

**CHEVRON/TEXACO'S ETHNO/ECO-CIDE OF THE ECUADOREAN  
AMAZON:  
THE SURVIVAL OF THE COFÁN**

This Article is dedicated in loving memory to my father Richard Grumet and to all the innocent Ecuadorean men, women and children who've been displaced, had their cultural roots uprooted, and who've lost their lives and livelihoods due to oil pollution.

The protracted environmental pollution case against Texaco (now owned by Chevron, Hereinafter "Chevron/Texaco"), who operated in Ecuador from 1967-1992, began long before the lawsuit was filed. Chris Jochnick & Paulina Garzon, *A Seat at the Table*, 34 NACLA: Report on the Americas, 42 (2001). The legal action *Aguinda v. Texaco, Inc.*, was filed in 1993 federal court in White Plains, New York, as a class action naming 74 plaintiffs (settlers and indigenous tribes) and 30,000 unnamed affected peoples, who all suffered due to Chevron/Texaco's destructive practices. Judith Kimerling, *Indigenous Peoples and the Oil Frontier in Amazonia: The Case of Ecuador, Chevron/Texaco, and Aguinda v. Texaco*, 38 N.Y.U.J. Int'l L. & Pol. 413, 427 (2006) [Hereinafter *Oil Frontier*]. The Cofán peoples, a tribe directly affected by the company's operations, suffered due to oil pollution for decades. Although the tribe, among other affected tribes (the Siona and Huaorani), were not named as plaintiffs in the lawsuit, "the class was defined geographically to also include them." *Id.* And although "unnamed," their story is very real. Forty years ago, the indigenous peoples of the northern Ecuadorean Amazon experienced an incursion, resulting in a devastating impact can only now be fully absorbed. Within the pristine northern Amazon of Ecuador, the tribes who had lived for centuries in balance with their environment and each other were systematically fragmented in an effort to extract oil.

The assault on the environment was fueled by greed, but the ethnocide of indigenous peoples and the ecocide of their territories were rooted in the notion of indigenous peoples as the “Other”. The terms “other” and “otherization” derive from

“the concept of the Other in cultural theory, and refers to the ways in which the discourse of a particular group defines other groups in opposition to itself...The term ‘Other’ has typically been used with reference to perceptions of national/ethnic culture, but also, for example, to institutional subgroups, and to gender.”

David Palfreyman, Discourses of Quality in Teaching and Learning:"Otherization" in a Multicultural University School of English 1 (2002),  
<http://www.ecu.edu.au/conferences/herdsa/main/papers/nonref/pdf/DavidPalfreyman.pdf>,  
(last accessed April 21, 2008).

The otherization of indigenous peoples is not unique to Ecuador. Generalized concepts of “natives” are inextricably woven into western society’s idea of indigenous peoples. But when the “contact zone” (“social spaces where cultures meet, clash and grapple with each other often in contexts of highly asymmetrical relations of power”) is injected with power, money, and resources, the concept of the Other becomes more subjugated. Tropicalizations:Transcultural Representations of Latinidad 2 (Frances R. Aparicio & Chavez-Silverman eds.,1997).

The Amazonian Other was so valueless to Chevron/Texaco, that the company’s modes of oil exploration spiraled downward, until cutting corners and saving money trumped the value of human life and allowed for decimation of the natural environment. The profit motive, in combination with the devaluation of the Cofán peoples, led to Chevron/Texaco’s failure to use even the most basic environmental safeguards in their oil exploitation. These values and perceptions also informed the actions of oil workers, who

sexually violated local indigenous women and bribed tribes with trinkets (such as solar panels and radios) in order to gain access to demarcated indigenous territories. Interview with Antonio Aguinda, Cofán tribe member, Zabalo, Ecuador. (March 22, 2008) [Hereinafter *Antonio Interview*]. Against this social backdrop, Chevron/Texaco's moral code became as polluted as the ecosystem it demolished.

The Aguinda v. Texaco lawsuit was removed from the United States federal courts primarily on grounds of *forum non conveniens*, international comity, and failure to join two indispensable parties, *Aguinda v. Texaco, Inc.*, 175 F.R.D. 50 (S.D.N.Y. 1997). Nevertheless, Chevron/Texaco's premeditated ecocide and ethnocide, with the consent of the Ecuadorean government, of the Amazonian region and its peoples, invokes an overriding and internationally recognized principle –*jus cogens*–under which Chevron/Texaco should have been tried within the United States and held accountable for its actions. *Jus cogens*, or natural law is a “source of international law based on universally accepted, unwritten standards for fundamental human behavior.” See Mark W. Janis & John E. Noyes, *Cases and Commentary on International Law* 138-54 (3d ed. 2006). Large scale ecocide and ethnocide by domestic oil companies operating abroad fits squarely within the framework that *jus cogens* was created to address, namely “[t]he universal and fundamental rights of human beings identified by Nuremberg–rights against genocide, enslavement, and other inhumane acts.” David F. Klein, *A Theory for the Application of Customary International Law of Human Rights by Domestic Courts*, 13 *Yale J. Int'l L.* 332, 350-351 (1988). [Hereinafter *Human Rights*].

Even without a legal victory as of yet, emerging from their struggles with *el petrolero* (the oilman) empowered and organized, the Cofán peoples have developed

refined political and legal strategies for countering oil contamination. Through collective action, pursuit of legal redress, transition to sustainable development and a strong spiritual core, the Cofán serve as an example of how indigenous peoples can effectively navigate through the culture of oil dependency and emerge as inspiration for a more socially conscious future.

To put into context both Chevron/Texaco's horrific destruction of the land and the Cofán peoples' heroic struggle for redress, this article describes my first hand experiences observing the impact of oil on indigenous communities (specifically the Cofán peoples) in Ecuador during visits in July of 2000 and March of 2008 as well as my personal interviews with residents of Lago Agrio, the Amazon Defense Front, and members of the Cofán tribe. The Cofán tribal condition, seen by the State, constitutes the last societal remnants of small-scale societies that in order to subsist, must calculate environmental carrying capacity, i.e. environmental fragility vs. demographic pressure. Chevron/Texaco endangered this equilibrium.

Lago Agrio, a dusty oil town crowded with oil workers, *policia* (police), locals and *indigenas* (indigenous peoples) selling goods under umbrella-lined side walks, is where my study of into the Ecuadorean oil incursion began. Elizabeth Grumet email journal, (March 15-18, 2008), Ecuador. (on file with author) [Hereinafter *Email Journal*]. I arrived after an eight-hour of flight from Los Angeles to Ecuador's capital of Quito, and a seven-hour bus ride winding up through the Andes. It's not a tourist destination by any means; in fact, visiting tourists are warned not to linger, since Lago Agrio's proximity to the nearby conflict-ridden Colombian border have made it simply a stepping stone into the magnificent Amazon. *Id.* Moreover, the oil industry, launched in great part by

Chevron/Texaco in the 60's, is indelibly stamped on the geography and culture of this majestic country.

On the bus ride to “Lago”, as locals refer to the region, it is virtually impossible to miss the pipeline, a dark, pregnant, venomous snake that slithers along the verdant countryside, invading front lawns of homes, cutting through the middle of roads, and running alongside babbling rivers and waterfalls. *Email Journal*. At a small police checkpoint about five hours from Lago, where local military sifts through locals in search of Colombian drug smugglers, the bus driver stopped for *merienda* (lunch). I walked towards an open field, where a pipeline hung about four feet off the ground. In a surreal convergence of innocence, oil and the environment, I watched a young Ecuadorean boy with his fishing pole in hand walk atop the suspended pipe over the green field, his dogs prancing close behind. (see appendix). This poignant image will never leave my memory, and represented the extent to which the peoples of Ecuador have been forced to adapt to the invasion of the oil industry.

Lago Agrio, translated as “Sour Lake”, was named by the first oil workers after Sour Lake, Texas, the former headquarters of Texaco. Interview with Jose Fajardo, President, Amazon Defense Front, in Lago Agrio, Ecuador (Mar. 18, 2008) [Hereinafter *Jose Fajardo Interview*]. The city's official name is Nueva Loja, though Lago Agrio is the name that has stuck with locals, appropriate within the inextricable culture of oil pervading the area. Lago is the provincial capital of Sucumbios, and the entry point into the magical Cuyabeno Reserve, created in 1979 to protect the Amazon. *Id.* The lush Amazon serves as the home to unique flora and fauna and various native indigenous groups, including the Siona, Secoya, Quechua, Shuar, Huaorani, and the Cofán. *Id.* A

tragic casualty to oil contamination, the Tetetes, a native indigenous tribe, has literally disappeared. *Id.* This is a classic case of population demise correlated with environmental entropy.

**DIS-ORIENTE-TION IN THE ORIENTE: ECOCIDE, ETHNOCIDE & “OTHERIZATION”**

Chevron/Texaco began its oil quest in 1967, when they discovered oil in the eastern region of the *Oriente* (Amazon). Jochnich et. al., *supra*, at 42. The Oriente, spanning 32 million acres, encompasses one of the most ecologically delicate and diverse areas on earth. *Id.* Within this fragile environment, Chevron/Texaco made calculated decisions to *aprovechar* (take advantage of) Ecuador’s lax environmental laws and use unconscionable methods to extract oil, resulting in the devastating ecocide of the Amazon. “Ecocide” is defined as “the intentional destruction, in whole or in part, of any portion of the global ecosystem.” Timothy Schofield, *The Environment As An Ideological Weapon: A Proposal To Criminalize Environmental Terrorism*, 26 B.C. Env’tl. Aff. L. Rev. 619, 641 (1999) [*Hereinafter Environmental Terrorism*].

In *Environmental Terrorism*, Schofield presents a strong argument to criminalize ecocide. He argues that

“[t]he domestic crime of ecocide should be defined as the intentional or reckless manipulation or destruction of any aspect of the physical environment which damages or exploits, in whole or in part, any portion of the global ecosystem. This definition incorporates not only acts which destroy the environment, but also those which employ it as a conduit of destruction.”

*Id.* at 645. Chevron/Texaco’s reckless destruction of Ecuador’s ecosystem constitutes ecocide in the most literal sense. The company’s actions both destroyed the environment and employed it as a conduit of destruction. The most vivid example of the environment as a conduit of destruction was the continuous dumping of highly toxic chemicals into the

river systems, which carried the contamination through the entire Amazonian region, and subsequently into the homes and bodies of the men, women, children and living creatures who ingested the toxic water. *Jose Fajardo Interview*.

Chevron/Texaco's operation was an expansive minefield of contamination. This made any escape from the area nearly impossible for long time residents, especially given that many had few resources. They drilled 339 wells (*pozos*) over an expanse of 1,094,590.35 acres throughout the region. Helen Collinson, Judith Kimerling, *Green Guerrillas: Oil, lawlessness and Indigenous Struggles in Ecuador's Oriente* 61 (1997). In order to cut costs and attain maximum profits, Texaco opted against the standard environmental practice of extracting the toxic water and sludge and re-injecting it into the earth. *Id.* The three dollar per barrel savings motivated a much more crude, and infinitely more toxic practice-dumping approximately *18 billion* gallons of the "formation waters" directly into the waterways. Chevrontoxico, *The Rainforest Chernobyl*, <http://www.chevrontoxico.com/article.php?id=33>, (last visited April 21, 2008).

Chevron/Texaco extracted \$30 billion in profits from its operations in Ecuador and the conversion from profit to environmental damage is staggering. *Id.* Each billion Texaco earned in profits converted to one oil spill of crude oil the size of the Exxon Valdez spill. Fausto Penafiel, the former environmental director of Quito, Ecuador and current consultant to the affected peoples, estimates that the amount of crude oil dumped by Texaco is the equivalent of *30* Exxon Valdez spills. *Id.*

Infiltrating an area approximately three times the size of Manhattan, Chevron/Texaco left a legacy of devastation. The waste produced by Chevron/Texaco's wells include heavy metals, hydrocarbons and toxic levels of salts were dumped directly

into unlined, open holes in the ground. *Id.* These ‘pits’, allow toxic leachate to seep into the groundwater. *Id.* Locals called these pits *piscinas* (pools), and saw them as a source of potable water, a resource very scarce in the remote Amazon. In fact, many people constructed their homes near the pools due to the water scarcity. *Jose Fajardo Interview.* Local indigenous peoples and *mestizos* consumed the waters, unaware of the massive toxins they were ingesting. “Mestizo” is a term generally used to describe a person of mixed blood, most typically of Indian and Spanish blood. Antonia Darder, Rodolfo D. Tores, *The Latino Studies Reader*, 203 (1998). Toxic contaminants in the drinking water were 1,000 times above the safety standard recommended by the U.S. Environmental Protection Agency and local health agencies have reported increased gastrointestinal problems, skin rashes, birth defects and cancers, ailments they attribute to the Texaco contamination. Albion Monitor, *Texaco’s Devastating Search for Amazon Crude*, <http://albionmonitor.com/11-14-95/texacoamazon.html>, (last visited April 21, 2008).

Chevron/Texaco’s actions directly fragmented local indigenous communities and stifled their existence by causing many people in the region to perish or become sick from contamination, or left them desperately clinging to their “lifeway.” Norman E. Whitten, Jr., International Work Group For Indigenous Affairs, *Ecuadorian Ethnocide and Indigenous Ethnogenesis: Amazonian Resurgence Amidst Andean Colonialism* 24 (1976). In tandem with the original lawsuit, the Center for Economic and Social Rights (a U.S. NGO) and a team from Harvard University found conclusive evidence of contamination and of widespread human rights violations. Jochnich et. al., *supra*, at 43. According to anthropologist Norman Whitten, “The concept of ethnocide is taken from genocide, and refers to the process of exterminating the total lifeway of a people or

nation, but in the ethnocidal process many of the peoples themselves are allowed to continue living.” Whitten, *supra*, at 24. In a chilling example of ethnocide, Chevron/Texaco exterminated the lifeway of tens of thousands of victims, and after profiting from their resources, left them clinging to survival.

### **AGUINDA V. TEXACO: THE SISYPHEAN CHALLENGE**

The plaintiffs have endured an arduous judicial battle spanning over a decade that brings to mind Sisyphus, the mythical Greek king forced for eternity to roll an enormous boulder up a steep hill, only to have it slip from his fingers near the top and roll down, wherein he would begin again.

Many procedural issues plagued Plaintiff’s case from the beginning, complicating the litigation and creating the momentum of a judicial system dragging through crude oil. Chevron/Texaco argued several legal theories to effect the removal of the case from the U.S. federal court system to Ecuador, the most significant of which were *forum non conveniens*, international comity, and failure to join two indispensable parties. *Aguinda*, 175 F.R.D. at 50. Their position was that “the convenience of the parties and the Court and the interests of justice require that the case be tried in Ecuador.” *Sequihua v. Texaco, Inc.*, 847 F. Supp. 61, 63 (S.D. Tex. 1994). The court in *Sequihua*, to which the *Aguinda* court deferred for analysis of the principle legal issues, explained that under international comity, “a court should decline to exercise jurisdiction under certain circumstances in deference to the laws and interests of another foreign country.” *Id.* The District Court concluded that the Ecuadorean court system was a reasonably adequate forum in which to conduct a fair trial, and in consideration of the location of the evidence and victims in

Ecuador (among other factors), it would be unfair to subject the defendants to trial in the United States. *Id.*

In light of the adversarial position their own government took in the case (see *Insider Accomplice* section), the plaintiffs in *Aguinda* persuasively argued to the District Court that any litigation in Ecuador would be met with hostility and any semblance of justice would be impossible. *Aguinda v. Texaco, Inc.*, 1994 U.S. Dist. LEXIS 4718, 7 (D.N.Y. 1994) (unpublished case). Despite giving merit to the concerns of the plaintiffs, the court found that, “[a]lthough lack of impartiality in adjudication is a potential problem in all jurisdictions including those in the United States (and is indeed a principal basis for diversity of citizenship jurisdiction), the courts of the United States are properly reluctant to assume that the courts of a sister democracy are unable to dispense justice.” *Id.* at 7.

The *Aguinda* case was dismissed on the condition that Chevron/Texaco submit to the jurisdiction of the Ecuadorean court system. *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 478-79 (2d Cir. 2002). According to the lead plaintiff’s lawyer Cristobal Bonifaz, “[t]o the best of our knowledge . . . this is the first [case] of its kind in world history: where an American company is forced by American courts to show up in another country’s courtroom and comply with whatever judgment that comes out of that courtroom.” *See, e.g.,* Kevin Koenig, *ChevronTexaco on Trial*, *World Watch*, Jan.-Feb. 2004, at 10, 11. Within the new jurisdiction of Ecuador, the original case has taken on a new shape. A lawsuit representing 46 of the *Aguinda* plaintiffs, two new plaintiffs and “members of the affected communities” was filed at the Superior Court of Justice of Nueva Loja in May of 2003. *Oil Frontier*, at 629-631. The Cofán, once again, are not being directly

represented, but are amorphously included within the “members of the affected community.” *Id.* at 631.

The lawsuit is seeking a “judicial determination of the costs of a comprehensive environmental remediation...and an order directing ChevronTexaco to pay the full amount to a local NGO, Amazon Defense Front (*Frente de Defensa de la Amazonia*, “*Frente*”), which would then ‘apply’ the funds to the ends determined in the judgment.” *Id.* This remediation money would include a ten percent share to be remitted to *Frente* for the plaintiffs. *Id.* The local concern over an NGO receiving and dispersing all awarded damages is palpable, and despite attempts to include affected Ecuadorean citizens in the proceedings, many, like the Cofán are essentially “out of the loop”. Many members of the Cofán community (during my visits in both 2001 and 2008) were completely unaware of the proceedings and were not informed of any potential remediation funds. The lawsuit in Nueva Loja is currently in the discovery stage, with court-appointed experts evaluating the damage to the affected areas, and *Frente* hopes for a final judgment in 2009-2010. *Jose Interview*. It is essential that substantial efforts be made to incorporate the Cofán (and all affected peoples) in the proceedings to ensure their meaningful representation.

### **VIOLATION OF THE LAW OF NATIONS-JUS COGENS**

The District Court in its first ruling noted that Chevron/Texaco may have violated the “law of nations,” possibly invoking jurisdiction in the New York federal court. *Aguinda v. Texaco, Inc.*, 1994 U.S. Dist. LEXIS 4718, 715 (D.N.Y. 1994) (unpublished case). The court articulated that

“[t]he law of nations is...customary in nature, to be defined by the usages, solemn commitments and clearly articulated principles of the international

community. Participation of the United States in formulation of such usages, commitments and principles is, of course, of particular importance - and may indeed be necessary - where the courts of the United States are asked to enforce them.”

*Id.* at 21.

Although the law of nations is an “international natural law theory,” the international community has fueled its force through affirmation, application and deference. See David F. Klein, *A Theory for the Application of Customary International Law of Human Rights by Domestic Courts*, 13 *Yale J. Int’l L.* 332, 350-351 (1988) [Hereinafter *Human Rights*]. Nations ratify and give the legal theory force and credence when they “seek to enforce it upon each other, and deny their own violations of it,” *Id.* at 352. The Nuremberg Tribunals were a powerful example of the significance of *jus cogens*, wherein it was underscored that basic principles of right and wrong govern the international community. *Id.* at 352. Specifically, the International Court in the *Barcelona Traction* held that “there are two kinds of obligations in customary international law: those toward other states, and those toward the international community as a whole.” *Id.* The latter include ‘principles and rules concerning the basic rights of the human person.’ *Id.*

Although the issue of *jus cogens* was overshadowed by *forum non conveniens* in subsequent rulings in the case, Chevron/Texaco’s attack upon and endangerment of the Amazonian ecosystem amounts to ecocide and ethnocide so significant it cuts at the “universal and fundamental rights of human beings” and amounts to “inhumane treatment” so severe that the U.S. federal court should have asserted jurisdiction over the litigation under the *jus cogens* principle. *Id.* at 352.

The law of nations is structured using two prongs of legal theory. First, *jus dispositivum*, forms a non-binding international “honor code,” under which “violators are reproached only for having failed to live up to the expectations that they themselves have created.” *Id.*, at 352. Second, *jus cogens*, a binding, internationally recognized moral code that amounts to a federal common law. *Id.* at 352.

In *Human Rights*, Klein posits:

Common law courts have jurisdiction to hear common law claims. Among these are claims arising under the law of nations. When substantive violations occur under that law, claims for redress may be adjudicated pursuant to both common law rules and domestic statutes defining jurisdiction and specifying available forms of relief. It is within the right of domestic jurisdictions to prescribe the remedy for substantive violations of international law, and it may also be their duty to provide some legal redress, whether it be penal- or tort-based. In the United States, remedies for violations of customary international law, like the jurisdiction to apply it, are provided by the Alien Tort Statute... However, where a particular domestic jurisdiction has expressly bound itself to respect that law, or where the law constitutes *jus cogens* subject to universal jurisdiction, it is peremptory and therefore domestically binding as U.S. common law.

*Id.* at 365.

Furthermore, *jus cogens* “is customary law that is ordered to a transcendent good of the international community.” *Id.*, at 351. *Jus cogens* derives from “values taken to be fundamental by the international community, rather than from the fortuitous or self-interested choices of nations.” *Id.*, at 351. The force of the Nuremberg prosecutions was due not to the consent of the Axis Powers and individual defendants, but on the nature of the acts they committed: acts that the laws of all civilized nations define as criminal. *Id.* The application of *jus cogens* in cases such as this is not only warranted, but should be per se invoked in any judicial action involving massive environmental ecocide and ethnocide.

## **THE ECUADOREAN GOVERNMENT: *THE INSIDER ACCOMPLICE***

For decades, the Ecuadorean government played an integral role in aiding oil companies in their quest for “black gold”. During the 1970’s and 1980’s, the government encouraged colonization of the Amazon by offering “land titles and easy credit to settlers who migrated to the region, cleared the rainforest, and planted crops or pasture...Government officials pledged to “civilize” native peoples and integrate them into the dominant national culture.” *Oil Frontier*, at 427. As Kimerling explains, “Since the oil boom began, successive governments have linked national development plans and economic policy almost exclusively with petroleum policy, and the health of the industry has become a central concern for the State.” *Id.* at 422. A likely explanation of this accomplice role is the government’s view the Amazon as a “frontier to be conquered—a source of wealth for the debt burdened state and an escape valve for demographic and land distribution pressures.” *Id.* at 413, 427. The government was complicit in facilitating the exploitation of natural resources and allowing injury and death among their peoples.

Indigenous peoples, especially those in the Amazon, are regarded by the Ecuadorean government and much of society as “Indios que viven alla muy lejos en la selva”, (Indians who live way out there in the jungle). (Elizabeth Grumet, informal conversations with Ecuadorean residents regarding their notions of Amazonian tribes, in Quito and Lago Agrio, Ecuador (March 16-19, 2008). As Linda Tuhiwai Smith, a leading theorist on indigenous rights explains, the term ‘indigenous peoples’ is a

relatively recent term which emerged in the 1970’s out of the struggles primarily of the American Indian Movement (AIM), and the Canadian Indian Brotherhood. It is a term that internationalizes experiences, the issues and struggles of some of the world’s colonized peoples. The final ‘s’ in ‘indigenous peoples’ has been argued for quite vigorously by indigenous activists because of the right of peoples to self-determination. It is also a way of recognizing that there are real differences between different indigenous peoples.

Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* 7 (Zen Books, Ltd., Univ. of Otago Press, 1999) (1999). Governmental infrastructure and policies reflect this distanced perception of the Other. As a result, resources rarely make their way into the Oriente, leaving people completely subsistent on a disappearing landscape.

From the inception of the Chevron/Texaco litigation, the Ecuadorean government vehemently opposed judicial action in the U.S., fearing that if they supported the litigation oil companies would take their business to a more corporate-friendly nation. Accordingly, the administration filed an *amicus* brief in support of Texaco's action to have the litigation moved to Ecuador. *Aguinda v. Texaco, Inc.*, 1994 U.S. Dist. LEXIS 4718, 28 (D.N.Y. 1994) (Unpublished Opinion). They pleaded to the U.S. District Court that, "Ecuador needs foreign investment in order to stimulate its economy . . . Foreign investors naturally assume that disputes relating to the development of Ecuador's natural resources are to be adjudicated by the courts of Ecuador." *Id.*

Ecuador's antagonistic stance towards their citizens' complaint severely crippled the litigation. In numerous orders, the District Court referred to the government's criticism of the case and identified their support for the removal of the case from the United States as pivotal. *Aguinda v. Texaco, Inc.*, 175 F.R.D. 50, 51 (S.D.N.Y. 1997), *Aguinda v. Texaco, Inc.*, 139 F. Supp. 2d 438 (S.D.N.Y. 2000), *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 474 (2d Cir. 2002). In the order dismissing the lawsuit, the District Court asserted that,

As for the submissions offered here by the Congress of Ecuador asking this Court to disregard the submissions of the Government of Ecuador objecting to this Court's retention of jurisdiction, the litany of conflicting submissions from these

representatives and officials further evidences the need for this Court to resist intruding on matters that are already the subject of intense political debate in the affected foreign country.

*Aguinda v. Texaco, Inc.*, 945 F. Supp. 625, 627 (S.D.N.Y. 1996).

Despite the Ecuadorean government's belated support of the lawsuit post-dismissal due to an electoral change, the effects of their undermining actions had done irreversible damage to the Cofánes' (et. al) case. In response to the governments' action to intervene as plaintiffs in the case, the District Court found that

[f]inality in litigation and the orderly administration of justice would be rendered a mockery and a sham if electoral changes and accompanying shifts in viewpoint could of themselves justify renunciations of formal positions previously taken with the Court, let alone constitute grounds for 'timely' intervention after a case has gone to judgment.

*Aguinda*, 175 F.R.D. 50, 51.

### ***DESTRUCTION OF THE COANCOAN: CHEVRON/TEXACO'S INVASION OF THE COFÁN SPIRIT WORLD***

The Cofán have a deep spiritual relationship their environment, such that their vision of the world incorporates a narrative of powerful spirits (*coancoans*) who live below the earth and are counterparts to the Cofánes who live above the earth. The invasion of drills into the earth is like an invasion into the soul of the Cofánes, and extracting oil from the earth is like extracting the spirit of the underworld. Enrique Criollo, a native Cofán, spoke of the legend of the coancoans, and how oil has affected this spiritual balance,

In the consciousness of the Cofán, it's very clear that inside the earth, there's a landscape similar to this world; there exist trees, rivers, and animals for hunting. There exist people that live like us, but they're bigger and taller. It's the coancoan, the owners of the petroleum...But the oil companies destroy the world below and kill the coancoans...and with them dies the knowledge that ensures hunting and nourishment for our town. We have to save the coancoan from the destruction because their life depends on ours.

The Cofán-Guardians of the Rainforest, The Old People Told Us: Twenty Six Cofán legends as related by Enrique Criollo, edited by M. B. Borman, [cofan.org/Cofan\\_legends\\_antiguo.doc](http://cofan.org/Cofan_legends_antiguo.doc), (last visited April 21, 2008).

Oil exploitation has torn at the very fabric of the Cofán cosmology. The ethnocide carried out upon the Cofán has not only damaged the environment and the Cofánes physically, but the very lifeblood of their spiritual world. The magnitude of this harm is profound when one considers the constant spiritual injury the Cofán suffered during the Texaco Period, after which their numbers dwindled to 300 from tens of thousands previously. *Antonio Aguinda interview*, (March 21, 2008). This spiritual pillage is best described in the following Cofán narrative:

The coan-coan, spirits of the subterranean realm, give our shamans power to heal. Our shamans tell us that the coan-coan suffer just like we do as a result of the oil company's presence. The oilmen have destroyed a lot of coan-coan.

Oilwatch, [http://www.oilwatch.org/doc/libros/oilflows\\_forestsbleed.pdf](http://www.oilwatch.org/doc/libros/oilflows_forestsbleed.pdf), (Last accessed April 21, 2008).

## **COFÁN COLLECTIVE ACTION & SUSTAINABLE DEVELOPMENT**

The Cofán have taken a courageous stance against further incursions into their territory by the oil industry. As Carlos, a young Cofáne explained, “This experience has helped us unite to ensure this (oil invasion) never happens to us again.” Interview with Carlos Aguinda, Cofán tribe secretary, Zabalo, Ecuador. (March 22, 2008) [Hereinafter *Carlos Aguinda Interview*]. While some local tribes are tempted by the gifts/bribes offered by oil companies in exchange for permission to drill into indigenous territories, the Cofán communities respond to these inducements with formidable rebuke. *Id.*

Additionally, the tribe has taken political steps to ensure their survival. In order to defend their rights, they formed Ecuador's Indigenous Organization of the Cofán Nationality (Organización Indígena de la Nacionalidad Cofán del Ecuador, OINCE), now FEINCE. Through this united front, the Cofán have secured the legal rights to approximately one million acres of their ancestral territory, which are "currently protected as indigenous ancestral territory through agreements with the Ecuadorian Ministry of the Environment and within the National System of Protected Areas." Cofán, *Organization*, <http://www.cofan.org/organizacion/organizacion.html> (Last visited April 22, 2008). The tribe has also "successfully negotiated a co-management and cooperation agreement with the Ministry of Environment to directly protect and manage more than 250,000 acres within the Cayambe-Coca Ecological reserve, home to the Sinangoe Cofán community and a region rich with tradition for all the Ecuadorian Cofán." *Id.* These significant achievements demonstrate the power of collective action and the Cofánes' ability to influence political change through organization and perseverance.

Antonio Aguinda, a 55-year old Cofáne passionately spoke of an event "about 10-15 years ago," which exemplifies the power of collective action. La Comunidad Cofán de Zabalo (Cofan Community of Zabalo), where he and about 150 other Cofánes have relocated due to the oil industry, is a tranquil, lush community hours from any formal roads or communities. Therefore, when the low buzz of Amazonian insects was interrupted one night by the overpowering clamor of grinding drills and construction, the Cofánes knew it was another uninvited oil company. *Antonio Aguinda Interview*. As former Chief and ardent activist Randy Borman explains:

The tribe has endured a continuous stream of assaults on their territory for decades, since the first exploratory well affirmed quantities of marketable oil in

the region in 1966. Nacion Cofán del Ecuador, *Who Are We*, <http://www.cofan.org/quienes/quienes.html> (last visited April 19, 2008) [Hereinafter *Who We Are*]. The actual impact at the local level was brutal. Young men were urged to work for the company cutting down the forest that had provided sustenance for many centuries, and ridiculed for wearing "womanly" *ondicuje* (garment, also known as "chusma" worn by Cofán men.) Nacion Cofán del Ecuador, Dictionary, <http://www.cofan.org/quienes/diccionario.html> (last visited April 19, 2008), and beads. Young women were propositioned and often raped. Alcohol flowed freely. Petty robbery, almost unknown among a closed and egalitarian traditional culture, became common...The fabric of the culture was being frayed in a thousand ways. *Id.*

In response to the incursion, Antonio and a group of Cofánes adorned in traditional Cofán attire, gathered their *lancas* (spears) and made way into the night. The tribe trekked for two days until they reached the oil site. *Antonio Aguinda Interview*. They encountered a full fledged oil operation within their demarcated territory, with oil platforms and extraction structures being built by a group of oil workers many times the size of the small Cofán group. *Id.* The Cofánes, spears in hand, surrounded a pump and refused to leave until the company agreed to cease operations and to sign a contractual agreement affirming their departure and promising never again to set foot in Cofán territory. *Id.*

Randy Borman concludes, "The oil well was capped, *in one of the most historic moments of Cofán history, and the question of possible oil exploitation within the Cofán lands at Zabalo has permanently been shelved.*" *Who We Are*. This was a proud victory for the tribe and a symbolic representation of transcendent hope for all indigenous peoples faced with the pressure of oil exploitation.

## **SUSTAINABLE DEVELOPMENT**

In a conscious effort to harness local knowledge and resources and maintain the delicate balance within their environment, the Cofán have built a sustainable economy to

ensure their survival. Sustainable development is defined as “development that meets the needs of the present without compromising the needs of future generations to meet their own needs.” Elizabeth Dore, *Crossing Currents: Continuity and Change in Latin America*, “Capitalism and Ecological Crisis: Legacy of the 1980’s”, 415, (1998). The Cofán have harnessed their extensive knowledge of the environment and ingenuity in canoe making to create a sustainable source of income for the tribe. Over ten years ago, the tribe developed *EcoCanoa*, a *taller de canoas* (canoe making outfit) where local Cofánes work to create eco-friendly canoes for public consumption. The Cofán Community in Zabalo has also developed a growing ecotourism business, in which visitors are hosted in cabanas and treated to the full Cofán cultural experience, including traditional meals, guided nature hikes and pirana-fishing expeditions, and the purchase of traditional Cofán jewelry. The Zabalo community has also had tremendous success for over a decade managing a *charrapa* (turtle) restoration initiative, wherein local tribe members raise turtles in large pools and release them into the river when they reach maturity. This year alone, the Cofán released over 9,000 turtles into the Rio Zabalo. Elizabeth Grumet Journal, March 22, 2008. (On file with author). These adaptive survival techniques have taken the tribe from the brink of extinction to a position of empowered fortitude.

In conclusion, the Chevron/Texaco assault can serve as a significant lesson to inform future litigation in oil ethno/ecocide violations by domestic companies operating in other nations. *Jus Cogens* is not only an appropriate binding legal authority, but should be invoked per se when violations are so severe, as in the Chevron/Texaco case, that the abuse of basic human rights is an affront to the moral principles of the world

community. Amidst the mire of crude oil exploitation, the Cofán can teach us invaluable lessons about how indigenous peoples can fight *el petrolero* and emerge victorious.

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Word Count: 5847