

March 15, 2022

President Joe Biden
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear President Biden,

We write to you with great concern regarding the situation of Steven Donziger, a US human rights lawyer who has been sentenced to six months in prison in a case that was brought in retaliation for his work in defense of the rights of Indigenous peoples in Ecuador who were victims of Chevron Corporation's oil dumping. More than four months since a discerning opinion by the UN Working Group on Arbitrary Detention that found Steven Donziger's detention to be arbitrary, US judicial authorities have thus far failed to take any action to remedy the situation and implement the Working Group's call to ensure Mr. Donziger's immediate release. We are therefore urging you to exercise your power of executive clemency to pardon Steven Donziger as a way to ensure his immediate release.

As you may already be aware, the UN Working Group on Arbitrary Detention found in September 2021 that Steven Donziger's deprivation of liberty is arbitrary because it violates several norms relating to the right to a fair trial, including the apparent lack of impartiality of the courts.¹ The Working Group noted with concern the lack of fairness in a civil process against Mr. Donziger and further condemned the lack of independence, objectivity and impartiality of the judge who ordered Mr. Donziger to remain in pre-trial house arrest for over two years in violation of his right to liberty and that has overseen the trial over criminal contempt charges.

Moreover, the Working Group concluded that Mr. Donziger's deprivation of liberty appears to be in retaliation for his work as a legal representative of Indigenous communities in Ecuador after he refused to disclose to Chevron the confidential correspondence with his clients.

Despite these serious concerns, Mr. Donziger was sentenced on 1 October 2021 to the maximum penalty of 6 months in prison and denied the possibility to be released pending an appeal. Notwithstanding a decision by the Court of Appeals for the Second Circuit to expedite the resolution for the pending appeal on the conviction and sentence, the decision is still pending to date.

¹ Opinion adopted by the UN Working Group on Arbitrary Detention No. 24/2021, concerning Steven Donziger (United States of America), UN Doc. A/HRC/WGAD/2021/24, 1 October 2021

Steven Donziger’s prosecution is one more example of how far powerful interests are willing to go in their quest to silence those standing up for justice and exposing their wrongdoing. By doing so, they are also trying to send a chilling message to environmental activists around the world that fighting against corporate interests can cost them their liberty and more.

This type of legal cases brought, or threatened to be brought, with the intention of silencing or intimidating journalists, civil society organizations and human rights defenders are becoming an increasing threat to the space for civil society globally. These intimidatory suits are not necessarily aimed at protecting the honour or reputation of an individual or a corporation, but rather to intimidate, tire and deplete the financial and psychological resources of their target. The cost of fighting these legal actions can put extreme financial and other pressure on human rights activists forcing them to repurpose the already limited funds and resources from their work to defending the lawsuit. The litigation is often also successful in diverting the attention from the environmental or human rights issue to the legal case itself.

Already in 2017, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed concern over a “worrying new approach” in the USA of litigants using the RICO statute to “intimidate advocacy groups and activists”.² The UN Special Rapporteur on the situation of human rights defenders has similarly expressed concern over the restrictions faced by environmental defenders in the USA who were facing increased restrictions in the country.³

It is therefore urgent for the US authorities to promptly implement the UN’s decision calling, among other things, for the immediate release of Steven Donziger and further take the necessary measures to ensure that corporations can no longer abuse the justice system to target and harass human rights defenders. The continued reprisals against Steven Donziger are sending a worrying message to corporations in the USA and around the world that they can keep weaponizing the justice system to intimidate human rights defenders without any consequence.

² Info Note of the UN Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association, Annalisa Ciampi, ‘SLAPPs and FoAA rights’: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_ICJ_USA_33403_E.pdf

³ World Report on the situation of human rights defenders, prepared by Mr. Michel Forst (United Nations Special Rapporteur on the Situation of Human Rights Defenders), December 2018, pp. 192-196 available at <https://www.protecting-defenders.org/pdf.js/web/viewer.html?file=https%3A//www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf>

We thank you in advance for your urgent consideration of this matter, and we would welcome an opportunity to meet with you or your officials for further discussions regarding the injustices of this case and more broadly about what the US authorities can do to ensure that corporations can no longer abuse the justice system to target and harass human rights defenders.

Sincerely,

Amazon Watch	Environmental Justice Coalition for Water
Amnesty International	Estes Valley Clean Energy Coalition
Animals Are Sentient Beings, Inc.	Extinction Rebellion NYC
Athens County's Future Action Network	Extinction Rebellion San Francisco Bay Area
Banana Link	Fair Finance International
Bay Area – System Change not Climate Change	Family Farm Defenders
Be The Change – Colorado	Food Empowerment Project
BudgIT Foundation	Food & Water Watch
Cafe Coop	Forest Peoples Programme
CASE – Citizens Alliance for a Sustainable Englewood.	Friends of the Earth Canada
Central California Environmental Justice Network	Friends of the Earth US
Civil Liberties Defense Center	Future Coalition
Clean Energy Action	Global Alliance for Incinerator Alternatives
Climate Action Rhode Island – 350	Goldblatt Partners LLP
Climate Crisis Advisory Group	Indigenous Peoples Rights International
Climate Defense Project	Institute for Policy Studies Climate Policy Program
CODEPINK	International Marine Mammal Project of Earth Island Institute
Community Empowerment and Social Justice Network (CEMSOJ)	International Service for Human Rights
Community Outreach for Development and Welfare Advocacy (CODWA)	Fossil Fuel Divest Harvard
Corporate Ethics International	Foundation For Environmental Rights, Advocacy & Development (FENRAD NIGERIA)
CorpWatch	Global Exchange
Defend Democracy in Brazil Committee – New York	Global Justice Ecology Project
Denver Justice and Peace Committee	Global Justice Now
Direct Action Everywhere	Global Witness
Divest Ed	Greenaction for Health and Environmental Justice
Earth Ethics, Inc.	Greenpeace USA
Echo	Greenpeace Canada
Environment East Gippsland inc.	Green State Solutions
Environmental Defender Law Center	Harrington Investments, Inc.
	Healing Bridges
	Honor the Earth

Human and Environmental Development Agenda
Impact Capital Strategies
International Women's Rights Action Watch Asia Pacific
Just Share
Kickapoo Peace Circle
The Lebanese Oil and Gas Initiative
Liberty Tree Foundation for the Democratic Revolution
London Mining Network
Long Beach Alliance for Clean Energy
March Forth Ventures
Media Alliance
Mighty Earth
Mosquito fleet
NJ State Industrial Union Council
Nurture The Children
Oil Change International
Oil and Gas Action Network
One Earth Sangha
Oxfam America
Pachamama Alliance
Palestine Legal
Project HEARD
Publish What You Pay (PWYP) Nigeria
Public Citizen's Global Trade Watch
Rainforest Action Network
Rainforest Foundation US
Re: Common
Resource Matters
ReThink Trade
Rights Action
Rocky Mountain Peace and Justice Center
Scientists for the Mekong
SoCal 350 Climate Action
South East Region Conservation Alliance
Stand.earth
Sunflower Alliance
Ta havet tilbake og jorda i bruk
Terra Advocati
Texas Campaign for the Environment
Texas Environmental Justice Advocacy Services
Trade Justice Education Fund
TribesAlive
TZH Editing Inc.
Universidade de Brasília: Laboratory and Study Group in Interethnic Studies
Union of Concerned Scientists
Union of People Affected by Texaco (UDAPT)
Uplift
Vegan Runners
West Berkeley Alliance for Clean Air and Safe Jobs
Women United for Economic Empowerment
Women's Earth and Climate Action Network
Youth United for Community Action
198 methods
350 Bay Area
350 Hawaii
350ma-Berkshires
350 Silicon Valley

Background

Steven Donziger first began his work for environmental justice in 1993, when he visited Ecuador and became part of the legal team representing victims of oil dumping in an emblematic case against Chevron Corporation, following accusations that the corporation was responsible for what is widely considered one of the worst oil-related environmental disasters in contemporary history. In 2011, after years of judicial proceedings, a court in Ecuador found Chevron Corporation liable for causing serious environmental and health damage to the Amazon rainforest and the communities who lived there. The court determined that the corporation had deliberately discharged billions of gallons of oil waste onto Indigenous ancestral lands as a cost-saving measure and ordered Chevron to pay billions of dollars in damages.⁴

After losing the case in Ecuador, Chevron moved all its assets out of the country.⁵ The plaintiffs were then forced to seek enforcement actions in other countries where Chevron had a presence, but the corporation threatened the Ecuadorian victims with “a lifetime of litigation” unless they dropped their case.⁶ In 2011, Chevron filed a lawsuit in the USA against all the plaintiffs named in the Ecuador lawsuit as well as Steven Donziger and other lawyers, nongovernmental organizations and a number of experts who supported their case.⁷

In 2014, Mr. Donziger was found liable for having committed acts that fell within the RICO definition of “racketeering activity”, including “extortive” efforts to pressure Chevron through “celebrity advocacy”, government lobbying, a disinvestment campaign, and an NGO-driven media strategy. The judge ruled in favor of Chevron and enjoined enforcement of the Ecuadorian judgment in the United States and prohibited Mr. Donziger from attempting to profit from it. He was ordered to transfer to Chevron all property that he had or might later obtain that could be traced to the Ecuadorian judgment. Mr. Donziger was thereafter required by the judge to turn over all of his electronic devices and accounts (email, chat, social media accounts, clouds, etc.) to a forensic expert for ultimate review by Chevron.⁸ Mr. Donziger submitted in October 2018 a letter explaining that he would be unable to comply with the judge’s orders since it would give Chevron “near wholesale access to confidential, privileged, and protected documents” and requested the court “to allow me to go into voluntary contempt as a matter of principle in order to obtain appellate review”.⁹ In his letter, Mr. Donziger explained that his ethical

⁴ Provincial Court of Sucumbios - Judgment of Case No. 2003-0002, 14 Feb 2011 [English translation of decision issued by the Provincial Court of Sucumbios, Ecuador] available

<https://chevronecuador.org/assets/docs/2011-02-14-judgment-Aguinda-v-ChevronTexaco.pdf>

⁵ <https://www.cbsnews.com/news/chevron-fined-95-billion-in-ecuador/>

⁶ John Otis, Chevron vs. Ecuadorean Activists, The Global Post, May 3rd, 2009, available at:

<http://www.globalpost.com/dispatch/the-americas/090429/chevron-ecuador? page=0,2>

⁷ US Southern District Court of New York, Chevron Corporation v. Steven Donzier et al., Feb 1, 2011 available

https://www.eenews.net/assets/2011/02/02/document_gw_02.pdf

⁸ Chevron Corporation v. Donziger, 833 F.3d 74 (2016). Donziger appealed the Court’s decision, but in 2016 the Court of Appeals confirmed the initial judgment

⁹ 11-cv-00691-LAK. Dkt. 2184 at 3-4, 11

obligations towards his clients prevented him from turning over the devices prior to appellate review given that the order appeared to violate multiple legal protections under US and international law. On 23 May 2019, the judge held Mr. Donziger in civil contempt for his refusal to comply with the protocol and for several other acts of non-compliance, including failing to transfer to Chevron his right, title and interest to Ecuadorian case fees and for failing to transfer to Chevron funds from third-party investors who had been financing the litigation for the affected Ecuadorian communities. Mr. Donziger exercised his right to appeal this decision rather than surrender his devices and accounts to the forensic experts, which led the judge to draft extraordinary criminal contempt charges against him under Federal Rule of Criminal Procedure 42.

As per Rule 42, the judge then referred the case to the US Attorney's Office for the Southern District of New York (SDNY), which declined to pursue prosecution.¹⁰ In response, the judge took the unusual and extraordinary decision to appoint a private law firm as special prosecutors in the criminal contempt case.¹¹ The judge also personally selected the judge to preside over the criminal contempt case,¹² bypassing Rule 16 of the SDNY Rules for the Division of Business Among District Judges (RDB) which states that "the assignment committee shall transfer the case by lot".¹³

On 6 August 2019, the judge presiding over the criminal contempt charge ordered Mr. Donziger to surrender his passport and submit to both GPS tracking and home confinement.¹⁴ The judge justified the pre-trial house arrest on grounds of flight risk, which was extended for over two years even though the longest sentence possible for the charges Mr. Donziger was facing is six months in prison.¹⁵ On 29 March 2021, after launching an appeal against the pre-trial house arrest, the Court of Appeals for the Second Circuit upheld the decision by the District Court to retain the precautionary measure. While the Court of Appeals stated that Mr. Donziger's arguments "gave [them] pause", they still supported the District Court's unjustifiable and arbitrary findings without providing further justification that the measure was necessary and proportionate.

On 1 October 2021, only a few days after the decision by the UN Working Group on Arbitrary Detention was made public, Steven Donziger was sentenced to the maximum penalty of six months in prison. In sentencing Mr. Donziger, the judge argued that he had flaunted the court's orders for several years and is unremorseful, so she had to "hit him between the eyes with a 2x4" to understand the seriousness of his transgressions.

¹⁰ <https://www.courthousenews.com/when-feds-demur-judge-charges-ecuador-crusader-himself/>

¹¹ USA v. Donziger 19 Cr. 561 (LAP) page 12

¹² <https://slate.com/news-and-politics/2021/08/chevron-judge-loretta-preska-steven-donziger.html>

¹³ Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, Rules for the Division of Business Among District Judges, Rule 16,

https://www.nysd.uscourts.gov/sites/default/files/local_rules/rules-2018-10-29.pdf

¹⁴ United States v. Donziger {11cv691} (1:19-cr-00561), District Court, S.D. New York, order of Judge Loretta A. Preska, August 6, 2019

¹⁵ United States of America v. Steven Donziger, 19 CR 561 (LAP), Telephone Conference, US District Court, Southern District Of New York, 18 May 2020

The judge further dismissed a motion presented by his defense to consider time served under house arrest, which by then had already exceeded two years, finding that his home confinement did not constitute “detention” for purposes of punishment. Moreover, the judge denied the possibility to allow Mr. Donziger to be able to appeal the conviction and sentence without being imprisoned, based on an alleged risk of flight. He was given one week to appeal the denial of bail, in contravention to his right to adequate time and facilities to prepare a defense, and was ordered to report to jail 24 hours after the ruling of the court of appeal should the appeal be denied.

On 26 October, the United States Court of Appeals for the Second Circuit upheld the decision to deny bail without providing any justification as to the necessity and proportionality of the measure. The Court of Appeals nevertheless ordered an expedited resolution for the pending appeal on the conviction and sentence, but the decision is still pending to date. Mr. Donziger was thus required to start serving his prison sentence regardless of the pending appeal and, a day later as ordered by the judge, Steven Donziger reported to a federal prison in Danbury, Connecticut, to begin serving his sentence.

On 10 December 2021, after having served 45 days (25%) of his six-month sentence, Mr. Donziger was allowed to serve the rest of the sentence in home confinement as permitted by the CARES Act, which allows for the release of certain prisoners due to the risks posed by Covid-19. Under the policy of the Federal Bureau of Prisons, this home confinement may be accompanied by electronic monitoring and, in any case, represents a continuing form of deprivation of liberty.