



Attorney General Merrick Garland
950 Pennsylvania Avenue NW
Washington, DC 20530
USA

27 October 2021

Dear Attorney General Garland,

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 and denied the opportunity to be granted bail while he appeals a conviction on a politically motivated contempt of court charge, after having spent more than two years in pre-trial house arrest. We are seriously concerned that the case against him appears to be in retaliation for his work in defence of the rights of Indigenous peoples in Ecuador who were victims of Chevron Corporation's oil dumping.

As you may already be aware, the UN Working Group on Arbitrary Detention recently found that Steven Donziger's deprivation of liberty is arbitrary because it lacks any legal basis and is in violation of several norms relating to the right to a fair trial, including the apparent lack of impartiality of the courts.¹ Moreover, the Working Group concluded that the 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.

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

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

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.²

After losing the case in Ecuador Chevron moved all its assets out of the country,³ leading the plaintiffs to seek enforcement actions in other countries where Chevron had a presence and threatened the Ecuadorian victims with “a lifetime of litigation” unless they dropped their case.⁴ 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.⁵

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 favour of Chevron and enjoined enforcement of the Ecuadorian judgement 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 judgement. 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.⁶

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”.⁷ In his letter, Mr. Donziger explained that his ethical 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

² 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://chevroninecuador.org/assets/docs/2011-02-14-judgment-Aguinda-v-ChevronTexaco.pdf>

³ <https://www.cbsnews.com/news/chevron-fined-95-billion-in-ecuador/>

⁴ 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>

⁵ 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

⁶ *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 judgement

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

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.⁸ In response, the judge took the unusual and extraordinary decision to appoint a private law firm as special prosecutors in the criminal contempt case.⁹ The judge also personally selected the judge to preside over the criminal contempt case,¹⁰ 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".¹¹

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.¹² The judge justified the pre-trial house arrest on grounds of flight risk, which has been now extended for over two years even though the longest sentence possible if Mr. Donziger is convicted is six months in prison.¹³ 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, despite serious concerns raised by the UN Working Group on Arbitrary Detention and various civil society organizations¹⁴ over the lack of

⁸ <https://www.courthousenews.com/when-feds-demur-judge-charges-ecuador-crusader-himself/>

⁹ USA v. Donziger 19 Cr. 561 (LAP) page 12

¹⁰ <https://slate.com/news-and-politics/2021/08/chevron-judge-loretta-preska-steven-donziger.html>

¹¹ 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

¹² United States v. Donziger {11cv691} (1:19-cr-00561), District Court, S.D. New York, order of Judge Loretta A. Preska, August 6, 2019

¹³ United States of America v. Steven Donziger, 19 CR 561 (LAP), Telephone Conference, US District Court, Southern District Of New York, 18 May 2020

¹⁴ <https://www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/ecuador-judge-that-ruled-for-chevron-in-pollution-case-was-allegedly-biased-had-money-invested-in-chevron-according-to-analyst/>;
https://www.ran.org/the-understory/judge_kaplan_drastically_overreached_with_unlawful_injunction_to_protect_chevron_international_law_experts_say/;
[https://today.westlaw.com/Document/I0f9aa490f84b11eabc9abc0b5d872bd2/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://today.westlaw.com/Document/I0f9aa490f84b11eabc9abc0b5d872bd2/View/FullText.html?transitionType=Default&contextData=(sc.Default)&firstPage=true)

independence, objectivity and impartiality of the judge who ordered the pre-trial house arrest and who has overseen the trial over criminal contempt charges, Steven Donziger was sentenced to the maximum penalty of 6 months in prison and denied the possibility to be released pending an appeal.

In its recent opinion, the UN Working Group on Arbitrary Detention noted with concern the lack of fairness in the civil process against Mr. Donziger and further condemned the lack of independence, objectivity and impartiality of the judge who ordered the pre-trial house arrest and that has overseen the trial over criminal contempt charges. Furthermore, the UN Working Group concluded that Steven Donziger's deprivation of liberty has continued beyond the maximum period foreseen by the charges laid against him in violation of his right to liberty.

Amnesty International began documenting an alarming trend since 2019 in which human rights defenders were being targeted and harassed through the criminal justice system in the USA.¹⁵ Already in 2017, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed her concern over a “worrying new approach” in the USA of litigants using the RICO statute to “intimidate advocacy groups and activists”.¹⁶ The UN Special Rapporteur on the situation of human rights defenders had similarly expressed concern over the restrictions faced by environmental defenders in the USA who were facing increased restrictions in the country.¹⁷

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 known as Strategic Lawsuits Against Public Participation or “SLAPP” suits. SLAPP 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.

The US Department of Justice can promptly put an end to this injustice by taking control of the case away from a private prosecutor, pursue all avenues for appeal and take any available steps to ensure that Steven Donziger is released immediately

¹⁵ Amnesty International, USA: ‘Savings Lives is Not a Crime’: Politically motivated legal harassment against migrant human rights defenders by the USA, 2 July 2019, AI Index: AMR 51/0583/2019, www.amnesty.org/en/documents/amr51/0583/2019/en/

¹⁶ 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_ICA_USA_33403_E.pdf

¹⁷ 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>

and unconditionally. Moreover, as requested by the UN Working Group on Arbitrary Detention, your office should launch a full and independent investigation of the circumstances surrounding Steven Donziger's arbitrary deprivation of liberty and take the necessary measures to ensure that corporations can no longer abuse the justice system to target and harass human rights defenders. Anything less would send a clear message to corporations in the USA and around the world that they can continue weaponizing the justice system to harass and intimidate human rights defenders without any consequence.

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 Department of Justice can do to ensure that corporations can no longer abuse the justice system to target and harass human rights defenders.

Sincerely,

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Amnesty International

Simon Taylor
Director
Global Witness

Leila Salazar-Lopez
Executive Director
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