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Mr. Pavel Sulyandziga, Chair-Rapporteur
Mr. Puvan J. Selvanathan, Member
Mr. Michael K. Addo, Member
Ms. Alexandra Guaqueta, Member
Ms. Margaret Jungk, Member

Working Group on the issue of human rights and
transnational corporations and other business
enterprises

Re: Response to July 25, 2013 letter from Professor Douglass Cassel

Dear Mr. Chair and Members of the Working Group:

We represent the affected Ecuadorian communities who for the past 20 years have fought to hold Chevron Corporation accountable for the hundreds of open-air waste ponds and other contamination that still remains at the company's former operations sites in Ecuador. We write today to respond briefly to the letter of July 25, 2013 from Professor Douglass Cassel, a paid consultant for Chevron, who has wholly adopted the extraordinary position that Chevron has advanced in a series of retaliatory lawsuits: namely, that the historic environmental case against it in Ecuador was a "sham," a "fraud," and even "extortion"; that there is no evidence of even "a potential health risk" from the contamination; and that the real victim deserving the human rights community's attention and sympathy here is Chevron.¹

The affected Ecuadorian communities wholly reject Chevron's abusive and cynical "counter-attack" strategy—and Professor Cassel's endorsement of it. We have already deconstructed at length the distortions and contortions that Chevron and Cassel go through trying to "turn the tables" and make Chevron, not the Ecuadorians forced to raise their families in the vicinity of Chevron's old pits, the victim.² Indeed, since the company recognized as early as 2009 that it

¹ Before wading into this debate, I would encourage any Member who has not seen photos of the contamination or heard testimonies from Ecuadorian victims to explore the material available on <http://chevrontoxico.com> and elsewhere on the internet. *See, e.g.*, "Amazon Crude," 60 Minutes, CBS News, May 8, 2009, at <http://goo.gl/gLvVF>; Lou Dematteis, "Chevron Says These People Don't Matter," The Huffington Post, Apr. 12, 2012, at <http://goo.gl/6BEhQz>.

² *See* "Response to Doug Cassel's Apology for Chevron's Human Rights Violations In Ecuador," Mar. 15, 2012, available at <http://goo.gl/3TxObx>.

was going to face liability on the merits of the environmental claims against it, it has leveraged the full weight of its massive global resource base—lawyers, consultants, private investigators, and political and media contacts at the highest levels—to taint the Ecuadorian case with “fraud.” (Conveniently, one of the few defenses left to it when resisting enforcement of the judgment in the Ecuadorian case in other countries.) The company has disclosed that over 2,000 individuals have worked on this defense strategy in the last few years, with 114 lawyers from its lead U.S. law firm alone.

The affected communities also wholly reject the substance of the Chevron’s fraud and extortion charges. As described elsewhere, the strength of the scientific evidence against Chevron is overwhelming and unassailable.³ Chevron’s counter-charges, by contrast, are a house of cards. As described by the Republic of Ecuador in the opening pages of a related legal brief, the charges are built on logical fallacies, guilt by allusion, and selective quoting and editing of the hundreds of thousands of confidential emails and videos that Chevron obtained through a scorched-earth collateral litigation campaign.⁴ The cornerstone of Chevron’s “fraud” counter-attack is a federal lawsuit in New York in which Chevron is seeking to characterize the entire case as “racketeering activity” by the Ecuadorian communities and their NGO partners. A jury trial is scheduled to begin October 15. In front of a jury, all the snippets of emails and videos that Chevron and Cassel mischaracterize will be methodically placed back in their true context; the credibility of Chevron’s “fact” witnesses—most of whom accepted cash or were viciously coerced for their testimony—can be conclusively assessed.⁵

³ See, e.g., “Summary of Overwhelming Evidence Against Chevron in Ecuador Trial,” Jan. 2012, at <http://goo.gl/sjQRZ> (summarizing the “voluminous record of 220,000 pages that contains more than 100 expert reports, testimony from dozens of witnesses, scientific data from 54 court-supervised inspections, independent health evaluations, and reams of legal argument” underlying the historic Ecuadorian trial court judgment). For a copy of the Ecuadorian trial court’s final judgment in Spanish and English translation, along with the Plaintiffs’ Final Legal Argument (“Alegato”), see <http://goo.gl/vsjyNA>. To be specific: evidence was found of illegal and harmful levels of pollution at 100% of the dozens of Chevron’s 378 well sites and production facilities that were inspected under court supervision in Ecuador. For example, at the Aguarico station (opened by Chevron in 1974) evidence found illegal levels of the carcinogen benzene, xylene, barium, and chromium VI, among others. Barium exceeded the Ecuadorian standard by more than 2,000 times. Other toxic substances exceeded the Ecuadorian standard by over 200 times. At the Sacha Central station, Chevron expert John Conner found levels of barium, cadmium, chromium VI, Ethylbenzene, Pyrene, and TPH at levels exceeding legal standards. At the Sacha Norte 1 Station, Chevron expert Bjorn Bjorkman found illegal levels of Barium, Cadmium and Benzo(a)pyrene, and Pyrene, among others. The list, which goes on and on and encompasses dozens of sites, is summarized on pp. 25-41 of the plaintiff’s Alegato. On pp. 42-48 of this submission, one can read a summary about how Chevron’s own scientific sampling results proved the claims of the plaintiffs.

⁴ Available at <http://www.italaw.com/sites/default/files/case-documents/italaw1426.pdf>. Although the Republic of Ecuador had no involvement in the environmental lawsuit by the private party plaintiffs against Chevron, the Republic has suffered Chevron’s wrath for years in the form of collateral litigation trying to force the Republic to pay damages for allowing the lawsuit to proceed in its courts.

⁵ It must be noted that the Ecuadorians have suffered grievous due process concerns in the case at the hands of the judge, who is currently under almost unprecedented scrutiny by the appellate court for his apparent bias and his handling of the case. The burden of pre-trial litigation in case has grown so overwhelming that earlier this year, all the lawyers for the Ecuadorians and their representatives except one solo practitioner were forced to withdraw due to mounting unpaid fees. (A copy of one lawyer’s withdrawal motion describing the state of affairs in the trial court is available at <http://goo.gl/ONcKrd>.) Whether a fair trial is possible under these

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In this context, we believe the Working Group will recognize the inappropriateness of Professor Cassel's attempt to rush the human rights community to judgment on Chevron's charges now, before the Ecuadorians have even had a chance to put Chevron to its proof in court. Indeed, the move seems to come straight from the playbook of an overzealous prosecutor, escalating pressure on the eve of trial knowing that a properly-advised defendant cannot freely respond. This hardly seems consistent with Professor Cassel's much-professed concern about due process. Ironically, while Professor Cassel suggests that the evidence is sufficient now for a final conclusion, even the U.S. judge in the case (who has been scrutinized repeatedly by appellate courts for his hostility to the Ecuadorians in the case), has four times in a row rejected Chevron's efforts to get "summary judgment" in the case to avoid a jury trial.

Of course, the due process Professor Cassel worries about is Chevron's. But what is the cause for concern? Chevron is mere weeks away from a trial on its claims; it will finally have the opportunity—and the obligation—to move past allegations and insinuations and prove its claims to the satisfaction of a jury. The company's "fraud" narrative has enjoyed lavish attention from the media, and a parade of powerful institutions and "opinion-makers," such as the U.S. Chamber of Commerce and the National Association of Manufacturers, have taken time out of their busy schedules to "highlight" Chevron's claims in the media and in their lobbying efforts at the highest levels in Congress and the federal agencies. Chevron's voice, we submit, has been heard.

One final point needs to be mentioned. In his letter, Professor Cassel openly advances Chevron's claims on the basis of his own credibility as "a career human rights lawyer, and as a scholar, teacher and legal advocate of corporate human rights responsibility for two decades." He continues to maintain that "all views expressed in this communication are my personal views." This is similar to the disclaimer he offered in an earlier written attack against on the Ecuadorian case, that, like the July 25 letter, he circulated to the human rights community purportedly on the basis of his own credibility and conscience. In that letter, he stated as "full disclosure" that he had "billed Chevron for my time on the [amicus] brief (but not for my time on this letter)." In fact, it now appears that while Professor Cassel may not have billed Chevron for the letter, he certainly has been compensated for it in the form of the "independent external consulting" relationship with Chevron that his letter apparently led to.

This paid relationship, together with the fact that he recites Chevron's claims in the most extreme, incendiary terms without pausing to mention the substantial rebuttals to Chevron's claims that the Ecuadorians have put on the record in the New York case and other forums, reveals the obvious fact that Cassel is before the Working Group simply as a paid advocate for a party to a dispute. What this in itself is not exceptional, it remains disturbing that Cassel continually attempts to hide this fact behind appeals to his scholarly reputation and the human rights advocacy that is part of his work as a faculty member at Notre Dame. His recommendations to the Working Group—such as his recommendation that the issue of Chevron's alleged lack of due process in Ecuador fairly ranks as a priority for the Working

circumstances remains a serious question. Nonetheless, even under these circumstances Chevron itself appears to have serious doubts about taking its case to a jury. *See, e.g.*, "Chevron Getting the Jitters Over Its RICO Case," The Chevron Pit, at <http://goo.gl/rec92y>.

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Group's attention despite all the other issues on the agenda—should simply be received as the position of Chevron, just as the positions in this letter are (openly) the positions of the affected Ecuadorian communities.

Sincerely,

/s/

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