

Petroleum in the Amazon

Executive Summary

The case study analysis below details how a market failure in a foreign country has led to a decades long litigation battle between the defendant, Chevron (previously Texaco), a major multinational corporation, and many plaintiffs, most notably the “afectados”, or affected ones, who include indigenous people and uneducated settlers in an area of Ecuador known as the Oriente.¹

The case is replete with examples of ethical dilemma. The main issue I will focus on is that of an international company using its influence and sway on a weak foreign government and the officials within to gain rights to natural resources. Should such a company be compelled to mitigate environmental damage left behind from these operations, despite having negotiated a liability waiver with the unsophisticated government? My analysis will show that the social contracts expected of business today are far and beyond what was required in the past. I will outline the ethical inflection points involved in the above question, and provide reasoning for why the answer is undoubtedly- yes, but on a going forward basis. Although legal proceedings have already concluded in the matter, we may still look at the issues that surface in this example, and how the legal system and humans may learn from the case to apply best practices going forward.

The question is posed: Should a human rights violation as recognized by an international court with jurisdiction, having violated no national statute, be deemed an injury upon these humans by an international business entity, whilst said entity acted in concert with the national government of the injured, given that immunity was contractually granted from

future fault in legal proceedings by said government? Let us look at each piece of the question and decide if it may stand on its own before collectively answering the question.

First, does any international court have jurisdiction upon so called human rights violations by an American (or any other nations) company? As it turns out, yes. According to the United Nations, in the event that domestic courts “fail to address human rights abuses mechanisms and procedures for individual and group complaints are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.”²

Second, how may the court conclude that despite the fact that Chevron had a contractual agreement with Ecuador that it would not be held liable for damages in future proceedings, it can in fact still hold the company liable? The only answer to this question that may be logically acceptable is that the contract is invalid for one or more of any number of possible reasons. The reason most acceptably put forth in the case is that Chevron (Texaco) did knowingly and willingly exert it’s influence over proven unreliable government and court officials to get the desired outcome, or in this case, a no fault contract.

Finally, we must examine what the evidence shows and determine if a human rights violation occurred, based on *the law at the time*. The rule of ex-post facto in the United States will not allow for the prosecution of a person or entity for the violation of a statute if the violation happened before the statute was in effect. In the case of Texaco, there has been previous litigation which found the company guilty and required restitution to remedy the injury to the natives. Texaco paid out this restitution, but then was able to persuade the government to adopt the contract prohibiting future litigation or damages for the environmental damage. If we concede the fact that these contracts and the split between the national oil company and the government that left Texaco with a 37% share of damages were not valid due to corruption and bribery, and this can be proven, than we must decide the previous ruling to bear in fact on the case taken up today.

The social contract expected of today's companies is far and above what it once was. Many companies have simply moved operations out of the American public eye by reaping high profits for low cost in foreign countries. The time has come for these situations to be remedied. Unfortunately, the legal battles that ensue are difficult and may provide more questions than answers. On all sides, there are always vultures looking to profit from the unfortunate stakeholders involved.

The power and strength of some American corporations is simply unmatched by many other entities. There may not be enough willpower to withstand the onslaught of the law teams these corporations bring to bear, and this leads to settlements, agreements, cases being thrown out, or dropped. Clearing the backlog of these cases will take time. Moving forward, it is clear that the world now expects more than business as usual from corporations in all nations. I am optimistic that these types of stories will move out of the modern vernacular just as the robber barons and the Enrons examples have.

1 Patrick Radden Keefe, "Reversal of Fortune," The New Yorker, January 9, 2012,
http://www.newyorker.com/reporting/2012/01/09/120109fa_fact_keefe.

2 The United Nations, "The Universal Declaration of Human Rights,"
http://www.un.org/en/documents/udhr/hr_law.shtml