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UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL
HUMAN RIGHTS
PROGRAM

Supreme Court of Canada should not impose additional hurdles for indigenous peoples harmed by transnational corporations trying to access justice

October 20, 2014 – On Friday, the International Human Rights Program at the University of Toronto Faculty of Law (IHRP), MiningWatch Canada (MiningWatch) and the Canadian Centre for International Justice (CCIJ), filed their factum with the Supreme Court of Canada in *Yaiguaje et al. v. Chevron*. The joint interveners provided the Court with submissions on the proper interpretation of private international law and corporate law principles in light of the international law obligation to provide effective remedies for human rights violations.

The *Lago Agrio* litigation is a decades-long struggle between Chevron and Amazonian indigenous peoples from Ecuador who are seeking compensation for extensive pollution of the Amazon Rainforest between 1972 and 1990. In February 2011, after years of litigation in Ecuador, an Ecuadorian court found Chevron liable in the amount of US\$18 billion. The award was subsequently reduced to \$9.51 billion on appeal. This award is now final for the purposes of Ecuadorian law. Chevron has wound up all of its Ecuadorian operations such that the plaintiffs have not been able to collect.

In 2013, the plaintiffs filed a claim in Ontario seeking to enforce the Ecuadorian judgment against the assets of Chevron Corporation and Chevron Canada. The Supreme Court is considering the preliminary issue of whether the plaintiffs are able to attempt to enforce the Ecuadorian judgment in Canada. Notably, the Supreme Court will not determine whether the Ecuadorian judgment will actually be enforced in Canada – that is a question for another day.

Relying on international human rights law, the joint interveners argue that established private international law principles regarding enforcement of foreign judgments should not be saddled with jurisdictional hurdles that would thwart the right to an effective remedy for victims of human rights violations. They also submit that there may be instances where the corporate veil must be pierced to ensure that transnational

corporations are held accountable for human rights violations committed by their wholly-owned and controlled subsidiaries

“This case is essentially about access to justice for those harmed by transnational corporations,” says Renu Mandhane, director of the IHRP. Matt Eisenbrandt, Legal Director at CCIJ stated: “We are honoured to be interveners in this case along with our partners and to advocate for the position that Canadian courts should remain open to foreign plaintiffs, particularly those affected by transnational corporations, seeking to enforce judgments obtained in their countries.” Catherine Coumans of MiningWatch notes that “transnational corporations should not be allowed to avoid providing remedy to those they have harmed by evading court judgments against them, Canada can show leadership by providing access to justice for these indigenous victims.”

The IHRP, MiningWatch and CCIJ are represented by a team of UofT law alumni: Murray Klippenstein, Cory Wanless, and IHRP Director Renu Mandhane. IHRP clinic students Alison Mintoff (3L) and James Rendell (2L/MGA) have provided invaluable research assistance. “It has been an incredible experience to work on this case and see how much work goes into researching and drafting a factum,” said Alison Mintoff. “It’s unbelievable that the IHRP afforded me to opportunity to contribute to advocacy before the Supreme Court of Canada before even graduating from law school” added James Rendell.

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[Read the Joint Intervener’s submissions to the court](#)