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HUMAN RIGHTS PETITION
of
STEVEN R. DONZIGER

Briefing Memorandum

U.S. attorney Steven Donziger, who has represented indigenous and other Ecuadorian Amazon communities in the historic environmental case against Chevron Corporation for over 25 years, is petitioning the Inter-American Commission on Human Rights, claiming that by embracing Chevron's retaliatory litigation and "demonization" campaign against him, U.S. judicial bodies and other public authorities have inflicted and enabled severe violations of his rights to due process, freedom of expression and association, privacy, and property under applicable international human rights instruments. This Briefing Memorandum serves to apprise the public of the content of the petition, the disturbing facts of the persecution suffered by Mr. Donziger, and the larger context of the threat that such attacks pose to human rights and environmental advocacy more broadly.

OVERVIEW & PURPOSE

American attorney Steven Donziger has been helping a group Indigenous peoples and subsistence farmers in Ecuador pursue environmental justice against Chevron Corporation for over 25 years. In 2009, as Chevron finally and imminently faced an environmental liability that would require it to remediate hundreds of ponds of toxic oil waste and provide other compensation, the company adopted what it called a "long term strategy" of response that would, they hoped, allow the company evade the environmental liability without facing severe public relations consequences. The strategy was designed to draw attention away from the humanitarian crisis caused by the contamination and its devastating cancerous effects on Ecuadorians living around Chevron's former operations sites and instead focus attention on Mr. Donziger, who Chevron would portray as a "greedy plaintiff's lawyer" (a stereotyped figure that business lobbying groups like the U.S. Chamber of Commerce have long coaxed the American public to despise). In the words used by Chevron strategists amongst themselves, the strategy was simple: "demonize Donziger."

To implement this strategy, Chevron prepared an unprecedented and extraordinarily aggressive "racketeering" lawsuit against Mr. Donziger. Chevron filed it just days before the issuance of a multi-billion dollar environmental judgment by an Ecuadorian trial court. While that judgment has worked its way through the Ecuadorian civil justice system, being unanimously affirmed three times on appeal by four layers of Ecuadorian courts, Chevron has used its overwhelming resources and a flagrantly biased U.S. federal judge (as evident from his public comments, reprinted below) to drag Donziger through a gruesomely one-sided and humiliating "trial" process resulting in a court finding that Mr. Donziger and his clients were guilty of "attempted extortion" of Chevron. The federal racketeering judgment was issued from the bench after the U.S. judge refused, two weeks before trial, to empanel a jury, and was decided under a minimally demanding standard of proof. It purported to find that Mr. Donziger and others had reached a corrupt agreement with the Ecuadorian judge who issued the environmental judgment, but so "found" by relying on the absurdly conflicted and utterly incredible testimony of a single Chevron witness who was recruited, coached, and paid millions of dollars in cash and benefits for his "fact" testimony (all in violation of ethical rules).

U.S. authorities, with the encouragement of Chevron and its lead strategists and lawyers at the law firm Gibson Dunn & Crutcher (GDC), are now seeking to destroy Mr. Donziger personally and financially by stripping him of his law license and forcing him to pay the costs of the egregious process they inflicted on him—everything from Chevron's attorneys fees to the meals and first-class travel expenses of its experts. Despite the fact that Mr. Donziger has never been subject to a single "grievance" by a client (as opposed to attacks by Chevron, an adversary) in his 25 years of law practice, an attorney grievance committee in Manhattan last year urged a New York state court to suspend his law license on an emergency basis, calling him a "threat to the public order." Mr. Donziger opposed with more than 70 pages of legal briefing in his defense, primarily insisting on his right to a hearing on the allegations of misconduct against him. In a perfunctory three-page order issued in August 2018, the state court suspended Mr. Donziger's license, refused to allow him a hearing, barred him from contesting the "facts" set out in the false and distorted racketeering judgment, and ordered the committee to proceed with imposing a permanent sanction.

The attacks on Mr. Donziger target him as a human rights defender and violate his rights as protected by international human rights instruments as well as the U.S. Constitution. They also represent a broader threat to basic freedoms of association, expression, and petition, for persons opposing the interests of powerful corporations. Until recently, the implications of the persecution of Mr. Donziger have been overlooked, despite Mr. Donziger's (and a few others'[1]) repeated warnings that the litigious methodologies being against him would soon be turned into a "playbook" for corporate attacks on human rights and environmental defenders generally. Only since other companies have started filing similar, almost copycat attacks against other more well-known defendants, like Greenpeace, has the public begun to pay closer attention.[2]

U.S. judicial institutions have proven not just unable to offer Mr. Donziger protection but indeed have served as instruments of the repression he has suffered. The U.S. judge in the racketeering case declared at the outset that Chevron was "a company of considerable importance to our economy" and castigated Mr. Donziger for his "imagination" in choosing to litigate the environmental case. As such, Mr. Donziger is filing a petition to the Inter-American Commission on Human Rights (IACHR) and potentially other human rights bodies in the future, to vindicate his own rights under international human rights treaties as well as to draw attention to ***(1)*** the human rights problems inherent in the embrace of Chevron's retaliatory litigation and "demonization" strategy by the U.S. judiciary and other institutions; ***(2)*** the abusiveness of Chevron's strategy and the need for a just resolution of the environmental and human rights situation in the Ecuadorian Amazon; and ***(3)*** the larger public policy implications of the new corporate playbook of attacking human rights and environmental defenders with well-financed litigation campaigns based on manufactured controversies, as a strategy to neutralize public pressure that companies otherwise face on substantive human rights and environmental issues.

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[1] *See, e.g.*, Report of the Special Rapporteur on the Situation of Human Rights Defenders, UN Doc. A/72/170 (19 July 2017), http://undocs.org/A/72/170 ("an increasing number of business enterprises are pursuing retaliatory lawsuits, commonly under the guise of strategic lawsuits against public participation [SLAPPs], against defenders. Such harassment takes a substantial financial and psychological toll on defenders and has a chilling effect, ultimately undermining their capacity and willingness to bring human rights abuses to light. . . . Judicial harassment against defenders is facilitated by State judicial mechanisms in both home and host States and, as such, it occurs with State complicity or disregard."). *See also* UN Doc. A/70/217 (15 July 2015), https://undocs.org/A/70/217; UN Doc. A/65/223 (4 Aug. 2010), http://undocs.org/A/65/223. The Business & Human Rights Resource Centre (BHRRC) tracks cases specifically of attacks against human rights defenders working on corporate accountability issues, compiling a database of 1252 cases thus far. By far the most common mode of attack is judicial harassment, as Mr. Donziger has suffered. *See* https://www.business-humanrights.org/en/bizhrds.

[2] On September 5, 2018, Greenpeace USA, Human Rights Watch, Amnesty International, the American Civil Liberties Union (ACLU), the Electronic Frontier Foundation (EFF), the Center for International Environmental Law (CIEL), the Natural Resources Defense Council (NRDC), EarthRights International (ERI), the Center for Constitutional Rights (CCR), the Rainforest Action Network (RAN), and other leading civil society organizations launched a "Protect the Protest" campaign aimed at raising awareness of the threat posed by strategic retaliatory litigation, or SLAPPs, to human rights and public interest advocates generally. The Coalition highlights Chevron's decision "to go after the affected communities' American lawyer, Steven Donziger" as a progenitor of the recent wave of lawsuits, as it "seductively" illustrated the "potential use of civil RICO as a weapon against civil society organizations." History of SLAPPs, https://www.protecttheprotest.org/history/.

TABLE OF CONTENTS

OVERVIEW & PURPOSE i
TABLE OF CONTENTS iii
SUBSTANCE OF THE PETITION 4
I. Facts Alleged 4
- **A. Overview** 4
- **B. Background** 6
- **C. "Demonize Donziger"** 6
- **D. The Biased and Abusive Racketeering Trial** 8
- **E. Attacks on Mr. Donziger's Personal Finances and Livelihood** 10

II. Authorities Allegedly Responsible 11
III. Human Rights Allegedly Violated 11
- **A. Due Process Generally** 11
- **B. Due Process - Presumption of Innocence / Burden of Proof** 12
- **C. Due Process - Impartial and independent tribunal** 13
- **D. Due Process - Inequality of arms** 13
- **E. Freedom of Association and Expression** 14
- **F. Privacy** 15
- **G. Property** 16

IV. Evidence 16
V. Witnesses 18
VI. Exhaustion of Remedies 19
VII. Request for Relief 19
CONCLUSION 21

SUBSTANCE OF THE PETITION

The IACHR uses an online submission system for individual petitions. The following text represents the text submitted as part of the petition and is structured and drafted according to the requirements of the IACHR petition process. Documentary evidence in support of all the assertions and descriptions contained herein will be provided to the IACHR at the appropriate time in the petition process, but is available to interested members of the public upon request.

I. Facts Alleged

A. Overview

Petitioner Steven Donziger hereby challenges his persecution by judicial and administrative authorities in the United States, wherein, in summary:

(1) A quasi-criminal "extortion," "fraud," and "racketeering" lawsuit was filed against him by a financially-interested private party (Chevron Corp.) and accepted by the courts.

(2) The lawsuit was filed consistent with Chevron's self-acknowledged strategy of "demonizing" Mr. Donziger for his work as a human rights defender assisting certain impoverished communities in the Ecuadorian rainforest in obtaining a large environmental damages judgment against Chevron.

(3) The U.S. judge assigned to the case openly expressed contempt for Mr. Donziger, favoritism toward Chevron, and refused to empanel a jury as required by the U.S. Constitution.

(4) The U.S. court ordered Mr. Donziger to give Chevron unfettered access to his computer, all his email and online accounts, and all his legal files, after finding that Mr. Donziger forfeited all attorney-client privileges on account of a procedural error.

(5) The court refused to take any steps to address the prejudicial impacts of the gross disparity of resources between the parties and abusive litigation tactics of Chevron, forcing Mr. Donziger to represent himself during critical parts of the proceeding.

(6) The trial proceeding violated due process requirements in numerous respects, including by

(a) relying on testimony from a "fact" witness who was recruited by Chevron, coached for 53 days, and paid millions of dollars in exchange for his testimony;

> (b) forcing Mr. Donziger to disclose years' worth of attorney-client privileged files and confidential material such as his own personal diary;
>
> (c) barring the introduction of key contextual evidence, such as evidence of the environmental conditions driving Mr. Donziger's work in Ecuador;
>
> (d) rejecting the application of U.S. Constitutional free expression (First Amendment) protections; and
>
> (e) refusing to recognize findings by multiple layers of Ecuadorian courts that there was no "fraud" or misconduct under Ecuadorian law.

(7) The court, sitting without a jury, convicted Mr. Donziger of "racketeering" and related "predicate criminal acts" (extortion, fraud, obstruction of justice, witness tampering) under a civil standard of proof far less demanding than "beyond a reasonable doubt."

(8) Even though Chevron waived all damages claims against Mr. Donziger (in order to prevent a jury trial), it later sought two massive money judgments (over $34 million) against Mr. Donziger to compensate for its attorneys fees and court costs. Using unreviewed, attorney-issued "notices," Chevron has frozen Mr. Donziger's bank accounts. Chevron also successfully sought the U.S. court to order Mr. Donziger to transfer property Chevron, and when Mr. Donziger resisted by seeking to add a statement of background "understandings" to the transfer document, Chevron moved to hold Mr. Donziger in contempt and imprisoned.

(9) The U.S. trial court and Chevron together lobbied lawyer regulation authorities to get Mr. Donziger disbarred as a New York lawyer under a "collateral estoppel" theory in which Mr. Donziger never received a hearing.

(10) Throughout the time period of the above, Chevron has maintained a massive network of lawyers, lobbyists, private investigators, public relations firms, paid journalists, and bloggers (totaling over 2,000 individuals) to "demonize Donziger" (the words of a Chevron strategist) until he "gives up" (the words of Chevron' former CEO) on his advocacy on behalf of his Ecuadorian clients. The U.S. courts have refused to consider the relevance of this unapologetically abusive litigation strategy.

The persecution described above reflects numerous severe violations of Mr. Donziger's rights to due process, judicial protection, privacy, free expression, and property, as guaranteed by Articles XXVI, XVIII, XVII, V, XXIII, IV, XXI, and XXII of the American Declaration of the Rights and Duties of Man ("Declaration" or "Am. Decl."), and further elaborated in the provisions and

jurisprudence of Articles 8 and 25 of the American Convention on Human Rights (“Convention” or “Am. Conv.”).

B. Background

Mr. Donziger is a U.S. lawyer who has worked in the field of corporate accountability his entire career (with the exception of his work as a criminal justice public defender in his first years of practice).

The critical background to the current persecution of Mr. Donziger is the historic environmental lawsuit captioned *Aguinda v. Chevron Corp.*, in which a group of Ecuadorian claimants, representing over 30,000 indigenous and rural persons in the Sucumbíos and Orellana provinces of Ecuador, have for 25 years demanded that Chevron Corporation (then Texaco Inc.) remediate the massive contamination abandoned by the oil company at its former operations sites in and around their communities, lands, and territories. The contamination includes hundreds of open-air pits of oil sludge, rivers and streams laced with decades of oils waste, and as-yet-unknown quantities of groundwater contamination. The region affected by the contamination has suffered a statistically significant elevated rate of cancers and other illnesses, as confirmed by leading medical and epidemiology journals.

In 1993, Mr. Donziger was part of the original U.S./Ecuadorian legal team that first sued Chevron (then Texaco) in the United States. In 2003, Chevron successfully convinced the U.S. courts to transfer the case (under the *forum non conveniens* doctrine) to be litigated in Ecuador. In Ecuador, Chevron broke its promise not to contest jurisdiction, and resisted the progress of the environmental trial with a variety of abusive judicial and extrajudicial tactics. Nonetheless, in 2011, after eight years of scientifically-intensive environmental testing and multiple rounds of legal argument, the Ecuador trial court issued judgment in the communities’ favor, commanding Chevron to pay $8.5 billion into a legal trust to be administered by a local registered non-profit organization for environmental and cultural remediation projects. While various corrections and amendments were made on appeal, the core integrity of the trial judgment was affirmed by an Ecuadorian intermediate appellate court in 2012, by Ecuador’s National Court of Justice in 2013, and finally by Ecuador’s Constitutional Court in 2018.

C. “Demonize Donziger”

Chevron’s immediate response to the Ecuadorian judgment was to declare that it would refuse to pay the judgment “until hell freezes over” (the company’s own words). Instead, Chevron sought to “taint” the Ecuador judgment with allegations of “fraud” that it could use to resist efforts to enforce the judgment in other countries (it had already strategically removed all its assets from Ecuador). These efforts, dating back to at least 2008, are well-documented. By 2009, internal Chevron documents (produced in litigation), reveal that company strategists had expressly shifted the “taint” strategy to focus on Mr. Donziger in particular, likely because he could be portrayed as a “greedy plaintiff’s lawyer,” a notoriously demonized stereotype in contemporary U.S. public

affairs. One Chevron strategist expressly acknowledged that "our L-T [long-term] strategy is to demonize Donziger."

The key method for implementing this "demonize" strategy was through the filing of a lawsuit against Mr. Donziger under the federal Racketeer Influenced and Corrupt Organizations (RICO) Act. RICO was intended to allow prosecutors to bring criminal cases against the mafia, but has long been abused by well-resourced litigants to as the "litigation equivalent of a thermonuclear device," in the words of one the judge—a tool, if deployed with enough force, to slander an opponent as a criminal while pressing a civil claim. A non-government plaintiff under RICO must "prove" that its opponent committed "predicate criminal acts"—but, critically, is only required to do so under a civil, or "preponderance of the evidence" standard of proof, not the "beyond a reasonable doubt" standard that is required to prove exactly the same criminal acts in a regular criminal proceeding. Courts are typically required to empanel a jury in a RICO case because the U.S. Constitution requires a jury every time a plaintiff claims more than $20 in any civil case.

Chevron filed its RICO suit just two weeks before the Ecuador environmental judgment was issued. It used a procedural tactic to circumvent the federal court system's random assignment system and have the civil RICO lawsuit assigned to a particular judge, Lewis A. Kaplan, who had presided over an earlier related discovery case and who already had clearly expressed his animosity toward Mr. Donziger and his favoritism for Chevron. Among many other prejudicial comments, Judge Kaplan had already stated publicly (before he was assigned to the RICO case):

> "The imagination of American lawyers is just without parallel in the world. It is our one absolutely overwhelming comparative advantage against the rest of the world, apart from medicine. You know, we used to do a lot of other things. Now we cure people and we kill them with interrogatories. It's a sad pass. But that's where we are. And Mr. Donziger is trying to become the next big thing in fixing the balance of payments deficit. I got it from the beginning."

In the opening days of the RICO lawsuit, once it was assigned to him, Judge Kaplan continued to reveal his lack of impartiality, at one point stating from the bench:

> "[W]e are dealing here with a company of considerable importance to our economy that employs thousands all over the world, that supplies a group of commodities, gasoline, heating oil, other fuels and lubricants on which every one of us depends every single day. I don't think there is anybody in this courtroom who wants to pull his car into a gas station to fill up and finds that there isn't any gas there because these folks [the Ecuadorians] have attached it in Singapore or wherever else [as part of enforcing their judgment]."

D. The Biased and Abusive Racketeering Trial

The ensuing federal racketeering trial against Mr. Donziger was a travesty of justice on many levels. It is not possible for this petition to describe all the problematic and violative features of the proceeding; the following examples are the most important and illustrative.

First, Chevron deployed an extreme level of financial and other resources to aggressively litigate that case and overwhelm Mr. Donziger and his Ecuadorian clients who appeared as codefendants. Independent news sources estimated that Chevron at one point was spending $400 million per year in legal fees, and the company acknowledged that it had used over 2000 professionals and more than 60 law firms. Mr. Donziger took out loans and used his personal savings to help fund his defense. While he had counsel at certain points, Mr. Donziger was forced to represent himself at critical junctures in the proceeding, and relied significantly on pro bono help from law students to manage his defense. Judge Kaplan ignored Mr. Donziger's pleas for procedural modifications and generally refused to do anything to mitigate the effects of the extreme inequality of arms. Chevron used its army of lawyers to gain unfettered access to Mr. Donziger's computer, email and other online accounts, and legal files, and yet simultaneously to the defense any access to Chevron's own documentary materials that the defense needed. At the trial itself, Mr. Donziger's small, mostly *pro bono* team lacked sufficient funds to obtain transcripts, make sufficient copies of trial materials, and see to countless other trial expenses. In just one example, the U.S. court allowed Chevron to submit over 2,000 exhibits into evidence in a single day, and when the defense didn't object to each exhibit individually within in four days' time, the court found that all objections to use of the exhibits were waived.

Second, Chevron knowingly or recklessly manufactured and presented false testimony, and the U.S. court accepted it despite clear evidence of its falsity and corrupt origin. The facts here are shocking. Even though U.S. law prevents (indeed, criminalizes) payments to "fact" witnesses, Chevron paid millions of dollars to one such witness—the only witness who testified (falsely) that Mr. Donziger was involved in an alleged agreement to bribe the Ecuador trial judge. Chevron made the payments under the ludicrous justification that it was not paying for the testimony, but only for "information" related to the testimony. Chevron paid the witness in cash to secure his testimony, and has paid him a monthly "stipend" of $10,000—twenty times his pre-Chevron salary—for his cooperation since at least January 2013. The witness changed his story constantly, and his testimony was later disproven by a digital forensic analysis of the Ecuador trial judge's hard drive which showed that the key facts of the "bribe" described by the witness could not have occurred.

Third, Judge Kaplan dismissed all of Mr. Donziger's claims to attorney-client privilege and/or "opinion work product" for his work as a lawyer on the Ecuador matter for over 20 years. He forced Mr. Donziger to produce his entire hard drive and all his files to Chevron for examination. Chevron ultimately ended up relying heavily on snippets taken out of context from a personal diary of his work on the case that Mr. Donziger had kept for a period of time. Judge Kaplan also did nothing in response to documented claims that Mr. Donziger and others adverse to Chevron were routinely being followed, photographed, and spied on by private investigators—including lawyers

being spied on while meeting with clients. In addition, Judge Kaplan allowed Chevron to take and submit evidence in the pre-trial period from "John Doe" witnesses whose identities were never revealed to Mr. Donziger who could not be effectively cross-examined.

Fourth, the U.S. court severely restricted what evidence could be discovered and then presented at trial in ways that utterly undermined the ability of Mr. Donziger and his Ecuadorian clients to defend themselves. Most shockingly, the court barred any mention at trial of Chevron's contamination or the company's abusive tactics during the environmental trial in Ecuador, even though the good faith, non-wrongful basis of defendants conduct underlying Chevron allegations could not be understood without it. As a small example, Chevron placed great weight on the fact that, on occasion, Mr. Donziger and others used "code words" in emails, a fact which Chevron claimed showed consciousness of guilt. In reality, the use of code words was responsive to the fact that Mr. Donziger and his colleagues had reason to believe that Chevron's investigators were spying on them—but Mr. Donziger was not allowed to establish this fact at trial.

Fifth, the U.S. court accepted (and ultimately granted) claims that directly attacked Mr. Donziger's work as a human rights and environmental defender. Most shockingly, the court accepted the notion that the use of out-of-court advocacy in the media and in public protest campaigns amounted to "attempted extortion" of Chevron in violation of a federal criminal statute.

Sixth, the U.S. court allowed Chevron to proceed without having to prove its case to a jury, even though Mr. Donziger demanded one and the U.S. Constitution requires that a civil defendant be given a jury if the amount in controversy is more than $20. Even though the "amount" realistically in controversy was exponentially more than $20 in numerous ways, the U.S. court allowed Chevron (just two weeks ahead of trial) to drop all its money damages against Mr. Donziger and proceed solely on claims for injunctive relief, and thereupon denied Mr. Donziger's jury demand. Mr. Donziger argued at the time that he was still entitled to a jury because he still faced (1) the possibility of monetary penalties in other forms and (2) the stigmatization associated with the underlying criminal charges.

As expected, Judge Kaplan ruled in Chevron's favor in March 2014. Under a civil standard of proof, the court found that Mr. Donziger had committed felony fraud, attempted extortion, and bribery, as well as other felonies derivative of the fraud finding (money laundering, obstruction of justice). The court devoted literally hundreds of pages to articulating "factual findings" that adopted virtually all of Chevron's positions, struck out the bulk Mr. Donziger's sworn testimony, and largely ignored, without comment, Mr. Donziger's counter-positions and the numerous Ecuadorian court decisions rejecting Chevron's fraud claims. Because the false factual findings were too numerous to challenge individually, and because of his scarcity of resources, Mr. Donziger filed an appeal focusing on the egregious legal errors in the decision.

In August 2016, the U.S. Court of Appeals for the Second Circuit affirmed the March 2014 judgment. The primary basis was that the appeals court interpreted Mr. Donziger's focus on legal errors to mean that he had "conceded the facts," despite Mr. Donziger vigorous dispute to many parts of Chevron's false narrative in his appellate briefing. In July 2017, the U.S. Supreme Court

denied Mr. Donziger's petition for certiorari review of the Second Circuit affirmance. Links to amicus briefs in support of Mr. Donziger's petition for certiorari are included in the Evidence section of the petition.

E. Attacks on Mr. Donziger's Personal Finances and Livelihood

The same day that the Supreme Court denied certiorari, Chevron returned to Judge Kaplan, now with an unvarnished strategy to go after Mr. Donziger personally. Despite the fact that the company had "waived" all money damages claims to avoid seating a jury in the RICO case, it now filed an extraordinary $32 million attorney fees claim and a $1 million "costs" claim against Mr. Donziger. Judge Kaplan entered a $800,000 "supplemental judgment" on costs against Mr. Donziger on Feb. 28, 2018, and immediately gave Chevron permission to serve a dozens of new discovery requests targeting Mr. Donziger's bank accounts and other assets entirely unrelated to his work on the Ecuador case. Chevron subsequently used attorney-issued "notices" to freeze Mr. Donziger's bank accounts, leaving him faced with the prospect of being unable to fund not just his own human rights work but his child's schooling and other personal expenses. Judge Kaplan also ordered Mr. Donziger to execute documents transferring property to Chevron. When Mr. Donziger objected that he should be allowed to include a "statement of understandings" explaining the context of the execution of the documents, Judge Kaplan ordered that he execute the documents exactly as drafted by Chevron, without any changes or other expressions, and Chevron asked the court that Mr. Donziger be imprisoned until he did so to the company's satisfaction.

In yet another avenue of personal attack, the New York federal court aggressively lobbied the purportedly independent professional discipline authorities in New York (the "Attorney Grievance Committee" or AGM) to initiate proceedings to strip Mr. Donziger of his legal license—his basic means of earning a living. Chevron has engaged in similar lobbying efforts to get Mr. Donziger disbarred from the federal court system (where he is defending himself *pro se* against the money judgments), and may have also coordinated with the AGM (the AGM has repeatedly declined demands that it acknowledge any coordination, and it is unclear whether there are any prohibitions on such private coordination or even procedural rules requiring transparency). Despite the fact that no client has ever filed a "grievance" against Mr. Donziger in his nearly 30 years of legal practice, and despite a policy supposedly disfavoring the initiation of discipline at the behest of adversary counsel in ongoing litigation, the AGM has proceeded to seek to disbar Mr. Donziger.

It has done so in a "blitzkrieg" style, first ignoring Mr. Donziger's repeated requests for a meeting or interview to explain the larger context of the lawsuit against him; second, initiating disbarment proceedings under a rarely-used emergency provision of the rules that allow the AGM to seek disbarment of an attorney who constitutes "an immediate threat to the public order" and allows for interim suspension <u>without any hearing or argument</u>; and third, seeking permanent disbarment on a "collateral estoppel" theory which would prevent Mr. Donziger from challenging or even explaining or contextualizing any of the false "findings" in Judge Kaplan's 500-page RICO judgment. Mr. Donziger was allowed to oppose in writing, and filed 70 pages of briefing and reply briefing opposing the use of this procedure. On July 10, 2018, the relevant disciplinary authority (the Appellate Division of the First Department of the New York State court system) invoked

collateral estoppel in a four-page summary order, declining to respond to any of Mr. Donziger's arguments and suspending his license pending a hearing exclusively addressed what "sanction" Mr. Donziger should receive. The only appeal available is a petition for discretionary review to the New York Court of Appeal (New York's highest court), a rarely granted form of review in attorney discipline cases.

II. Authorities Allegedly Responsible

The violations set forth in this petition are the product of systemic interest group protection biases deeply embedded in U.S. judicial institutions and legal and political culture generally. The particular authorities responsible for the violations alleged above include:

- U.S. judicial authorities, specifically federal district judge Lewis A. Kaplan.
- Attorney Grievance Committee for the First Appellate Division of the Supreme Court of the State of New York.
- First Appellate Division of the Supreme Court of the State of New York.
- Chevron Corporation, to the extent it has been able to use its influence with legal institutions and the political process to advance its private agenda under color of law.

III. Human Rights Allegedly Violated

Mr. Donziger's treatment by judicial and lawyer regulation authorities in the United States has severely violated his rights to **due process** and **judicial protection** as guaranteed by Articles XXVI, XVIII, and XVII of the American Declaration (as further elaborated in Articles 8 and 25 of the American Convention and the jurisprudence thereto), as well as rights to **freedom of association and expression** under Am. Decl. Articles XXII and IV, **privacy** under Am. Decl. Article V, and **property** under Am. Decl. Article XXIII (as further elaborated by Am. Conv. Articles 16, 13, 22, and 21).

A. Due Process Generally

The right to due process of law—the "right to Justice"—lies at the heart of a range of provisions of the American Declaration and Convention, and infuses the spirit of both instruments. *See, e.g.*, *Zambrano Vélez et al. v. Ecuador*, Ser. C No. 166, July 4, 2007 (Separate Opinion of Judge Ventura Robles). It serves "as an 'access key' to the national and international protection of the rights" under the American system instruments. *Lopez Alvarez v. Honduras*, Inter-Am. Ct. H.R., Series C No. 141, Feb. 1, 2006 (Separate Opinion of Judge Sergio Garcia Ramírez). At heart, "'due process of law' [in the Inter-American system requires that] a defendant must be able to exercise his rights and defend his interests effectively." *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Ser. A No. 16, Oct. 1, 1999, ¶ 119.

Specifically, Article XXVI of the Declaration provides that "[e]very person accused of an offense has the right to be given an impartial and public hearing" and "[e]very accused person is presumed to be innocent until proved guilty." Article XVIII requires that court procedures be available to

"ensure respect for [a person's] legal rights" and to "protect [the person] from acts of authority that, to his prejudice, violate any fundamental constitutional rights." The American Convention—"an authoritative expression" of the rights articulated in the Declaration that can be used along with its jurisprudence in interpreting and applying the Declaration's provisions, *see, e.g.*, *Case of Grand Chief Michael Mitchell v. Canada*, Case 12.435, Inter-Am. Comm. H.R., Report No. 61/08, OEA/Ser.L/V/II.118, doc. 70 rev. 2, Jul. 25, 2008, at ¶ 64—further provides at Article 8 that "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature." Article 8 also articulates "the right to be presumed innocent" and the right to "adequate time and means" and legal counsel as regards an accused's defense. Additionally, Am. Conv. Article 25 articulates a right to "effective recourse" by "a competent court or tribunal for protection against acts that violate [a person's] fundamental rights."

B. Due Process - Presumption of Innocence / Burden of Proof

The presumption of innocence is a foundational right of due process. A key component of the presumption of innocence is the requirement that "accusations of a criminal nature" be proven against the accused by a high standard of proof, equivalent to the "beyond a reasonable doubt" standard used in common law jurisdictions. *See, e.g.*, Rome Statute of the International Criminal Court, art. 66 ("Presumption of Innocence") ("the Court must be convinced of the guilt of the accused beyond reasonable doubt"); *In re Winship*, 397 U.S. 358, 361 (U.S. Supreme Court 1970) ("the Due Process Clause [of the U.S. Constitution protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."). The presumption and the high standard of proof are required for any "accusations of a criminal nature," regardless of the sometimes complex categories of criminal, civil, or administrative that national justice systems sometimes use. Am. Conv., art. 8; *In re Winship*. Another key component of the presumption is to require that States not "contribute to forming public opinion" on the guilt of the accused "while the criminal responsibility of that individual has not been proven." *Lori Berenson Mejía v. Peru*, Ser. C No. 119, Nov. 25, 2004, ¶ 160.

In this case, Mr. Donziger was found guilty of violating U.S. federal criminal laws on fraud, extortion, obstruction, and witness tampering, yet Judge Kaplan refused to seat a jury as required by the U.S. Constitution and applied a standard of proof far less rigorous than "beyond a reasonable doubt." To the extent U.S. jurisprudence currently authorizes "convictions" on such terms, it stands in contradiction to the due process requirements of the American Declaration. Mr. Donziger will also show that Judge Kaplan allowed Chevron to use his courtroom to aggressively "demonize" Mr. Donziger in public opinion by, *inter alia*, broadly ordering the disclosure of materials such as outtakes from a documentary film and Mr. Donziger's personal documents, failing to take action when Chevron manipulated this material and released it publicly to demonize Mr. Donziger, and by taking a number of steps to block Mr. Donziger from factually developing and publicizing a response to Chevron's attacks. Indeed, Judge Kaplan went further by actively encouraging

Chevron to take more aggressive actions against Mr. Donziger and even demonizing Mr. Donziger personally from the bench, as reflected in the comment set forth in the Facts section of this Petition.

C. Due Process - Impartial and independent tribunal

Due process under the American Declaration requires rigorous impartiality by the tribunal in judicial proceedings, at both the subjective level (looking at whether the tribunal is actually partial or not to one of the parties) and the objective level ("whether, quite apart from the judges' personal conduct, there are ascertainable facts which may raise doubts as to their impartiality"). *Herrera Ulloa v. Costa Rica*, Ser. C No. 107, Jul. 2, 2004, ¶ 170; *see also Apitz Barbera et al. v. Venezuela*, Ser. C No. 182, Aug. 5, 2008, ¶ 56-65. In *Palamara Iribarne v. Chile*, the Inter-American Court observed that "the impartiality of a court implies that its members have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy," and stated strongly that a judge "must withdraw from a case being heard thereby where there is some reason or doubt which is in detriment to the integrity of the court as an impartial body. For the sake of safeguarding the administration of justice, it must be ensured that the judge is free from any prejudices and that no doubts whatsoever may be cast on the exercise of jurisdictional functions." Ser. C No. 135, Nov. 22, 2005, at ¶¶ 145-47.

Under this standard, it was flagrantly inappropriate for Judge Kaplan to preside in the civil RICO case, and certainly for Judge Kaplan to assume the sole fact-finding and decision-making function by refusing, at the last minute, to empanel a jury. Mr. Donziger can and will make a strong case of partiality at the subjective level by Judge Kaplan, as reflected not just in the judge's comments and orders but in a number of improper and strategically debilitating steps taken by the court that prejudiced Mr. Donziger. But even clearer is the inappropriateness of Judge Kaplan's role at the objective level: the judge's public comments—mocking Mr. Donziger for the "imagination" of his advocacy while calling Chevron "a company of considerable importance to our economy" and worrying about the effect of the Ecuadorian judgment on the availability of petrol for U.S. consumers—unquestionably "raise doubts" as to the judge's impartiality.

D. Due Process - Inequality of arms

Due process requires "full procedural equality" between the parties in an adversarial proceeding affecting an individual's rights. *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Ser. A No. 16, Oct. 1, 1999, ¶ 117. This, in turn, requires rigorous attention to any possible "real disadvantages" born by one party or linked to resource disparity or "inequality of arms" between the parties, as well as the taking of appropriate steps to mitigate any such disadvantage or prejudice. *Id.* at ¶ 119 ("The presence of real disadvantages necessitates countervailing measures that help to reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of one's interests."); *Ivcher Bronstein v. Peru*, Ser. C No. 74, ¶ 107; *cf. Dombo Baheer BV v. Netherlands*, ECHR, Oct. 27, 1993 ("Equality of arms implies that each party must be afforded a reasonable opportunity to present his case—including his evidence—under conditions that do not place him at a substantial disadvantage vis-á-vis his opponent").

As described briefly in the Facts Section, and as Mr. Donziger will fully demonstrate at the appropriate time, the massive disparity of resources between him and Chevron Corp. could not have been more pronounced nor more prejudicial. Furthermore, far from taking steps to mitigate any prejudice, Judge Kaplan repeatedly took steps to exacerbate the prejudice, such as piling unnecessary briefing and "document discovery" obligations on Mr. Donziger's counsel until that counsel was effectively forced to withdraw; refusing to provide any meaningful procedural accommodations to Mr. Donziger when he was defending himself *pro se* on the theory that because he was a lawyer, he was on "equal" footing with Chevron's massive legal team; refusing any accommodations at trial resulting in the waiver of objections, the inability to effectively cross-examine witnesses, and other prejudice; and the continued use of technical errors by Mr. Donziger in his *pro se* representation (e.g. the form of pleadings) to justify the denial of substantive relief.

E. Freedom of Association and Expression

The RICO lawsuit, in its overall essence and in various particular aspects, has also violated Mr. Donziger's rights to investigation, opinion, and expression under Am. Decl. Article IV, and to association under Am. Decl. Article XXII, as further elaborated in Am. Conv. Articles 13 and 16 and the jurisprudence thereto.

Chevron's central RICO claim was that Mr. Donziger's expressive activity in publicly challenging Chevron for its environmental record and in openly "pressuring" the company to settle the lawsuit and clean-up its former sites was tantamount to "extortion" prohibited by U.S. federal criminal laws. Despite principles U.S. jurisprudence designed to protect "petitioning activity" in court and limiting "extortion" claims to cases where the defendant is proven to have deployed both "wrongful means" and demonstrated a "wrongful objective," Judge Kaplan found Mr. Donziger guilty of extortion (under a civil "preponderance of the evidence" standard of proof). Kaplan ignored Mr. Donziger's sworn testimony that his fundamental objective in his advocacy was not "wrongful," but rather to achieve a clean-up for his clients. Instead, Kaplan held that Mr. Donziger's methods were so "inherently wrongful" that there could be no "nexus to any plausible" non-wrongful objective. But what was so inherently wrongful? Kaplan stated it in a heading: "Donziger Repeatedly Used Damages Estimates [in his advocacy against Chevron that] He Knew Were False or the Truth of Which He Doubted." Mr. Donziger has unequivocally rejected this claim in his own testimony and provided documentary evidence to corroborate his good faith belief in the referenced estimates. But even apart from the truth of the matter, Judge Kaplan's holding that the use of exaggerated or inflated damages estimates is sufficient to impose *criminal* liability for extortion is flagrantly at odds with the scope of expressive liberty protected by the Declaration and Convention.

The RICO lawsuit also targeted Mr. Donziger's "right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature"—in this case, Mr. Donziger's professional and social-justice interest in imposing accountability on Chevron for its contamination. The RICO lawsuit expressly targeted this associational activity as unlawful "conspiracy" and "racketeering," merely by claiming that

the environmental claims pursued by the association activity were, in Chevron's eyes, unfounded or even a "sham." (Chevron was forced to withdraw the "sham" claim before trial in order to prevent Mr. Donziger from introducing evidence going to the merits of the environmental claims in Ecuador. However, Judge Kaplan held that this withdrawal did not otherwise affect Chevron's ability to proceed to trial.)

The procedure of the RICO lawsuit also violated Mr. Donziger's right to association by allowing Chevron—an avowed opponent of Mr. Donziger and his politics—to access privileged legal information and confidential information about the identity of supporters of the Ecuadorian environmental cause, who Chevron then predictably sought to intimidate with additional lawsuits, effectively freezing up financial and other support. Chevron has also aggressively pursued this strategy ***after*** the issuance of Judge Kaplan's RICO Judgment, using discovery purportedly in service of its money judgments against Steven as the vehicle, and ultimately aiming to shut down all financial support for the Ecuadorian cause and end the accountability efforts against it once and for all. The tragedy is that the United States actually has very strong case law blocking such strategies on constitutional First Amendment grounds. *See NAACP v. Alabama*, 357 U.S. 449 (1958). But Judge Kaplan has refused to apply this law, citing various technicalities ("Waiver, Forfeiture and [lack of] Standing"), and for a lack of "good cause" because, in the judge's view, Chevron's retaliatory lawsuits against funders and supporters were merely legitimate efforts by Chevron "to seek legal redress against anyone whom it may allege is complicit in Donziger's tortious activities—in other words, by exercising its [Chevron's] rights under the law." While this is bad law in the United States, it is deeply repugnant to the scope of associational liberty protected by the American Declaration and Convention.

F. Privacy

Article V of the Declaration, as elaborated by Article 11 of the Convention, protects against "abusive interference with [an individual's] private life," including "his correspondence," and grants a right "to the protection of the law against such interference or attacks." As Mr. Donziger will show with evidence at the appropriate time, the RICO proceeding relied on discovery orders issued by Judge Kaplan requiring Mr. Donziger to give Chevron unfettered access to all his computers, phones, and online accounts, including access to decades' worth of attorney-client privileged legal files and communications. Chevron subsequently used countless items of confidential and private material in its attacks on Mr. Donziger, including in public filings and in leaks to the press. Indeed, perhaps the most used piece of evidence in the RICO case was a "diary" that Mr. Donziger kept for years, recording his thoughts and mental impressions on developments in the case and in his life generally. Chevron used decontextualized snippets from the diary against Mr. Donziger constantly at trial.

The right to privacy under the Declaration, as expounded in Article 11 of the Convention, also requires respect for an individual's dignity and prohibits "unlawful attacks on his honor or reputation." Chevron's express "demonization" campaign flagrantly violated Mr. Donziger's rights under these provisions, and did so by leveraging the prestige and power of the U.S. legal

system and the RICO lawsuit to drive the demonization campaign much farther than it could have accomplished by direct media efforts alone.

G. Property

Chevron's more recent use of the RICO lawsuit to obtain a money judgment of nearly $1 million, and likely soon a money judgment of $32 million (all to pay for the very same prejudicial trial Mr. Donziger was forced to endure), and its ongoing and forthcoming efforts to enforce those judgments against Mr. Donziger's personal property, stand in violation of Am. Decl. Article XXIII, as elaborated by Am. Conv. Article 21. Deprivation of property under these provisions is only lawful where it is pursuant to established law, necessary, proportional, and in service to a legitimate goal in a democratic society. *See, e.g.*, *Ivcher Bronstein*, *supra*, at ¶ 155. As set out above, the RICO lawsuit did not adhere to the established requirements of due process. Furthermore, an award of $1 million (much less $32 million) to a wealthy corporate defendant to be paid by an individual human rights defender to "compensate" the corporation for its expenses in attacking the defender is utterly contrary to the legitimate goals of a democratic society, including those related to free expression and the pursuit of social justice.

IV. Evidence

This is not a simple case. The evidence in support of the rights violations described in preceding sections is both extremely voluminous and often highly technical. Indeed, the litigation abuse described herein has often been accomplished because many allegations are so shrouded in technical jargon from elite litigation consultants that they are incomprehensible to observers trying to understand the allegations in common sense terms.

Mr. Donziger is prepared to provide evidence fully supporting each of the facts set forth in the preceding sections. For purposes of this petition, Mr. Donziger provides the following list of publicly available materials (some developed by Mr. Donziger, some prepared independently) that substantiate the facts alleged.

- ***BIT Arbitration Briefing.*** In a collateral litigation entirely separate from the RICO lawsuit but similarly aimed to "taint" the Ecuador judgment, Chevron initiated an investor-state Bilateral Investment Treaty (BIT) arbitration directly against the Republic of Ecuador (ROE) in 2009. (Chevron claimed that the ROE's decision ***not*** to quash the communities' private lawsuit against Chevron was a "denial of justice" causing billions of dollars in damage to Chevron.) Unlike Mr. Donziger, the ROE had sufficient resources to engage adequate legal counsel—U.S. law firm Winston & Strawn (W&S)—and to fund more serious investigation into Chevron's various allegations. In multiple rounds of highly-detailed briefing, W&S has deconstructed and fully rebutted each of Chevron allegations regarding the Ecuador trial and Mr. Donziger's alleged conduct. W&S also commissioned experts to independently validate all the scientific field-testing results from the Ecuador trial. The last publicly available brief from the BIT Arbitration (dated March 2015) is

particularly useful. *See* http://chevrontoxico.com/assets/docs/2015-03-17-respondents-track-2-supplemental-rejoinder.pdf. Specifically:

- At pages 80-104, the brief explain how the environmental evidence produced in the Ecuador proceeding was valid and not a "sham" as Chevron claims. The W&S team scrutinized all of the evidence in the Ecuador trial record and scientifically replicated the soil and water samples in the Ecuador trial judgment with an extensive field sampling operation conducted by a one of the world's most prestigious environmental firms, The Louis Berger Group.

- At pages 117-140, the brief reviews the profound credibility flaws of Chevron's star witness, Alberto Guerra—whose testimony constitutes the only direct evidence claiming there was a corrupt "bribe" agreement in the Ecuador trial. The analysis extends to point out the uselessness of the "documentary evidence" that Chevron has claimed circumstantially supports Guerra's testimony despite his credibility flaws.

- Pages 143-156 review the forensic analysis by leading authority J. Christopher Racich of the hard drives taken from the computers of the Ecuador trial judge. The Racich examination demonstrates that Guerra's "bribe" story, which lies at the heart of Judge Kaplan's RICO judgment, is unequivocally false. The brief also rebuts Chevron's various desperate attempts to minimize the impact of this groundbreaking evidence, which never was considered by Judge Kaplan nor the U.S. appellate court that affirmed Kaplan's judgment. (Pages 140-43 and 156-67 provide additional reasons why Chevron's "bribe" and "ghostwriting" claims are unconvincing.)

- An amicus brief dated May 1, 2017, filed on behalf of environmental organizations and prepared by lawyers at Earthrights International, details the corrupt nature of Chevron's multiple attempts to "taint" the Ecuadorian environmental judgment as a fraud, including by paying Guerra for false testimony. http://chevrontoxico.com/assets/docs/2017-05-01-aw-ran-amicus-brief.pdf

- Mr. Donziger's written direct testimony in the RICO case is available at http://stevendonziger.com/wp-content/uploads/2013/11/Donziger-Witness-Statement-Final.pdf. An overview of Mr. Donziger challenges to the RICO Judgment and its affirmance, containing extensive links to independent source materials, is available at http://stevendonziger.com/wp-content/uploads/2017/05/KaplanRebuttal.pdf.

- ***Video***. Documentary films and other video evidence are useful to rebut Chevron's baseline claim that the claims in the environmental case were a "sham"—a claim necessary to the company's argument that the litigation pursued by Mr. Donziger and others was tantamount to "extortion."

  - A recent TeleSUR documentary on the status of the Ecuador contamination and the affected communities' ongoing struggle for justice is available at https://www.youtube.com/watch?v=umYqYmU7xxI.

  - A more detailed 15-minute video explaining the technical aspects of Chevron's contamination is available at https://chevrontoxico.com/news-and-multimedia/2012/0208-the-true-story-of-chevrons-ecuador-disaster.

  - A compilation of Chevron internal video (given to civil society groups by a whistle-blower) showing Chevron technicians discovering oil contamination at inspections sites that the company's technicians later sought to hide from the Ecuadorian court is available at http://amazonwatch.org/news/2015/0408-the-chevron-tapes.

  - A short documentary and commentary by Mr. Donziger is available at https://vimeo.com/75415296.

- ***News articles.*** Thousands of news reports have been filed on the Ecuador environmental case and Chevron's retaliatory litigation. Articles focusing in particular on Chevron's campaign to "demonize" Mr. Donziger and avoid liability by tainting the Ecuadorian Judgment with "fraud" claims include:

  - Rex Weyler, *Chevron's SLAPP suit against Ecuadorians* (Greenpeace, 2018), at https://www.greenpeace.org/international/story/16448/chevrons-slapp-suit-against-ecuadorians-corporate-intimidation/,

  - James North, *Ecuador's Battle for Environmental Justice Against Chevron* (The Nation, 2015), at https://www.thenation.com/article/ecuadors-battle-environmental-justice-against-chevron/

  - Alexander Zaitchek, *Sludge Match: Inside Chevron's $9 Billion Legal Battle With Ecuadorean Villagers* (Rolling Stone, 2014), at https://www.rollingstone.com/politics/news/sludge-match-chevron-legal-battle-ecuador-steven-donziger-20140828.

  - Katie Redford (EarthRights International), *The New Corporate Playbook, Or What To Do When Environmentalists Stand In Your Way* (Huffington Post, 2016), at https://www.huffingtonpost.com/katie-redford/the-new-corporate-playboo_b_10599544.html.

V. Witnesses

A preliminary list of potentially useful witnesses will be provided to the IACHR as part of the Petition.

VI. Exhaustion of Remedies

As noted above, the means available to challenge the primary vehicle for the attacks on Mr. Donziger (the RICO case) have been fully exhausted all the way to denial of *certiorari* review by the U.S. Supreme Court. Other components of the persecution, such as the issuance of money judgments against Mr. Donziger and the authorization of execution procedures and related discovery, is final in the first instance and the possibility of further relief from the same authorities that authorized the RICO lawsuit itself is sufficiently remote as to be futile under Rule of Procedure 31(2)(b) and the applicable jurisprudential standards. Other components, such as proceedings before the lawyer disciplines authorities and the New York state courts, are also final to the extent that interim suspension has been imposed, and while the possibility of remedy to the New York Court of Appeals is perhaps not futile (although certain remote), the seriousness of the prejudice currently being suffered by Mr. Donziger as a result of the suspension is sufficient to justify consideration by the Commission at the current stage, supplemental to the remainder of the petition.

Chevron has initiated a wide-ranging campaign of efforts to attack the Ecuador Judgment, such as the BIT arbitration noted above. Some of those proceedings are ongoing. Additionally, the affected Ecuadorian communities have initiated proceedings to enforce the Ecuadorian environmental judgment against Chevron's assets in Canada, and Chevron has responded by trying to use Judge Kaplan's RICO decision to control the outcome in Chevron's favor in those proceedings. None of these proceedings, however, raise, much less duplicate, the issues of the legitimacy of the use civil RICO and the fairness of the RICO trial under the human rights standards of the Declaration, nor are any of them capable of leading to an effective settlement of such issues under Rule 33.

VII. Request for Relief

For all the foregoing reasons, Mr. Donziger respectfully requests that the Commission:

1. Register this petition according to Articles 51-52 and 29 of the Commission's Rules of Procedure, or notify Mr. Donziger through his undersigned representative of any concerns as to the requirements of the Rule 28 or any other Rules.

2. Request an appropriate response pursuant to Article 30 of the Rules, declare the petition admissible pursuant to Article 36, and initiate proceedings on the merits under Rule 37-39, including public hearings pursuant to Rule 61-70.

3. With respect to the ongoing proceedings to permanently strip Mr. Donziger of his New York law license without an evidentiary hearing, *supra* at Part I.E, Part IV, Mr. Donziger plans to request precautionary measures limited to a request that the appropriate authorities in New York allow Mr. Donziger to contest the facts of the allegations against him with evidence at a public hearing, consistent with due process.

4. Declare that the authorities indicated in Part II are responsible for violation of Mr. Donziger's rights under Articles XXVI, XVIII, XVII, V, XXIII, IV, XXI, and XXII of the Declaration.

5. Recommend such remedies as the Commission considers adequate and effective to address the violations, including, *inter alia*, reconsideration, by an impartial tribunal, of the legitimacy of the use of civil RICO procedures in Mr. Donziger's case and the substance of the underlying claims against him; a public acknowledgment of violation and apology; the taking of appropriate steps to sanction unethical conduct by Chevron, Gibson Dunn, and other entities involved in the presentation of false evidence in the RICO case; the taking of measures sufficient to protect Mr. Donziger's property and livelihood; the issuance of appropriate compensation for Mr. Donziger; and the establishment of an independent public body to investigate the broader threats posed by the use of civil RICO and other litigation by corporations against human rights defenders.

CONCLUSION

Mr. Donziger has been widely celebrated for his tenacity in advocating for the Ecuadorian communities affected by Chevron's contamination for the last 25 years. But the public has been all too willing to accept that he will be required to bear an enormous personal cost for his advocacy. Journalists who cover Chevron's attacks on Mr. Donziger often celebrate Chevron's "creativity" and refer to the case as a "giant game"; one journalist who has written extensively on human rights issues compared it to a television show, wondering what Chevron's "showrunners" would come up with next.

This glibness masks the real and painful consequences of Chevron's abusive tactics. While Mr. Donziger has been able to continue his advocacy long past when most defenders would have been forced to abandon their clients, and is grateful for the support he has received, the reality is that Chevron's cynical deployment of the politics of personal destruction and "demonization" have put enormous emotional strain on him, and now threaten to bankrupt him, destroy his livelihood, and hurt his family's future. This cannot be accepted as the "cost of doing business" in the area of human rights advocacy against powerful corporations.

U.S. judicial and lawyer discipline authorities have utterly failed to appreciate the most fundamental fact about the attacks on Mr. Donziger: they are a response to Mr. Donziger's advocacy on a plainly legitimate public interest and human rights matter. They are designed to serve Chevron's interest in avoiding liability. Until this fact gets put at the center of institutional responses to attacks on Mr. Donziger—and at the center of any self-serving corporate litigation against *any* human rights defender—legitimate processes of law will far too easily be abused by powerful litigants to the detriment of human rights defenders, their respective causes, and global respect for human rights.

The principles to which the United States has committed itself demand both that Mr. Donziger be treated consistently with the due process and free expression requirements of the Declaration and that a human rights perspective be taken into account in the U.S. judiciary's appreciation corporate litigation against human rights defenders generally. In particular, the use of quasi-criminal RICO claims against human rights defenders by corporations appears difficult to justify in any circumstances in light of the profound free expression, free association, and due process problems it raises under hemispheric human rights standards.[3]

In light of the utter failure of U.S. judicial and other public authorities to address these issues—and indeed, the complicity of those authorities in the attendant human rights violations—the Commission can and must initiate a rights-respecting process for Mr. Donziger to seek justice. The Commission must act to begin changing the larger conversation, redirecting it from imagined threats to U.S. consumers and "compan[ies] of considerable importance to our economy" back to

[3] In coalition with other human rights and environmental defenders, Mr. Donziger expects to raise the particular issue of the use of civil RICO by corporations against defenders as part of a request for a thematic hearing before the Commission.

the core human rights principles to which the United States has committed itself. While developments such as the aforementioned "Protect the Protest" coalition are encouraging,[4] the bulwark of public opinion needs the support and expertise of human rights institutions in order to grow in a direction that will ensure better respect for human rights in the future and demand accountability for existing victims of human rights violations.

4 *See, e.g.*, https://twitter.com/SLAPPtaskforce/status/1037419903102447617.