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ALUMNI PROFILE



Courtesy of Thierno Baldé.

Thierno Baldé.

Thierno Baldé recalls a peaceful childhood with his four brothers and three sisters in the small village of Fatako, Guinea. Born in 1973 to the village chief and his wife, as a young child, Baldé did not understand the struggles his country was facing. At that time, Ahmed Sékou Touré, the first Guinean president after the country gained independence from France in 1958, was in power. Under Sékou Touré's revolutionary socialist regime, political protestors often faced torture, imprisonment, or execution. The government even sent Baldé's uncle, a businessman, to jail three times at Camp Boiro, the infamous political prison and torture block that Touré created to silence opposition.

Baldé attended school in Fatako until age eleven, when he moved to the capital, Conakry, to live with his brother. After Touré's death two years later, Baldé entered a French school. Soon thereafter, the Military Committee of National Recovery (CMRN) seized power, and its leader, Colonel Lansana Conté, became the president of Guinea. The CMRN abolished the Constitution and the National Assembly, and unilaterally led the country through ordinances, decrees, and decisions by the president and his ministers.

After Baldé visited Camp Boiro in 1984, he immediately knew he wanted to attend law school. "The scenes of the

atrocities that I saw changed my life. I guess I lost my innocent childhood that day." Baldé resolved to "do my best to make sure that those things don't happen again . . . [T]hat dream never left me." By that point, more than 50,000 people had died at Camp Boiro since its opening in 1958; their "crimes" included staging student protests.

Baldé continued school in Conakry until he graduated from high school. After working for one year, he moved to Switzerland with only U.S. \$300 to his name, and earned his J.D. from the University of Lausanne in 1999. He then earned an LL.M. in European Union Law and International Economic Law from the University of Geneva in 2000.

Then, Baldé moved to Washington, D.C. and began his studies at WCL, where he received an LL.M in International Business Law in 2001. Baldé says attending WCL was a "dream come true." "My classmates were wonderful," he states. "It was one of the most diverse groups in term[s] of background, nationalities, and experience. I learned a lot, not only from my classes but also from [the other students]." In addition, Baldé forged lasting friendships with many of his professors; he watched his first baseball game with Professor Michael Diamond and assisted Professor Jamin Raskin during his campaign for the Maryland State Senate.

Baldé then worked with the World Bank Group for two years and returned to WCL to receive his third LL.M. in Law and Government in 2003. During this year, Baldé coached the René Cassin European Human Rights Moot Court team and traveled with three students to Strasbourg, France, to compete in the moot court competition based on the European Convention on Human Rights. Baldé had also been a member of the moot court team during law school in Lausanne, and he encourages all law students, particularly those interested in litigation, to participate in the “rewarding experience” of moot court.

In 2006, Baldé completed a J.S.M. in International Legal Studies with a focus on policy analysis at Stanford Law School, where he received the Stanford African Student Association Award and was a staff member on what is now the *Stanford Journal of International Law*.

Baldé then returned to Conakry and, in January 2007, founded the Research Institute on Democracy and Rule of Law (IRDED), an independent non-profit organization that promotes democratic principles, free society, and rule of law in West Africa. Among its projects, IRDED has organized seminars on the Legal Protection of the Media, provided legal counsel to NGOs regarding compliance with the Ministry of Interior’s licensing requirements, and encouraged young adults to participate in the electoral process and learn about nonviolent opposition methods. Baldé is currently the President of the Board of Directors of IRDED.

Baldé also “initiated several civic movements with youth leaders to ask President Conté to step down and establish a transitional council to organize free and fair elections.” However, President Conté died in December 2008, and a group of military officers called the National Council for Democracy and Development (CNDD) staged a coup only hours later. The self-proclaimed president, Captain Moussa Dadis Camara, suspended the constitution and promised to hold elections in 2009 to establish a civilian-led government, but those elections were never held. Baldé says, “It was unthinkable to imagine President Conté’s regime to perpetuate after 24 years of struggle and misery I believed that for once we [would] change the destiny of our country for good.” Baldé and other activists spent many sleepless nights working to propose reforms for the new government. Of his discussions with President Camara, Baldé says, “He made me believe that he wanted to set up the path for the establishment of democracy and rule of law in Guinea. [A] few months later, I realized that the commitments made were worthless.”

Throughout the year, the CNDD suppressed political opposition and banned political and union activity. Baldé mounted a media campaign with private radio stations that denounced human rights violations and explained the necessity of free and fair elections. Baldé says most people were not willing to say these things on air “for fear of being arrested.” Finally, on September 28, 2009, a month after Camara promised a “fair”

presidential election in January 2010, tens of thousands of people gathered at a Conakry stadium to peacefully protest the continued military rule and Camara’s apparent candidacy in the upcoming election. In response, government troops shot and killed at least 150 people, raped or sexually abused more than 100 women, and beat numerous other protestors. Baldé himself was arrested and jailed for helping to organize a hunger strike. Baldé and others are now focused on “lobbying for the International Criminal Court to investigate and judge the ones who are responsible [for] the killings.” As of mid-February, the ICC has begun a preliminary investigation regarding these “crimes against humanity.” Although President Camara’s government offered Baldé cabinet positions, he twice declined.

The international community has denounced the abuses by President Camara’s government and taken steps to isolate the government and push for accountability for the violence. In December 2009, one of Camara’s own guards attempted to assassinate him. Camara flew to Morocco for treatment, where he has remained in exile. On January 18, 2010, the military leaders, with the opposition’s assent, appointed civilian Jean-Marie Doré as Prime Minister.

Baldé thinks Doré “has an opportunity to organize free and fair elections and leave a lasting legacy to Guinea I hope that he will avoid making the same mistakes as his predecessors: appointing his close friends and relatives to key positions and thinking that he will be able to have free hands.” Baldé strongly believes that “from now on, it will be difficult for any leader to forgo the will of the people and expect to remain in power. It’s a daily battle . . . but I have a good feeling.” Guinea’s electoral commission has scheduled the civilian presidential election for June 27, 2010.

Baldé was recently appointed the Program Coordinator of the West Africa Public Interest Litigation Center (WAPILC), an organization based in Abuja, Nigeria that promotes human rights by improving the rule of law and access to justice for West African citizens. Baldé says this position will allow him “to advocate and lobby for respect of human rights principles and litigate [human rights] violations within [the Economic Community of West African States] member countries.”

Baldé is currently studying the legal protection of the media in Guinea for his S.J.D. dissertation from WCL under the supervision of Professor Jamin Raskin. He has already given his first presentation and hopes to return to WCL later this year to give his final presentation. Baldé remarks, “This year has been one of the most challenging I have had in a long time, but I guess these challenges are the forces that make us want to see the next year, hoping for better things.” **HRB**

Courtney Moran, a J.D. candidate at the Washington College of Law, wrote the Alumni Profile for this issue of the Human Rights Brief.

ENDNOTES: Economic Development at the Cost of Human Rights: China Nonferrous Metal Industry in Zambia *continued from page 7*

³⁸ Mushinge, *supra* note 3.

³⁹ *Id.*

⁴⁰ “According to Albert Mando, General Secretary of the National Union of Mining and Allied Workers (NUMAW), workers at the NFC Africa copper mine, a Chinese-owned operation in Chambishi, north-eastern Zambia, were shot and wounded by both the police and Chinese management during a strike in July.” INTERNATIONAL TRADE UNION CONFEDERATION, 2007 ANNUAL SURVEY OF VIOLATIONS OF TRADE UNION RIGHTS: ZAMBIA, *available at* <http://survey07.ituc-csi.org/getcountry.php?IDCountry=ZMB&IDLang=EN> [hereinafter ANNUAL SURVEY 2007].

⁴¹ Kachingwe, *supra* note 37.

⁴² *Chinese beaten up, supra* note 33.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Chinese beaten up, supra* note 33.

⁴⁶ *Id.*

⁴⁷ See previous section, “ZAMBIA’S HUMAN RIGHTS OBLIGATIONS.”

⁴⁸ Robyn Dixon, *Africans Lash out at Chinese Employers*, THE LOS ANGELES TIMES, Oct. 6, 2006, *available at* <http://articles.latimes.com/2006/oct/06/world/fg-chizambia6> [hereinafter Dixon].

⁴⁹ *Id.*; Guerin, *supra* note 7.

⁵⁰ Bench Marks Foundation, Home Page, <http://www.bench-marks.org.za> (last visited Jan. 17, 2010).

⁵¹ FREEK CRONJÉ, CHARITY CHENGA & JOHANN VAN WYK, CORPORATE SOCIAL RESPONSIBILITY IN THE ZAMBIAN MINING INDUSTRY (Bench Marks Foundation 2008), *available at* http://www.bench-marks.org.za/research/gap3_part1.pdf [hereinafter CORPORATE SOCIAL RESPONSIBILITY].

⁵² *Id.*

⁵³ *Id.*

⁵⁴ CORPORATE SOCIAL RESPONSIBILITY, *supra* note 51.

⁵⁵ *Id.*

⁵⁶ SomaliPress.com, *Controversial Chinese Firm Given Another Copper Mine in Zambia*, <http://www.somalipress.com/news/2009-jun-02/controversial-chinese-firm-given-another-copper-mine-zambia.html> (last visited Jan. 17, 2010).

⁵⁷ *Id.*

⁵⁸ Current President Lupiya Banda stated the following about NFC: “I want to assure you that this investor knows and understands the business of mining.” *Id.*

⁵⁹ Dixon, *supra* note 48.

⁶⁰ Mushinge, *supra* note 3.

⁶¹ *Id.*

⁶² Guerin, *supra* note 7.

⁶³ Ching Kwan Lee, *Raw Encounters: Chinese Managers, African Workers and the Politics of Casualization in Africa’s Chinese Enclaves* (IRLE Working Papers, No. WP-2009-14, Feb. 2009), *available at* <http://escholarship.org/uc/item/2037d9f7> [hereinafter Lee].

⁶⁴ *Id.*

⁶⁵ AFRICAN DEVELOPMENT FUND, SECOND POVERTY REDUCTION BUDGET SUPPORT FOR ZAMBIA: APPRAISAL REPORT (Sept. 2008), *available at* <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/ZM-2008-104-EN-ADF-BD-WP-ZAMBIA-AR-SECOND-POVERTY-REDUCTION-BUGET-SUPPORT-PRBS-II.PDF>.

⁶⁶ Elias Chipimo, *Taxing the mining sector*, IFLR 1000, <http://www.iflr1000.com/LegislationGuide/150/Taxing-the-mining-sector.html> (last visited Jan. 17, 2010).

⁶⁷ *Id.*

⁶⁸ Danstan Kaunda, *Sharing the Copper Windfall*, INTER PRESS SERVICE NEWS AGENCY, Aug. 18, 2008, *available at* <http://ipsnews.net/africa/nota.asp?idnews=43604> [hereinafter Kaunda].

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Kaunda, *supra* note 68.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Shacinda, *supra* note 34.

⁷⁵ *Id.*

⁷⁶ CHINESE INVESTMENTS IN AFRICA: A LABOUR PERSPECTIVE, *supra* note 11.

⁷⁷ ANNUAL SURVEY 2007, *supra* note 40.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ CHINESE INVESTMENTS IN AFRICA: A LABOUR PERSPECTIVE, *supra* note 11; Lee, *supra* note 63.

⁸¹ CHINESE INVESTMENTS IN AFRICA: A LABOUR PERSPECTIVE, *supra* note 11.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ CHINESE INVESTMENTS IN AFRICA: A LABOUR PERSPECTIVE, *supra* note 11.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ CHINESE INVESTMENTS IN AFRICA: A LABOUR PERSPECTIVE, *supra* note 11.

⁸⁸ CHRIS PESTRAUKIS, VULNERABILITY AND THE EMPLOYEE: HOW TO RESTORE DIGNITY TO EMPLOYMENT IN ZAMBIA? (Jesuit Centre for Theological Reflection 2005), *available at*: <http://www.jctr.org.zm/downloads/4thQ-05-brief.pdf>.

⁸⁹ *Id.*

⁹⁰ CHINESE INVESTMENTS IN AFRICA: A LABOUR PERSPECTIVE, *supra* note 11.

⁹¹ UDHR, *supra* note 23.

⁹² African Charter, *supra* note 26.

⁹³ Zambia acceded to the ICESCR and the ICCPR on April 10, 1984 and ratified the African Charter on October 21, 1986. United Nations Treaty Collection, <http://treaties.un.org/> (last visited Feb. 8, 2010).

ENDNOTES: The Clash of Human Rights and BIT Investor Claims: Chevron's Abusive Litigation in Ecuador's Amazon *continued from page 15*

⁹ For documents related to the sting operation, see Chevron Toxico, Chevron's Corruption of Ecuador Trial, <http://chevrontoxico.com/news-and-multimedia/chevrons-corruption.html> (last visited Feb. 22, 2010). A Chevron contractor and Ecuadorian citizen, Diego Borja, along with an American man passing himself off as the owner of an environmental remediation company, induced the then-trial judge Juan Nuñez to meet with them to discuss the status of the trial. During this meeting, both men secretly videotaped the judge via micro-cameras in a pen and a watch to later claim the judge had already decided to rule against Chevron. The videos, however, do not support Chevron's account and the judge is never seen on camera indicating he would rule one way or another. It turned out that Borja has worked for Chevron for several years on the *Aguinda* trial and was relocated to the United States and provided with a criminal lawyer paid for by Chevron, preventing him from being questioned. Borja also receives a salary from the company while he lives in the United States. The American involved in the scheme, Wayne Hansen, turned out to have lied about his credentials as the owner of a remediation company and had been convicted for his involvement in a conspiracy to import 275,000 pounds of marijuana to the United States from Colombia. See *id.* for PDF of investigative report on the sting operation.

¹⁰ See Richard Cabrera, Responses the Plaintiffs Questions Concerning the Expert Report (Nov. 2008) (Updated Report), p.34 Response to Question 42 (estimating the number of excessive cancer deaths attributable to contamination exposure at 1,401); see also Miguel San Sebastián et al., *Outcomes of Pregnancy among Women Living in the Proximity of Oil Fields in the Amazon Basin of Ecuador*, 8 No. 4 INT'L J. OF OCCUPATIONAL & ENVTL. HEALTH 312 (2002) (finding pregnancies of women in communities relying on streams with high TPH concentrations significantly more likely to end in spontaneous abortion); Miguel San Sebastián et al., *Exposures and Cancer Incidence Near Oil Fields in the Amazon Basin of Ecuador*, 58 No. 8 OCCUPATIONAL & ENVTL. MED. 517 (2001) (revealing severe exposure to TPHs by the residents of the community of San Carlos and significantly higher than expected rates of cancer and cancer deaths, even when controlling for employment in the oil industry and smoking habits); Miguel San Sebastián et al., *La salud de mujeres que viven cerca de pozos y estaciones de petróleo en la Amazonía ecuatoriana*, 9 No. 6 REVISTA PANAMERICANA DE SALUD PUBLICA 375 (2001) (demonstrating significantly higher prevalence of skin fungi, nasal irritation, and throat irritation, and associations with higher prevalence of fatigue, headaches, eye irritation, earaches, diarrhea, and gastritis in women living in communities relying on streams with high TPH concentrations); Anna-Karen Hurtig & Miguel San Sebastián, *Incidence of Childhood Leukemia and Oil Exploitation in the Amazon Basin of Ecuador*, 10 No. 3 INT'L J. OF OCCUPATIONAL & ENVTL. HEALTH 245 (2004) (finding significantly higher rates of child leukemia in *Oriente* counties where oil exploitation had been ongoing for at least twenty years as compared with non-oil-producing counties).

¹¹ The President of the Court in Nueva Loja appointed a Court Expert to evaluate the environmental damage suffered, if any, to the soil, water, vegetation, fauna in the surrounding area to specify, if possible, the origin of such damage; verify the existence of sub-

stances affecting the environment; specify the technical work and measures which must be implemented to restore the environmental damage, as far as technically possible; and determine methods for restoration based on the characteristics of each environment.

¹² See RICHARD CABRERA STALIN VEGA, TECHNICAL SUMMARY REPORT, EXPERT OPINION 19 (Mar. 24, 2008), available at <http://chevrontoxico.com/assets/docs/cabrera-english-2008.pdf>.

¹³ "Produced water" is toxic water, high in sodium chloride which comes out of the ground mixed with the crude oil. Because the water has been in contact with hydrocarbon-bearing formations, it contains some of the chemical characteristics of the formations and the hydrocarbons as well as chemicals added during the production processes. CORRIE CLARK & JOHN A. VEIL, ARGONNE NATION LAB., PRODUCED WATER VOLUMES AND MANAGEMENT PRACTICES IN THE UNITED STATES (2009) (prepared for U.S. Department of Energy, Office of Fossil Energy, National Energy Technology Laboratory). "Produced water" can be extremely harmful to animal and plant life with which it comes into contact. Chevron's operation in Ecuador was no exception. For example, the U.S. Environmental Protection Agency (EPA) has a standard of 230 ppm chloride (which measures saltiness) for the protection of freshwater aquatic life. U.S. EPA. OFFICE OF WATER REGULATIONS AND STANDARDS, CRITERIA AND STANDARDS DIVISION AMBIENT WATER QUALITY CRITERIA FOR CHLORIDE-1988 (February 1998), available at <http://www.epa.gov/waterscience/criteria/library/ambientwqc/chloride1988.pdf>. In an environmental audit conducted for Texaco as it was winding down its operation in Ecuador, chloride concentrations measured in every sample taken from the production water discharged at all eighteen Texaco production stations exceed the EPA standard, several by an order of magnitude. Most of the samples taken exceeded 10,000 ppm chloride, and the maximum was 104,000 ppm chloride (seawater has approximately 19,000 ppm chloride). HBT AGRA LIMITED, ENVIRONMENTAL ASSESSMENT OF THE PETROECUADOR-TEXACO CONSORTIUM OIL FIELDS: VOLUME I – ENVIRONMENTAL AUDIT REPORT (1993). These extremely high salt concentrations were toxic to the organisms in the freshwater streams and rivers downstream of Texaco's discharge points. See VEGA, *supra* note 12, at Annex J. They also, obviously, were harmful to the local inhabitants who had relied for millennia on those fresh water sources for their sustenance.

¹⁴ HBT AGRA LIMITED, ENVIRONMENTAL ASSESSMENT OF THE PETROECUADOR-TEXACO CONSORTIUM OIL FIELDS: VOLUME I – ENVIRONMENTAL AUDIT REPORT, 5-10 (1993) (revealing, "No testing is conducted on the wastewater prior to disposal into the river . . .") (draft on file with the author); FUGRO-McCLELLAND WEST, ENVIRONMENTAL FIELD AUDIT FOR PRACTICES 1964-1990, PETROECUADOR-TEXACO CONSORTIUM, ORIENTE, ECUADOR, E-2, Executive Summary (1992) (stating, "All produced water from the production facilities eventually discharged to creeks and streams . . . None of the discharges were registered with the Ecuadorian Institute of Sanitary Works (IEOS) as required by the Regulations for the Prevention and Control of Environmental Pollution related to Water Resources (1989)") (on file with author).

¹⁵ The release by its plain language and legislative history never intended to cover claims by third parties of the type being pressed in *Aguinda*. The Memorandum of Understanding signed by the

parties provided that “[t]he provisions of this [MOU] shall apply without prejudice to the rights possibly held by third parties for the impact caused as a consequence of the operations of the former Petroecuador-Texaco consortium.” Memorandum of Understanding Between the Government of Ecuador, Petroecuador, and Texaco Petroleum Company (Dec. 14, 1994) (on file with author). A 1995 settlement agreement that followed the MOU by its terms released only those claims belonging to Ecuador and Petroecuador. The 1995 Settlement Agreement states in pertinent part: “On the execution date of this contract . . . the Government and Petroecuador shall hereby release, acquit, and forever discharge Texpet . . . Texaco, Inc. . . . of all the Government’s and Petroecuador’s claims against the Releases for Environmental Impact arising from the Operations of the Consortium, except for those related to the obligations conducted hereunder for the performance by Texpet of the Scope of Work.” Contract for Implementing of Environmental Remedial Work and Release from Obligations, Liability and Claims (May 4, 1995) (on file with author).

¹⁶ VEGA, *supra* note 12, at 26 (finding that “the level of petroleum contamination in pits that were cleaned up by Texpet appears to be no lower than the contamination in pits that Texpet did not clean up”).

¹⁷ See Doug Beltman & Ann Maest, *Texaco’s Misuse of the TCLP Test in Ecuador* (Feb. 2009), available at <http://chevrontoxico.com/assets/docs/tclp-misuse.pdf>; see also Amazon Defense Coalition, *New Evidence Shows Chevron Manipulated Lab Results in Landmark Environmental Trial* (Feb. 4, 2009), available at http://chevrontoxico.com/news-and-multimedia/2009/0204-new-evidence-shows-chevron-manipulated-lab-results.html?searched=TCLP&advsearch=allwords&highlight=ajaxSearch_highlight+ajaxSearch_highlight1.

¹⁸ Jorge Roberto Salcedo Gonzalez, Inspección Judicial del Pozo Shushufindi 38, Prepared for Chevron Re: *Maria Aguinda y Otros vx. ChevronTexaco Coporation*, Corte Superior de Justicia, Nuevo Loja, Ecuador, Jucio No. 002-2003 (Mar. 16, 2006).

¹⁹ Press Release, Congresswoman Linda Sanchez, Members of Congress Urge USTR to Ignore Chevron Petition on Ecuador Legal Case (Dec. 15, 2009), available at <http://www.lindasanchez.house.gov/news.cfm/article/595> (stating, “Rather than allowing this case to come to a conclusion, embarking on clean-up efforts, or even seeking mediation, Chevron has engaged in a lobbying effort that looks like little more than extortion Apparently, if it can’t get the outcome it wants from the Ecuadorian court system, Chevron will use the U.S. government to deny trade benefits until Ecuador ‘cries uncle.’”).

²⁰ See *supra* note 6.

²¹ *Id.*

²² See Carl Pope, *Pity the Poor Oil Company*, SIERRA CLUB, Apr. 25, 2008, <http://sierraclub.typepad.com/carlpope/2008/04/pity-the-poor-o.html>.

²³ See Fund For Peace, *Health and Business Roundtable Indonesia*, http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=320&Itemid=483 [(last visited Feb. 16, 2010)] (noting, “Chevron...[was] the first member to provide financial support to sustain HBRI by sponsoring the sixth Roundtable session and third workshop”).

²⁴ For copy of military report, see Military Report on Cancellation of Guanata Inspection, available at [http://chevrontoxico.com/news-and-multimedia/2005/1020-military-report-on-cancellation-of-](http://chevrontoxico.com/news-and-multimedia/2005/1020-military-report-on-cancellation-of-guanta-inspection.html?searched=guanta&advsearch=allwords&highlight=ajaxSearch_highlight+ajaxSearch_highlight1)

[guanta-inspection.html?searched=guanta&advsearch=allwords&highlight=ajaxSearch_highlight+ajaxSearch_highlight1](http://chevrontoxico.com/news-and-multimedia/2005/1020-military-report-on-cancellation-of-guanta-inspection.html?searched=guanta&advsearch=allwords&highlight=ajaxSearch_highlight+ajaxSearch_highlight1).

²⁵ Petitioner’s Statement of Undisputed Material Facts, *Republic of Ecuador v. Chevron Corp. & Texaco Petroleum Co.* No. 09 Civ. 9958 (S.D.N.Y. filed Feb. 10, 2010) (citing Letter from M. Kolis (Aug. 11, 2005), which stated, “Texaco and now Chevron’s representatives have met regularly with representatives of the Republic to discuss various matters between the company and the Republic. As new administrations have come to power in Ecuador . . . Texaco and Chevron representatives have always made efforts to meet with government officials, including the President, if possible . . . to discuss the state of affairs between the company and the Republic.”).

²⁶ For a letter from the International Commission of Jurists and Amnesty International, see Press Release, International Commission of Jurists (June 14, 2006), available at <http://www.texacotoxico.org/eng/node/41>.

²⁷ *Republic of Ecuador v. ChevronTexaco Corp.*, 499 F. Supp. 2d 452 (S.D.N.Y. 2007).

²⁸ *Republic of Ecuador v. ChevronTexaco Corp.*, 296 F. App’x 124, 2008 WL 4507422 (2d Cir. Oct. 7, 2008), *cert. denied*, 129 S. Ct. 2862 (2009).

²⁹ In an Arbitration under the Treaty Between the U.S. and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment and the UNCITRAL Arbitration Rules, (UNCITRAL PCA Case No. AA277).

³⁰ Issued by the First Civil Court of Pichincha, Case No. 2003-0983 (Feb. 26, 2007).

³¹ See Douglas Beltman, *Equitable Justice: A Comparison of Environmental Disasters and Cleanup Costs*, Stratus Consulting (May 20, 2008) (finding the actual damages in the Cabrera report is consistent with damages assessments for other large environmental disasters) (noting Hanford nuclear waste facility, United States, U.S. \$53 to \$63 billion; Prestige oil spill, Spain, U.S. \$4.2 billion; and Rocky Flats, United States, U.S. \$7.2 billion) (on file with author).

³² Ben Casselman, *Chevron Expects to Fight Ecuador Lawsuit in U.S.*, WALL ST. J., July 20, 2009, at B3.

³³ Press Release, Chevron, Chevron Calls for Dismissal of Ecuador Lawsuit (Oct. 8, 2007), available at <http://www.chevron.com/news/press/Release/?id=2007-10-08>.

³⁴ Michael Isikoff, *A \$16 Billion Problem*, NEWSWEEK, Jul. 26, 2008, available at <http://www.newsweek.com/id/149090>.

³⁵ Claimant’s Notice of Arbitration, *Chevron Corp. & Texaco Petroleum Co. v. Republic of Ecuador* (Perm. Ct. Arb. Sept. 23, 2009), available at <http://www.chevron.com/documents/pdf/EcuadorBITen.pdf>.

³⁶ Though Chevron argues it is not liable in the *Aguinda* trial because of a prior U.S. \$40 million remediation agreement with the Ecuadorian government, the S.D.N.Y. was extensively briefed on the issue in prior and pending arbitration cases between Republic of Ecuador and Chevron and has indicated it is “highly unlikely” the release applied to the plaintiffs’ claims. See *Republic of Ecuador v. Chevron Corp. & Texaco Petroleum Co.*, No. 09 Civ. 9958, FN 20 (S.D.N.Y. filed Feb. 10, 2010) (explaining (1) the “release” on its face was limited to claims by the Republic and PetroEcuador; (2) the parties had expressly agreed in Article VIII of a 1994 MOU that the Republic’s and PetroEcuador’s release of TexPet would “apply without prejudice to the rights possibly held by third parties for the impact caused as a consequence of the operations of the former

PETROECUADOR-ECUADOR Consortium;” (3) TexPet’s principal Ecuadorian legal advisor at the time the MOU and Settlement Agreement were executed testified that Article VIII of the MOU “carves out entirely” from the release “any action brought by parties who were not parties to the settlement agreement”; (4) in any event, and as a matter of Ecuadorian law, the Republic could *not* waive the rights of third parties; and (5) even though the *Aguinda* case in which the plaintiffs sought equitable relief in the form of remediation of the “contamination and spoliation of [plaintiffs’] properties, water supplies and environment” had been pending for two years by the time the 1995 Settlement Agreement was signed, the Agreement and its release made no reference to the pending *Aguinda* case whatsoever and included neither an indemnification nor a save harmless clause with respect to third-party claims. As S.D.N.Y. observed in its 2005 decision in *Republic of Ecuador v. ChevronTexaco Corp.*, “Absent this contention by Defendants [that the claims brought in *Lago Agrio* were different than the claims in *Aguinda*], it would be extremely difficult for Defendants to establish that claims nominally brought by third parties in the Lago Agrio litigation were covered by the 1995 and 1998 Agreements between Texaco and Ecuador: it is highly unlikely that a settlement entered into while *Aguinda* was pending would have neglected to mention the third-party claims being contemporaneously made in *Aguinda* if it had been intended to release those claims or to create an obligation to indemnify against them.” (citing *Republic of Ecuador v. ChevronTexaco Corp.*, 376 F. Supp. 2d 334, 374 (S.D.N.Y. 2005)).

³⁷ Although there have been efforts to reform ICSID tribunals to allow *amicus curiae*, these efforts have not yet extended to UNCITRAL proceedings. See Brigette Stern, *Civil Society’s Voice in the Settlement of International Economic Disputes*, 22 No. 2 FOREIGN INV. L. J. 280 (2007). However, even if plaintiffs were able to intervene as *amicus curiae* under UNCITRAL rules, the rights of the plaintiffs will not be adequately protected. First, as a non-disputing party, those whose rights are at the center of the dispute would not be “parties” to the arbitration. The tribunal, in private, has discretion to refuse the request or limit the level of involvement. Even where plaintiffs can show significant interest in the proceeding and relevant factual and legal insight, the tribunal need not grant *amicus* status nor give the submission appropriate weight. The tribunal may disregard any argument made by the *amici*, especially where a party to the dispute expresses its opposition, as Chevron surely would. This hardly safeguards the expectations of the 30,000 plaintiffs who have fought for seventeen years to hold ChevronTexaco accountable for the destruction of their homeland. Second, the forum provides no transparency. There is no publication of the case records without consent from both parties, no opportunity for plaintiffs to appear as witnesses, and no access to the arbitral hearings without consent of both parties. Therefore, those whose rights are most greatly impacted would be without a voice, without access to information, and without redress in the event of an adverse decision. Notably, there is no evidence that third party submissions, even when accepted, have ever affected a tribunal’s determination. See Eloise Obadia, *Extension of Proceedings Beyond the Original Parties: Non-Disputing Party Participation in Investment Arbitration*, 22 No. 2 FOREIGN INV. L. J. 349 (2007).

³⁸ UNCITRAL ARBITRATION RULES (1976) (adopted by the General Assembly on Dec. 15, 1976).

³⁹ Several U.S. investors in Ecuador have complained confidentially to the authors that Chevron’s strategy is undermining the investment climate in the country and impinging on U.S. investment interests generally. Separately, leaders of the Ecuador-American Chamber of Commerce in Ecuador have indicated confidentially that they have been pressured by the U.S. Chamber of Commerce (of which Chevron is a member and major contributor of dues) to drop its opposition to Chevron’s attempt to cancel bilateral trade preferences extended by the U.S. to that country, or risk being expelled from the international network of Chambers of Commerce organized by the U.S. chapter.

⁴⁰ Luke Eric Peterson, *Chevron Goes All-In Against Ecuador; New Claim Reflects Latest BIT Usage*, KLUWERARBITRATIONBLOG, Sept. 24, 2009, <http://kluwerarbitrationblog.com/blog/2009/09/24/chevron-goes-all-in-against-ecuador-new-claim-reflects-latest-bit-usage/> (last visited Feb. 22, 2010).

⁴¹ *Pac Rim Cayman LLC v. Republic of El Salvador* (ICSID Case No. ARB/09/12). A few weeks later, two other mining companies in El Salvador filed a copycat suit. *Commerce Group Corp. & San Sebastian Gold Mines, Inc. v. Republic of El Salvador* (ICSID Case No. ARB/09/17).

⁴² *Impregilo S.p.A. v. Argentine Republic* (ICSID Case no. ARB/07/17); *Aguas del Tunari S.A. v. Republic of Bolivia* (ICSID Case no. ARB/02/3); *Biwater Gauff Ltd. v. United Republic of Tanzania* (ICSID Case no. ARB/05/22).

⁴³ See Luke Eric Peterson, *Foreign Insurers Object to Slovak Republic’s Health Policy Reversal*, 2 No. 3 INV. ARB. REP. 2, 3 (Feb. 10, 2009).

⁴⁴ *Piero Foresti, Laura de Carli & Others v. Republic of South Africa* (ICSID Case No. ARB(AF)/07/1).

⁴⁵ GUS VAN HARTEN, INVESTMENT TREATY ARBITRATION AND PUBLIC LAW 7-8 (2007). Ten days after the U.S. \$353 million award was issued, a different arbitral tribunal issued an award examining precisely the same facts and found no liability whatsoever. The Czech Republic was still forced to pay the first award.

⁴⁶ See, e.g., ALAN REDFERN ET AL., LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 77 (3d ed. 1999) (noting that “it is possible, without undue sophistication, to identify at least five different systems of law which in practice may have a bearing on an international arbitration”); *id.* at 118 (describing “lex mercatoria” or “merchants’ law”); FOUCHARD, GAILLARD, GOLDMAN ON INTERNATIONAL COMMERCIAL ARBITRATION 871-77 (Emmanuel Gaillard & John Savage eds., Kluwer L. Int’l 1999).

⁴⁷ See, e.g., W. LAURENCE CRAIG ET AL., INTERNATIONAL CHAMBER OF COMMERCE ARBITRATION § 23.01 (3d ed. 2001).

⁴⁸ See, e.g., *id.* at 657-59 (arguing that “the State has in essence delegated to individuals the power to establish law . . . allow[ing] the business community to create its own regulatory environment”).

⁴⁹ Jan Paulsson, *Arbitration Without Privity*, 10 FOREIGN INV. L. J. 232, 232 (1995).

⁵⁰ See, generally, YVES DEZELAY & BRYANT G. GARTH, DEALING IN VIRTUE (Univ. of Chi. Press 1996).

⁵¹ GUS VAN HARTEN, INVESTMENT TREATY ARBITRATION AND PUBLIC LAW 5 (Oxford Univ. Press 2007) (“arbitrators are able to award damages as a public law remedy without having to apply the various limitations on state liability that evolved in domestic legal systems to balance [competing] objectives”); see also Redfern, *supra* note 46, at 4-43 (noting how the Club exhibits “a tendency to consider