



**OPEN LETTER DEMANDING AN END TO UNPRECEDENTED HOUSE ARREST OF  
HUMAN RIGHTS ATTORNEY STEVEN DONZIGER  
AND A CALL TO THE INTERNATIONAL HUMAN RIGHTS COMMUNITY TO  
#MAKECHEVRONCLEANUP**

“ALMOST TWENTY YEARS AGO, the United Nations General Assembly adopted by consensus **the Declaration on Human Rights Defenders**. All governments made the strong commitment to prioritise the security and protection of Human Rights Defenders, recognizing the right of all individuals and organisations to peacefully defend human rights. **Yet, the world seems less and less safe for those who stand up for human dignity.**” – Michael Forst, UN Special Rapporteur on the situation of human rights defenders<sup>1</sup>

As members of the international legal community, including human rights, environmental rights, and indigenous peoples’ rights organizations, we must protect human rights defenders. We are outraged by the attack on the rule of law evidenced in the arbitrary detention of human rights attorney, Steven Donziger. Thanks to corporate-friendly federal Judge Lewis A. Kaplan, who openly stated his pro-corporate bias in a case involving a multinational corporation,<sup>2</sup> a dangerous precedent is being set chilling legal representation. In the “Land of the Free,” Donziger has now spent more than 9 months under unprecedented house arrest in retaliation for his work on behalf of indigenous people of the Ecuadorian Amazon against oil giant, Chevron, in one of the most important corporate accountability and human rights cases of our time.

In 1993, U.S. human rights attorney, Steven Donziger, became part of the legal team for 30,000 indigenous peoples and affected *campesinos* in the Ecuadorian Amazon seeking justice from the environmental damage and ongoing health crisis caused by oil company Texaco, for deliberately polluting the Amazon Rainforest. From 1964 to 1990, Texaco dumped over 16 billion gallons of toxic wastewater, spilled more than 17 million gallons of crude oil and left hundreds of open pits with hazardous waste in the forest floor. In 2000, Chevron purchased Texaco along with everything that came with it – including liability for the destruction Texaco had caused in Ecuador’s Lago Agrio region. The Cofan people, among other indigenous groups and rural communities that call the Amazon home, have suffered intense environmental and health ramifications of “Chevron’s cost of doing business,” including lack of potable water, displacement from ancestral lands, irreparable loss of culture, and severe health concerns, including heightened mortality rates due to birth defects and widespread incidence of cancer.

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<sup>1</sup> Michael Forst, “Stop the Killing,” Foreword, 2017 Front Line Defenders Report on Human Rights Defenders, [https://www.frontlinedefenders.org/sites/default/files/stk\\_-\\_full\\_report.pdf](https://www.frontlinedefenders.org/sites/default/files/stk_-_full_report.pdf).

<sup>2</sup> See James North, “How a Human Rights Lawyer Went From Hero to House Arrest,” *The Nation*, March 31, 2020, <https://www.thenation.com/article/activism/steven-donziger-chevron/>.

In 2011, after nearly two decades of litigation in Ecuador—where Chevron executives had hoped they would win—Chevron was found guilty and ordered to pay \$19 billion in damages and for cleanup. In 2013, Chevron appealed to the Ecuadorian Supreme Court, who upheld the previous judgment and ordered Chevron to pay a reduced \$9.5 billion to clean up. Despite knowing that the money from the judgment would be used for environmental repair, not individual indemnifications, Chevron—one of the world’s largest corporations with over \$260 billion in assets—sold its assets in Ecuador and fled the country. In the US, it began a counter-offensive strategy, threatening human rights lawyers and the indigenous plaintiffs with a “lifetime of litigation.”<sup>3</sup>

To date, by some estimates, Chevron has spent nearly \$2 billion in a massive legal and defamatory propaganda campaign aimed at taking down Steven Donziger and finding work-arounds to the Ecuadorian judgment. At the unorthodox suggestion of Judge Kaplan, in 2011, Chevron filed a RICO complaint against Donziger and two Ecuadorian attorneys, claiming that the judgment obtained after 10-years of litigation before three levels of Ecuadorian courts was the product of fraud and extortion.

In 2014, after the prolonged RICO trial aimed at weakening Donziger and Amazonian plaintiffs’ resolve, Judge Kaplan, who has made public comments about Chevron’s importance in the global economy,<sup>4</sup> ruled in favor of the oil giant.<sup>5</sup> At the time of his decision, Judge Kaplan had undisclosed financial ties to Chevron that would have provided grounds for Ecuadorian plaintiffs and Donziger to seek his recusal.<sup>6</sup>

In Kaplan’s RICO decision, despite having previously ignored the basic principle of international comity (respect among nations for each other’s legal systems) when he attempted to

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<sup>3</sup> Press Release, “Chevron Calls for Dismissal of Ecuador Lawsuit,” Chevron Corporation, October 8, 2007, <https://www.chevron.com/stories/chevron-calls-for-dismissal-of-ecuador-lawsuit> (stating that if Chevron’s demands for dismissal were not met, both sides would be “sentenced” to “a lifetime of appellate and collateral litigation.”).

<sup>4</sup> James North, “How a Human Rights Lawyer Went From Hero to House Arrest,” *The Nation*, March 31, 2020, <https://www.thenation.com/article/activism/steven-donziger-chevron/> (“[Kaplan] lauded Chevron as ‘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.’”).

<sup>5</sup> Impartiality and independence of the judiciary are understood to safeguard the objectivity and fairness of judicial proceedings and are essential elements in a system governed by the rule of law. As to impartiality, the UN Human Rights Committee has stated that it “implies that judges must not harbor any preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties.” Human Rights Committee, Communication No. 387/1989 (*Karttunen v. Finland*), UN Doc. CCPR/C/46/D/387/1989, para. 7.2.; *see also* Human Rights Committee, Communication No. 263/1987 (*González del Río v. Peru*), CCPR/C/46/D/263/1987, para. 5.2. (where the UN Human Rights Committee stated that the two principles of independence and impartiality of judges form “an absolute right that may suffer no exception.”).

<sup>6</sup> Court-mandated financial disclosure forms show Judge Kaplan owned shares in three J.P. Morgan funds that have holdings in Chevron – investments that were never disclosed despite requests for his recusal for bias in favor of Chevron. *See* Press Release, “U.S. Judge Kaplan Held Investments in Chevron When He Ruled for Company in Ecuador Pollution Dispute,” Amazon Watch, October 29, 2014, <https://amazonwatch.org/news/2014/1029-judge-kaplan-held-investments-in-chevron-when-he-ruled-for-company>.

prohibit enforcement of the Ecuadorian judgment against Chevron in any nation<sup>7</sup>—an injunction that was ultimately vacated by the U.S. Court of Appeals for the Second Circuit in 2011—Kaplan found a new way to circumvent the enforcement issue. The RICO order, though explicitly allowing enforcement in other countries, imposes a constructive trust where any funds that might be collected on the judgment outside the U.S. would have to be held in trust for Chevron. More recently, Kaplan held that this constructive trust also blocks the Ecuadorian plaintiffs from raising any money to pay for the supposedly allowed foreign enforcement actions.

Extraordinarily, after some progress was made in other countries to enforce the judgment with Donziger’s help, Judge Kaplan allowed Chevron to initiate a costly and intrusive document discovery process against Donziger and others associated with the Ecuadorian plaintiffs. Kaplan required Donziger to turn over his client communications to Chevron from over two decades of work, meaning that Chevron would gain backdoor access to information they could not obtain legally through the discovery process, including conversations regarding litigation strategy, among other things, of all those involved in the human rights case, thus infringing upon one of the most time-honored privileges: that of an attorney and his clients.

Donziger objected to Kaplan’s orders and filed an appeal. When Kaplan demanded that Donziger nonetheless produce the privileged information while the appeal was pending, Donziger refused on principle and openly stated he was willing to be held in civil contempt of court if necessary. Kaplan did hold him in civil contempt—and then, in July 2019, increased the pressure by drafting extraordinary criminal contempt charges against Donziger. Kaplan referred the case to the U.S. Attorney’s Office for the Southern District of New York, which declined to prosecute. Undeterred, Kaplan took it upon himself to appoint a private law firm, Seward & Kissel (a firm with known ties to Chevron and Chevron-related entities),<sup>8</sup> to prosecute Donziger despite their conflict of interest.

Judge Kaplan also bypassed the random case assignment process and handpicked Judge Loretta Preska to oversee the prosecution.

Quickly continuing the process marked by disproportionate harshness, Judge Preska remanded Donziger to home detention along with the seizure of his passport, and required an \$800,000 bond as conditions of his pretrial release. Preska found that even though Donziger has a family and deep ties to New York, the “risk” that he would flee the country and try to live out his life in exile was so great that he had to be confined to his home. Donziger faces a maximum penalty of 6 months imprisonment from criminal contempt, but has already “served” nine months of pretrial home detention.

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<sup>7</sup> See Michael D. Goldhaber, “The Global Lawyer: Chevron’s Ecuador Case Veers Off Script at Second Circuit,” *The AMLaw Daily*, September 19, 2011, <https://amlawdaily.typepad.com/amlawdaily/2011/09/my-entry.html>.

<sup>8</sup> See Sharon Lerner, “How the Environmental Lawyer Who Won a Massive Judgment Against Chevron Lost Everything,” *The Intercept*, January 29, 2020, <https://theintercept.com/2020/01/29/chevron-ecuador-lawsuit-steven-donziger/>, (citing a December 30, 2019 letter from Donziger’s counsel to Judge Preska stating that public records show a Seward law partner had ties to Chevron’s Board of Directors, in addition to at least one other Seward client currently receiving significant income from Chevron).

Donziger was also referred to the New York bar, requesting his law license be suspended based on the claim that he was an “immediate threat to the public interest.” Donziger’s law license was suspended for 18 months before he was afforded a modicum of due process and finally provided a hearing. On February 24, 2020, in an important moment for Donziger’s case, Referee John R. Horan for the Supreme Court of the State of New York, Appellate Division, First Department, issued a report and recommended that Donziger’s “interim [bar license] suspension should be ended and that he should be allowed to resume the practice of law.” Horan, a former Assistant U.S. Attorney, added, “[t]he extent of his pursuit by Chevron is so extravagant, and at this point so unnecessary and punitive, while not a factor in my recommendation, is nonetheless background to it... Assessment of character is not an exact science, but we can all agree that the essential components are honesty, integrity and credibility... Respondent has such character and is essentially working for the public interest, and not against it... If his interest in earning a large fee makes his character suspect, the entire bar is suspect.”<sup>9</sup>

**This fight is not just about the money and it’s not just about Donziger. It is about accountability and the very bedrock of the rule of law – that no one, no matter how powerful – is above the law.** Yet, as Donziger himself has stated, “Chevron is trying to kill off the idea that impoverished indigenous groups and lawyers can pool their talents and resources like we have to take on Big Oil and be successful.”<sup>10</sup> If Chevron prevails, it will reaffirm the *status quo* – that a multinational corporation can defy national and international law with impunity.

When human rights defenders are attacked, it is democracy itself that suffers. In many countries, commitment to environmental activism such as Steven Donziger’s often results in death. A recent report by Front Line Defenders reveals that in 2019, over 300 human rights defenders were killed in 31 countries, with over two-thirds killed in Latin America, where impunity from prosecution is the norm. Forty percent of those killed fought for land rights, indigenous peoples, and environmental justice.<sup>11</sup> The report details the physical assault, defamation campaigns, digital security threats, judicial harassment and attacks faced by human rights defenders across the world. We cannot allow the rule of law to be upended by corporate interests and a highly biased federal judge seeking to destroy the willpower of one lawyer who has already withstood decades of brutal litigation and scathing personal and professional attacks.

**We, the undersigned, call upon the members of the international legal community, human rights, environmental rights, and indigenous peoples’ rights organizations, including those in the United States and abroad, to stand in solidarity with Steven Donziger and the 30,000 indigenous peoples of the Ecuadorian Amazon, and hereby DEMAND:**

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<sup>9</sup> Referee John R. Horan Report, *In re Stephen R. Donziger*, Supreme Court of the State of New York, Appellate Division, First Judicial Department, RP No. 2018.7008, February 24, 2020. Available at: <https://www.courthousenews.com/wp-content/uploads/2020/02/Donziger-Report-02.24.20-complete.pdf>.

<sup>10</sup> James North, “Ecuador’s Battle for Environmental Justice Against Chevron,” *The Nation*, June 2, 2015, <https://www.thenation.com/article/archive/ecuadors-battle-environmental-justice-against-chevron/>.

<sup>11</sup> Frontline Defenders Global Analysis 2019 Report on Human Rights Defenders, [https://www.frontlinedefenders.org/sites/default/files/global\\_analysis\\_2019\\_web.pdf](https://www.frontlinedefenders.org/sites/default/files/global_analysis_2019_web.pdf).

- 1) #FreeDonziger - We demand an immediate end to the unjustified pretrial house arrest of human rights attorney Steven Donziger which is nearing 10 months as a result of a violation of due process.**

As stated above, such arbitrary detention sets a dangerous precedent for human rights attorneys in the United States and around the world.

- 2) #InvestigateKaplan - Judge Lewis A. Kaplan undermined the judiciary, lacking impartiality and refusing to recuse himself in a case where he repeatedly displayed a clear bias towards one of the parties, thus violating basic notions of fairness in the judicial process that lie at the core of the rule of law.**

By no means exhaustive, this letter has detailed only some of the overtly biased actions taken and statements made by Judge Kaplan that betray the ethical duty of an impartial judge. It is no surprise that the principles of independence and impartiality of the judiciary enjoy universal allegiance in U.S. law and in the ratified human rights instruments incorporated into United States domestic law through Article 6 section 2 of the U.S. Constitution. The right to a fair trial by an impartial tribunal is one of the most basic human rights guarantees.<sup>12</sup> In 1995, the Special Rapporteur of the Commission on Human Rights considered judicial independence and impartiality to form part of the “general principles of law recognised by civilised nations.”<sup>13</sup>

Judge Kaplan’s actions have violated the integrity of the U.S. federal judiciary, called into question his apparent lack of compliance with his ethical duties as defined by the Code of Judicial Conduct, and therefore, the Department of Justice along with the United States Senate and House Judiciary Committees should take action and investigate Kaplan’s role in this case, as well as level sanctions for abuse of judicial power and any other appropriate claims, including immediate removal and dismissal of all claims against Donziger.<sup>14</sup>

- 3) #MakeChevronCleanUp – We demand Corporate Accountability, not Corporate Impunity for the environmental damages caused to the Ecuadorian Amazon and over 30,000 indigenous peoples that have waited long enough for justice.**

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<sup>12</sup> Art. 14 (1) of the Covenant on Civil and Political Rights; Art. 10 of the Universal Declaration of Human Rights; Art. 8, American Convention on Human Rights; Arts. 7 and 26 of the African Charter on Human Rights and Peoples' Rights; Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>13</sup> Report of the Special Rapporteur Param Cumaraswamy, Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers, UN Doc. E/CN.4/1995/39, para. 34.

<sup>14</sup> Judge Kaplan and Chevron continue to say that their actions against Donziger and the plaintiffs are justified by the findings against Donziger that the Ecuadorian judgment was procured by fraud. However, these are findings of a biased judge who did not credit the strong testimony by Donziger denying the allegations and were not changed even after Ecuadorian Judge Guerra, one of the most important witnesses to testify as to the alleged fraud or bribery, admitted under oath in a later arbitration proceeding Chevron brought against Ecuador that he had given false, sworn testimony in the RICO case against Donziger. See Eva Hershaw, “Chevron’s Star Witness Admits to Lying in the Amazon Pollution Case,” *VICE News*, October 26, 2015, [https://www.vice.com/en\\_us/article/neve7z/chevrons-star-witness-admits-to-lying-in-the-amazon-pollution-case](https://www.vice.com/en_us/article/neve7z/chevrons-star-witness-admits-to-lying-in-the-amazon-pollution-case).

Starting with the reign of the United Fruit Company in Latin America, the impact of multinational corporations worldwide is nothing new. Extractive industries continue to pilfer the earth and the ancestral lands of indigenous peoples without anything to stop them. Frontline human rights defenders are often killed and along with the prosecution for those deaths, the actions of the corporations behind these deaths enjoy impunity.

As Victoria Tauli-Corpus, UN Special Rapporteur on the Rights of Indigenous Peoples has said, “[t]he killings make news, but hidden behind these headlines is something even more insidious: the silencing of entire communities.”

The 30,000 indigenous peoples and affected *campesinos* of the Ecuadorian Amazon and their allies worldwide will not be silenced.<sup>15</sup>

**Sincerely,**

**International Association of Democratic Lawyers  
National Lawyers Guild International Committee**

### **Organizational Endorsements**

1. A Legacy of Equality, Leadership and Organizing (LELO)
2. Acción Jurídica Popular
3. Alliance for Global Justice
4. Amazon Watch
5. Asociación Americana de Juristas (AAJ)
6. Asociación Americana de Juristas Rama Colombia
7. Asociación Civil NACE UN DERECHO
8. Asociación Interamericana para la Defensa del Ambiente, AIDA
9. Asociación Nacional de Abogados Democráticos (ANAD)
10. Australian Fair Trade and Investment Network
11. Camino Común: Solidarity International
12. Canadian Buddhist Civil Liberties Association
13. Caribbean Institute for Human Rights
14. Central Arizona National Lawyers Guild
15. Climate Defense Project
16. Climate Hawks Vote
17. Colegio de Abogados y Abogadas de Puerto Rico
18. Colombia Support Network
19. Comitê Carioca de Solidariedade a Cuba – Brasil
20. Comité Internacional Paz, Justicia y Dignidad a los Pueblos
21. Community Services Unlimited Inc.

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<sup>15</sup> See Jonathan Watts, “Nobel laureates condemn ‘judicial harassment’ of environmental lawyer,” *The Guardian*, April 18, 2020, <https://www.theguardian.com/world/2020/apr/18/nobel-laureates-condemn-judicial-harassment-of-environmental-lawyer> (wherein 29 Nobel laureates urge the release of Steven Donziger and demand Chevron be held accountable for its destruction of the Ecuadorian Amazon).

22. Consejo Consultivo AAJPR
23. Defending Rights & Dissent
24. Divest, Invest, Protect
25. Earth Care Not Warfare
26. Environmental Investigation Agency
27. Environmental Justice Initiative
28. Fair Shake Environmental Legal Services
29. Frente de Defensa de la Amazonia - FDA
30. Gravity human rights podcast
31. Harvard Law School National Lawyers Guild
32. Hawai'i Institute for Human Rights
33. Indigenous Peoples Human Right Defenders and Corporate Accountability Program
34. Indigenous Peoples Law and Policy Program, University of Arizona
35. International Commission for Labor Rights
36. International Observatory for Lawyers in Danger
37. International-Lawyers.Org
38. KUPS Student Radio
39. Labor & Employment Committee of the National Lawyers Guild
40. Latinos Unidos por el Futuro
41. Law Union of Ontario
42. MADRE
43. Maurice & Jane Sugar Law Center for Economic and Social Justice
44. Monitoring Committee on Attacks on Lawyers, International Association of People's Lawyers (IAPL)
45. Movimiento Ecologista Ecuatoriano
46. National Association of Democratic Lawyers of South Africa (NADEL)
47. National Lawyers Guild (DC Chapter)
48. NLG Task Force on the Americas
49. NorCal Resist
50. Nouvelles Alternative pour le Développement Durable en Afrique
51. ÖHD (Association of Lawyers for Freedom)
52. Olympia Movement for Justice and Peace
53. Pachamama Alliance
54. Palestine Legal
55. Pan Left Productions Media Collective
56. Paris Bar, France
57. Parlamento De Las Nacionalidades Indigenas De La Amazonia Ecuatoriana (PARNIAE.)
58. Peace of the Green Forest
59. Popular Resistance
60. Progressive Lawyers Association (CHD), Turkey
61. Rainforest Action Network
62. Red Solidaria Década Contra la Impunidad AC, México
63. Samidoun Palestinian Prisoner Solidarity Network
64. Seattle Anti-War Coalition
65. solartopia.org
66. Sugar Law Center for Economic & Social Justice

67. The Arrested Lawyers Initiative
68. Trial Guides
69. Ukrainian Association of Democratic Lawyers
70. UMLaw NLG Student Chapter
71. United Electrical, Radio & Machine Workers of America (UE)
72. Water Protector Legal Collective
73. Whatcom Civil Rights Project
74. Alerta Temprana Red (AT-R):

*Liga Mexicana por la Defensa de los Derechos Humanos A.C. (LIMEDDH); Liga Mexicana por la Defensa de los Derechos Humanos, A.C. Filial Oaxaca (LIMEDDH-Oax); Asociación de Familiares de Detenidos Desaparecidos y Víctimas de Violaciones a los Derechos Humanos en México (AFADEM FEDEFAM); Red Universitaria de Monitores de Derechos Humanos (RUMODH); Asociación de Derechos Humanos del Estado de México (ADHEM); Fundación Diego Lucero, A.C. (FDL); Foro Permanente de Mujeres Iztacalco, A.C. (FPM-I); Consejo Federal Ejecutivo Nacional e Internacional del Frente Mexicano Pro Derechos Humanos, A.C. (FREMEXDEHU); Asociación Nacional de Abogados Democráticos, A.C. (ANAD); Comité de Familiares de Personas Desaparecidas en México, Alzando Voces, (COFADDEM); Centro de Estudios para los Derechos Humanos y la Justicia Ambiental "YURENI", A.C. (CEPDHJA); Actuar Familiares contra la Tortura, (AFT); Centro de Derechos Humanos Coordinadora 28 de Mayo, A.C. (CDH C-28 M); Centro de Derechos Humanos "Antonio Esteban", A.C. (CDHAE); Asociación Canadiense por el Derecho y la Verdad (ENVERO); Frente Mexiquense en Defensa para una Vivienda Digna, A.C. (FMDVD); Centro de Derechos Humanos de Base "Digna Ochoa", A.C. (CDHBDO); Red Solidaria Década contra la Impunidad, A.C. (RSDI); Centro de Derechos Humanos Ku'untik (CDHK); Asociación Mexicana de Abogados del Pueblo (AMAP); Asamblea Vecinal Nos Queremos Vivas Neza (AVNQVN); Comité de Defensa de Derechos Humanos "Cholollan" (CDHC); Mujeres Guerrerenses por la Democracia, A.C. (MGD); Aliadas por la Justicia, A.C. (AxJ); Desarrollo Humano Internacional, A.C. (DHI); Comunidad Raíz Zubia, A.C. (CRZ); Zihuame Xotlametzin, A.C. (ZX); Asociación Guerrerense Contra la Violencia Hacia las Mujeres, A.C. (AGCVIM, A.C.)*

75. Observatorio de Derechos Humanos de los Pueblos

*Integrantes del Consejo Consultivo:*  
*Argentina Adolfo Pérez Esquivel Premio Nobel de la Paz, Stella Calloni Corresponsal de la Jornada en Buenos Aires; Colombia Dra. Piedad Esneda Córdoba Ruiz Senadora y Defensora de Derechos Humanos y Coordinadora Internacional del Observatorio de Derechos Humanos de los Pueblos. Vocera de colombianas y colombianos por la Paz, Camilo González Posso Presidente de INDEPAZ, Dr. Mario Hernández Álvarez Coordinador Doctorado Interfacultades en Salud Pública Universidad Nacional de Colombia; España Ana Andrés Ablanado Defensora de Derechos Humanos de Soldepaz Pachakuti, Ricardo*



*Sanchez Andrés miembro de la junta de la (ACP) Asociación Catalana por la Paz – miembro de la Asamblea de Internacional de (Comunistes de Catalunya) y miembro permanente del consejo de Solidaridad de la Ciudad de Manresa, María Victoria Fernández Molina Candidata a Doctora en Derechos Humanos, Estados Unidos James Patrick Jordan Coordinador Nacional de la Alianza por la Justicia Global y Eduardo García de la Alianza por la Justicia Global, Devora González Coordinadora Nacional de SOA Watch – Observatorio por el Cierre de las Escuela de la Américas e integrantes del Observatorio de Derechos Humanos de los Pueblos capítulo Estados Unidos; Suiza José Manuel González López y Gerardo Romero Luna de la Red Latinoamericana de Zurich integrantes del Observatorio de Derechos Humanos de los Pueblos capítulo Suiza; Venezuela Héctor Orlando Zambrano Diputado de la Asamblea Nacional del Poder Popular de la República Bolivariana de Venezuela y Miembro de la Coordinación Nacional de la Corriente Revolucionaria Bolívar y Zamora, Nieves Hugo Alberto Integrante de la Comisión Política de la Corriente Revolucionaria Bolívar y Zamora – CRBZ, Indhira Libertad Rodríguez Red de Colectivos La Araña Feminista, José Miguel Gómez García Movimiento Internacional de la Economía de los Trabajadores; Ecuador Abg. Franklin Columba Cuji Dirigente Nacional y Coordinador de Asuntos Políticos del FENOCIN; Bolivia Rodolfo Machaca Yupanqui Strio. General de Confederación Sindical Única De Trabajadores Campesinos de Bolivia (CSUTCB); Palestina Jamal Juma Coordinador STOP The WALL; Guatemala Ana Laura Rojas Padgett Red de Integración Orgánica - RIO - por la Defensa de la Madre Tierra y los Derechos Humanos; Uruguay Anahit Aharonian Kharputlian Ingeniera Agrónoma y Docente Comisión Multisectorial de Uruguay; Panamá Ligia Arreaga Integrante de la Alianza por un mejor Darién – AMEDAR; Brasil Gizele Martins do Movimento de Favelas do Rio de Janeiro; Perú Carlos Romainville Vásquez Coordinador General del Movimiento Alfa y Omega; Uruguay Anahit Aharonian Kharputlian Ingeniera Agrónoma y Docente Comisión Multisectorial del Uruguay; México Eduardo Correa Senior Profesor de la Universidad Autónoma de la Ciudad de México – UACM, Dr. José Enrique González Ruiz Profesor de la Universidad Nacional Autónoma de México – UNAM, Dr. José Rafael Grijalva Eternod Doctor en Derechos Humanos, Dr. Felix Hoyo Arana Profesor de la Universidad Autónoma de Chapingo; Dr. John Mill Ackerman Rose, Daniela González López Coordinadora Internacional del Observatorio de Derechos Humanos de los Pueblos, Soledad Ortiz Vásquez CODEM, Patrocinio Martínez López CODEM, Claudia Tapia Nolasco CODEM, Artemio Ortiz Hurtado CEND – SNTE, Sergio Espinal CEND – SNTE; Prof. Antonio Castro López Secretario General del CEND – SNTE, Prof. Miguel Guerra Castillo Secretario General del CEND – SNTE, Prof. Alejandro Trujillo González, Secretario General del CEND – SNTE, Prof. Eugenio Rodríguez Cornejo CEND – SNTE, Prof. Jerónimo Sánchez Sáenz CEND – SNTE, Roberto Palma Juárez ONPP – Morelos, Arquitecto José Márquez Pérez Presidente del Patronato Pro Defensa y Conservación del Patrimonio Cultural y Natural de Oaxaca PRO – OAX y Lic. Hugo Aguilar Promotor y Defensor de Derechos Indígenas.*

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383. Toby Zimbalist, Lawyer for injured workers, Phoenix, AZ, USA

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403. Zeke Maggard, Esq., SGR, LLC, Denver, USA
404. Zulma Miranda, Human Rights Attorney | Global Advisor at World Pulse, New York