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## A M A Z O N O I L O F F E N S I V E

By Chris Jochnick

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THIS PAST NOVEMBER, the Organization of American States sent an official delegation to Ecuador's Amazon ("the Oriente") to investigate alleged human rights violations. The investigation was significant for its concern with the actions of two U.S. oil companies, Texaco and Maxus. While environmentalist and indigenous groups have long decried the unregulated development of oil in the Oriente, it is only recently that these activities have come under scrutiny as human rights violations.

The Oriente consists of over 13 million hectares (32 million acres) of tropical rainforest lying at the headwaters of the Amazon river network. The region contains one of the most diverse collections of plant and animal life in the world, including many endangered species. The Oriente is also home to 95,000 indigenous people belonging to eight different ethnic groups and 250,000 recent immigrants, who have followed the oil roads east in search of land and work.

The development of oil in Ecuador has followed a pattern that, familiar to most developing countries. Since the first barrels were extracted in 1972, the industry has been dominated by multinational corporations -- led by Texaco until its 1992 departure -- with negligible government oversight and scant attention paid to non-economic concerns. Oil development has taken a predictable toll on the environment and welfare of the Oriente's inhabitants. Less predictable was the strength of the opposition.

The struggle over oil came to a head in 1994. In January, the government announced a plan to double the amount of rainforest subject to oil exploration; a coalition of environmental and indigenous groups immediately challenged the government's plan. Local protesters took over the offices of the Ministry of Energy and Mines in Quito, condemning any new oil development until the oil companies remedied past damages and the government imposed stricter controls on the industry.

The protest was joined by international groups led by

Rainforest Action Network (RAN) and Oxfam America. In March, the New York City-based Center for Economic and Social Rights (CESR) released a report documenting dangerous levels of toxic contamination and related health problems in Ecuador's Amazon and charging the government with human rights violations. That same month, New York federal judge Vincent Broderick sided with Ecuadoran plaintiffs bringing suit against Texaco, granting them access to Texaco's files to establish the parent company's responsibility for damages caused by the company's Ecuadoran operations. This past summer, Ecuador Minister of Energy Francisco Acosta rejected a Texaco-commissioned environmental audit of the damages caused by the company, arguing that it was too narrow. The minister threatened to bring his own suit against Texaco if the company refused to negotiate in good faith. When it was later discovered that the minister had arrived at a secret agreement with Texaco, environmentalists convinced an already restless Congress to impeach him.

#### VIOLATING THE AMAZON AND ITS PEOPLE

The OAS investigation and the use of human rights rhetoric against Texaco and other private companies have challenged traditional human rights dogma. In this case, it is more than civil liberties being threatened and the government is only one of many essential actors. "When we indigenous peoples talk about the environment, we are not just talking about the trees, rivers and butterflies. We are also talking about human beings," explains Rafael Pandam, vice president of the Confederation of Indigenous Nationalities of Ecuador (CONAIE). "Likewise, when we talk of human rights, we are not just talking about the right to free speech. We are talking of the political, economic, social and cultural rights of all peoples."

Pandam's broad vision of human rights is well supported by international and Ecuadoran law. In 1972, the United Nations General Assembly unanimously endorsed the principle that "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." This non-binding agreement is rooted in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights which, in addition to granting the right to "life, liberty and the security of the person," oblige governments to take necessary steps for "the improvement of all aspects of environmental and industrial hygiene." The Organization of American States recently drafted a more specific "right to a healthy environment" in the 1988 San Salvador Protocol. Ecuador and other nations have ratified the protocol, which will enter into force once several more nations ratify it. Similarly, Ecuador's constitution provides for the right "to live in an environment free from contamination."

Economic and social rights, like the right to a healthy environment, implicate corporate activities more directly

than do traditional civil and political rights. When civil liberties are threatened, in China for example, foreign corporations are criticized for their presence but are rarely accused of active participation in human rights abuses. By contrast, in Ecuador, "Texaco is viewed as the chief human rights violator," explains Paulina Garzon of the Quito-based Accion Ecologica. "Texaco has invaded the forests, killed the rivers and animals, created a health disaster and destroyed indigenous groups like the former Tagiere."

#### PETROLEUM POISON

Texaco's involvement in these human rights abuses has been documented in a series of recent reports. Amazon Crude, written by Judith Kimerling and published by the National Resources Defense Council in 1991, estimated that Ecuadoran oil operations discharged 4.3 million gallons of toxic wastes into the Oriente's environment every day. Until 1990, Texaco controlled 90 percent of these oil operations. A later CESR report confirmed that these wastes created a potential health catastrophe. The report documented toxic contaminants in drinking water at levels reaching 1,000 times the safety standards recommended by the U.S. Environmental Protection Agency. Local health workers report increased gastrointestinal problems, skin rashes, birth defects and cancers, ailments that they believe to be related to this contamination.

This assault on the environment is intertwined with a parallel social and cultural assault on indigenous groups. As described in a published statement of the Federation of Indigenous Communities of the Ecuadoran Amazon (CONFENAIE), "more than two decades ago, Texaco entered indigenous territories and exploited petroleum, destroyed the forests, contaminated the rivers, soil and environment, made the fish and animals disappear, and then came the colonists and our territory was occupied by foreigners." Contact with outsiders and the vital loss of land has broken down traditional bonds, brought malnutrition and new diseases and pushed indigenous communities into the bottom rung of a hostile market economy. Alcoholism and prostitution, endemic to the Oriente's oil towns, are among the most visible signs of the social and cultural deterioration. The World Bank has described the region's socio-economic state as "calamitous."

A 1987 study by the Ecuadoran government warned that oil development led by Texaco had placed the local indigenous groups "at the edge of extinction as a distinct people." Indeed, at least one group, the Tetetes, has completely disappeared in the wake of Texaco's activities, and the Cofan population has been reduced from 15,000 to about 300 people. "Since the 1950s, almost every aspect of the Cofan culture has experienced change. This includes their house types, tools and weapons, traditional medical practices, the behavior of community members, and their traditional food taboos," notes a World Bank Report. "As a

result of outside contacts and pressures, the Cofan have suffered a process of social disorganization, rapid acculturation and near cultural extinction."

Texaco counters these allegations by touting the essential importance of oil to Ecuador's development. Oil revenues now account for approximately half of the government's revenues. Michael Trevino, vice-president of Texaco Petroleum (Texpet), notes that Texaco's operations brought \$24 billion to the Ecuadoran government over the course of 18 years.

Texaco denies that its operations seriously damaged the Ecuadoran Amazon. "Texaco did not ravage the Amazon region," says Trevino. "We think we made a very significant contribution . . . we have international standards to which we hold ourselves accountable." Trevino points to an environmental audit commissioned by Texaco and the Ecuadoran state oil company that found "moderate to high" levels of contamination in 60 percent of the former Texaco sites in the Oriente, but recommended a limited program of remediation costing less than \$30 million. According to Fransisco Acosta, former minister of energy and mines, Texaco has offered to pay 33 percent of any cleanup costs, based on ownership share of the consortium. (Through 1990, Texaco was the consortium's sole operator, but held only a one-third ownership stake). "Texaco is not interested in dollar amounts; the issue is commencing with the clean up," Trevino says.

Responding to claims that the oil roads are the source of many of the region's problems, a Texpet statement says: "To allege that Texaco is responsible for the local population's subsequent use of the roads for colonization and agricultural development is both dishonest and unrealistic. As a private company, Texaco would have no authority or right to restrict citizens of Ecuador from using these roads, or to interfere in Ecuador's national programs and planning for colonization of the region."

In fact, Ecuador's government has encouraged settlement along Amazon oil roads to relieve pressure on land elsewhere in the country. The "Wastelands Law" granted legal title to any person that cleared the rainforest and put it to "productive use." The resulting deforestation has been exacerbated by the poor quality of Amazon soils and inappropriate farming techniques, which encourage the continual clearing of new land. Oil roads and the lack of government regulation also have opened the door to land speculators, agro-industrialists, ranchers and loggers, who place even greater pressure on the land.

#### TAKING ON TEXACO

Texaco's denial of responsibility notwithstanding, an international boycott organized by Accion Ecologica and RAN in the United States and Europe, along with political

lobbying, appears to have had some effect on Texaco's willingness to negotiate an agreement. These groups estimate proper cleanup costs and fair compensation will run to several billions of dollars, dwarfing the figures that Texaco has been considering. Texaco has also reportedly felt pressure from the U.S. Congress and the Clinton administration to find a fair solution to the problem.

Texaco is facing a major challenge on the judicial front as well: a \$1.5 billion lawsuit brought in a New York federal court on behalf of 30,000 Ecuadoran plaintiffs. The case was filed in November 1993 by a team of lawyers headed by Cristobal Bonifaz and Joseph Kohn of Kohn, Naft and Graf of Philadelphia. Bonifaz says, "Texaco can't be brought before international human rights tribunals and there is no chance of finding justice in Ecuador, so we filed a suit in its own backyard. We don't care how it's achieved, but Texaco must somehow be forced to make good on the damage it caused to the people and environment of the Oriente."

Perhaps the most crucial question raised by the suit is whether foreign plaintiffs alleging health and environmental damages in their country should be allowed to sue a U.S.-based company in the United States. When Indian plaintiffs tried to sue Union Carbide for the Bhopal disaster, they were sent back to India under a doctrine, known as *forum non conveniens*, which gives U.S. judges wide discretion to decide that a case would be more suitably heard in the courts of another country. Under this doctrine, an earlier suit filed by Attorney Judith Kimerling in Texas was quickly dismissed by a federal judge, who viewed Ecuador as a more appropriate forum.

The plaintiffs in the New York case argue that New York is the appropriate site for the case because Texaco made the critical decisions that resulted in the damages to the plaintiffs at its headquarters in White Plains, New York. The plaintiffs also maintain that the Ecuadoran courts are incapable of fairly hearing the case against Texaco because of widespread corruption, racism and incompetence. More importantly, they argue, the Ecuadoran courts have no meaningful authority over Texaco since Texaco operated in Ecuador through its Texpet subsidiary, which has assets of less than \$10 million.

Unbound by the Texas court's decision, Judge Vincent Broderick has granted plaintiffs the opportunity to depose Texaco's employees and to review Texaco documents before he decides whether to accept the case. In a 25-page March 1994 memo denying Texaco's petition to have the case dismissed, he suggested that the case will proceed if plaintiffs can show that decisions made in Texaco headquarters directly led to environmental and health problems in Ecuador. His memo also takes seriously the plaintiff's use of an eighteenth century statute allowing foreign plaintiffs to sue U.S. based defendants for violations of international law. Were he to grant jurisdiction under the so-called "Alien Tort

Statute," it would mark a major advance in the field of environmental law and would have far-reaching implications for U.S. corporations operating abroad.

This past summer, Judge Broderick granted Texaco a temporary hold on discovery while the company seeks a settlement with the government. On December 22, 1994, Texaco submitted to the court a "Memorandum of Understanding" the company reached with the Ecuadoran government. Texaco's Trevino says the agreement "establishes a mechanism for the implementation of environmental remedial work." He adds that Texaco also proposes to establish schools, fish farms and health clinics. But the agreement does not bind Texaco to any specific amount of compensation and the corporation has only agreed to put up a \$5 million bond to settle individual claims in Ecuador. Without consent of the plaintiffs, it is unclear whether the judge would consider the agreement sufficient grounds for dismissal of the suit.

Less than a week after Texaco's filing, the plaintiffs' attorneys filed a new suit in front of the same judge on behalf of 25,000 Peruvians who complain of similar damages related to Texaco's former Ecuador operations. "The problem has now spread to Peru and has snowballed into an international catastrophe," says Bonifaz. All of the rivers in which the Center for Economic and Social Rights found oil-related contamination eventually flow through Peruvian territory. Trevino calls the case "frivolous," claiming that the plaintiffs live more than 250 kilometers (150 miles) away from Texaco's former sites and that Texaco stopped operating the sites almost five years ago. Judge Broderick has agreed to consolidate the two cases, which should at least make it more difficult to dismiss the suit on the grounds that Ecuadoran courts are the more suitable forum.

#### MAXUS'S NATIONAL PARK

The OAS investigation undertaken by the Inter-American Human Rights Commission was primarily concerned with a different U.S. oil company, Maxus Energy. In 1990, the Sierra Club Legal Defense Fund (SCLDF) filed suit to block the plans of Maxus's former consortium partner, Conoco, to build a road and begin oil development in the Yasuni National Park. Conoco abandoned the project soon after in the face of heated protest from indigenous and environmental groups, but Maxus went ahead with the road and began oil production in the summer of 1994.

Yasuni National Park, one of the most biodiverse territories in the world, is designated by the United Nations as a World Biosphere Reserve. Ecuadoran lawyers initially succeeded in blocking the Conoco-Maxus operation under a constitutional provision providing for the right to a contamination-free environment and under laws prohibiting exploitation of protected areas. However, one month after ordering a stop to the Conoco-Maxus plans, the

constitutional court reversed itself in the face of what one judge later described as intense pressure from the government and oil industry.

The SCLDF suit addressed the threat that oil development poses to the indigenous groups in the area, particularly 1,200 Huaorani. The complaint, filed before Maxus had begun to develop the Yasuni, describes the diseases, water contamination, breakdown of traditional cultures and loss of land that has followed oil development in other parts of the country. Oil development will have especially severe effects on the Huaorani, contend lawyers working on the case, because their population is small, dispersed and isolated from the outside world.

The complaint is supported by the testimony of Dr. William T. Vickers, an anthropologist with 26 years of experience in Latin America. The road into the Yasuni "will be the bridge for a spontaneous invasion of the land.... Deforestation will begin immediately," says Vickers. "Many of the Huaorani will contract new diseases and many will die. Many will be disheartened and depressed by these losses. Among the survivors, some will become alcoholics and others will sustain themselves by begging from the whites. It is totally possible that the Huaorani culture and language will disappear within two or three generations." Kimerling says, "Huaorani lands that have been used by the Petroecuador-*Texaco* consortium for oil production activities are so degraded by pollution, colonization and deforestation that Huaorani can no longer live there."

GREETING "HUAORANI FRIENDS"

But Maxus is not as easy a target as *Texaco*, having learned from its predecessor and taken steps to avoid political damage. On the environmental front, Maxus has managed to assuage some critics through its program of reforestation and its use of modern drilling practices, including the reinjection of production wastes (as opposed to *Texaco's* practice of leaving them in unlined pits and spreading oil residue on the roads). The company claims to be spending \$60 million on environmental protection, a significant figure, particularly by Ecuadoran standards. However, given the ecological richness and fragility of the territory, many environmentalists object to any sort of development and are particularly concerned by Maxus's policy of denying outsiders access to its facilities to independently verify the company's claims.

Even the best environmental policies provide little defense against the primary threat to the region, the colonization and deforestation that has inevitably followed the oil roads. Maxus has carved a 94-mile road into the Yasuni, opening up vast stretches of rainforest formerly accessible only by helicopter and boat. As one Huaorani comments, "Maxus and the government have promised to keep the colonists out, but what happens when Maxus leaves and

there is no more oil? Who will stop them then?" The SCLDF complaint notes that over the course of eight years of oil development in the Northern Oriente, the influx of colonists more than tripled the local population from 74,000 to 260,000. The government's 1982 census revealed that the Oriente was growing at twice the rate of the rest of the country. Plans by Maxus and the government to prevent colonization by establishing army-run roadblocks are unsustainable and unrealistic, critics say.

In contrast to Texaco's practice of simply ignoring indigenous inhabitants, Maxus has actively sought their support, signing an unprecedented "Friendship Agreement" with the Huaorani in 1993. Maxus's directive to its employees reads, "Maxus is a guest in the home of the Huaorani, the rainforest. For this reason we must respect their culture, customs and territory." If they make contact with the indigenous people, employees are told to announce "Waponi, amigos Huaorani, boto Maxus," or, "Greetings Huaorani friends, I am Maxus."

Maxus has contracted with the government to provide health and educational services, and has already begun supplying medical and dental care, educational materials, school rooms and health clinics. It has also nurtured support by employing indigenous men, providing funds for a political organization and plying community leaders with personal gifts.

This policy has temporarily won Maxus the support of the Huaorani Nation of the Ecuadoran Amazon (ONHAE). ONHAE has formally distanced itself from the demands of the Confederation of Indigenous Organizations of Ecuador (CONAIE) for a 15 year moratorium on oil development. Last April, during a conference of indigenous organizations held in the Amazon, Maxus flew a group of Huaorani leaders to Quito, where they spent their days meeting with government officials and the press and denouncing Maxus's critics.

Maxus's overwhelming presence in the social and cultural affairs of the community has alarmed outsiders. Given the government's proven inability or unwillingness to regulate oil companies and the lack of transparency in Maxus's internal operations, critics worry about ceding it such fundamental government functions as health and education. "It's no longer clear who's supposed to do what," states SCLDF attorney Neil Popovic. "The Ecuadoran government has abdicated its responsibilities to private companies and has made no effort to regulate them." Government agencies remain seriously understaffed and underfunded, leaving monitoring essentially in the hands of the corporations themselves.

The Huaorani have no effective recourse if Maxus fails to comply with its many promises. The "Friendship Agreement" between the Huaorani and Maxus is written in Spanish, a language that few Huaorani either speak or read, and makes



no firm commitments. "Maxus is under no obligation," explains spokesperson Tom Sullivan. "We're damned if we do, damned if we don't. If we weren't providing anything we'd have a whole other group of people condemning us."

However, critics remain skeptical, viewing Maxus's gestures as hollow and emphasizing the larger political questions of accountability. They ask whether corporations such as Maxus or Texaco (whose annual revenues of \$42 billion dwarf Ecuador's \$12 billion GNP) should not be treated differently than private citizens, should not be held more accountable to the public in the way that public bodies are. "Ecuador's indigenous and environmental organizations have pushed human rights groups to reexamine their exclusive focus on government actors," says Roger Normand, policy director of CESR. "When multinationals assume the role of government, they must be held more directly responsible for the welfare and human rights of their constituents, the people they effectively govern."

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