



# Decision to reinclude Chevron Corporation

## December 2017

Chevron Corporation is a multinational energy company, headquartered in the USA.<sup>1</sup> The company has been excluded from investment by KLP and the KLP Funds since 2004, due to its association with serious environmental damage.<sup>2</sup> Much of the evidence on which the exclusion rested was fabricated or obtained through wide-ranging corruption on the part of the claimants' lawyers, including the bribery of judges and witnesses in Ecuador. Even if KLP were to accept that the pollution in question has occurred, it is no longer possible to say with certainty that Chevron is responsible for it. Furthermore, it is more than 20 years since Texaco (which was subsequently acquired by Chevron) ceased its operations in Ecuador. During that period, the company has, in keeping with the rest of the industry, made a number of improvements to its guidelines and routines. Chevron could preferably be more transparent about its routines and the way it deals with environmental and human rights issues. Nevertheless, the length of time involved, and new information regarding falsified evidence, point in favour of rescinding the company's exclusion. KLP has therefore decided to revoke the exclusion of Chevron from investment by KLP and the KLP Funds with effect from December 2017.

## Background

The background for KLP and the KLP Funds' decision to exclude Chevron was as follows:

In 2004, legal proceedings were initiated against Chevron in connection with waste management in the Ecuadorian rainforest, where ChevronTexaco, as the company was then called, operated from the 1960s until the 1990s. Chevron lost the case in 2013. The company was accused of having dumped large quantities of toxic, carcinogenic waste over many years, thereby polluting the soil and water used by many local communities. Chevron contested the findings of several of the studies that were undertaken. However, in 2008, an independent study confirmed that 42 out of 46 dumping grounds contained a high level of toxicity,

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<sup>1</sup> Chevron Corporation, *About Us*. URL: <https://www.chevron.com/about>.

<sup>2</sup> From 2002 until 2004 Chevron was excluded under the human rights criterion in connection with an unrelated case involving security forces in Nigeria. When that case closed in 2009, the company's exclusion was based solely on serious environmental damage in Ecuador.



and that the majority of these sites were not encompassed by the clean-up programme that Chevron had agreed with the Ecuadorian authorities. As a result, the case against Chevron concerned not merely environmental issues, but also fraud.<sup>3</sup>

The case related to Texaco's actions in a joint venture with the Ecuadorian state oil company PetroEcuador for the production of oil, and subsequently, operation of an oil pipeline.<sup>4</sup> Texaco's operations lasted from 1964 until 1992.<sup>5</sup> During that period, PetroEcuador increased its stake in the company to a majority shareholding, and took over the entire licence when Texaco ceased operating in the country.<sup>6</sup> Shortly afterwards, the Ecuadorian government reached a negotiated settlement with Texaco with respect to clean-up requirements in the area. In 1998, Ecuador certified that Texaco had fulfilled its obligations under the agreement.<sup>7</sup> In 1993, local residents in the area in which Texaco had operated, including an indigenous tribe, filed their own claim for restitution by means of a class action suit in the USA.<sup>8</sup> Chevron acquired Texaco in 2001, and with it, Texaco's place in the legal proceedings.<sup>9</sup>

Since then, the case has been pursued in Ecuador, the USA, the Permanent Court of Arbitration in The Hague, and numerous other venues.<sup>10</sup> In Ecuador, the claimants' Ecuadorian and US lawyers won their clients a court-ordered payout of USD 18.2 billion in 2011.<sup>11</sup> However, Chevron has always claimed that it had fulfilled its obligations in Ecuador, and that the state oil company PetroEcuador was therefore liable for any residual pollution.<sup>12</sup> Furthermore, Chevron alleged that the claimants' lawyer had procured the court ruling in Ecuador through bribery and other forms of corruption and deception.<sup>13</sup>

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<sup>3</sup> URL: [https://www.klp.no/polopoly\\_fs/1.35191.1483530686!/menu/standard/file/KLP-LISTEN\\_22%2012%202016\\_NORSK.pdf](https://www.klp.no/polopoly_fs/1.35191.1483530686!/menu/standard/file/KLP-LISTEN_22%2012%202016_NORSK.pdf).

<sup>4</sup> United States Court of Appeals for the Second Circuit, *Chevron Corp. v. Donziger*, p. 10 (8 August 2016). URL: <http://theamazonpost.com/wp-content/uploads/2016/08/CA2-Opinion.pdf>.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid., p. 10-11.

<sup>8</sup> Ibid., p. 11.

<sup>9</sup> Ibid., p. 10.

<sup>10</sup> Caroline Simson, "A Cheat Sheet to Chevron's Epic Feud with Ecuador", *Law 360* (14 June 2016). URL: <https://www.law360.com/articles/805987/a-cheat-sheet-to-chevron-s-epic-feud-with-ecuador>.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.



In August 2016, a US appeals court ruled in Chevron's lawsuit against the claimants' lawyers.<sup>14</sup> The judgment describes how the claimants' lawyers bribed judges and expert witnesses, concealed contradictory evidence and falsified technical reports provided to the court.<sup>15</sup> The claimants' lawyers *did not appeal the facts*, but argued that the case should be dismissed on the grounds of lack of jurisdiction.<sup>16</sup> The judges accepted that pollution had taken place and that Texaco may have been responsible for it, but found it necessary to reject the claim on the grounds of wide-ranging deception, bribery and evidence-tampering on the part of the claimants' lawyers.<sup>17</sup>

### Dialogue with the company

From 2015 until this year, Chevron had refused to discuss the Ecuador case with investors. This has made KLP's assessment difficult, particularly in relation to the extent to which the company has altered its practices and guidelines as a result of the case. KLP has engaged in a dialogue with Chevron through a joint investor initiative calling for respect for human rights in the extractive sector. In a conversation held in 2017, Chevron confirmed that the company stands firm in its view that it has no further liability in connection with the Ecuador case – legally or ethically.<sup>18</sup> Like many other companies in its industry, Chevron has nevertheless made many changes to its guidelines and practices over the past 20 years.<sup>19</sup>

Chevron has introduced numerous improvements since KLP decided to exclude it in 2002. For example, the company introduced a human rights policy in 2009<sup>20</sup> and supports the UN Guiding Principles on Business and Human Rights.<sup>21</sup> Chevron has also developed guidelines for what it calls the Stakeholder Engagement Process. These include dialogue with local communities, non-profit organisations, and public authorities regarding challenges linked to human rights and the environment.<sup>22</sup> On its website, Chevron also writes that the company has updated its guidelines for indigenous peoples' rights, bringing them into line with the standards the World Bank applies to its projects.<sup>23</sup>

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<sup>14</sup> United States Court of Appeals for the Second Circuit, *Chevron Corp. v. Donziger* (8 august 2016). URL: <http://theamazonpost.com/wp-content/uploads/2016/08/CA2-Opinion.pdf>.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid., p. 3.

<sup>17</sup> Ibid., p. 15-16.

<sup>18</sup> Notes on file at KLP.

<sup>19</sup> Ibid.

<sup>20</sup> Chevron, *About our Human Rights Policy* (2009). URL: <https://www.chevron.com/-/media/chevron/corporate-responsibility/documents/AboutOurHumanRightsPolicy.pdf>.

<sup>21</sup> Chevron, *Human Rights*. URL: <https://www.chevron.com/corporate-responsibility/people/human-rights>.

<sup>22</sup> Chevron, *Our Management of Human Rights*. URL: <https://www.chevron.com/corporate-responsibility/people/human-rights> (last visited 4 September 2017).

<sup>23</sup> Ibid.



A major weakness is that Chevron does not publish the actual guidelines, merely a brief reference to them. This makes it difficult for investors to assess whether the documents are sufficient to avoid precisely the type of conflict with stakeholders that has characterised the Ecuador case.

The company reports in greater detail about how human rights and environmental considerations are reflected in Chevron's activities in Myanmar, in a kind of case study.<sup>24</sup> The company's sustainability report also contains a clear reference to the UN Guiding Principles for Business and Human Rights.<sup>25</sup> The report also details responsibility of company management for overseeing compliance with Chevron's human rights obligations.<sup>26</sup>

### KLP's assessment

It cannot be ruled out that Chevron is responsible for serious environmental damage in Ecuador, with major negative consequences for indigenous tribes and local residents in the Amazon region. However, the US court ruling from 2016 reveals wide-ranging deception on the part of the claimants' lawyers, making it practically impossible to conclude what actually happened. The case has led to unprecedented volumes of litigation since the 1990s, and more has probably been spent on legal fees than the original claim.

When KLP and the KLP Funds excluded the company, it was on the basis of the information available at that time. KLP would not have come to the same conclusion today, given the ruling described above. Furthermore, more than 20 years have passed since Texaco, later acquired by Chevron, discontinued its operations in Ecuador. Since KLP first excluded the company, Chevron has made numerous improvements to its routines, with the result that the risk of any repetition is probably low. Nevertheless, several allegations have been made against Chevron, which KLP – via its service provider – has followed up since 2002. As of the present date, all such allegations have either been archived due to a lack of evidence, closed because Chevron has dealt adequately with the matters concerned, or do not rise to a violation of KLP and the KLP Funds' guidelines for responsible investment.

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<sup>24</sup> Chevron, *Myanmar*. URL: <https://www.chevron.com/worldwide/myanmar> (last visited 4 September 2017).

<sup>25</sup> Chevron, *2016 Corporate Responsibility Report Highlights*, p. 18. URL: <https://www.chevron.com/-/media/shared-media/documents/2016-corporate-responsibility-report.pdf>.

<sup>26</sup> *Ibid.*



KLP considers that there are not sufficient grounds for maintaining Chevron's exclusion. Compared to others in its industry, the company cannot be considered a leader with respect to corporate social responsibility. However, that in itself is insufficient to warrant exclusion. Furthermore, the improvements Chevron has made since KLP first excluded the company, as well as new information regarding the case and, not least, the length of time that has passed, sway KLP towards a reassessment of its decision. Active ownership is thus deemed a more appropriate response.

KLP has decided to reinclude Chevron Corporation and continue the active dialogue it has had with the company with a view to obtaining further improvements.

### **KLP's decision**

The exclusion of Chevron Corporation from investment by KLP and the KLP Funds has been revoked with effect from December 2017.