

Press Conference for Prosecutor Washington Pesántez

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Washington Pesántez

Good day, Gentlemen. Faced with your concerns and the concerns of all the media over the week concerning the Texaco-Chevron case, we have considered it appropriate at the Office of the Prosecutor to invite you so that you can find out from the horse's mouth, first hand, what the Office of the Prosecutor has received, what we know and what we plan in our investigation. So I'm going to talk about that later. Our head of social communication said that I'm thinking of calling you together so that the distribution of information is fair, calling you together once per week, and later on we will indicate specifically which days so that you can provide information through the various media.

I will also talk about Mr. Balda's complaint and the countercomplaints, if you like, from Dr. Alexis Mera and Dr. Ricardo Patiño and another topic associated with it. Okay, I don't want to cover a lot of topics. I know you have some concerns and we can leave them for next week, the Angostura case, for example.

I should like to tell you in regards to the Chevron-Texaco case that the Office of the Prosecutor of the State received no more than 72 hours ago a letter from Chevron, a copy of which we have here. This letter is signed by Thomas F. Cullen Jr., Attorney at Law. The letter is not a complaint; it is a letter to inform me of alleged irregularities in the handling of the proceedings in Sucumbíos and, in particular, the involvement of the Presiding Judge of the Corte Superior de Loja [Loja Superior Court], Provincial Judge Juan Esteban Núñez. This letter invites me to share information that arrived, without telling me how, at that oil company.

The communication does not specify any accusations, but it does imply possible participation by the judge, who in this case is Juan Evangelista Núñez Sanabria, in what we could say is an attempt to bribe so that he will specify the environmental remediation expenses that the ruling should contain and facilitate the participation of businesses involved in this work.

There is a claim filed under our Code of Civil Procedure. It must be handled in the place where the acts occurred, both for civil matters and for criminal ones. In the civil matter, it is in progress in Sucumbíos, in Nueva Loja or Lago Agrio, however you choose to call the provincial capital, and in truth, it's over ten years old. And what in essence is definitely being handled in the trial is awarding damages caused by decades of oil exploitation by the former Texaco, which turned over its rights to Chevron some years ago as well.

This company when doing its exploitation probably caused serious environmental damages for decades and also caused illnesses, also probably caused effects on the health of the inhabitants of the place, of the province, I would say. For this reason, a suit has been filed by 38,000 persons acting as plaintiffs, represented by some of their directors. These proceedings, I insist, are over ten years old. The amount of the claim, from what we know, is about 27 billion dollars, in other words, twice what the general State budget for one year would be. In this context of the suit, there would be items to be paid. It is said that 10 percent, I don't have the exact figure, some 10 percent for the plaintiffs if Chevron is found guilty, and 90 percent would be split among the State to remediate or bioremediate, however you call it. To correct the defects, there are biological and chemical mechanisms, because from what we know, from what we have been able to investigate in parallel criminal proceedings, the defects are there to this day. The expert has presented his product, the results of his expert examination, and one can clearly see that these pits, these lagoons, as they're called still exist and the soil is clearly contaminated in them.

This video, which appears to be edited, has made its way to us. I am asking that I be provided with the contents of this entire document or this entire video. A cursory analysis of the conversations between assorted persons, three of them and Judge Núñez, allow us to deduce that there has been a provocation. In criminal law, it is customary to talk about a provoking agent, an agent provocateur. Inducing to crime and such in our law is prohibited, it is banned. This agent definitely intends to involve the judge in collusion to possibly facilitate their access to environmental remediation work.

I want it to be absolutely clear, and I intended to be as much an instructor as possible. If the judge makes his ruling and orders the payment of X amount of money, say, 27 billion dollars, part of that must be decided for remediation. So the hypothetical remediators, this Mr. Borja and someone else I'll mention later, what they are intending is to suggest to the judge that they be awarded the remediation and for that purpose, there would be three million dollars to be divided among three actors. As you see, this is a hypothesis.

First, it would be necessary to have a ruling of fault, this money would have to be paid, and then, some time later, it would be necessary to award ... this remediation. I would say that the logical thing to do would be by bidding, with a nationwide or international call for tenders. So we're talking hypothetically, this is strange, even in criminal law literature. In criminal law doctrine, the possibility of (unintelligible) to the agent provocateur is discussed, i.e., to the people inducing someone to commit a crime. We do not accept this because it is a dishonest form, which attacks what we call lealtad [loyalty], a basic principle of adherence to procedure.

At first glance, one can assume that Chevron might use these surreptitiously-obtained recordings. There is an express provision in the Code of Criminal Procedure. Recordings may not be made without asking the judge for authorization. Obtaining them surreptitiously will render them invalid. Today, Chevron is using this video to delegitimize the proceedings or the trial being pursued against the company for, as I said, over ten years and to find or seek right now a reason for not paying the large compensation for environmental damages if they are convicted. Much of this damage, listen well, is irreversible, and not even the payment of a large sum of money would accomplish a return to its prior state, its natural state, so I insist that the environmental damage is irreversible.

For this reason, not by happenstance, but fundamentally due to bad practices in oil exploitation that caused severe damage in the Amazon region of our country.

I want to tell you that the Office of the Prosecutor, based on the principle of innocence which all we Ecuadorians, all citizens, enjoy, presumes the innocence of Judge Juan Núñez Sanabria, I insist. It is confident of the judge's honesty and probity, and I also want to tell you that I personally know Judge Núñez, who was also a prosecutor for some years. But I believe, notwithstanding what has been emphasized, that it is essential that the judge recuse himself from continuing to handle the trial.

And I want to tell you, I have spoken with Judge Núñez, I have asked him to recuse himself and I hope to present today the letter of withdrawal from continuing in the proceedings. For what purpose? For the purpose of ensuring that the ruling that will be issued months later, already delayed too much, it's been ten years already, is not the subject of any additional delays or delegitimization by the company, which is apparently seeking a reason not to pay it. Once a ruling is issued, it will be necessary to turn to legal mechanisms before the government of the United States, the public entities of the United States, so that they comply with the ruling. You will recall that they tried to change jurisdiction to the United States, and that it was rejected there; they said the crime was committed in Ecuador and it was the Ecuadorian authorities that should judge.

He should definitely recuse himself, I have asked him to do that, he has promised to recuse himself, if you like, the term is withdraw [inhibirse]. He promised a few minutes ago that he would withdraw from trying the case.

After the withdrawal, you might ask me this is going ... there is only one chamber in Lago Agrio. The associate judges should analyze it, and based on the provisions of the Code of Civil Procedure establishing the grounds for withdrawal, they will accept or deny this withdrawal.

If they accept it, it will be up to the presiding judge of that Provincial Court that is substituted to handle the proceedings. That judge must issue a ruling. That ruling may be appealed to the chamber, which is definitely the second instance. In addition, there would be occasion for a cassation appeal before the National Court of Justice.

So I make it clear that the judge is going to withdraw from continuing in the proceedings, and that is to avoid any trick that might possibly be used by the American oil company, by this multinational company, to unilaterally exempt itself from paying the compensation we consider just, because it did cause damage on our territory.

The Office of the Prosecutor General of the State, for its part, yesterday initiated a preliminary investigation concerning the videos that are now known to all the citizenry through the Internet. We have asked that the expert examinations we consider relevant be conducted immediately to determine the truth and authenticity of the videos on the oil company's web page and we have

already indicated dates and times for each of the persons appearing in this video, and other persons who are somehow associated with that video, to provide statements next week.

Even more, I should make it clear that the way the video was obtained is in violation of clear provisions of our criminal law. Nevertheless, we will take it as clue so that there is no doubt, because here the intent is to delegitimize the administration of justice that has declined so much in our country and which we are called upon to protect.

The Prosecutor General does not want to say that everything's coming up roses. I'm not going to say anything more about roses so that you don't get any bad intentions. Not everything is marvelous, I myself am constantly criticizing, but based on the intent to delegitimize from outside, we will respectfully not allow ourselves, and I'm saying this as the Prosecutor General, to reject this intended delegitimization of justice.

So we believe that there should be no more delays, that the verdict should be urgent, no more unnecessary procedural delays. We need there to be just proceedings, and that is guaranteed in this country. We will be vigilant. We proceed with our preliminary investigation, and on the other hand, we politely ask the judges that are determined to have jurisdiction that they make their ruling listening to the parties within the framework of due process in this trial that caused the scandal that today is a reason for the Prosecutor General to refer to it.

I would like to tell you that I have in my hands the letter and it says in pertinent part: Chevron has obtained audiovisual recordings of four meetings, in some of which Juan Núñez Evangelista, the presiding judge of the court, participates.

One meeting is in the office of Dr. Juan Núñez in Lago Agrio, and another here in a room in the city. The recordings reveal that some people, who apparently represent the Ecuadorian government and the Alianza País party, met with contractors and assured them that Judge Núñez would rule that Chevron was liable and that the ruling would require Chevron to pay billions of dollars for environmental remediation. The representatives stated that the Ecuadorian Government was contracting with environmental remediation contractors before the award. That is impossible to believe. There wasn't even a ruling, and they say that the Government is already contracting with contractors for remediation. This really doesn't have the least support.

In the meetings, they said that the contractors would have to pay three million. The hypothetical contractors would pay three million for the award of an environmental remediation contract, which would be distributed as follows: One million for the judge, one million for the representatives of the President's office, one million for the plaintiffs. That's what Chevron says based on the videos.

The participants you know, Mr. García Ortega and Juan Pablo Novoa, who supposedly represent the Government, Aulo Gelio, who was the property registrar in Lago Agrio and has been removed, at any rate, supposedly a friend of the man who is now an intermediary with the judge or close to Judge Núñez; Pablo Almeida, an environmental remediation contractor, Rubén Darío Miranda Martínez, an assistant to Patricio García, potential remediation contractors, the company itself agrees that they're potential ones, and the ones who recorded the meetings were Diego

Borja – and we are going to have to investigate because it is impossible that scandals, recording after recording, has become the fashion here in Ecuador.

The Office of the Prosecutor is there to preserve the citizens' rights to free communication and privacy in our individual relations. In that regard, we are going to be absolutely firm and clear in pursuing them. The people who recorded the meetings were, according to Chevron, Diego Borja, an Ecuadorian who worked for Chevron, which leads us to say that there is a sort of agent provocateur. Diego Borja, an Ecuadorian who worked for Chevron as a logistics contractor, the company itself says; Wayne Hansen, an American who has no relationship at all with Chevron, they say; it would have to be proven.

Here there are some hypotheses, some of them contemptible on their face, that the Ecuadorian Government is running Judge Núñez. That would have to be proven. I say that as far as my institution is concerned, there is no interference here in any proceedings. We here in the Office of the Prosecutor live in a state governed by the rule of law. The Government has never interfered, nor will it interfere, nor do I have reasons to say the contrary in judicial functions, i.e., in the body having jurisdiction.

That Chevron will lose the trial, that's a hypothesis, one loses or one wins in proceedings, there are no ties in proceedings. I don't see any situation here worthy of reproach; if you ask the judge, he will say, I accept the suit or I reject it.

That the Ecuadorian Government has provided attorneys to "help" in the opinion, I mean in Chevron's ruling, would have to be proven. That they're helping to handle the proceedings, that's impossible, between the judge and the clerk, they handle the procedural rulings. I doubt that it occurs in any event, and even though the way the video was obtained is illegitimate, having this clue, I don't discount it; I'm going to investigate it.

That the advisor in the President's office would have given the judge instructions on how to route the money from the verdict, but that's not up to the judge to say. The amount of the claim, if there's an order to pay, will be divided as follows, a way that I don't find to be a substantive issue to investigate here.

That Patricio García will give the judge his part of the bribe. Hypothetical. And that the judge said the following in summary: That he's going to declare Chevron guilty; that has to be proved, I, like you, don't see any part of the videos in which Judge Juan Evangelista Núñez Sanabria says that he's going to declare anyone guilty, that's a possibility. That the claim is 27 billion, but that's written in the claim filing, in the initial document, so that's not a new discovery.

When one sues, one says that the amount of my suit is such and such, of course. That part of the compensation for damages will be paid to the Ecuadorian Government, that's in the claim filing. That there will be a ruling in October or November. If you ask me when the Office of the Prosecutor will make a ruling in case X, I will tell you that our deadlines pass in about such and such a month and I will make a ruling. So here again there's no element of judgment or suspicion.

That the appeal proceedings between the chamber and the Plenum of the Corte Provincial will be a formality, I said before that after the verdict from the Presiding Judge of the Court there could be an appeal, that is a legal formality, right. How does one understand the term “formality”? It is simply passage, transit, or the material issues will be analyzed. Any appeal means analyzing the entire proceedings. That the United States Government will tell Chevron, if you want to use Núñez Evangelista’s words, you lost the trial, pay up.

That supposedly Núñez is going to say you lost the trial, pay up. After these meetings, Patricio ... sent instructions to contractors for fund transfer through Miranda, his assistant. I believe they’re not going to be that naïve. There isn’t even a trial ended, and we’re already indicating accounts for a hypothetical deposit in a United States bank, And finally, the letter says, this information has serious implications for the integrity of the trial in Lago Agrio, for the confidence in the state governed by the rule of law, for the criminal liability of the various people who are apparently asking for bribes, and for the past and future role of Judge Núñez in the trial. We want you to pay the most intense and serious attention to this subject.

Because of the implications, I am responding to the attorney, and no more than an hour ago, I contacted the United States. Unfortunately it was impossible to establish a dialog, but I’m going to call so that he can confirm this thing for me, which appears to be a complaint. This letter is something I am prepared to investigate, and I am telling you in advance that we in the Ecuadorian State are here to protect due process, to stop hypothetical interference so that proceedings can be handled, that rulings are made in accordance with law based on what has been done procedurally.

It is signed by Attorney Thomas Cullen. This is concerning the case of Attorney Núñez Sanabria, the judge in Lago Agrio. I insist that my petition, regardless of the observations I just made, is that the judge remove himself from trying the case to avoid having this multinational company starting to prepare arguments so as to possibly not pay, a question that is not pursuable because once a ruling has been made and the ruling is final, it will have to acceded to the legal mechanisms of international legislation so that the bodies in the United States can enforce it if they are ordered to do something. So, that’s it as concerns the Chevron case.

QUESTION PERIOD

In the case of Chevron, Dr., doesn’t your decision to ask the judge to recuse himself from hearing the case imply that the Ecuadorian State is acceding to the oil company’s claims?

That is one reading that one could have with a reporter’s acuity, but it seems to me that it is a matter of basic decency when a judge, whether apparently rightly or wrongly, has been put in question, that he say I’m stepping aside for a moment, analyze my withdrawal and make a decision. If there’s merit, if there’s a reason, I’ll step aside; otherwise I will continue to hear the case. It seems to me that aside from certain formalities, we should be characterized by the ethics of our actions, not just judicial ones, in all the spheres of our life, there should be integrity. So I am convinced of that, and that’s why I’ve talked to the judge and the judge has told me that

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today he is stepping aside from hearing the case and he is bringing his withdrawal to the consideration of the appropriate judges so that it can be analyzed. That is not automatic, right, one doesn't simply stop hearing a case when one wants to, just if there are grounds and these grounds are analyzed, in this case by his colleagues in the chamber.

How long could that trial take? Is it the case that it has nothing to do with the Judiciary Council, but rather specifically with the Court in Nueva Loja?

Another aspect that I understand from the statements of Dr. Benjamín Cevallos, the Chair of the Judiciary Council, is that it's going to be investigated and that seems good to me. It is going to be investigated in the administrative field, the conduct of Dr. Juan Núñez as a judicial official. Let them pursue it; the Office of the Prosecutor is prepared to contribute in the criminal arena, we in the criminal forum, the Judiciary Council in the administrative one, so that all the investigations needed can be pursued to ensure that the actions are done as tidily as they should be, particularly in a case of such importance, an unprecedented amount, I would say, in the country's legal history, suing for 27 billion dollars. That definitely doesn't have a precedent, just as the damage caused to the inhabitants of the Amazon and to the environment doesn't have a precedent either.

But doesn't that mean that the case is also going to be delayed some more, because this case has been going on nearly 15 years?

The judge's withdrawal, if it happens as I have been told it will, does not mean a delay. The provincial court hearing and ruling on it might take a week at the most. No more delays. The Prosecutor, the Office of the Prosecutor, which by its definition in the Constitution defends the interests of society, will be monitoring the actions of the judges. We are a definite procedural party in criminal matters and we will be vigilant in ensuring that due process is complied with.

You have talked enough about the agent provocateur inducing, or trying to induce the judge to do something. These agents provocateurs that tried to induce the judge to do something, telling him that there was going to be a contract to be divided up, do they need to demonstrate how and why they tried to get the judge's ruling to be partial?

I have not seen in the video any proposal to the judge that the judge rule in such and such a form in the Chevron case, much less that he award anything to them. That's not in the videos. I'm going to call this for next week, I have the order in my hands, the initiation of a preliminary investigation so that they will expand it for us next week ...

Will the suitability of the videos be seen in this inquiry next week, and will there be any punishment for Chevron, assuming it's using it?

We have already designated forensic experts to do the analysis of the videos. They will assume their duties on Monday of next week. We shall see about the authenticity, there will be a

translation done; even though it's already on the web page, that is just a reference for us, we have to get it officially, and for that we designate experts, we swear them in, we give them time to translate them for us and clearly they also talk about the authenticity. That is one more element that allows us to compare them with the other clues, such as the statements, for example. Mr. Cullen is being called to expand his communication, and if appropriate, to recognize it as a complaint, this thing that is not in the form of a complaint. At any rate, we are taking it as notice of a possible crime; it's like a criminal notice.