

Monday, April 6, 2015

Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Dear Mr. Daly and Mr. Doe:

I am writing you to request press access to the next round of Bilateral Investment Treaty proceedings in the arbitration that Chevron and TexPet brought against the Republic of Ecuador, beginning on April 20 in Washington.

Describing these proceedings as being in the public interest would be a gross understatement: Chevron has accused Ecuador of helping extort the company out of billions of dollars, and Ecuadorean President Rafael Correa has publicly commented that the arbitration can “bankrupt” his country based on false allegations that provide cover for environmental devastation to the Amazon rainforest.¹

With the stakes so high, maintaining total secrecy over these hearings would be all the more troubling. The Permanent Court of Arbitration’s longstanding practice of conducting its hearings in private already has led some to criticize its work as opaque and unaccountable.²

To quote your Secretary-General Hugo Siblesz, the PCA’s record for offering public proceedings is “mixed,” ranging from providing “webcasting” of oral arguments to keeping “even the existence of an arbitration in the strictest confidence.”³

The Chevron / Ecuador arbitration has taken the latter route with closed-door proceedings, with at least one important development only coming to light through an unauthorized disclosure.⁴

Contrast this with the transparency that your fellow arbitrators at the International Center for the Settlement of International Disputes (ICSID) brought to the case of *Pac Rim Cayman LLC v. Republic of El Salvador*.

¹ Reuters, “Ecuador Seeks to End Investment Protection Treaty With U.S.” (March 12, 2013) <http://uk.reuters.com/article/2013/03/12/ecuador-us-treaty-idUKL1N0C401C20130312>; Courthouse News, “CNS Talks to President Correa on Legacy of Oil Drilling in Ecuador.” (April 11, 2014) <http://www.courthousenews.com/2014/04/11/67021.htm>

² Press release from the non-profit group Public Citizen (December 2013) <http://www.citizen.org/documents/Chevron-decision-2013.pdf>

³ Hugo Siblesz speech “What Role for the Permanent Court of Arbitration Today?” from Feb. 12, 2013 pca-cpa.org/showfile.asp?fil_id=2110

⁴ Courthouse News, “Amazon Judge’s Data Secretly Scanned in \$9.8B Chevron Fight” (Feb. 27, 2015) <http://www.courthousenews.com/2015/02/27/amazon-judges-data-secretly-scanned-in-9-8b-chevron-fight.htm>

Like the Chevron case, the Pac Rim Cayman case pitted a private corporation's allegations that a Latin American nation violated an investment treaty against that nation's complaints that the company polluted its lands.⁵

On Jan. 12 this year, the ICSID made these proceedings public through an Internet live-stream.⁶

Whether the case involves a mining company or an oil giant, the principle remains the same: Public hearings are accountable hearings, and proceedings conducted in secret breed distrust in a just outcome.

With this in mind, I hope that you will consider granting us press access to this month's proceedings in Washington, and/or find some way to make proceedings widely available to the press and public.

In accordance with UNCITRAL rules, I am forwarding this request to the three arbitration panelists, Chevron / TexPet's lawyers at the King & Spalding firm and Ecuador's *procurador* and private attorneys at Winston & Strawn LLP.

All the best,

Adam Klasfeld
Reporter, Courthouse News
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⁵ The Guardian, "El Salvador groups accuse Pacific Rim of 'assault on democratic governance.'" (April 10, 2014). <http://www.theguardian.com/global-development/2014/apr/10/el-salvador-pacific-rim-assault-democratic-governance>

⁶ The broadcast can still be viewed here: <http://new.livestream.com/ICSID/events/3723967>