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Federal judge tells Chiquita it must face human rights allegations in the U.S.

After years of litigating against Chiquita on behalf of Colombian villagers terrorized by Chiquita-sponsored death squads, a federal judge denied the company's latest attempt to get rid of our case and escape justice. We will now be moving forward with discovery, to trial, and (we expect) to justice for our clients.

The legal decision is important for the farmers, workers and labor organizers who endured killings, disappearances and violence without remedy, and for those of us who have worked so hard supporting them. Chiquita has thrown one obstacle after another in our way in order to avoid facing these villagers in court. Most recently, the banana giant argued that the case should be heard in Colombia. It did so even though Colombia is one of the most dangerous countries in the world for human rights defenders and Chiquita has no assets left in the country. The judge said "no".

We all know about the sad reality and deadly threats that earth rights defenders^[1] face across the globe. But this case sends a clear message that companies cannot escape justice in the United States by forcing victims and survivors to litigate in countries where those defenders are threatened. The judge^[2] discussed the grave and dangerous context in which human rights and environmental defenders do their work in Colombia, and cited these risks as a key factor in his determination to allow the case to proceed in the U.S.

The decision also stands as warning to companies that strip their assets from a country after causing harm there. We have witnessed Chevron's boomerang strategy — where it shut down its operations in Ecuador, successfully kicked a pollution case brought by indigenous Ecuadorians out of U.S. courts, only to a reject a judgment reached and approved at every level of the Ecuadorian judiciary (the company's chosen forum). And while Chevron has been able to avoid paying on its liabilities thus far, U.S. companies will now have a harder time replicating that strategy. One of the other key bases for the Florida judge's decision was the fact that Chiquita had no assets left in Colombia.

The History

This is a decade-long case, and some background is probably necessary.

In 2007, Chiquita pled guilty to financing the *Autodefensas Unidas de Colombia* ("AUC"), a Colombian paramilitary and designated terrorist organization. Chiquita had, for years, made illegal and regular payments to the AUC, totaling around \$1.6 million. During that time, the AUC killed and terrorized thousands of civilians in Colombia's banana-growing regions, where Chiquita operated.

While the company admitted guilt and paid a \$25 million fine to the Department of Justice, they have not paid a cent to the thousands of victims murdered with their aid. So, some of the victims' surviving family members, represented by my organization EarthRights International and others, sued Chiquita in a U.S. court^[3]. For almost a decade, we have been litigating

this case, as Chiquita has tried time and again to have the case thrown out of court.

Read more about the case, here^[4].

Companies cannot flee from the law: Forum Non Conveniens

"Forum non conveniens" means "inconvenient forum". The basic principle behind the doctrine is that a judge may dismiss a case it should otherwise hear if there is a better place for both parties to litigate the case. But they are only supposed to do so when the plaintiffs can actually bring a case in the other forum and that forum can provide real remedies to them.

Unfortunately, courts — that are either protective of corporate interests or just trying to clear their dockets — have been *far* too willing to grant *forum non conveniens* motions. And, powerful companies have used that willingness to get transnational human rights cases kicked out of U.S. courts. We have seen this tactic before. For example, Occidental Petroleum tried to send the Achuar's contamination lawsuit back to Peru even though they had closed their operations in that country.

In that case, we were able to beat back^[5] their attempt to dismiss our case and deny our clients access to justice. But many plaintiffs do not have that luck. And here is the challenge: those plaintiffs have often been unable to file new cases in their home countries because it is too dangerous, the judiciary too corrupt or because they cannot find lawyers to represent them.

For Earth Rights Defenders, This Decision Matters.

A company cannot flee justice in the United States by pointing to another forum where earth rights defenders are under threat and killed with impunity. Colombia is one of the most dangerous places for human rights and environmental defenders—and their lawyers. As the federal judge recognized, "[b]etween 2009 and 2015, at least 335 human rights defenders were murdered" with impunity. In Antioquia — the region where many of our clients live — there were 95 attacks in 2014 alone. Colombian lawyers that have bravely chosen to represent victims seeking reparations have been targeted and disappeared with alarming frequency.

A survivor should not have to choose between seeking justice and staying safe, and neither should a lawyer. We argued in our legal briefs that when defenders are under siege in their home country, the company cannot get rid of the case in the U.S. simply by suggesting that plaintiffs can litigate in those dangerous places.

There is Hope.

I don't doubt that the results of the U.S. election will embolden corporations that seek to turn a profit without regard for the communities that they harm or the environment that they degrade. But this just makes our job more important. And successes — like the one that we enjoyed last Tuesday — will serve as a reminder to those corporations that they cannot escape justice in the U.S.

There will always be individuals and organizations who will seek to hold individuals and institutions accountable for their complicity in human rights and environmental harms. Regardless of who is in the White House, U.S. Courts must fulfill their

promise of blind and even-handed justice, a cornerstone of our American democracy that is truly “great”. We will continue to fight alongside the victims of earth rights abuses *and* as this case proves, we will continue to win.

Referencias

- 1.^ earth rights defenders (www.huffingtonpost.com)
 - 2.^ The judge (www.earthrights.org)
 - 3.^ sued Chiquita in a U.S. court (www.earthrights.org)
 - 4.^ here (www.earthrights.org)
 - 5.^ we were able to beat back (www.earthrights.org)
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