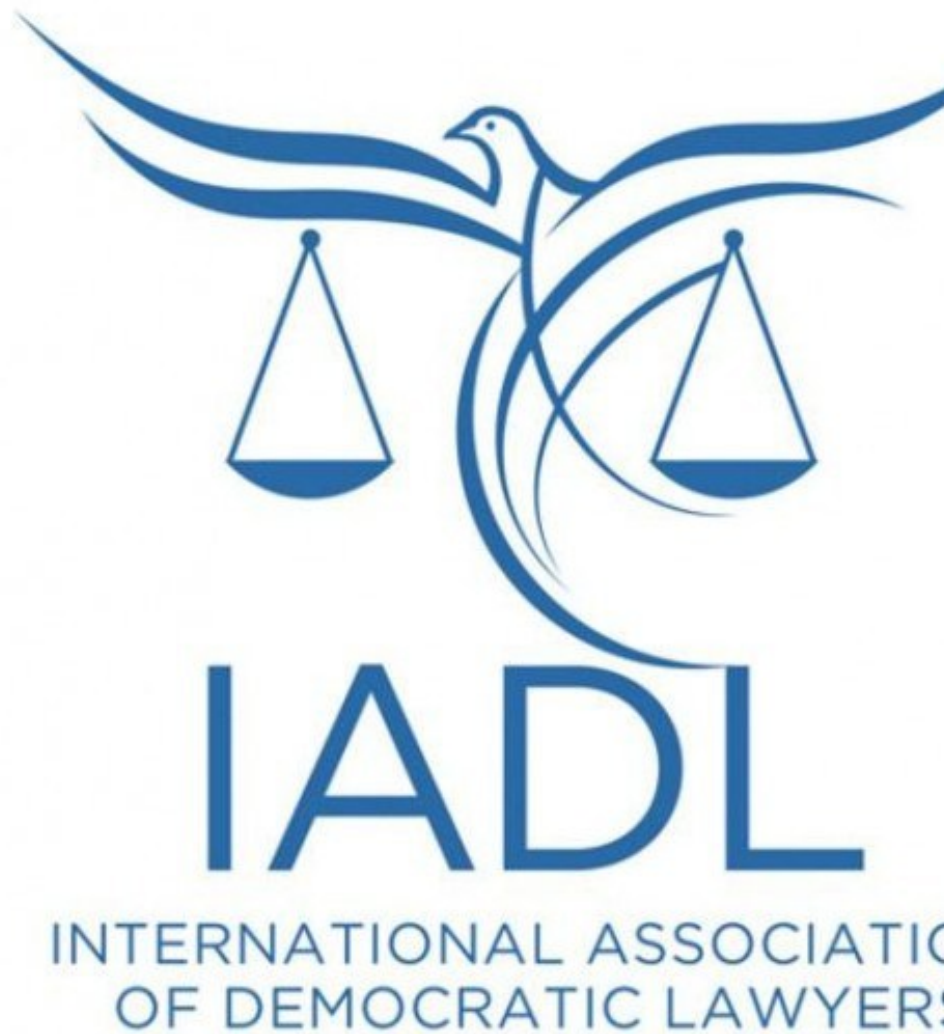


More than 200 lawyers file judicial complaint against U.S. Judge Lewis A. Kaplan over abusive targeting of human rights advocate Steven Donziger

1 September 2020



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Complaint signed by 37 organizations representing 500,000 lawyers worldwide details shocking violation of U.S. judge in long-running Chevron retaliation campaign

Chevron and Kaplan targeted Donziger after he helped Indigenous peoples win a landmark \$9.5 billion judgment in 2011 for dumping oil waste in the Amazon

NEW YORK—September 1, 2020—Dozens of legal organizations around the world representing more than 200 individual lawyers today submitted a [judicial complaint](#) documenting a series of shocking violations by United States Judge Lewis A. Kaplan targeting human rights lawyer Steven Donziger after he helped I judgment against Chevron in Ecuador to clean up the pollution caused by decades of oil drilling with no e

The complaint was formally filed by the National Lawyers Guild in conjunction with the International Association of Lawyers for Human Rights (IALR). IALR was founded in Paris in 1946 to fight to uphold the rule of law around the world and has co

Five pages in length with a [40-page appendix with 15 exhibits](#), the complaint is to be turned over to the court in New York that oversees the trial court where Kaplan sits. The complaint is signed by an unprecedented number of organizations from approximately 80 countries collectively representing 500,000 lawyers.

The Chief Judge of the Second Circuit Court of Appeals, Robert Katzmann, has a duty to read the complaint and appoint a committee to investigate and issue findings.

The complaint could result in a censure of Kaplan or even his removal from the bench.

"We wrote this judicial complaint after studying the record in this case and coming to the conclusion that Judge Kaplan is a de facto lawyer for Chevron in this litigation. He has shown a shocking pattern of escalating efforts to harass the rights of indigenous people in Ecuador spanning a 10-year period," said Jeanne Mirer, the President of the National Lawyers Guild. "We believe the complaint demands urgent investigation by Judge Katzmann to stop this pattern of abuse and protect human rights lawyer from being unjustly convicted."

The complaint documents what its authors say is a pattern of ethics violations committed by Judge Kaplan. Kaplan denied Donziger a jury, put in place a series of highly unusual courtroom tactics, severely restricted his defense, and through his tactics had picked judge to try him for criminal contempt has had him detained a year on contempt charges that were rejected by the U.S. Attorney, and allowed him to be prosecuted by the government as a client. He also imposed enormous fines on Donziger without a jury finding that have all but bankrupted him.

The complaint alleges that the "statements and actions of Judge Kaplan over the last ten years show him acting as counsel for Chevron ... rather than that of a judge adjudicating a live controversy before him." It added, "Judge Kaplan has violated his duty of impartiality under the canons of judicial conduct."

The complaint concluded that Judge Kaplan since 2010 has "beyond all bounds of reason" tried "to destroy Donziger personally and professionally" and "by extension has blocked the access to remedy for the 30,000 Indigenous clients he has represented since 1993."

"Complainants are very concerned that the persecution of Mr. Donziger by Judge Kaplan and Chevron will serve as a warning of the consequences they will suffer should they try to hold Chevron accountable for their human rights violations," the complaint said.

Organizations signing the complaint also include the Center for Constitutional Rights; Lawyers Committee for Human Rights; the Conference of Black Lawyers; the Confederation of Lawyers of Asia and the Pacific (including lawyers from Indonesia, and Pakistan); the African Bar Association, which includes lawyers from 61 nations; and the International Association of Lawyers for Human Rights. The IALR also has members from more than 50 nations.

Also signing the complaint are more than 200 individual lawyers, including Professors Charles Nesson and Richard H. Pildes of Harvard Law School; Marie Toussaint, a member of the European Parliament; Sarah Leah Whitson, the former Middle East and North Africa director of Human Rights Watch.

Watch; Scott Badenoch, Jr., the Co-chair of the Environmental Justice Committee of the American Bar Association, is a Professor of Law, Birkbeck College, University of London.

In 2011, Donziger helped Indigenous peoples win a \$9.5 billion environmental judgment against Chevron for deliberately dumping billions of gallons of oil waste in a huge swath of Amazon rainforest in Ecuador. Donziger and indigenous and local Ecuadorian communities that had been decimated by the dumping, with rates of child mortality skyrocketing. The court ruling was affirmed by six appellate courts in Ecuador and Canada, including the

As part of an avowed campaign to “demonize” Donziger, and despite accepting jurisdiction in Ecuador, Chevron moved to the U.S. District Court in New York and filed a civil “racketeering” case against the lawyer and all 47 named plaintiffs from the rainforest. The case sought \$10 billion in damages — the highest personal liability in U.S. history. The company steered the case to Judge Kaplan, who let a jury and then let Chevron pay a witness at least \$2 million while moving him and his entire family from Ecuador. Chevron lawyers coached the witness, Alberto Guerra, for 53 days before Kaplan let him testify against Donziger. Donziger testified under oath that he had lied repeatedly. Kaplan also refused to let Donziger testify on direct.

Prominent trial lawyer John Keker called the proceedings before Kaplan a “Dickensian farce” driven by the company’s greed toward Donziger. In the meantime, 29 Nobel laureates and several human rights organizations have criticized the proceedings, judicial authorities and have demanded his immediate release.

After the Canadian Supreme Court ruled in favor of the Ecuadorian plaintiffs, Judge Kaplan last year filed contempt charges against Donziger after he appealed post-judgment discovery orders to turn over to Chevron his e-mails, his computer and cell phone. A judicial order requiring an attorney to disclose confidential work product to a client would be unprecedented. That appeal is scheduled to be argued on Sept. 15 while Kaplan is trying to drive Donziger out of the country on charges on Sept. 9, despite the fact Donziger’s lawyers cannot travel from out of town during the COVID-19 pandemic. Donziger’s criminal trial has been held in the district since March.

In another unusual move, after the U.S. Attorney’s Office refused to pursue Judge Kaplan’s contempt charges against Donziger’s law firm, Seward & Kissel LLP—which is known for its extensive financial ties to the oil and gas industry—Donziger was released from the government while being paid an hourly rate by taxpayers. The firm immediately pushed for Donziger’s release and disclosed that Chevron was a direct client of the firm.

Donziger is now in his 13th month of home detention in a misdemeanor case where the longest sentence for someone convicted of the charge is three months of home confinement.

The judicial complaint follows the formation last week of a case monitoring committee comprised of a senior judge, a professor that also has been critical of how judicial authorities in New York have treated Donziger. The committee includes Judge Kaplan, American Bar Association’s Section of Litigation; Nadine Strossen, a former president of the American Civil Liberties Union; a Law School professor; and Stephen Rapp, a former U.S. Department of State ambassador-at-large for human rights.

In a news release last week announcing its formation, the committee said that “trial monitoring committees exist in many cases around the world, but they’re most often employed in developing countries with problematic judiciaries.”

“It is unusual for a case in the United States to have such deep problems that a trial monitoring committee is needed,” said attorney Scott Badenoch, who helped organize the group.

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