

**PCA CASE NO. 2009-23**

**IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE UNITED STATES OF  
AMERICA AND THE REPUBLIC OF ECUADOR CONCERNING THE  
ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS,  
SIGNED 27 AUGUST 1993 (THE “TREATY”) AND THE UNCITRAL  
ARBITRATION RULES 1976**

**BETWEEN:–**

**1. CHEVRON CORPORATION  
2. TEXACO PETROLEUM COMPANY  
(both of the United States of America)**

*The Claimants*

**- and -**

**THE REPUBLIC OF ECUADOR**

*The Respondent*

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**First Interim Award on Interim Measures**

**dated 25 January 2012**

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**The Arbitration Tribunal:**

**Dr. Horacio A. Grigera Naón;  
Professor Vaughan Lowe;  
V.V. Veeder (President)**

**Administrative Secretary: Martin Doe**

**(I) THE ORDER OF 14 MAY 2010**

**WHEREAS:** The Tribunal made the following procedural order dated 14 May 2010:

*“WHEREAS on 23 September 2009, the Claimants served a Notice of Arbitration on the Respondent pursuant to Article VI(3)(a)(iii) of the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment, signed on 27 August 1993 (the “Treaty”), which provides that disputes arising under it may be submitted to an arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law of 1976 (the “UNCITRAL Rules”);*

*WHEREAS on 29 September 2009, the Respondent received the Notice of Arbitration;*

*WHEREAS in their Notice of Arbitration, the Claimants notified the Respondent of their appointment of Dr. Horacio A. Grigera Naón as the first arbitrator;*

*WHEREAS on 4 December 2009, the Respondent notified the Claimants of its appointment of Professor Vaughan Lowe QC as the second arbitrator;*

*WHEREAS on 25 February 2010, the Secretary-General of the PCA appointed V.V. Veeder QC as the presiding arbitrator;*

*WHEREAS on 21 March 2010, the Tribunal convened a telephone conference call between the Parties and the Tribunal for 26 March 2010;*

*WHEREAS by e-mail dated 25 March 2010, the Claimants indicated that they “anticipate filing in the very near future a request for provisional measures that is necessary to protect the rights of the Claimants. This request is urgent and will need to be decided quickly. We would ask that the Tribunal add this item to the Agenda for discussion and scheduling [for the telephone conference call of 26 March 2010.]”;*

*WHEREAS during the telephone conference call of 26 March 2010, the Tribunal (i) requested that the Claimants file their Request for Interim Measures no later than 2 April 2010, (ii) scheduled a second telephone conference call with the Parties for 9 April 2010 for the purpose of discussing a timetable for dealing with the Claimants’ Request for Interim Measures, and (iii) scheduled a first procedural meeting to take place on 10-11 May 2010 at the IDRC in London, the above schedule also being set out in writing in the presiding arbitrator’s e-mail of 31 March 2010;*

*WHEREAS by e-mail dated 1 April 2010, the Claimants submitted their Request for Interim Measures, with instructions for accessing exhibits and legal authorities electronically;*

*WHEREAS by letter dated 6 April 2010, the Respondent objected to the consideration of the Claimants' Request for Interim Measures and requested the cancellation of the 9 April 2010 telephone conference call;*

*WHEREAS by letter dated 7 April 2010, the Claimants opposed the cancellation of the 9 April 2010 telephone conference call, pending consideration of a further application for immediate interim measures to be in force until a hearing is held on the Claimants' Request for Interim Measures;*

*WHEREAS by e-mail dated 7 April 2010, the Tribunal decided to maintain the telephone conference call of 9 April 2010;*

*WHEREAS during the telephone conference call the Claimants orally confirmed their applications for immediate interim measures;*

*WHEREAS on 9 April 2010, following the telephone conference-call with the Parties, the Tribunal issued a Procedural Order as follows:*

*'The Tribunal thanks the Parties for their participation in today's second session held by telephone conference-call. It is appropriate for the Tribunal to issue the following order with immediate effect, although a formal order will follow in due course, addressing other matters discussed at the session:*

*A - Interim Measures:*

*As regards Item 1 of the Agenda, the Tribunal notes the Claimant's two cumulative applications for interim measures: (i) the first application for interim measures made by letter dated 1 April 2010, as set out in Paragraph 14 (pages 6 -7) and (ii) the second application for interim measures made by letter dated 7 April 2010, as set out in its last paragraph (being orally confirmed by the Claimant's Counsel during today's session).*

*The Tribunal decides that the Claimant shall be heard by the Tribunal as regards both applications at the first procedural meeting to be held in London on 10 and 11 May 2010 subject to further order, including directions as to procedure applicable before and during that meeting (e.g., as to the former, the Respondent's written answer to such applications, in whole or in part, and the Claimant's written reply before the meeting).*

*The Tribunal currently intends that such directions shall be made in the light of the Respondent's further letter regarding the Claimant's applications (to be received by the Tribunal as soon as practicable but no later than Friday, 16 April 2010) and any written response thereto by the Claimant, as directed by the Tribunal. [...].'*

*WHEREAS by letter dated 15 April 2010, the Respondent provided further comments regarding the Claimants' Request for Interim Measures, including a procedural proposal for the adjudication of the Request;*

*WHEREAS by letter dated 16 April 2010, the Claimants responded to the procedural proposal put forward by the Respondent;*

*WHEREAS by letter dated 23 April 2010, the Respondent requested clarification from the Tribunal on the agenda for the meeting in London on 10-11 May 2010;*

*WHEREAS on 27 April 2010, the Tribunal issued a Procedural Order as follows:*

*'1. Further to the Tribunal's Procedural Order dated 9 April 2010, the Tribunal has considered the Respondent's letter dated 15 April, the Claimants' letter dated 16 April and the Respondent's letter dated 23 April 2010.*

*2. The Tribunal confirms that the Claimants' two applications for interim measures, namely:*

*(i) the first application for interim measures made by the Claimants' letter dated 1 April 2010, as set out in paragraph 14 (pages 6-7), and*

*(ii) the second application for interim measures made by the Claimants' letter dated 7 April 2010 (as set out in its last paragraph),*

*shall be heard at the first procedural meeting to be held at the IDRC, 70 Fleet Street, London ECY 1EU on 10 and 11 May 2010, beginning at 0930 hours on the first of these two days.*

*3. The Tribunal considers that the most immediate issue for this meeting lies in the Respondent's submission that "no urgency exists here" (as set out in the Respondent's letter dated 15 April 2010, at pages 3-4) and the Claimants' submission to the contrary (as set out in its letters dated 1 & 7 April 2010).*

*4. The Parties are requested to address this issue at the meeting, as well as any other related issue. To that end, in regard to such issue(s), the Respondent is requested to submit a written response to the Claimants' applications by 3 May 2010, to which the Claimants are requested to respond in writing by 7 May 2010.*

*5. Subject to further order, the meeting will begin with the Claimants' oral submissions in the morning of the first day (not to exceed 2.5 hours), to be followed by the Respondent's oral submissions in the afternoon (not to exceed 2.5 hours). On the second day, the Claimants and the Respondent may make oral submissions in reply (not to exceed 1.5 hours each).*

*6. Either at the end of the first day or in the afternoon of the second day (to be determined at the meeting), the Tribunal will address, in further consultation with the Parties, outstanding procedural matters, including the future procedural timetable, possibly based on different contingencies.'*

*WHEREAS by e-mails dated 3 May 2010, the Respondent submitted its Response to the Request for Interim Measures and its Summary Description of Preliminary Jurisdictional and Admissibility Objections;*

*WHEREAS by e-mails dated 7 May 2010, the Claimants submitted their Reply on Interim Measures;*

*WHEREAS the meeting on interim measures and procedural matters was held in London on 10-11 May 2010, as recorded in the verbatim transcripts of that meeting (in English and Spanish);*

*WHEREAS the Tribunal considered the Parties' several written and oral submissions;*

*THE TRIBUNAL ORDERS AS FOLLOWS:*

*1. Until further decision the Tribunal takes, pursuant to Article 26(1) of the UNCITRAL Rules, the following interim measures up to and including the next procedural meeting beginning on 22 November 2010:*

*(i) The Claimants and the Respondent are both ordered to maintain, as far as possible the status quo and not to exacerbate the procedural and substantive disputes before this Tribunal, including (in particular but without limiting howsoever the generality of the foregoing) the avoidance of any public statement tending to compromise these arbitration proceedings;*

*(ii) The Claimants and the Respondent are both ordered to refrain from any conduct likely to impair or otherwise adversely affect, directly or indirectly, the ability of the Tribunal to address fairly any issue raised by the Parties before this Tribunal;*

*(iii) The Claimants and the Respondent are both ordered not to exert, directly or indirectly, any unlawful influence or pressure on the Court addressing the pending litigation in Ecuador known as the Lago Agrio Case;*

*(iv) The Claimants and the Respondent are ordered to inform the Tribunal (in writing) of the likely date for the issue by the Court of its judgment in the Lago Agrio Case as soon as such date becomes known to any of them;*

*(v) The Respondent is ordered to communicate (in writing and also by any other appropriate means) the Tribunal's invitation to the Court in the Lago Agrio Case to make known as a professional courtesy to the Tribunal the likely date for the issue by the Court of its judgment in the Lago Agrio Case; and, to that end, the Respondent is ordered to send to the Court the full text in Spanish and English of the Tribunal's present order; and*

*(vi) The Respondent is ordered to facilitate and not to discourage, by every appropriate means, the Claimants' engagement of legal experts, advisers and representatives from the Ecuadorian legal profession for the purpose of these arbitration proceedings (at the Claimants' own expense).*

*2. This Order is and shall remain subject to modification in the light of any future event, upon the Tribunal's own motion or upon any Party's application, particularly in the light of any new development in the Lago Agrio Case and the issue of the Court's judgement in such*

Case; and any of the Parties may apply to the Tribunal for such modification upon 24 hours' written notice.

3. This Order is made strictly without prejudice to the merits of the Parties' procedural and substantive disputes, including the Respondent's jurisdictional and admissibility objections and the merits of the Claimants' claims."

## **(II) THE ORDER OF 28 JANUARY 2011**

**WHEREAS:** The Tribunal made the following procedural order dated 28 January 2011:

*"WHEREAS the Tribunal received (i) the Claimants' letter dated 12 December 2010 with their application for a "brief order" stating the Tribunal's determination that it has jurisdiction over the Parties' dispute and establishing "a schedule for the merits procedure" (at page 13, paragraph 2, here called the "First Application"); (ii) under the Tribunal's order of 17 December 2010, the Respondent's letter dated 31 December 2010 opposing the Claimants' First Application; (iii) the Claimants' first letter dated 14 January 2011 responding to the Respondent's letter dated 31 December 2010 as regards the First Application; (iv) the Claimants' second letter dated 14 January 2011 with their revised application for interim measures (at pages 15-16, paragraphs (1) to (6), here called the "Second Application" and set out as Annex A hereto); (v) the Respondent's letter dated 18 January 2011 applying for an extension of time to 21 January 2011 for its written response to the Claimants' first letter dated 14 January 2011 regarding the First Application and an extension to 14 February 2011 for its written response to the Claimants' second letter dated 14 January 2011 regarding the Second Application; (vi) the Claimants' letter dated 19 January 2011 opposing the Respondent's application for an extension of time in regard to the Second Application beyond 28 January 2011 and requesting an immediate and provisional order pending the Tribunal's determination of their Second Application; and (vii) under the Tribunal's order of 20 January 2011, the Respondent's letter dated 21 January 2011 responding to the Claimants' first letter dated 14 January 2011 regarding the First Application;*

*WHEREAS the Tribunal heard the Parties' legal representatives at a procedural meeting (held by telephone conference-call) on 26 January 2011, the contents of which were recorded and shall be transcribed presently, as regards the procedure required to address both the Claimants' Second Application and the Respondent's opposition to this Second Application;*

*WHEREAS during this procedural meeting, the Claimants indicated that the Tribunal should determine their Second Application urgently without any oral hearing (i.e., on the Parties' written submissions and other materials already before the Tribunal submitted in these arbitration proceedings); the Respondent opposed such procedure and indicated that it*

*requested an oral hearing preceded by an opportunity to make its written submissions opposing the Second Application; and the Claimants indicated that if their Second Application could not be determined by the Tribunal timeously, the Claimants requested an immediate “temporary order” in like terms pending such determination; and*

*WHEREAS the Tribunal is continuing to deliberate and decide upon its jurisdiction to decide the Parties’ dispute in these arbitration proceedings, following the Parties’ many oral and written submissions on such disputed jurisdiction; and*

*NOTING the Claimants’ concerns as to the imminent expectation of an adverse judgment made in the pending litigation in Ecuador known as the Lago Agrio Case, in a substantial monetary amount, following the Lago Agrio Court’s confirmation of its autos para sentencia on 29 December 2010;*

*NOTING the Claimants’ further concerns as to immediate attempts thereafter to enforce such judgment by the Lago Agrio plaintiffs (within and without Ecuador), potentially rendering these arbitration proceedings inefficacious and, if not thereby thwarting the Claimants’ claims against the Respondent, causing loss to the Claimants not compensatable in damages payable by the Respondent; and*

*NOTING the Respondent’s opposition to the Claimants’ Second Application on the ground (inter alia) that the Respondent is not a party to the Lago Agrio Case; that no adverse judgment is necessarily imminent even after the Lago Agrio Court’s autos para sentencia; that the Claimants have indicated that they will appeal any adverse judgment of the Lago Agrio Court; that, under Ecuadorian law, judgments entered in a domestic proceeding are not enforceable during the pendency of a first-instance appeal until that appeal has been decided; and that the Claimants cannot establish that a foreign court would agree to recognize and enforce an Ecuadorian judgment that is not final and enforceable under the laws of Ecuador;*

*THE TRIBUNAL NOW DECIDES:*

*(A) The Respondent shall submit its written submissions in response to the Claimants’ Second Application as soon as practicable but no later than 1700 hours (Netherlands time) on Friday, 4 February 2011 (or such other date as may be ordered by the Tribunal);*

*(B) There shall be an oral hearing on the Claimants’ Second Application and the Respondent’s opposition thereto at the Peace Palace, The Hague, provisionally on Sunday, 6 February 2011 (or such other date as may be ordered by the Tribunal) at a time and in a form to be decided later by the Tribunal;*

*(C) Pending such oral hearing or further order (on application by any Party or by the Tribunal upon its own initiative), the Tribunal takes the following interim measures pursuant to Article 26 of the UNCITRAL Arbitration Rules:*

*1. The Tribunal re-confirms Paragraphs 1(i) to (iv) of its Order dated 14 May 2010 (as amended); namely:*

*(i) The Claimants and the Respondent are both ordered to maintain, as far as possible the status quo and not to exacerbate the procedural and substantive disputes before this Tribunal, including (in particular but without limiting howsoever the generality of the foregoing) the avoidance of any public statement tending to compromise these arbitration proceedings;*

*(ii) The Claimants and the Respondent are both ordered to refrain from any conduct likely to impair or otherwise adversely affect, directly or indirectly, the ability of the Tribunal to address fairly any issue raised by the Parties before this Tribunal;*

*(iii) The Claimants and the Respondent are both ordered not to exert, directly or indirectly, any unlawful influence or pressure on the Court addressing the pending litigation in Ecuador known as the Lago Agrio Case;*

*(iv) The Claimants and the Respondent are ordered to inform the Tribunal (in writing) of the likely date for the issue by the Court of its judgment in the Lago Agrio Case as soon as such date becomes known to any of them;*

*2. Whilst the Lago Agrio plaintiffs are not named parties to these arbitration proceedings and the Respondent is not a named party to the Lago Agrio Case, the Tribunal records that, as a matter of international law, a State may be responsible for the conduct of its organs, including its judicial organs, as expressed in Chapter II of Part One of the International Law Commission's Articles on State Responsibility;*

*3. If it were established that any judgment made by an Ecuadorian court in the Lago Agrio Case was a breach of an obligation by the Respondent owed to the Claimants as a matter of international law, the Tribunal records that any loss arising from the enforcement of such judgment (within and without Ecuador) may be losses for which the Respondent would be responsible to the Claimants under international law, as expressed in Part Two of the International Law Commission's Articles on State Responsibility; and*

*4. This order for further interim measures is made by the Tribunal strictly without prejudice to any Party's case as regards the Tribunal's jurisdiction, the Claimants' First and Second Applications, the Respondent's opposition to these First and Second Applications and any claim or defence by any Party as to the merits of the Parties' dispute."*



### **(III) THE ORDER OF 9 FEBRUARY 2011**

**WHEREAS:** The Tribunal made the following procedural order dated 9 February 2011:

*“WHEREAS, the Tribunal issued its order for interim measures on 28 January 2011, providing (inter alia) for an oral hearing on 6 February 2011 at the Peace Palace, The Hague, the Netherlands on the Claimants’ Second Application for Revised Interim Measures made by letter dated 14 January 2011;*

*WHEREAS, by letter dated 1 February 2011, the Respondent declared its intention not to make written submissions on the Claimants’ Second Application in accordance with Paragraph A of the Tribunal’s order of 26 January 2011;*

*WHEREAS, by e-mail message dated 1 February 2011, the Respondent submitted to the Tribunal a copy of the civil complaint filed earlier that same day by the First Claimant (Chevron Corporation) in the US District Court for the Southern District of New York against several named defendants comprising (inter alios) the Lago Agrio plaintiffs and their legal representatives (but not including the Respondent) for damages and injunctive relief under 18 U.S.C. § 1962, entitled “Chevron Corporation v Steven R. Donziger, et al.” (for convenience, here called the “RICO action”);*

*WHEREAS, by order dated 2 February 2011, after considering written submissions made by the Parties dated 1 February and 2 February 2011, the Tribunal decided to maintain and confirm the oral hearing on 6 February 2011;*

*WHEREAS, the Tribunal subsequently received the letter dated 2 February 2011 from the President of the Chamber of the Provincial Court of Justice of Sucumbíos (copied to the Parties) in response to the Tribunal’s letter dated 10 December 2010 regarding the likely date of the first-instance judgment in the Lago Agrio Case, which date currently remains uncertain but potentially imminent;*

*WHEREAS, on 3 February 2011, the First Claimant submitted an application to the US District Court for the Southern District of New York in the RICO action for an order to show cause why a temporary restraining order and preliminary injunction should not be entered against the defendants at a hearing fixed for 1400 hours on 8 February 2011, whereby the defendants would be enjoined “...and any persons acting in concert with them from funding, commencing, prosecuting, advancing in any way, or receiving benefit from, directly or indirectly, any action or proceeding for recognition or enforcement of any judgment entered against Chevron in [the Lago Agrio Case], or for prejudgment seizure or attachment of assets based on any such judgment...”;*

*WHEREAS, on 6 February 2011, there was an oral hearing in the Small Court Room at the Peace Palace commencing at 0945 hours and concluding at 1645 hours at which the Parties made oral submissions to the Tribunal on the Claimants' Second Application, recorded by transcript and attended (for the Claimants) by Doak Bishop, Edward Kehoe, Caline Mouawad, Isabel Fernández de la Cuesta, Kristi Jacques, Elizabeth Silbert (all of King & Spalding), James Crawford (of Matrix Chambers, by telephone from Australia); Hewitt Pate, David Moyer and David Cohen (all of the First Claimant); and (for the Respondent) by Álvaro Galindo Cardona (of the Procuraduría General del Estado), Zachary Douglas (of Matrix Chambers), Eric Bloom and Ricardo Ugarte (both of Winston & Strawn);*

*WHEREAS, on 6 February 2011, at the conclusion of the hearing, the Tribunal continued, until further order, Paragraph C of its order for interim measures of 26 January 2011; and*

*WHEREAS, on 8 February 2011, the Claimants informed the Tribunal that the US District Court for the Southern District of New York had granted that day the First Claimant's application in the RICO action for a temporary restraining order directing the defendants "to temporarily refrain from taking any action to seek recognition or enforcement of a Lago Agrio judgment";*

*THE TRIBUNAL NOW DECIDES:*

*(A) As to jurisdiction, the Tribunal records that it has not yet determined the Respondent's challenge to its jurisdiction (as recorded in the fourth preamble to its Order of 28 January 2011). Nonetheless, for the limited purpose of the present decision, the Tribunal provisionally assumes that it has jurisdiction to decide upon the Claimants' Second Application for Interim Measures on the ground that the Claimants have established, to the satisfaction of the Tribunal, a sufficient case for the existence of such jurisdiction at this preliminary stage of these arbitration proceedings under the written arbitration agreement invoked by the Claimants against the Respondent under the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment (the "BIT"), incorporating by reference the 1976 UNCITRAL Arbitration Rules (the "UNCITRAL Rules");*

*(B) The Tribunal notes that: (i) Article 26 of the UNCITRAL Rules permits a tribunal, at the request of a party, to take interim measures (established in the form of an order or award) in respect of the subject-matter of the parties' dispute; (ii) Article 32(1) of the UNCITRAL Rules permits a tribunal to make (inter alia) an award in the form of a final, partial or interim award; (iii) Article 32(2) of the UNCITRAL Rules provides that any award is final and binding on the parties, with the parties undertaking to carry out such award without delay; and (iv) Articles VI.3(6) of the BIT provides (inter alia) that an award rendered pursuant to Article VI.3(a)(iii) of the BIT under the UNCITRAL Rules shall be binding on the parties to the dispute, with the Contracting Parties undertaking to carry out without delay the provisions of any such award and to provide in its territory for its enforcement;*

(C) *As to form, the Tribunal records that, whilst this decision under Article 26 of the UNCITRAL Rules is made in the form of an order and not an interim award, given the urgency required for such decision, the Tribunal may decide (upon its own initiative or any Party's request) to confirm such order at a later date in the form of an interim award under Articles 26 and 32 of the UNCITRAL Rules, without the Tribunal hereby intending conclusively to determine the status of this decision, one way or the other, as an award under the 1958 New York Convention.*

(D) *As to the grounds for the Claimants' Second Application, the Tribunal concludes that the Claimants have made out a sufficient case, to the Tribunal's satisfaction, under Article 26 of the UNCITRAL Rules, for the order made below in the discretionary exercise of the Tribunal's jurisdiction to take interim measures in respect of the subject-matter of the Parties' dispute;*

(E) *Bearing in mind the Respondent's several obligations under the BIT and international law, including the Respondent's obligation to carry out and provide for the enforcement of an award on the merits of the Parties' dispute in these arbitration proceedings (assuming this Tribunal's jurisdiction to make such an award), the Tribunal orders:*

(i) *the Respondent to take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against the First Claimant in the Lago Agrio Case; and*

(ii) *the Respondent's Government to inform this Tribunal, by the Respondent's legal representatives in these arbitration proceedings, of all measures which the Respondent has taken for the implementation of this order for interim measures;*

*pending further order or award in these arbitration proceedings, including the Tribunal's award on jurisdiction or (assuming jurisdiction) on the merits;*

(F) *The Tribunal records that it is common ground between the Claimants and the Respondent in these arbitration proceedings, as also re-confirmed by the Respondent at the oral hearing on 6 February 2011 (page 107 of the English transcript and page 101 of the Spanish transcript) that, under Ecuadorian law, a judgment entered in a domestic proceeding at first instance (such as a first-instance judgment in the Lago Agrio Case) is not final, conclusive or enforceable during the pendency of a first-level appeal until at least such time as that appeal has been decided by the first-level appellate court;*

(G) *The Tribunal continues Paragraph C (1) to (3) of its order of 28 January 2011 (which order is incorporated by reference herein);*

(H) *The Tribunal decides further that the Claimants shall be legally responsible, jointly and severally, to the Respondent for any costs or losses which the Respondent may suffer in performing its obligations under this order, as may be decided by the Tribunal within these arbitration proceedings (to the exclusion of any other jurisdiction);*

(I) *This order shall be immediately final and binding upon all Parties, subject only to any subsequent variation made by the Tribunal (upon either its own initiative or any Party's request); and*

(J) *This order, as with the earlier order of 26 January 2011, is made by the Tribunal strictly without prejudice to any Party's case as regards the Tribunal's jurisdiction, the Claimants' First Application made by letter dated 12 December 2010, the Respondent's opposition to such First Application, and to any claim or defence by any Party as to the merits of the Parties' dispute."*

#### **(IV) THE ORDER OF 16 MARCH 2011**

**WHEREAS:** The Tribunal made the following procedural order of 16 March 2011:

*"1. The Tribunal here addresses the four disputed applications in these arbitration proceedings regarding the Tribunal's several orders for interim measures dated 14 May 2010, 28 January 2011 and 9 February 2011; namely: (i) the first application by the Claimants made by letter dated 23 February 2011; (ii) the second application by the Respondent made by letter dated 24 February 2011; (iii) the third application by the Respondent made by letter dated 28 February 2011; and (iv) the fourth application by the Claimants made by letter dated 4 March 2011.*

*2. First Application: As regards the first application by the Claimants for further interim measures against the Respondent in regard to the criminal proceedings in Ecuador concerning (inter alios) two of the Claimants' legal representatives (Messrs Ricardo Veiga and Rodrigo Pérez), the Tribunal refers to the Claimants' letter dated 23 February 2011, the Claimants' email message dated 25 February 2011 and the Respondent's letter dated 10 March 2011.*

*3. Having considered the Parties' written submissions listed in paragraph 2 above (with attached exhibits), together with all other relevant circumstances in this case, the Tribunal does not consider it appropriate to grant the Claimants' application pleaded specifically at page 21 of their letter dated 23 February 2011, beyond maintaining the Tribunal's existing orders for interim measures.*

*4. Second Application: As regards the second application made by the Respondent seeking the revocation of the Tribunal's order dated 9 February 2011, the Tribunal refers to Part II of the Respondent's letter dated 24 February 2011 and the Claimants' letter dated 4 March 2011.*

*5. Having considered the Parties' written submissions listed in paragraph 4 above (with attached exhibits), together with all other relevant circumstances in this case, the Tribunal*

*does not consider it appropriate to grant the Respondent's application or the Claimants' counter-application, beyond maintaining its existing order for interim measures dated 9 February 2011.*

*6. Third Application: As regards the third application made by the Respondent in regard to alleged violations by the Claimants of the Tribunal's orders for interim measures and for further interim measures, the Tribunal refers to the Respondent's letter dated 28 February 2001 and the Claimants' letters dated 4 and 10 March 2001.*

*7. Having considered the Parties' written submissions listed in paragraph 6 above (with attached exhibits), together with all other relevant circumstances in this case, the Tribunal does not consider it appropriate to grant the Respondent's application pleaded specifically at page 3 of its letter dated 28 February 2011, beyond maintaining the Tribunal's existing orders for interim measures.*

*8. Fourth Application: As regards the fourth application made by the Claimants in regard to alleged violations by the Respondent of the Tribunal's order dated 9 February 2011, the Tribunal refers to the Claimants' letter dated 4 March 2011.*

*9. Having considered the written submissions listed in paragraph 8 above (with attached exhibits), together with all other relevant circumstances in this case, the Tribunal does not consider it appropriate to grant the Claimants' application, beyond maintaining the Tribunal's existing order for interim measures dated 9 February 2011.*

*10. This procedural order shall not prejudice any issue as regards jurisdiction, admissibility or merits in these proceedings; nor shall it preclude any future application by any Party for interim measures or like relief in the event of any change in relevant circumstances."*

## ***(V) THE PARTIES' PRESENT APPLICATIONS***

### ***WHEREAS:***

(A) By letter dated 4 January 2012, the Respondent informed the Tribunal that the Provincial Court of Sucumbíos had issued on 3 January 2012 a decision affirming on appeal the decision of the first-instance court of 14 February 2011 in the Ecuadorian legal proceedings entitled *Maria Aguinda et al v Chevron Texaco Corporation* (also known as the "Lago Agrio Case" or "Lago Agrio Litigation") whereby the Provincial Court rejected the appeals of both Chevron and the Lago Agrio plaintiffs; and the Respondent attached a copy of this appellate decision obtained from a media website;

(B) By letter dated 4 January 2012 (with attachments), the Claimants also informed the Tribunal that the appellate court had affirmed the judgment of the first-instance court,

attaching a copy of the appellate judgment (with an English translation to follow); and the Claimants applied for the Tribunal immediately to; “(i) convert the order dated February 9, 2011 (the ‘Interim Measures Order’) into the form of an Interim Award, as the Tribunal contemplated in the Order; and (ii) request that the Republic of Ecuador inform the Tribunal, by this Friday, 6 January, 2012, of the steps that it intends to take to comply with the Interim Measures Order and prevent the Lago Agrio Judgment from becoming enforceable”;

(C) By order dated 5 January 2012, the Tribunal requested the Respondent to respond to the Claimants’ application as soon as possible (even on an interim basis), such response to be received by the Tribunal not later than 6 January 2012, a deadline later extended at the Respondent’s request to 9 January 2012 (by order dated 6 January 2012);

(D) By letter dated 9 January 2012 (with attachments), the Respondent responded to the Claimants’ application of 4 January 2012, disputing (inter alia) the grounds advanced by the Claimants for converting the Order of 9 February 2011 into an Interim Award and also requesting that the Tribunal vacate that Order;

(E) By letter dated 12 January 2012 (with attachments), the Claimants responded to the Respondent’s said letter dated 9 January 2012, requesting the Tribunal to issue an Award to protect the Claimants’ contract, legal and Treaty rights from imminent and substantial harm, specifically (with footnotes here omitted):

“(1) Declaring that Claimants have met all of the legal requirements for interim measures protection, including a declaration that Claimants have presented a prima facie case on the merits, including prima facie evidence that the claims involved in the Lago Agrio Litigation have been settled and released by the Government, that the Lago Agrio Litigation has been tainted by fraud and/or serious due process violations, and that the Government has violated the Treaty and international law;

(2) Declaring that Respondent has breached its obligations under the Interim Measures Order and international law to “take all measures at its disposal” to suspend or cause to be suspended the enforcement or recognition of the Lago Agrio Judgment within and without Ecuador:

- (a) The suspension of any certificate providing that the judgment is final or enforceable by the Secretariats of all Ecuadorian courts;
- (b) The declaration of a suspension of the Judgment’s enforceability during the pendency of any further legal recourse from the Judgment in Ecuador, including waiver or relief from the bond requirement, whether through an Attorney General opinion under Article 237 of the Ecuadorian Constitution or through other effective means by a Government official;
- (c) The injunction of the Lago Agrio Plaintiffs, the Amazon Defense Front, and any trust established either pursuant to the Judgment or by agreement of the Plaintiffs or their lawyers and representatives, from seeking to recognize or enforce the Judgment anywhere in the world, by the appropriate Government branch or organ;
- (d) The declaration, through its judges or otherwise, that Chevron is not required

to post a bond during any further appeals or legal recourse in Ecuador in order to suspend the Judgment's enforceability, or the undertaking to post a bond or alternative form of security sufficient to relieve Chevron of any bond that might be required by Respondent's judicial branch in order for Chevron to pursue further appeals in Ecuador in a manner that suspends enforcement of the Judgment;

(3) Declaring that: (i) pending the outcome of this arbitration, the Lago Agrio Judgment is not enforceable, within and without Ecuador, because it is inconsistent with Ecuador's obligations under the U.S.-Ecuador BIT and international law, including Article II(7) of the BIT imposing a positive obligation on Ecuador to provide effective means of enforcing rights, both substantive and due-process; and (ii) this declaration is binding not only as a matter of international law, but also as a matter of Ecuadorian law;

(4) Declaring that Respondent has the legal obligation to appear in any proceedings for the enforcement or recognition of the Lago Agrio Judgment within and without Ecuador, and to declare in any such proceedings that the Judgment is not enforceable under Ecuadorian law, and to request that any such proceedings for enforcement or recognition be discontinued or stayed pending the outcome of this arbitration;

(5) Declaring that, on account of the breaches stated in requests (1) and (2), any and all attorneys' fees, costs and other expenses incurred by Claimants in defending, or preparing to defend against, recognition and enforcement actions related to the Lago Agrio Judgment may be damages for which Respondent would be responsible to Claimants under international law;

(6) Reiterating its prior declaration that, if it were established that any judgment made by an Ecuadorian court in the Lago Agrio Case was a breach of an obligation by Respondent owed to Claimants as a matter of international law, any loss arising from the enforcement of such judgment (within and without Ecuador) may be losses for which Respondent would be responsible to Claimants under international law, as expressed in Part Two of the International Law Commission's Articles on State Responsibility; and

(7) Granting any other and further relief that the Tribunal deems appropriate in the circumstances";

(F) By letter dated 13 January 2012, the Respondent replied to the Claimants' said letter of 12 January 2012, disputing (inter alia) the Claimants' application and indicating that it would make a further reply "on or before 24 January 2012";

(G) By order made on 16 January 2012 (as later supplemented), the Tribunal fixed (i) a further procedural meeting to be held on 25 January 2012 (by telephone conference-call); and (ii) an oral hearing to hear the Parties' respective applications to be held in Washington DC, USA on 11 and 12 February 2012 ("the February Hearing");

(H) By letter dated 24 January 2012 (with attachments), as earlier indicated, the Respondent replied further to the Claimants' said letter of 12 January 2012;

(I) The Tribunal held the procedural meeting with the Parties' legal representatives (by telephone conference-call) on 25 January 2012 on procedural arrangements for the February Hearing in regard to the Parties' respective applications for further interim measures by an Award (as set out in the Claimants' letter dated 12 January 2012) and the termination of the Order dated 9 February 2011 (as set out in the Respondent's letter dated 9 January 2012);

**AND WHEREAS:** The Tribunal has considered the Parties' several submissions on their respective applications to the Tribunal and further considered all relevant circumstances current in this arbitration up to the February Hearing;

***(VI) THE TRIBUNAL NOW MAKES THIS FIRST INTERIM AWARD AS FOLLOWS:***

**1. Pursuant to Paragraph (C) of its Order dated 9 February 2011 and upon the following terms, the Tribunal confirms and re-issues such Order as an Interim Award pursuant to Articles 26 and 32 of the UNCITRAL Arbitration Rules, specifically Paragraph (E) of such Order; namely (as here modified):**

**2. Bearing in mind the Respondent's several obligations under the BIT and international law, including the Respondent's obligation to carry out and provide for the enforcement of an award on the merits of the Parties' dispute in these arbitration proceedings (assuming this Tribunal's jurisdiction to make such an award), the Tribunal orders:**

- (i) the Respondent to take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against the First Claimant in the Lago Agrio Case; and**
- (ii) the Respondent's Government shall continue to inform this Tribunal, by the Respondent's legal representatives in these arbitration proceedings, of all measures which the Respondent has taken for the implementation of this Interim Award;**

**pending the February Hearing's completion and any further order or award in these arbitration proceedings;**

**3. This Interim Award is and shall remain subject to modification (including its extension or termination) by the Tribunal at or after the February Hearing; and, in the meantime, any of the Parties may also apply to the Tribunal for such modification upon 72 hours' written notice for good cause shown;**



4. This Interim Award is made strictly without prejudice to the merits of the Parties' substantive and other procedural disputes, including (but not limited to) the Parties' respective applications to be heard at the February Hearing;

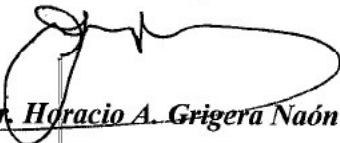
5. This Interim Award shall take effect forthwith as an Interim Award, being immediately final and binding upon all Parties as an award subject only to any subsequent modifications herein provided, whether upon the Tribunal's own initiative or any Party's application; and

6. This Interim Award, although separately signed by the Tribunal's members on three signing pages, constitutes an "interim award" signed by the arbitrators under Article 32 of the UNCITRAL Arbitration Rules.

*PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS*

*DATE: 25 JANUARY 2012*

*THE TRIBUNAL:*

  
*Dr. Horacio A. Grigera Naón*

*Professor Vaughan Lowe*

*V.V. Veeder (President)*

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*Van Kerk Veeder*

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