IN THE MATTER OF
AN ARBITRATION UNDER THE RULES OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

CHEVRON CORPORATION and
TEXACO PETROLEUM COMPANY,
CLAIMANTS,

v.

THE REPUBLIC OF ECUADOR,
RESPONDENT.

CLAIMANTS' REQUEST FOR INTERIM MEASURES

R. Doak Bishop
Wade M. Coriell
Isabel Fernández de la Cuesta
KING & SPALDING
1100 Louisiana, Suite 4000
Houston, TX 77002
(713) 751-3205
(713) 751-3290 (Facsimile)

James Crawford SC
Matrix Chambers
Gray's Inn, London
England WC1R 5LN

Edward G. Kehoe
Caline Mouawad
KING & SPALDING
1185 Avenue of the Americas
New York, NY 10036-4003
(212) 556-2100
(212) 556-2222 (Facsimile)

April 1, 2010

TABLE OF CONTENTS

Page

I. INTRODUCTION AND INTERIM MEASURES REQUESTED

1. Through this Arbitration, Claimants seek to protect and enforce their rights under binding agreements by which the Republic of Ecuador ("ROE" or "Ecuador"), Petroecuador and several local governments settled all environmental claims against Texaco Petroleum Company ("TexPet") and its affiliates, and released them from all liability for environmental impacts in Ecuador. Claimants' rights under these settlement and release agreements include the right to (1) be free of any further claims and obligations concerning environmental remediation in Ecuador (*res judicata*), (2) Ecuador's good faith performance of the contractual and legal commitments by which it agreed that Claimants would not be liable for any further environmental claims, and (3) Ecuador's specific performance of those agreements.

2. Ecuador is violating Claimants' contractual, legal, and Treaty rights by failing to protect Claimants from, and affirmatively seeking to subject them to, the claims and liabilities from which Ecuador previously released Claimants. This is occurring through (1) civil litigation currently pending against Chevron in the Provincial Court of Justice of Sucumbíos in Lago Agrio, Ecuador (Case No. 002-2003-P-CSJNL) (the "Lago Agrio Litigation"), and (2) criminal proceedings pending as *Prosecutorial Investigation No. 09-2008*, Case No. 150-2009 before the National Court of Justice (formerly *Prosecutorial Investigation No. 20-2008 against Engineer Patricio Rivadeneira García, et al.*, Supreme Court of Justice of Quito) against Mr. Ricardo Veiga and Mr. Rodrigo Pérez, two of Claimants' lawyers (the "Criminal Proceedings").

3. In the Lago Agrio Litigation, the 48 nominal Plaintiffs seek to hold Chevron liable for the same claims that Ecuador, Petroecuador, and four municipalities (and their cantons) and two provinces in the former Concession Area settled and released in the agreements that are the subject of this Arbitration. The Plaintiffs in the Lago Agrio Litigation do not seek any individual damages for alleged injuries to themselves or their property. Rather, they purport to act in a representative capacity, bringing public claims to remediate the former Concession Area as well as oil production facilities owned and controlled by Petroecuador. But Ecuador already settled and released those claims, and the Lago Agrio Plaintiffs' claims are barred by *res judicata*.

4. Ecuador has refused to inform the Lago Agrio Court that Claimants have been released from those claims, and it has refused to absolve Claimants from liability for them. In fact, in breach of its good faith duty to protect and defend Claimants' releases, Ecuador has actively supported the Lago Agrio Plaintiffs in their litigation against Chevron. To this end, Ecuador has sought to undermine the settlement and release agreements and has signaled to the courts that the only acceptable outcome in Lago Agrio is a massive judgment against Chevron—and it has done so in an environment in which the Ecuadorian judiciary has no independence from this kind of political pressure in a high-profile case in which the ROE is interested. As part of these efforts, Ecuador has commenced the substantively baseless and procedurally invalid Criminal Proceedings against Claimants' lawyers who signed the settlement and release agreements.

5. Although the Plaintiffs purport to seek environmental remediation, the Lago Agrio Litigation is not about true environmental remediation. It is a coordinated effort by Ecuador and the Plaintiffs' attorneys to extort billions of dollars from a foreign company—a breathtaking sum that bears no relation to the true cost of environmental remediation in the affected region. The Lago Agrio Plaintiffs have refused to seek remediation from Petroecuador, which primarily is responsible for any environmental impacts based on its majority ownership and oversight of the Consortium, its unilateral oil operations for the past 18 years, and its release of Claimants from any further environmental remediation obligations. Instead, the Lago Agrio Plaintiffs have promised Ecuador that they will not seek to hold Ecuador or Petroecuador liable for such remediation or accept any recovery that might be awarded against them—an evident *quid pro quo* for Ecuador's assistance in the litigation against Chevron. And the scheme in which Ecuador and Petroecuador are actively colluding represents, at a minimum, a fraud on the Lago Agrio court. For example, earlier this week, one of the Lago Agrio Plaintiffs' former experts, Charles Calmbacher, testified under oath that the two site inspection reports that the Plaintiffs submitted to the Lago Agrio court bearing his name were fabricated documents that he had never signed or authorized. Further, they contradicted his actual conclusions, which did not find any threat to human health or any need for remediation.

6. Under international law, Claimants are entitled to have their contractual, legal, and Treaty rights under the settlement and release agreements protected by interim measures

7. Under traditional international jurisprudence, interim measures may be awarded when (1) the Tribunal has *prima facie* jurisdiction over the subject matter of the request, (2) there is a threat of substantial or irreparable harm or prejudice to rights capable of being protected by the Tribunal, and (3) urgency exists because the risk of harm to the protectable right will likely occur before the arbitral proceeding is concluded. One tribunal also has considered whether the party seeking interim measures has shown a *prima facie* case and whether the imposition of interim measures would disproportionately burden the other party. Claimants easily satisfy each of these elements.

8. *First*, the Tribunal has *prima facie* jurisdiction over this dispute under Article VI(1)(a) and (c) of the United States-Ecuador Bilateral Investment Treaty ("U.S.-Ecuador BIT" or "BIT"). Both Chevron and TexPet are U.S. companies that have an investment in Ecuador, out of which this investment dispute arises. In a recent UNCITRAL case between the same parties and under the same BIT, the tribunal held that it had jurisdiction over a dispute involving the same underlying oil exploration activities that gave rise to the Lago Agrio Litigation, the Criminal Proceedings, and this Arbitration proceeding. The tribunal found that ongoing litigation relating to those activities formed part of the "lifespan" of the underlying "investment," because an "investment" is not wound up—and thus still exists and is entitled to protection under the BIT—until all litigation arising from or relating to it is completed.[1] Here, the Lago Agrio Litigation and the Criminal Proceedings relate directly to TexPet's oil production and environmental remediation activities in Ecuador, and Claimants' rights in this regard are entitled to protection under the Treaty. The Lago Agrio Litigation and Criminal Proceedings also

[1] **CLA-1**, *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador*, PCA Case No. AA277, UNCITRAL Arbitration Rules, Interim Award, Dec. 1, 2008 ("*Commercial Cases Dispute* Interim Award") (Professor Karl-Heinz Böckstiegel (Chairman); Professor Albert Jan van den Berg; and The Honorable Charles N. Brower), 23-12 MEALEY'S INT'L. ARB. REP. 2 (2008). On March 30, 2010, the tribunal issued a partial award on the merits. It found that the failure of the Ecuadorian courts to rule on certain cases commenced by TexPet violated the BIT provision requiring Ecuador to provide effective means of asserting claims and enforcing rights. It found Ecuador responsible for damages of approximately US$700 million, plus interest, subject to future calculations of taxes and compound interest due on the award. **CLA-47**, *Chevron Corporation and Texaco Petroleum Corporation v. Ecuador*, PCA Case No. AA277, UNCITRAL Arbitration Rules, Partial Award on the Merits, Mar. 30, 2010.

implicate important rights under settlement and release agreements between TexPet and its affiliates, on the one hand, and Ecuador and its State-owned oil company, Petroecuador, on the other hand. Those agreements constitute investment agreements and relate to the original concession agreements, which are also investment agreements under Article VI(1)(a) of the BIT. Thus, this Tribunal has *prima facie* jurisdiction to order interim measures.

9. *Second*, if a judgment from the Lago Agrio Litigation becomes enforceable before this Arbitration concludes, then Claimants' ability to protect the rights that they assert in this Arbitration will be seriously and irreparably impaired. The Plaintiffs' lawyers asserting the Lago Agrio claims have stated publicly that they will attempt to file enforcement proceedings immediately upon issuance of a judgment and will attempt to cause "a significant disruptive impact on the company's operations" worldwide.[2] These attacks would aggravate the harm to Claimants resulting from Ecuador's violations of the rights at issue here.

10. These injuries to Claimants could not be adequately compensated through money damages and, in any event, Ecuador has indicated it will not pay any arbitral awards. Simply put, if a Lago Agrio judgment becomes enforceable, Claimants' rights will be substantially impaired before this Tribunal can decide them. Demonstrating the cooperation between them, both Ecuador and the Lago Agrio Plaintiffs recently filed tandem lawsuits in a U.S. federal court in New York seeking to stop this Arbitration from proceeding.[3] The U.S. Judge dismissed both cases, noting that the argument that "there would be no adverse consequences to Chevron on the rendition of a judgment for billions and billions of dollars against it" is "ludicrous."[4] Moreover, Ecuadorian officials have stated publicly that 90% of any judgment in the Lago Agrio Litigation would go to the ROE itself.[5]

---

[2] **Exhibit C-1**, *Amazon Defense Coalition: Chevron's Recent Setbacks in U.S. Courts Forced Its Hand on Arbitration Claim, Lawyers Say*, Resource Week, Oct. 18, 2009.

[3] **Exhibit C-2**, *Rep. of Ecuador v. Chevron Corp. and Texaco Petroleum Co.*, 09 CV 9958 (LBS), *Yaiguaje et al. v. Chevron Corp. and Texaco Petroleum Co.*, No. 10 CV 316 (LBS), U.S. District Court for the Southern District of New York, Pleadings and Memoranda of Law, and Statement of Facts filed by the Parties; **Exhibit C-3**, *Id.* Mem. and Court Order, Mar. 16, 2010; **Exhibit C-4**, *Id.* Transcript of Hearing, Mar. 10-11, 2010.

[4] **Exhibit C-4**, *Rep. of Ecuador v. Chevron Corp. and Texaco Petroleum Co.*, 09 CV 9958 (LBS), *Yaiguaje et al. v. Chevron Corp. and Texaco Petroleum Co.*, No. 10 CV 316 (LBS), U.S. District Court for the Southern District of New York, Transcript of Hearing, Mar. 10-11, 2010, at 83-84.

[5] **Exhibit C-5**, Press Conference by Prosecutor General Washington Pesántez, Sept. 4, 2009.

11. *Third*, Claimants' request is urgent because the risk of harm or prejudice to their rights is imminent. It is anticipated that the Lago Agrio Court will issue a judgment against Chevron in the near future—notwithstanding the recent recusal of the Judge who was recorded participating with purported representatives of the Ecuadorian government in a bribery scheme. In the recordings, the Judge indicated that a US$27 billion judgment, more or less, likely would be issued against Chevron by the end of 2009. Since that Judge was recused, various government officials have called for a judgment to be entered quickly, and the Plaintiffs' lawyers (who repeatedly have met with and received the public support of Ecuador's President) have predicted that a judgment will be rendered in early 2010. Plaintiffs' lawyers have stated that they intend to commence enforcement and attachment proceedings immediately upon receiving the judgment. When asked by the Judge presiding over the recent federal court proceeding in New York whether the Plaintiffs would stay enforcement of the Lago Agrio judgment pending the outcome of this Arbitration, counsel for the Plaintiffs responded that they would not.[6] Interim measures are required to preclude enforcement of a Lago Agrio judgment pending the outcome of this Arbitration. Furthermore, the Criminal Proceedings, which impair Chevron's ability to defend the Lago Agrio Litigation and threaten the liberty and property of Claimants' attorneys, are expected to conclude well before this Tribunal could issue its final award.

12. *Fourth*, Claimants have pleaded a *prima facie* case which must be accepted as true for purposes of this Request. Claimants have clear and unequivocal rights under the settlement and release agreements that Ecuador is breaching, including the *res judicata* right to be free of any further claims or judgments for environmental impacts arising out of Consortium-related activities. Similarly, Ecuador is breaching its obligations owed to Claimants under the U.S.-Ecuador BIT.

13. *Finally*, an award of interim measures will not cause either Ecuador or the nominal Plaintiffs in the Lago Agrio Litigation to suffer any meaningful harm. Ecuador has no legitimate interest in enforcement of a judgment for claims that it has already released, and the nominal Lago Agrio Plaintiffs do not seek any individual damages for alleged injuries to

[6] **Exhibit C-4**, *Rep. of Ecuador v. Chevron Corp. and Texaco Petroleum Co.*, No. 09 CV 9958 (LBS), *Yaiguaje et al. v. Chevron Corp. and Texaco Petroleum Co.*, No. 10 CV 316 (LBS), U.S. District Court for the Southern District of New York, Transcript of Hearing, Mar. 10-11, 2010, at 84.

themselves or their property. Instead, they bring their claims in a representative capacity for the same community and the same Ecuadorian law claims previously settled and released by Ecuador.

14. For these reasons, Claimants respectfully request the issuance of the following interim measures award concerning the Lago Agrio Litigation and Criminal Proceedings, to protect their contract, legal and Treaty rights from imminent and substantial harm during this Arbitration, and to prevent Ecuador from aggravating this dispute and frustrating the eventual arbitral award:

(a) With respect to the Lago Agrio Litigation, Claimants request that the Tribunal:

(1) Order Ecuador to use all measures necessary to prevent any judgment against Chevron in the Lago Agrio Litigation from becoming final, conclusive or enforceable pending the outcome of this Arbitration; and/or

(2) Order Ecuador to use all measures necessary to enjoin enforcement of any judgment against Chevron rendered in the Lago Agrio Litigation, including enjoining the nominal Plaintiffs from obtaining any related attachments, levies or other enforcement devices, pending the outcome of this Arbitration; and/or

(3) Order Ecuador to make a written representation to any court in which the nominal Plaintiffs attempt to enforce a judgment from the Lago Agrio Litigation, stating that the judgment is not final, enforceable or conclusive pending the outcome of this Arbitration; and/or

(4) Declare that any judgment against Chevron in the Lago Agrio Litigation is neither final, conclusive nor enforceable, pending the outcome of this Arbitration; and/or

(5) Issue an interim award that the Tribunal deems just and reasonable, so as to protect and preserve the rights that Claimants assert in this Arbitration, pending its outcome; and/or

(6) Order Ecuador to refrain from taking any action that would aggravate, exacerbate or extend the dispute in question, threaten the integrity and jurisdiction of this arbitral proceedings or frustrate the effectiveness of any award from this Tribunal.

(b) With respect to the Criminal Proceedings, Claimants request that the Tribunal:

(1) Order Ecuador to stay or suspend the Criminal Proceedings in Ecuador against Messrs. Ricardo Veiga and Mr. Rodrigo Pérez, pending the outcome of this Arbitration; and/or

(2) Order Ecuador not to seek the detention, arrest, or extradition of Messrs. Veiga and Pérez or the encumbrance or seizure of any of their property, pending the outcome of this Arbitration.

II. FACTUAL BACKGROUND CONCERNING THE SETTLEMENT AND RELEASE AGREEMENTS

A. THE CONSORTIUM EXPLORED FOR AND PRODUCED OIL IN THE ORIENTE REGION OF ECUADOR

15. In 1964, Ecuador granted oil exploration and production rights in Ecuador's Oriente region to TexPet and the Ecuadorian Gulf Oil Company through a concession contract,[7] and the venture came to be known as the "Consortium." By 1976, Petroecuador had acquired a 62.5% majority interest in the Consortium, with TexPet retaining a 37.5% minority interest.[8] TexPet was the operator for the Consortium until 1990, when Petroamazonas (a Petroecuador subsidiary) took over that role. In 1992, the concession contract expired, the Consortium ended, and Petroecuador became sole owner of all of the fields and installations. Petroecuador has continued its unilateral oil exploration and production activities in the area since 1992.

16. Throughout the term of the Concession, the government regulated and approved the Consortium's activities.[9] While TexPet acted as operator during most of the Concession, it was the Consortium's owners (including majority owner Petroecuador) that made the operational decisions, enjoyed any profits, and bore any risks and associated liabilities.[10]

---

[7] **Exhibit C-6**, Concession Contract between the Government of Ecuador and TexPet, Feb. 21, 1964.

[8] **Exhibit C-7**, Agreement between the Government of Ecuador and Ecuadorian Gulf Oil Company and Texaco Petroleum Company, Aug. 6, 1973 ("1973 Agreement"), at § 52; **Exhibit C-8**, Agreement among the Government of Ecuador, CEPE and Ecuadorian Gulf Oil Co., May 27, 1977 ("1977 Agreement").

[9] **Exhibit C-9**, *Aguinda et al. v. Texaco Inc.*, No. 93-CIV-7527(VLB) (S.D.N.Y.), *Amicus Curiae* Brief filed by the Republic of Ecuador, Jan. 26, 1994, at 2-4 ("Ecuador strictly regulates the exploration and development of its resources by foreign investors" and the *Aguinda* case "involv[es] conduct . . . extensively regulated by the government of Ecuador.").

[10] **Exhibit C-10**, *Aguinda et al. v. Texaco Inc.,* 142 F.Supp.2d 534 (S.D.N.Y. 2001) ("[t]he record before the Court also clearly establishes that all of the Consortium's key activities, including the decisions and practices here at issue, were managed, directed and conducted by Consortium employees in Ecuador").

B. TEXPET EXITED THE CONSORTIUM IN 1992, REMEDIATED FROM 1995-1998, AND RECEIVED FULL RELEASES OF LIABILITY IN 1998

1. In 1994, TexPet, Petroecuador, and Ecuador Executed a Memorandum of Understanding Setting Forth TexPet's Remediation Obligations

17. When Petroamazonas took over as operator in 1990 and the Concession period neared its end, TexPet and Ecuador agreed to conduct an environmental audit of the Consortium's oilfields, with a view that the Consortium's environmental obligations would be shared jointly by TexPet and Petroecuador according to their respective ownership percentages. Two highly reputable international contractors—one selected by Ecuador for the joint audit and one by TexPet for a concurrent audit for quality control—conducted separate environmental audits to ascertain the scope of environmental impacts from the Consortium's operations. Representatives of the Ministry of Energy, Petroecuador, TexPet and Petroamazonas composed an Environmental Audit Technical Committee that established the Scope of Work for the environmental audits, oversaw its technical aspects, and approved the final reports.[11]

18. Both audits concluded that the Consortium had generally adhered to standard industry practices.[12] Nonetheless, both audits identified certain areas where environmental remediation would be useful. The audits estimated that the total cost to remediate the environmental impacts would be approximately US$8 million to US$13 million.[13]

19. In November 1993, while TexPet negotiated with Ecuador about the Consortium's remediation obligations, U.S. plaintiffs' lawyers filed a putative class action lawsuit against Texaco Inc. in federal court in New York (the "*Aguinda* Litigation"). The *Aguinda* plaintiffs claimed to represent a class of 30,000 Ecuadorians who allegedly had been harmed by the Consortium's operations.[14] Although the plaintiffs also claimed "equitable relief to remediate their environment," the action sought primarily "damages for injury to [the

---

[11] **Exhibit C-11**, HBT Agra Ltd., Draft Audit: Environmental Assessment of the Petroecuador-Texaco Consortium Oil Fields, Oct. 1993 ("HBT Agra Draft Audit"), Vol. I, at 1-3.

[12] **Exhibit C-12**, Fugro McClelland, Final Environmental Field Audit for Practices 1964-1990, Oct. 1992 ("Fugro McClelland Final Audit"), at E-1; **Exhibit C-11**, HBT Agra Draft Audit at 5-23; **Exhibit C-13**, HBT Agra, Environmental Audit and Assessment of the Petroecuador-Texaco Consortium Oil Fields Until June 30, 1990, Mar. 19, 1997, at 5-19.

[13] **Exhibit C-12**, Fugro McClelland Final Audit at 7-13; **Exhibit C-11**, HBT Agra Draft Audit at 4-39.

[14] **Exhibit C-14**, *Aguinda et al. v. Texaco Inc.,* No. 93-CIV-7527 (S.D.N.Y.) Complaint, Nov. 3, 1993, ¶¶ 3, 30.

plaintiffs'] person[s] and property."[15] The sole defendant was Texaco Inc., which the plaintiffs claimed made or controlled the decisions of TexPet, its fourth-tier subsidiary.

20. In 1994, Ecuador and TexPet identified a set of remediation obligations corresponding generally to TexPet's minority ownership interest in exchange for TexPet being released from any other remediation obligations for environmental impact. The parties then developed and defined, on a site-by-site basis, the technical criteria for TexPet's remedial responsibility.

21. In December 1994, Ecuador, Petroecuador, and TexPet signed a Memorandum of Understanding ("MOU") in which they agreed to "*negotiate the full and complete release of TexPet's obligations for environmental impact arising from the operations of the Consortium*."[16] TexPet's release would be accomplished in two steps:

> "(a) TEXPET *shall not be responsible for the environmental impact or effects not included in the Scope of Work, and shall be released from any liability concerning such impact upon execution of the* Contract . . .
>
> (b) *The release for the work to be performed in accordance with said Scope of Work shall discharge Texpet from any liability for environmental impact arising from the operations of the Consortium*, and shall be effective upon the notification from the Contractor that it has performed the work, and by acceptance and certification issued by the Ministry and PETROECUADOR to the effect that the work has been performed."[17]

22. The MOU specifically noted that the scope of work for which TexPet was responsible "t[ook] into consideration the inhabitants of the Oriente Region."[18] It also stated that its provisions "shall apply without prejudice to the rights possibly held by third parties for the

---

[15] **Exhibit C-15**, *Aguinda et al. v. Texaco Inc.*, No. 93-CV-7527 (S.D.N.Y. 1994), Plaintiffs' Mem. of Law in Opposition to Texaco's Motion to Dismiss for Failure to Join Indispensable Parties, Mar. 10, 1994, at 3. *See also* **Exhibit C-16**, *Aguinda et al. v. Texaco Inc.*, No. 93-CV-7527 (S.D.N.Y.), Plaintiffs' Mem. of Law in Opposition to Texaco's Motion to Dismiss, Feb. 20, 1996, at 50.

[16] **Exhibit C-17**, Memorandum of Understanding between the Republic of Ecuador, PetroEcuador and Texaco Petroleum Co., Dec. 14, 1994, at Art. IV ("MOU") (emphasis added).

[17] *Id.* at Arts. IV(a) & (b) (emphasis added).

[18] *Id.* at Art. V.

impact caused as a consequence of the operations of the former Petroecuador-Texaco Consortium."[19] This was consistent with Ecuadorian law at the time,[20] namely that the ROE could not release TexPet from individual claims for personal injury or damage to their private property.[21] But a settlement with Ecuador would, and subsequently did, fully discharge TexPet and its affiliates from any and all responsibility that may have existed for environmental impacts to the community in general, including any environmental remediation and any general public health issues. As Ecuador's Ambassador to the United States noted in a letter to the *Aguinda* court, Ecuador was the sole "legal owner of the rivers, streams and natural resources and all public lands where the oil producing operations involved in this litigation are located and is the legal protector of the quality of air, water, atmosphere and environment within its frontiers . . . the plaintiffs' attorneys in this matter are attempting to usurp rights that belong to the government of the Republic of Ecuador under the Constitution and laws of Ecuador and under international law."[22] The only potential claims not settled were those for individual personal injuries or private property damages.

2. *In 1995, TexPet, Petroecuador and Ecuador Executed a Scope of Work and Settlement Agreement Specifically Detailing TexPet's Remediation Obligations and Releasing TexPet from All Other Environmental Liabilities*

23. On March 23, 1995, Ecuador, Petroecuador, and TexPet signed a Scope of Work identifying the particular sites and projects that would constitute TexPet's remediation responsibility and agreed on how the remediation would be performed.[23] TexPet also agreed to

---

[19] *Id.* at Art. VIII.

[20] **Exhibit C-18**, Letter from Rodrigo Pérez to the Undersecretary of the Environment, Dec. 13, 1994 (stating that this provision "merely confirms what is already established by the Ecuadorian laws").

[21] In a letter dated December 17, 1998, Ecuador's Ministry of Foreign Relations acknowledged that Ecuadorian citizens "have the legal right to bring actions for compensation to which they may be entitled on account of the damage to *their property and personal health*" and that the settlement agreements did not affect those rights. **Exhibit C-19**, *Aguinda et al. v. Texaco Inc.*, No. 93-CV-7527 (S.D.N.Y.), Plaintiffs' Mem. of Law in Opposition to Texaco's Motion to Dismiss, Feb. 20, 1996, Jan 11, 1999, Exhibit 21 (emphasis added).

[22] **Exhibit C-20**, Letter from Amb. Edgar Terán to Judge Rakoff, June 10, 1996. *See also* **Exhibit C-21**, *Sovereignty of the Country at Stake: Interview of Ambassador Terán*, LA OTRA, May 25, 1994 ("Nobody can seek compensation for damages on property belonging to the Ecuadoran Government. Only the Government can litigate. No third parties.").

[23] **Exhibit C-22**, Scope of the Environmental Remedial Work, Mar. 23, 1995 ("Scope of Work"), Annex "A" to Contract for Implementing of Environmental Remedial Work and Release from Obligations, Liability, and Claims, May 4, 1995.

finance certain socio-economic and community development projects.[24] Finally, TexPet agreed to negotiate with the various local governments of the Oriente region where the Consortium had operated.[25]

24. On May 4, 1995, Ecuador, Petroecuador, and TexPet executed a settlement agreement (the "1995 Settlement Agreement"), providing that "the scope of the Environmental Remedial Work to be undertaken by Texpet to discharge all of its legal and contractual obligations and liability [for] Environmental Impact arising out of the Consortium's operations has been determined and agreed to by TexPet, the Government and Petroecuador as described in this Contract," and that "Texpet agrees to undertake such Environmental Remedial Work in consideration for being released and discharged of all its legal and contractual obligations and liability for Environmental Impact arising out of the Consortium's operations."[26] The 1995 Settlement Agreement defined the term "Environmental Impact" broadly to include "[a]ny solid, liquid, or gaseous substance present or released into the environment in such concentration or condition, the presence or release of which causes, or has the potential to cause harm to human health or the environment."[27]

25. "[I]n consideration for Texpet's agreement to perform the Environmental Remedial Work in accordance with the Scope of Work set out in Annex A, and the Remedial Action Plan," Article V of the 1995 Settlement Agreement ("RELEASE OF CLAIMS") set forth Ecuador's and Petroecuador's sweeping releases of liability for TexPet and its broadly-defined agents and principals. Article V expressly released "all the Government's and Petroecuador's claims against the Releases for Environmental Impact arising from the Operations of the Consortium, except for those related to the obligations contracted hereunder for the performance by Texpet of the Scope of Work (Annex A) which shall be released as the Environmental

---

[24] *Id.* at Arts. VII.A and VII.B.

[25] *Id.* at Art. VII.C.

[26] **Exhibit C-23**, Contract for Implementing of Environmental Remedial Work and Release from Obligations, Liability and Claims between the Republic of Ecuador and Texaco Petroleum Company, May 4, 1995 ("1995 Settlement Agreement"), at 3.

[27] *Id.* at 4.

Remedial Work is performed to the satisfaction of the Government and Petroecuador . . .".[28] The emphatic, express language underscores the all-encompassing nature of the release:

> The Government and Petroecuador intend *claims* to mean any and all claims, rights to claims, debts, liens, common or civil law or equitable causes of actions and penalties, whether sounding in contract or tort, *constitutional, statutory, or regulatory causes of action* and penalties . . . costs, lawsuits, settlements and attorneys' fees (past, present, future, known or unknown), that the Government or Petroecuador have, or ever may have against each Releasee for or in any way related to contamination, that have or ever may arise in the future, directly or indirectly arising out of Operations of the Consortium, *including but not limited to consequences of all types of injury that the Government or Petroecuador may allege concerning persons, properties, business, reputations, and all other types of injuries that may be measured in money, including but not limited to, trespass, nuisance, negligence, strict liability, breach of warranty, or any other theory or potential theory of recovery*.[29]

26. Thus, as the MOU anticipated, the 1995 Settlement Agreement (1) immediately released TexPet from all of Ecuador's and Petroecuador's claims based on Environmental Impact, except for claims related to performance of the Scope of Work; and (2) provided that TexPet would be released from all environmental liability at the sites that were the subject of the Scope of Work upon completion of the remediation obligations described therein. The claims covered by the 1995 Settlement Agreement included "*causes of action under Article 19(2) of the [1978] Political Constitution of the Republic of Ecuador*,"[30] which guaranteed all Ecuadorians the "*right to live in an environment free of contamination*" and placed the "*duty [on] the State to ensure that this right will not be affected and to watch over the protection of nature*."[31]

3. In 1996, TexPet Entered into Settlement and Release Agreements with Ecuador's Political Subdivisions and Was Fully Released from All Environmental Liability

27. TexPet also settled all existing disputes with four municipalities in the Oriente region (where the Concession Area was located) that had filed lawsuits seeking compensation for

---

[28] *Id.* at Art. V, ¶ 5.1.

[29] *Id.* at Art. V, ¶ 5.2 (emphasis added).

[30] *Id*.

[31] **Exhibit C-24**, 1979 Political Constitution of the Republic of Ecuador, at Art. 19.2 (emphasis added).

alleged environmental harm resulting from the Consortium's operations,[32] and received releases of potential claims for environmental impact from two provinces (together, the "1996 Provincial and Municipal Settlements").[33] The Provincial and Municipal Settlements sought, *inter alia*, "[t]o end, through this Contract, the civil lawsuit filed by the Municipality of Lago Agrio [and the other municipalities] against Texaco Petroleum Company . . . the purpose of which was to obtain payment of indemnification for alleged environmental damages in the jurisdiction of the Canton of Lago Agrio [and the other municipalities], as a result of the actions performed by Texpet in said area."[34] The parties specifically designed these settlements to "meet[] the interests of The Municipality and of its citizens as to any claim they may have against TexPet."[35] As consideration, the municipalities expressly agreed:

> *to exempt, release, exonerate and relieve forever Texaco Petroleum Company, Texas Petroleum Company [and its agents and principals] from any responsibility, claim, request, demand or complaint, be it past, current or future, for any and all reasons* related to the actions, works or omissions arising from the activity of the aforementioned companies in the territorial jurisdiction of the Canton of Lago Agrio, Province of Sucumbíos, which in part comprises the area of the oil concession legally granted to TexPet by the Government of the Republic of Ecuador by contract signed on the sixth day of August, nineteen hundred seventy-

---

[32] Ecuador has acknowledged on various occasions that these actions were "brought on behalf of all the members of the plaintiff community and organizations, alleging environmental contamination in the Oriente." **Exhibit C-25**, *Rep. of Ecuador and Petroecuador v. ChevronTexaco Corp. and Texaco Petroleum Co.*, No. 04 Civ. 8378 (LBS), Plaintiffs' Local Civil Rule 56.1 Statement of Undisputed Material Facts on Motion for Summary Judgment, Jan. 16, 2007, at ¶¶ 100-101; **Exhibit C-2**, *Rep. of Ecuador v. Chevron Corp. and Texaco Petroleum Co.*, No. 09 CV 9958 (LBS), *Yaiguaje et al. v. Chevron Corp. and Texaco Petroleum Co.*, No. 10 CV 316 (LBS), ROE Response in Opp'n to Respondents' Local Rule 56.1 Counterstatement of Facts, Mar. 5, 2010, ¶ 12 (characterizing the Municipal complaints as "popular actions" seeking "damages" and court orders to "clean[ ] up . . . our environment."). *See also* **Exhibit C-26**, Court Approval of Settlement with Municipality of Lago Agrio, Sept. 19, 1996 (characterizing the relief sought by the municipality as "the clean-up of the contaminated areas, . . . the restoration of health of the affected population, animals and species").

[33] **Exhibit C-27**, Release with Municipality of Joya de los Sachas, May 2, 1996; **Exhibit C-28**, Release with Municipality of Shushufindi, May 2, 1996; **Exhibit C-29**, Release with Municipality of the Canton of Francisco de Orellana (Coca), May 2, 1996; **Exhibit C-30**, Release with Municipality of Lago Agrio, May 2, 1996; **Exhibit C-31**, Contract of Settlement and Release between Texaco Petroleum Company and the Provincial Prefect's Office of Sucumbíos, May 2, 1996; **Exhibit C-32**, Instrument of Settlement and Release from Obligations, Responsibilities, and Claims between the Municipalities Consortium of Napo and Texaco Petroleum Company, Apr. 26, 1996.

[34] **Exhibit C-30**, Release with Municipality of Lago Agrio, *supra* note 33, Point 3.1.

[35] **Exhibit C-33,** Sworn statement of Raúl Avilés Puente, Mayor of the Council of the Municipality of Lago Agrio, May 2, 1996, ¶ 3.

> three, *especially concerning damages possibly caused to the environment in said cantonal jurisdiction of the Municipality.*[36]

Furthermore, the parties agreed that "*pursuant to Article 2386* [current Article 2362] *of the Civil Code, this settlement shall have for the parties the effect of res judicata before the highest court*."[37]

28. Courts in each of the respective municipalities or cantons where lawsuits had been brought approved the respective settlements.[38] When a subsequent Mayor in the Municipality of Lago Agrio challenged the terms of the Lago Agrio municipal settlement, the court dismissed the challenge on the grounds that it was *res judicata.*[39]

4. By 1998, TexPet Had Completed its Remediation Obligations, Funded Additional Community Projects under the 1995 Settlement Agreement, and Was Fully Released from All Environmental Liability

29. To perform the remediation under the 1995 Settlement Agreement, TexPet selected—from a list that Ecuador provided and after a bidding process—Woodward-Clyde, one of the largest and most reputable environmental engineering firms in the world. Woodward-Clyde investigated the sites listed in the Scope of Work and developed a Remedial Action Plan. The Remedial Action Plan identified the specific pits at each site listed in the Scope of Work requiring remediation under the 1995 Settlement Agreement's criteria and clarified the particular remedial actions. In September 1995, Ecuador, Petroecuador, TexPet, and Woodward-Clyde signed and approved the Remedial Action Plan.[40]

---

[36] **Exhibit C-30**, Release with Municipality of Lago Agrio, at Point FIFTH (emphasis added).

[37] *Id.* Point SEVENTH (emphasis added). **Exhibit C-34**, Ecuadorian Civil Code, at Art. 2362 (formerly Art. 2386) ("A settlement has the *res judicata* effect of a final [non-appealable] instance decision, but a declaration of nullity or rescission may be requested pursuant to the preceding articles.").

[38] **Exhibit C-35**, Court Approval of Settlement with Municipality of La Joya de los Sachas, June 12, 1996; **Exhibit C-36**, Court Approval of Settlement with Municipality of Francisco de Orellana, June 25, 1996; **Exhibit C-37**, Court Approval of Settlement with Municipality of Shushufindi, May 8, 1996; **Exhibit C-26**, Court Approval of Settlement with Municipality of Lago Agrio, Sept. 19, 1996.

[39] **Exhibit C-38**, Decision of the Nueva Loja Court, Oct. 1, 1996; **Exhibit C-39**, Decision of the Nueva Loja Court, Oct. 10, 1996; **Exhibit C-40**, Decision of the Nueva Loja Court, Oct. 23, 1996; **Exhibit C-41**, Decision of the Nueva Loja Court, Feb. 27, 1997.

[40] **Exhibit C-42**, Remedial Action Plan for the Former Petroecuador-TexPet Consortium, Sept. 8, 1995 ("Remedial Action Plan").

30. Between October 1995 and September 1998, Woodward-Clyde conducted all of the remediation required by the 1995 Settlement Agreement and the Remedial Action Plan.[41] In all, TexPet invested approximately US$40 million for environmental remediation and various community development projects under the 1995 Settlement Agreement and other agreements.

31. Ecuador's responsible ministries and agencies oversaw, inspected, and approved all of the remediation. From October 1995 to September 1998, Ecuador issued nine *actas* signed by Ecuador's representatives, an inspector from the National Directorate of Hydrocarbons, and a representative of Petroecuador's Environmental Protection Unit, as well by two TexPet representatives. Each *acta* described the work that was completed and certified Ecuador's agreement that TexPet had completed the remediation of the pits pursuant to the terms of the agreement.[42] Each *acta* in turn was supported by hundreds of certification documents for each site.

32. On September 30, 1998, Ecuador, Petroecuador, and TexPet executed the *Acta Final* (the "1998 Final Release Agreement") certifying that TexPet had performed all of its obligations under the 1995 Settlement Agreement and fully releasing it from all environmental liabilities arising from the Consortium's operations.[43] Ecuador and Petroecuador retained responsibility for any remaining environmental impact. The 1998 Final Release Agreement sets forth an additional broad release of liability:

---

[41] **Exhibit C-43**, Woodward-Clyde International's Final Report on Texaco's Remedial Action Project in Ecuador, May 2000, at 9-1, 9-2, 3-3, 6-2.

[42] **Exhibit C-44**, Acta 1, Ministry of Energy and Mines, Feb. 26, 1996; **Exhibit C-45**, Acta 2, Ministry of Energy and Mines, Mar. 14, 1996; **Exhibit C-46**, Acta 3, Ministry of Energy and Mines, Apr. 11, 1996; **Exhibit C-47**, Acta 4, Ministry of Energy and Mines, July 24, 1996; **Exhibit C-48**, Acta 5, Ministry of Energy and Mines, July 24, 1996; **Exhibit C-49**, Acta 6, Ministry of Energy and Mines, Nov. 22, 1996; **Exhibit C-50**, Acta 7, Ministry of Energy and Mines, Mar. 20, 1997; **Exhibit C-51**, Acta 8, Ministry of Energy and Mines, May 14, 1997; **Exhibit C-52**, Acta 9, Ministry of Energy and Mines, Oct. 16, 1997.

[43] **Exhibit C-53**, Final Certification Between the Republic of Ecuador, Petroecuador, PetroProducción and TexPet, Sept. 30, 1998 ("1998 Final Release Agreement"). The 1998 Final Release Agreement states that "[t]he performance of the Contract has been analyzed once again by the Inter-Institutional Commission comprised of delegates of the Undersecretariat of the Environment of the Ministry of Energy and Mines, National Department of Hyrdocarbons and PETROPRODUCCION, Contract Supervisors," and specifically attests to TexPet's satisfactory completion of its remediation obligations under the 1995 Settlement Agreement, noting that "all the works performed were already approved in the 9 Final Documents (Partial) that were signed by the Ecuadorian Government and TEXPET." *Id.* at Art. II(1).

> In accordance with that agreed in the Contract for Implementing of Environmental Remedial Work and Release from Obligations, Liability and Claims, specified above, *the Government and PETROECUADOR proceed to release, absolve and discharge TEXPET* [and its agents and principals] *forever, from any liability and claims by the Government of the Republic of Ecuador, PETROECUADOR and its Affiliates, for items related to the obligations assumed by TEXPET in the aforementioned Contract, which has been fully performed by TEXPET,* within the framework of that agreed with the Government and PETROECUADOR; for which reasons the parties declare the Contract dated May 4, 1995, and all its supplementary documents, scope, acts, etc., fully performed and concluded.[44]

33. Shortly thereafter, Ecuador's Ambassador Ivonne Baki informed the U.S. court in *Aguinda* that Ecuador had "absolved, liberated and forever freed TEXPET [and its affiliates and principals] of any claim or litigation by the Government of the Republic of Ecuador concerning the obligations acquired by TEXPET in the fore-mentioned contract."[45]

34. It is clear that Ecuador and Petroecuador—not Claimants—are responsible for all remaining environmental remediation in the affected areas, for which the Lago Agrio Plaintiffs seek to hold Claimants responsible.

5. Ecuador's Current Environmental Remediation Programs

35. Petroecuador did not begin to remediate its share of the Consortium's environmental impacts, or impacts that Petroecuador solely caused after 1992, until late 2006.[46] In testimony before Ecuador's Congress in May 2006, Ecuador's National Director of Environmental Protection Management, Manuel Muñoz, confirmed that TexPet "*completed the remediation of the pits that were their responsibility . . . but Petroecuador, during more than*

---

[44] **Exhibit C-53**, 1998 Final Release Agreement, at § IV ("Release from Obligations, Liabilities and Claims") (emphasis added).

[45] **Exhibit C-54**, *Aguinda et al. v. Texaco Inc.*, No. 93-CV-7527 (S.D.N.Y.), Letter from Amb. Ivonne Baki to the U.S. federal district court, Nov. 11, 1998.

[46] As sole operator and owner since 1992 of the former Consortium sites, Petroecuador has developed one of the worst environmental records in the world. *See* **Exhibit C-55**, Bret Stephens, *Amazonian Swindle*, WALL STREET JOURNAL, Oct. 30, 2007. *See also* **Exhibit C-56**, *Ecuadorian Farce*, LATIN BUSINESS CHRONICLE, Apr. 7, 2008 (saying that Petroecuador is "clearly a major and serial contaminator"); **Exhibit C-57**, *Ecuador's Pathetic Tactics*, LATIN BUSINESS CHRONICLE, Sept. 15, 2008 (noting that Petroecuador caused 1,000 oil spills between 2002 and 2007, accounting for 90% of all oil spills in Ecuador).

three decades, had done absolutely nothing with regard to the pits that were the state-owned company's responsibility to remediate."[47]

36. Around this time, Petroecuador initiated a program called Project for Elimination of Pits in the Amazon District ("PEPDA") to remediate all environmental impacts in the Oriente region of Ecuador arising from oil production activities, including in the former Concession Area, by the end of 2010.[48] The public announcement of the program on October 5, 2006 stated that the project was aimed in part at remediating Petroecuador's share of the Consortium pits: "Through a 1995 agreement between the Ecuadorian State and Texaco, the company [Texaco] started an Environmental Remediation Plan in order to correct the effects of its operations by remediating 165 pits. The State owned PETROECUADOR, through its subsidiary Petroproducción, continues with the cleanup of the remaining 264 pits which were not treated by Texaco."[49] PEPDA's budget for remediating not only the pits in the former Concession Area, but also the expanded area that Petroecuador developed after the Concession ended in 1992, totaled US$121 million.[50] President Correa assured that "national experts have the technical capacity to perform the remediation at a cost less than that of a private company."[51]

37. On June 21, 2009, Ecuador's Ministry of the Environment announced a comprehensive remediation plan to replace PEPDA. The new program is focused on all areas in Ecuador impacted by petroleum production, including former Consortium sites, and will be conducted from 2009 to 2013 at an expected total cost of US$96.74 million.[52] On November 7,

---

[47] **Exhibit C-58,** DINAPA's Muñoz Appears Before Congress (emphasis added). *See also* **Exhibit C-59**, *Petroecuador has started remediation of Texaco's pits*, LA HORA, Mar. 12, 2006 ("Of the total pits, 33% are Texaco's responsibility, and the rest are the responsibility of Petroecuador . . . .").

[48] **Exhibit C-60**, "Timeline for Elimination of Environmental Liabilities," Annex to PEPDA 2007 Annual Report, at 1-2.

[49] **Exhibit C-61**, *Petroproducción Eliminará 264 Piscinas con Desechos en la Amazonía*, EL COMERCIO, Oct. 5, 2006.

[50] **Exhibit C-60**, "Timeline for Elimination of Environmental Liabilities," Annex to PEPDA 2007 Annual Report, at 2.

[51] **Exhibit C-62**, *We have the technical capacity to remediate the Amazon*, PETROLEO ACTUALIDAD, May 2007.

[52] **Exhibit C-63**, *State Assumes Environmental Remediation*, EL UNIVERSO, June 21, 2009.

2009, President Correa stated that Petroecuador will remediate environmental impacts at all remaining sites in the Oriente over the next seven to ten years.[53]

C. IN 2001, THE U.S. FEDERAL COURT IN *AGUINDA* DISMISSED THE CLAIMS AGAINST TEXACO INC. ARISING FROM THE CONSORTIUM'S OPERATIONS ON *FORUM NON CONVENIENS* GROUNDS

38. In 2001, the U.S. federal court dismissed the *Aguinda* Litigation on *forum non conveniens* grounds.[54] The Court found that the plaintiffs "have wholly failed, despite years of discovery, to adduce competent evidence to support" their claims against Texaco: "No one from Texaco, or indeed, anyone else operating in the United States, made any material decisions as to the Consortium's activities and practices that are at issue here."[55] The Court further found that "[t]he record . . . clearly establishes that all of the Consortium's key activities, including the decisions and practices here at issue, were managed, directed and conducted by Consortium employees in Ecuador."[56]

39. The Court also made key findings regarding Ecuador's role: "*[O]n any fair view of the evidence so far adduced in this case, the alleged preference given by the Consortium to oil exploitation over environmental protection was a conscious choice made by the Government of Ecuador in order to stimulate its economy*."[57] The Court noted that Ecuador had the "primary" role in "authorizing, directing, funding, and profiting from" the Consortium's activities. [58]

40. As a condition of dismissal for *forum non conveniens*, Texaco was required to consent to be sued in Ecuador "on the[] claims (or their Ecuadorian equivalents)" set forth in the complaint. [59] Texaco also was required to waive the applicable statute of limitations for 60

---

[53] **Exhibit C-64**, Presidential Weekly Radio Address at Joya de los Sachas, Nov. 7, 2009.

[54] **Exhibit C-10**, *Aguinda et al. v. Texaco Inc.,* 142 F.Supp.2d 534 (S.D.N.Y. 2001). This decision was affirmed on appeal by the United States Second Circuit Court of Appeals. **Exhibit C-65**, *Aguinda et al. v. Texaco Inc.*, 303 F.3d 470 (2d Cir. 2002).

[55] **Exhibit C-10**, *Aguinda et al. v. Texaco Inc.,* 142 F.Supp.2d 534, 548 (S.D.N.Y. 2001).

[56] *Id*.

[57] *Id.* at 551 (emphasis added).

[58] *Id.* at 550-51.

[59] *Id.* at 539.

days.[60] The Second Circuit Court of Appeals later required extending the waiver to one year precisely because of the individual nature of the claims: "In the district court, timely claims were brought on behalf of nearly 55,000 plaintiffs. In Ecuador, because class action procedures are not recognized, signed authorizations would need to be obtained for *each individual plaintiff*. This presents a formidable administrative task for which we believe 60 days is inadequate time."[61] Thus, it was understood that the plaintiffs would file individual claims for personal injury and property damage against Texaco. Texaco promptly notified the plaintiffs that it had designated an agent for service of process in Ecuador.[62]

D. IN 2001, TEXACO INC. MERGED WITH A SUBSIDIARY OF CHEVRON CORPORATION

41. On October 9, 2001, Texaco Inc. merged with a wholly-owned subsidiary of Chevron Corporation called Keepep Inc. As a result of that transaction, Texaco Inc. absorbed Keepep. Accordingly, Texaco Inc. survived the merger and became a wholly-owned subsidiary of Chevron Corporation, retaining its independent legal identity.[63]

E. IN 2003, PLAINTIFFS FILED A NEW AND DISTINCT CASE IN ECUADOR AGAINST CHEVRON—NOT TEXPET OR TEXACO INC.—ASSERTING CLAIMS UNDER THE EMA

42. In May 2003, a group of 48 Ecuadorian Plaintiffs who differed from, but overlapped with, the *Aguinda* plaintiffs filed the Lago Agrio Litigation in the Superior Court of Nueva Loja, Ecuador, against Chevron Texaco Corporation (not against Texaco Inc. or TexPet).[64]

---

[60] *Id*.

[61] **Exhibit C-65**, *Aguinda et al. v. Texaco Inc.*, 303 F.3d 470, 479 (2d. Cir. 2002) (emphasis added).

[62] **Exhibit C-66**, Letter from R. Marooney to J. Kohn and C. Bonifaz, Oct. 11, 2002; **Exhibit C-67**, Letter from R. Marooney to J. Kohn and C. Bonifaz, Jan. 2, 2003.

[63] *See* **Exhibit C-68**, Certificate of Merger filed with the State of Delaware, Oct. 9, 2001; **Exhibit C-69**, Form 8-K, Chevron Corp – CVX, Oct. 9, 2001, at 2; **Exhibit C-70**, Form 10-Q, Chevron Corp. – CVX, Nov. 13, 2001, at 5, 15.

[64] **Exhibit C-71**, *Lawsuit for Alleged Damages filed before the President of the Superior Court of "Nueva Loja," in Lago Agrio, Province of Sucumbíos; on May 7, 2003, by 48 Inhabitants of the Orellana and the Sucumbíos Province*, Superior Court of Nueva Loja, Complaint, May 7, 2003 ("Lago Agrio Complaint"). The name of the court has since been changed to the Provincial Court of Justice of Sucumbíos. ChevronTexaco Corporation has since changed its name to Chevron Corporation.

43. The Lago Agrio Litigation differs significantly from the *Aguinda* Litigation. First, Chevron is the sole defendant, while Texaco Inc. was the sole defendant in *Aguinda*. When Chevron answered the Lago Agrio complaint, it objected to the court's jurisdiction, pointing out that it is not the same corporation as Texaco Inc.[65] The Lago Agrio court has never ruled on this objection.

44. Second, the Lago Agrio claims are different from the claims in the *Aguinda* Litigation. Unlike the *Aguinda* plaintiffs, the Lago Agrio Plaintiffs do not seek any individual damages for alleged injuries to themselves or their property. Rather, the Lago Agrio Plaintiffs, purporting to represent the larger community, brought a public action for remediation of the alleged impacts by the Consortium's operations, including the "elimination or removal of the contaminant elements that still threaten the environment and the health of the inhabitants," and the "reparation of the environmental damages according to Article 43 of the [Law for Environmental Management]."[66] Article 43 of the 1999 Environmental Management Act (the "EMA") provides: "The individuals, legal entities, or human groups linked by a common interest and affected directly by the harmful act or omission may file before the court with jurisdiction actions for damages and for deterioration caused to health or the environment, including biodiversity and its constituent elements."[67]

45. The Lago Agrio Complaint purports to designate the Amazon Defense Front (*Frente de Defensa de la Amazonía*, sometimes called the Amazon Defense Coalition) as sole beneficiary of any proceeds resulting from the Litigation. The Amazon Defense Front is an

---

[65] **Exhibit C-72**, *Lawsuit for Alleged Damages filed before the President of the Superior Court of "Nueva Loja," in Lago Agrio, Province of Sucumbíos; on May 7, 2003, by 48 Inhabitants of the Orellana and the Sucumbíos Province*, Superior Court of Nueva Loja, Chevron Answer to Lago Agrio Complaint, Oct. 21, 2003.

[66] **Exhibit C-71**, Lago Agrio Complaint, *supra* note 64 at 22-25.

[67] **Exhibit C-73**, 1999 Environmental Management Act, Official Registry No. 37, July 30, 1999 ("1999 EMA" or "EMA"), at Art. 43. *See also* **Exhibit C-274,** First Debate, Minutes No. 8, Aug. 19, 1996, at 39) (in which Representative Saltos Galarza viewed the EMA as "a historic step" and argued that "one can not only proceed through individual rights as currently established, but also that a step be taken toward a different concept that is coming up in other countries, where collective rights also exist[.]"); **Exhibit C-275,** Second Debate, Minutes No. 105, June 10, 1999, at 35 (in which Representative Rosero Gonzalez opposed enactment of the new law, saying it was "inconceivable" that "twelve and a half million of us Ecuadorians may suddenly be heard in a personal motion of an environmental nature without any prior appeal or background.").

Ecuadorian organization formed to support the Plaintiffs' lawsuit,[68] and Claimants believe that it is partly funding the Lago Agrio Litigation. Despite its stated goal to "protect" and "defend" the people and the environment of the Ecuadorian Amazon,[69] the Amazon Defense Front has not taken the most obvious step of pursuing legal action against Petroecuador, the Consortium's majority owner and the sole owner and operator of the former Concession Area for almost 20 years. Instead, the Plaintiffs' then-lead attorney stated in a published interview that he had "presented the Attorney General with notarized documents in which the indigenous people refused to pursue any legal action against the State . . . . [I]f the U.S. court finds both Petroecuador and Texaco liable, we will not accept the percentage of the claim assigned to [Petroecuador]."[70]

46. Ecuador's Prosecutor General, Washington Pesántez, has stated that 90% of the proceeds from any judgment against Chevron would be delivered to "the State to remediate or bio-remediate."[71] No matter how the judgment is distributed, it is clear that Ecuador has a direct and substantial financial interest in the outcome of the case.

47. On October 6, 2003, Chevron notified Ecuador that the Lago Agrio claims clearly fall within the scope of the 1995 Settlement Agreement and the 1998 Final Release Agreement, and requested that Ecuador: (1) notify the Lago Agrio Court that neither Chevron, Texaco Inc., nor TexPet is liable for environmental damage or for remediation arising from the operations of the former Consortium; and (2) indemnify, protect and defend the rights of Chevron, Texaco, and TexPet in connection with the Lago Agrio Litigation.[72] Ecuador failed to take either action.

---

[68] **Exhibit C-71**, Lago Agrio Complaint at 25. Mr. Bonifaz told a U.S. federal judge that the Amazon Defense Front is a "powerful political force" and that plaintiffs in his separate case could not publicly disclose their names because they would face "harassment and retaliation, including physical retaliation" by the Amazon Defense Front. **Exhibit C-74**, *Jane Doe I., et al. v. Texaco Inc.*, No. C 06-2820 (N.D. Cal. 2006) Declaration of Cristóbal Bonifaz in Support of Plaintiffs' Renewed Motion to Proceed with Action Using Pseudonyms, June 9, 2006, ¶ 4.

[69] **Exhibit C-75,** Bylaws of the Amazon Defense Coalition.

[70] **Exhibit C-76,** *Petroecuador will not be hurt*, EL COMERAS, Apr. 22, 1997; **Exhibit C-77,** *Texaco—The Time Has Come*, EL HOY, Apr. 14, 1997.

[71] **Exhibit C-5**, Press Conference by Prosecutor General Washington Pesántez, Sept. 4, 2009. Article 43 of the EMA provides that only 10% of the damages are payable to the nominal plaintiffs. **Exhibit C-73**, EMA, *supra* note 67, at Art. 43.

[72] **Exhibit C-78**, Letter from Edward B. Scott to Minister of Energy Carlos Arboleda, Oct. 6, 2003.

F. ECUADOR'S JUDICIARY HAS BEEN PURGED BY THE EXECUTIVE BRANCH REPEATEDLY SINCE NOVEMBER 2004, AND IS NOT INDEPENDENT

48. The ROE's breach of the settlement and release agreements and its refusal to perform those agreements in good faith have been made possible because of the deterioration of the judiciary in Ecuador since 2004. At that time, Ecuador's three highest courts were the (i) Electoral Tribunal, responsible for organizing, directing and overseeing the electoral process, (ii) Constitutional Tribunal, charged with interpreting Ecuador's Constitution, and (iii) Supreme Court, the highest court for all matters that are not within the jurisdiction of the other two tribunals. Pursuant to Article 199 of the 1998 Ecuadorian Constitution, "[t]he bodies of the Judiciary shall be independent in discharging their duties and powers."[73] A summary timeline of events from November 2004 to the present graphically demonstrates that President Correa has consolidated all government power in himself and that there is no legitimate rule of law in Ecuador today, as many Ecuadorian commentators have expressly recognized:

- **November 2004**: Ecuador's Congress initiated impeachment proceedings against President Lucio Gutiérrez for embezzlement of public funds. President Gutiérrez successfully secured a new majority that stopped the proceeding in Congress, and then he moved against the judiciary.[74]

- **November 25, 2004**: All of the judges on the Electoral Tribunal and Constitutional Tribunal were immediately removed, without any reason given.[75]

- **December 2, 2004**: The newly-appointed members of the Constitutional Tribunal issued a resolution declaring that no *amparo* (which provides a remedy to protect constitutional rights) could be issued with regard to any challenges to the Congressional act removing the old members of the Tribunal or appointing the new members. It further ruled that the Constitutional Tribunal itself was the only competent body to hear any action challenging the constitutionality of the Congressional act.[76] The Tribunal took these actions despite the fact that it does not have the

---

[73] **Exhibit C-79**, 1998 Political Constitution of Ecuador, at Art. 199, Official Registry No. 1, Aug. 11, 1998.

[74] **Exhibit C-80**, Inter-American Comm'n on Human Rights, Annual Report 2005, Chapter IV: Ecuador, ¶ 138.

[75] **Exhibit C-81**, Leandro Despouy, *Follow-up Report Submitted by the Special Rapporteur on the Independence of Judges and Lawyers, Follow-Up Mission to Ecuador*, United Nations Comm'n on Human Rights, Jan. 31, 2006.

[76] **Exhibit C-82**, Constitutional Tribunal Resolution, Official Registry Supplemental No. 477, Dec. 8, 2004.

authority to create legislation or preemptively bar other judges from hearing *amparos*.[77]

- **December 5, 2004**: President Gutiérrez called a special session of Congress and dismissed all judges of the Supreme Court.[78] The reason stated was that they had all over-stayed the alleged four-year term limit applicable to governmental employees, even though Ecuador's Constitution expressly provides that Supreme Court judges are appointed for life.[79] Later, however, President Gutiérrez criticized the judges for ruling against the country's interests by agreeing to hear certain tax claims of foreign oil companies.[80] When the dismissed judges refused to leave, the police physically removed them from the Supreme Court building. Commenting on these events, the president of CONESUP (the Ecuadorian National Higher Education Council) stated that Ecuador's institutions were being degraded and that the judicial purges were "the outcome of constant disrespect towards the legal framework."[81] The newly-constituted Court became known as the "Pichi Court."

- **January 2005**: As public outrage intensified over the judicial purges, the newly-appointed judges threatened criminal action against protest leaders during a public press conference.[82]

- **March 29, 2005**: Leonardo Despouy, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, issued a Preliminary Report containing his findings with a number of preliminary recommendations, including that "[i]t is vital and urgently necessary to secure the full restoration of the rule of law," and that "[t]he people of Ecuador have paid dearly for the high level of politicization which has contaminated their courts, and so it is vitally and urgently necessary to reconstruct a system of institutions which is free from political interests and vicissitudes."[83]

- **April 15, 2005**: President Gutiérrez declared a state of emergency, and he and the Congress again summarily dismissed all of the new judges of the

---

[77] *Id*. *See also* **Exhibit C-79**, 1998 Political Constitution of Ecuador, at Art. 119, 276, Official Registry No. 1, Aug. 11, 1998.

[78] Pursuant to Article 130(9) of the Ecuadorian Constitution, the Ecuadorian Congress does not have authority to impeach or otherwise remove Supreme Court judges. *Id.* at Art. 130(9).

[79] *Id.* at Art. 202.

[80] **Exhibit C-83**, *Gutiérrez Clarifies His Remarks Before the London Tribunal*, EXPRESO, A3, Feb. 18, 2005.

[81] **Exhibit C-84**, *Pro-government parties reshape Supreme Court in Ecuador*, BBC MONITORING AMERICAS, Dec. 11, 2004.

[82] **Exhibit C-85**, *Ecuador's Sacking of Judges Brings Flak, Judicial Strike*, ORLANDO SENTINEL, Dec. 11, 2004.

[83] **Exhibit C-86**, Leandro Despouy, *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Preliminary Report on a Mission to Ecuador*, Mar. 29, 2005 (emphasis added).

Supreme Court, leaving the country without a Supreme Court for more than seven months.[84]

- **May 18, 2005**: Congress passed Law No. 2005-001, amending the Organic Law of the Judicial Branch, which created an *ad hoc* "Qualification Committee" to appoint new Supreme Court justices based on certain criteria, including a ban on any lawyer who represented a party in any monetary lawsuit "against the Ecuadorian State."[85]

- **May 20, 2005**: The Organization of American States' ("OAS") Mission to Ecuador issued a report stating that Ecuador's judiciary had become politicized and was controlled by the other branches of government.[86]

- **November 2005**: All new judges were appointed to the Supreme Court almost eight months after it had been dismissed and left vacant.[87]

- **January 31, 2006**: The Special Rapporteur for the United Nations issued a follow-up report stating that he had made additional visits to Ecuador to follow-up on his preliminary recommendations and to help Ecuador find "the most appropriate means of resolving the crisis caused by the *unconstitutional dismissal of the country's three highest courts*." The report stated "Unfortunately, the Special Rapporteur's recommendations were accepted only partially by the main political actors in Ecuador." The supplemental report concluded by pointing to "the urgent need to reform the whole judicial system, in particular by (a) enacting a new law on the Organization of the Judiciary, (b) enacting a law laying down standards and safeguards for the judiciary, (c) giving practical effect to the principle that only judicial bodies may perform judicial functions . . ."[88]

- **September 2006**: Less than a year after the new Court was appointed, videos surfaced showing a Supreme Court judge's son negotiating a US$

---

[84] **Exhibit C-87**, Supreme Decree No. 2752, Official Registry No. 12, May 6, 2005; **Exhibit C-81**, Leandro Despouy, *Follow-up Report Submitted by the Special Rapporteur on the Independence of Judges and Lawyers, Follow-Up Mission to Ecuador*, United Nations Comm'n on Human Rights, Jan. 31, 2006, at 4.

[85] **Exhibit C-88**, Organic Law of the Judicial Branch, Official Registry No. 26, Law No. 2005-001 (May 26, 2005).

[86] **Exhibit C-89**, *Report to the Permanent Council on the Situation in Ecuador, Inter-American Comm'n on Human Rights, OAS Mission to Ecuador*, May 20, 2005.

[87] **Exhibit C-90**, Alonso Soto, *Ecuador High Court Sworn in After 8-month Absence*, REUTERS NEWS, Nov. 30, 2005.

[88] **Exhibit C-81**, Leandro Despouy, *Follow-up Report Submitted by the Special Rapporteur on the Independence of Judges and Lawyers, Follow-up Mission to Ecuador*, United Nations Comm'n on Human Rights, Jan. 31, 2006, ¶¶ 3, 36 (emphasis added).

500,000 bribe on behalf of three Supreme Court judges to overturn a legislator's criminal conviction.[89]

- **January - March 2007**: President Correa took office as President. He issued a decree calling for a referendum to create a Constituent Assembly.[90] There is no provision in the Constitution allowing this. Congress opposed it, and President Correa claimed that he did not need congressional approval. He further claimed that if the Electoral Tribunal did not approve his proposed referendum to create the Constituent Assembly, he would replace it.[91] The Electoral Tribunal approved President Correa's referendum, and in response Congress voted to remove the president of the Electoral Tribunal. The Electoral Tribunal then ordered that 57 congressmen be removed from office. The military supported the President (and the Electoral Tribunal that he controlled), and physically barred the 57 congressmen from the legislative building.[92]

- **March 28, 2007**: Unable to gain access to the higher courts, the congressmen turned to the regional courts. One regional court overturned the Electoral Tribunal's ruling on President Correa's referendum. The Electoral Tribunal removed the regional judge from his office.[93]

- **March 29, 2007**: President Correa rejected the regional court's ruling, stating his support for the Electoral Tribunal.[94]

- **April 23, 2007**: The Constitutional Tribunal ordered the reinstatement of 51 of the 57 ousted lawmakers, finding their removal unconstitutional. The next day, the chief Electoral Tribunal judge threatened the Constitutional Tribunal with criminal charges for their ruling and Congress completely purged the Constitutional Tribunal of all of its judges. President Correa also threatened to put the ousted lawmakers in prison if they tried to re-take their seats. The Superior Court of Quito

---

[89] **Exhibit C-91**, Kate Joynes, *Supreme Court Suspends Ecuadorian Judge for Corruption*, GLOBAL INSIGHT DAILY ANALYSIS, Sept. 8, 2006; **Exhibit C-92**, *Ecuadorian high court judge resigns under fire,* EFE NEWS SVC., Sept. 8, 2006; **Exhibit C-93**, *Ecuador's Supreme Court shaken by corruption allegations*, BBC MONITORING AMERICAS, Sept. 9, 2006.

[90] **Exhibit C-273**, President of the Republic, Decree No. 2, Official Registry No. 8, Jan. 15, 2007, at Art. 1.

[91] **Exhibit C-94**, *Ecuador: Correa warns of conspiracy*, LATIN NEWS DAILY, Jan. 29, 2007; **Exhibit C-97**, *Opposition Lawmaker Accuses Ecuador President of Power Grab*, DOW JONES NEWSWIRE, Feb. 11, 2007.

[92] **Exhibit C-95**, *Ecuador Election Tribunal Votes to Dismiss 57 Congressmen*, INT'L HERALD TRIBUNE, Mar. 6, 2007; **Exhibit C-96**, *Ecuadorian Police Surround Congress to Enforce Court Ruling*, Voice of America Press Release and Documents, Mar. 8, 2007.

[93] **Exhibit C-98**, *Judge Fired as Ecuador Faces Political Meltdown*, ASSOCIATED PRESS NEWSWIRE, Mar. 28, 2007; **Exhibit C-99**, *Ecuador Crt Fires Judge As Country Faces Political Meltdown*, DOW JONES INT'L NEWS, Mar. 28, 2007; **Exhibit C-100**, *Ecuador Judge Rejects Lawmakers' Request for Injunction Over Firing*, ASSOCIATED PRESS NEWSWIRE, Mar. 16, 2007.

[94] **Exhibit C-101**, *Ecuador's Leader Rejects Ruling*, L.A. TIMES, Mar. 29, 2007.

subsequently announced its intention to initiate criminal proceedings against 24 of the ousted lawmakers on sedition charges for attempting to block the Constituent Assembly.[95]

- **September 30, 2007**: President Correa's Party won 60% of the Constituent Assembly seats. Under the Assembly's own rules, decisions may be made by a simple majority of 50.1%.

- **November 27, 2007**: As its first Mandate, the Constituent Assembly suspended Congress indefinitely, asserted absolute authority, and expressly threatened any court that might challenge the Constituent Assembly or its procedures. Mandate 1 states in part:

> [T]he decisions of the Constituent Assembly are superior to any other rule in the judicial system, and compliance with them is mandatory for all persons, entities and other public authorities without any exception whatsoever. *No decision of the Constituent Assembly shall be subject to the oversight of, or be challenged by, any agency of the current government. Judges and tribunals that process any action contrary to the decisions of the Constituent Assembly shall be dismissed from their post and subject to corresponding prosecution.* Likewise, public employees who cause or promote, through act or omission, a failure to comply with or the disregard of the provisions of the Constituent Assembly shall be punished.[96]

The newly-constituted Constitutional Tribunal subsequently upheld the Assembly's mandate, holding that no Assembly decision is susceptible to control or challenge by any governmental institution.[97]

- **December 5, 2007**: The Constituent Assembly proposed reducing judicial salaries by more than 50%,[98] and dozens of judges with more than 25 years of judicial experience resigned so that they could claim retirement

---

[95] **Exhibit C-102**, *Deputies in Ecuador to be tried*, LATIN NEWS DAILY – INTELLIGENCE RESEARCH LTD., May 15, 2007; **Exhibit C-103**, *Judge Elsa de Melo steps down from the dismissed legislators' case*, EL COMERCIO, May 9, 2007.

[96] **Exhibit C-104**, Constituent Assembly, Mandate 1, Official Registry No. 223, Nov. 30, 2007, at Art. 2 (emphasis added).

[97] **Exhibit C-105**, *The CIT upholds the full powers of the Assembly*, EL UNIVERSO, Feb. 28, 2008; **Exhibit C-106**, *TC ratifies full powers*, EL TIEMPO, Mar. 19, 2008.

[98] **Exhibit C-107**, *Judges create a front to defend salaries*, EL UNIVERSO, Dec. 14, 2007.

benefits before the Assembly's proposals were imposed.[99] This paved the way for the appointment of new judges by President Correa.

- **2007**: Freedom House published its annual report entitled, "Countries at the Crossroads." Freedom House is an independent non-governmental organization founded in 1941 by Eleanor Roosevelt, Wendell Willke and other Americans concerned with mounting threats to peace and democracy. In its 2007 Annual Report, it stated: "In what appears to be a race toward institutional obliteration . . . the rule of law in Ecuador is close to non-existent. . . . In recent years, the rule of law has been severely affected by repeated interbranch conflict." It considered Ecuador to be a "highly corrupt country," and noted that in January 2007, the media revealed 197 videos showing judicial personnel "receiving money for their services."[100]

- **January 8, 2008**: The President of the Supreme Court, Roberto Gómez, stated that "[our] country is not living under the rule of law."[101]

- **March 2008**: The Heritage Foundation report stated that in Ecuador "there is a lack of respect for the rule of law."[102] In the Western Hemisphere, only Haiti was ranked lower.

- **March 2008**: The U.S. Department of State reported that "systemic weakness and susceptibility to political or economic pressures in the rule of law constitute the single most important problem faced" by international investors in Ecuador.[103]

- **August 2008**: Legal scholars noted that President Correa had consolidated power in himself: "The most important characteristic of the Ecuadorian political process during the presidency of Rafael Correa is the concentration of power in the hands of the executive. This consolidation is the result of both the slow erosion of Ecuador's political institutions and Correa's strong personal popularity."[104]

---

[99] **Exhibit C-108**, *Five provisional judges appointed after resignations,* EL HOY, Dec. 14, 2007; **Exhibit C-109**, *CNJ unmoved by massive resignations,* DIARIO LA HORA, undated.

[100] **Exhibit C-110**, Freedom House, *Countries at the Crossroads 2007 - Ecuador*, pp. 1, 2, 16, 19.

[101] **Exhibit C-111**, *Gómez Mera:"The country is not living under the rule of law*," EL UNIVERSO, Feb. 1, 2008; **Exhibit C-112**, *Roberto Gómez Mera: We are not living in a state that is completely under the rule of law*," ECUADOR INMEDIATO, Feb. 11, 2008.

[102] **Exhibit C-113**, The Heritage Foundation, Index of Economic Freedom - Ecuador (2008).

[103] **Exhibit C-114**, U.S. Department of State, *2008 Investment Climate Statement: Ecuador*, at 4.

[104] **Exhibit C-115**, Adrian Bonilla & Cesar Montufar, *Inter-American Dialogue, Two Perspectives on Ecuador: Rafael Correa's Political Project*, Aug. 2008, at 1.

- **September 2008**: The Correa Administration expelled a Brazilian engineering company, Norberto Odebrecht, during a dispute over contracted work on a power plant, suspended its constitutional rights and brought criminal charges against several Odebrecht officials.[105] When the court dismissed the charges due to procedural violations, Prosecutor General Pesántez announced that he would initiate a criminal investigation of the judges who made the ruling.

- **October 21, 2008**: All of the Supreme Court judges resigned in mass because they refused to take part in a lottery to appoint 21 of them (there were then 31) as interim members of the renamed "National Court of Justice."[106] Thus, Ecuador was again without a Supreme Court, and for the third time in less than five years the Supreme Court of Ecuador was completely purged. The National Court of Justice remained vacant for the ensuing months, and the Prosecutor General announced that the selected judges would face criminal investigation if they did not accept their seats on the new court.[107]

- **November 8, 2008**: On his national radio show, President Correa stated the obvious: "Ecuador is not currently living under the rule of law."[108] President Correa also stated that the Executive Branch may pressure the Judiciary to "be responsive to the country's needs" and that the Judiciary is "the worst" State institution due to the "mediocrity" of its officers.[109]

- **February 2009**: The U.S. State Department reported that "[t]he Ecuadorian judicial system is hampered by processing delays, unpredictable judgments in civil and commercial cases, inconsistent rulings, and limited access to the courts. Criminal complaints and arrest warrants against foreign company officials have been used to pressure companies involved in commercial disputes."[110]

- **March 2, 2009**: President Correa met with 18 members of the new National Court of Justice. One judge confirmed that the President requested "expediency in cases of interest to Ecuador."[111] The President

---

[105] **Exhibit C-116**, Executive Order No. 1383, Oct. 9, 2008; **Exhibit C-117**, *San Francisco: Arrest Warrants Issued for 9*, EL COMERCIO, Dec. 18, 2008.

[106] **Exhibit C-118**, *The Country Without a Supreme Court and Without National Court*, LA HORA, Oct. 27, 2008; **Exhibit C-119**, *Ecuador, without Court for Several Days*, EL UNIVERSO, Oct. 27, 2008.

[107] **Exhibit C-120**, *Former Judges' Unity is Fractured*, EL COMERCIO, Dec. 2, 2008.

[108] **Exhibit C-121**, Gonzalo Ruiz Álvarez, *And the Rule of Law?*, EL COMERCIO, Nov. 11, 2008; **Exhibit C-122,** Sebastián Mantilla Baca, *Ecuador Adrift*, EL COMERCIO, Nov. 12, 2008.

[109] **Exhibit C-123,** *Rafael Correa: the Executive can press Courts to 'fulfill their duties'*, EL HOY, Nov. 8, 2008.

[110] **Exhibit C-124**, U.S. State Dept., *2009 Investment Climate Statement: Ecuador*, Feb. 2009.

[111] **Exhibit C-125**, Joffre Campaña Mora, *Interference in the Administration of Justice*, EL UNIVERSO (Mar. 5, 2009).

of the National Court of Justice, Jose Troya, confirmed that during talks with President Correa, issues in pending cases were discussed.[112]

- **March 7, 2009**: In his weekly radio address, President Correa discussed his lunch-meeting with members of the National Court of Justice, calling it normal, because according to President Correa, "The President of Ecuador is not only the Head of the Executive Branch, *he is also Head of the entire Ecuadorian State*." He added that "*the Ecuadorian State is the Executive, the Legislative, the Judiciary,* the Electoral and the Transparency and Citizen Oversight bodies, the superintendences, *the Prosecutor's Office and the Comptroller General's Office. The Ecuadorian State comprises all that*."[113]

- **May 14, 2009**: Dr. Hernan Salgado, a former justice of Ecuador's Supreme Court and the former President of the Inter-American Court of Human Rights, stated in an interview that in December 2004 the judicial institutions in Ecuador came "tumbling down with the 'Pichi' Court." He stated further that repeated changes to the judiciary have destabilized it, and that the latest constitutional changes have politicized the judiciary. When asked directly: "Do you think politics is again interfering in the judiciary?" He answered: "Yes." Dr. Salgado noted that he attributes this interference to a lack of independence and impartiality of the judges, and stated that he does not see any solution to this problem in the short term.[114]

- **June 12, 2009**: At President Correa's request, Ecuador's Congress approved Ecuador's withdrawal from the International Centre for the Settlement of Investment Disputes (ICSID). In his weekly radio address on June 21, 2009, the President stated that Ecuador will expel foreign oil companies that file international claims against the country over contractual disputes. "The policy is going to be: You sue us, you leave the country. I will no longer tolerate foreigners suing us and profiting from our natural riches."[115]

- **June 15, 2009**: Three former Presidents of Ecuador issued a joint press release stating that President Correa's administration is seeking to replace the rule of law with an authoritarian regime: "Like many other Ecuadorians, we former Presidents signing this statement are witnesses to the severe deterioration of the democratic institutions that have suffered under the administration of Rafael Correa." They noted with particular concern the control that the State exercises over newspaper and television

---

[112] **Exhibit C-126**, *Court Matters*, ECUADOR INMEDIATO, Mar. 4, 2009.

[113] **Exhibit C-127**, Alberto Acosta, *The President Let Something Slip*, Mar. 13, 2008 (emphasis added).

[114] **Exhibit C-128**, *The Judiciary has been De-Institutionalized*, EL COMERCIO, May 14, 2009.

[115] **Exhibit C-129**, *Foreign Companies Threatened*, EL COMERCIO, June 21, 2009.

stations, the intimidation of reporters and the independent media, and the daily manipulation of public opinion.[116]

- **July 4, 2009**: In his weekly radio address, President Correa stated, "I really, really hate the big transnational companies."[117]

- **July 10, 2009**: Former Supreme Court justice Mauro Terán stated that the Legal Counsel to the President, Alexis Mera, exerted influence over the Supreme Court: when a "judgment was rendered against [Mera's client], he retaliated against the Supreme Court of Justice by pulling strings, especially at the Constituent Assembly, in order to dismantle the Judiciary and create the Court of his dreams, the one they now have." He stated further, "Mr. Mera is now surely exerting pressure on that new Court," which he affirmed "is without doubt easily influenced because of the manner in which it was convened, without a merit selection or a review of the qualifications of its members."[118]

- **July 23, 2009**: Three judges from the Second Division of the Administrative Court of Quito were removed from office for alleged irregularities in a case in which they had ruled against the government by dismissing an appeal taken by the Office of the Comptroller.[119]

- **July 29, 2009**: The new Constitutional Court declared that only precedents decided under the new Constitution would be binding on Ecuadorian courts.[120]

- **September 2009**: At a meeting to address corruption called by the National Judicial Council, several judges publicly complained that "government officials are exerting pressure" by "threatening them that if they don't hand down the rulings [the government officials] want to have, complaints will be filed and the judges will be penalized by the Judicial Council."[121] The spokesman for the National Judicial Council reported at the meeting that some judges were working with law firms that were drafting court rulings themselves: "'[The law firms] send the rulings to

---

[116] **Exhibit C-130**, *Statement from Former Presidents Sixto Durán Ballén, Osvaldo Hurtado Larrea and Gustavo Noboa Bejarano,* EL HOY, June 16, 2009; **Exhibit C-131**, *Three former Ecuadorian Presidents Label the Correa Administration a "Dictatorship*," ECUADOR INMEDIATO, June 15, 2009.

[117] **Exhibit C-132**, Presidential Weekly Radio Address, July 4, 2009.

[118] **Exhibit C-133**, *Terán: "Mera is Pressing the Court,"* EL HOY, July 10, 2009.

[119] **Exhibit C-134**, *Office of the Comptroller Gets Judges Out*, EL HOY, July 23, 2009. *See also* **Exhibit C-135**, *Judge's Appointment Questioned*, LA HORA, Aug. 2, 2009.

[120] **Exhibit C-136**, Official Registry No. 644, Constitutional Tribunal Judgment 003-09-SIN-CC, July 29, 2009.

[121] **Exhibit C-137**, *Quito Judges Report Pressures*, EL COMERCIO, Sept. 21, 2009.

certain judges on USB sticks just so that they can check them and return them if they're OK.'"[122]

- **September 4, 2009**: Ecuadorian jurist Antonio Rodriguez stated in an interview that "Ecuador is living under a dictatorship." He stated that all power of the government is consolidated in the Executive Branch.[123]

- **October 27, 2009**: Alexis Mera, legal counsel to President Correa and his administration, proposed to "clean up" the Ecuadorian judiciary because the majority of judges are "delinquents." He insisted that the Secretary of the State and the governors in each province must assume a follow-up of cases, and that "[f]irst, jails should be filled up with judges."[124]

- **October 27, 2009**: After an arbitral award of nearly US$ 6 million was issued against the Government, the Telecommunications and Information Society Minister, Jorge Glas, announced that "not even a single cent will be paid to corrupt companies . . . which take shelter under arbitral awards to continue affecting the State's interests," and that Ecuador "will not allow that the resources of all the Ecuadorians be delivered by means of arbitral awards."[125]

- **October 28, 2009**: President Correa requested the Ecuadorian Congress to terminate 13 additional bilateral investment treaties—including the U.S.-Ecuador BIT—in part because they "expose the country to international arbitration"[126] and lead to the "detriment of national interests."[127]

- **October 30, 2009**: Press reports indicate that between January 2008 and October 2009, "[a]t least 300 judges, co-judges, secretaries and assistants have been penalized . . . for proven corruption acts . . . . The penalties have ranged from fines, admonitions, warnings and job suspensions, to removals from office for proven corruption acts."[128]

---

[122] *Id*.

[123] **Exhibit C-138**, *We are Living Under a Dictatorship*, Interview of Jurist Antonio Rodríguez, ECUADOR INMEDIATO, Sept. 4, 2009.

[124] **Exhibit C-139**, *Alexis Mera: The Criminal Court Judges are the Criminals*, EL HOY, Oct. 27, 2009.

[125] **Exhibit C-140**, *Minister Glas ratifies his rejection towards arbitral award against Alegro*, ECUADOR INMEDIATO, Oct. 27, 2009.

[126] **Exhibit C-141**, *Ecuador to Denounce Remaining BITS*, GLOBAL ARB. REV., Oct. 30. 2009, *available at* http://www.globalarbitrationreview.com/news/article/19251/ecuador-denounce-remaining-bits/ (last visited on Mar. 31, 2010). *See also* **Exhibit C-142**, Mercedes Alvaro, *Ecuador President Seeks to End Investment Protection Agreements*, DOW JONES NEWSWIRE, Oct. 28, 2009; **Exhibit C-143**, *At the Point of Annulling 13 Investment Treaties*, EL COMERCIO, Oct. 28, 2009.

[127] **Exhibit C-144**, *Ecuador To Go Forward with Termination of Bilateral Investment Treaties*, ECUADOR INMEDIATO, Oct. 28, 2009.

[128] **Exhibit C-145**, *CJ penalized 300 judges, co-judges and secretaries*, EL EXPRESO, Oct. 30, 2009.

- **November 2009**: One commentator noted that "unfortunately a kind of reverential fear currently exists for the President of the Republic in all State levels and entities, which prevents the government officials and employees from acting with impartiality and from guaranteeing the citizens' rights."[129]

- **November 2009**: The International Transparency Organization's 2009 Corruption Perception Index ranked Ecuador as one of the "most corrupt countries in the world."[130] Ecuador scored only 2.2 on a 10-point scale (10 being the least corrupt), and ranked 28 (out of 31) for the most corrupt country in Latin America (31 being the most corrupt). According to Transparency International's measures, any score below 3.0 amounts to "rampant corruption."[131] "The U.S. State Department, World Bank, United Nations, and the International Bar Association have all denounced Ecuador's court system or overall government as unreliable or corrupt."[132]

- **December 1, 2009**: President Correa announced a bill to regulate the media that "sparked outrage from journalists who claim it would clamp down on freedom of expression."[133]

- **December 2, 2009**: The Civic Board of Guayaquil filed a lawsuit against the ROE with the Inter-American Court of Human Rights for the "unconstitutional situation" under which the country is living as a consequence of the acts performed by the Constituent Assembly since its establishment. The Board's president explained that "there is no law" in Ecuador, and that "everything arising from the self-extension of its term, the laws and statutes are illegal; they have no legal support and constitute a flagrant violation of Articles 8, 25, 12 and 13 of the Inter-American Commission on Human Rights."[134]

- **December 2009**: Prosecutor General Washington Pesántez "reiterated his request to restructure the administration of justice" after declaring that certain judicial decisions were indefensible "because they are damaging to the State."[135]

---

[129] **Exhibit C-146**, Orlando Alcívar Santos, *Requiem for the Law*, EL UNIVERSO, Nov. 6, 2009.

[130] **Exhibit C-147**, *Ecuador is Among the Most Corrupt Countries in the World*, PODER360.COM, Nov. 18, 2009.

[131] **Exhibit C-148**, *Inequities in Ecuador*, THE WASHINGTON TIMES, Nov. 19, 2009.

[132] *Id.*

[133] **Exhibit C-149**, *Ecuador's Correa supports bill to regulate media*, REUTERS, Dec. 1, 2009.

[134] **Exhibit C-150**, *Civic Board sues the State in U.S.A. court*, EL UNIVERSO, Dec. 2, 2009.

[135] **Exhibit C-151**, *General Prosecuting Attorney Demands Changes in Court; Judges Repudiate This*, EL UNIVERSO, Dec. 21, 2009.

- **December 12, 2009**: One commentator noted that "the separation of the State functions is not respected, to such an extent that the highest authority interferes with justice . . . . The pressure against the judges cannot be more grotesque, particularly because it comes from the highest authority of the nation . . . ."[136]

- **December 23, 2009**: After President Correa repeatedly criticized Teleamazonas, a major television network that had criticized his administration, the Superintendency of Telecommunications shut down the station for three days.[137] Throughout 2009, President Correa announced that the Government would be reviewing the licenses of television and radio stations, resulting in several takeovers and sanctions of media outlets critical of his positions.

- **January 3, 2010**: The President's brother Fabricio Correa announced that Alexis Mera, Legal Counsel to the President, manages the country's judicial system. He also stated: "It is a known fact that the General Prosecuting Attorney acts either slowly or archives any case involving a government official; however, when it is necessary to attack a person that is considered an opponent by the government, or someone whose head they want to exhibit, the procedures are accelerated."[138]

- **January 20, 2010**: The Prosecutor General and the Attorney General announced dissatisfaction with a ruling in the highly politically-charged case involving Filanbanco Bank, in which President Correa had expressed an interest. The judges in that case demoted the criminal charges against the politically unpopular Isaias brothers from embezzlement to forgery, prompting Prosecutor General Pesántez to announce that he would seek the suspension and immediate imprisonment of the judges involved.[139] The same day, President Correa ordered the Judicial Council to investigate the bank accounts of the judges, stating: "I have talked with the Prosecutor . . . he told me he will appeal; if this doesn't work we will appear before the Constitutional Court, but we will not allow this public fraud and will not disappoint the people that hope justice will be finally made."[140] The

---

[136] **Exhibit C-152**, *Interference with Justice*, EL HOY, Dec. 16, 2009. *See also* **Exhibit C-153**, *Undue Influence*, EL EXPRESO, Dec. 16, 2009.

[137] **Exhibit C-154**, *President: The violations committed by Teleamazonas are clear and undeniable*, EL CIUDADANO, Dec. 26, 2009; **Exhibit C-155**, Press Release, *IAPA Condemns Ecuador Government's Confrontation with the Press*, July 24, 2009; **Exhibit C-156**, *Superintendency of Telecommunications shut down Teleamazonas Yesterday, Just as Correa Requested*, EL UNIVERSO, Dec. 23, 2009; **Exhibit C-157**, *Critical TV Station suspended in Ecuador*, Committee to Protect Journalists, Dec. 23, 2009.

[138] **Exhibit C-158**, *Fabricio Correa Insists: Ricardo Patiño and Alexis Mera Manage the Judicial and Legislative Powers*, ECUADOR INMEDIATO, Jan. 3, 2010.

[139] **Exhibit C-159**, *Criticism at Every Level Regarding the Isaías Ruling*, EL COMERCIO, A5, Jan. 20, 2010.

[140] **Exhibit C-160**, *Alternate Judges in the Isaías Case Sanctioned Following Correa's and Prosecutor General Pesántez's Complaints*, EL UNIVERSO A1, at A3, Jan. 20, 2010.

Judicial Council did in fact suspend the judges, admitting that political pressure influenced their ruling,[141] and criminal charges were brought against all three judges for "malfeasance in office."[142]

- **February 12, 2010**: Prominent Ecuadorian lawyer and former Dean of the law school at Pontifical Catholic University in Ecuador, Juan Falconi, announced that "[j]ustice is a public service that has become cynically corrupted, delayed, and tainted by permanent scandals." Citing various recent cases that were influenced by political interests, Mr. Falconi stated that "this country is no man's land, where no laws, law schools, or lawyers exist."[143]

- **February 17, 2010**: Carlos Estarellas, chairman of the special committee that selected the justices of the Supreme Court in 2005, declared that "[t]he great disgrace of the court system is that political interests can't resign themselves to not interfere with the courts. That has been a fatal sign. In Ecuador, I don't see the principle of independence enshrined in our Constitution being followed. The current constitution has minimized the power of the Court; that is evident in its rulings. Political influences have turned out to be ruinous."[144] On the same day, Fernando Casares, former Justice of the Supreme Court, wrote that "[s]ince 2008, the administration of justice has entered an institutional crisis. The reason for this is that there is a marked trend whereby the Executive Branch is taking over all sorts of duties, and the Judiciary has been unable to escape this trend."[145]

- **February 25, 2010**: Detailing a series of Constitutional violations in recent politically-tainted cases, an editorial in *El Comercio* asserted: "The interests of the State prevail over the people's rights and guarantees. There is no one who will win any case against the government."[146]

- **March 2010**: In its annual Human Rights Report on Ecuador, the U.S. State Department stated that "there continued to be serious problems" with respect to "corruption and denial of due process within the judicial system" and that "the judiciary was at times susceptible to outside pressure and corruption." Additionally, the Report notes that "[t]he media

---

[141] **Exhibit C-161**, *Three Years Later, Justice Remains Threatened by Political Groups*, EL COMERCIO, Feb. 17, 2010.

[142] **Exhibit C-162**, *Associate Judges Go Against Prosecutor Pesántez in the Filanbanco case*, EL UNIVERSO, Feb. 9, 2010.

[143] **Exhibit C-163**, Juan Falconí, *Contempt of Court*, EL HOY, Feb. 12, 2010.

[144] **Exhibit C-161**, Carlos Estarellas, *The Power Still Hasn't Resigned Itself*, EL COMERCIO, Feb. 17, 2010.

[145] **Exhibit C-161**, Fernando Casares, *Justice Is in Crisis*, EL COMERCIO, Feb. 17, 2010.

[146] **Exhibit C-164**, Fabian Corrál, *Derogation of Rights*, EL COMERCIO, Feb. 25, 2010.

> reported on the susceptibility of the judiciary to bribes for favorable decisions and resolution of legal cases and on judges parceling out cases to outside lawyers who wrote judicial sentences on cases before the court and sent them back to the presiding judge for signature."[147]

G. ECUADOR HAS ACTIVELY SUPPORTED AND ASSISTED THE LAGO AGRIO PLAINTIFFS, AND PRESIDENT CORREA AND HIS ADMINISTRATION ARE DRIVING ITS OUTCOME

49. Various organs of the Ecuadorian State, including the Executive, have breached Ecuador's contractual, legal, and Treaty obligations, and have failed to act in good faith concerning those obligations, by directly assisting the nominal Lago Agrio Plaintiffs in attempting to circumvent the 1995 Settlement Agreement, the 1996 Provincial and Municipal Settlements, and the 1998 Final Release Agreement (collectively, the "Settlement and Release Agreements").

50. Deputy Attorney General Martha Escobar made clear to Lago Agrio Plaintiffs' attorneys Alberto Wray and Cristóbal Bonifaz, and leaders of the Amazon Defense Front, including its President Luis Yanza, that the Attorney General's office was searching for a way to nullify or undermine the remediation agreement with TexPet, and that the Attorney General wanted the Prosecutor General to prosecute those who had executed the remediation agreements, despite the acknowledged lack of evidence:

> With respect to the [1998 Final Release Agreement], I explained [to the President's legal representative] that *the Attorney General's Office and all of us working on the State's defense were searching for a way to nullify or undermine the value of the remediation contract and the final acta* and that our greatest difficulty lay in the time that has passed.
>
> . . . *The Attorney General* remains resolved to have the Comptroller[] [General's] Office conduct another audit . . . ; *he wants to criminally try those who executed the contract (that also seems unlikely to me, since the evidence of criminal liability established by the Comptroller's office was rejected by the prosecutor).*[148]

---

147 **Exhibit C-165**, U.S. State Department, *2009 Report on Human Rights Practices: Ecuador*.

148 **Exhibit C-166**, Email from Dr. Martha Escobar to Alberto Wray et al., Aug. 10, 2005.

Dr. Escobar initially testified falsely under oath in a U.S. federal court that she had not had any contact with Plaintiffs' representatives. Only when confronted with the emails did she admit such contacts.[149]

51. Recognizing the political and financial opportunity to receive a windfall from a judgment in the Lago Agrio Litigation, President Correa's administration has elevated the collusion to an even more egregious level. Early in his administration, President Correa openly campaigned for a decision against Chevron at the same time that the Government made clear that any judge who issued opinions contrary to its interest would be subject to dismissal and even possible criminal prosecution. On March 20, 2007, President Correa issued a press release announcing the Government's support for the Lago Agrio Plaintiffs and its intention to help them collect evidence.[150] These statements and others prompted a U.S. federal Judge to conclude that "it's now an established fact" that Ecuador is supporting the Lago Agrio Plaintiffs.[151]

52. President Correa made a highly-publicized trip with the Plaintiffs' lawyers and the Amazon Defense Front to the former oil Concession Area in April 2007, where in widely-disseminated statements he publicly denounced the "barbarity committed by that multinational corporation [Texaco]."[152] He also repeatedly accused Texaco of causing "irreversible" damage in the Amazon,[153] demanding that the Office of the Prosecutor General bring "criminal actions" and condemning Chevron's Ecuadorian attorneys as corrupt and selling out their homeland.[154]

53. In January 2008, President Correa announced that he had again met with the Amazon Defense Front and that the Lago Agrio Plaintiffs had the "full backing of the national government."[155] He again met with the Amazon Defense Front and the Plaintiffs' lawyers in

---

[149] **Exhibit C-167**, Deposition of Martha Escobar, Excerpt, Nov. 21, 2006.

[150] **Exhibit C-168**, Press Release, Government of Ecuador Secretary General of Communications, *The government backs actions of the assembly of persons affected by Texaco Oil Company*, Mar. 20, 2007.

[151] **Exhibit C-169**, *Republic of Ecuador v. ChevronTexaco*, No. 04-CV-8378 (S.D.N.Y.), Transcript of Hearing at 6-7, Apr. 19, 2007.

[152] **Exhibit C-170**, Press Release, Office of President Correa, *The Whole World Should See the Barbarity Displayed by Texaco*, Apr. 26, 2007.

[153] *Id.*

[154] **Exhibit C-171**, Presidential Weekly Radio Address, Radio Caravana, Apr. 28, 2007.

[155] **Exhibit C-172**, Presidential Weekly Radio Address, Jan. 19, 2008.

August 2008, and publicly stated that the Prosecutor General should prosecute those who signed the release[156] and that his Government "will never again bow to the interests of the big transnational (companies)."[157] Ecuador's Attorney General stated that "the Correa administration's position on the case is clear: 'The pollution is [the] result of Chevron's actions and not of Petroecuador.'"[158] Clearer signals to the Court cannot be imagined.

54. This political interference in the Lago Agrio Litigation, together with the lack of judicial independence, is apparent. Without ever ruling on Chevron's immediately asserted and case-dispositive legal defenses, the Lago Agrio Court has conducted highly irregular proceedings that appear to be directed solely toward finding Chevron liable.

55. The evidence-gathering process has devolved into a judicial farce. The parties originally agreed upon protocols, including sample collection and analysis, to govern judicial inspections of designated sites in the former Concession Area, which the court then approved.[159] Upon court approval, this process became the law of the case and could not legally be changed.

56. The experts nominated by Chevron followed these protocols and all of the basic scientific standards in each of the judicial inspections. These experts gathered 1,344 water and soil samples, and had them analyzed at laboratories in the United States that are accredited to meet the stringent NELAC Standard guidelines.[160] Reports prepared by Chevron-nominated experts concluded, based on chemical analyses of the samples taken at each of the inspected sites, that the TexPet-remediated sites pose no significant oil-related health risk to humans.[161]

---

[156] **Exhibit C-173**, Presidential Weekly Radio Address, Canal del Estado, Aug. 9, 2008.

[157] **Exhibit C-174**, *Ecuador says to meet Chevron over $16 bln lawsuit*, REUTERS, Aug. 16, 2008.

[158] **Exhibit C-175**, Isabel Ordóñez, *Amazon Oil Row: US-Ecuador Ties Influence Chevron Amazon Dispute*, DOW JONES, Aug. 7, 2008.

[159] **Exhibit C-176**, Court Order Regarding Evidence and Appointment of Experts, Oct. 29, 2003; **Exhibit C-177**, Summary Oral Hearing No. 002-2003 (including Terms of Reference for Experts), Aug. 7, 2004.

[160] These guidelines for accreditation of environmental laboratories are issued by the National Environmental Accreditation Conference under the auspices of the U.S. Environmental Protection Agency.

[161] **Exhibit C-178**, Ernesto Baca, Expert Report Judicial Inspection of Sacha-53 Well (Excerpt), Jan. 27, 2005, at 1-3; **Exhibit C-179**, John A. Connor & Roberto Landázuri, Response to Statements by Mr. Cabrera Regarding Alleged Impacts to Water Resources in the Petroecuador-Texaco Concession Area, Aug. 29, 2008, at 7-9.

57. In contrast, the experts suggested by the Lago Agrio Plaintiffs failed to comply with the agreed protocols, and as a result, produced judicial-inspection reports riddled with irregularities and lacking scientific support.[162] Plaintiffs' data was analyzed at the HAVOC Lab in Ecuador, which is not accredited to perform this testing.[163] Chevron's experts do not believe that HAVOC even had the equipment to perform such tests and sought to inspect the Lab, but seven times HAVOC refused any inspections despite court orders. Plaintiffs even submitted a report on paper with a *Petroecuador* logo on it, which reflected that there was an agreement between Petroecuador and the Amazon Defense Front concerning the report—further evidence of Petroecuador's (and the ROE's) efforts to assist the Plaintiffs in putting all liability on Chevron.[164]

58. Dr. Charles Calmbacher, who served as one of the Plaintiffs' judicial inspection experts in the Lago Agrio Litigation, has now confirmed under oath that the Lago Agrio Plaintiffs' lawyers have committed a fraud on the Lago Agrio Court by submitting fabricated documents. On March 29, 2010, Dr. Calmbacher testified in a deposition, pursuant to a subpoena authorized by a U.S. federal court. Dr. Calmbacher stated that the two reports submitted by the Lago Agrio Plaintiffs' lawyers to the Lago Agrio court in his name were forged and falsified documents that he had never authorized, never signed, and in fact had never even seen before. Dr. Calmbacher testified that the fabricated reports, which purported to represent his assessment of judicial inspection sites Sasha 94 and Shushufindi 48, were directly contrary to his actual conclusions, which found no evidence indicating a threat to human health or need for remediation. Dr. Calmbacher testified that U.S. lawyer Steven Donziger knew Dr. Calmbacher's real opinions and would have known that the reports submitted in his name were false. Mr. Donziger telephoned Dr. Calmbacher before the deposition and attempted to dissuade him from

---

[162] For example, despite a court order requiring experts to report data for all samples collected, the Plaintiffs' experts failed to report about 30% of their samples and failed to preserve the back-up material needed for independent verification of their data. **Exhibit C-180**, Expert Report of Dr. Luís Alberto Villacreces Carvajal, Feb. 6, 2006; **Exhibit C-181**, Motion from Edison Camino Castro to the Superior Court of Nueva Loja, Feb. 21, 2006; **Exhibit C-182**, Expert Report of Oscar M. Dávila, July 12, 2005, at Conclusions.

[163] *See* **Exhibit C-183**, Gregory S. Douglas, Evaluation of the Validity of the Plaintiffs' Suggested Experts' Analytical Data from the Judicial Inspections, Sept. 8, 2008, at 22.

[164] **Exhibit C-185**, Questions and Answers to Roberto Bejarano, at Questions 10-11. *See also* **Exhibit C-184**, Study on the Socio-Environmental Conflicts at the Sacha and Shushufindi Fields (1994-2002), FLACSO Project, Report by Guillaume Fontaine, Nov. 2003, at n. 29 (referring to an agreement between Petroecuador and the Amazon Defense Front).

appearing for his deposition. Dr. Calmbacher further testified that the Lago Agrio Plaintiffs' lawyers never informed him that the Lago Agrio Court had ordered him to respond to questions about the fabricated reports that they had submitted in his name until the week before his deposition. He stated that his last contact with the Lago Agrio Plaintiffs was in November 2004, when at their request he overnighted signature pages and blank initialed pages on which he understood that a very different report he had approved would be printed. He had no knowledge of the letters to the Lago Agrio court that were submitted in his name in September and November of 2004, in which he purportedly requested an extension of time from the court—and which misspelled his own name. Finally, Dr. Calmbacher also confirmed the collusion between the Lago Agrio Plaintiffs and Petroecuador, stating that Plaintiffs have been given access to Petroecuador's library of documents—and to which a court-appointed expert has been denied access despite repeated court orders. [165]

59. The Plaintiffs' manipulation of the evidence-gathering was further compounded by the Court's refusal to allow the court-appointed independent experts to address Chevron's objections to Plaintiffs' judicial inspection evidence. Despite Chevron's numerous requests, the Lago Agrio court allowed an independent expert report to be prepared for only a single judicial inspection of a former Consortium site, known as Sacha 53. The independent experts who reviewed the experts' reports on the Sacha 53 site concluded that the Plaintiffs had failed to substantiate their claims of environmental contamination. They specifically found that TexPet's remediation was adequately performed and met the standards imposed by Ecuador.[166]

60. Following the Sacha-53 report by the independent experts, the Plaintiffs sought to withdraw from two-thirds of their originally-requested site inspections and to move directly to a so-called "global assessment" of liability by a single expert.[167] The Plaintiffs successfully

---

[165] **Exhibit C-186**, In re Chevron Corp., No. 1:10-MI-0076-TWT-GGB, Transcript of Deposition of Dr. Calmbacher, Mar. 29, 2010.

[166] **Exhibit C-187**, Expert Report on the Judicial Inspection of Sacha 53 (Excerpt), Feb. 1, 2006, at § 6.

[167] **Exhibit C-188**, Motion from Pablo Fajardo Mendoza to the Superior Court of Nueva Loja, Jan. 27, 2006; **Exhibit C-189**, Motion from Pablo Fajardo Mendoza to the Superior Court of Nueva Loja, Dec. 4, 2006. In anticipation of the Sacha 53 settling expert report, the Plaintiffs already had moved to truncate the judicial inspection process in favor of a global assessment of the sites by a single "expert." *See*, *e.g.*, **Exhibit C-190**, Motion from Pablo Fajardo Mendoza to the Superior Court of Nueva Loja, Jun. 15, 2006. The Court initially ordered the Plaintiffs to proceed with the inspections as per the parties' previous agreements. **Exhibit C-191**, Court Order, June 19, 2006.

overcame the lack of any valid legal arguments for terminating the process by pressuring the Judge, including (i) an intimidating public protest accusing the Judge of delaying the trial in favor of Chevron[168] and (ii) an *amicus* brief in support of the Plaintiffs' position submitted by, among others, Gustavo Larrea, who was then the campaign manager for rising presidential candidate Rafael Correa.[169] The Judge accepted the Plaintiffs' withdrawal on August 22, 2006,[170] and ratified his decision for a second time on March 19, 2007,[171] just days after President Correa assumed office and Mr. Larrea became his Minister of Government.[172]

61. The Court appointed Richard Cabrera, a mining engineer with no qualifications for this task and an undisclosed conflict of interest, as the sole expert to carry out what the Plaintiffs called a "global assessment" of liability.[173] Mr. Cabrera's appointment coincided with President Correa's public campaign supporting the Lago Agrio Plaintiffs.

62. From the beginning, it was clear that Mr. Cabrera's global assessment was a sham that lacked any accepted scientific methodology or basis. In his first report issued on April 1, 2008, Mr. Cabrera estimated the cost of environmental remediation and other "damages" to be approximately US$8 billion, much of it for alleged items of damages that go beyond the pleadings, while gratuitously suggesting an additional US$8 billion for alleged unjust enrichment.[174] This report was riddled with "essential errors," and was the product of an unscientific and biased process that lacked any semblance of transparency or legitimacy.[175]

---

[168] **Exhibit C-192**, *Persons injured by Texaco are filing Chaim for slowness of court proceedings,* ECUADOR INMEDIATO, June 14, 2006; **Exhibit C-193**, *Protests in Lago Agrio for slowness in Texaco's case,* FDA Press Release, June 14, 2006.

[169] **Exhibit C-194**, *Amicus Curiae* Brief Submitted by Gustavo Larrea *et al*, Superior Court of Nueva Loja, July 21, 2006.

[170] **Exhibit C-195**, Court Order permitting the "Relinquishment" of 64 Judicial Inspections, Aug. 22, 2006.

[171] **Exhibit C-196**, Court Order Declaring the Relinquishment Valid, Jan. 22, 2007; **Exhibit C-197**, Court Order Declaring the Relinquishment Valid, Mar. 19, 2007.

[172] **Exhibit C-198**, *Seven Women in Ecuador's Incoming Cabinet*, MERCO PRESS, Dec. 28, 2006.

[173] **Exhibit C-197**, Court Order Declaring the Relinquishment Valid, Mar. 19, 2007 (appointing Richard Cabrera as expert); **Exhibit C-199**, Motion from Dr. Diego Larrea Alarcón to the Superior Court of Nueva Loja, Mar. 22, 2007; **Exhibit C-200**, Robert E. Hinchee, Rebuttal of the Method Used by Mr. Cabrera to Determine the Supposed Necessity and Cost of Remediation, Aug. 9, 2008, at Executive Summary.

[174] **Exhibit C-201**, Report by Eng. Richard Stalin Cabrera Vega, Apr. 1, 2008 ("First Cabrera Report").

[175] *See* **Exhibit C-202**, Chevron's Rebuttal to First Cabrera Report, Sept. 15, 2008.

63. Contrary to his court-assigned mandate,[176] Mr. Cabrera, *inter alia*, visited only a fraction of the sites for which he purported to assess damages and took samples from only a portion of those he visited.[177] He also failed to assess causation or provide a chronology showing when the alleged impacts occurred as required by the Court.[178] His field work failed to conform to accepted standards and was "assisted" by Plaintiffs' representatives, while Chevron was physically barred even from observing.[179] And Mr. Cabrera never established a causal link between TexPet's activities and the impacts he allegedly found,[180] or a link between any alleged environmental impact associated with TexPet's operation of the former Consortium and the majority of the remedies he proposed.[181] Considering that Petroecuador has solely operated many of the sites since 1992, causation is highly disputed.

64. But Mr. Cabrera was not finished. After the Plaintiffs and Chevron provided comments on his first report,[182] Mr. Cabrera filed a supplemental report in November 2008 in which, at the Plaintiffs' request, he increased his damage recommendation from US$16 billion to US$27 billion, with little explanation and no legally or scientifically-valid support. He not only

---

[176] Mr. Cabrera was tasked with (a) determining the existence of environmental impacts in the former Concession area; (b) determining causation; (c) assessing the degree, if any, of ongoing risks caused by any such impacts; and (d) detailing the steps needed to remedy any impacts that needed to be addressed. *See* **Exhibit C-203**, Motion from Dr. Patricio Campuzano Merino to Superior Court of Nueva Loja, Feb. 22, 2006; **Exhibit C-204**, Court Order Regarding Expert Designations, May 17, 2007.

[177] *See* **Exhibit C-205**, Annex U-04 to the First Cabrera Report, *Resultados Sitio por Sitio*.

[178] *See* **Exhibit C-206**, Motion from Dr. Patricio Campuzano Merino to Superior Court of Nueva Loja, Feb. 22, 2006; **Exhibit C-207**, Court Order Regarding Expert Designations, May 17, 2007.

[179] Specifically, representatives of the Amazon Defense Front accompanied Mr. Cabrera. **Exhibit C-208**, Annex D to Chevron's Rebuttal to the First Cabrera Report, *Photographs showing the Participation of FDA Activists and Collaborations in Eng. Cabrera's Technical Team*. *See also* **Exhibit C-209**, Motion from Chevron Complaining that Mr. Cabrera Fenced in his Work Site, July 6, 2007.

[180] Rather, the available data showed that any existing environmental impacts in and around the pits were not attributable to TexPet. **Exhibit C-200**, Robert E. Hinchee, Rebuttal of the Method Used by Mr. Cabrera to Determine the Supposed Necessity and Cost of Remediation, Aug. 9, 2008; **Exhibit C-210**, Ernesto Baca, Response to Mr. Cabrera Regarding His Evaluation of PetroEcuador's Pit Remediation Program (PEPDA), Sept. 5, 2008.

[181] The Court requested that Mr. Cabrera set forth the steps necessary to address contamination attributable to TexPet. *See* **Exhibit C-206**, Motion from Dr. Patricio Campuzano Merino to Superior Court of Nueva Loja, Feb. 22, 2006; **Exhibit C-204**, Court Order Regarding Expert Designations, May 17, 2007. Instead of doing so, Mr. Cabrera's report assesses billions of dollars to improve public services, to modernize Petroecuador's infrastructure, to foster indigenous cultures, to compensate personal injuries that were not alleged or proved, and even to reclaim alleged "unjust enrichment." **Exhibit C-201**, First Cabrera Report, at § 7.3.

[182] *See* **Exhibit C-211**, Plaintiffs' Rebuttal to Cabrera Report, Sept. 16, 2008; **Exhibit C-202**, Chevron's Rebuttal to First Cabrera Report, Sept. 15, 2008.

ignored Chevron's comments pointing out the fundamental flaws in his work,[183] but adopted the Plaintiffs' comments as his own (at times verbatim, including Plaintiffs' errors).[184] The Lago Agrio Plaintiffs' influence and the lack of scientific merit of Mr. Cabrera's Supplemental Report are clear from a few examples: (1) after specifically being asked by Plaintiffs to include an assessment for groundwater remediation,[185] Mr. Cabrera assessed $US3.2 billion for it, despite no valid evidence of any groundwater contamination and a previous, unequivocal statement that he could not make such an assessment;[186] and (2) Mr. Cabrera more than tripled his suggested compensation for "excessive deaths due to cancer" from US$2.9 billion to US$9.5 billion,[187] without identifying even one of the supposed victims or producing any valid evidence of such deaths, such as a death certificate, medical report, or hospital record of any cancer deaths[188] Moreover, the Plaintiffs' complaint does not even ask for such damages.

65. This is not the first time that the parties to this scheme have claimed damages for cancer without identifying anyone who actually had cancer. Cristóbal Bonifaz, one of the "architects" of the *Aguinda* and Lago Agrio lawsuits and formerly lead counsel for the Plaintiffs, was sanctioned by a Federal Court in California for filing a frivolous lawsuit against Chevron in 2006. Mr. Bonifaz filed the lawsuit purportedly on behalf of individuals that reside in the Ecuadorian rainforest alleging that some of his clients developed cancer as a result of TexPet's operations in the Concession Area. In 2007, the Court dismissed the cancer case and sanctioned Mr. Bonifaz in the amount of US$45,000 after several of the plaintiffs admitted that they had never been diagnosed with cancer. The Court also found that Mr. Bonifaz had not even obtained

---

[183] **Exhibit C-212**, Supplemental Report by Richard Stalin Cabrera Vega, Nov. 26, 2008 ("Supplemental Cabrera Report"). Indeed, the submittal page of Mr. Cabrera's Supplemental Report notes that the report contains "*my responses to the comments made by the Plaintiffs* about my Expert Report." *Id.* at 1 (emphasis added).

[184] *Compare* **Exhibit C-213**, Chevron's Rebuttal to Supplemental Cabrera Report, Feb. 10, 2009, *with* **Exhibit C-212**, Supplemental Cabrera Report, at 37. *See also* **Exhibit C-214**, Chevron's Supplemental Rebuttal to Supplemental Cabrera Report, Feb. 10, 2009, at 11, 23-24.

[185] **Exhibit C-212**, Supplemental Cabrera Report, at 12, 51.

[186] *Id.* at 12 ("I am unable to define the cost of cleaning up the groundwater" because it "would require substantial effort over an extensive period and will cost millions of dollars [to collect] the data needed to develop the groundwater clean-up plan.").

[187] *Id.* at 35-37.

[188] His Supplemental Report also contained several other fundamental defects. **Exhibit C-213**, Chevron's Rebuttal to Supplemental Cabrera Report, Feb. 10, 2009, at § 1.2.3.

authority to file the lawsuit from all of the plaintiffs.[189] The Federal Judge recognized the lawsuit for what it was: "It is clear to the Court that this case was manufactured by plaintiffs' counsel for reasons *other* than to seek a recovery on these plaintiffs' behalf. *This litigation is likely a smaller piece of some larger scheme against defendants.*"[190]

66. Chevron challenged both of Mr. Cabrera's reports based upon the staggering evidence of errors and irregularities, bias, and incompetence. Then-presiding Judge Juan Evangelista Núñez Sanabria denied Chevron's request. When Chevron sought to exercise its right to appeal his order, Judge Núñez sanctioned Chevron's counsel.[191]

67. On February 9, 2010, Chevron provided newly-discovered information to the court in Lago Agrio showing that Mr. Cabrera—despite his oath of independence—is the majority owner of an oilfield remediation company that has an ongoing business relationship with Petroecuador, and therefore has a clear conflict of interest and even stands to benefit financially from a judgment against Chevron. Chevron's motion to strike Mr. Cabrera's reports on this ground is pending.[192]

H. IN THE FACE OF POLITICAL PRESSURE, THE LAGO AGRIO JUDGE PREJUDGED THE OUTCOME OF THE LAGO AGRIO LITIGATION AND ENGAGED IN IMPROPER, UNETHICAL, AND CORRUPT BEHAVIOR

68. The same Judge Núñez, who presided over the Lago Agrio Litigation during the critical period from August 2008 until September 2009, showed a clear bias and pre-judgment of the outcome, not only through his rulings but also through various public and private comments. Judge Núñez publicly characterized the case as "a fight between a Goliath and people who cannot even pay their bills."[193] His statement to the *Financial Times* that this is "the case of the

---

[189] **Exhibit C-215**, *Gonzáles v. Texaco Inc.*, No. C 06-02820 WHA, 2007 WL 3036093 (N.D. Cal. Oct. 16, 2007). The Ninth Circuit reversed the sanctions as to Mr. Bonifaz's co-counsel and remanded the matter to the district court for further findings consistent with its opinion. The sanctions imposed on Mr. Bonifaz were not appealed. **Exhibit C-216**, *Gonzales v. Texaco Inc.*, Nos. 07-17123, 07-17124, 2009 WL 2494324 (9th Cir. 2009).

[190] **Exhibit C-217**, *Gonzáles v. Texaco Inc.*, No. C 06-02820 WHA, 2007 WL 2255217 at *3 (N.D. Cal. Aug. 3, 2007) (emphasis added).

[191] **Exhibit C-218**, Nueva Loja Sanctions Decision, Aug. 28, 2009; **Exhibit C-219**, Sucumbíos Sanctions Decision, Aug. 13, 2009; **Exhibit C-220**, Chevron Motion on Fines, Sept. 8, 2009.

[192] **Exhibit C-221**, Chevron Motion to Strike Cabrera Report, Feb. 9, 2010.

[193] **Exhibit C-222**, Simon Romero & Clifford Kraus, *In Ecuador, Resentment of an Oil Company Oozes*, THE NEW YORK TIMES, May 15, 2009.

century" and "what happens here is important . . . for all humanity" betrayed a bias in favor of an enormous judgment.[194] Judge Núñez's public statements were particularly inappropriate because he made them before he had even begun reviewing the approximately 145,000 pages of evidence in the case at that point.[195] His statement to the press that the case had "taken too long"[196] came shortly after a two-hour luncheon between the National Court of Justice and President Correa at which the President demanded "expediency in cases of interest to Ecuador."[197] These and similar statements led *The Economist* to observe that "[t]he judge in Lago Agrio, Juan Núñez, . . . has made no secret of his sympathy for the plaintiffs."[198] *The New York Times* similarly noted that Judge Núñez's "sympathies . . . are not hard to discern."[199]

69. In June 2009, Chevron obtained evidence indicating that Judge Núñez, the office of the President, and Plaintiffs were involved in a bribery scheme relating to an apparently predetermined judgment against Chevron. Audiovisual recordings captured a series of four meetings in May and June of 2009 involving, variously, Judge Núñez, persons purporting to represent the Ecuadorian Government and President Correa's *Alianza PAÍS* party, and prospective environmental remediation contractors. The recordings, made while the trial was still ongoing, indicate that Judge Núñez would soon issue a ruling against Chevron with the assistance of the Government and that, to obtain remediation contracts arising out of this judgment, the prospective contractors would have to pay a US$3 million bribe to be shared among the presidency, the presiding Judge, and Plaintiffs. A critical part of the scheme was to show the prospective contractors that Judge Núñez would issue a judgment against Chevron, thereby creating the need for remediation contracts.

---

[194] **Exhibit C-223**, Naomi Mapstone, *Chevron fights Ecuador pollution lawsuit*, FINANCIAL TIMES, June 12, 2009.

[195] **Exhibit C-224**, Juan Forero, *In Ecuador, High Stakes in Case Against Chevron*, WASH. POST A12, Apr. 28, 2009 (noting that Judge Núñez "will begin reviewing . . . [the] evidence after reports on the effects of the discharges on fishing and agriculture are completed").

[196] *Id.*

[197] **Exhibit C-125**, Joffre Campaña Mora, *Interference in the Administration of Justice*, EL UNIVERSO, Mar. 5, 2009.

[198] **Exhibit C-225**, *Justice or Extortion?: The Hounding of an American Oil Company*, THE ECONOMIST, at 2, May 21, 2009.

[199] **Exhibit C-222**, Simon Romero & Clifford Krauss, *In Ecuador, Resentment of an Oil Company Oozes*, THE NEW YORK TIMES, May 15, 2009.

70. Chevron had no involvement in the meetings or the recordings which the prospective contractors independently made. After taking steps to confirm the authenticity of the recordings, Chevron contacted the Prosecutor General of Ecuador in August 2009 to raise its serious concerns about the conduct captured in the recordings.[200] The official reaction in Ecuador, however, was largely to ignore the evidence. Indeed, almost immediately after receiving the recordings, Ecuadorian officials impugned Chevron's motives, publicly prejudged (again) Chevron's guilt in the Lago Agrio Litigation, and encouraged a speedy ruling in the case. Prosecutor General Pesántez took the opportunity to publicly support the Lago Agrio Plaintiffs, saying that TexPet had caused "severe environmental damages" and "illnesses."[201] He then asked Judge Núñez to recuse himself from the case[202]—not because of the improper conduct reflected in the recordings, but rather to ensure "that the ruling that will be issued . . . is not the subject of any additional delays or delegitimization by the company, which is apparently seeking a reason not to pay it."[203] He added that "the judge is going to withdraw from continuing in the proceedings, and that is to avoid any trick that might possibly be used 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."[204] And President Correa again confirmed that "[o]f course I want our indigenous friends to win."[205] Again, the signals from the Executive Branch to the Court could not be any clearer.

71. Although Judge Núñez was forced to recuse himself, his replacement, Judge Zambrano, rejected Chevron's motion to annul Judge Núñez's rulings in the Lago Agrio Litigation,[206] so his biased rulings continue to taint the trial.[207]

---

200 **Exhibit C-226**, Letter from Thomas F. Cullen, Jr. to Dr. Washington Pesántez, Aug. 31, 2009.

201 **Exhibit C-5**, Press Conference by Prosecutor General Washington Pesántez, Sept. 4, 2009.

202 *See* **Exhibit C-227**, Motion from Judge Juan Nuñez Recusing Himself from the Case, Sept. 3, 2009.

203 **Exhibit C-5**, Press Conference by Prosecutor General Washington Pesántez, Sept. 4, 2009, at 3.

204 *Id*.

205 **Exhibit C-228**, Hugh Bronstein, *Ecuador Says Had No Role in Alleged Bribery Case*, REUTERS, Sept. 12, 2009.

206 **Exhibit C-229**, Chevron Motion to Annul, Sept. 11, 2009; **Exhibit C-230**, Order Denying Chevron Motion to Annul, Oct. 21, 2009.

207 In February 2010, Judge Zambrano was replaced by Judge Leonardo Ordoñez Pina.

III. FACTUAL BACKGROUND CONCERNING THE CRIMINAL PROCEEDINGS

72. In early 2007, the Ecuadorian Executive Branch expanded its campaign to unduly influence the Lago Agrio Litigation in breach of the Settlement and Release Agreements by pursuing the Criminal Proceedings against two of Claimants' lawyers, Ricardo Reis Veiga and Rodrigo Pérez Pallares, who executed the 1998 Final Release Agreement. These baseless charges, supported by no evidence, represent Ecuador's ongoing strategy to undermine the 1995 Settlement Agreement and 1998 Final Release Agreement so that Ecuador can secure an improper windfall from the Lago Agrio Litigation. The Criminal Proceedings are characterized by extreme departures from the rules of Ecuadorian criminal procedure and are the direct result of improper influence from the highest levels of the State.

A. ECUADOR'S PROSECUTORS INVESTIGATED AND DISMISSED THE ORIGINAL CRIMINAL COMPLAINT AGAINST CLAIMANTS' LAWYERS

73. In 2003, shortly after the Lago Agrio Litigation was commenced, Ecuador's Comptroller General submitted a criminal complaint (*denuncia*) to the Prosecutor General of Ecuador against Claimants' lawyers Ricardo Veiga and Rodrigo Pérez, as well as the former Ecuadorian officials, who signed the 1998 Final Release Agreement (the "Criminal Complaint"). The Criminal Complaint alleged that Messrs. Veiga and Pérez had misstated the facts regarding the remediation in public documents and claimed that TexPet's remediation work had not been performed.[208] In 2004, then-Prosecutor General of Ecuador Mariana Yépez Andrade opened a preliminary investigation into the alleged falsification of public documents,[209] while the Public Prosecutor of Pichincha investigated accusations of environmental harm.[210]

74. While these two investigations were ongoing, Ecuadorian officials made it clear that the Government's goal was to undermine the Settlement and Release Agreements. As noted above, on August 10, 2005, Deputy Attorney General Escobar wrote to Alberto Wray, then a lead lawyer for the Lago Agrio Plaintiffs, that the Attorney General's Office was "searching for a

---

[208] **Exhibit C-231**, Criminal Complaint from Dr. Genaro Peña Ugalde, Comptroller General, to the Prosecutor General, Oct. 29, 2003.

[209] **Exhibit C-232,** Motion by Dr. Mariana Yépez Andrade to Investigate Alleged Falsification of Public Documents, May 10, 2004.

[210] **Exhibit C-233,** Motion by Dr. Luis Enriquez Villacrés to Investigate Injury to the Environment, May 27, 2004.

way to nullify or undermine the value of the remediation contract and the final acta" and that the Attorney General "want[ed] to criminally try those who executed the contract."[211]

75. After more than two years of investigation, on August 9, 2006, Ecuador's Prosecutor General Cecilia Armas requested dismissal of the charge that public documents had been falsified on the basis that there was no evidence of any criminal wrongdoing.[212] Dr. Armas concluded that the Comptroller's Criminal Complaint failed to show that a crime had occurred.[213] Dr. Armas noted that the 1998 Final Release Agreement "was prepared on the basis of nine prior documents that were not objected to or challenged by Petroecuador or the Ministry of Energy and Mines at the appropriate time, with the understanding that they reflected reality."[214] According to Dr. Armas, if the Government had a problem with the 1998 Final Release Agreement—for instance that TexPet had not performed its obligations thereunder—the proper recourse was to pursue an action in the civil courts:

> [G]iven the fact that the matter that might give rise to this preliminary criminal investigation is a civil matter, and specifically a matter involving a breach of contract, and the fact that Ecuadorian law establishes causes of action for this type of legal relationship, and the fact that the report by the Office of the Comptroller General does not find any evidence of criminal liability, on the basis of Art. 38 of the Code of Criminal Procedure I therefore dismiss the criminal complaint filed by the Comptroller General.[215]

76. Regarding the allegations of environmental crimes, after conducting an investigation that included expert field inspections of sites in the former Consortium area, the

---

[211] **Exhibit C-166,** Email from Dr. Martha Escobar to Alberto Wray *et al*., Aug. 10, 2005.

[212] **Exhibit C-234,** Prosecutor General Opinion Dismissing the Criminal Complaint Filed by the Comptroller General, Aug. 9, 2006.

[213] *Id.*

[214] *Id.*

[215] **Exhibit C-234,** Prosecutor General Opinion Dismissing the Criminal Complaint Filed by the Comptroller General, Aug. 9, 2006. *See also* **Exhibit C-235**, Ecuadorian Code of Criminal Procedure, at Art. 38 ("The Prosecutor must request to the Judge, through a duly grounded request, the archiving of the complaint, when it is manifest that the alleged act is not a crime, or when there is any legal obstacle for the continuation of the proceeding."). Claimants refer herein to the Code of Criminal Procedure in force at the time of each phase of the Criminal Proceedings.

Prosecutor of Pichincha, Dr. Marianita Vega Carrera, issued a report on September 4, 2006, finding that no improper conduct had occurred.[216] Specifically, Dr. Vega concluded that:

- *None of the pits evaluated are having negative impacts on the environment.*
- At certain locations near the wells visited, the presence of oil on the ground was noted, which was *due to recent spills caused by the State-owned Company Petroecuador*.[217]

77. Dr. Vega's superior, then District Prosecutor of Pichincha, Dr. Washington Pesántez, reviewed Dr. Vega's report and, in a court document filed March 13, 2007, confirmed all of her findings and ratified the request for dismissal.[218] In particular, Dr. Pesántez found no evidence of environmental damage caused by TexPet in connection with oil production operations and found that the technical expert reports established that TexPet satisfied the requirements in the 1995 Settlement Agreement and the Scope of Work.[219] In confirming Public Prosecutor Vega's conclusion that no crime had occurred, Dr. Pesántez relied on reports prepared by State-appointed experts, which concluded that TexPet's remediation had been successful. In fact, one expert appointed by the Prosecutor General's Office concluded that "100% of the pits evaluated did not show any superficial impact on the environment which may place human life, flora, or fauna at risk."[220]

B. THE PRESIDENT OF THE SUPREME COURT REFUSED TO ARCHIVE THE CASE IN BREACH OF ECUADORIAN CRIMINAL PROCEDURAL LAW

78. On October 27, 2006, the President of the Supreme Court, Dr. Jaime Velasco, transferred Prosecutor General Armas's findings to the Comptroller General for his

---

[216] **Exhibit C-236,** Motion of Dr. Marianita Vega Carrera, Assistant District Prosecutor of Pichincha, to Third Criminal Judge of Francisco de Orellana, Sept. 4, 2006. The District Prosecutor's Office also concluded that the definition of environmental crimes in Ecuador's Penal Code (Reform Law 99-49, Official Registry No. 2, Jan. 25, 2000) could not be applied retroactively to TexPet's alleged acts. *Id.* at Conclusions.

[217] *Id.* at Conclusions (emphasis added).

[218] **Exhibit C-237,** Motion of Dr. Washington Pesántez, District Prosecutor of Pichincha, to Third Criminal Court of Napo, Mar. 13, 2007, at 8.

[219] *Id.*

[220] *Id.* at 6. Dr. Pesántez also took into account the fact that Prosecutor General Armas had reached the conclusion that "no 'criminal falsification' of public documents within the meaning of Arts. 338 and 339 of the Penal Code had been committed." *Id.* at 9.

comments.[221] Pursuant to Article 39,[222] after hearing the criminal complainant (here, the Comptroller General),[223] the President of the Supreme Court had the power to dismiss the case with no further action. Moreover, because the request to archive the file came from Prosecutor General Armas as the highest Prosecutor in Ecuador, Article 39 of the Code of Criminal Procedure required the Court to issue an order dismissing and archiving the case. [224]

79. Yet on January 12, 2007, the President of the Supreme Court, Dr. Velasco improperly transferred the Comptroller General's comments to the Prosecutor General in complete abuse of Ecuadorian legal procedure.[225]

80. On March 1, 2007, the new Prosecutor General of Ecuador, Jorge German, again requested dismissal of the Criminal Complaint and emphasized that the only admissible course of action was to archive the case file: "Article 39 of the Criminal Procedure Code clearly sets forth the procedure to be followed . . . and *that article does not provide for transferring the file [to the Prosecutor] with the complainant's response to the Prosecutor General's dismissal.* Therefore, I hereby request that you [Judge Velasco] issue the proper order, in compliance with Article 39 . . . , that is, the case be dismissed."[226] The Supreme Court President, however, ignored the Prosecutor General's emphatic request to follow the law and archive the case.

C. PRESIDENT CORREA AND THE GOVERNMENT DEMANDED THE PROSECUTION OF CLAIMANTS' LAWYERS AND DISMISSED THE PROSECUTOR GENERAL WHO REFUSED TO PURSUE THE CASE

81. This refusal by the President of the Supreme Court to archive the case coincided with President Correa's increasing interest in the Lago Agrio Litigation and his calls for the

---

[221] **Exhibit C-238**, Court Order Transferring Prosecutor General's Opinion to Comptroller General, Oct. 27, 2006.

[222] **Exhibit C-235**, Ecuadorian Code of Criminal Procedure, at Art. 39.

[223] **Exhibit C-239**, Motion by Dr. Genaro Peña Ugalde, Comptroller General, to the President of the Supreme Court, Nov. 1, 2006, at 8.

[224] **Exhibit C-235**, Ecuadorian Code of Criminal Procedure, at Art. 39.

[225] **Exhibit C-240**, Court Order Transferring Prosecutor General's Opinion to Comptroller General, Jan. 12, 2007.

[226] **Exhibit C-241**, Motion by Dr. Jorge Germán, Prosecutor General, to the President of the Supreme Court, Mar. 1, 2007 (emphasis added).

criminal prosecution of those who executed the Settlement and Release Agreements.[227] President Correa escalated his rhetoric, calling Chevron's Ecuadorian lawyers traitors and demanding that they, along with the Petroecuador officials who signed the 1998 Final Release Agreement, should be criminally prosecuted:

> Chevron-Texaco has lawyers *"vende patrias"* (who sell their country) defending it, people who for a fistful of dollars are capable of selling their souls, their country, their families, etc. There are also people in Petroecuador; in 1998 a document was signed declaring everything had been remedied, while many of the pits had not been even covered. I cordially call on the Public Prosecutor of the Nation. There is a report from the Office of the Comptroller General establishing criminal liability incurred by Petroecuador's officials who shamelessly signed that document. It was said that everything had been remedied when nothing had been remedied. I request that this case be prosecuted and criminal actions be brought against those corrupt *"vende patrias"* . . . [228]

Just weeks later, the Comptroller General of Ecuador objected once again to the Prosecutor General's request to dismiss the case, invoking the political importance of the case for Ecuador and insisted that the President of the Supreme Court called on the Prosecutor General "to conduct the necessary inquires . . . [which] conducted in due form, will undoubtedly lead to a decision to initiate the pertinent Prosecutorial investigation."[229]

82. Prosecutor General German refused to be bullied. On June 14, 2007, he directed the President of the Supreme Court—for the second time—to archive the case file. He noted that the law expressly required the case's archival and that the court had no discretion to do otherwise: "As you also know, rules of procedure are mandatory; that is, a judge ruling on a case must strictly adhere to those rules and has no power of authority to change them."[230] Prosecutor General German reiterated that the President of the Supreme Court had not acted pursuant to

---

[227] **Exhibit C-242**, Office of President Rafael Correa, Press Release, *President calls upon district attorney to allow criminal case to be heard against Petroecuador officers who accepted the remediation performed by Texaco*, Apr. 26, 2007; **Exhibit C-243**, Transcript of Statements by Rafael Correa, Teleamazonas Broadcast, Apr. 26, 2007.

[228] **Exhibit C-171**, Presidential Weekly Radio Address, Radio Caravana, Apr. 28, 2007.

[229] **Exhibit C-244**, Comptroller General Petition Insisting on the Reopening of the Investigation, May 18, 2007.

[230] **Exhibit C-245**, Motion by Dr. Jorge German, Prosecutor General, to the President of the Supreme Court, June 14, 2007.

Article 39 of the Code of Criminal Procedure, which "clearly describes the procedure for dismissal of a criminal complaint."[231]

83. Five months later, on November 30, 2007, as one of its first acts, President Correa's new Constituent Assembly removed Prosecutor General German from office and appointed Dr. Washington Pesántez as his replacement.[232] Dr. Pesántez previously had issued two separate motions approving and ratifying the report drafted by the Public Prosecutor of Pichincha, Dr. Vega, which dismissed the Criminal Complaint's charge that Claimants' lawyers had committed crimes against the environment.[233] In upholding Dr. Vega's conclusion, Dr. Pesántez stated that "the report on the special audit conducted by the Comptroller General of Ecuador [ ] showed that there was no evidence of civil, administrative or criminal nature liability on the part of . . . the representatives of the TEXACO company, with respect to environmental damage that had allegedly been caused in the Amazon region."[234] He also stated that TexPet had complied with its remediation obligations: "[T]he technical reports prepared by the College of Geology and Mines of the Central University of Ecuador established that TEXACO *did* satisfy the requirements provided for and established in the contract signed by the Government of Ecuador and Texpet."[235] But under mounting public pressure from President Correa to blame Chevron, Prosecutor General Pesántez soon issued a one-paragraph opinion stating that undisclosed new circumstances and evidence warranted re-opening the criminal investigation against Claimants' lawyers.[236]

84. Dr. Pesántez never described the alleged new evidence, despite an express request for such information by Messrs. Veiga and Pérez.[237] No such disclosure has ever been made

---

[231] *Id.*

[232] **Exhibit C-104**, Constituent Assembly, Mandate 1, Official Registry No. 223, Nov. 30, 2007.

[233] **Exhibit C-237**, Motion of Dr. Washington Pesántez, District Prosecutor of Pichincha, to Third Criminal Court of Napo, Mar. 13, 2007.

[234] *Id.* at 9 (emphasis added); **Exhibit C-246**, Motion of Dr. Washington Pesántez to Criminal Court of Sucumbíos, Sept. 13, 2007, at 12.

[235] **Exhibit C-237**, Motion of Dr. Washington Pesántez, District Prosecutor of Pichincha, to Third Criminal Court of Napo, Mar. 13, 2007, at 9. *See also* **Exhibit C-246**, Motion of Dr. Washington Pesántez to Criminal Court of Sucumbíos, Sept. 13, 2007, at 12.

[236] **Exhibit C-247**, Order by Prosecutor General Reopening the Investigation, Mar. 31, 2008.

[237] **Exhibit C-248**, Motion of Dr. Jaime Donoso Jaramillo to Dr. Washington Pesántez, Apr. 11, 2008.

because no "new evidence" exists. The only changed circumstance was a political one: President Correa's increasingly open support for the Lago Agrio Plaintiffs.

D. CONCERTED LAST-MINUTE EFFORTS BY PRESIDENT CORREA AND THE LAGO AGRIO PLAINTIFFS' LAWYERS PRESSURED THE PROSECUTOR GENERAL INTO COMMENCING A PROSECUTORIAL INVESTIGATION

85. On July 31, 2008, the U.S. lawyers representing the Lago Agrio Plaintiffs issued a press release entitled "Preliminary Criminal Investigation of Falsehood in a Public Instrument: A Serious Crime that is About to Be Time-Barred."[238] In this release, the Plaintiffs' lawyers brazenly called for a prosecutorial investigation (*instrucción fiscal*) of Claimants' employees, noting that the statute of limitations would soon expire.[239] The Plaintiffs' lawyers reiterated their call for a prosecutorial investigation in *El Comercio* three days later, telling the newspaper that the statute of limitations would soon bar the prosecution of Messrs. Veiga and Pérez.[240] In making these statements, the Plaintiffs' lawyers ignored the fact that the ROE repeatedly had determined, over several years, that there was no evidence to proceed with criminal charges. As the Prosecutor General had concluded after a more than two-year investigation, "none of the findings [of the investigation] indicate[s] any evidence of criminal liability."[241]

86. In early August 2008, President Correa again met with the Amazon Defense Front in what he called a "working meeting on the Texaco case."[242] During the President's weekly radio address to the country, he described the purpose of the meeting and personally commended Prosecutor General Pesántez for reopening the preliminary investigation against Claimants' lawyers.[243]

---

238 **Exhibit C-249**, *Preliminary Criminal Investigation of Falsehood in a Public Instrument: A Serious Crime that is About to Be Time-Barred*, July 31, 2008.

239 *Id*.

240 **Exhibit C-250**, *Texaco, accused of risking negotiations with the USA.*, EL COMERCIO, Aug. 1, 2008.

241 **Exhibit C-234**, Prosecutor General Opinion Dismissing the Criminal Complaint Filed by the Comptroller General, Aug. 9, 2006.

242 **Exhibit C-173**, Presidential Weekly Radio Address, Canal de Estado, Aug. 9, 2008.

243 *Id.*; *see also* **Exhibit C-251**, Presidential Weekly Radio Address, Aug. 16, 2008. *See also* **Exhibit C-171**, Radio Caravana, Presidential Weekly Radio Address, Apr. 28, 2007.

87. Ten days later, on August 26, 2008, Prosecutor General Pesántez instituted a prosecutorial investigation against Mr. Veiga and Mr. Pérez, in accordance with the public urging of President Correa and the Lago Agrio Plaintiffs' lawyers.[244] Dr. Pesántez did not conduct any additional investigation between the reopening of the preliminary investigation in March 2008 and the commencement of the prosecutorial investigation in August 2008, and accordingly no new facts were presented or alleged. Rather, with the exception of a few deleted sentences, the decision initiating the prosecutorial investigation tracks the language in the original 2003 Criminal Complaint almost word for word.[245]

88. Although Dr. Pesántez later recused himself on the basis of his prior involvement in the case, he failed to explain why he had not recused himself prior to commencing the prosecutorial investigation.[246]

E. THE ECUADORIAN COURTS IMPROPERLY ASSERTED JURISDICTION OVER THE CRIMINAL PROCEEDINGS AFTER THE STATUTE OF LIMITATIONS EXPIRED

89. The commencement of the prosecutorial investigation did not toll the statute of limitations, however, because tolling occurs only when a court notifies all of the defendants. Under Ecuadorian law, when the Prosecutor General commences a prosecutorial investigation, the case is randomly assigned to a three-judge criminal chamber of the Supreme Court[247] that will then notify the defendants. It is this notification that legally tolls the statute of limitations.[248] Under the lottery system, the proceedings against Claimants' lawyers were

---

[244] **Exhibit C-252,** Order from Prosecutor General Washington Pesántez Ordering Prosecutorial Investigation to Begin, Aug. 26, 2008; **Exhibit C-253**, Notification of Prosecutorial Investigation from Dr. Carlos Fernandez Idrovo, Comptroller General, to the President of the Supreme Court, Sept. 3, 2008.

[245] *See* **Exhibit C-231**, Criminal Complaint from Dr. Genero Peña Ugalde, Comptroller General, to the Prosecutor General, Oct. 29, 2003; *cf.* **Exhibit C-252**, Order from Prosecutor General Washington Pesántez Ordering Prosecutorial Investigation to Begin, Aug. 26, 2008.

[246] **Exhibit C-254**, Notification from Prosecutor General Washington Pesántez to the Parties, Dec. 8, 2008; **Exhibit C-255**, Mercedes Álvaro, *Ecuador: Prosecutor Recuses Himself in Chevron Case*, DOW JONES, Dec. 16, 2008; **Exhibit C-256**, *Prosecutor General Recuses Himself from the Texaco Case*, EL COMERCIO, Dec. 16, 2008; **Exhibit C-257**, *Prosecutor General Recuses Himself in Chevron Case*, EL TIEMPO, Dec. 16, 2008; **Exhibit C-258**, *Prosecutor Pesántez Excuses Himself from Chevron-Texaco Lawsuit*, EXPRESO, Dec. 16, 2008.

[247] **Exhibit C-259,** Organic Law of the Judicial Branch, Official Registry No. 639, Sept. 11, 1979, at Art. 13 (Agregado per Art. 2 of the Law 2006-33, Official Registry No. 238, 28-III-2006, unnumbered article).

[248] **Exhibit C-260**, Ecuadorian Code of Civil Procedure, Arts. 304, 305; **Exhibit C-235**, Ecuadorian Code of Criminal Procedure, Disposición General. The Ecuadorian Code of Criminal Procedure provides that the Code of Civil Procedure governs when there is no express provision in the Code of Criminal Procedure.

assigned to the First Criminal Chamber of the Supreme Court. But in complete violation of Ecuador's criminal procedure, this court declined jurisdiction and ordered the case file "to be returned immediately" to the President of the Supreme Court, Dr. Roberto Gómez Mera.[249] Although he had no authority to do so, Judge Gómez immediately "accepted" the Criminal Proceedings and ordered the defendants to be notified.[250] The notification was sent only days before the 10-year statute of limitations period expired.

90. On February 3, 2009, the President of the First Chamber of the newly-constituted National Court of Justice (the former Supreme Court) issued an order nullifying all rulings by Judge Gómez on the grounds that he did not have jurisdiction over the case.[251] The Prosecutor General's office did not appeal this decision and so it became final. Because Judge Gómez's actions were nullified, the defendants were never timely and properly notified of the proceedings pending against them, and the statute of limitations was never tolled. Although the statute of limitations had expired, the President of the First Chamber of the National Court of Justice failed to dismiss the case and instead ordered that the defendants be notified again.[252]

F. THE SUBSTANCE OF THE CRIMINAL PROCEEDINGS IS FABRICATED

91. The substantive content of the Criminal Proceedings is as absurd as the process that led to their initiation. The allegations are based solely on 16 oil pits. The allegations are that TexPet was required to remediate those sites, that TexPet did not do so, and thus, that Claimants' lawyers committed fraud by signing the Release. Yet, of the 16 well sites listed:

---

[249] **Exhibit C-261**, Resolution, Supreme Court of Justice, First Criminal Chamber, Sept. 16, 2008 ("Based on the foregoing and because the most recent filings by the Office of the State Prosecutor were improperly assigned, since this Division lacks jurisdiction to hear the present case, accordingly, it is ordered that the record be sent to the President of the Supreme Court of Justice.").

[250] **Exhibit C-262,** Court Order Accepting the Criminal Case from the First Chamber of the Supreme Court, Sept. 19, 2008. *See also* **Exhibit C-263**, Motion by Dr. Jaime Donoso Jaramillo and Dr. Emiliano Donoso Vinueza to the Supreme Court, Sept. 25, 2008. A few weeks after Judge Gómez improperly asserted jurisdiction over the criminal case, Prosecutor General Pesántez requested that Judge Gómez abstain from hearing the case so as to "avoid future possible causes of nullity in these proceedings," on the basis that Ecuadorian procedural law requires that criminal proceedings be assigned to courts by lottery. **Exhibit C-264**, Motion by Dr. Prosecutor General Washington Pesántez to the Supreme Court, Oct. 13, 2008.

[251] **Exhibit C-265**, Court Order Nullifying the Rulings of the Supreme Court, Feb. 3, 2009.

[252] *Id*.

- Eleven were designated as "No Further Action" pits (*i.e.*, the field investigation performed in mid-1995 by Woodward-Clyde determined that no remediation was required pursuant to the terms of the 1995 Settlement Agreement, and in each instance Ecuador agreed and approved this designation of the pits);[253]

- Three other pits listed were designated as "Change of Conditions" pits (*i.e.*, conditions were found by Woodward-Clyde to be different during the remedial action from the conditions encountered during the remedial investigation, generally as a result of the actions of Petroecuador as operator since 1992, such that Petroecuador was responsible for the pits and TexPet was not required by the parties' agreement to remediate them, as again agreed and approved by Ecuador and Petroecuador);[254] and

- The last two pits had been approved by Ecuador as having been properly remediated.[255]

92. Ecuador expressly approved these designations and the remediation conducted, and released TexPet from all liability. The Criminal Complaint acknowledges that the 14 pits designated as "No Further Action" and "Change of Conditions" were so designated by Ecuador at the time of the remediation, but it asserts that unidentified officials at Petroecuador now disagree with the original designations.[256] The Criminal Complaint, however, does not identify these officials or state the factual basis for such alleged disagreement. This vague assertion several years later by unidentified officials at a state-owned oil company with a vested interest in

---

[253] These pits are Sacha 52.1, Aguarico 9.1, Sacha 88.1, Guanta 5.1, Shushufindi B31.2, Sacha 110.1, Sacha 98.1, Sacha 52.2, Shushufindi 13A.3, Sacha 109.2, and Sacha 104. **Exhibit C-43**, Woodward-Clyde International's Final Report on Texaco's Remedial Action Project in Ecuador, May 2000, at § 3.5. *See also* **Exhibit C-276**, Letter from the Ministry of Energy and Mines to Rodrigo Pérez of TexPet, June 27, 1996.

[254] These pits are Aguarico 1.1, Guanta 3.1, and Sacha 111.1. Under the terms of the Remedial Action Plan, "[i]f during the implementation of the remedial actions, conditions are found to be different than the one encountered during the Remedial Investigation as documented in Appendices A through F and are due to Petroecuador or any of its affiliates and/or its respective subcontractors activities (that is, new spills, fresh oil being discarded in pits, modification to installation, etc.), the representative of the Ministry of Energy and Mines will be notified. No action will be undertaken and the remedial action will be deemed to have been completed for the site(s) where the changes of conditions occurred." **Exhibit C-42**, Remedial Action Plan ¶ 1.5; *see also* **Exhibit C-23**, 1995 Settlement Agreement, at Art. IV (referring to Remedial Action Plan).

[255] These pits are Shushufindi 30.1 (30A.1) and Shushufindi B31.1. **Exhibit C-43**, Woodward-Clyde International, Remedial Action Project, Oriente Region, Ecuador: Final Report, May 2000, Table 3-25 (showing "remediation completed" for both pits).

[256] **Exhibit C-231**, Criminal Complaint from Dr. Genaro Peña Ugalde, Comptroller General, to the Prosecutor General, Oct. 29, 2003, at 4. *See also* **Exhibit C-252**, Order from Prosecutor General Washington Pesántez Ordering Investigation to Begin, Aug. 26, 2008.

the outcome is being used as the predicate for a sham criminal proceeding that deprives the accused of their due process rights.

93. On May 13, 2009, the acting Prosecutor General (after Dr. Pesántez's self-recusal), Dr. Alfredo Alvear Enríquez, added nine new sites to the allegations and ordered inspections to be conducted at the 20 pits associated with the new sites, to analyze the environmental remediation work performed in the former Concession area.[257] Engineer William Mauricio Bedón Sánchez was appointed as the expert, and he conducted site inspections at the 20 pits.[258] Engineer Bedón's findings confirm that the government's claims are without merit. In his report, Engineer Bedón concludes that contamination levels were below acceptable levels and that TexPet complied with the terms contained in the Remedial Action Plan.[259]

IV. CLAIMANTS SATISFY THE REQUIREMENTS FOR INTERIM MEASURES

94. This Tribunal has wide powers to issue interim measures. Article 26(1) of the UNCITRAL Arbitration Rules provides that "the arbitral tribunal may take *any interim measures it deems necessary in respect of the subject-matter of the dispute. . . .*," which under Article 26(2) "may be established in the form of an interim award." (Emphasis added). Article 26(1) "leaves wide[ ] discretion to the Tribunal in the awarding of provisional measures,"[260] which may extend to any aspect of the "subject-matter of the dispute," as long as the tribunal deems these measures "necessary." This authority has been construed as encompassing a wide range of potential remedies.[261]

95. Under the jurisprudence of the International Court of Justice ("ICJ") and awards issued under the ICSID Convention and the UNCITRAL Arbitration Rules, there are three

---

[257] **Exhibit C-277**, Notification from Prosecutor General Washington Pesántez Regarding the Inspection of Nine Sites, May 13, 2009; **Exhibit C-278**, Environmental Expert Report on the Analysis of the Environmental Remediation Works Performed at the Pits in the Aguarico 08, Atacapi 05, Lago Agrio 05, Parahuacu 03, Ron 01, Sacha 56, Sacha 57, Sacha 94, and Shushufindi 18 Well Sites, Aug. 25, 2009, at § 9. The expert appointed by the court, William Mauricio Bedon Sanchez, conducted inspections at the following nine sites: Aguarico 08, Atacapi 05, Lago Agrio 05, Parahuaco 03, Ron 01, Sacha 56, Sacha 57, Sacha 94, and Shushufindi 18.

[258] *Id.* § 9.

[259] *Id*.

[260] **CLA-2**, *Sergei Paushok et al. v. Government of Mongolia*, UNCITRAL, Order on Interim Measures, Sept. 2, 2008 ("*Paushok*"), ¶ 34.

[261] **CLA-3**, Gary B. Born, INTERNATIONAL COMMERCIAL ARBITRATION 1957-1959 (2009).

general requirements for granting interim relief: (1) *prima facie* jurisdiction over the subject matter of the request; (2) a threat of substantial or irreparable harm or prejudice to property or a right capable of being protected by the tribunal; and (3) urgency in the sense that the risk of harm or prejudice is imminent.[262] One UNCITRAL case has set forth two additional requirements: *prima facie* establishment of the case and the extent to which interim measures would inconvenience the other party.[263] Claimants satisfy each of these elements.

A. THE TRIBUNAL HAS *PRIMA FACIE* JURISDICTION

96. Under Article VI(1) of the BIT, the Tribunal has jurisdiction over, *inter alia*, "a dispute . . . arising out of or relating to (a) an investment agreement between that Party and such national or company . . . or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment." Article I(1)(a) defines "investment" as "*every kind of investment* in the territory of one Party *owned or controlled directly or indirectly* by nationals or companies of the other Party, *such as* equity, debt, and service and *investment contracts*; and *includes* . . . (iii) a claim to money or a *claim to performance having economic value, and associated with an investment*; . . . and (v) *any right conferred by law or contract*, and any licenses and permits pursuant to law."[264]

97. This Tribunal has *prima facie* jurisdiction[265] because this dispute arises out of or relates to (1) a right conferred or created by the BIT with respect to an investment; and (2) a series of investment agreements between Ecuador and its political subdivisions and Claimants.

98. First, Claimants own or control, directly or indirectly, an "investment" in Ecuador that falls within the above definition, and therefore, this Tribunal has jurisdiction under Article VI(1)(c) of the BIT.

---

[262] The Iran-U.S. Claims Tribunal adopted an equivalent standard in determining the requirements for interim remedies under Article 26(1) of the UNCITRAL Rules. *See* **CLA-4**, Charles N. Brower and Jason D. Brueschke, THE IRAN-UNITED STATES CLAIMS TRIBUNAL 218 (The Hague, Martinus Nijhoff, 1998).

[263] **CLA-2**, *Paushok, supra* note 260, ¶ 45.

[264] **Exhibit C-279**, U.S.-Ecuador BIT, Art. I(1)(a) (emphasis added).

[265] *See* **CLA-5**, *LaGrand Case (Germany v. United States of America)*, ICJ, Request for the Indication of Provisional Measures, Order, Mar. 3, 1999, ICJ Reports 1999, at 8, ¶ 13 ("*LaGrand* Provisional Measures Order") (considering issue of *prima facie* jurisdiction in connection with interim measures request). *See also* **CLA-6**, *Case Concerning the Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russia)*, Order, Oct. 15, 2008, ¶ 85 ("*Case Concerning the Convention CERD*").

99. In a recent dispute under the UNCITRAL Arbitration Rules involving the same parties, the same BIT and the same underlying oil exploration and production activities as this Arbitration (the *Commercial Cases Dispute*), the tribunal issued an Interim Award, finding that it had jurisdiction.[266] The *Commercial Cases Dispute* concerned seven breach-of-contract cases that TexPet brought against Ecuador in Ecuador's courts between 1991 and 1993 that related to the Consortium's oil production activities. Chevron and TexPet alleged, *inter alia*, that the egregious delays by the Ecuadorian courts in deciding the seven cases constituted a violation of the BIT.[267]

100. Ecuador argued, *inter alia*, that the lawsuits did not constitute an "investment" and that the tribunal lacked jurisdiction.[268] The tribunal rejected Ecuador's arguments, noting that "Respondent does not and cannot reasonably deny that the Claimants had what would be considered to be an investment in Ecuador in their oil exploration and extraction activities ranging from the 1960s to the early 1990s."[269] The tribunal also found that the 1973 and 1977 concession agreements were investment agreements.[270] The tribunal determined that the lawsuits "form part of that investment,"[271] because "once an investment is established, it continues to exist and be protected until its ultimate 'disposal' has been completed—that is, until it has been wound up." Claimants' investment was "not yet fully wound up because of ongoing claims for money arising directly out of their oil extraction and production activities under their contracts with Ecuador and its state-owned oil company." The tribunal found that "the Claimants' investments have not ceased to exist: their lawsuits continued their original investment through the entry into force of the BIT and to the date of commencement of this arbitration."[272]

---

266 **CLA-1**, *Commercial Cases Dispute* Interim Award, *supra* note 1.

267 *Id.* ¶ 8.

268 *Id.* ¶ 151.

269 *Id.* ¶ 180.

270 *Id.* ¶ 211.

271 *Id.* ¶ 180.

272 *Id.* ¶ 184.

101. Just as the lawsuits in the *Commercial Cases Dispute* formed part of Claimants' "investment," the rights and obligations under the 1994 MOU and the 1995, 1996, and 1998 Settlement and Release Agreements also form part of Claimants' investment. These agreements did not wind up the investment for BIT purposes. Rather, they established a framework for TexPet to terminate its involvement in oil exploration and extraction activities, to remediate agreed sites within the concession, and to receive full and complete releases from Ecuador relating to oil exploration and development activities.

102. For the same reasons as in the *Commercial Cases Dispute*, the Lago Agrio Litigation directly implicates Claimants' rights and interests because its subject matter involves TexPet's oil exploration and production activities (along with those of Petroecuador), the alleged environmental impacts of those activities, and the remediation of those alleged impacts. Viewed in the context of its entire lifespan, TexPet's investment in Ecuador's hydrocarbons sector began in the 1960s and continues to exist today. It entails a variety of interrelated components including, *inter alia*, the hundreds of millions of dollars invested in, and all of the activities and operations associated with: the 1964 hydrocarbons concession to explore for oil in certain provinces; the 1973 and 1977 Agreements to explore and exploit oil in designated areas; the oil exploration and production activities that produced tens of billions of dollars in revenue for Ecuador; the 1994 MOU concerning TexPet's remediation activities; the 1995 Settlement Agreement that set the scope of TexPet's remediation activities and responsibilities; the remediation activities undertaken by TexPet from 1995 through September 1998; the 1996 Provincial and Municipal Settlements; the 1998 Final Release Agreement; and Claimants' legal and contractual rights at issue in the Lago Agrio Litigation, which all arise out of the Plaintiffs' allegations of environmental damage associated with TexPet's oil activities. Because the Lago Agrio Litigation deals with TexPet's activities in Ecuador, the alleged environmental impacts of those activities, and the remediation of those alleged impacts, it arises directly from and is part of TexPet's investment.

103. Both Article II(3)(b) of the Treaty[273] and international arbitral jurisprudence confirm that Claimants' investment is entitled to protection throughout its lifespan. For example, the tribunal in the *Mondev v. United States* case held that NAFTA protected the claimant's interest in legal claims relating to its investment, even though the underlying investment had failed and no longer existed by the time of NAFTA's entry into force.[274] The tribunal underscored a state's responsibility to comply with treaty obligations throughout an investment's lifespan, which ceases only with its ultimate disposal:

> Issues of orderly liquidation and the settlement of claims may still arise and require [international legal protection] . . . The shareholders even in an unsuccessful enterprise retain interests in the enterprise arising from their commitment of capital and other resources, and the intent of NAFTA is evidently to provide protection of investments throughout their life-span, *i.e.*, 'with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.'[275]

104. The tribunal in the *Commercial Cases Dispute* reaffirmed this conclusion, finding that the BIT "provisions indicate to the Tribunal that once an investment is established, the BIT intends to close any possible gaps in the protection of that investment as it proceeds in time and potentially changes form. Once an investment is established, it continues to exist and be protected until its ultimate 'disposal' has been completed—that is, until it has been wound up."[276]

105. Accordingly, the Settlement and Release Agreements are part of Claimants' ongoing "investment" and are entitled to protection under the Treaty. TexPet's extensive remediation and community development activities, on which it spent approximately US$40 million, and the Lago Agrio Litigation are all part of the continuation, winding up, disposition,

---

[273] That provision expressly covers the disposal of investments: "Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or *disposal* of investments." **Exhibit C-279**, U.S.-Ecuador BIT (emphasis added)

[274] **CLA-7**, *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB (AF)/99/2, Award, Oct. 11, 2002, ¶ 80.

[275] *Id.* ¶ 81.

[276] **CLA-1**, *Commercial Cases Dispute* Interim Award, *supra* note 1, ¶ 183 (emphasis added). Art. I(3) of the BIT provides that "Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment." *See* **Exhibit C-279**, U.S.-Ecuador BIT.

and enforcement of legal and contractual rights arising directly from, and part of, Claimants' Ecuadorian investment. Under both Article II(3)(b) of the Treaty and international arbitral jurisprudence, as the *Commercial Cases Dispute* tribunal found, Claimants' investment is protected throughout its entire lifespan.[277]

106. The tribunal's findings on jurisdiction in the *Commercial Cases Dispute*, including that Claimants had an "investment" in Ecuador in oil exploration and production activities and that ongoing claims arising directly out of those activities form part of that "investment," should be deemed *res judicata* here. The classic formulation of *res judicata* under international law was expressed in the *Orinoco Steamship Company* case, which noted that "a right, question or fact *distinctly put in issue and distinctly determined* by a court of competent jurisdiction as a ground of recovery, cannot be disputed."[278] Claimants' right to assert claims under the Treaty in relation to TexPet's operations in Ecuador and ongoing claims relating to those operations was "distinctly put in issue" by Ecuador when it challenged the *Commercial Cases Dispute* tribunal's jurisdiction and was determined distinctly by the tribunal in its jurisdictional award.

107. As specifically held in the *Laguna del Desierto* case, "The force of an international judgment as *res judicata* relates primarily to its operative part (*dispositif*), that is to say that part in which the Tribunal rules on the dispute and establishes the rights and obligations of the parties."[279] Also "those propositions contained in the grounds of judgment ('considerations') which constitute the necessary logical antecedents to the operative part have the same binding force as the latter."[280] The same "considerations" that constitute the necessary logical antecedents to this Tribunal exercising jurisdiction in this case—*inter alia*, (1) TexPet's rights and interests in a litigation matter that arose out of its oil exploration and production activities constituting part of the lifespan of those activities for purposes of defining the investment, and (2) Chevron's ownership of an investment in Ecuador as a result of its status as

---

[277] **CLA-7**, *Mondev*, *supra* note 274, ¶¶ 80-81; **CLA-1**, *Commercial Cases Dispute* Interim Award, *supra* note 1, ¶ 183.

[278] **CLA-8**, *Amco Asia v. Indonesia*, Jurisdiction: Resubmission, 89 ILR 552, 560 (1988) (quoting *Orinoco Steamship Company*).

[279] **CLA-9**, *Laguna del Desierto*, Judgment, Oct. 21, 1994, 113 ILR 1, 43, ¶ 70.

[280] *Id.*

TexPet's ultimate sole shareholder—constituted necessary logical antecedents to the tribunal's finding of jurisdiction as to both TexPet and Chevron in the *Commercial Cases Dispute*. That tribunal's findings on jurisdiction[281] thus should be deemed *res judicata* under international jurisprudence and dispositive of jurisdiction in this case.

108. Second, this Tribunal also has jurisdiction under Article VI(1)(a) of the BIT because the dispute arises out of or relates to the 1973 Agreement, the 1994 MOU, the 1995 Settlement Agreement, the 1996 Provincial and Municipal Settlements, and the 1998 Final Release Agreement, which are "investment contracts" or "investment agreements" under the BIT.[282]

109. The Treaty does not define the terms "investment contracts" or "investment agreements," so these terms should be interpreted in accordance with their plain and ordinary meaning in light of the Treaty's object and purpose.[283] The term "investment contract" is normally understood to be an agreement between the host State or its political subdivisions and a national or company of the other State constituting or implementing an investment or a part thereof.[284] All of the above-mentioned agreements are between the Republic of Ecuador and

---

[281] The *Commercial Cases Dispute* tribunal also found that Article VI(1)(a) conferred upon it jurisdiction over customary international law claims, such as denial of justice: "The Tribunal finds that Article VI(1)(a) does confer jurisdiction over customary international law claims. Article VI(1)(a), in contrast to Article VI(1)(c) and the wording of a large number of other BITs, is not limited to causes of action based on the treaty. Its language includes all disputes 'arising out of or relating to' investment agreements and this language is broad enough to allow the Tribunal to hear a denial of justice claim relating to the Concession Agreements." **CLA-1**, *Commercial Cases Dispute* Interim Award, *supra* note 1, ¶ 209, p. 104. This finding also has *res judicata* effect under international law.

[282] The *Commercial Cases Dispute* tribunal expressly found that the 1973 and 1977 concession agreements are investment agreements. *See id.* ¶ 211, p. 105. At a minimum, the various settlement agreements are "related to" the 1973 and 1977 Agreements, and thus, relate to investment agreements, which is sufficient to support jurisdiction under Article VI(1)(a).

[283] Pursuant to Article 31 of the Vienna Convention, "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose." **CLA-10**, Vienna Convention on the Law of Treaties, at Art. 31(1), *opened for signature* May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969) ("Vienna Convention"). This textual approach is "an accepted part of customary international law." **CLA-11**, OPPENHEIM'S INTERNATIONAL LAW at 1271, at § 632 (Sir Robert Jennings & Sir Arthur Watts eds. 9th ed., Addison Wesley Longman Inc. 1996) (1905) (hereinafter "Oppenheim's International Law"). If the application of Article 31 of the Vienna Convention establishes a clear and reasonable meaning of the treaty text at issue, an arbitral tribunal need not look to other methods of interpretation. *Id.* at § 633 (citing *Admission of a State to the United Nations (Charter, Art. 4)*, Advisory Opinion, 1948 I.C.J. 57, 63 (May 28)); *accord* **CLA-12**, *The Case of the S.S. Lotus*, *(France v. Turkey)*, Judgment, 1927 P.C.I.J., Ser. A., No. 10. at 16.

[284] Article XI of the Treaty provides that "This Treaty shall apply to the political subdivisions of the Parties." **Exhibit C-279**, U.S.-Ecuador BIT.

Petroecuador, on the one hand, and TexPet, Texaco Inc. and their subsidiaries, principals and affiliated companies, on the other. As described above, the agreements constitute an investment because they are part of Claimants' underlying investment in oil exploration and production activities.

110. In fact, under the terms of its 1994, 1995, 1996, and 1998 investment agreements, TexPet engaged in *additional* investment activities in Ecuador. Between 1995 and 1998, TexPet spent approximately US$40 million in Ecuador on both a substantial environmental investigation and remediation project and various socio-economic and community development projects. Those projects entailed, *inter alia*, an expenditure of US$1 million for the construction of educational centers and medical facilities,[285] the provision of logistical support for the medical facilities,[286] an expenditure of US$1 million to support community-based socio-economic and sustainable development projects carried out by indigenous federations,[287] and a contribution of approximately US$3.7 million to Amazonian municipalities for water and sewage projects.[288]

111. Although Chevron was not a signatory to the investment agreements, it falls within the categories of parties released by Ecuador and its political subdivisions and is a beneficiary under the express terms of all the releases listed above, and therefore, it has standing to invoke those agreements against Ecuador under the dispute-resolution provisions of the BIT. The 1995 Settlement Agreement and 1998 Final Release Agreement release not just TexPet and Texaco, but also the affiliates and principals of those companies.[289] Since October 2001, Chevron has been the 100% indirect shareholder principal of TexPet (which is its wholly-owned, indirect subsidiary)[290] and therefore it is entitled to invoke the terms of the 1995 Settlement

---

[285] **Exhibit C-53**, 1998 Final Release Agreement, *supra* note 43, at Art. II.2.2.2.

[286] *Id.* This included the supply of an airplane. The Organization of Indigenous Towns of Pastaza certified that TexPet had "fully performed all the obligations assumed with respect to the delivery and importation of the aircraft" on June 24, 1998.

[287] *Id.* at Art. II.2.2.1.

[288] *Id.* at Art. II.2.2.3.

[289] **Exhibit C-23**, 1995 Settlement Agreement, § 5.1.

[290] **Exhibit C-280**, Affidavit of Texaco Petroleum Company, Exh. 13 to Mem. of Law in Support of Texaco Inc.'s Motions to Dismiss, ¶ 3.

Agreement and the 1998 Final Release Agreement. Similarly, each of the Provincial and Municipal Settlements covers "any other affiliate, subsidiary or other related companies."[291]

112. Under the BIT, Claimants' investment includes a "claim to performance having economic value, and associated with an investment" pursuant to Article I(1)(a)(iii). Having fully complied with their remediation obligations, Claimants have the right to insist on Ecuador's performance of investment agreements, including the 1998 Final Release Agreement, by which Ecuador released Claimants from liability and effectively accepted any remaining environmental remediation as the sole responsibility of Ecuador and Petroecuador. Ecuador's complete disregard of these investment agreements has subjected Claimants to a potential multi-billion dollar judgment in the Lago Agrio Litigation and already has caused Claimants to incur substantial legal fees and burdens. There can be no doubt that Claimants' "claim to performance" (*i.e.*, that Ecuador honor its releases and other obligations under the investment agreements) has significant "economic value."[292]

113. Claimants' investment also includes "right[s] conferred by law or contract" pursuant to Article I(1)(a)(v) of the BIT, all of which arise from the investment agreements. Specifically, Claimants possess a number of rights and obligations arising from the investment agreements. As set forth in greater detail above, the parties contractually agreed in the 1994 MOU to "negotiate the full and complete release of TexPet's obligations for environmental

---

[291] **Exhibit C-31**, Contract of Settlement and Release between Texaco Petroleum Company and the Provincial Prefect's Office of Sucumbíos, July 11, 1992; **Exhibit C-27**, Release with Municipality of Joya de los Sachas, May 2, 1996; **Exhibit C-28**, Release with Municipality of Shushufindi, May 2, 1996; **Exhibit C-29**, Release with Municipality of the Canton of Francisco de Orellana (Coca), May 2, 1996; **Exhibit C-30**, Release with Municipality of Lago Agrio, May 2, 1996; **Exhibit C-32**, Instrument of Settlement and Release from Obligations, Responsibilities, and Claims between the Municipalities Consortium of Napo and Texaco Petroleum Company, Apr. 26, 1996.

[292] In the *Commercial Cases Dispute*, Ecuador argued that the phrase "associated with an investment" places a further limitation on which "claims . . . having economic value" constitute investments protected by the BIT. According to Ecuador, a claim to money or performance is not enough, and a tribunal must look back to the BIT's definition of investment in order to define a *further* investment with which the claim to money or performance is associated. Moreover, Ecuador contended that the definition of the associated investment should further be restricted through Article XII(1)'s limitations to investments existing at the time the BIT entered into force. The Tribunal disagreed "that the further mention of the term 'investment' within the definition itself should be understood as providing for a recursive definition . . . [T]he use of the plain meaning of the word 'investment' provides a basis with which to supplement the non-exclusive list of covered investments, particularly as regards new kinds of investment as may arise in the future." **CLA-1**, *Commercial Cases Dispute* Interim Award, *supra* note 1, ¶ 192. Claimants' claims to performance under the terms of their investment agreements with Ecuador therefore satisfy the definition in Article I(1)(a)(iii) of the BIT, because they are associated with TexPet's previous oil exploration and production activities, which themselves constitute a prototypical investment.

impact arising from the operations of the Consortium." The parties further stipulated in the 1995 Settlement Agreement that TexPet would undertake the "Environmental Remedial Work in consideration for being released and discharged of all its legal and contractual obligations and liability for Environmental Impact arising out of the Consortium's operations." TexPet carried out its environmental remediation obligations into late 1998, after the Treaty's entry into force. On September 30, 1998, Ecuador, Petroecuador, and TexPet executed the 1998 Final Release Agreement, which certified that TexPet had "fully performed and concluded" all of its obligations under the 1995 Settlement Agreement, and therefore released it from any and all environmental liability arising from the Consortium's operations. Similarly, TexPet entered into written settlements and releases with the municipalities and a province in the former Concession Area. All of the above-mentioned agreements created mutual and continuous rights and obligations between the parties that constitute part of Claimants' investment.[293]

114. Both Claimants and Respondent have consented to UNCITRAL arbitration for adjudication of their disputes under Articles VI(1)(a) and (c) of the BIT. Article VI(3)(a) of the U.S.-Ecuador BIT provides that "the national or company concerned may choose to consent in writing to the submission of the dispute for settlement by binding arbitration . . . in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law." Claimants consented to UNCITRAL arbitration when they filed their Notice of Arbitration.[294] Ecuador also "consent[ed] to the submission of any investment dispute for settlement by binding

---

[293] This Tribunal has jurisdiction *ratione temporis*. Article XII(1) of the Treaty provides that the Treaty "shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter." Claimants' remediation activities were ongoing at the time that the Treaty entered into force and continued thereafter. The tribunal in the *Commercial Cases Dispute* found that it had jurisdiction *ratione temporis* and rejected Respondents' argument that the environmental remediation did not extend the Claimants' investment past the date of the Treaty's entry. The 1998 Final Release Agreement and the filing and prosecution of the Lago Agrio Litigation and the Criminal Proceedings also post-date the entry into force of the Treaty of May 11, 1997. **CLA-1**, *Commercial Cases Dispute* Interim Award, *supra* note 1, ¶ 157.

[294] *See generally* **CLA-13**, *Generation Ukraine v. Ukraine*, ICSID Case No. ARB/00/9, Award, Sept. 15, 2003 ("*Generation Ukraine* Award"), ¶¶ 12.2, 12.3 ("[I]t is firmly established that an investor can accept a State's offer of ICSID arbitration contained in a bilateral investment treaty by instituting ICSID proceedings. There is nothing in the BIT to suggest that the investor must communicate its consent in a different form directly to the State . . . It follows that the Claimant validly consented to ICSID arbitration by filing its Notice of Arbitration at the ICSID Centre"); **CLA-14**, *El Paso Energy International v. Argentina*, ICSID Case No. ARB/03/15, Decision on Jurisdiction, Apr. 27, 2006, ¶ 35 ("It is now established beyond doubt that a general reference to ICSID arbitration in a BIT can be considered as being the written consent of the State, required by Article 25 to give jurisdiction to the Centre, and that the filing of a request by the investor is considered to be the latter's consent.").

arbitration in accordance with the choice specified in the written consent of the . . . company under paragraph 3 . . . ." when it entered into the U.S.-Ecuador BIT (Article VI(4) of the BIT).[295]

115. Article VI(4) of the BIT allows Claimants to pursue UNCITRAL arbitral proceedings against Ecuador if: (1) the private party has not submitted the dispute for resolution either to the courts or administrative tribunals of the host State or in accordance with any previously-agreed dispute settlement procedures; and (2) six months have elapsed from the date when the dispute arose. Each of these requirements has been satisfied. Claimants have not submitted this investment dispute either to the courts or administrative tribunals of Ecuador or to any other applicable, previously-agreed dispute settlement procedure. This dispute arose shortly after the Lago Agrio Litigation was commenced in 2003 when Ecuador refused to honor its obligations under the investment agreements. Claimants sent a letter to Ecuador on October 6, 2003, notifying Ecuador of its legal obligations under the investment agreements and requesting that Ecuador fully comply with its contractual obligations.[296] The six-month waiting period has long since expired.[297]

B. CLAIMANTS HAVE RIGHTS TO BE PROTECTED BY THIS TRIBUNAL, AND ECUADOR'S CONDUCT IS SUBSTANTIALLY HARMING THOSE RIGHTS

1. Provisional Measures Should Be Issued to Protect Rights from Substantial or Irreparable Harm

116. Rights that are the subject of an ongoing arbitration must be protected pending the outcome of that arbitral proceeding. Interim measures are intended "to preserve the respective rights of the parties pending [the Tribunal's] decision, and presuppose[] that irreparable

---

[295] **CLA-13**, *Generation Ukraine* Award, ¶ 12.4.

[296] **Exhibit C-78**, Letter from Edward B. Scott to Minister of Energy Carlos Arboleda, Oct. 6, 2003.

[297] The BIT also suggests the parties initially "should" seek a resolution through negotiation. **Exhibit C-279**, U.S.-Ecuador BIT, at Art. VI(2). Claimants' representatives have met with government officials several times seeking to resolve this dispute. Moreover, in October 2003, Claimants wrote to Ecuador, reiterating this dispute's existence, seeking to negotiate a resolution, and notifying Ecuador that Claimants would seek international arbitration under the BIT if the matter were not resolved. **Exhibit C-78**, Letter from Edward B. Scott to Minister of Energy Carlos Arboleda, Oct. 6, 2003. *See also* **Exhibit C-281**, Letter from Edward B. Scott to President Rafael Correa, Oct. 9, 2007; **Exhibit C-282**, Letter from Ricardo Veiga to President Rafael Correa, Oct. 9, 2007; **Exhibit C-283**, Letter from L. Beebe to President Rafael Correa, June 17, 2009; **Exhibit C-284**, Letter from Rodrigo Pérez to President Rafael Correa, June 17, 2009. All efforts at a negotiated solution have failed.

prejudice shall not be caused to rights which are the subject of a dispute in judicial proceedings."[298]

117. International law recognizes that interim measures in an international arbitration should protect, at a minimum, the following rights:

- The right to prevent contract and legal rights that are the subject of the arbitration from being impaired or eviscerated prior to a final determination by the tribunal;
- The right of a party to have its dispute decided by the international tribunal;
- The right to proceed through arbitration without having the dispute aggravated, exacerbated or extended by the other party.

118. *First*, arbitral tribunals have recognized the propriety and necessity of interim measures to protect and preserve contractual rights by ordering, *inter alia*, stays of judicial proceedings and collection actions pending the outcome of the arbitration—including criminal charges against the claimant's employees. In fact, international arbitral tribunals have issued several such stays in cases involving Ecuador. In *City Oriente,* for example, the tribunal ordered Ecuador to refrain from "[e]ngaging in, starting or persisting in any other conduct that may directly or indirectly affect or alter the legal situation agreed upon under the Contract."[299] Ecuador had enacted Law No. 2006-42 mandating that all oil companies operating in Ecuador under "participation contracts" (oil production-sharing contracts) pay at least 50% of the revenues obtained over a certain base-price of oil. In October 2007, an Executive Decree set that percentage at 99% of revenues. City Oriente commenced an ICSID arbitration against Ecuador to protect its rights under the participation contracts. As the non-breaching party, and as provided by Ecuadorian law, City Oriente requested specific performance of the contract.[300] When Ecuador nonetheless sought to collect the disputed amounts from City Oriente pursuant to Law 42 and instituted criminal proceedings against four City Oriente executives on the basis that

---

[298] **CLA-5**, *LaGrand* Provisional Measures Order, *supra* note 265, ¶ 22 ("the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant, or to the Respondent."). *See also* **CLA-6**, *Case Concerning the Convention CERD*, *supra* note 265, ¶¶ 118, 128 (same).

[299] **CLA-15**, *City Oriente Ltd. v. Republic of Ecuador and Petroecuador*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, Nov. 19, 2007 ("*City Oriente*").

[300] **Exhibit C-34**, Ecuadorian Civil Code, at Art. 1505 (providing that "the [aggrieved] party may, at its discretion, seek either the termination or the performance of the contract with indemnification of damages").

their company failed to pay the "additional participation," the tribunal granted in full City Oriente's requested provisional measures, ordering Ecuador to refrain from altering the terms of the contract through its conduct, from demanding payment of disputed amounts allegedly due under the new law, and from instituting or pursuing any judicial proceedings (including criminal proceedings and collection actions) against City Oriente or its employees in relation to the contract at issue. "Where there is an agreement in place between the parties that has so far defined the framework of their mutual obligations," the tribunal held, "then the rights to be preserved are, precisely those that were thereby agreed upon."[301]

119. Similarly, the *Perenco* tribunal also protected the claimant's contractual rights that were at the heart of the dispute by enjoining Ecuador from, *inter alia*, demanding payment of any amounts allegedly due by Perenco under the new law, instituting or pursuing any judicial proceedings against Perenco or its employees to collect the disputed amounts, and "unilaterally amending, rescinding, terminating, or repudiating the Participation Contracts or engaging in any other conduct which may directly or indirectly affect or alter the legal situation under the Participation Contracts, as agreed upon by the parties."[302] The tribunal considered that, pending the arbitration challenging the "additional participation" required by Law 42 but not provided for in the contract, Perenco should not have to choose between making the disputed payments and suffering coercive actions by Ecuador (such as seizure of its oil production or other assets) to collect those disputed payments.[303]

120. On the same basis the *Burlington* tribunal also restrained Ecuador from taking imminent coercive action against Burlington to enforce payments pursuant to Law 42.[304]

121. *Second*, arbitral tribunals have enjoined pending court proceedings in order to preserve a party's right to have the dispute decided by an international tribunal without having its rights eviscerated before an award on the merits. For example, in the *Electricity Company* case,

---

[301] **CLA-15**, *City Oriente*, *supra* note 299, ¶ 55.

[302] **CLA-16**, *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Provisional Measures, May 8, 2009, ¶ 79 ("*Perenco*").

[303] *Id.* ¶ 60.

[304] **CLA-17**, *Burlington Resources Inc. and others v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 on Burlington Oriente's Request for Provisional Measures, June 29, 2009, ¶ 73 ("*Burlington*").

the Permanent Court of International Justice ("PCIJ") ordered Bulgaria to ensure that, pending the proceedings before the Court, no further steps were taken in a local collection action brought by the Municipality of Sofia against a Belgian company.[305] The Court considered that interim measures were warranted "to prevent . . . the performance of acts likely to prejudice . . . the respective rights which may result from the impending judgment."[306] Similarly, the *CSOB* tribunal ordered the Slovak Republic to suspend bankruptcy proceedings pending in its courts on the grounds that those proceedings might include determinations relating to claims under a contract between CSOB and the Slovak Republic, and thus might "deal with matters under consideration by the Tribunal in the instant arbitration."[307] The *Zhinvali* tribunal also ordered the Georgia court to "stay and suspend its proceedings insofar as any issues pending before the Tribunal were concerned"[308] and that Georgia should bring the tribunal's decision "to the attention of the Georgia court so that it might take into account what appeared to the tribunal as the 'exclusive' jurisdiction of ICSID over issues that any final judgment in the Georgia lawsuit might otherwise implicate in a manner that was prejudicial to the Claimant."[309]

122. *Third*, interim measures may be issued to prevent a party from aggravating, exacerbating or extending a dispute, such as by pursuing judicial proceedings (including criminal proceedings) or by making certain public statements.[310] The *City Oriente* tribunal squarely

---

[305] **CLA-18**, *In re Electricity Co. of Sofia and Bulgaria (Belgium v. Bulgaria)*, PCIJ, Interim Measures Decision, Dec. 5, 1939, Series A/B, No. 79 ("*In re Electricity*"), at 199.

[306] *Id*.

[307] **CLA-19**, *Ceskoslovenska Obchodni Banka, A.S. v. Slovak Republic*, ICSID Case No. ARB/97/4, Procedural Order No. 4, Jan. 11, 1999, 14 ICSID Rev.—FILJ 251, 255 (1999) (granting provisional measures to suspend judicial bankruptcy proceedings brought before Slovakian courts, insofar as the proceedings interfered in the dispute submitted to arbitration); **CLA-20**, *Ceskoslovenska Obchodni Banka, A.S. v. Slovak Republic*, ICSID Case No. ARB/97/4, Procedural Order No. 5, Mar. 1, 2000. *See also* **CLA-21**, *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Order No. 1, July 1, 2003, 11 ICSID Rep. 311, at 312 (deciding that both parties should refrain from, suspend and discontinue, any domestic proceeding, judicial or otherwise, concerning Tokios Tokelés or its investment in Ukraine).

[308] **CLA-22**, *Zhinvali Development Ltd. v. Republic of Georgia*, ICSID Case No. ARB/00/1, Award, Jan. 24, 2003, 10 ICSID Rep. 6, ¶ 45. Although *Zhinvali* involved a domestic litigation between two government entities, the claimant in the arbitration was not a named party in that litigation (rather only a "third person" in interest). Here, Claimants are named parties in the relevant domestic litigation, and Ecuador expects to receive proceeds from the final judgment.

[309] *Id*.

[310] **CLA-15**, *City Oriente*, *supra* note 299, ¶ 55 (stating that interim measures are warranted to prohibit "any action that affects the disputed rights, aggravates the dispute, frustrates the effectiveness of the award or entails having either party take justice into their own hands"); **CLA-23**, *Biwater Gauff (Tanzania) v. United Republic of Tanzania*,

addressed a party's right to arbitrate without having the dispute aggravated, exacerbated or extended, stating that, "pending a decision on this dispute, the principle that neither party may aggravate or extend the dispute or take justice into their own hands prevails."[311] In granting the claimant's request to order Ecuador to stop pursuing administrative and criminal proceedings against City Oriente and its employees in a forcible attempt to collect the disputed amounts, the tribunal concluded that Ecuador was using the criminal proceedings as a mechanism to pressure City Oriente, thus violating the principle that neither party may aggravate or extend the dispute: "[I]t is the Tribunal's view that such undisputed right of the Republic of Ecuador [to prosecute and punish crimes of all kinds perpetrated in its territory] should not be used as a means to coercively secure payment of the amounts allegedly owed by City Oriente pursuant to Law No. 2006-42, since this would entail a violation of the principle that neither party may aggravate or extend the dispute or take justice into their own hands."[312] The coercive nature of the criminal prosecutions powerfully reinforced the need for immediate interim measures. "In the Tribunal's opinion, the passing of the provisional measures is indeed urgent, precisely to keep the enforced collection or termination proceedings from being started, as this operates as a pressuring mechanism, aggravates and extends the dispute and, by itself, impairs the rights which Claimant seeks to protect through this arbitration."[313]

123. Similarly, in *Biwater*, the tribunal issued interim measures to preserve the integrity of the proceeding and prevent aggravation of the dispute.[314] The tribunal granted the

---

ICSID Case No. ARB/05/22, Procedural Order No. 3, Sept. 29, 2006 ("*Biwater* Order No. 3"), ¶ 135 ("It is now settled in both treaty and international commercial arbitration that an arbitral tribunal is entitled to direct the parties not to take any step that might (1) harm or prejudice the integrity of the proceedings, or (2) aggravate or exacerbate the dispute.").

311 **CLA-15**, *City Oriente*, *supra* note 299, ¶ 57.

312 *Id.* ¶ 62.

313 *Id.* ¶ 69. *See also* **CLA-24**, *E-Systems, Inc. v. Islamic Republic of Iran*, Case No. 388, Interim Award No. ITM 13-388-FT, Iran-U.S. Cl. Trib., UNCITRAL Arbitration Rules, Feb. 4, 1983 (stating that the tribunal has an "inherent power" to issue orders as necessary to conserve the rights of the Parties and ensure the effectiveness of the Tribunal's jurisdiction). The tribunal in *E-Systems* further declared that its eventual award would prevail over inconsistent local decisions because the tribunal had "been established by inter-governmental agreement." *Id.*

314 **CLA-23**, *Biwater* Order No. 3, *supra* note 310, ¶ 135, at 42-43 (granting provisional measures requested so as to preserve the integrity of the proceeding or prevent the aggravation of the dispute which might have occurred if certain documents or records had been made public). *See also* **CLA-25**, *Quiborax S.A. et al. v. Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures, Feb. 26, 2010 ("*Quiborax*") (ordering Bolivia to take all appropriate measures to suspend criminal proceedings on the basis that these proceedings threatened the procedural

claimant's request to protect the confidentiality of the arbitral proceeding by, *inter alia*, restricting the parties' public discussion of the case to "what is necessary, and is not used as an instrument to antagonize the parties, exacerbate their differences, unduly pressure one of them, or render the resolution of the dispute potentially more difficult."[315]

124. The concepts of "substantial" or "irreparable" harm are flexible under international law, and "[do] not necessarily require that the injury complained of be not remediable by an award of damages."[316] Substantial harm may exist even if the party would still have recourse in damages.[317] If a party would suffer substantial prejudice absent interim measures, then the interim measures are "necessary" and the substantial harm element is deemed to be satisfied.[318] Interim measures are also deemed necessary when (i) action prejudicial to the rights of a party is likely to be taken before the tribunal renders a final decision or (ii) the

---

integrity of the ICSID proceedings, in particular with respect to Claimants' right of access to evidence through potential witnesses).

[315] **CLA-23**, *Biwater* Order No. 3, *supra* note 310, ¶ 163(d).

[316] **CLA-2**, *Paushok, supra* note 260, ¶¶ 68-69 ("[T]he possibility of monetary compensation does not necessarily eliminate the possible need for interim measures . . . 'To preserve the legitimate rights of the requesting party, the measures must be 'necessary'.' This requirement is satisfied if the delay in the adjudication of the main claim caused by the arbitral proceedings would lead to a 'substantial' (but not necessarily 'irreparable' as known in common law doctrine) prejudice for the requesting party.'" [citation omitted] The Tribunal shares that view and considers that the 'irreparable harm' in international law has a flexible meaning. It is noteworthy in that respect that the UNCITRAL Model Law in its Article 17A does not require the requesting party to demonstrate irreparable harm but merely that '(h)arm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted'."). *See also* **CLA-26**, *Behring International, Inc. v. Islamic Republic Iranian Air Force*, Iran-U.S. Cl. Trib., UNCITRAL Arbitration Rules, Award No. ITM/ITL 52-382-3, June 21, 1985, cited in David D. Caron, Lee M. Caplan & Matti Pellonpaa, THE UNCITRAL ARBITRATION RULES: A COMMENTARY 553 (Oxford: Oxford Univ. Press 2006) ("The definition of 'irreparable prejudice' is elusive; however, the concept of irreparable prejudice in international law arguably is broader than the Anglo-American law concept of irreparable injury. While the latter formulation requires a showing that the injury complained of is not remediable by an award of damages (*i.e.* where there is no certain pecuniary standard for the measure of damages), the former does not necessarily so require."); **CLA-25**, *Quiborax*, *supra* note 314, ¶ 156; **CLA-27**, *Saipem S.p.A v. The People's Republic of Bangladesh*, ICSID Case No. ARB/05/07, Decision on Jurisdiction and Recommendation of Provisional Measures, Mar. 21, 2007, ¶ 182 (emphasis added) (concluding that "in view of the pending litigation in Bangladesh, the Tribunal considers that there is both necessity and urgency. This finding is reinforced by the facts that . . . there is a risk of irreparable harm if Saipem has to pay the amount of the Warranty Bond").

[317] **CLA-2**, *Paushok*, *supra* note 260, ¶ 78.

[318] *Id.* ¶ 77.

jurisdiction of the tribunal and the integrity of the proceedings may be compromised or undermined in the absence of the measures.[319]

2. Without Interim Measures, Claimants' Rights Will Be Substantially or Irreparably Harmed

a) Claimants Possess Important Contractual, Legal, and Treaty Rights under the Settlement and Release Agreements

125. Claimants have rights under the Settlement and Release Agreements to be free from any further claims, judgments, or obligations to pay for any public environmental impacts or remediation of public lands in Ecuador. These rights include (1) the rights provided by the agreements themselves, as well as rights under Ecuadorian law such as (2) the right to Ecuador's good faith performance of the agreements, (3) the right to Ecuador's specific performance of the agreements, (4) the right not to have the agreements effectively modified or terminated pending a decision in this Arbitration, and (5) the *res judicata* right to be free of any further claims, judgments or obligations related to environmental impacts or remediation in Ecuador.

126. *First,* Claimants have the right to be fully and forever released and discharged from any and all claims for environmental impact arising out of the Consortium's former oilfield activities and from any further obligation to pay for any such environmental impact. Pursuant to the 1995 Settlement Agreement, Ecuador and Petroecuador immediately released TexPet, Texaco and their principals and affiliates from any and all environmental liability for environmental impact arising out of the Consortium's activities, except for the scope of the specified remediation projects that TexPet would perform over the next few years. TexPet then invested approximately US$40 million to complete the remediation work under Ecuador's supervision and continuing approval. Ecuador approved the remediation process between 1995

[319] **CLA-17**, *Burlington*, *supra* note 304, ¶ 73 (restraining Ecuador from taking imminent coercive action to enforce payments pursuant to Law 42 and requesting the claimant to place all of the funds in dispute in an escrow account). *See also* **CLA-25**, *Quiborax*, *supra* note 314, ¶ 141 ("The Tribunal has no doubt that it has the power to grant provisional measures to preserve the procedural integrity of the ICSID proceedings, in particular the access to and integrity of the evidence."); **CLA-28**, *Case Concerning Passage Through the Great Belt (Finland v. Denmark),* ICJ, Request for the Indication of Provisional Measures, Order, July 29, 1991, ICJ Reports, 1991 ("*Case Concerning Passage through the Great Belt*"), ¶ 23 (a measure is urgent when "action prejudicial to the rights of either party is likely to be taken before [a] final decision is given."); **CLA-6**, *Case Concerning the Convention CERD*, *supra* note 265, ¶ 129 ("the power of the Court to indicate provisional measures will be exercised only if there is urgency in the sense that there is a real risk that action prejudicial to the rights of either party might be taken before the Court has given its final decision.").

and 1998, and certified in the 1998 Final Release Agreement that TexPet had completed its remediation obligations. Similarly, the various municipalities and provinces in the former Concession Area reached settlement agreements with TexPet in 1996 pursuant to which they fully released TexPet from any environmental liabilities.

127. Under the 1995, 1996, and 1998 agreements, TexPet performed and paid for its share of the remediation, and any remaining remediation is the sole responsibility of the ROE.

128. *Second,* Claimants have the right to Ecuador's good faith performance of the Settlement and Release Agreements. Article 1562 of the Ecuadorian Civil Code requires a contracting party to perform a contract in good faith,[320] as do general principles of law.[321] International law requires Ecuador to perform its treaty obligations in good faith.[322] As part of Ecuador's good faith performance, Claimants have the right to Ecuador's full defense and support of Claimants' rights obtained through the settlements and releases. Claimants certainly have the right not to have their contractual rights undermined, nullified, or impaired by Ecuador.

129. *Third*, Claimants have the right to Ecuador's specific performance of the Settlement and Release Agreements. Under Ecuadorian law, a non-breaching, aggrieved party may seek either specific performance of the contract or contract termination, with damages.[323] In this Arbitration, Claimants seek, *inter alia*, to require Ecuador to specifically perform its Settlement and Release Agreements and to comply with the obligations that it voluntarily undertook. Indeed, the essence of a release requires that it be specifically performed.

---

[320] **Exhibit C-34**, Ecuadorian Civil Code, at Art. 1562 ("Contracts must be performed in good faith and, consequently, they do not only obligate [the parties] to the matters expressed therein but also to all matters precisely deriving from the nature of the obligation or belonging to it according to the law or custom.").

[321] *See* **CLA-29**, UNIDROIT Principles of International Commercial Contracts, Art. 1.7 (2004) ("Each party must act in accordance with good faith and fair dealing in international trade. The parties may not exclude or limit this duty."). Comment 2 to the UNIDROIT Principles states, "[t]he Principles do not provide any express definition, but the assumption is that the concept of 'commercial' contracts should be understood in the broadest possible sense, so as to include not only trade transactions for the supply or exchange of goods or services, but also other types of economic transactions, *such as investment and/or concession agreements*, contracts for professional services, etc." **CLA-30**, UNIDROIT Principles of International Commercial Contracts, Preamble cmt. 2 (2004) (emphasis added).

[322] *See* **CLA-10**, Vienna Convention, *supra* note 283, Art. 26. The BIT also requires Ecuador to act in good faith under the fair and equitable treatment standard. *See* **CLA-31**, *Tecnicas Medioambientales Tecmed S.A. v. Mexico*, ICSID Case No. ARB(AF)/00/2, Award, May 29, 2003 ("*Tecmed* Award"), ¶ 153 (concluding that fair and equitable treatment is "an expression and part of the *bona fides* principle recognized in international law.").

[323] **Exhibit C-34**, Ecuadorian Civil Code, at Art. 1505 (providing that "the [aggrieved] party may, at its discretion, seek either the termination or the performance of the contract with indemnification of damages").

130. *Fourth*, Claimants have the right to have the Settlement and Release Agreements not be effectively modified or terminated pending a decision on the merits of this Arbitration.[324] Enforcement of a judgment in the Lago Agrio Litigation would be tantamount to a substantial modification or effective termination of the Settlement and Release Agreements.

131. *Fifth*, Claimants have *res judicata* rights to be free of any further claims or judgments related to environmental impacts or remediation in Ecuador and to be free of any further obligation to pay for any such impact. The nominal Plaintiffs in the Lago Agrio Litigation seek to impose liability upon Chevron for the same claims that Ecuador and its political subdivisions fully settled and released in 1995, 1996 and 1998. The Plaintiffs in the Lago Agrio Litigation do not seek any individual damages for alleged personal injuries to themselves or any damage to private property they own.[325] Rather, under the EMA, the Plaintiffs purport to act in a representative capacity in bringing public action claims on behalf of the community for the alleged cost to remediate lands, waters and oil production facilities owned and controlled by Petroecuador. These are "public action" claims on behalf of "the community," not the individual Plaintiffs.[326] Because the ROE and its political subdivisions represent the entirety of the Ecuadorian community, "the community" that the nominal Lago Agrio Plaintiffs purport to represent has already been represented, and the claims they assert already have been released.

132. Under Ecuadorian law, *res judicata* bars a dispute that already has been resolved concerning the (1) same subject matter (the same objective identity), and (2) same parties (the same subjective identity).[327] The "same subject matter" has two components: the object of the lawsuit and the *causa petendi*. The object of the lawsuit is the same when a party demands the same "thing, quantity or fact," and the same *causa petendi* exists when what the party demands

---

[324] **CLA-15**, *City Oriente*, *supra* note 299, ¶ 55; *see also* **CLA-16**, *Perenco*, *supra* note 302, ¶ 79.

[325] **Exhibit C-71**, Lago Agrio Complaint. *See also* **Exhibit C-285**, Interview of Julio Prieto, *Informativo Cristalino 10h00*, Radio Cristal, Sept. 11, 2009; **Exhibit C-286**, Interview of Steven Donziger, CORPORATE CRIME REPORTER, Nov. 9, 2009.

[326] *See* **Exhibit C-73**, EMA, at Art. 43.

[327] **Exhibit C-34**, Article 297 of the Ecuadorian Code of Civil Procedure defines *res judicata*: "A non-appealable judgment shall be irrevocable with respect to the parties to the suit or the legal successor. Therefore, a new lawsuit cannot be filed when the two suits have the same subjective identity, established by virtue of the same parties, and the same objective identity, which consists of claiming the same thing, quantity or fact based on the same cause, reason, or right."

arises out of the same facts and substantive legal rights (the same "cause, reason or right").[328] Pursuant to Article 2362 of the Civil Code, a settlement agreement will have *res judicata* effect with respect to subsequent claims that satisfy these elements.

133. The Settlement and Release Agreements by Ecuador and its political subdivisions are *res judicata* of all general or collective environmental claims, that is, all environmental claims except those seeking individual damages for personal injuries or damage to specific private property. In fact, the plaintiffs in the *Aguinda* Litigation expressly recognized the *res judicata* effect of the 1995 Settlement Agreement in a legal brief that they filed in the Federal Court in New York in 1996 when arguing that Ecuador was not an indispensable party to the *Aguinda* litigation: "The release which TexPet obtained in its settlement agreement includes a release of 'any claims that the Government and Petroecuador have, or may have against TexPet, arising out of the Consortium Agreements' pursuant to which TexPet and the other Texaco subsidiaries that operated in Ecuador. This release explicitly protects Texaco, Inc., as well as TexPet and the other Texaco subsidiaries that operated in Ecuador. Thus, the protection which Texaco claims to need from inconsistent judgments will be provided by the principles of res judicata. . . ."[329]

134. With respect to the first component of the objective identity element of the *res judicata* analysis—the object of the lawsuit ("the same thing, quantity, or fact")—both the Settlement and Release Agreements and the Lago Agrio Litigation address the vindication of the same general or collective (non-individual) rights arising from the environmental impacts of the Consortium's activities. This is clear from a comparison of the express claims in the Lago Agrio Complaint with the express language in the various settlement agreements.[330]

---

[328] *Id.*

[329] **Exhibit C-16**, *Aguinda et al. v. Texaco Inc.*, No. 93-CV-7527, Plaintiffs' Mem. in Opposition to Texaco, Inc.'s Motions to Dismiss, Feb. 20, 1996, at 52-53 (citations omitted).

[330] A judgment in the Lago Agrio Litigation must be limited to the claims asserted in the Complaint. This is required by the Ecuadorian legal principles of congruency and *ultra petita*. **Exhibit C-34**, Ecuadorian Code of Civil Procedure, at Art. 273 ("The judgment shall resolve only the claims and defenses that formed the basis of the dispute and any incidental proceedings brought during the course of the procedure whose disposition could be delayed until the judgment without detriment to the parties.").

135. As noted above, the *causa petendi* component of *res judicata* ("the same cause, reason, or right") focuses on the substantive legal right, reason or justification for the requested relief and the factual context in which it is asserted. The broad contractual language in the 1994 MOU, the 1995 Settlement Agreement, the six 1996 Provincial and Municipal Settlements, and the 1998 Final Release Agreement confirms that the parties' intent was to address any violation of the Ecuadorian citizenry's right to live in a clean environment that allegedly resulted from the environmental impact of the Consortium's operations under every conceivable legal theory and type of harm that the Ecuadorian State and its political subdivisions could possibly assert.[331] A plain reading of the Complaint makes clear that the factual background giving rise to the claims made therein and the substantive legal rights allegedly violated are the same as those addressed, settled and released by Ecuador in the Settlement and Release Agreements.

136. In sum, the object and *causa petendi* of the Lago Agrio Litigation are the same as the object and *causa petendi* in the Settlement and Release Agreements, and the objective identity element of the *res judicata* doctrine is satisfied.

137. With respect to the subjective identity (the same parties) element of the *res judicata* doctrine, both the ROE, the municipalities and the provinces, on the one hand, and the Lago Agrio Plaintiffs, on the other hand, purport to represent the same Ecuadorian community with respect to its shared, non-individual, and general rights regarding environmental impacts arising out of the Consortium's operations.[332] The key issue is not who are the nominal plaintiffs, but rather whose interests and legal rights are being represented. Accordingly, the focus should be on whether the community purportedly represented by the nominal Lago Agrio

---

[331] *See* **Exhibit C-17**, MOU at IV; **Exhibit C-23**, 1995 Settlement Agreement at Preamble and Art. V ¶ 5.2; **Exhibit C-27**, Release with Municipality of Joya de los Sachas, May 2, 1996; **Exhibit C-28**, Release with Municipality of Shushufindi, May 2, 1996; **Exhibit C-29**, Release with Municipality of the Canton of Francisco de Orellana (Coca), May 2, 1996; **Exhibit C-30**, Release with Municipality of Lago Agrio, May 2, 1996; **Exhibit C-32**, Instrument of Settlement and Release from Obligations, Responsibilities, and Claims between the Municipalities Consortium of Napo and Texaco Petroleum Company, Apr. 26, 1996; **Exhibit C-31**, Contract of Settlement and Release between Texaco Petroleum Company and the Provincial Prefect's Office of Sucumbíos, July 11, 1992; **Exhibit C-53**, 1998 Final Release Agreement, at Arts. I, II, and IV.

[332] Although a settlement generally may not affect the rights of third parties (Article 2363 of the Ecuadorian Civil Code), when a party is legally empowered to act on behalf of another, that party's acts will bind the other as if that other party had acted. **Exhibit C-34**, Ecuadorian Civil Code, at Art. 1464. Article 2363 of the Civil Code addresses individual rights for individual damages. *Id.* at Art. 2363.

Plaintiffs was previously represented by the ROE, the municipalities and the provinces in their settlements with TexPet. Clearly, they were.

138. The Lago Agrio Plaintiffs do not assert any individual damage claims for themselves or others.[333] Instead, they brought the case in an alleged representative capacity to assert collective rights of the community for environmental remediation. This is made clear in Section VI of the Complaint when the Plaintiffs state that "in our capacity as members of the affected communities and in safeguard of their recognized collective rights, the plaintiffs sue ChevronTexaco Corporation."[334] In Section III of the Complaint, the Complaint identifies the people that the nominal Plaintiffs seek to represent in the Lago Agrio Litigation generally as the people of Orellana Canton[335] and La Joya de los Sachas Canton in the new Orellana Province (which was carved out of the Napo Province in 1998, after the 1996 Provincial and Municipal Settlements), and Lago Agrio Canton, Shushufindi Canton, Cascales Canton, and Putumayo Canton in the Province of Sucumbíos.[336] Not only did Ecuador represent these people in its settlement with TexPet, but each of these same provinces and municipalities also settled with TexPet in 1996 on behalf of their communities and released it from all liabilities. Thus, the nominal Lago Agrio Plaintiffs purport to represent those who were previously represented by the political authorities for their areas and who settled all claims with TexPet.

139. Moreover, as a general matter, the State represents the community. Indeed, the ROE is empowered with the authority to enforce general, non-individual rights of the community. Under the Ecuadorian Constitution, the State has an express duty to represent the

---

[333] This has been confirmed by the Plaintiffs' lawyers and representatives on numerous occasions. **Exhibit C-285**, Interview of Julio Prieto, *Informativo Cristalino 10h00*, Radio Cristal, Sept. 11, 2009 ("What we are claiming in this lawsuit has never been indemnifications for damages to individuals due to health reasons, or for the death of a particular person . . . We are not suing for millions as indemnifications for sick persons, but rather we are demanding a compensation system for public health"); **Exhibit C-287**, Pablo Fajardo, *Discussion with Xavier Lasso*, Ecuador TV, Apr. 22, 2008 (9:25 p.m.) ("We don't want any money for any particular person in the lawsuit, but to fix the damage. That's what we've been pursuing here, and pursuing for . . . the harm to the people."); **Exhibit C-288**, Luis Yanza, *Discussion with Xavier Lasso*, Ecuador TV, Apr. 22, 2008 (9:25 p.m.) (stating that, "[w]hen the complaint was drafted and the lawsuit was filed," this intent "was clearly stipulated."); **Exhibit C-286**, Interview of Steven Donziger, CORPORATE CRIME REPORTER, Nov. 9, 2009, at 13.

[334] *See* **Exhibit C-71**, Lago Agrio Complaint at § VI.

[335] The political authority of each canton is a municipality, and thus, the municipality politically represents its canton.

[336] *See* **Exhibit C-71**, Lago Agrio Complaint at § III, 18 (En.), 7-8 (Sp.).

community's interests regarding the environment: "the State guarantees . . . [t]he right to live in an environment free from contamination. *It is the duty of the State to ensure that this right will not be affected and to watch over the protection of nature . . .*"[337] At the time that these settlements and releases were executed, private individuals could not assert generalized, collective environmental claims against TexPet—this was a governmental matter only.[338] Ecuadorian Ambassador Terán, on behalf of the ROE, made this clear to the U.S. Court in the *Aguinda* Litigation: "It is the Republic's obligation to become involved in matters that directly impact the welfare of Ecuadorian citizens, territory and natural resources, and the very sovereignty of the Republic of Ecuador. The recent agreement between the Republic, Petroecuador and Texaco Petroleum Company, which was reviewed and supported by the Ecuadorian Congress . . . demonstrates the Republic's determination to fulfill this obligation."[339]

140. Similarly, a 1994 affidavit of *Aguinda* plaintiffs' attorney Alberto Wray concluded that "no one can bring an action in the name of another" in Ecuador and "the Constitution expressly forbids" a person from litigating "on behalf of the people."[340] And a 1999 brief filed by the *Aguinda* plaintiffs' lawyers in New York admitted that claims for

---

[337] **Exhibit C-24**, 1979 Political Constitution of the Republic of Ecuador, at Art. 19(2) (which remained in effect until it was replaced by the 1998 Constitution) (emphasis added).

[338] The 1995 Settlement Agreement expressly covered "causes of action under Article 19(2) of the Political Constitution of the Republic of Ecuador." **Exhibit C-23**, 1995 Settlement Agreement, at Art. V, ¶ 5.2C.

[339] **Exhibit C-289**, *Aguinda et al. v. Texaco Inc.,* No. 93 CIV 7527 (BDP) (S.D.N.Y), Affidavit of Amb. Edgar Terán, Jan. 3, 1996, ¶ 11 (referring to the 1995 Settlement Agreement at issue here). As confirmed by the Second Circuit, an ambassador "generally has the power to 'bind the state that he represents'" and, at the very least, "Ambassador Terán enjoyed apparent authority, and Texaco and the District Court were entitled to rely on his representations unless they were actually aware that he lacked such authority," which was not the case. *See also* **Exhibit C-292**, *Aguinda et al. v. Texaco Inc.*, No. 93-CV-7527, Supplemental Brief *Amicus Curiae* of the Republic of Ecuador, Jan. 11, 1996; **Exhibit C-20**, Letter from Amb. Edgar Terán to Judge Rakoff, June 10, 1996; **Exhibit C-21**, Supplemental Brief *Amicus Curiae* of the Republic of Ecuador, Jan. 11, 1996, filed in the *Aguinda* Litigation; **Exhibit C-20**, Letter from Amb. Edgar Terán to the U.S. federal district court in the *Aguinda* Litigation, June 10, 1996; **Exhibit C-21**, *Sovereignty of the Country at Stake: Interview of Ambassador Terán*, LA OTRA, May 25, 1994. The Ecuadorian Under-Secretary of the Environment during the settlement negotiations with TexPet has testified that Ecuador conducted a very transparent and open negotiation with TexPet, in which it consulted with every possible organization to try to reach a consensus. **Exhibit C-290**, *Republic of Ecuador et al. v. ChevronTexaco Corp. et al.*, No. 04-CV-837 (LBS) (S.D.N.Y.) Deposition of Giovanni Rosania Schiavone, Oct. 19, 2006, at 70-73.

[340] **Exhibit C-293**, *Aguinda et al. v. Texaco Inc.*, No. 93-CV-752, Affidavit of Alberto Wray, Mar. 8, 1994, ¶ 2.

"environmental contamination [can] be filed only . . . against the Government of Ecuador not the party responsible for the damages."[341]

141. In sum, in their Settlement and Release Agreements with TexPet, the Government, the municipalities and the provinces specifically represented the people of Ecuador in vindicating the same legal rights that the nominal Lago Agrio Plaintiffs now purport to represent. Consequently, since the Settlement and Release Agreements and the Lago Agrio Litigation thus concern the same factual matters, the same legal rights, the same object, and the same parties, the claims that the Lago Agrio Plaintiffs purport to assert are barred by *res judicata*.

b) Without Interim Measures, Claimants' Rights Under the Agreements Will Suffer Substantial and Irreparable Harm

142. Absent interim measures, Claimants' contractual and legal rights under the Settlement and Release Agreements will be substantially or irreparably harmed in several ways.

143. First, the enforcement of a Lago Agrio judgment imposing any liability on Chevron for environmental impact or remediation effectively will eviscerate or substantially impair Claimants' contract and *res judicata* rights. The very essence of Claimants' rights is to be free of any further claims or obligations to pay for environmental impact arising from Consortium-related activities. In these circumstances, enforcing a Lago Agrio judgment, by definition, would irreparably destroy this right.

144. Moreover, enforcement of a Lago Agrio judgment against Chevron effectively would eviscerate Claimants' right to Ecuador's good faith performance, and specific performance, of its obligations under the Settlement and Release Agreements. These obligations include the obligation to defend and enforce the Settlement and Release Agreements by, *inter alia*, indemnifying, protecting and defending the rights of Chevron, Texaco, and TexPet in connection with the Lago Agrio Litigation.[342]

---

[341] **Exhibit C-294**, *Aguinda et al. v. Texaco Inc.*, No. 93-CV-7527, Plaintiffs' Mem. of Law in Opposition to Texaco Inc.'s Motion to Dismiss, Jan. 11, 1999, at 9.

[342] **Exhibit C-78**, Letter from Edward B. Scott to Minister of Energy Carlos Arboleda, Oct. 6, 2003.

145. Second, Claimants' rights will be substantially harmed because the Plaintiffs and the ROE will attempt to use the enforcement and negative publicity of a huge judgment to generate enormous pressure on Chevron to settle unjustly. A coerced settlement payment would eviscerate Claimants' rights under the Settlement and Release Agreements because Chevron would be paying money to resolve claims for which it has already provided consideration and been released and for which it has no further payment obligation. The Plaintiffs and Ecuador should not be afforded any opportunity to attempt unduly to pressure Chevron to settle away its rights under the investment agreements.

146. Third, the nominal Lago Agrio Plaintiffs and their attorneys have threatened expeditious enforcement proceedings against Chevron's assets with a stated goal of disrupting business operations.[343] Although the Lago Agrio Plaintiffs have no right to attach or seek enforcement of a judgment against Chevron by attaching assets belonging to Chevron's subsidiaries around the world, their U.S. attorney Mr. Donziger has signaled his intent by stating, "Chevron operates in more than 100 countries and has numerous oil tankers that troll the world's waterways and dock in any number of ports . . . This could end up being one of the biggest forced asset seizures in history and it could have a significant disruptive impact on the company's operations."[344] The Plaintiffs' resolve to seek expeditious enforcement of a Lago Agrio judgment recently was confirmed before the federal court in New York, when the Plaintiffs' counsel, upon a question from the bench, categorically refused to stipulate to stay enforcement pending this Arbitration.[345] Given the Plaintiffs' lawyers' stated intent to disrupt Chevron's business operations to the fullest extent possible, the circumstances in this case, as in *City Oriente* and *Perenco*, warrant interim measures.[346]

---

[343] *See* **Exhibit C-295,** Amazon Watch Press Release, *Chevron Launches "Dirty War" on Ecuador Court*, July 4, 2007; **Exhibit C-296,** Amazon Defense Coalition Press Release, *New Evidence of Chevron Fraud from Final Judicial Inspections in $27 Billion Environmental Case*, June 24, 2009.

[344] **Exhibit C-1**, *Amazon Defense Coalition: Chevron's Recent Setbacks in U.S. Courts Forced Its Hand on Arbitration Claim, Lawyers Say*, RESOURCE WEEK, Oct. 18, 2009.

[345] **Exhibit C-4**, *Rep. of Ecuador v. Chevron Corp. and Texaco Petroleum Co.*, 09 CV 9958 (LBS), *Yaiguaje et al. v. Chevron Corp. and Texaco Petroleum Co.*, 10 CV 316 (LBS), U.S. District Court for the Southern District of New York, Transcript of Hearing, Mar. 10-11, 2010, at 84:6-20.

[346] **CLA-15**, *City Oriente*, *supra* note 299, ¶ 69 (finding that interim measures were urgent "precisely to keep the enforced collection or termination proceedings from being started, as this operates as a pressuring mechanism, aggravates and extends the dispute and, by itself, impairs the rights which Claimant seeks to protect through this

147. Fourth, a judgment may be filed anywhere in the world immediately and take on a life of its own, depending on the enforcement law of the country where it is filed. Chevron will be forced to dedicate substantial time, money and resources in defending against any and all enforcement actions. Fighting potential enforcement actions in multiple jurisdictions around the world will be extremely expensive and could disrupt Chevron's subsidiaries' businesses. Chevron should not be compelled to engage in lengthy and costly enforcement disputes around the world when it has already has been released from the very claims that formed the basis of the judgment.

148. As United States District Judge Sand recently noted when denying Ecuador's and the Lago Agrio Plaintiffs' efforts to stay this Arbitration, it would be "ludicrous" to assert the position that "there would be no adverse consequences to Chevron on the rendition of a judgment for billions and billions of dollars against it."[347]

c) Without Interim Measures, Claimants' Treaty Right to Have this Tribunal Determine this Dispute Will Be Irreparably Harmed

149. Interim measures are appropriate to preserve a tribunal's "mission and mandate to determine finally the issues between the parties"[348] and "to protect a party from actions of the other party that . . . prejudice the rendering or implementation of an eventual decision or award."[349] Claimants have the right to have this Tribunal exercise its jurisdiction to decide the claims pending before it (*i.e.*, Ecuador's violation of its Treaty obligations and its breaches of the investment agreements with TexPet).[350] Without interim relief, Claimants' right to have this Tribunal meaningfully determine the issues here presented will be in serious jeopardy.

---

arbitration."); **CLA-16**, *Perenco*, *supra* note 302, ¶ 60 ("Perenco should not, pending a final decision, be required to choose between making the very payments they dispute and suffering extensive seizure of its oil production or other assets.").

[347] **Exhibit C-4**, *Rep. of Ecuador v. Chevron Corp. and Texaco Petroleum Co.*, 09 CV 9958 (LBS), *Yaiguaje et al. v. Chevron Corp. and Texaco Petroleum Co.*, 10 CV 316 (LBS), U.S. District Court for the Southern District of New York, Transcript of Hearing, Mar. 10-11, 2010, at 83-84.

[348] **CLA-23**, *Biwater* Order No. 3, *supra* note 310, ¶ 135.

[349] **CLA-32**, *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Procedural Order No. 3, Jan. 18, 2005, ¶ 7.

[350] **CLA-33**, *Compañía de Aguas del Aconquija S.A. v. Argentina*, ICSID Case No. ARB/97/3, Decision on Annulment, July 3, 2002, ¶ 102 (finding that "it is not open to an ICSID tribunal having jurisdiction under a BIT in respect of a claim based upon a substantive provision of that BIT, to dismiss the claim on the ground that it could or

150. The BIT grants U.S. investors the right to bring claims against Ecuador for, respectively, its violation of substantive standards of protection set out in the Treaty and for claims arising out of or relating to investment agreements: "Each party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national or company[.]"[351] And Article VI(3)(a)(iii) provides that Ecuador's consent constituted an "agreement in writing" for purposes of Article II of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Claimants thus clearly have a Treaty right to have this Tribunal protect its jurisdiction, so that it—and not some other entity such as the Ecuadorian courts—ultimately may adjudicate the investment dispute between Claimants and Ecuador.

151. Enforcement of a Lago Agrio judgment would be tantamount to a substantial modification or effective termination of Claimants' right to the dispute resolution mechanism under the Treaty. It is for this Tribunal to rule on Claimants' rights and claims. If the Plaintiffs are permitted to enforce a massive judgment against Chevron during the pendency of this Arbitration, Claimants may be denied effective relief in these proceedings.

152. Moreover, if the nominal Lago Agrio Plaintiffs succeed in attaching assets for the ultimate benefit of Ecuador, those assets likely will be lost forever, regardless of any determination that the Tribunal may make. Ecuador has made clear that it has no intention of complying with its international obligations and is unlikely to return (or compel the return of) any funds or assets if this Tribunal ultimately issues a final award in favor of Claimants. As examples, President Correa announced Ecuador's withdrawal from the ICSID Convention in May 2009,[352] and after terminating eight of Ecuador's 24 bilateral investment treaties in

---

should have been dealt with by a national court. In such a case, the inquiry which the ICSID tribunal is required to undertake is one governed by the ICSID Convention, by the BIT and by applicable international law."); *see also* **CLA-34**, Stewart Abercrombie Baker & Mark David Davis, THE UNCITRAL ARBITRATION RULES IN PRACTICE 136-38 (Kluwer Law 1992) (stating that UNCITRAL Rule 26 grants arbitrators in international proceedings an "inherent authority" to protect their jurisdiction by ordering that parallel proceedings be stayed).

[351] **Exhibit C-279**, U.S.-Ecuador BIT, at Art. VI(4).

[352] **Exhibit C-297**, Fernando Carbrera Díaz, *Ecuador Continues Exit from ICSID*, INVESTMENT TREATY NEWS, June 8, 2009, available at http://ecuador-rising.blogspot.com/2009/06/ecuador-continues-exit-from-icsid.html (last visited Mar. 31, 2010); **Exhibit C-298**, *Petition Regarding Ecuador's Benefits Under the Andean Trade Preferences Act*, THE AMAZON POST, Sept. 22, 2009, *available at http://74.125.47.132/search?q=cache%3AiJEWLshq1AIJ%3Atheamazonpost.com%2Fweb-of-influence%2Ffiles%2Flarrea%2F02_Chevron_ATPA_2009_Annual_Review_Petition.pdf+ecuador+withdraws+fro*

November 2008[353] he recently requested that the Ecuadorian Congress terminate an additional 13 treaties—including the U.S.-Ecuador BIT at issue in this dispute—because they "expose the country to international arbitration."[354] Moreover, Ecuador has declared unabashedly that it will not comply with its obligations arising from international arbitration. President Correa announced that Ecuador "will not 'pay a single penny'" of an arbitral award in favor of a foreign oil company[355] and that Ecuador would expel foreign oil companies that choose to file international claims against it.[356] In his radio address of July 4, 2009, President Correa stated, "I really, really hate the big transnational companies."[357] Ecuador already has refused to comply with international arbitral awards rendered against it.[358]

---

m+icsid&hl=en&gl=us (last visited Mar. 31, 2010). Congress voted to denounce the ICSID Convention on June 12, 2009. **Exhibit C-129**, *Foreign companies threatened*, EL COMERCIO, June 21, 2009. On July 2, 2009, President Correa signed Executive Order No. 1823, the final domestic act required for denouncing the ICSID Convention. **Exhibit C-299**, Joshua M. Robbins, *Ecuador Withdraws from ICSID Convention*, PLC INTERNATIONAL, Aug. 12, 2009, *available at* http://arbitration.practicallaw.com/2-422-1266 (last visited Mar. 31, 2010).

353 *See* **Exhibit C-300**, *Ecuador Terminates BITs with Eight LatAm States*, GLOBAL ARB. REV., Nov. 5, 2008, *available at* http://www.globalarbitrationreview.com/news/article/14919/ecuador-terminates-bits-eight-latam-states/ (last visited Mar. 31, 2010) ("It is a significant development, and a further sign of the country's reassessment of its international obligations").

354 **Exhibit C-141**, *Ecuador to Denounce Remaining BITS*, GLOBAL ARB. REV., Oct. 30, 2009, *available at* http://www.globalarbitrationreview.com/news/article/19251/ecuador-denounce-remaining-bits/ (last visited Mar. 31, 2010). *Id*.; *See also* **Exhibit C-142**, Mercedes Álvaro, *Ecuador President Seeks to End Investment Protection Agreements*, DOW JONES NEWSWIRE, Oct. 28, 2009; **Exhibit C-143**, *At the Point of Annulling 13 Investment Treaties*, EL COMERCIO, Oct. 28, 2009.

355 **Exhibit C-301**, *Correa: We will not pay a penny of Perenco's claims*, EL COMERCIO, July 23, 2009. *See also* **Exhibit C-140,** *Minister Glas ratifies his rejection towards arbitral award against Alegro*, ECUADOR INMEDIATO, Oct. 27, 2009; **Exhibit C-302,** *The Attorney General's Office and the Comptroller's Office Criticize Justice*, EL HOY, Oct. 27, 2009 ("the Attorney General, Washington Pesántez and the General Comptroller, Carols Pólit, criticized the people who accepted the $5.9 million arbitral award granted by the Chamber of Commerce in Guayaquil.").

356 **Exhibit C-129**, *Foreign companies threatened*, EL COMERCIO, June 21, 2009.

357 **Exhibit C-132,** Presidential Weekly Radio Address, July 4, 2009.

358 **Exhibit C-303**, *Ecuador: Investor Concerns Grow*, LATIN BUSINESS CHRONICLE, July 14, 2009 ("Despite the ICSID tribunal orders, Petroecuador carried out three auctions of the crude oil it has seized from Perenco Ecuador and Burlington."). Although an ICSID tribunal comprised of Lord Bingham (President), Judge Charles N. Brower, and Mr. Christopher Thomas unanimously ordered Ecuador and Petroecuador to cease from "instituting or further pursuing any action . . . to collect from Perenco any payments [they] claim are owed . . . pursuant to Law 42," (**CLA-16**, *Perenco*, *supra* note 302, ¶ 62), Petroecuador conducted three auctions of oil seized from Perenco. While no buyers materialized at the first auction, Petroecuador—the sole bidder at the second and third auctions—purchased from itself approximately 2.5 million barrels of seized crude at approximately half of the current market price. According to Rodrigo Marquez, Latin American Regional Manager for the Perenco Group, "The Government's conduct in violation of the tribunals' orders has left Perenco Ecuador and Burlington exposed to all the cost and risk of operations at Blocks 7 and 21 with no corresponding revenues. This situation is unsustainable. The consortium cannot be expected to produce oil for the sole benefit of the Government of Ecuador." **Exhibit C-**

d) Ecuador Should Be Prevented from Continuing its Conduct of Aggravating, Exacerbating and Extending this Dispute, Including its Baseless Criminal Proceedings Against Claimants' Lawyers

153. Under international law and the BIT, Claimants have the right to have Ecuador refrain from aggravating, exacerbating or extending this dispute.[359] International tribunals including the Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ) consistently have recognized this right and have ordered that parties refrain from taking action that would aggravate, exacerbate or extend a dispute. In the *Electricity Company* case, the PCIJ stated that the provisional measures article of the Statute of the Court "applies the principle universally accepted by international tribunals . . . to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute."[360]

154. The *City Oriente* tribunal issued provisional measures against Ecuador targeted at "prohibiting any action that affects the disputed rights, aggravates the dispute, frustrates the effectiveness of the award or entails having either party take justice into their own hands."[361] In particular, the *City Oriente* tribunal held that Ecuador's sovereign right to prosecute and punish

---

304, *Perenco and Conoco threaten to suspend Ecuador operations*, GLOBAL ARB. REV., July 15, 2009. *See also* **Exhibit C-305**, *Perenco Will Protect Its Rights in Ecuadorian Oil Seized in Defiance of International Arbitration Tribunal Orders*, REUTERS, July 3, 2009, *available at* http://www.reuters.com/article/pressRelease/idUS35151+03-Jul-2009+PRN20090703 (last visited Mar. 31, 2010); **Exhibit C-306**, Damon Vis-Dunbar, *Ecuador defies provisional measures in dispute with French oil company*, INVESTMENT TREATY NEWS, June 8, 2009.

[359] *See*, *e.g.*, **CLA-17**, *Burlington*, *supra* note 304, ¶ 68 (ordering suspension of local proceedings not on the grounds of Article 26 of the ICSID Convention, but to preserve the *status quo* and non-aggravation of the dispute); **CLA-18**, *In re Electricity*, supra note 305, at 199; **CLA-35**, *Anglo-Iranian Oil Co*. (*United Kingdom v. Iran*), ICJ, Request for the Indication of Interim Measures of Protection, Order, I.C.J. Reports 1951, 89, 93 (stating that the purpose of provisional measures is to "preserve the respective rights of the Parties pending the decision of the [international tribunal]").

[360] **CLA-18**, *In re Electricity*, *supra* note 305, at 199. *See also* **CLA-46**, *LaGrand Case (Germany v. United States*), Judgment, June 27, 2001, ¶ 103, ICJ Reports 2001, at 466 (noting "the existence of a principle which has already been recognized by the Permanent Court of International Justice when it spoke of 'the principle universally accepted by international tribunals and likewise laid down in many conventions . . . to the effect that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given, and, in general, not allow any step of any kind to be taken which might aggravate or extend the dispute.' [citation omitted] Furthermore measures designed to avoid aggravating or extending disputes have frequently been indicated by the Court.").

[361] **CLA-15**, *City Oriente*, *supra* note 299, ¶ 55.

crimes "should not be used as a means to coercively secure payment of the amounts allegedly owed by City Oriente . . . since this would entail a violation of the principle that neither party may aggravate or extend the dispute or take justice into their own hands."[362] Similarly, the *Burlington* tribunal considered that "the rights to be preserved by provisional measures . . . may extend to procedural rights, including the general right to the *status quo* and to the non-aggravation of the dispute. These latter rights are thus self-standing rights."[363]

155. Claimants have a right to be free of abusive Criminal Proceedings used by Ecuador as a pressure and intimidation tactic and the corollary right to have the Criminal Proceedings decided by fair prosecutors and courts acting in a non-arbitrary manner, in good faith, for legitimate purposes, and in accordance with due process.[364] This right also includes the right to be free of any inflammatory public statements and conduct by the ROE (including the President, the Attorney General, the Prosecutor General, the Ombudsman, and other officials of the ROE) and of any undue influence exerted by the ROE on the Lago Agrio Litigation and

---

[362] *Id.* ¶ 62. *See also generally* **CLA-17**, *Burlington*, *supra* note 304, ¶ 66 ("by ratifying the ICSID Convention, Ecuador has accepted that an ICSID tribunal may order measures on a provisional basis, even in a situation which may entail some interference with sovereign powers and enforcement duties."); **CLA-36**, *Himpurna California Energy Ltd. v. Republic of Indonesia*, UNCITRAL Arbitration Rules, Interim Award, Sept. 26, 1999, ¶ 21 ("The Arbitral Tribunal's respect for the sovereignty of the Republic of Indonesia is complete. But it is precisely by the exercise of an attribute of sovereignty that a State accepts binding international undertakings; numerous arbitral tribunals have so held . . . The claimants now allege that the Republic of Indonesia is seeking to use the instrumentality of its own court system to subvert the Terms of Appointment. If this allegation is accepted by the Arbitral Tribunal as a factual matter, Counsel for the Republic of Indonesia are reminded that international law forms a part of Indonesian law, and . . . [that] transgressions of a contract signed by a State, like the Terms of Appointment, are not necessarily insulated from critical inquiry and decision simply because they emanate from, or are abetted by, a judicial authority of that State. The present Arbitral Tribunal would prefer not to have to pass judgment on procedural initiatives of the Republic of Indonesia, but neither will it shirk, if the issue arises and is pressed, from its own duties[.]").

[363] **CLA-17**, *Burlington*, *supra* note 304, ¶ 60.

[364] *See, e.g.*, **Exhibit C-288**, 2008 Political Constitution of Ecuador, at Art. 76.3 (stating that persons can only be judged by a competent authority); *id.* at Art. 76.7(k) (providing that each person has the right to be judged by an "independent, impartial and competent judge. No one shall be tried by *ad hoc* tribunals or special committees created for that purpose."); *id.* at Art. 76.7(l) ("Resolutions from public authorities must be duly motivated. There is no proper motivation if the resolution fails to mention the legal norms or principles on which it is based, and if there is no explanation about the relevance of their application to *de facto* antecedents."). The right to an impartial prosecution is also protected by the BIT under the fair and equitable treatment standard. *See* **CLA-37**, *Pope & Talbot, Inc. v. Canada*, Award on the Merits, Apr. 10, 2001, 122 I.L.R. 352, ¶¶ 156-181 (finding a violation of the fair and equitable treatment standard in which the government threatened the claimant with a harassing administrative investigation in which the claimant was denied due process rights); **CLA-38**, *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Award, June 29, 2007, ¶ 133 (pronouncing that a host State's "manifest and gross failure to comply with the elementary principles of justice in the conduct of criminal proceedings . . . may be a breach, or an element in a breach, of an investment treaty").

various government branches, which are extending the dispute between the parties. In turn, this includes Claimants' right to present an effective defense (*i.e.*, without improper interference from Ecuador),[365] which is guaranteed by both Ecuadorian law and the Treaty,[366] and Claimants' right to an impartial decision-maker under Ecuadorian law, international law and the Treaty,[367] which requires Ecuador to guarantee that judicial proceedings be decided in a fair and impartial manner, in accordance with principles of due process.

156. As shown in detail above, Ecuador has repeatedly acted to aggravate, exacerbate, and extend this dispute, and absent interim measures it will continue to take such actions.

157. First, Ecuador's illegitimate issuance and continuation of the Criminal Proceedings are an abuse of its sovereign right to prosecute and punish crimes committed in its territory. The purpose of the Criminal Proceedings is to undermine Ecuador's own Settlement

---

[365] *See supra* note 364 (detailing principles under Ecuadorian law). *See also* **CLA-39**, *Chattin v. United Mexican States*, U.S.-Mex. Cl. Trib., 4 RIAA 282 (1927) (finding violations of international law where local courts allowed "insufficiency of confrontations [and] withholding from the accused the opportunity to know all of the charges brought against him"); **CLA-40**, *Siag v. Egypt*, ICSID Case No. ARB/05/15, Award, June 1, 2009 (finding a BIT violation on the basis that Egypt gave claimants no notice of the impending expropriation proceeding, and did not afford them the opportunity to be heard on the matter until after the fact).

[366] Article 76 of the Ecuadorian Constitution provides for a range of due process rights related to the right to a defense, including that: no one shall be denied the right to present a defense; an adequate time and means for a defense will be made available; any defense shall be afforded "equal terms" to those granted to the prosecution; a person may submit arguments and evidence in support of his/her position; and a person may object to any evidence submitted against him/her. **Exhibit C-288**, 2008 Political Constitution of Ecuador, at Art. 76.7. Pursuant to Article II(7) of the Treaty, Ecuador is obligated to "provide effective means of asserting claims and enforcing rights with respect to investment, investment agreements, and investment authorizations." **Exhibit C-279**, U.S.-Ecuador BIT, at Art. II(7). The Vienna Convention requires treaties to be given "the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose." **CLA-10**, Vienna Convention, *supra* note 283, at Art. 31. The plain meaning of both Article II(7) and the fair and equitable treatment provision of the BIT affords Claimants the right to fair and impartial judicial proceedings with substantive and procedural due process. *See also generally* **CLA-41**, *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award, Aug. 30, 2000 (finding a violation of the FET guarantee when a Mexican municipality refused to grant a foreign investor a construction permit without affording the investor an opportunity to appear at the permit meeting); **CLA-31**, *Tecmed* Award, *supra* note 322, ¶ 201 (holding that Mexico violated the FET standard when its environmental regulatory authority failed to notify the investor that it was revoking its license to operate a landfill).

[367] **Exhibit C-288**, 2008 Political Constitution of Ecuador, at Art. 76.3 (guaranteeing trial by a competent authority); *id.* at Art. 76.7(k) (guaranteeing the right to an impartial judge); **CLA-42**, *Waste Management, Inc. v. Mexico*, ICSID Case No. ARB(AF)/00/3, Award, ¶ 98 (stating that the fair and equitable treatment standard would be violated by conduct that "involves a lack of due process leading to an outcome which offends judicial propriety - as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process"); **CLA-43**, *Azurix Corp. v. Argentina*, ICSID Case No. ARB/01/12, Award, July 14, 2006, ¶ 360 (stating that the fair and equitable treatment standard requires "just, even-handed, unbiased, legitimate" decisions); **CLA-44**, *Loewen v. United States*, ICSID Case No. ARB(AF)/98/3, Award, June 26, 2003, ¶ 129 (noting that customary international law requires States "to maintain and make available to aliens, a fair and effective system of justice.").

and Release Agreements in bad faith, to compromise Chevron's ability to defend the Lago Agrio Litigation, and to assist the Lago Agrio Plaintiffs' lawyers. Uncontroverted documentation evidences the collusion between the Office of the Attorney General and the Lago Agrio Plaintiffs' attorneys for this common purpose. Assistant Attorney General Martha Escobar exchanged a series of emails in 2005 with Plaintiffs' counsel in which she confirmed that Ecuador was looking for ways to "undermine the value of the remediation contract and the final acta" and that the "*Attorney General . . . wants to criminally try those who executed the contract*" even though there was no evidence to support this."[368]

158. The fabricated Criminal Proceedings are part and parcel of the scheme concocted by Ecuador and Plaintiffs' counsel to undermine the Settlement and Release Agreements. Although the Criminal Proceedings should have been quashed in 2006-2007 after three different prosecutors and experts found that no improper conduct had occurred,[369] President Correa politicized the Criminal Proceedings after assuming office in 2007, as part of his campaign in support of the Lago Agrio Plaintiffs and against Chevron, including publicly calling for the criminal prosecution of Claimants' lawyers who signed the remediation and settlement agreements.[370]

159. President Correa's statements signaled to Ecuador's government officials and judiciary that Ecuador strongly supported the Lago Agrio Plaintiffs. This spurred egregious violations of Ecuadorian law and due process rights by Ecuador,[371] including, *inter alia*: (i) the reopening of the Criminal Proceedings in March 2008 by Dr. Pesántez on the basis of alleged "new evidence," which to date has never been disclosed to Messrs. Veiga and Pérez despite an express request for such information; (ii) Dr. Pesántez's commencement of a prosecutorial investigation in August 2008, without any new facts or evidence, as a result of intense pressure from President Correa and the Lago Agrio Plaintiffs' lawyers calling for these actions; (iii) the

---

368 **Exhibit C-166**, Email from Dr. Martha Escobar to Alberto Wray *et al.*, Aug. 10, 2005 (emphasis added).

369 **Exhibit C-234,** Prosecutor General Opinion Dismissing the Criminal Complaint Filed by the Comptroller General, Aug. 9, 2006; **Exhibit C-236**, Motion of Dr. Marianita Vega Carrera, Assistant District Prosecutor of Pichincha, to Third Criminal Judge of Francisco de Orellana, Sept. 4, 2006; **Exhibit C-237**, Motion of Dr. Washington Pesántez, District Prosecutor of Pichincha, to Third Criminal Court of Napo, Mar. 13, 2007, ¶¶ 5-6, 8.

370 **Exhibit C-171**, Presidential Weekly Radio Address, Apr. 28, 2007.

371 *See supra* Section III.

failure to identify the employees of Petroecuador who now purportedly disagree with the original designations of some of the pits as "No Further Action" and "Change of Conditions" pits, and the failure to state the factual basis for such alleged disagreement; (iv) the Ecuadorian courts' improper refusal to archive the twice-dismissed criminal case file as required by law; (v) the Supreme Court President's improper assertion of jurisdiction over the case in an attempt to circumvent the soon-to-expire statute of limitations, in blatant disregard of the requirement that cases be randomly assigned to a criminal chamber of the Supreme Court; and (vi) after nullification of the Supreme Court President's actions, the National Court of Justice's (formerly the Supreme Court) failure to archive the case despite the expiry of the statute of limitations.

160. Moreover, the Criminal Proceedings have impeded Claimants' defense of the Lago Agrio Litigation. Claimants' lawyers facing the Criminal Proceedings, Messrs. Pérez and Veiga, have been key actors on behalf of Claimants. They negotiated and signed the agreements at issue, and Mr. Veiga was in charge of Chevron's defense of that Litigation before the Criminal Proceedings were instituted. Fear of being jailed on the bogus charges has forced Mr. Pérez and his wife to leave Ecuador and has prevented Mr. Veiga from traveling there.

161. The explosive situation facing Claimants' lawyers in Ecuador has caused and is continuing to cause extraordinary stress, mental anguish, and emotional harm to Messrs. Veiga and Pérez. Following the re-opening of the preliminary investigation in 2008, Mr. Pérez, an Ecuadorian national, was forced to leave his home in Ecuador in 2008 and relocate with his wife to the United States for fear of his personal safety. Mr. Pérez left behind family and lifelong friends in Ecuador and finds himself isolated in the United States. He is a 72-year-old man with a spotless reputation and record for the past forty years as a practicing lawyer in Ecuador and deeply suffers from his reputation being slandered in the press by the ROE and by the Lago Agrio Plaintiffs' lawyers. His prolonged exile from his home and his emotional anguish on account of these baseless Criminal Proceedings are taking their toll on his physical health. He now walks with a cane and has required medical attention several times since his arrival in the United States more than a year ago.

162. Similarly, the Criminal Proceedings have caused significant distress for Mr. Veiga and his family, and have been deeply painful and harmful to them. The Criminal Proceedings'

attack on Mr. Veiga's character and professionalism and have impeded his ability to perform his professional responsibilities to defend Chevron and instead have required Messrs. Veiga and Pérez to expend enormous amounts of time and energy defending themselves and their reputations.

163. This is not the first time that Ecuador has filed abusive criminal proceedings against company representatives for the purpose of intimidating claimants and undermining their rights.[372] In *City Oriente v. Ecuador*, for example, Ecuador filed criminal complaints against three executives of City Oriente Limited, alleging, *inter alia*, that these individuals had committed the crime of embezzlement because of City Oriente's failure to pay the onerous and disputed "additional participation" tax of 99%. Similarly, on September 24, 2008, President Correa ordered the seizure of all assets of the Brazilian construction company Odebrecht[373]—which had built an Ecuadorian hydroelectric power plant that was forced to shut down as a result of construction difficulties—and issued an executive decree expelling Odebrecht from the country, seizing all of its assets (including those unrelated to the hydroelectric plan), and suspending its executives' constitutional rights, barring them from leaving the country.[374] Those executives were forced to take refuge in the Brazilian ambassador's house in Quito[375] and arrest warrants were later issued against several Odebrecht officials.[376]

164. The circumstances surrounding the Criminal Proceedings in this case are even more egregious. Ecuador's pursuit of the Criminal Proceedings—which are conducted in breach of criminal procedure, are barred by the statute of limitations, and are meritless—cannot be

---

[372] Reports issued by the U.S. State Department in 2006, 2007, 2008 and 2009 noted that Ecuador frequently uses its criminal justice system "as a means of harassment in civil cases in which one party sought to have the other arrested on criminal charges." **Exhibit C-307**, U.S. State Department, *2008 Report on Human Rights Practices: Ecuador*, *available at* http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119158.htm; **Exhibit C-308**, U.S. State Department, *2007 Report on Human Rights Practices: Ecuador*, *available at* http://www.state.gov/g/drl/rls/hrrpt/2007/100638.htm; **Exhibit C-309**, U.S. State Department, *2006 Report on Human Rights Practices: Ecuador*, *available at* http://www.state.gov/g/drl/rls/hrrpt/2006/78890.htm; **Exhibit C-165**, U.S. State Department, *2009 Report on Human Rights Practices: Ecuador*.

[373] **Exhibit C-310**, *The Seizure was ordered by the Politburo of Alianza País,* EL COMERCIO, Sept. 24, 2008.

[374] *Id.* Media reports estimated the value of the seized assets at US$ 800 million. **Exhibit C-311,** Frank Jack Daniel, *Ecuador Stable with Leftist Correa Investors Wary*, REUTERS, Sept. 25, 2008.

[375] **Exhibit C-266**, , *Ecuador May Default on $US200 Million Brazil Loan,* ASSOCIATED PRESS, Sept. 25, 2008.

[376] **Exhibit C-117**, *San Francisco: Arrest Warrants Issued for 9*, EL COMERCIO, Dec. 18, 2008.

deemed to constitute the exercise of a legitimate sovereign right, and warrant the suspension of the Criminal Proceedings pending the outcome of this Arbitration.

165. Second, President Correa has made repeated and inflammatory public statements about the Lago Agrio Litigation, supporting the Lago Agrio Plaintiffs and publicly demonizing Chevron. Against the background of a judiciary that has been dismantled several times over since 2004 and today is no longer independent, with judges fired or prosecuted for ruling against the Government's wishes, President Correa's widely-disseminated public statements and other government conduct have demonstrably biased the Lago Agrio Court and are substantially harming Chevron's right to the non-aggravation of the dispute, including its right to present an effective defense before an impartial decision-maker. Specifically, President Correa has made repeated public statements that the government would support and assist the Plaintiffs in their lawsuit with Chevron, that Chevron was guilty, that no remediation ever took place, and that the persons who signed the Settlement and Release Agreements should be criminally prosecuted.[377]

166. President Correa's incendiary rhetoric has emboldened other government officials to take an equally vocal and biased stance against Chevron (*see supra* ¶¶ 48-53)—thereby escalating the dispute and resulting in an extremely hostile environment. It also has unduly influenced the course of the Lago Agrio Litigation, which in turn has impacted Chevron's right to present an effective defense before an impartial decision-maker. For example, after President Correa's public statements, the court took various actions in violation of Chevron's due process rights and then-presiding Judge Juan Núñez made a number of public statements demonstrating his own bias in favor of the Lago Agrio Plaintiffs,[378] yet Ecuador and its judiciary did nothing to discipline him.

167. These public statements culminated in the ROE's apparent behind-the-scenes contact with the Court, in breach of Ecuador's obligations under the Settlement and Release Agreements and in breach of Claimants' rights under the Treaty and their rights not to have

---

[377] *See* **Exhibit C-170**, Press Release, Office of President Correa, *The Whole World Should See the Barbarity Displayed by Texaco*, Apr. 26, 2007; **Exhibit C-172**, Presidential Weekly Radio Address, Jan. 19, 2008.

[378] *See* **Exhibit C-222**, Simon Romero & Clifford Kraus, *In Ecuador, Resentment of an Oil Company Oozes*, THE NEW YORK TIMES, May 15, 2009; **Exhibit C-223**, Naomi Mapstone, *Chevron fights Ecuador pollution lawsuit*, FINANCIAL TIMES, June 12, 2009.

Ecuador aggravate the dispute or take justice into its "own hands." The audio-visual recordings indicate improper contacts between the Government of Ecuador and the Lago Agrio Court and a bribery scheme premised upon a predetermined judgment against Chevron involving the Judge, the Presidency, and the Lago Agrio Plaintiffs.

168. Simply put, the Criminal Proceedings and the public statements and conduct of President Correa and other government officials were designed to signal to the court Ecuador's support for the Plaintiffs' case and to grant license to it to disregard Ecuador's own Settlement and Release Agreements. This conduct makes it practically impossible for Claimants to present an effective defense before an impartial decision-maker in the Lago Agrio Litigation, and warrants immediate relief from the Tribunal to prevent enforcement of a judgment from the Lago Agrio Court pending the outcome of this Arbitration.

C. THE REQUESTED INTERIM MEASURES ARE URGENT BECAUSE THE RISK OF HARM TO CLAIMANTS IS IMMINENT

169. Given that the purpose of interim measures is to preserve the rights of the parties, interim measures are appropriate when there is "urgency in the sense that there is a real risk that action prejudicial to the rights of either party might be taken before the Court has given its final decision."[379] The "degree" of urgency "depends on the circumstances, including the requested provisional measures, and may be satisfied when a party can prove that there is a need to obtain the requested measures before the issuance of a final award. In most situations, this will equate to 'urgency' in the traditional sense (*i.e.*, a need for a measure in a short space of time). In some cases, however, the only time constraint is that the measure be granted before a final award – even if the grant is to be some time hence."[380]

---

[379] **CLA-6**, *Case Concerning the Convention CERD*, *supra* note 265, ¶ 129. *See also* **CLA-28**, *Case Concerning Passage Through the Great Belt*, *supra* note 319, ¶ 23 (a measure is urgent when "action prejudicial to the rights of either party is likely to be taken before [a] final decision is given."); **CLA-25**, *Quiborax*, *supra* note 314, ¶ 150 ("The Arbitral Tribunal agrees with Claimants that the criterion of urgency is satisfied when a 'question cannot await the outcome of the award on the merits'.") (citation omitted).

[380] **CLA-45**, *Biwater Gauff (Tanzania) Ltd v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 1, Mar. 31, 2006, ¶ 76. *See also id.* ¶ 86 (where failure to issue provisional measures would raise a risk of impairing a material right, "the safest course at [an] early stage of the proceedings is to ensure that no adverse step is taken to the same."); **CLA-17**, *Burlington*, *supra* note 304, at pp. 28-29 (restraining Ecuador from taking imminent coercive action to enforce payments pursuant to Law 42 and requesting the claimant to place all of the funds in dispute in an escrow account).; **CLA-15**, *City Oriente*, *supra* note 299, ¶ 67 ("provisional measures are only appropriate if it is impossible to wait for a specific issue to be settled at the merits stage."); **CLA- 28**, *Case*

170. There is little question that the interim measures Claimants request are urgent because the risk of harm to Claimants is imminent. The Lago Agrio judgment is likely to be issued in the near future, certainly in 2010, well before this Tribunal issues its final award on the merits. In the video recordings of the bribery scheme, then-presiding Judge Núñez stated his intention to issue an award adverse to Chevron in late 2009, and that any appeal would be a "formality" that could be concluded by January 2010.[381] After being provided with the recordings evidencing the scheme, the greatest concern of Ecuador's Prosecutor General, Washington Pesántez, was not the bribery scheme itself, but rather preventing any delay in the issuance of the Lago Agrio judgment. Rather than acknowledging concern over the substance of the recordings, Prosecutor General Pesántez instead declared that his main objective is to "ensur[e] that the ruling . . . is not the subject of any additional delays."[382] Similarly, Ecuador's Ombudsman, Fernando Gutiérrez, also called for a prompt decision in the Lago Agrio Litigation case despite the bribery scheme: "This process is too important; therefore, the members of the Court of Sucumbíos shall not put anything else in front. This [case] has absolute priority and the judgment must be delivered as soon as possible . . . the study [of all the evidence] should not experience a delay for months . . . hardly even weeks."[383]

171. Plaintiffs' lawyer Pablo Fajardo publicly predicted that a judgment would be issued in the first quarter of 2010,[384] as has Mr. Donziger.[385] And Plaintiffs' lawyers have stated publicly that after the judgment is issued, they will move "expeditiously" to "seize" Chevron's assets around the world and disrupt its business operations. Accordingly, within the next few months—and certainly during the pendency of this Arbitration—Chevron could be fighting

---

Concerning Passage Through the Great Belt, *supra* note 319, ¶ 23 (a measure is urgent where "action prejudicial to the rights of either party is likely to be taken before [a] final decision is given.").

381 **Exhibit C-267**, Bribery Scheme Transcript Pertaining to Recording 3, June 5, 2009, at 32.

382 **Exhibit C-5**, Press Conference by Prosecutor General Washington Pesántez, Sept. 4, 2009.

383 **Exhibit C-268**, *Ombudsman Is Requesting Priority to Texaco Case*, EL HOY, Sept. 15, 2009. Ombudsman Gutiérrez previously had traveled to Sucumbíos to meet with the President of the Superior Court and to present to him a petition on behalf of the Lago Agrio Plaintiffs alleging delay in the administration of justice. **Exhibit C-269**, *D. del Pueblo a Sucumbíos*, EL HOY, Mar. 20, 2009.

384 **Exhibit C-270**, Interview of Pablo Fajardo, *Ecuador Inmediato Radio: The Power of a Word*, Sept. 23, 2009, 17h16.

385 **Exhibit C-271**, Rudolf ten Hoedt, *Dirty Hands in Ecuador*, FINANCIAL DAGBLAD, Mar. 6, 2010 ("I am expecting the verdict somewhere before April of 2010.").

worldwide enforcement actions to prevent potential disruptions to its business operations. In recent proceedings before the federal court in New York, the Plaintiffs' lawyers clearly stated their intention to proceed with enforcement proceedings regardless of this Arbitration proceeding.[386] In light of these statements, there can be no doubt that the Plaintiffs will seek to enforce any Lago Agrio judgment as soon as it is issued, and therefore that Claimants' request for interim measures with respect to the Lago Agrio litigation is urgent.[387]

172. The Criminal Proceedings, too, may well result in prosecution and sentencing before this Tribunal issues a decision on the merits in this Arbitration. Detention, arrest, and/or extradition proceedings could be ordered at any time against Messrs. Veiga and Pérez. The preliminary investigation stage of the Criminal Proceedings has been completed, and the political atmosphere surrounding these proceedings has reached a dangerous level, to the point that Claimants' lawyers have reason to fear for their safety and security. In one recent example, the Lago Agrio Plaintiffs' representatives hosted a protest march in Lago Agrio regarding the litigation. The crowd, including the Plaintiffs' representatives themselves, created effigies of Claimants' lawyers (including the two lawyers criminally charged), and buried them up-side down in an oil pit, while calling for their deaths and naming them "enem[ies]" of the people.[388] Luis Yanza, the Amazon Defense Front's "coordinator" of the case against Chevron, said "we are going to bury those who promoted this . . . we are going to bury them in the same pit because this is the place where they should be."[389] This violent rhetoric underscores the perilous situation facing Claimants' lawyers in Ecuador, and further evinces the urgent nature of the requested interim measures.

---

[386] **Exhibit C-4**, *Rep. of Ecuador v. Chevron Corp. and Texaco Petroleum Co.*, 09 CV 9958 (LBS), *Yaiguaje et al. v. Chevron Corp. and Texaco Petroleum Co.*, 10 CV 316 (LBS), U.S. District Court for the Southern District of New York, Transcript of Hearing, Mar. 10-11, 2010, at 84.

[387] **CLA-15**, *City Oriente*, *supra* note 299, ¶ 69 ("In the Tribunal's opinion, the passing of the provisional measures is indeed urgent, precisely to keep the enforced collection or termination proceedings from being started, as this operates as a pressuring mechanism, aggravates and extends the dispute and, by itself, impairs the rights which Claimant seeks to protect through this arbitration. Furthermore, where, as is the case here, the issue is to protect the jurisdictional powers of the tribunal and the integrity of the arbitration and the final award, then the urgency requirement is met by the very own nature of the issue.").

[388] **Exhibit C-272**, Transcript of Video During the Protest March in Lago Agrio, Oct. 5, 2009.

[389] *Id*.

173. In *City Oriente*, the tribunal held that the urgency requirement was met because "it is impossible to wait for a specific issue to be settled at the merits stage."[390] The tribunal held that when the action of a party "operates as a pressuring mechanism, aggravates and extends the dispute and . . . impairs the rights which Claimant seeks to protect through this arbitration," then the urgency requirement is satisfied.[391] As in *City Oriente*, there is no doubt that the continuation of the Criminal Proceedings would result in imminent harm to Claimants and to their attorneys.

174. There is real urgency for this Tribunal to act now and order the requested interim measures so as to maintain the *status quo*, protect the integrity of this Arbitration, preserve the Tribunal's jurisdiction, preserve the rights of the parties to this Arbitration, and avoid the substantial harm to Claimants that otherwise would occur.

D. CLAIMANTS ESTABLISHED A *PRIMA FACIE* CASE

175. In deciding whether interim measures were appropriate, the *Paushok* tribunal stated that a tribunal "need not go beyond whether a reasonable case has been made which, if the facts alleged are proven, might possibly lead the Tribunal to the conclusion that an award could be made in favor of Claimants."[392] The tribunal need undertake only a *prima facie* review of the merits as alleged in the Notice of Arbitration, not a searching evidentiary inquiry. "Essentially, the Tribunal needs to decide only that the claims made are not, on their face, frivolous or obviously outside the competence of the Tribunal. To do otherwise would require the Tribunal to proceed to a determination of the facts and, in practice, to a hearing on the merits of the case, a lengthy and complicated process which would defeat the very purpose of interim measures."[393]

176. Here, the factual and legal bases for Claimants' interim measures request easily establish Claimants' *prima facie* case on the merits. Claimants have pleaded and established that Ecuador and its political subdivisions granted full and complete releases to TexPet and its affiliates for all claims of environmental impact arising out of Consortium-related activities, and

---

390 **CLA-15**, *City Oriente*, *supra* note 299, ¶ 67.

391 *Id.* ¶ 69. The same tribunal did not address the requirement of harm in any terms.

392 **CLA-2**, *Paushok*, *supra* note 260, ¶ 55.

393 *Id.*

that Ecuador and Petroecuador retained sole responsibility for any remaining or future environmental impact. Claimants have clear and unequivocal rights under these Settlement and Release Agreements, including the right to Ecuador's good faith performance, and its specific performance, of its contractual and Treaty obligations and the *res judicata* right to be free of any further claims for environmental impact arising out of Consortium-related activities. As detailed in this Request, Ecuador has breached the Settlement and Release Agreements in various ways, including, *inter alia*, by (i) failing to inform the Lago Agrio Court that Claimants have been released from the claims in that lawsuit; (ii) failing to absolve Claimants from any and all responsibility or liability for any environmental impact arising out of Consortium-related activities, particularly in connection with the Lago Agrio Litigation; (iii) making repeated inflammatory public statements through its government officials, including President Correa, in support of the Lago Agrio Plaintiffs that are intended to drive the outcome of the Lago Agrio Litigation; (iv) colluding with Plaintiffs to undermine Claimants' rights under the agreements in connection with the Criminal Proceedings; and (v) instituting and pursuing sham Criminal Proceedings against Claimants' attorneys who signed the Settlement and Release Agreements. All of these actions are in breach of Ecuador's obligation to respect and perform the Settlement and Release Agreements and to protect and defend Claimants' rights pursuant thereto.

177. Ecuador's conduct also constitutes a breach of its international obligations under the U.S.-Ecuador BIT (*see* Claimants' Notice of Arbitration). By breaching the Settlement and Release Agreements, Ecuador has breached its Treaty obligation to observe any obligation into which it entered with respect to investments (Article II(3)(c)). Moreover, Ecuador's political interference in the Lago Agrio Litigation and the Criminal Proceedings and its collusion with the Plaintiffs in these same judicial proceedings constitute a breach of its obligation to afford Claimants' investment fair and equitable treatment, full protection and security, and treatment no less than that required by international law (Article II(3)(a)). The manner in which the Lago Agrio Litigation has been conducted and the existence of the Criminal Proceedings have violated Claimants' Treaty right to effective means to enforce their rights regarding their Ecuadorian investment and their Settlement and Release Agreements (Article II(7)). Similarly, the sham Criminal Proceedings against Messrs. Veiga and Pérez constitute a breach of Ecuador's obligation not to impair Claimants' management or disposition of their investment by arbitrary or discriminatory measures. Finally, by supporting the Lago Agrio Plaintiffs in seeking a

judgment that ultimately will benefit the ROE and shift the burden of remediating any environmental impact away from the ROE and Petroecuador and onto Chevron, Ecuador is favoring its national oil company to the detriment of Chevron and thus is failing to afford Claimants' investment a treatment that is no less favorable than that which it affords to its own nationals (Article II(1)).

E. GRANTING CLAIMANTS' REQUEST WILL NOT DISPROPORTIONATELY BURDEN ECUADOR OR THE NOMINAL LAGO AGRIO PLAINTIFFS

178. *Paushok* also stated that the tribunal "is called upon to weigh the balance of inconvenience in the imposition of interim measures upon the parties."[394]

179. While Claimants would suffer substantial or irreparable harm without interim measures as described above, neither the ROE nor the nominal Lago Agrio Plaintiffs would incur any meaningful harm if the Tribunal issues the interim measures. Ecuador has already settled and released their claims and neither it nor the nominal Plaintiffs have any legal basis for a double recovery. Since 90% of any damages would go to the ROE, the enforcement of a judgment would result in a double recovery for Ecuador. Moreover, Ecuador has ongoing programs to remediate environmental impact. As described above, these programs involve the same public environmental remediation that Plaintiffs seek. The nominal Plaintiffs make no claims in the Lago Agrio Litigation for individual damages, but only for public environmental remediation, which claim was released by the ROE. Staying enforcement of a Lago Agrio judgment pending this Arbitration will have no impact on Ecuador's program to implement and continue such remediation, nor will it cause the nominal Lago Agrio Plaintiffs to turn to Ecuador or Petroecuador to collect damages for their claims. Indeed, the Lago Agrio Plaintiffs have agreed not to sue Ecuador or Petroecuador for remediation costs.[395]

180. With respect to the Criminal Proceedings, suspending these baseless Criminal Proceedings, which have been pursued in breach of Ecuadorian law and in bad faith, does not infringe on Ecuador's legitimate sovereign interests. Although this is not the first time that Ecuador has abused criminal proceedings for the purpose of intimidating an international

[394] *Id.* ¶ 79.

[395] *See supra* ¶ 45.

arbitration claimant and undermining rights possessed by the claimant that are the subject of an arbitration,[396] Ecuador has no protectable right to pursue criminal proceedings for an illicit purpose such as an intimidation or pressure tactic or for political or other ulterior motives. As the *City Oriente* tribunal found when it ordered Ecuador to stop pursing criminal proceedings against the claimant's employees, Ecuador's sovereign right to prosecute and punish crimes "should not be used as a means to coercively secure payment of the amounts allegedly owed by City Oriente . . . since this would entail a violation of the principle that neither party may aggravate or extend the dispute or take justice into their own hands."[397] Similarly, here, Ecuador should not be permitted to take justice into its own hands and to use the Criminal Proceedings as a means to intimidate Claimants from effectively defending and protecting their rights under the Settlement and Release Agreements.

[396] *See, e.g.,* **Exhibit C-307**, U.S. State Department, *2008 Human Rights Report: Ecuador*, *available at* http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119158.htm (last visited Mar. 29, 2010); **Exhibit C-308**, U.S. State Department, *2007 Human Rights Report: Ecuador*, *available at* http://www.state.gov/g/drl/rls/hrrpt/2007/100638.htm (last visited Mar. 29, 2010); **Exhibit C-309**, U.S. State Department, *2006 Human Rights Report: Ecuador*, *available at* http://www.state.gov/g/drl/rls/hrrpt/2006/78890.htm (last visited Mar. 29, 2010).

[397] **CLA-15**, *City Oriente*, *supra* note 299, ¶ 62.

V. CONCLUSION

181. For all of the foregoing reasons, Claimants respectfully request that the Tribunal grant Claimants' requested interim measures.

Dated: April 1, 2010

Respectfully submitted,

R. Doak Bishop
Wade M. Coriell
Isabel Fernández de la Cuesta
KING & SPALDING
1100 Louisiana, Suite 4000
Houston, TX 77002
(713) 751-3205
(713) 751-3290 (Facsimile)

Edward G. Kehoe
Caline Mouawad
KING & SPALDING
1185 Avenue of the Americas
New York, NY 10036-4003
(212) 556-2100
(212) 556-2222 (Facsimile)

James Crawford SC
Matrix Chambers
Gray's Inn, London
England WC1R 5LN