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,

VS.

THE REPUBLIC OF ECUADOR,
RESPONDENT.

CLAIMANTS' NOTICE OF ARBITRATION

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Chevron Corporation ("Chevron") and Texaco Petroleum Company ("TexPet") (collectively "Claimants") hereby serve notice of the institution of an arbitration proceeding under the UNCITRAL Arbitration Rules against the Republic of Ecuador ("Ecuador," the "State," or "Respondent") pursuant to Article VI(3)(a) of the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investments (the "Ecuador-United States BIT," "BIT" or "Treaty").

I. Parties

Chevron has its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California, USA 94583. Its telephone number is (925) 842-1000, and its facsimile number is (925) 842-3530. Chevron is a legal entity of the United States of America.

TexPet has its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California, USA 94583, and offices in Quito, Ecuador at Rumipamba 706 y Av. República, Edificio Borja Páez, 5to Piso, Oficina 51. Its telephone number in Quito is 593-2-22-64-063, and its facsimile number is 593-2-22-64-062. TexPet is a legal entity of the United States of America and a wholly-owned, indirect subsidiary of Chevron.

The Republic of Ecuador is the constituted *de jure* government of the people and territory of Ecuador, and it is represented by the Attorney General of Ecuador, whose address is Robles 731 y Av. Amazonas, Quito, Ecuador. The telephone and facsimile number of the Attorney General's office is 593-2-2562080 (084).

II. Factual Background

A. Preliminary Statement

1. Claimants' case relates to TexPet's historical participation as a minority member of a Consortium with Ecuador and Ecuador's state-owned oil company, Petroecuador,[1] that explored for and produced oil under concession contracts. After its participation ended in 1992, TexPet negotiated a settlement agreement with Ecuador and Petroecuador in 1995 whereby TexPet assumed responsibility for specified environmental remediation projects corresponding to its minority ownership interest and was released from liability for environmental impact falling outside the scope of the specified projects.

2. TexPet spent approximately US$ 40 million over several years to fund environmental remediation, carried out by a leading international contractor, as well as community development projects as set forth in the settlement agreement with Ecuador and Petroecuador. All competent agencies of the Ecuadorian government inspected the remediation work and confirmed that it was completed in accordance with the settlement agreement, and in 1998 Ecuador and Petroecuador executed an agreement releasing TexPet, its affiliates and principals from liability for environmental impact in the former Concession area. Ecuador and Petroecuador retained responsibility for any remaining impact caused by the Consortium's pre-

[1] Ecuador's state-owned oil company was originally known as *Corporación Estatal Petrolera Ecuatoriana* or "CEPE," and it existed as such for most of the Consortium period until the name was changed to Petroecuador in 1989 as part of a restructuring. All references to Petroecuador should be understood to include CEPE.

1992 activities as well as any future impact caused by Petroecuador's own ongoing operations in the former Concession area. TexPet also entered into similar settlements and releases with the four main municipalities that comprised the former Concession area, the Province of Sucumbíos, and the Consortium of Municipalities of Napo.

3. In breach of the 1995 and 1998 agreements and the Treaty, Ecuador today is colluding with a group of Ecuadorian plaintiffs and U.S. contingency-fee lawyers who sued Chevron in 2003 in the courts of Ecuador seeking damages and other remedies for impacts that they allege were caused by the Consortium's operations (the "Lago Agrio Litigation"). By its actions and inactions, Ecuador improperly seeks to shift to Chevron Ecuador's own contractual share of liability for any remaining environmental impacts from the pre-1992 activities of the Consortium. Similarly, in further breach of the settlement and release agreements and the Treaty, Ecuador improperly seeks to shift to Chevron the responsibility for impact caused by Petroecuador's own oil operations since 1992, as well as impact caused by government-sanctioned colonization and agricultural and industrial exploitation of the Amazonian region.

4. Ecuador has pursued a coordinated strategy with the Lago Agrio plaintiffs that involves Ecuador's various organs of State. Ecuador's executive branch has publicly announced its support for the plaintiffs, and it has sought and obtained the sham indictment of two Chevron attorneys in an attempt to undermine the settlement and release agreements and to interfere with Chevron's defense in the Lago Agrio Litigation. Ecuador's judicial branch has conducted the Lago Agrio Litigation in total disregard of Ecuadorian law, international standards of fairness, and Chevron's basic due process and natural justice rights, and in apparent coordination with the executive branch and the Lago Agrio plaintiffs.

5. As described in more detail below, Ecuador's conduct violates the terms of the Ecuador-United States BIT and the terms of the investment agreements between Ecuador and TexPet.

B. Claimants' Investments in Ecuador

6. In 1964, Ecuador granted oil exploration and production rights in Ecuador's Oriente region to TexPet and the Ecuadorian Gulf Oil Company ("Gulf") (together, the "Consortium") through a Concession Contract with the companies' local subsidiaries (the "Napo Concession").

7. On August 6, 1973, Ecuador, TexPet and Gulf entered into a new agreement that, among other things, provided Petroecuador an option to acquire a 25% interest in the Consortium. Petroecuador exercised the option and acquired a 25% stake in the Consortium in 1974. Subsequently, on December 31, 1976, Petroecuador acquired Gulf's remaining interest, giving Petroecuador a 62.5% interest in the Consortium. TexPet retained a 37.5% interest thereafter, until the concession agreements expired and the Consortium ended in 1992.

8. Throughout the entire term of the concession, the government regulated, approved, and in many instances mandated the Consortium's activities. No facilities were constructed, nor wells drilled, nor oil extracted without the government's oversight and approval. The Consortium made all of the decisions about exploration, financing and operations, provided

royalties and other fees to the government, and was subject to government regulation and oversight. Even though TexPet, as the Consortium's operator for the majority of the concession term, conducted the physical work of the Consortium, it was the Consortium that stood to enjoy any profits and also bore any operational risk and liability associated with its operations. In 1990, Petroamazonas (a Petroecuador subsidiary created specifically for the task) assumed the role of operator.

9. Throughout the existence of the Consortium, approximately 90% of the revenues generated (approximately US$ 25 billion) went directly to Ecuador in the form of revenues, royalties, taxes, and subsidies. In short, Ecuador and Petroecuador held full regulatory control over the Consortium as well as a majority share of its ownership, and received almost all of the economic benefits from its operations.

10. When Petroamazonas assumed the role of operator in 1990, TexPet and Ecuador agreed to conduct an environmental audit of the Consortium's oil fields. Two international contractors conducted separate environmental audits to ascertain the scope of environmental impacts from the Consortium's operations. The audits identified certain areas for remediation and estimated that the total cost to remediate the impacts would be approximately US$ 8 million to US$ 13 million.

11. In 1994, Ecuador stated that it would not participate with TexPet in conducting environmental remediation. Thus, rather than jointly funding remediation of the entire Concession area, the parties agreed to identify a set of remediation obligations corresponding to TexPet's minority ownership interest to be remediated in exchange for TexPet being released from any further liabilities or remediation obligations for environmental impact.

1. *The 1994 Memorandum of Understanding*

12. On December 14, 1994, Ecuador (through the Ministry of Energy and Mines), 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.*" The release of TexPet would be accomplished in two steps. First, from the outset, TexPet would be released from any responsibility for environmental impact or effects not included in the "Scope of Work" (which was to specify the remediation tasks to be performed by TexPet). Second, TexPet would be released from any responsibility related to the Scope of Work upon performance thereof.

13. Together, the two-step release would discharge TexPet "from any claims that the Ministry and Petroecuador may have against TexPet concerning the environmental impact caused as a consequence of the operations of the former" Consortium. Since at that time only the Government of Ecuador, through its responsible ministries and agencies, could demand environmental remediation of public land, a settlement with the Government of Ecuador would fully discharge TexPet of any responsibility that may have existed for environmental impact on public land, without prejudice to potential individualized claims for alleged personal injury or damage to private property.

2. *The 1995 Settlement Agreement*

14. 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. TexPet also agreed to finance certain socioeconomic projects. Finally, Ecuador insisted that, as part of the consideration for a full release, TexPet negotiate with four specified municipalities of the Oriente region concerning relief that they were seeking.

15. Ecuador, Petroecuador, and TexPet executed a Settlement Agreement on May 4, 1995 (the "1995 Settlement Agreement"), which provided in its Preamble that TexPet agreed to 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.*" In turn, the term "Environmental Impact" was defined broadly, as including "[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." As contemplated by the MOU, the 1995 Settlement Agreement (1) 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 remaining environmental liability upon completion of the remediation obligations described in the Scope of Work.

3. *Performance Under the 1995 Settlement Agreement and Execution of the 1996 Municipal and Provincial Releases and the 1998 Final Release*

16. To perform the remediation work for environmental impact contemplated by the 1995 Settlement Agreement, Ecuador provided a list of approved, independent environmental engineering contractors. From Ecuador's list, TexPet selected Woodward-Clyde, one of the largest and most reputable environmental engineering firms in the world. Woodward-Clyde began its work by conducting additional investigations of the sites listed in the Scope of Work and developing a Remedial Action Plan. The Remedial Action Plan identified the specific pits at each well site that required remediation under the criteria set out in the 1995 Settlement Agreement, and further clarified the remedial action to be taken at each site. In September 1995, Ecuador, Petroecuador, TexPet, and Woodward-Clyde each approved the Remedial Action Plan.

17. Between October 1995 and September 1998, Woodward-Clyde conducted (on behalf of and paid for by TexPet) all of the remediation requir ed by the 1995 Settlement Agreement and the Remedial Action Plan. As part of its work, Woodward-Clyde and its subcontractors undertook the following remediation projects:

- remediate and close 162 pits and 6 spill areas at 133 well sites;
- remediate contaminated soils (roughly 6,000 cubic meters) at 13 production stations, five abandoned installations, and 17 well sites;
- identify and supply water treatment and processing equipment at six production stations and at four well sites;

- design and implement plugging and abandonment work at 18 previously-abandoned well sites;
- recover, treat, upgrade, and recycle approximately 28,000 barrels of hydrocarbon material from the remediated pits, resulting in additional revenue for Petroecuador; and
- re-vegetate affected areas using native Amazonian plant species, or turned those areas over to the local communities for alternate land use.

The responsible ministries and agencies of the Government of Ecuador oversaw and approved all of this remediation and reclamation work.

18. The 1995 Settlement Agreement also required TexPet to provide socioeconomic compensation to Ecuador by funding certain community development projects. Specifically, TexPet:

- supplied US$ 1 million for the construction of four educational centers and adjacent medical facilities, which included funds for two river ambulances;
- provided US$ 1 million for agricultural and forestry projects to be carried out by indigenous and peasant organizations in the Amazon region; and
- purchased and donated an airplane for the use of the Amazon region's indigenous communities.

19. In addition to its remediation and reclamation work for environmental impact, and as envisaged by the 1995 Settlement Agreement, TexPet also settled existing disputes with four municipalities of the Oriente region (where the Concession area was located) that sought compensation for alleged environmental harm resulting from the Consortium's operations. TexPet entered into written settlements and releases with the four municipalities, as well as with the province of Sucumbíos and the Consortium of Municipalities of Napo (the "1996 Municipal and Provincial Releases"), pursuant to which TexPet contributed approximately US$ 3.7 million for, among other things, potable water and sewage projects. TexPet, its parent company, affiliates, and principals were then released from any liability, including for environmental impact, for any Consortium-related activities conducted in the Concession area. The municipal releases were approved and confirmed by the respective courts.

20. In all, TexPet spent approximately US$ 40 million on environmental remediation and community development in Ecuador pursuant to the 1995 Settlement Agreement and the 1996 Municipal and Provincial Releases.

21. During the three-year period from October 1995 to September 1998, the Government of Ecuador issued nine *actas* documenting its acceptance that the pits listed therein were remediated as per the parties' agreement and certifying the adequacy of the remediation work that it had supervised and evaluated on an ongoing basis. Each of those *actas* was in turn supported by hundreds of certification documents. On September 30, 1998, Ecuador, Petroecuador, and TexPet executed the *Acta Final*, certifying that TexPet had performed all of its obligations under the 1995 Settlement Agreement, and fully releasing it from any and all

environmental liability arising from the Consortium's operations (the "1998 Final Release"). Ecuador and Petroecuador retained responsibility for any remaining, and future, environmental impact and remediation work.

C. Petroecuador's Operations Since 1992

22. Since the concession agreements expired and the Consortium ended in 1992, Petroecuador has been the sole owner of continuous and expanding oil producing operations in the former Concession area, and TexPet has had no ownership interest or involvement in any production activities in Ecuador. Petroecuador in the ensuing years has drilled more new wells (over 400) than TexPet drilled during the life of the Consortium (335).

23. Petroecuador also has established a widely acknowledged record of operational and environmental mismanagement, characterized by lack of investment in or maintenance of its equipment and installations, numerous spills, and failure to timely perform its share of environmental remediation. Ecuadorian public media sources have reported that Petroecuador has been responsible for more than 1,400 oil spills from 2000 to 2008, and that the company has spilled in excess of four million gallons of oil since 1992.

24. In May 2006, Ecuador's National Director of Environmental Protection Management, Manuel Muñoz, a representative of the Ministry of Energy, testified before Ecuador's Congress that Texaco "*worked on the remediation of the pits for which it was responsible, which was 33% of the total. However, for over 30 years Petroecuador has done absolutely nothing regarding the ones that were of the company's responsibility to remediate.*" Director Muñoz also stated that Petroecuador had allowed equipment, infrastructure and operations to deteriorate: "[T]here is a very serious problem regarding the pipelines, regarding all flow transmission systems both of oil as well as of derivatives, which have to a large degree become obsolete [because] there is no adequate budget to have them replaced."

D. The *Aguinda* Litigation

25. In November 1993, U.S. plaintiffs' lawyers filed a putative class action lawsuit against Texaco Inc., in the federal district court for the Southern District of New York (the "*Aguinda*" case). The *Aguinda* plaintiffs, claiming to represent 30,000 members of a class of persons residing in the Oriente region of Ecuador, generally sought compensation for purported personal injuries and damage to their own property allegedly caused by TexPet's actions as the Consortium's operator. Texaco Inc. successfully moved to dismiss the complaint for, *inter alia*, *forum non conveniens*.

26. The Government of Ecuador supported TexPet's efforts to have the New York *Aguinda* action dismissed. Specifically, the Government of Ecuador advised the federal court in New York that the State was "the legal protector of the quality of the air, water, atmosphere and environment within its frontiers," as well as "legal owner of the rivers, streams and natural resources and all public lands where the [Consortium's] oil producing operations" took place. Ecuador further informed the court that the plaintiffs had no independent right to litigate over public lands and that "the [*Aguinda*] 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." In an interview, Ecuador's Ambassador to the United States confirmed that "the soil, the subsoil, the vegetation, the air . . . all of these are property belonging to the Nation of Ecuador, not to the individuals living there, and not to the lawyers drawing up the claims . . . Nobody can seek compensation for damages in property belonging to the Ecuadorian Government. Only the Government can litigate. No third parties."

27. The *Aguinda* plaintiffs, however, persisted in their efforts to obtain the support of Ecuador and Petroecuador. Their lead attorney, Cristóbal Bonifaz, 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]." It was also reported in the Ecuadorian press that, "the plaintiffs and their attorneys have agreed – in legal documents – to not sue the State should it be found that the State was jointly responsible with Texaco for causing environmental damage."

28. The *Aguinda* plaintiffs' lawyers also reportedly lobbied for the passage of new legislation in Ecuador that would enable them to file new claims against TexPet. In July 1999, less than one year after execution of the 1998 Final Release, Ecuador enacted the Law of Environmental Management (also known as the Environmental Management Act) (the "1999 EMA"). Article 41 of the 1999 EMA grants individuals the right to bring an action to enforce "collective environmental rights," and Article 43 allows individuals "linked by a common interest and directly affected by the harmful action or omission" to file an action "for damages and for the deterioration caused to health or the environment."

29. In 2002, the United States Second Circuit Court of Appeals affirmed the decision of the federal district court for the Southern District of New York to dismiss the *Aguinda* litigation with prejudice on *forum non conveniens* grounds, subject to Texaco Inc.'s consent to the jurisdiction of Ecuadorian courts.

E. Ecuador's Misconduct in Connection With the Lago Agrio Litigation

30. In May 2003, a different but overlapping group of Ecuadorians, supported by some of the same U.S. contingency-fee lawyers who had filed the *Aguinda* litigation in New York, sued Chevron in the Superior Court of Nueva Loja in Lago Agrio, Ecuador (the Lago Agrio Litigation). These plaintiffs purport to seek damages from Chevron for environmental remediation of former Consortium sites pursuant to a retroactive application of the 1999 EMA.

31. In its October 2003 answer to the complaint, Chevron immediately objected to the Lago Agrio court's exercise of jurisdiction over the company on the basis that (1) Chevron is a distinct corporate entity that first acquired an indirect ownership interest in TexPet in 2001, and TexPet, Texaco Inc. and Chevron Corporation remain distinct corporate entities today; (2) Chevron was never the operator of the Consortium or a party to any of the underlying contracts, nor is it the successor-in-interest of Texaco Inc. or TexPet (which, in any event, was fully released by Ecuador, Petroecuador, and the municipalities and the province encompassing all of the alleged affected communities listed in the Lago Agrio complaint from any environmental liability in the Concession area); and (3) Texaco Inc., not Chevron, agreed to subject itself to the jurisdiction of the Ecuadorian courts for a one-year period following the Second Circuit Court of

Appeals decision confirming the dismissal of the *Aguinda* litigation.[2] Notwithstanding, the Lago Agrio court has not ruled on Chevron's objections and continues to exercise *de facto* jurisdiction over Chevron. Although there are no grounds for Chevron to be a defendant in the Lago Agrio Litigation, Chevron has been forced to expend the time and to incur the costs associated with defending the merits of the Lago Agrio Litigation.

32. Chevron further requested dismissal of the Lago Agrio claims based on, among other things, the 1995 Settlement Agreement, the 1996 Municipal and Provincial Releases, and the 1998 Final Release. In particular, Chevron showed that TexPet, its parent company, affiliates, and principals had received a full and complete release from any such liability. Chevron also argued that the plaintiffs lack standing to bring claims under the 1999 EMA and that, in all events, the 1999 EMA cannot be applied retroactively to Consortium operations that ended in 1992. Article 24 of the 1998 Constitution, in force at the time, and Article 7 of the Civil Code expressly bar the retroactive application of substantive Ecuadorian laws.

33. Also in October 2003, Chevron notified the Government of Ecuador by letter that the Lago Agrio claims clearly fall within the scope of the 1995 Settlement Agreement, the 1996 Municipal and Provincial Releases, and the 1998 Final Release, and that Ecuador and Petroecuador should bear financial responsibility for any obligation related to the Consortium and from any court ruling that may be handed down against Chevron. Chevron, Texaco and TexPet petitioned the Government: (1) to notify the Lago Agrio court that, under the 1995 Settlement Agreement and the 1998 Final Release, neither Chevron, Texaco Inc., nor TexPet is liable for environmental damage or for the remediation work arising from the operations of the former Consortium; and (2) to indemnify, protect and defend the rights of Chevron, Texaco, and TexPet in connection with the Lago Agrio Litigation. Ecuador failed to do so.

34. Through its actions and inactions, Ecuador improperly seeks to impose upon Chevron the public remediation obligations and liabilities that belong exclusively to Ecuador and Petroecuador, that never belonged to Chevron, and from which Ecuador and Petroecuador expressly released TexPet, its parent company, affiliates, and principals. Rather than honoring its obligations under the relevant agreements, the Government of Ecuador has chosen to collude with the Lago Agrio plaintiffs to evade Ecuador's own responsibilities and secure an illegitimate financial windfall from Chevron.

1. *Ecuador's Public and Private Collusion With and Support of the Lago Agrio Plaintiffs*

35. Various organs of the Ecuadorian State have, by their actions and inactions, directly assisted the Lago Agrio plaintiffs in illegitimate attempts to extract money from Chevron. For example, the offices of Ecuador's Attorney General have been used to try to prejudice Chevron's legal position in the Lago Agrio Litigation by conspiring with plaintiffs' attorneys in an ongoing scheme to try to undermine the 1995 Settlement Agreement and 1998 Final Release granted to TexPet. In an email communication on August 10, 2005, from Deputy Attorney General Martha Escobar to Alberto Wray, then a lead lawyer for the Lago Agrio

[2] Although Texaco Inc. notified the *Aguinda* plaintiffs and their attorneys that it had designated an agent in Ecuador to accept service of process, the plaintiffs instead chose to sue Chevron, and not Texaco Inc.

plaintiffs, Ms. Escobar wrote: "[T]he Attorney General's Office and all of us working on the State's defense *[a]re searching for a way to nullify or undermine the value of the remediation contract and the final acta* and [] our greatest difficulty [lies] in the time that has passed." Ms. Escobar continued, "The *Attorney General remains resolved to have the Comptroller[] [General's] Office conduct another audit* (that also seems unlikely to me given the time); *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[] [General's] Office was rejected by the prosecutor."[3] Other recipients of the August 10, 2005 email included Attorney General Borja, plaintiffs' attorney Bonifaz, and two leaders of the Amazon Defense Front.[4]

36. Other examples of Ecuadorian governmental support for the Lago Agrio plaintiffs can be seen in the statements of the Constituent Assembly, a body that asserted itself as the supreme power in the country in 2007. The Constituent Assembly enacted the following as its first official mandate in November 2007:

> [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. (Constituent Assembly, Mandate 1, Official Gazette No. 223, Nov. 30, 2007)

While serving as President of the Constituent Assembly, Alberto Acosta made several public statements expressly declaring solidarity with the Lago Agrio plaintiffs and pronouncing that Chevron "is responsible for environmental and social destruction in the Amazon."

37. And since taking office in January 2007, the President of Ecuador, Rafael Correa, repeatedly and publicly has stated his support for the Lago Agrio plaintiffs and has espoused their case enthusiastically.

38. 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 the Government's interests would be subject to dismissal and even possible criminal prosecution. On March 20, 2007, while the Lago Agrio Litigation was pending, President Correa issued a press release announcing the Government's support for the Lago Agrio plaintiffs and its intention to help them collect evidence. These statements prompted a United

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[3] Before being confronted with this email in the context of the New York Litigation, Deputy Attorney General Escobar falsely testified under oath that, in her official capacity, she had not had any contact with plaintiffs' representatives.

[4] The Amazon Defense Front (sometimes referenced as the Amazon Defense Coalition) (*Frente de Defensa de la Amazonia*) is an Ecuadorian organization formed by local interest groups to support the plaintiffs' lawsuit. It is funding the Lago Agrio Litigation in part and has been designated by the Lago Agrio plaintiffs as the entity to which any damages for remediation should be paid.

States federal judge in related litigation to conclude that "it's now an established fact" that Ecuador is supporting the Lago Agrio plaintiffs.

39. This public support was expressed, *inter alia*, in the form of President Correa's highly publicized trip, together with the plaintiffs' lawyers and the Amazon Defense Front, to the former oil concession area in April 2007, where he publicly denounced the "barbarity committed by that multinational corporation [Texaco]." President Correa made a further series of public statements, accusing Texaco of causing "irreversible" damage in the Amazon, demanding that the Office of the Public Prosecutor prosecute the case and bring "criminal actions," condemning Chevron's Ecuadorian attorneys for being corrupt and for selling out their homeland, and sending a "message of solidarity" to the Lago Agrio plaintiffs.

40. President Correa's cooperation with the Lago Agrio plaintiffs was confirmed further in a weekly national radio address on January 19, 2008, when he announced that he had met with the Amazon Defense Front and that the Lago Agro plaintiffs had "all the support of the National Government."

41. President Correa again met with the Amazon Defense Front and the plaintiffs' lawyers in August 2008, which prompted him again to publicly state that there had been no remediation, that the Prosecutor General would prosecute those who signed the release, and that his Government was "patriotic and sovereign" and "will never again bow to the interests of the big transnational (companies)."

42. Far from taking action to properly accept and assume its responsibility for the public remediation that the Lago Agrio plaintiffs seek, the Government of Ecuador, through these and other means, has signaled to judges that they should rule against Chevron in the case. As the rule of law has deteriorated in Ecuador since the December 2004 unconstitutional purge of the entire Supreme Court and further with the present administration's threats to remove judges from office and even criminally prosecute them for ruling against the interests of the government, the Ecuadorian judiciary lacks the necessary independence and institutional stability to adequately adjudicate highly politicized cases.

43. This lack of judicial independence and the political interference in the Lago Agrio litigation is abundantly 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.

44. The evidence-gathering process itself has devolved into a judicial farce. Initially, the court ordered a proceeding with two main components: (i) 122 judicial inspections of well sites and production stations were to be conducted pursuant to the Code of Civil Procedure, namely, each side would designate an expert, and the court would appoint settling experts to resolve any discrepancies between the party-designated experts; and (ii) the same group of experts were to carry out a "global assessment" to determine the existence and extent of oil-production impacts on the environment, causation and chronology, and any necessary

remediation. The parties mutually agreed on protocols to govern the judicial inspection process, which were approved by the court.[5]

45. The plaintiffs subsequently failed to comply with the agreed protocols[6] and, as a result, produced judicial inspection reports riddled with irregularities that lacked solid scientific support. The plaintiffs' manipulation of the evidence-gathering phase was further compounded by the court's refusal to allow Chevron the opportunity to have the settling experts address Chevron's many objections to plaintiffs' judicial inspection evidence. The court then essentially terminated the process of judicial inspections prematurely, upon the unilateral request of the plaintiffs and over Chevron's opposition, following the issuance of the first—and only—report by the court's independent settling experts. In February 2006, after the judicial inspection of a former Consortium site known as Sacha 53, the settling experts issued a report concluding that the plaintiffs had failed to substantiate their claims of environmental contamination, that TexPet's remediation was adequately performed and met the standards imposed by Ecuador.

46. In the face of this unfavorable result, the plaintiffs intensified their efforts to withdraw from certain site inspections and to move directly to a unilaterally-modified version of a global assessment. In January 2007, the court—in violation of Ecuadorian law and over Chevron's repeated objections—granted the plaintiffs' request to waive their remaining judicial inspections, effectively relieving plaintiffs from their burden of proving their claims with credible, scientific evidence. The court previously had twice rejected plaintiffs' requests to waive judicial inspections, and reversed course only after having received a July 2006 *amicus* brief in support of the plaintiffs submitted by, among others, Gustavo Larrea (who was then the campaign manager for ascendant presidential candidate Rafael Correa). The decision came just days after President Correa assumed office and Mr. Larrea became his Minister of Government.

47. The court also acceded to the plaintiffs' demand that the global assessment process be put in the hands of a single, Ecuadorian expert, and appointed Richard Cabrera, a mining engineer with little or no prior experience in the remediation of oil fields. Mr. Cabrera's appointment and work began around the same time that President Correa began to publicly express support for the Lago Agrio plaintiffs in early 2007.

48. In a first report issued on April 1, 2008, Mr. Cabrera estimated the cost of environmental remediation and other "damages" to be approximately US$ 8 billion. He assessed an additional $8 billion for alleged unjust enrichment. This report resulted from a process that lacked transparency and was filled with numerous essential errors. For example, Mr. Cabrera visited only 49 of the 335 sites that he was tasked with evaluating, yet purported to reach conclusions about all 335 sites. In so doing, he assessed millions of dollars of damages for pits that demonstrably do not even exist. Moreover, although Petroecuador has been the sole owner and operator of continuous and expanding oil production activity in the region since 1992, and TexPet had no involvement during that time, Mr. Cabrera attributed all environmental impact to TexPet, and none to Petroecuador.

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[5] The parties also requested additional evidence-gathering beyond judicial inspection of the former well sites.

[6] For example, the plaintiffs failed to report data for all samples collected, to preserve the back-up material needed for independent verification of their data, and to use qualified laboratories meeting industry competency standards (instead having samples analyzed at an unaccredited laboratory).

49. After the plaintiffs and Chevron provided comments on Mr. Cabrera's first report, Mr. Cabrera filed a supplemental report in November 2008 setting forth conclusions that: (1) ignored Chevron's comments; (2) adopted the plaintiffs' comments (at times word for word, including any errors made by the plaintiffs); and (3) increased his damage recommendation to US$ 27 billion, with little explanation and no legally or scientifically valid support.

50. Chevron has petitioned to have Mr. Cabrera's report excluded from the record of the Lago Agrio Litigation based upon its multiple essential errors and the overwhelming evidence of irregularities, bias and incompetence. Chevron's submissions to the court have detailed these irregularities, including Mr. Cabrera's use of the plaintiffs' supporters in his fieldwork, his conduct of much of his work in secret, and numerous indications that he collaborated with the plaintiffs' representatives in preparing his report. In denying Chevron's request for a hearing on its claims of essential error, the presiding judge, Juan Núñez, stated only that Mr. Cabrera's report did not need clarification—a rationale that has nothing to do with Chevron's essential error claims. When Chevron sought to exercise its right to appeal the judge's order, he issued sanctions against Chevron's counsel.

51. Judge Núñez's rulings against Chevron, including those relating to Mr. Cabrera, appear to show a bias and pre-judgment of the outcome. That appearance is bolstered by comments that he has made in public and in private. THE ECONOMIST has observed that "[t]he judge in Lago Agrio, Juan Núñez, . . . has made no secret of his sympathy for the plaintiffs." THE NEW YORK TIMES similarly has noted that Judge Núñez's "sympathies are not hard to discern." His public statements were particularly inappropriate because they were made to the press at a time when, according to one press statement, the judge had not even begun reviewing the approximately 145,000 pages of evidence. Notably, moreover, the judge's statement to the press that the case had "taken too long" came shortly after a two-hour luncheon between the members of the National Court of Justice and President Correa at which the President complained about delays and demanded "expedited treatment of cases that are of interest to Ecuador."

52. Judge Núñez also has made statements to third parties, unrelated to the Lago Agrio Litigation, indicating a pre-disposition of the outcome of the case. In April 2009, two individuals pursuing business opportunities in Ecuador—an Ecuadorian named Diego Borja and a U.S. citizen named Wayne Hansen—were invited to meet with Judge Núñez in connection with potential remediation projects to be funded with the proceeds of a judgment against Chevron. Two meetings were arranged between Messrs. Borja and Hansen and Judge Núñez. During these meetings, while the Lago Agrio Litigation was still in its evidentiary phase and additional filings by the parties were still to be made, Judge Núñez was recorded stating that he would issue a ruling in late 2009 finding Chevron liable and that the appeals would be a formality.

53. Messrs. Borja and Hansen also were invited to meet in the offices of Ecuador's ruling Alianza PAIS party with persons including Patricio García, who identified himself as a political coordinator for the party. Mr. García was recorded stating that the remediation contracts would be awarded in exchange for a bribe which was to be divided between Judge Núñez, the office of the Presidency of Ecuador and the Lago Agrio plaintiffs. Mr. García also stated that the legal advisor of the Ecuadorian President's office, Alexis Mera, had given

instructions as to how the proceeds of the supposed Lago Agrio judgment against Chevron were to be routed, and that the executive branch was involved in drafting Judge Núñez's decision.

54. On August 31, 2009, Chevron notified Ecuador's Prosecutor General, Dr. Washington Pesántez, of the foregoing information. On September 3, 2009, Judge Núñez excused himself from the Lago Agrio Litigation, and the next day, Prosecutor General Pesántez publicly declared that he had intervened in the Lago Agrio Litigation by asking Judge Núñez to excuse himself temporarily to prevent any delay of the trial. Prosecutor General Pesántez also publicly declared that Texaco had "caused severe environmental damages and diseases" and confirmed that the Government of Ecuador expected to receive "ninety percent" of the prospective judgment against Chevron.

2. *Ecuador's Abuse of the Criminal Justice System and Other Coercive Tactics*

55. In 2008, the Ecuadorian executive branch expanded its campaign to pressure and intimidate Claimants by criminally indicting two Chevron attorneys who executed the 1998 Final Release. These indictments, which previously had been rejected several times, were characterized by extreme departures from the rules of Ecuadorian criminal procedure, violated Chevron's attorneys' human rights, were the direct result of improper influence from the highest levels of the State as part of a clear effort to support the Lago Agrio plaintiffs, and were designed to attempt to nullify the 1998 Final Release.

56. Shortly after the Lago Agrio Litigation was commenced, on October 29, 2003, the Comptroller General of Ecuador submitted to the Prosecutor General a criminal complaint (*denuncia*) against these two Chevron attorneys, alleging that they had falsified public documents regarding the remediation.

57. On May 10, 2004, then-Prosecutor General Mariana Yépez Andrade opened an investigation into this alleged fraud, as well as an investigation of possible underlying environmental crimes. Two different prosecutors conducted these separate investigations. On August 9, 2006, then-Prosecutor General Cecilia Armas, who was investigating the fraud charges, dismissed the complaint on the basis that there was no evidence of any criminal wrongdoing. The charge for the alleged environmental crime similarly was dismissed by the Public Prosecutor for Pichincha Province, Marianita Vega Carrera, who found that the evidence did not support the charge. This decision later was confirmed by Ms. Vega Carrera's superior, then-District Prosecutor for Pichincha, Washington Pesántez.

58. Pursuant to Article 39 of the Code of Criminal Procedure, the Prosecutor General directed the Supreme Court to archive the case file. Instead of archiving the case file as required by Ecuadorian law, the President of the Supreme Court improperly transferred the Prosecutor General's findings to the Comptroller General for his comments. The Comptroller General issued objections thereto, which the President of the Supreme Court delivered on January 12, 2007, to the new Prosecutor General, Jorge German, for comments. On March 1, 2007, the Prosecutor General advised the President of the Supreme Court that the law required the case to be archived based on the prior findings.

59. This cycle repeated itself again, with the President of the Supreme Court again defying the Prosecutor General's request to archive the case file—and thus breaching Ecuadorian law—and the Comptroller General insisting that the Prosecutor General pursue the *denuncia* in light of the alleged importance of the case for Ecuador.

60. Finally, in November 2007, the Constituent Assembly, which had been elected to draft a new Constitution, declared absolute authority over all branches of Government. As one of its first acts, the Assembly removed Prosecutor General German and in his stead appointed Dr. Washington Pesántez. With clear statements from President Correa that the Lago Agrio plaintiffs had the full support of the national government, on March 31, 2008, Prosecutor General Pesántez reopened the investigation, despite the fact that there was no new evidence to support another investigation and that, as District Prosecutor, he previously had confirmed a report finding no criminal wrongdoing by Chevron's lawyers.

61. In light of President Correa and the Lago Agrio plaintiffs meeting again and publicly calling for the indictment of those who executed the 1998 Final Release, Dr. Pesántez formally brought criminal charges against two Chevron attorneys on August 26, 2008. With the exception of a few deleted sentences, the criminal indictment tracks the language in the original 2003 *denuncia* almost word for word. 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 issuing the indictment.

62. Under Ecuadorian law, after the Prosecutor General issues an indictment, the case is then randomly assigned to a three-judge criminal Chamber of the Supreme Court (in this case the First Criminal Chamber), at which point the Chamber then decides whether to accept the case. If it does so, the Chamber then orders that the defendants be notified. It is this notification that legally tolls the statute of limitations. In complete violation of Ecuador's criminal procedure, however, the President of the Supreme Court asked that the case file be delivered to him as soon as it was filed, at which point the President immediately accepted the indictment and ordered the defendants to be notified. The notification was sent three days before the 10-year statute of limitations period expired.

63. The President of the First Chamber of the National Court of Justice (the former Supreme Court) declared in February 2009 that all of the actions of the President of the Supreme Court were null and void on the grounds that he did not have jurisdiction over the case. The Prosecutor General's office did not appeal this decision and so it became final. 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 indictees be notified again. The criminal proceedings are currently ongoing.

64. The substantive content of the criminal indictments is as absurd as the process that led to their issuance. It is based solely on 16 oil pits, asserts that TexPet was required to remediate those sites, and claims that it did not do so. Yet, of the 16 well sites listed in the indictment, (i) 11 were "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; (ii) three other pits listed in the indictment were "Change of Conditions" pits, i.e., conditions were found to be different

during the remedial action from the ones encountered during the remedial investigation (generally as a result of the actions of Petroecuador), such that Petroecuador was responsible for them and TexPet was not required by the parties' agreement to remediate them, as again agreed by Ecuador and Petroecuador; and (iii) the last two pits had been approved by Ecuador as having been properly remediated. The indictment 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. The indictment, however, does not even identify these officials or state the factual basis for such alleged disagreement. This vague assertion ten years later by unidentified officials at a state-owned oil company with a vested interest in the outcome is being used as the predicate for a sham criminal proceeding and deprives the accused of their due process rights.

65. By issuing frivolous and unfounded indictments against two Chevron lawyers (and doing so in breach of criminal procedure and due process rights), Ecuador breached the 1995 Settlement Agreement and 1998 Final Release and violated the Ecuador-United States BIT. The indictments also constitute violations of those lawyers' human rights, and in particular, breach the American Convention on Human Rights.

III. Respondent's Conduct Breaches Its Investment Agreements With Claimants and Its Treaty Obligations

66. As set forth in more detail above, Ecuador (in its sovereign capacity) agreed to the Scope of Work to be carried out by TexPet, approved all of TexPet's remediation work and consequently granted TexPet a full release from all legal and contractual obligations and from any further liability for environmental impact arising out of the Consortium's operations. Similarly, the relevant municipalities and province in Ecuador fully released TexPet from any liability—including for environmental impact—arising out of any Consortium-related activities conducted in the Concession area.

67. Yet, contrary to the foregoing express contractual promises and public statements and admissions, Ecuador has used all means available to it to evade its obligations under the investment agreements and to undermine and nullify its agreements with Claimants. Ecuador has refused to notify the Lago Agrio court that TexPet and its affiliated companies have been fully released from any liability for environmental impact resulting from the former Consortium's operations (thereby permitting Chevron to be sued for environmental impact that Ecuador assured by binding contract had been discharged), and has refused to indemnify, protect and defend the rights of Claimants in connection with the Lago Agrio Litigation. Ecuador also has supported actively the Lago Agrio plaintiffs in various ways, including openly campaigning for a decision against Chevron and b y initiating baseless criminal proceedings against two Chevron attorneys.

68. Ecuador has engaged in a pattern of improper and fundamentally unfair conduct, whereby Ecuador: (i) breaches and effectively seeks to repudiate the 1995 Settlement Agreement, the 1996 Municipal and Provincial Releases and the 1998 Final Release; (ii) improperly exercises *de facto* jurisdiction over Chevron; (iii) improperly assists and colludes with the Lago Agrio plaintiffs in an effort to impose the State's obligations on Claimants through the Lago Agrio Litigation, and seeks to improperly influence the courts through public

statements; and (iv) abuses the criminal justice system and pursues other inequitable measures to advance Ecuador's improper goals.

69. Ecuador's conduct described above violates its investment agreements and the Ecuador-United States BIT in numerous ways, and thus is actionable under the Treaty. Specifically, Ecuador violated the following Treaty obligations, among others:

- Ecuador's obligation to provide Claimants' investment fair and equitable treatment, full protection and security, and treatment no less than that required by international law (Article II(3)(a) of the BIT);

- Ecuador's obligation to provide effective means of asserting claims and enforcing rights with respect to investment and investment agreements (Article II(7) of the BIT);

- Ecuador's obligation not to impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion or disposal of Claimants' investment (Article II(3)(b) of the BIT);

- Ecuador's obligation to treat Claimants and their investment on a basis no less favorable than that accorded to investments owned by its own nationals or nationals of third countries (Article II(1) of the BIT); and

- Ecuador's obligation to observe any obligation entered into towards investments (Article II(3)(c) of the BIT).

IV. Agreement to Arbitrate

70. Article VI(1) of the Ecuador-United States BIT defines an investment dispute as:

> . . . a dispute between a Party and a national or company of the other Party arising out of or relating to (a) an investment agreement between that Party and such national or company; (b) an investment authorization granted by that Party's foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

71. In the event of such a dispute, the 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 . . . . (Article VI(3)(a))

72. In Article VI(4) of the BIT, Ecuador "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 . . . company under paragraph 3 . . . ." Under the BIT, a party may pursue arbitration under the UNCITRAL Rules 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. In addition, the Ecuador-United States BIT suggests that the parties "should" initially seek a resolution through consultation and negotiation.

73. Each of these requirements and suggestions has been met. First, 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. Second, this dispute arose shortly after the Lago Agrio Litigation was commenced in 2003, when Ecuador refused to honor its obligations under the 1995 and 1998 investment agreements. For that reason, the six-month waiting period has expired. In addition, Claimants' representatives have met with various government officials on numerous occasions seeking to resolve this dispute. Moreover, in October 2007, Claimants delivered a letter reiterating this dispute's existence, seeking to resolve it via negotiation, and notifying Ecuador that Claimants would seek international arbitration under the BIT if the matter could not be resolved. All efforts at a negotiated solution have failed.

V. Number of Arbitrators; Claimants' Party-Appointed Arbitrator

74. Claimants propose that this dispute be adjudicated by a panel of three (3) arbitrators chosen as provided by the UNCITRAL Arbitration Rules.

75. Claimants hereby appoint Dr. Horacio A. Grigera Naón as their party-appointed arbitrator. Dr. Grigera Naón may be contacted at:

American University, Washington College of Law
4801 Massachusetts Ave. NW
4910 Building - Suite 16
Washington, DC 20016
Phone: (202) 337-1832
Email: hnaon@wcl.american.edu

VI. Request for Relief

76. Claimants request an award granting the following relief:

(1) A declaration that under the 1994, 1995, 1996 and 1998 investment agreements, Claimants have no liability or responsibility for environmental impact, including but not limited to any alleged liability for impact to human health, the ecosystem, indigenous cultures, the infrastructure, or any liability for unlawful profits, or for performing any further environmental remediation arising out of the former Consortium that was jointly owned by TexPet and Ecuador, or under the expired Concession Contract between TexPet and Ecuador;

(2) A declaration that Ecuador has breached the 1994, 1995, 1996 and 1998 investment agreements and the Ecuador-United States BIT, including its obligations to afford fair and equitable treatment, full protection and security, an effective means of enforcing rights, non-arbitrary treatment, non-discriminatory treatment, national and most favored nation treatment, and to observe obligations it entered into under the investment agreements;

(3) An order and award requiring Ecuador to inform the court in the Lago Agrio Litigation that TexPet, its parent company, affiliates, and principals have been released from all environmental impact arising out of the former Consortium's activities and that Ecuador and Petroecuador are responsible for any remaining and future remediation work;

(4) A declaration that Ecuador or Petroecuador is exclusively liable for any judgment that may be issued in the Lago Agrio Litigation;

(5) An order and award requiring Ecuador to indemnify, protect and defend Claimants in connection with the Lago Agrio Litigation, including payment to Claimants of all damages that may be awarded against Chevron in the Lago Agrio Litigation;

(6) An award for all damages caused to Claimants, including in particular all costs including attorneys' fees incurred by Claimants in defending the Lago Agrio Litigation and the criminal indictments;

(7) An award of moral damages to compensate Claimants for the non-pecuniary harm that they have suffered due to Ecuador's outrageous and illegal conduct;

(8) An award to Claimants of all costs associated with this proceeding, including attorneys' fees;

(9) An award of both pre- and post-award interest until the date of payment; and

(10) Any other relief that the tribunal deems just and proper.

Dated: September 23, 2009.

Respectfully submitted,

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