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February 24, 2011

VIA HAND DELIVERY

Honorable Lewis A. Kaplan
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Chevron Corp. v. Donziger, et al., Case No. 11-CV-0691 (LAK)

Dear Judge Kaplan:

As Your Honor requested at the preliminary injunction hearing, enclosed please find two copies of the certified translation of the 188-page Lago Agrio judgment. It awards approximately $18.2 billion in total damages. The Lago Agrio court imposes $8.646 billion in damages for "reparation measures" derived from the following categories:

- $600 million for groundwater remediation (p. 179);
- $5.396 billion for soil remediation (p. 181);
- $200 million to restore native flora, fauna, and aquatic life (p. 182);
- $150 million to implement a potable water system in the allegedly affected areas (p. 183);
- $1.4 billion to establish a healthcare system to serve the general population of the allegedly affected communities (p.183);
- $800 million for "a plan of health," including potential cancer treatment (p. 184); and
- $100 million to rebuild ethnic communities and indigenous culture (pp. 183-84).

In addition, Chevron is ordered to pay an additional 10 percent—more than $864 million—directly to the Amazon Defense Front, which is not a named plaintiff in the Lago Agrio litigation, on top of the $8.646 billion set out above (p. 187). Finally, the judgment imposes a "punitive penalty" of "100% of the aggregate values of the reparation measures" -- meaning another $8.646 billion -- unless Chevron issues a "public apology" in the "principal print media in Ecuador" and the United States within 15 days of the judgment (pp. 185-86). If Chevron were to succumb to the extortionate demand to make an immediate public apology, it would be denied its due process rights and, having just apologized, would effectively be admitting liability, and thereby stripped of its ability to appeal this multi-billion-dollar judgment and to mount any successful defense to enforcement and recognition in other jurisdictions.

Respectfully,

Randy Mastro

Randy M. Mastro

cc: All Defendants/Counsel of Record

Lawsuit No. 2003-0002

REPORTING JUDGE: ATTORNEY NICOLAS ZAMBRANO LOZADA SUCUMBÍOS PROVINCIAL COURT OF JUSTICE. – SOLE CHAMBER OF THE SUCUMBÍOS PROVINCIAL COURT OF JUSTICE.

Nueva Loja, Monday, February 14, 2011, 8:37 a.m. **WHEREAS**.- With regard to the case identified as No. 002-2003, filed for environmental harm by María Aguinda *et al.*, against the company Chevron Corporation, in view of its procedural status, the following is ordered: 1).- The annexes and motions submitted at 4:24 p.m. on February 3, 2011, by Dr. Adolfo Callejas Ribadeneira, Legal Representative of Chevron Corporation, are deemed added to the record, and addressing the same it is ordered that his request to reverse the ruling dated February 2, 2011 at 5:14 p.m. is denied, by virtue of the fact that he is not being prevented the right that entitles him to file petitions that are found protected by law. – 2).- As to the merits, María Aguinda, Ángel Piaguaje, *et al.*, pursuant to articles 2241 and 2256 of the previous codification of the Civil Code (hereinafter CC), currently articles 2214 and 2229, respectively, according to the new Codification published in the *Registro Oficial* [Official Gazette] of June 24, 2005, as grounds for the obligation to repair the harm; Article 169 of the ILO as grounds for the right to compensation for indigenous peoples; and, with respect to the right to claim redress due to an environmental impact, in number 6 of article 23 and article 86 of the 1998 Constitution, as well as article 2260 of the previous codification of the Civil Code, currently article 2236, which states, "As a general rule, a popular action [*acción popular*] is granted in all cases of contingent harm that threatens indeterminate persons because of someone's imprudence or negligence. But if the harm threatens only determinate persons, only one of them may file the action" and in the 41 of the Environmental Management Law – hereinafter, the EMA (pages 78 and 79), appear at pages 73 to 80 demanding the elimination or removal of contaminant elements and the redress of environmental harm, against CHEVRON TEXACO CORPORATION, which changed its name to CHEVRON CORPORATION, as indicated and demonstrated by means of a document presented by its Counsel of Record, attached to the motion filed August 23, 2005, at 8:05 a.m.; this complaint, in Recitals One through Six, summarizes the antecedents (where it alleges that the detail of the works carried out by Chevron is included in Annex A of the complaint), the contaminating methods employed by Texaco, the harm and the affected population, Texaco's responsibility, and the legal grounds described above, and sets forth the

following claims: “Based on the cited legal provisions, as members of the affected communities and guarding our rights collectively recognized, the persons appearing demand of CHEVRON TEXACO CORPORATION, already previously identified in the background, the following: 1. The elimination or removal of the contaminant elements that still threaten the environment and health of the inhabitants. Consequently, the sentence shall provide for: a) Removal and adequate treatment and disposal of waste and contaminant materials still existing in pits or ditches opened by TEXACO and simply plugged, covered or inadequately treated; b) Sanitation of rivers, lakes, swamps, wetlands and natural and artificial streams and the adequate disposal of all waste materials; c) Removal of all the structural elements and machinery that stand out at wells, stations and sub-stations that are closed, fenced off or abandoned, as well as the pipelines, tubes, intakes and other similar elements related to such wells; and d) In general, cleaning of lands, crop fields, crops, streets, roads and buildings where contaminant leftovers produced or generated as a consequence of the operations carried out by TEXACO existed, including the deposits for contaminant waste built as part of the badly enforceable environmental cleanup tasks; 2. The reparation of environmental damages, according to article 43 of the Environmental Management Act. Consequently, the sentence shall order: a) Execution of necessary works in the pits opened by TEXACO, in order to recover the natural characteristics and conditions that the soil and the circulating environment had before the damages; b) Contract on charge of the claim, specialized persons or institutions in order to design and carry out a recuperation plan for the native fauna and flora, where possible; c) Contract on charge of the defendant, specialized persons or institutions in order to design and carry out a plan for the regeneration of aquatic life; d) Contract on charge of the defendant, specialized persons or institutions in order to design and carry out a plan for the health improvement and monitoring of the inhabitants affected by contamination. The resources necessary to cover the cost of activities whose execution is demanded, in the amount that shall be determined by an expert according to the penultimate clause of article 43 of the Environmental Management Act, shall be delivered to the Amazon Defense Front [*Frente de Defensa de la Amazonía*], with the purpose of using them exclusively for the ends determined in the sentence, with the concourse and assessment

of specialized international institutions; 3. The payment of ten percent of the value that represents the amount of the reparations, in regard to the second clause of article 43 of the Environmental Management Law; as well as the payment of the legal costs of action and the worth of the time and diligences employed in it, according to article 2261 of the Civil Code. What is ordered to be paid for these concepts shall also be delivered, for explicit petition of the plaintiffs, to the Amazon Defense Front."- Having legally summoned the defendant, as the record shows, Dr. Adolfo Callejas appeared at the conciliation hearing (pages 243 to 267) in the capacity of Legal Representative of the defendants, together with defending attorneys doctors Arturo Carvajal Salas, Enrique Carvajal Salas and Alberto Racines Enríquez, who answered the complaint in a broad and detailed manner, and put forth the following defenses, in their order: "Defense.- In virtue of the reasons stated previously in the answer, I hereby raise the following defenses: IV.1.- Principal Defense.- As a principal defense, I claim lack of jurisdiction of Ecuadorian courts and, therefore, your lack of competence and jurisdiction, Mr. President of the Honorable Superior Court of Justice of Nueva Loja, to hear and decide the present case filed by María Aguinda S. et al., versus Chevron Texaco Corporation, since it lacks these regarding the company I represent.- IV.2.- First Subsidiary Defenses.- As first subsidiary defenses I claim, in order, the following: IV.2.1.- Lack of legitimate opposing party; IV.2.2.- I deny that Chevron Texaco Corporation is a legitimate opposing party; IV.2.3.- I deny that Chevron Texaco Corporation is the successor of Texaco Inc. Nor that it has acquired any right or obligation whatsoever of Texaco Inc. IV.3.- Second Subsidiary Defenses.- I also allege the following second subsidiary defenses, in their order: IV.3.1.- Undue accumulation of legal actions, since actions have been instituted in the summary verbal proceeding, actions which require differing substantiation and the hearing of which does not fall to you, Mr. President.- IV.3.2.- I expressly claim the inapplicability of the Environmental Management Law, because I expressly claim the non-retroactivity of such law.- IV.3.3.- I make the same pronouncement in relation to Art. 15 of the International Labour Organisation's Agreement 169.- IV.3.4.- I expressly claim prescription of the cause of action, pursuant to the stipulations of article 2259 of the Civil Code.- IV.4.- Third Subsidiary Defenses.- Subsidiary to all the preceding defenses, and in the unacceptable and unadmitted event that the defenses cited above were not sufficient, I claim: IV.4.1.- Plaintiffs' lack of right to institute the present action, inasmuch as they lack all connection

to Chevron Texaco Corporation and because the supposed ecological damage in the Amazon region, in the area that belonged to the Petroecuador – Texaco Consortium, unjustifiably attributed solely to Texaco Petroleum Company, was covered by final settlements legally entered into and granted. As we have explained in detail above.- IV.4.2.- I expressly claim the illegitimacy of the complaint that has been filed under the scope of article 2260 of the Civil Code.- IV.4.3.- I claim extinguishment of all obligations that Texpet might have had inasmuch as such company was released from reparations of the environmental damages that are being claimed.- IV.5.- Fourth Subsidiary Defenses.- Finally, subsidiary to all that stated, I raise the following additional defenses, also subsidiary in nature: IV.5.1.- I deny that my client has caused any damage whatsoever to the plaintiffs.- IV.5.2.- I deny that my client must be liable for the actions of third parties.- IV.5.3.- I deny that my client has any obligation whatsoever to cure any damage whatsoever.- IV.5.5.- I deny that my client Chevron Texaco Corporation has performed any of the actions that are described in the complaint.- IV.5.6.- I deny that my client has caused any damage whatsoever.- IV.5.7. Finally, I deny all the bases in fact and law of the complaint.- IV.5.8.- I deny that Chevron Texaco Corporation has committed a crime or unintentional tort that would have caused any damage to plaintiffs.- IV.5.9.- I deny that Chevron Texaco can be imputed with malice or negligence that would cause damage to plaintiffs, either in the past or in the present."- Since facts existed that must be justified, the legal evidence period was granted for six days, that having expired, since the proceeding is in the resolution stage, to do so the following is considered: **FIRST.-** Lack of competence. As the former Supreme Court said, in a third-instance judgment, "Competence is one of the substantive and unavoidable procedural premises that Procedural Law requires be found satisfied so that the Judge or Tribunal can, validly and legally, enter to rule on the merits of the case. In other words, the Judge or Tribunal, before entering to hear the aspect at issue in the dispute, must indisputably establish its competence, under penalty that its violation result in procedural nullity, with severe breach of justice" (*Gaceta Judicial*. Year LXXXI. Series XIII. No. 11. Page 2406; Quito, February 26, 1981), which is why this is the first point to be resolved in this judgment. With respect to jurisdiction and competence, it is considered that in accordance with the Constitution and the *Código Orgánico de la Función Judicial* [Organic Code of the Judicial Branch] (hereinafter OCJB), jurisdiction belongs to the entities of this branch of the State, that is to say, the power to administer justice rests with the Judiciary, which means,

in civil matters, declaring the law and enforcing it, even against the resistance of the obligated party. The first article of the Code of Civil Procedure states: "Jurisdiction, i.e., the power to administer justice, is the public authority to decide and enforce decisions in a specific matter, and this authority belongs to the courts and judges established by law […]." Correspondingly, article 7 of the Organic Code of the Judicial Branch states: "Jurisdiction and competence originate in the Constitution and the law. Jurisdictional authority may only be exercised by judges appointed in accordance with their precepts […]." The jurisdiction of this Presidency to hear this case, that is to say, the power to administer justice understood as "the Public Authority to adjudicate and enforce that adjudicated" (art. 150 OCJB), is given by the Constitution (art. 167) and by the same OCJB (subsection a), tenth transitory provision, and therefore all its members, including the undersigned, being legally and duly instated in their posts, their jurisdiction has been established, which must be exercised in accordance with the rules of competence, this understood as "the measure within which said power is distributed among the various courts, by virtue of territory, subject matter, persons and degrees" (art. 1 Code of Civil Procedure, hereinafter CCP). In this case, redress of environmental harm and the harm and injury caused by this environmental impact are being claimed, that is to say, in principle, we find ourselves by reason of territory in the case provided for in subsection 5 of article 29 of the CCP, according to which the competent Judge is the one in the place "where the harm was caused, in claims for compensation or for redress of that harm," however there are special rules for competence by reason of the subject matter in the case of environmental harm, which is precisely the subject matter of this case. According to what is set forth in the second paragraph of article 42 of the EMA (RO 245 of July 30, 1999), the undersigned Substitute President of the Provincial Court of Justice of Sucumbíos is competent to hear and resolve, in the first instance, the civil action for harm and losses arising from an environmental impact claimed by María Aguinda *et al*. against Chevron Corporation, given the excuse of Dr. Juan Evangelista Núñez Sanabria, former permanent President of this Court, and the recusal for failure to process/dispatch/proceed/hear with this case of Dr. Leonardo Isaac Ordoñez Piña, current President of this Court. The lack of competence alleged by the defendant has been argued by reason of the company, Chevron Corporation's statement that it is not the successor of Texaco Inc., which even if it were true, in no way affects either the jurisdiction or the competence of this

Court which, as has been established in this case, is given by the Constitution, the new OCJB, the CCP and the EMA. This Presidency considers that the alleged fact that Chevron Corporation is not successor of TEXACO INC. does not prevent the competence of this Court, but rather eventually, should the alleged fact be true, would constitute a lack of legitimate opposing party, defense that has been alleged as first subsidiary defense in the answer to the complaint, and which will be analyzed further below.- **SECOND**.- The lawsuit has been defined with the plaintiff's claims and the defenses propounded by the defendant in the conciliation hearing; as is logical the preliminary issues addressed in the answer were analyzed first, which refer to this Court's lack of competence, which has been based around various facts that also are the subject of other defenses discussed later in the answer and that will be decided at the appropriate point in this judgment. The defenses that were propounded, in their order, are decided below.- **THIRD.-** The defendant has alleged the following defenses, which will be analyzed in the order they have been presented, because in the answer the defendant does not differentiate between whether they are dilatory or peremptory defenses: 3.1.- Lack of legitimate opposing party. The complaint states that Chevron is the successor of Texaco, while the defendant denies this assertion, therefore, since I must rule in this respect, according to the record, one can see that the strict legal sense, that is, understanding succession as a method to acquire control by which the rights and obligations are transferred from the originator to its successors (according to the Roman tradition), the assertion that Chevron is not the successor of Texaco Inc. is correct, in so far as the record shows duly certified documentary evidence that demonstrates that Texaco Inc. maintains legal status and consequently legal life(at pages 222 and 223 the original document in English can be found, translated on pages 224 and 225), in such a way that it becomes evident that there cannot be succession *mortis causa* without an originator. This Presidency begins the analysis considering the explanation of the defendant in the conciliation hearing, referring to there not being a merger between Texaco and Chevron, but rather, as they proved with the certificate that lies at pages 230 and 231 (translation at page 225), the merger actually occurred between Texaco Inc. and Keepep Inc. However, this reality, evidenced by documents, must be analyzed in light of the entire body of evidence, therefore various aspects are considered, among which it convenient first to refer to page 4103 where a certification is found, from October 29, 2003, at 11:18 a.m., issued by the Clerk of the Presidency, which states that the

defendant did not appear for the presentation of various documents related precisely to this topic, which was timely requested by the plaintiffs in a motion filed October 23, 2003 at 3:25 a.m., and ordered in the ruling of October 23, 2003 at 3:30 p.m. The documents that to the defendant should have presented included: 1) A complete and certified copy of the "Agreement and Plan of Merger," which is said to be related to the "Certificate of Merger between Keepep Inc. and Texaco Inc.," a document with the issuance date of October 9, 2001; 2) A complete and certified copy of the document containing the authorization of Chevron Corporation, in order for its subsidiary Keepep Inc. to participate in the Merger; 3) A complete and certified copy of the authorization from the competent corporate body to proceed with the change in name of Chevron Corporation to Chevron Texaco Corporation; 4) A complete and certified copy of the authorization issued by the competent corporate body, for Chevron to be able to include the word Texaco in its new name. These documents, which the defendant did not present, despite having been timely requested to do so by the plaintiff and ordered by the Presidency of this Court, were not filed by the defendant. As the record shows the defendant explained the reasons that support a supposed inability to produce said documents, via a brief on October 27, 2003, at 4:50 p.m., which was addressed through a ruling on October 27, 2003 at 5:20 p.m., ordering compliance with what was ordered or that the excuse be given on the indicated date. As was noted, the explanation recorded by the Office of the Clerk clearly indicates that the defendant did not appear on the indicated date and time, therefore did not offer a valid excuse for this failure to comply. Considering Art. 826 of the Code of Civil Procedure with respect to the merit of the presentation of documents requested as evidence, and given that this Presidency should only consider the elements that form part of the proceeding, I consider that the refusal to comply with the ordered presentation of documents cannot favor the party in contempt, but rather to the contrary, the Code of Civil Procedure has established a sanction for these cases, in Art. 827, which says, "If once ordered the presentation of evidence is not fulfilled within the term indicated, a fine will be imposed on the reluctant party of ten to forty United States dollars for each day of delay, depending upon the amount in dispute. This fine may not exceed the value equivalent to ninety days," therefore in this case, due to the time elapsed, the maximum fine must be applied, equivalent to 40 dollars per day multiplied by the 90 days, for each document that has not been produced as was ordered. The same thing happened with the documents whose production was

requested in the motion filed on October 24, 2003 at 4:59 p.m., that refers to "Chevron Texaco Notice of the 2002 Annual Meeting and the 2002 Proxy Statement," and to "Chevron Texaco Notice of the 2003 Annual Meeting and the 2003 Proxy Statement," and also by motion filed on October 24, 2003 at 5:00 p.m., in which it is requested that a date and time be scheduled for the defendant company to produce the following documents: "a.- Complete and certified copy of the "Agreement and Plan of Merger" between Chevron Corporation and Texaco Inc., b.- Complete and certified copy of the records of the competent body , among which appear the authorization for the institution called "merger," in the legislation of the state of Delaware, of the United States of North America, to proceed between the companies Chevron Corporation and Texaco Inc.; c.- Certificate of Merger between Texaco Inc. and Chevron Corporation; d.- Authorization of the competent body that permits Chevron Texaco Corporation to establish, in the legal documents "Chevron Texaco Notice of the 2002 Annual Meeting and the 2002 Proxy Statement and Chevron Texaco Notice of the 2003 Annual Meeting and the 2003 Proxy Statement," that the legal concept called "Merger" has occurred between the companies Texaco Inc. and Chevron Corporation," which motions were addressed in the ruling of October 27, 2003 at 8:40 a.m., in which the requested production was scheduled for November 4, 2003, without there being a record in the proceedings of the compliance with this order. Moreover, this situation has been considered together with the other record evidence, which indicates to us that both the representatives of Chevron and those of Texaco each made public statements, in different media and by different spokespersons, announcing a financial operation that would combine the strengths of two companies to form a new one that would benefit from this union. The case file contains important documentary evidence as of page 140700, in the notarial record made on June 6, 2008 of the true copy of the following documents: 1. Chevron Document: Power – Point slides "Analysis of Meeting Notice*;"* Transcription of meeting of Chevron and Texaco analysts, October, 16, 2000; 3. Chevron and Texaco Agree to a $100 Billion Merger in an Integrated Co. of energy (Top-Tier); 4. Chevron and Texaco announce leadership team and organization structure for proposed Post-merger Co.; 5. Proposed Chevron-Texaco merger clears regulatory hurdle in Europe; 6. Texaco shareholders approve Chevron-Texaco merger; 7. The United States Federal Trade Commission approves Chevron-Texaco merger; 9. Chevron Texaco to begin first full day of global operations; 10. ChevronTexaco

announces its plans to promote retail gasoline brand in the U.S.; 11. Federal Trade Commission consent agreement allows the merger of Chevron S.A. and Texaco Corp., preserves market competition; 12. Analysis of the proposed merger order to aid public comment; and, 13. Agreement containing consent orders, with its respective translation, and additional documents. Considering that these documents were publicly available, specifically the official page of Chevron, the defendant corporation (www.chevron.com), it follows that their content be analyzed in the following manner. In general, all of these documents refer to or announce a financial transaction called "merger" in the English language, which is the language in which these documents appear. Taking into account the translation from the Spanish and English Legal Dictionary *Diccionario Jurídico Inglés-Español* by Henry Saint Dahl, McGrraw-Hill's publishing company, and additionally the translations in the record, the unmistakable conviction is reached that the English language term "merger" translates to Spanish as "*fusión*." Likewise, the translation submitted to the Presidency of the Court inside the same notarial record, done by Mr. Mauricio Javier Rodríguez Sandoval, as of page 140746, invariably translates the English term "merger" with the Spanish word "*fusión*." With respect to what a merger is, the Law of Companies (*Ley de Compañías*) dedicates a complete section, in which it explains the concept of merger, indicating that this occurs: a) when two or more companies unite to form a new one that succeeds them in their rights and obligations; and, b) when one or more companies are absorbed by another that continues existing (srt. 337), for which reason it is appropriate to analyze the underlying legal transaction that occurred between Chevron and Texaco Inc., to determine if art. 337 of the Law of Companies is applicable to it. Under this legal approach all of the documentation has been analyzed related to the transcript of the presentation made at the Chevron–Texaco merger Analysts meeting held on October 16, 2000, at which Chevron's General Manager, David O'Reilly, makes the following statements: "First of all we'll talk about the strategic rationale for combining Chevron and Texaco to form this new company, ChevronTexaco Corporation" (page 140747), then goes on to say "The capabilities of the new company will be made stronger by the combination of the skills and talents of both organizations," and that "We'll have a larger and stronger portfolio which will enable Chevron and Texaco to better manage and absorb risk" (page 140748). The Presidency carefully observes the fact that Chevron's General Manager emphasizes the idea of "combining" Chevron and Texaco so that the new company can

benefit from this combination of the skills and talents of both, which makes it evident that the new company acquired benefits of the combined companies. It is noteworthy that, although there is no express mention of obligations, the advantage of "better manage and absorb risk" is analyzed. The Presidency cannot disregard the fact that in slide 13 of the presentation (page 140750) the benefits of the merger with respect to Latin America are discussed, describing how the new company will benefit from the rights that the combined companies have in South American countries; nevertheless, despite the fact that no mention is made of the obligations of these companies in those countries, due to an elemental principle of law we understand that the net assets are united as a whole, made up of assets and liabilities, and therefore in terms of the law, it is understood that be the underlying financial legal transaction what it may, or however the companies want to call it or conceal it, what causes legal effects is the true transaction. This Presidency is convinced that the net assets must be combined as a whole and not just the rights alone, that is to say, the obligations are also combined. We understand that the Managers of both companies publicly announced a merger, and that the legal effects of such operation necessarily entail that the new "combined" company succeeds its creators in rights and obligations, in accordance with what art. 337 of the Law of Companies has provided in this regard, and rat. 338 which provides that the respective corporate assets shall be transferred "in a block," that is to say, that the full net assets are transferred, assets and liabilities, rights and obligations, without benefit of inventory or any other limit, as is explained with total clarity in the second paragraph of Art. 341, which provides that "the absorbing company shall take care of paying the liability of the absorbed and shall assume, by virtue thereof, the responsibilities inherent to a liquidator with respect to the creditors of the latter*;"* therefore, the defendant's statement that "the claimed automatic transfer To Chevron Texaco Corporation of any obligations TEXACO INC. may have had lacks legal basis" (page 244) has no legal merit at all, since the transfer is not "automatic," but rather it finds its cause in the legal transaction that has been called merger in English, and that combined the net assets of both companies. In addition, the various press releases issued by Chevron Corporation have been analyzed, which were published on the official web page of the same Corporation and are certified in the case file with their respective translation in the Notarial Record that we are now examining, in which there appear several statements by Chevron's General Manager, expressly affirming that "this merger positions

ChevronTexaco as a much stronger global energy producer," and that it "will create greater value for the shareholders of both companies" (page 140759, reverse). The General Manager of ChevronTexaco, on October 10, 2001, also announced that with the new company "we have a broader mix of high-quality assets, businesses, skills and technology, thanks to the merger" (page 140768), which corroborates that the new company, ChevronTexaco Corporation, now called only Chevron Corporation acquired benefits (assets, businesses, skills and technology) from the combination of the two combined companies Texaco and Chevron. This coincides with that said by the President and General Manager of Texaco, Glenn F. Tilton, who said that "the new ChevronTexaco will bring together two great companies," as well as that, he looks forward "to completing the merger and creating a great new energy company" (page 140766). Per the principle of good faith, any citizen, Ecuadorian or North American, who heard the public statements made by the companies Chevron and Texaco would have come inevitably to the conviction of a merger between them. This same conviction appears to be the one that motivated such that the plaintiffs initiated their action against the new company resulting from the combination of the other two, since this conclusion is the result of having trusted the information that both companies issued publicly through their legal representatives and official channels. On the official page of the Company Chevron, www.chevron.com, on October 9, 2001, the defendant company made the following public announcement: "Chevron Texaco Corporation announces completion of merger" (page 140767, reverse). This clear and express Said announcement, clear and express, leaves no room for confusion, and in any case is presumed truthful for the principle of good faith, but if it turned out that the public statements by the Presidents and General Managers of both companies are made with the intention of creating a false impression of reality, then we could qualify these statements as malicious, and under basic principle of law the author or authors cannot benefit from such malice, in accordance with the provisions of subsection 2 or art. 17 of the Law of Companies, which provides that "For acts of fraud, abuse or other improper conduct committed on behalf of companies and other individuals or legal entities, the following shall be held solidarily liable: 1. Those who order or carry them out, without prejudice to the responsibility that may affect such persons . 2. Those who obtained benefit to the extent of its value. 3. The holders of the properties for the purpose of their restitution," such that in this case, in which the actions and announcements of the spokespersons and representatives of both companies created a false impression of reality, the companies that

participated in this financial operation and that seek to benefit from the false information they disseminated are solidarily liable. In addition, to issue this ruling, I consider the statements of Dr. Ricardo Reis Veiga, who gave his version of the facts (page 103.460) during the judicial inspection of well Guanta 7, in which he states: "I am Vice President of Texaco Petroleum Company, professionally I am an attorney, I am responsible for all corporate legal matters in Latin America," and also adds, "Yes, I do have a relationship with Chevron, of course I have a relationship with Chevron, but I did not have a relationship with Chevron at that time because the truth is that it had not merged (…)," making clear the position he holds within the company Texaco, and also clarifying that he maintains "relations" with Chevron, but that these relations are subsequent to the merger, which is inferred when he states "because the truth is that it had not merged," revealing the certain fact that the author of this testimony has the internal conviction of the existence of the merger as a consummated, past and objective fact. Also considered is the existence in the case file of various checks (pages 103221, 104241, 101884, 69483, among others) that have been signed by Dr. Rodrigo Pérez Pallarez, legal representative of the company Texaco in Ecuador, to satisfy the obligations that the defendant party, Chevron Corporation, has had to pay as part of the expenses generated by this lawsuit. This subrogation of Texaco, who is not a party in this lawsuit, to satisfy the obligations contracted by Chevron Corporation, necessarily denotes at least a proprietary/patrimonial relationship between the two companies, since between distinct, independent companies there would be no legal cause for one company to assume the legal expenses of the other. All these public statements and procedural acts carried out by spokespersons and representatives of both companies (Chevron Corp. and Texaco Inc.) lead to the unequivocal conclusion that the combination of their net assets and personalities is a legal reality, as well as a public and well-known fact. As provided by the principle of procedural truth established in art. 27 of the OCJB, this Presidency, as the competent Judge, does not require further proof of the merger between Chevron and Texaco, given that it has been shown to be common knowledge based on the evidence added to the procedural index. t One cannot fail to observe the manifest reality, that neither Chevron Corp. nor Texaco Inc., nor their spokespersons or representatives, in any of their frequent press releases, has ever denied publicly the existence of the merger (while they did deny, debate and denounce publicly other facts, through paid announcements in the press media), but rather all the contrary, this litigation being the only known scenario in which Chevron

Corp. Debates the existence of the merger with Texaco Inc., for which it is appropriate to recall that in our legal system the principle prevails that no one can benefit from his bad faith, which would be the case of making several false public announcements to transmit a distorted idea of the reality and to profit from the error induced, such as, for example, if said maneuver is undertaken for the purpose of evading legal obligations with third parties. The fact that the shareholders of the predecessor companies are the same ones who control the new company, leaving as the result of said merger that the shareholders of Chevron are owners of "approximately 61% of the new merged company, while the Texaco shareholders would own approximately 39% of it" (page 140770); and moreover that the executives in charge of the new company are the same ones who managed the combined companies, (140759, 140761, 140768), as occurs in this case, leads one to think that there is not sufficient separation between the ownership and control of the new company and its predecessors. One considers that if the shareholder of Texaco Inc., became the shareholders of Chevron, and consequently benefited from the new company (same as its executives), the obligations that the latter maintained as shareholders of Texaco Inc. Transferred as well to the new company, Chevron Corp. The law serves justice, and cannot allow legal institutions to be manipulated for illegitimate purposes, such as to favor a fraud or to promote injustice, which would be the case of transferring the assets to one Corporation "free of responsibility," while the responsibilities are kept in a company "free of assets," the way the defendant tries to have us understand the transaction that took place between Chevron and Texaco, in which the new company benefits from the combined companies, but fails to mention the obligations. As the First Civil and Commercial Chamber of the Former Supreme Court of Justice tells us, "in foreign legal treatises and case law, the need is increasingly gaining ground to lift the veil of legal entities, particularly of corporations[*sociedades anónimas*]. The unveiling consists in disregarding the external form of the legal entity and, giving birth from there, penetrating in the interior of the same and examining the real interests that live inside it," (*Gaceta Judicial*, Year CV, Series XVIII, No. 1, Page 79, Quito, July 23, 2004, Published in file 172, *Registro Oficial* 553, March 29, 2005). In cases like this one, that fit the case where the new corporate structure could provoke a fraud on third parties or a similar injustice, North American jurisprudence teaches us that the doctrine of lifting the corporate veil must especially be asserted. The same thing happens in Ecuadorian jurisprudence, where

developments have been such, that it has been possible to synthesize a series of basic postulates that contain, at the same time, both a definition and an identification of the scope of action of the institution of veil lifting in Ecuador. In the first place, it is vitally important to highlight that the institution of veil lifting is strictly exceptional in nature, since the important social role that is played by a clear separation of the equity of legal entities and their owners is undeniable (as set forth in the Ruling of the First Civil and Commercial Chamber of the Supreme Court of Justice, File No. 393, issued on July 8, 1999 at 9:00 a.m., *Registro Oficial* No. 273 of September 9, 1999). In the second place, there is the obvious reality that the existence of the corporate entity has lent itself in the past to a series of abuses, being used not for the purposes provided for in the Law, but rather to affect rights of third parties through, becoming in practice like a tool of fraud. It is in this event that the Judges must pull open the corporate curtain of legal entities, in order to observe and analyze the reality of things beyond the appearances (see ruling of the First Civil and Commercial Chamber of the Supreme Court of Justice, File No. 120, handed down on March 21, 2001 at 11:15 a.m., *Registro Oficial* No. 350 of June 19, 2001). In the third place, at the time of analyzing abuses of the corporate entity, it is not relevant if it was organized with the clear intention of causing a fraud or a harm. It is sufficient that said fraud or harm exists in order to justify a lifting of the veil (see Ruling of the First Civil and Commercial Chamber of the Supreme Court of Justice, File No. 393, handed down on July 8, 1999 at 9:00 a.m., *Registro Oficial* No. 273 of September 9, 1999). Finally, it is essential to highlight that lifting the corporate veil of a company is not simply a power of the court when faced with abuses of the corporate form. On the contrary, the application of this institution constitutes a true obligation of the judge, since that is the only, or at least the most effective, remedy for unmasking these abuses of the legal entity (see Judgment of the First Civil and Commercial Chamber of the Supreme Court of Justice, File No. 20, issued on January 28, 2003 at 11:00 a.m., *Registro Oficial* No. 58 of April 9, 2003). For these reasons, the fact that the procedural index demonstrate the legal existence of Texaco and the merger of the latter with Keepep, does not contradict the demonstrated, public and well-known fact that the new company, Chevron Corporation, benefited from all the assets and rights of Texaco and of Chevron, in the same way that the reverse triangular merger, cannot serve as a legal mechanism to claim that Chevron

benefited only from rights and assets, leaving in the company Texaco the lawsuits and other pending obligations. It is estimated that if the financial transaction between Chevron And Texaco meant that as a result, the Texaco shareholders receive 0.77 ordinary shares of Chevron, and the shareholders that Chevron became owners of 61% of the combined entity, valued at 100 billion, (page 140759) it is because this transaction involved the transfer of assets and/or rights from which the new company and the shareholders of the combined companies would directly benefit; however we must insist that it is contrary to the principles of law and to good faith to expect that only the assets and rights have transferred, while not the obligations. If we consider the mandate of the Law of Companies and the principal of procedural truth, along with the evidence provided and referred to in this judgment that demonstrate that Chevron (and its shareholders) benefited from the merger with Texaco, plus the universal principles of law, we have more than enough legal foundation for the transmission of the obligations of Texaco to the defendant company, Chevron Corp. in this way the obligation to submit to Ecuadorian justice pending on Texaco Inc. was also transmitted to the new company Chevron Texaco Corporation, so that consequently Chevron Corp. cannot allege that it never operated in Ecuador to give grounds for lack of a legitimate opposing party. The record shows that Texaco –who did operate it– was obligated to submit to this jurisdiction, as can be seen in the judgment of the New York Court, at page 152883, which states: "following remand, Texaco provided the missing commitment; in other words, to submit to the jurisdiction of the courts of Ecuador (and Peru as well)," leaving then the initiation of the complaint, by reason of territory under the competence of the Presidency of this Court. In addition to the well-known, justified facts and the law invoked, this Presidency has studied and considered the precedents of US legislation, inasmuch as it recognizes that in cases where the merger is carried out in bad faith or in order to defraud third parties, it must be assumed that it is a *de facto* merger. The precedents in Delaware establish that "the corporations shall not be able to avoid their responsibilities through a merger." In a manner consistent with that provided by the principle of procedural truth, the Courts of the US pay more attention to the substance than to the form of this type of transactions. It has been made clear that the simple fact of calling a transaction a merger does not turn it into such, and that the Courts must observe the substance of the transaction in place of what is alleged by the parties. Considered of vital importance is the general principle according to which in mergers, "the party that benefits also assumes the obligations,"

which has been established in various Codes. From the standpoint of legal scholars, imposing responsibilities on the new company is appropriate in those cases where it knew previously of the responsibility of its predecessors therefore, there being no argument whatsoever in the record that indicates lack of knowledge on the part of Chevron Corp. regarding the obligations of Texaco Inc., It is presumed that the existence of the New York Court's order was not concealed by Texaco Inc. from Chevron Corp. It is appropriate for the purposes of justice, to impose on Chevron Corp., which benefited from the "merger," the obligations of Texaco Inc. On the other hand, to allow the right of the victims to redress to disappear for mere formalities within the merger, would be considered by the Courts of the US as "manifest Injustice," always considering that in certain circumstances, allowing responsibilities to be avoided or eluded through corporate formalities can be unfair for the victims, who would end up defenseless. Everything stated leads us to raise serious doubts as to the good faith with which the defendant acted in this lawsuit in particular, since this is the only known scenario in which CHEVRON CORP. Appears disputing the merger with Texaco. Responsibility of Texaco Inc, for Texpet. The complaint states that "The employ a subsidiary company, in this case TEXPET, created to develop operations in Ecuador as a different corporation, with little equity and patrimony, very much inferior to the real volume of its operations, corresponds to a scheme designed for the clear purpose of limiting the impact of any complaint derived from its activities in the country. In reality, TEXPET was nothing more than an screen behind which TEXACO INC acted, being proprietary by itself or through its subsidiaries of the total capital." It also affirms that TEXACO INC directed, supervised and controlled the operations in Ecuador of its subsidiary company TEXPET and established the operating procedures and techniques to be used in the hydrocarbon exploration and production activities, however, as noted by the defendant during the conciliation hearing, the Federal Court in New York declared that neither Texaco Inc, nor Chevron Texaco Corp. "conceived or approved of" the "decisions related to the methods, procedures, etc., used by Texpet in Ecuador" (F.S. 253), so that it is appropriate, in the first place, to conduct an analysis of said legal decision, which in the event it constitutes material *res judicata* would prevent this Court from analyzing this topic again. Thus, the first thing noted is the fact that in the event that this foreign judgment constitutes res judicata, it should have been so alleged, as a defense, during the conciliation hearing, which was the appropriate procedural moment

according to Ecuadorian procedural Law. This defense has not been put forth, demonstrating that the defendant did not have either the conviction or the intention that said foreign legal judgment be considered as a material decision of final instance; in the second place, it is noted that although the foreign legal judgment of the United States District Court, of the Southern District of New York, of May 30, 2001, (translation by expert Zambrano of November 14, 2008 at 2:30 p.m., from page 152840, in volume 1430) is in the record, which holds that "the plaintiffs, after taking numerous deposition and obtaining responses to no fewer than 81 document requests and 14 interrogatories, were unable to adduce material competent evidence of meaningful Texaco [USA] involvement in the misconduct complained of" (page 152882), this decision refers mainly to the competence of the Court, and was based on various aspects that need to be reconsidered. From a reading of this court order in its context it stands out that what is being analyzed the decision in question is the link between the evidence and the US or Ecuador as another parameter for establishing the most suitable forum, concluding that the greatest amount of evidence is found in Ecuador. The decision states that "the record establishes overwhelmingly that these cases have everything to do with Ecuador and nothing to do with the United States" (page 152880), which is not a decision on the merits that decides that Texaco Inc did not direct or decide on operations in Ecuador, but rather that the lack of proof in this aspect is considered as one more basis for demonstrating forum non conveniens. The reasoning of the New York Court is considered correct insomuch as the majority of the evidence should be, by logic, in Ecuador, which also implies that the New York Court recognized that new evidence could be introduced. Then, if we consider the transcribed text of the judgment we read that it refers to the fact that the record has been analyzed in terms of "admissible evidence" in the US, while in Ecuador the same norms do not necessarily prevail in order to determine what is considered admissible evidence, with this Presidency having to adhere to that which our laws establish as regards the evidence, its presentation and its evaluation; and finally, the new evidence that has been presented and that is part of this record pursuant to the referenced norms, must be considered, and must necessarily be taken into account to establish the procedural truth. In this way, the fact that only the evidence admissible and obtained in the U.S. was analyzed, along with the fact that new evidence has been presented,

push for consideration of the facts at issue discussed in light of the totality of all the evidence. In addition, it is felt that this decision refers to this issue only as one additional argument that demonstrates the absence of a link of the case with the United States, in order to demonstrate precisely that there was no discretion in the lower court decision in deciding that in this case the evidence was found in Ecuador, but rather that the balance of public and private interests tilts the scale toward an Ecuadorian forum, such that what this judgment does is confirm the formal decision of the lower court, that rejects the complaint based on Forum non Conveniens, but modifies this decision by conditioning it on the commitment of Texaco to accept the interruption of the extinguishing prescription of actions, such that it is clear that it is not possible to speak of material res judicata, since the matters at issue have not been resolved, but rather on the contrary, the complaint has been rejected taking as a basis the existence of a more appropriate forum: this one. In this manner competence has settled in this Presidency of the Provincial Court of Justice of Sucumbíos, where in addition we must give credit to evidence that has been presented in this lawsuit and that were not considered either by the Federal Court in New York or by the appeals Court, in handing down their judgments. Thus we conclude that the judicial decision of the Federal Court in New York has not been final as to the merits of the matter, nor has it caused state, so that material *res judicata* cannot be admitted, nor is it admissible as a decision on the merits binding on this Presidency which is fully competent to rule on this issue submitted to be heard by it. Therefore, what is incumbent to analyze are both the documents obtained and turned over by Texaco Inc through the Discovery process, whose existence has been accepted by the defendant as a certain fact during the conciliation hearing like other documents that have been lawfully presented, and the law applicable to the specific circumstances of this case, in order to determine whether it is appropriate to apply the doctrine of lifting the corporate veil, which in our legal system has a jurisprudential and not legislative development. Thus, we begin again remembering that the origin of this institution is due to the need that judges and courts had to remedy the severe crisis in which the concept of legal entity entered due to the fact that many have taken advantage of the benefits that the recognition of the corporate legal entity assumes. That is how our case law recognizes it, in the decision No. 135-2003, handed down in the ordinary lawsuit for payment of sales Commission No. 36-2003 that José Miguel Massuh Buraye brought against Roberto Dumani,

published in R.O. No. 128 of July 18, 2003, which notes that "[…] cases are presented in which the legal entity is abused in order to avoid the fulfillment of legal obligations, especially tax-related or to be used as a screen to evade the rights of third parties. For this reason, the doctrine is being consolidated which allows for judges to be able to tear away the veil of legal personality and adopt measures with regard to the men and the relationships covered behind it," such that the benefits granted by the legal system are limited, thought to promote the general economic development, not only of honest businessmen, but of all society; however, abusing the division or separation of equity and of responsibility, the corporate veil has been used for perverse purposes, that have no relation with its objective. Along that same line, it has been expressed to the Supreme Court of Justice in decision No. 120-2001 on a petition for cassation, in verbal summary proceeding 242-99, which points out that "in the actions of legal entities, in recent years a well-known and prejudicial deviation has been observed, now that it is used as an oblique or detoured path to evade the law or harm third parties." (Published in R.O. No. 350 of Tuesday, June 19, 2001, *Gaceta Judicial*, No. 5, Year CII, Series XVII, p. 1262, Quito, March 21, 2001). In view of this possibility, which has been alleged by the plaintiff, it is necessary to start by analyzing it considering that this suit has been brought for the redress of environmental harm supposedly caused by TEXPET while it was operating the Napo Concession, therefore it is appropriate for us to determine if the conditions are met that permit lifting the corporate veil in order to attribute responsibility to Texaco Inc for the conduct or acts of Texpet, to which the defendant has expressly objected, noting they are separate and independent companies, so that in order to resolve this aspect, the various factors will be analyzed that reflect, beyond formal questions, the level of dependence between subsidiary and parent company in order to determine whether it can be considered that the corporate veil has been used to hide the true interested parties and beneficiaries of the subsidiary's affairs, or if it has been legitimate. 1.- With this purpose we first note that the capital of the subsidiary company shall be consistent with the amount of business done and the obligations to be met, because it is understood that business people acting in good faith risk in their affairs a capital rationally adequate to face their potential responsibilities. The capital of the subsidiary can be considered insufficient if it requires constant authorizations and transfers of funds to proceed with the normal course of business, since in that case, those really making the decisions and exercising control over the

activities are the people who provide the authorizations and the funds, which frequently are sheltered behind the mask of the legal entity, making necessary that in certain cases the formal structure of the corporate entity be disregarded in order to avoid defrauding third parties. In the record at volume 65, pages 6827, 6828,6830, 6831, 6826, 6833, are the translations of various requests for authorization from Shields to Palmar, in which Mr. Shields makes requests in the name of the "Ecuadorian Division" of Texaco Inc. to his superiors at Texaco Inc., requesting their approval for various matters pertaining to the operations in the Ecuadorian Oriente. The record contains authorizations for everyday matters, of routine administration, such as tenders for catering services and the cleaning of the Consortium's operating sites in Quito and the Oriente region (translation of document PET 029369 at page 6827 and PET 028910 at page 6830), or the contracting of motion picture entertainment services at the Oriente installations (PET 029086 at page 6831). Likewise we find an authorization for the contracting of equipment and personnel for pipeline maintenance (PET 019212 on page 6828) and construction of bridges in Aguarico and Coca (PET 016879 at page 6833). Finally, Shields requests Palmer's authorization to begin the exploration of the Sacha-84 well, in October 1976 (PET 012134). Also in the record are various documents from the Texpet archives, containing authorization requests from Bischoff to Palmer, in volume 65, pages 6839, 6840, 6843, 6844, 6848, where it appears that, like Shields, Palmer refers to Texpet's operations in the Oriente as "the Ecuadorian Division." Among his requests for authorization is the urgent request to approve the tender for two "workover" towers (support and maintenance) for production in the Oriente (PET 030919 at page 6839), and the tender on a road between the Yuca and Culebra wells (PET 016947 at page 6843), key aspects for the development of Texpet's operations. Authorization also is requested to extend the contract for ferry services in the zone (PET 032775 at page 6844), and more importantly, approval is requested of the approval documents for Vista-1 Well. There is also a memorandum of special importance revealing the existence of a lineal chain of authorization existing between these executives, since Bischoff asks Palmer who, after approving the document, signs and forwards it to McKinley, a higher executive of Texaco Inc (PET 022857 at page 6848), denoting the existence of a chain of command, which meant that the decisions regarding every aspect relating to the operation of Texpet in Ecuador were made by executives of Texaco Inc in the U.S. In addition, there are respective authorization requests in the record from Palmer

to Granville, in volume 66, pages 6930, 6938, 6943, which show that the chain of authorizations extends higher than Palmer, since in echoing a request from Shields (see PET 019212 at page 6828), Palmer asks Granville for authorization to contract equipment and personnel for pipeline maintenance (PET 029976 at page 69309) and per Bischoff's requirement (see PET 030919, at page 6839), approves one of the offers for the construction of the "workover" towers, submitting said approval to Granville for an O.K. (PET 029991, at page 6943). The record also contains letters and memorandums from Shields and Palmer to John McKinley, coming from the Texaco Inc, and Texpet files. In volume 66, pages 6957, 6958, 6964, 6959, 6960, 6974. That show that both Shields and Palmer maintained a constant flow of letters and memos with McKinley, asking for his authorization and informing him of events relating to the Napo Concession. Likewise, letters from minor officials addressed to Shields, in volume 65, pages 6855, 6856, 6860, 6861, 6875, 6882, 6885, where reference is made to letters addressed to Shields that originated in Quito, in hands of minor officials who requested his authorization, such as William Saville, who was a Texpet executive who operated in Quito, and sent many and daily communications to Shields (in New York) requesting authorizations. For example, he sent Shields the estimated costs of drilling the Sacha 36 to 41 wells (unnumbered doc) and asks his approval to start the tender for fuel transport in the Oriente (PET 031387 at page 6856). J.E.F. Caston, another executive of the oil firm based in Quito, asks Shields for his authorization to call for bids for various services (PET 020758 at page 6860) and to approve the estimated costs of installing submersible pumps in five wells in the Lago Agrio field. Finally, we have Max Crawford, another official based in Quito, who also periodically asked for Shields' approval for various purposes (PET 035974 at page 6882, and unnumbered doc at page 6885). On the other hand, it is necessary to consider the proven fact that the decisions of the "Executive Committee" of Texpet had to be approved by the board of directors of Texaco Inc, as we see that in the Minutes of the Board of Directors No. 478 (Volume 25, page 2427), where it approved Texpet's decision to enter into negotiations with Ecuador to object to an increase in the income tax for the oil company, and additional payments, in the same way that the Texaco Inc board of directors approved the purchase of a plane for US$ 850,000, Minutes 456 (Volume 24, page 2351), demonstrating the decision-making power of Texaco Inc. over the purchases made by Texpet. In my opinion, these minutes demonstrate the constant scrutiny that the parent firm Texaco Inc. maintained over all operations and news

relative to Texpet in Ecuador. If we analyze this fact independently, perhaps it could be confused with the normal control that a board of directors exercises over its subsidiaries. However we must analyze this control by the parent firm over its subsidiary in its context, taking into account also that the Board of Directors of Texaco Inc. also delivered the "allocations" of money with which Texpet operated, which implies that Texpet lacked not only administrative autonomy, but also financial, since it was Texaco Inc. that controlled not only the decisions, but that also authorized the funds that Texpet needed for the normal course of activities. Starting with the admitted fact that Texpet is a fourth level subsidiary company belonging one hundred per cent to a single owner, Texaco Inc., and that Texpet operated with funds coming from the coffer of Texaco Inc., it has been shown that there is not a real separation of patrimony. We understand that different legal entities necessarily imply differentiated patrimony, according to the rules of the attributes of the entity, however in this case, the confusion of patrimony is obvious, plus a confusion of entities in the same manner. Among the evidence that lead us to this conviction we cite additionally the minutes of a board of directors meeting of Texaco Inc. No. 380, dated January 22, 1965 (Volume 22, page 2166), which established allocations in favor of the Cia. Texaco Petróleos del Ecuador for an amount of US$ 30,212.oo. The minutes of the board of directors meeting of Texaco Inc. No. 387, dated September 17, 1965, (Volume 22, page 2176), established allocations in favor of Texaco Petroleum Company (Texpet) for an amount of US$ 27,625.oo. Minutes of the board of directors meeting of Texaco Inc. No. 393, dated April 19, 1966 (Volume 22, page 2182), established allocations in favor of Texaco Petroleum Company (Texpet) for an amount of US$ 331,272.oo, and in favor of the Cia. Texaco Petróleos del Ecuador for an amount of US$ 13,631. establishing in this way the conviction of this Presidency regarding that Texaco Inc., controlled the funds both of the company exercising the concession rights (Texaco Petróleos del Ecuador) and of the one contracted to operate the concession of the fields, which makes it obvious that TEXPET was a company without any capital or sufficient autonomy to face the normal course of business, which in turn constitutes more evidence of lack of independence of the subsidiary with respect to the principal, leading us to the conviction that TEXPET was an undercapitalized company, that depended both economically and administratively on its parent company. The amount of the contracts that require authorizations to make likely the unavailability of its own capital, which is an indication of inability to face the possible

responsibilities that can be expected after an oil operation. Cabanellas explains to us in his work "*Derecho Societario: Parte General. La personalidad jurídica societaria* [Corporate Law: General Section. The corporate legal entity] that "the corporate entity is based on a set of rules that determine what conduct is attributable to the corporation as a legal entity. The general effects of those rules may see themselves modified according to certain norms that alter that attribution, turning to imputing the conduct that normally would be attributable to the corporation as a legal entity, to other physical or legal persons, such as their partners or other people who exercise the control in fact of the corporation." (See Vol. 3. Buenos Aires: Editorial Heliasta, 1993. P. 65.) It has been shown in the record that the authorizations and investments required by TEXPET, made it so the *de facto* control of its operations was exercised by the parent company, which constitutes an important issue to be considered. López Mesa and José Cesano state it well in their work, *El abuso de la personalidad jurídica de las sociedades comerciales: Contribuciones a su estudio desde las ópticas mercantil y penal* [The abuse of the legal entity of commercial corporations: Contributions to its study from the commercial and criminal perspectives] (Buenos Aires: Depalma, 2000), when they note that "The regime of the legal entity cannot be used against the superior interests of the society or the rights of third parties. The techniques manipulated to inhibit the purely instrumental use of the corporate form vary and adopt different names, but they all propose, in substance, the consideration of the economic and social reality and the supremacy of objective law." Concordantly, the Supreme Court, in Ruling 120.2001, cited above, has said that "in the face of these abuses, it is necessary to react by rejecting the legal entity, that is, drawing aside the veil that separates third parties with the true final recipients of the results of a legal business to reach them, in order to prevent that the corporate entity be used improperly as a mechanism to harm third parties, be they creditors who would be hindered or impeded from attaining the fulfillment of their loans, be they legitimate holders of a good or a right who would be deprived or dispossessed of them. These are extreme situations, that must be analyzed with extreme care, as legal certainty cannot be affected, but neither can, on the pretext of upholding this value, the abuse of the law or the fraud on the law through the abuse of the corporate institution be allowed." 2.- Now, if we consider the formal questions, such as the fact that the same people hold the positions of executive directors and other managerial posts in both companies, added to the admitted fact that Texaco Inc was the 100% owner of Texpet, the certainty abounds as to the need to apply the doctrine of corporate lifting. For

example, Mr. Robert C. Shields held the position of Vice President of Texaco Inc. between 1971 and 1977, while at the same time being the Head of Texpet's Board of Directors, according to his sworn statement (volume 63, page 6595). Review of the record shows that Shields signs his letters on behalf of Texpet, when according to his own testimony between 1971 and 1977 he held the position of Vice President of Texaco Inc. This fact is consistent with Bischoff's statement that Texpet was the division of Texaco Inc. that operated in Latin America, and not a mere subsidiary, as the defendant's defense maintains. In the same way, over the course of his career, Mr. Robert M. Bischoff held positions with Texaco Inc. both in the United States and in Latin America. Between 1962 and 1968 he worked as Vice President in the production division for Latin America, which he himself calls Texaco Petroleum Company (Texpet), according to his sworn statement in volume 63, page 6621. This shows how even the executives of Texaco Inc. themselves thought of Texpet as a division of Texaco Inc., and not as a separate company. Like Shields, the record clearly shows that Bischoff actively participated in the complex decision-making chains and processes that involved Texaco Inc. and Texpet. In his sworn statement Bischoff explains how the contracts of Texpet's headquarters, located in Florida, that exceeded US$500,000.oo had to be approved by an attorney of the last name Wissel, head of Texaco Inc.'s attorneys. In this case, we see how the relationship between Texpet and Texaco Inc. was not limited to this one owning the shares of the other, but rather that both worked intimately linked, with Texaco Inc. taking all the decisions while Texpet was limited to carrying them out. It is true that as a general rule a company can have subsidiaries with completely distinct legal status. However, when the subsidiaries share the same informal name, the same personnel, and are directly linked to the parent company in an uninterrupted chain of operational decision-making, the separation between entities and patrimonies is significantly clouded, or even comes to disappear. In this case, it has been proven that in reality Texpet and Texaco Inc. functioned in Ecuador as a single and inseparable operation. Both the important decisions as well as the trivial ones passed through various levels of executives and decision-making bodies of Texaco Inc., to the extent that the subsidiary depended on the parent company to contract a simple catering service. In this regard this regard it is completely normal that the Board of Directors of a subsidiary company be made up of some officers from its parent company, and it is also normal that the parent company receive periodic reports

on its condition, and take certain decisions that for their importance are beyond the reach of the regular administration. However, in the case of Texaco Inc. and its subsidiary Texaco Petroleum Company (Texpet), the role of the Directors transcends roles that might be considered normal, as they received information and made decisions about the great majority of Texpet's deeds and acts regarding everyday matters of the operation of the Napo Oil concession, responding to a well-established chain of command, as has been shown in the record. 3.- Finally, it is considered that the doctrine of lifting the corporate veil is especially applicable in the face of the abuses that can be committed in detriment to the public order or the rights of third parties, in order to avoid fraud and injustice, that is, that the corporate veil must be lifted whenever not doing so favors a fraud or promotes injustice, as would be the case in which we find schemes intentionally created to leave the profits in the parent company, while the obligations remain in a subsidiary, which in general is incapable of satisfying them. As López Mesa and José Cesano rightly say: "Even when it is admitted as a hypothesis that two corporations are subordinate to a decision-making unit or constitute an economic unit or corporate group, this is not sufficient data to dispense with the legal autonomy of each one of the corporate subjects implicated in the acts, as long as it is not alleged and proved that the legal forms have been implemented to prejudice the plaintiff in his rights, since what is appropriate is to respect the corporation's separation of assets , as long as this is not likely to be the means of violation of other legal rules, since rejection of the status or attribution of responsibility to persons in distinct appearances, is exclusively based on proving the abuse of the privilege granted to the detriment of public order or the rights of third parties" (Pages 145 and 146). Along these lines it is noted that the plaintiffs have indeed expressly alleged that Texpet was a company implemented to keep pending responsibilities in a company without sufficient capital, while keeping the capital of the parent company free of responsibilities, with the precise objective of avoiding potential liabilities with third parties, while the record contains abundant evidence, as has been noted above, demonstrating the subsidiary's deep ties and lack of independence with respect to its parent company, which was who actually took the decisions and benefited from the acts of its subsidiary, which is moreover incapable of meeting the extent of the responsibilities that are demanded of it. Consideration is finally given to what

the Supreme Court of Justice stated in its judgment No. 393, handed down in Ordinary Proceeding No. 1152-95 for moral damages brought by Rubén Morán Buenaño against Ricardo Antonio Onofre González and Leopoldo Moran Intriago, published in R.O. No. 273 of September 9, 1999, that with respect to the lifting of the corporate veil warns that "the use of this instrument is not open nor indiscriminate, rather it will be in those hypotheses in which the interpreter of the Law comes to the assessment that the legal entity has been constituted with the aim of defrauding either the law or the interests of third parties, or when the use of the formal cover in the legal entity consists leads to the same defrauding effects," aspect that coincides with that indicated by the cited authors in that this principle "cannot be made without first applying a large dose of prudence, mindful that its indiscriminate, frivolous, immoderate application could lead to doing away with the formal structure of companies, or else to disallowing it under circumstances where it is not warranted, with serious harm to the law, certainty and security in legal relationships," such that considering the foregoing analysis, the exceptional but justified need has been established in this case to lift any corporate veil that separates Texaco Inc. in its fourth-level subsidiary, Texaco Petroleum Company (Texpet), given that it has been proven that it was a company with a capital very inferior to the volume of its operations, that required constant authorizations and investments from the parent company to carry out the normal course of business of its commercial activity, that the executives were the same in both companies, and principally the obvious fact that not lifting the corporate veil would imply a manifest injustice. 3.2. Improper joinder of actions. The defendant alleges that actions have been brought in summary verbal proceedings require a different type of proceeding, that this Presidency is not competent to hear, thus to rule on this point it is considered that improper joinder occurs when two actions are joined that necessarily have different procedures. The defendant has alleged that actions for damages derived from the Civil Code (2241, 2256, and 2260) "are to be heard at an ordinary trial, before a competent Civil Judge," however upon reading the invoked articles 2241, 2256, and 2260 (currently articles 2214, 2229 and 2236), no reference is found therein to the procedure to be used or to the competent Judge, thus, the assertion that these actions should or must be processed "ordinary trial" before the competent Civil Judge" lacks legal foundation. To the contrary, article 59 of the CPC establishes with total clarity that "Any lawsuit that is not subject to a special procedure

under applicable law shall be resolved by ordinary proceedings." thus stipulating that the ordinary proceeding be the one provided for in a general and residual way for those cases in which a Law exists that establishes a special procedure. In this case, the final paragraph of article 43 of the EMA clearly establishes that "claims for damages originating from harm to the environmental shall be heard in summary verbal proceedings," while the second paragraph of article 42 indicates that the President of the Provincial Court of Justice of the place where the environmental impact occurs shall be competent, thus, considering the legal grounds and the claims put forward in the complaint, which have been reproduced in this judgment, this objection lacks merit under the protection of the cited provisions, since there is no improper joinder of actions, but rather the application of a legal mandate that is imposed through the application of the principle of specialty, since a special and subsequent Law is involved that provides in procedural norms the process to be followed, taking precedence over a prior Law, that does not expressly establish any type of proceeding, but rather generally provides for the ordinary lawsuit as the residual process to follow in any case that does not have a special procedure according to the Law, and in this case there is not nor has there been alleged any legal norm that supports the "need" or legal mandate to apply ordinary proceedings to actions for damages established in the Civil Code, while there does exist a law that establishes a special procedure. 3.3. Non-retroactivity of the Environmental Management Act. Non-retroactivity in the application of the Law is a principle of law that governs in our procedural system as the general rule, however rule 20 of Article 7 of the Civil Code, cited on multiple occasions by the parties to the lawsuit, establishes that rules relative to the manner of hearing cases and their formalities prevail over prior ones as of the time they go into effect, that is, there is an exception to the general rule, by virtue of which procedural norms must be applied retroactively, and as was established above in this judgment, the Environmental Management Act establishes the summary verbal proceeding and grants competent jurisdiction to the President of the Provincial Court of the place of the occurrence. The second paragraph of article 42 states: "The President of the Provincial Court of the place where the harm to the environment occurred shall have jurisdiction to hear the actions that lie as a result of such harm. If the harm covers various jurisdictions, competence will lie with any of the presidents of the provincial courts of those jurisdictions." For its part, paragraph five of article 43 clearly establishes that "Claims for damages originating from harm to the environment shall be heard in summary verbal proceedings." These norms refer to two essential aspects of the formalities

of the proceedings: competence and the type of proceeding, that is, they are quite clearly procedural norms, such that, in application of the mentioned rule, the general principle of non-retroactivity does not apply to these provisions of the EMA, in that the complaint is based on this Law for matters regarding the formalities of the proceeding. On the other hand, the substantive right to seek redress for harm is guaranteed by the Civil Code, as stated in the petitions of the complaint, in its articles 2241 and 2256, which will be analyzed later in this judgment. Additionally and in concordance, consideration is given to that provided in the OCJB, in the second paragraph of Subsection 2 of article 163, which establishes the same exception to the general principle of non-retroactivity of the law, when it states that "Nonetheless, the laws concerning the manner of hearing cases and their formalities prevail over prior ones as of the time they go into effect." Based on the above, we find that in law the procedural norms contained in the EMA are fully applicable to this case, even though they were enacted subsequent to the events that are being tried, thus this defense is not accepted. 3.4. Non-retroactivity ILO 169. ILO Convention 169 is part of the body of international legal norms in effect in Ecuador, however its date of entry into force is after that of the events that give rise to the lawsuit, therefore in application of the principle of non-retroactivity, here the defense of non-retroactivity put forth against ILO Convention 169 is admissible, thus, accepted the defense with respect to this body of law, it cannot be applied in this lawsuit. 3.5. Prescription, per 2259. At the settlement hearing as the record shows (page 263), DR. Adolfo Callejas asserted that "as can be seen from the published decisions of the Courts of New York, the commitment to accept the existence of a civil interruption of prescription originating from the filing in the month of November 1993 of a complaint against TEXACO INC in New York also for supposed environmental harm derived from its so often cited operation of the Consortium, which commitment is contained in the decision of August 16, 2002 issued by the Federal Court of Appeals of the Second District of the United States of America [whose translation was presented on November 14, 2008, at 2:30 p.m. by Expert Translator Carmita Zambrano Guzmán], is applicable solely and exclusively to TEXACO INC., without, therefore, its being applicable; to the defendant, CHEVROTEXACO CORPORATION, which is a distinct legal entity from TEXACO INC., is not its successor nor acquired any right or obligation whatsoever that TEXACO INC. may have had." It follows from this statement that Counsel

of Record for the defendant recognized on behalf of his client, that a court order exists, issued by the Federal Court Appeals of the Second District of the United States of America, that obligates TEXACO INC to accept the existence of a civil interruption of prescription originating from the filing in November 1993 of a lawsuit against it. It is clear to this Court that the defendant has never alleged the nonexistence of said court order, but rather alleges that the mentioned order is addressed to Texaco Inc. and therefore maintains that it is not applicable to the defendant, Chevron Corp. Faced with this argument, we consider that despite the fact that the order was addressed to TEXACO INC., and despite the fact that this company maintains legal life, the operation publicly known as "merger" (*fusión*), has the legal effect that CHEVRON CORP. is replaces TEXACO INC. in its rights and obligations, consequently the defendant, CHEVRON CORP., is bound by the obligation of the company TEXACO INC. thus the alleged prescription is overruled because there exists a pending obligation over the lawsuit to accept the existence of a civil interruption of prescription originating from the filing in the month of November 1993 of a complaint of TEXACO INC. in New York, as has been admitted by the defendant through its Counsel of Record, Dr. Adolfo Callejas Rivadeneira 3.6. Lack of right of the plaintiffs. The defendant alleges that there is no connection between them and the plaintiffs; and that any possible harm was already the subject of settlements. With respect to the possible lack of connection between the defendant company and the plaintiffs, it is noted that for the right of the plaintiffs to bring an action to exist there is no requirement that a connection exist between them and the defendant, since rights and/or obligations can be conveyed to third persons, through various legal transactions for transmission of obligations, in which in which a third party becomes subrogated to the obligations of others, regardless of the original connection of the creditors of such obligations. Despite this, here it is advisable to recall some of the points already considered, such as the fact that the defendant company publicly merged with the company Texaco Inc., who in turn was the owner of 100% of Texpet, a fourth-level subsidiary that was in charge of the Consortium's operations, the same that the plaintiffs allege have caused harm to the environment and affected the inhabitants of the zone. In the opinion of this Court, the existence of a connection, even if not direct, is reasonably set out. In the same way, the facts that support it are proved, leaving it pending to prove the existence of the harm alleged in the complaint, issue we will analyze further below in this

judgment. On the other hand, with respect to the alleged lack of rights of the plaintiffs because the harm has been the subject of settlements, the Presidency notes that said settlements were effective, as the record shows, for the Government of Ecuador to release Texpet and its parent company, Texaco Inc., from all responsibility for the environmental harm that may have originated in the Concession. There is not a single piece of evidence in the record indicating that the Government of Ecuador has filed this complaint or some other against Texaco Inc. In relation with environmental harm in the Napo Concession, nor that it has acted as a party to this lawsuit. Neither is there a legal basis to maintain that the existence of this settlement serves to deprive the plaintiffs of their fundamental right to bring actions and petitions and that these be decided. This right was consecrated in the second codification of the Political Constitution of the Republic of Ecuador, (R.O. No. 183 of May 5, 1993), in subsection 10 of article 19, and also in Article 8.1 of the American Convention on Human Rights, whose text is published and in effect since 1984 (R.O.No.801 of August 6). We can also find the right of recourse to the courts consecrated in the American Declaration of the Rights and Duties of Man of 1948 (art. XVIII), in the Universal Declaration of Human Rights (art.10), and in the International Covenant on Civil and Political Rights (art.14, paragraph 1). Seen in this way, the exercise of the right of action and/or petition is guaranteed by the State, and it could hardly stipulate a limitation on this right through an administrative contract, given that "The ruling force of the Constitution cannot be eluded under any circumstance, as its precepts prevail over the others, whether these refer to public or private law" (see Resolution No. 0008-03-AA of October 28, 2003 from the Constitutional Tribunal). The theory that the acts of the Government are always undertaken in the name of the people and constitute the expression of their will cannot be used with such exaggeration because that would make it impossible for such acts to be challenged, and to the contrary, the general rule is that every act is challengeable. On the other hand, we must consider that not every act in which the Government or one of its bodies intervenes is an act of Government. Resolution No. 0036-2001-TC, 0042-2001.TC and 0044-2001-TC, adopted by the Constitutional Tribunal in full session in consolidated cases 0036-2001-TC, 0042-2001-TC and 0044-2001-TC, states: "Subsection b) of article 2 of the resolution excludes from challenge by means of an *amparo* action acts of government, restricting this concept to those that satisfy the three conditions it specifically establishes: that involve "the direct exercise

of a Constitutional power;" that were dictated "in exercise of an activity that cannot be delegated" that have "general scope or effect." In this regard it should be considered that there are certain acts that the Political Constitution establishes as fundamental powers of the State bodies, the same that, according to current legal thought, translate into legal norms and not acts between parties." Considering that in the 1995 Contract the unilateral will of the State is not expressed, but rather, in it the will of an individual, Texpet, has participated concurrently , it is clear that said contract cannot be qualified as an act of government, and in consequence the theory is inadmissible that said contract constitutes an act of government, and much less that it has been signed by the Government in the name of all the Ecuadorians, as the defendant has repeatedly maintained, that at the judicial inspection of Yulebra, and at the judicial inspection of Yuca Station, of Guanta, and at Auca Sur, repeatedly said that "The plaintiffs illegally seek to ignore the legal concept of representation, set forth in the Political Constitution, in the Civil Code and in other laws in force and question the Ecuadorian Government and the officials who, at the time were legal representatives of Petroecuador and of the Ministry of Energy and Mines, for having released TEXPET from all obligation for the environmental conditions of the area of the 1973 Concession, arguing that the release cannot be extended to their clients; accepting the plaintiffs' theory would mean that each of the officials acted on his own behalf and not because those they represented on that occasion, in which they legally intervened on behalf of the Ecuadorian State, which in turn is the agent of all the citizens of our country." We must clarify that although it is true that the officials who signed said release did not act in their own name nor on their own behalf, it is no less true that their acts and representation were limited and framed in the Constitution and in the laws in effect. The Presidency does not ignore the concept of representation, but rather limits the representation of the officials who executed the release to the entities they represented, and through them, to all is Government of Ecuador, which is not a party to this lawsuit and cannot benefit from it, thus, there is no legal reason to extend such representation to all the citizens and deprive them of rights that are inalienable by their very nature. According to the law, the defendant alleges that the plaintiffs lack the right to sue because the harm was addressed in settlements, which would imply that such releases would be capable of restricting fundamental rights, however from a reading of all the various releases mentioned, it can

be observed with total clarity that none of them tries to nor is capable of addressing—as is required by law—the right of action and petition to which people in Ecuador are entitled, but rather, on the contrary, the literal meaning established in the 1995 Contract allows one to clearly understand the scope of said document. Article 1.7, entitled "Scope of the Work," says: "The scope of the entire remedial work and actions agreed upon between the parties and set out in Annex A that is required to discharge and release all of Texpet's legal and contractual obligations, and its liability toward government and Petroecuador, for the Environmental Impact arising from the Operations of the Consortium," where it is highlighted that the release operates vis-à-vis the Government and Petroecuador. Similarly, article 1.12, entitled "Release," also speaks to us of the release vis-à-vis the Government and Petroecuador, clarifying that it includes "any claims that the Government or Petroecuador have or may have against Texpet, arising from the Consortium agreements," as is consistent with article V that indicates to us with total clarity that "the Government and Petroecuador shall hereby release, acquit and forever discharge Texpet [its parent company, employees and others] of all the Government's and Petroecuador's claims against the Releasees for Environmental Impact arising from the Operations of the Consortium." For total clarity we also consider what was said in clause IV of the *Acta* Final signed on September 30, 1998 by the Government, represented by the Ministry of Energy and Mines, Petroecuador, and Texas Petroleum Company, in which the former proceed to release, absolve and forever discharge the Exonerated Parties "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," leaving clear that the scope of the release from liabilities and lawsuits is limited to those that could come from the Government, from Petroecuador, or from its affiliates. In addition, I consider that the jurisdictional power is determined in the Constitution, and consequently the Government cannot relinquish the same through an administrative contract, since in such a case said contract would be contrary to Public law, being obligated in any events to administer justice. In short, the plaintiffs who do not appear as signatories to the settlement alleged by the defendant in its defense, enjoy the rights of action and petition guaranteed by the Constitution because those are inalienable, moreover because the settlements are clear in stating who the active and passive parties are in the settlement, without such type of legal transaction being extendable to

third parties nor applicable to inalienable rights. Consideration should also be given to the what is said in article 42 of the EMA:" Any person, entity or human group can be heard in criminal, civil or administrative proceedings filed for violations of an environmental nature, even though their own rights have not been violated," together with the fact that the complaint has been signed by 42 citizens, the plaintiffs, who have not requested personal compensation for any harm, but rather have demanded the protection of a collective right in accordance with the formalities provided by the EMA, the redress of environmental harm, which as has been alleged in this lawsuit, affects more than 30000 people, these supposedly being undetermined. This Presidency has noted that the parties potentially affected by the activities of the Consortium are divided into several different human groups, that claim to be united by the fact of being affected by an environmental harm, without all belonging to a single nationality or neighborhood, but rather who are identifiable for sharing impacts coming from the environmental harm. There is no, as far as the record shows, census or list that identifies them, precisely because they are diverse human groups, but connected by one same impact and a common interest in resolving it. In this way, the legal grounds on which the collective right of the plaintiffs to file this claim rests have been established to the satisfaction of the Court, summarized in the fundamental, inalienable, substantive right of action and petition, in the second place in the norms of the Civil Code to give grounds for the right to ask for redress of the harm, and in the third place in the active legal standing of the plaintiffs to be heard in this proceeding in defense of collective rights. 3.7 – Inadmissibility of the claim under 2260. During the answer to the complaint the defendant argued that article 2236 (previously 2260) "confers a right that can only be exercised through an ordinary trial before a Civil Judge" (page 264, obverse), nevertheless the text of the norm sates:"As a general rule, a popular action [*acción popular*] is granted in all cases of contingent harm that threatens indeterminate persons because of someone's imprudence or negligence. But if the harm threatens only determinate persons, only one of them may file the action," from which it can be appreciated that nowhere in the rule transcribed is there set forth the procedure or proceeding that must be followed to make this right effective, nor is there any reference whatsoever to which Judge is competent to hear the case. The Civil Judge is the default Judge in whom competence falls for proceedings that do not have a determined Judge of competence, but before this norm express provisions prevail,

as is the case of Article 42 of the EMA. In the same way, the ordinary lawsuit is the proceeding provided for all causes for which a special proceeding is not established, but in this case once again the EMA has changed the formalities for claim this right, and has established with total clarity that in cases of claims for environmental harm, the verbal summary proceeding should be followed (art. 43). The defendant in its answer has affirmed that article 2260 "Would only be applicable against the current operator and owner of the areas that belonged to the Consortium," however, addressing the characteristics of the environmental year, the presence of contaminating elements in the environment can represent a threat or risk to unspecified persons, and since what is claimed is precisely the removal of those elements, arguing the harm they have caused and the risk they represent, the legal basis set forth in the cited norm is admissible. 3.8 Extinction of the obligations due to the release of Texpet. It has been established that the extinction of obligations in favor of the defendant Chevron Corp., operates on the release from liability the Government of Ecuador ranted in favor of TEXPET, TEXACO INC, etc., but what the defendant is disputing is not the passive subject of the release but rather the active subject, that is, the party making the release. Chevron alleges that this release from liability by the Government of Ecuador was made as an act of Government, in the name and on behalf of all citizens, extinguishing their rights, for which reason we should once again take pay attention to what is said in this instrument. The text of the 1995 Contract, insomuch as it refers to the scope of the release from liability, states: "The scope of the entire remedial work and actions agreed upon between the parties and set out in Annex A that is required to discharge and release all of TEXPET's legal and contractual obligations, and its liability toward the government and Petroecuador, for environmental impact arising from the operations of the consortium," from where it can be gathered that the release was made by the Government and Petroecuador exclusively in their name, since it states "toward the Government, Petroecuador," meaning that makes no reference to third parties nor to allow for broad interpretations. There is no evidence whatsoever in the proceedings that the plaintiffs have signed any document that extinguishes the obligations that the defendant may have toward them, so consequently those have not been extinguished. In this way, although the defendant timely raised this defense, it has failed to demonstrate that the mentioned extinction of obligations is also applicable to obligations with third parties, since the 1995 contract and the *Acta* Final signed on September 30, 1998 clearly indicate the

contrary. 3.9 the rest of the objections raised by the defendant constitute pure denials to that alleged in the complaint, for which reason it is appropriate to contrast them with the facts that have been proven in the record, as will be done further down –**FOURTH**.– Several motions exist by the parties which were filed during the proceeding and which need to be resolved at this time, this being the appropriate moment to do so in the proceeding; since, in accordance with the provisions set forth in article 273 of the CCP: "The judgment shall decide only the issues regarding which the lawsuit was filed and answered and any collateral issues (*incidentes*) arising during the trial that may have been reserved to be resolved in it, without causing undue burden on the parties." This being the case, and there being no evidence to indicate that an irreparable burden may have been caused to either one of the parties, which have shown themselves to be capable of exercising a passionate and extensive defense of their positions, limited exclusively by the law and the rights of the other party, with respect to the motions created by means of the briefs filed by both parties to the proceeding, the resolution of which is pending, both those containing the opinion of the parties concerning some discrepancy in matters relative to the conduct of the proceedings and those filed prior to the order of the case file for judgment, but which nevertheless were incorporated into the proceeding, indicating that they would be addressed at judgment, it is hereby ruled in the following order: 4.1. Motions containing pending petitions relating to the conduct of duly requested evidence. The defendant has repeatedly complained about the manner in which this Court has conducted the oral summary proceeding, allegedly for having incorrectly applied the principle of promptness, preventing the defendant from exercising its defense, all of which contradicts the information contained in the record of the proceedings in this matter which has continued for almost 8 years and has accumulated over two hundred thousand pages of case file. Nevertheless, the delay in deciding this case is not the responsibility of the judge but of the parties thereto, which have disputed and complicated even the most mundane matters in the conduct of a case. Thus, since the beginning of the case, we can start by referring to a:1.) The evidence requested by Chevron under numbers 30, 31, 38, 62, 63, 73, in its motion dated October 27, 2003 at 05:00 p.m. (page 3295) because, reviewing the file, it is evident that the Court has on two occasions presided over the inquiry requested in the defendant's petition, receiving a response in official document N° 1890-DNH-EEC90692 filed on May 18, 2009 at 10:49 a.m., on the record at page 156.548, which Chevron knew and which indicated that it was necessary to designate two people to review the documentation, in the face of which

Chevron did not indicate any interest whatsoever, nor did it respond by designating or naming any individual to assist in completing the matter of its interest, despite the fact that it was evidence requested by its defense, allowing time to elapse and the phase of the case to change, and subsequently at the end of the evidentiary period, it has sought to reopen it with a completely extemporaneous petition. The Presidency considers this mode of action by counsel for the defendant as evidence of procedural bad faith. 2) Moving on now to the phase of judicial inspections, we find there are challenges by both sides to the different experts and the manner in which they performed their work, the manner in which they were appointed and installed in their positions, and this Court has even been required to designate settling experts to resolve the alleged contradictions between the experts, for which reason it is appropriate to refer to these matters, which due to their discussion and positions have threatened to prevent the normal progress of the discovery process or prolong it indefinitely. The case file demonstrates that between both parties to the case, more than one hundred judicial inspections were requested, this being an unprecedented burden for this Court which, nevertheless, accepted them and ordered them to be carried out, despite this decision it was obvious the need of coordination between the parties and the Court for the better development of the procedures. For this reason, the Court accepted the document entitled "Terms of reference for judicial inspections, analysis plan and sampling plan," proposed by both parties to the proceeding to guide the work of the experts. Notwithstanding, the defendant has asserted on repeated occasions that this document constitutes an actual contract, despite the fact that it is entitled "Terms of reference for judicial inspections, analysis plan and sampling plan," and thus alleges in its motion dated November 7, 2008 at 5:02 p.m., that "once qualified and approved by the judge, a protocol was created which, having been freely agreed to by the parties, becomes a "procedural contract" the parameters of which are mandatorily applicable; and it should be governed by the general regulations governing contracts […]," basing its assertions on the words of the treatise writer Enrique Véscovi who, indeed, in his work *Teoría General del Proceso* [General Procedural Theory], recognizes that the theory of the procedural contract does not have much acceptance in modern law and, having reviewed case law, nor is there any mention whatsoever concerning the procedural contract and much less the fact that it be mandatory for the Judge, with the exception of those agreements between the parties to designate the expert or to designate more than one (art. 252 CCP). On the contrary, there is no procedural regulation upholding the existence of a "procedural contract," far less is the mandatory nature of such definition found in legal writings of scholars or in the case law reviewed,

so that neither the legal writings of scholars nor the Law nor Ecuadorian procedural practice have recognized this institution, save for the exceptions specifically set forth in that same Law. In fact, if we observe the acts of counsel for the defendant in this proceeding, we can see that they too were not convinced of the binding nature of such an agreement, as can be seen from a reading of the judicial inspection minutes for the Palanda Station and the judicial inspection minutes for the Shushufindi refinery, in which the defendant expressly authorized the designation of a single expert, recognizing that no agreement existed between the parties and thereby obviating the application of the aforementioned agreement. In light of the foregoing, this Presidency is convinced that the aforementioned agreement does not constitute a procedural contract under the terms set forth by Chevron in its motions dated November 7, 2008 at 5:02 p.m. and 5:05 p.m., for which reason it rejects its argument and on the contrary abides by the literal terms of that same agreement which clearly indicates that they are "guidelines," "terms of reference," in such a way that it does not constitute either a regulation or a contract, far less does it have the power to limit the activities of the experts in the performance of their work, since this could diminish the ability of the judge to assess the reality. Indeed, once a judicial inspection has been ordered, it is the responsibility of the judge to designate an expert "only when he considers it necessary"(art. 243 CCP), and the judge is required to designate one or more experts exclusively by the agreement of the parties (art. 252 CCP), and furthermore is not obliged to take their opinion into consideration (art. 249 CCP), and that contained in the second of article 262 of the CCP, in such a way that the procedural law is clear in indicating the powers of the Judge and the limits of the agreements which the parties to the case may reach, since the latter cannot override on the powers of the judge to conduct the proceeding. The actual function of the expert, as an assistant to the judge, and of the expert report, as well as his opinion in the case file, is to provide greater elements of judgment to assist in reaching a resolution which appropriately takes into consideration unfamiliar sciences or arts, and from there, although such opinions may be of assistance at the time of rendering a judgment, the Judge is not obligated to abide by his opinion in contradiction of his own opinion, that is, what an expert says or fails to say does not tie the hands of the judge, who is authorized to appreciate this evidence in accordance with the rules of sound judgment. Thus, non-compliance with such terms of reference cannot be considered *per se* a flaw in the proceeding and, as we shall see later in this document, neither can it be perceived as an essential error, since the judge is responsible for assessing the contents of the report in accordance with the rules of sound judgment and giving it the value it warrants. With this ruling all the motions by the parties in connection with the

aforesaid document that included the terms of reference for the experts in the judicial inspections have been ruled on; their arguments have been considered but not necessarily accepted in this judgment. In this context we begin the analysis of the existence of putatively contradictory expert Reports since even though the case record includes several expert reports issued by the various experts that have participated in the various evidentiary proceedings, the assessment of these reports has turned out to be a complicated exercise. This is both because of the technical nature of their content and due to the differing opinions put forth by each expert. These opinions apparently even contradict one another, as the defendant has alleged, and has requested on several occasions that other experts be appointed to settle these disputes, invoking Art. 259 of the Code of Civil Procedure, which provides: "In the event of discrepancies in the expert reports, the Judge shall appoint another expert, if he deems it necessary in order to form his own opinion," wherefore, based on that article itself, we note that before appointing another expert the judge must deem such appointment necessary to form his opinion. However, in the case file there is plenty of information with which the judge can form his opinion and any person with the evidence that has been submitted by the two parties to the proceedings (56 judicial inspections with the respective expert reports, 6 independent expert reports, testimony, documents and deposition), and even their apparent contradictions – and the resulting debates they have triggered – have served to better illustrate the reality in the eyes of the judge. Therefore, it was deemed unnecessary to appoint a third expert, which rather than offering greater clarity might trigger new disputes in the proceedings. Along these lines art. 249 of the Code of Civil Procedure explains that "The Judge may disregard the report of the expert or experts that is contrary to what he himself perceived with his own senses during the examination and order that a new inspection be performed by another expert or other experts." Giving preponderant value to the immediacy of the judge in the proceeding and stressing the discretion that the judge has to assess the various reports, appoint a third expert in the event that they are contradictory and/or order that a new expert opinion be issued when there is disagreement or when the opinion is contrary to what the judge has himself perceived, as the case may be. In the Ecuadorian procedural system, the judge is not bound to accept a report against his own conviction or to appoint a third expert to resolve alleged disputes. Thus, pursuant to the articles invoked, it has been decided not to order settlement because it is deemed that there are sufficient data in the various reports in order to shed light and

permit the judge to apply his reasoning and sound judgment; in addition, it is deemed that even though the judge is not bound to appoint a third expert to resolve the apparent disputes among the reports, the judge is bound to apply the principles of procedural economy and swiftness and forego the conduct of unnecessary proceedings. That is why art. 259 provides that a third expert be appointed only "if it is deemed necessary to better form his opinion," while if this condition is not satisfied because the judge believes that a third expert will not help him better form his opinion or because the new report would be inefficient, providing more data or opinions, the appointment of such third expert would not be admissible. Nevertheless, beyond the alleged contradictions, the parties to the proceedings have had the opportunity to be heard on each one of the more than one hundred expert reports submitted in this case, to request additional information and clarifications, and to express their rejections and challenges thereto. These have been considered by the judge in handing down this ruling so that, there are no inexplicable contradictions that could affect the opinion of the judge. With this ruling all the motions by the parties in connection with the apparent contradictions in the various reports on the judicial inspections have been ruled on; their arguments have been considered but not necessarily reflected in this judgment. In fact, the challenge to the various reports has been taken to extremes by the defendant, who has alleged the existence of essential errors in virtually all the expert reports that were not submitted by experts put forth by the defendant itself, showing lack of objectivity in its arguments, which when they have been put to the test have failed to convince the judge of the existence of errors of such magnitude that they would affect the actual integrity of the reports. So it is that we have 26 cases of alleged essential errors whose need to be heard and the consequence of a refusal to do so have been stated by Chevron in a motion of May 12, 2010, at 8:50 a.m. (pages 177499 to 177514), with respect to the 13 summary proceedings denied, and alleging that its right to defense has been coopted by limiting it solely to documentary evidence in the 13 summary proceedings filed, since Chevron wanted to file for several evidentiary proceedings of which it had been giving notice, as if they were ordinary proceedings. In the motion dated December 22, 2010, at 5:48 p.m., the defendant exercised restraint in summarizing the status of the proceedings in its motions on essential error, although we must note that it erred in affirming that it was an essential error that the summary proceedings were not initiated as was proper, since the judge ordered "simply that the evidentiary motions be added to the case record, and

without ordering as is appropriate under the law that the petitions in the various evidentiary motions be granted," since it is up to the judge to conduct the proceeding, and given that article 258 CPC states that essential errors shall be "summarily proven," in connection with art. 844 of the Code of Civil Procedure, it impedes the initiating of incidents that could slow down the proceedings, we have no doubt about the impossibility of initiating a new evidentiary phase as sought by the defendant within an oral summary proceeding so as to prove the existence of an alleged essential error that the law sets forth that shall be proven in summary proceedings rather than expeditiously. Therefore, it has been ordered that the evidence be limited to documents so that they may be incorporated into the proceedings without unnecessary delays, but that permit the claimant to state its arguments as it has done, although they have not been sufficient to convince the judge of the existence of such errors, as demonstrated below. With respect to the report on the judicial inspection of the Sacha Central Production Station by the expert José Robalino, whose motion on essential error was filed in a motion dated February 14, 2006, at 9:25 a.m. (page 93270), and a motion dated May 18, 2006, at 8:55 a.m. (page 108853), the issues refer on the one hand to irregularities in the sample taking or in the sampling methods, since according to Chevron's allegations, the expert should have used the aforementioned document "Terms of Reference" while on the other hand Chevron alleged the anachronistic use of law. Something very similar occurs with the report by this same expert with respect to the inspections of the Shushufindi 13 well, since if we accept the motion by Chevron dated April 17, 2006, at 2:50 p.m., (page 103678) whereby it alleges essential error regarding this report, we see that it alleges virtually the same thing with respect to the non-use of the "Terms of Reference" in the handling of the samples, on the one hand, and the retroactive application of the law, when it cites the "examples" of the errors in the text of its petition, although it adds an argument that the expert "minimizes the basic principle of the sanctity of contracts," which without a doubt constitutes a legal issue that should be assessed by the judge in this case rather than the experts, and finally Chevron states that the expert "makes affirmations of a legal nature" which were evident upon reviewing the reports but will not be considered in order to hand down this judgment precisely because they are outside the area of the expert's expertise. Chevron also alleged essential error against this same expert in his report on the judicial inspection of the Lago Agrio 2 well, in its statement dated May 11, 2006, at 3:45 p.m. (page 107691), it has literally repeated the motion on essential error in referring to "having engaged in the use of

erroneous legal and technical parameters with the express intention of inducing the judge to commit an error," it also repeats the arguments regarding the sanctity of contracts, alluding to the release that the government of Ecuador granted to Texaco and it also rejected assertions of a legal nature by the expert, and therefore the same reasoning is also applied in this case. In order to conclude the analysis of the motions on essential error regarding the reports by the expert José Robalino, we must refer to his report on the Sacha Norte 1 well and to Chevron's motion dated December 13, 2006, at 4:30 p.m. (page 124036), in which we again find the repetition of the same arguments, which, as we have made clear, it is incumbent upon the judge to analyze. We also find several motions on essential error against the expert Luis Villacreces in connection with his expert reports on the judicial inspections of the following wells: Shushufindi 18, in a motion dated May 30, 2006, at 3:20 p.m. (page 110536); Auca 1, in a motion dated July12, 2007, at 3:l0 p.m. (page 131347); Yuca 2B, in a motion by Chevron dated June 14, 2007, at 8:35 a.m., (page 130207); Cononaco 6, in a motion dated July 3, 2007, at 5:50 p.m. (page 130729); and Shushufindi 27, in a motion by Chevron dated May 30, 2006, at 4:10 p.m. (page 111063), in which we also find similarity of accusations and the same grounds for essential error as is the case of affirming that the legal standards applied by the expert are anachronistic, characterizing this as an "obvious essential error" (page 110541 for Shushufindi 18, page 131358 for Auca 1; 130235 and 130243 for Yuca 2B), or that he ignores the validity of the environmental remediation and the principles of law applicable to contracts (page 131347 for Auca 1; 130730 for Conocaco 6; 111073 for Shushufindi 27; 130235 for Yuca 2B); or that he does not use the sampling methods agreed to by the parties and approved by the Court (page 130730 for Cononaco 6) or set forth in the RAP (see pages 111074 for Shushufindi 27), all these issues have already been considered and are far from being considered errors in the essence of the reports. Continuing with the case of the expert report on the judicial inspection of the Shushufindi 7 Well submitted by the expert Francisco Viteri, pursuant to the petition by Chevron in its motion dated March 13, 2006, at 4:30 p.m. (page 100294), the expert is unaware of the existence of the RAP, violates the basic principle of the sanctity of contracts, issues legal opinions and retroactively applies laws. The same thing applies to the Sacha Sur Station expert report prepared by the expert Orlando Felicita pursuant to the petition by Chevron in its motion dated October 23, 2006, at 8:30 a.m. (page 121836), who is also accused the expert of applying "anachronistic legal provisions" of "being unfamiliar with the

legal instruments concerning remediation;" and also with the expert report on the judicial inspection of the Aguarico 2 well conducted by the expert Pilamunga on October 6, 2008, (page 151247) in which we find exactly the same arguments adapted to this report. In the case of the expert report on the Shushufindi 25 well, by the expert Fabián Mora Orozco, initiated upon the petition by Chevron dated March 13, 2007, at 5:l5 p.m. (page 126743), the case file shows that the expert has not been cited but we note that the purpose of such citation was to enable him to exercise his defense, it being noted that it is not necessary for him to exercise any defense whatsoever because there is no valid accusation against him, as one can see upon review of the arguments in this petition, such that the citation is a mere formality that did not constitute an impediment to the proper conduct of this process, nor did it prevent the expert from exercising his defense. With respect to the motions on essential error that have not been initiated, this is the motion against the report on the judicial inspection of Sacha 57 by the expert Robalino filed by Chevron on April 25, 2006, (page 89347); the motion against the report on the judicial inspection of the Lago Agrio 6 well by the same expert Robalino submitted on May 23, 2006, at 5:45 p.m. (page 109534); the motion against the report on the judicial inspection of the Shushufindi 21 well by the expert Francisco Viteri submitted by Chevron on March 13, 2006, at 4:26 p.m. (page 99982); the motion against the report on the judicial inspection of the Aguarico Station by the expert Villacreces, submitted on September 12, 2006, at 3:35 p.m.(page 119317); and the petition on the judicial inspection of the Shushufindi 4 well by the expert Robalino, filed by Chevron on January 19, 2006, at 3:05 p.m. (page 91289), one can see that in all the cases of the reports subject to complaint there is another expert report submitted by the expert put forth by Chevron itself, and there are also the statements by Chevron with respect to these reports and the petitions for clarification, and finally the statements on the addenda and clarifications, such that it is virtually impossible that an essential error would escape the eyes of the judge. Furthermore, since these cases that were denied are identical to those referred to previously, for which a special period for production of evidence was in fact initiated, the judge has become convinced of the non-existence of the alleged essential errors in all of them since the ineffective arguments are repeated. With respect to the motions on essential error against the reports submitted by the expert Marcelo Muñoz, an expert appointed by the Court not put forth by either party, in connection with the judicial inspections at the Auca 17 well filed by Chevron on July 16, 2009, at 3:30 p.m. (page 157637; at the Auca 19 well filed by Chevron on July 16, 2009, at 3:32 p.m. (page

157664; on the Auca Central Station on the same date at 3:34 p.m. (page 158555); on the Auca Sur Station on the same date at 3:36 p.m. (page 157730); also on the same date at 3:38 p.m. against the report on the Culebra Station (page 157759); on the Yulebra Station, also on July 16, 2009 at 3:40 p.m. (page 157777); on the Yuca Central Station at 3:42 p.m. (page 157801); and finally on July 16, 2009 at 3:50 p.m. on the Guanta Central Station (page 157820), one can see in the case file that Chevron petitioned for the appearance of the Court expert so he could be examined, as one can see in the registered public document found on page 159786. As one can see in the record, the expert responded to all the questions put to him by Chevron's attorneys, with only the issue of the application of anachronistic law remaining. On pages 158789 and 158790 one reads that shortly before the Chevron's examination of the expert Muñoz was completed, the judge intervened as follows: "Mr. President, addressing Dr. Campuzano, asks him: What question, what issue [put to] Dr. Muñoz has not satisfied you? Dr. Campuzano responded: basically, the part about the fullest application of Decree 1215 to work performed by Texaco in the environmental remediation from 1995 to 1998. That is to say, Dr. Muñoz has used as a reference the currently in effect decrees, but he is forgetting that the remediation done by Texaco from 1995 to 1998, and therefore subsequent laws could never have been applied, that is to say, legislation, a law that applies five years later, which is legally inadmissible, that is the petition by the defendant company." so that subsequently the judge, by an order dated July 27, 2010, that denied the initiation of essential error proceedings on the grounds that the expert had already appeared to respond to all the questions of the defendant. Although the provisions of this order have become final, we also note that the anachronistic application of the law as the basis for denouncing the existence of essential errors is without grounds since the experts have proceeded to comply with the judge's orders and those of the parties in applying the various criteria. It is incumbent upon the judge to assess the result of the reports in conjunction with the accusations of anachronism that have been abundantly alleged by the defendant. Thus, considering the above, in resolving this issue the Court takes into consideration the record of the defendant requesting 26 summary proceedings for alleged essential error. Challenges were made against almost all the experts who have worked in this court, whether proposed by the plaintiffs or chosen by the President of the Court, but no action has been requested against the participating foreign experts proposed by Chevron itself. This leads us

to believe that these allegations lack objectivity, and that the defendant has used these essential error proceedings as an in fact mechanism to challenge the evidence of the adversary, and not as a means to amend the record and correct real fundamental errors that could affect the decision in this case, which is the real purpose of such institution. Secondly, the Court finds that Chevron had multiple opportunities to prove the existence of the essential errors claimed, summarily and through interviews and/or documents filed with the Court, allowing the grounds and evidence that supported these claims to be evaluated. However, it has become clear that the alleged errors cannot be classified as essential because they do not affect the essence of the expert reports being challenged nor will they affect the judgment of the court. Finally, the Court finds that each of the reports alleged to contain essential errors will be evaluated alongside other expert reports, including those presented by the experts proposed by Chevron, and thus a truly essential error would become evident, preventing the court from making a decision influenced by an essential error in a report. Regarding the merits of these arguments, the Court notes that they are more concerned with disagreements on data interpretation and application of the Law by the experts, and therefore these claims will be taken into consideration when assessing expert reports. No legal criteria used or issued by any expert will be considered nor taken into account, and any claim that the expert reports challenged by the defendant suffer from errors that may be classified as essential or which may mislead this Presidency is definitely rejected. With this ruling, all motions by parties with regard to allegations of essential error in the reports of several experts are now considered to be resolved. The arguments within these motions have been taken into consideration but are not necessarily reflected positively in this ruling. In addition, the parties have challenged each other over the use of the Havoc and Severn Trent laboratories by their respective experts. This is based upon mutual accusations that the other party's laboratory is not qualified to do the work, which, they argue, discredits the samples. Official Letter-OAE 06-151, from Dr. Blanca Viera, National Director of Accreditation, of July 12, 2006 at 5:50 p.m. (pages 114413 and 114414), has been taken into consideration with regard to this issue, and in connection with it, what was stated by motion filed on August 16, 2006 at 5:05 p.m. (117232), to the effect that it records their official opinion and acceptance because they believe that the Ecuadorian Accreditation Agency (OAE) has endorsed the legitimacy

of the work and testing carried out by the HAVOC laboratory, which is the laboratory used by the experts proposed by the plaintiffs. However, the defendant, in its motion of October 29, 2007 at 5:22 p.m. (pages 133394 to 133399), has disputed these facts, stating that Havoc was not authorized to perform the examinations for this trial because the laboratory did not have these qualifications when it analyzed the samples taken during judicial inspections, and that contrary to what the plaintiffs assert, the above-mentioned official letter did not endorse the actions carried out by Havoc, so that, in keeping with the text of the official letter in question, the defendant argues that the Ecuadorian Accreditation Agency has no power to give authorization, but rather to give accreditation, and in this case cannot certify the laboratory because it has not been evaluated, but it cannot stop the lab from carrying out the work it does a detail that could not be considered an inherent defect in the reports. On this same issue, subsequently the defendant, in a motion by Adolfo Callejas on December 5, 2007, at 5:38 p.m. (133810), requested a ruling about whether there is any kind of accreditation for Havoc Cia Ltda. Laboratories, in response to which the plaintiffs then responded by invoking the principle of equality of the parties so that the same ruling should be given with respect to Severn Trent Laboratories, the one used by the experts proposed by the defendant, making it evident upon review of the record that Severn Trent has not received any certification from the OAE, but rather a similar certification issued abroad (see page 117500 onwards and related documents), which has also been challenged by the plaintiffs. However, despite the mutual accusations that seek to undermine the findings of the experts proposed by the other party, the Court finds that justice cannot be served if the samples are found to be invalid based on these formal objections. Thus the Court will take into partial consideration the sampling results obtained by the experts proposed by both parties, but will assess the results of the analysis as a whole while considering the allegations contained in the respective challenges. Official Letter OAE 06-151 states that according to the law, the lack of accreditation would not be an impediment to carrying out testing, much less to presenting the results at trial, but instead that the lack of accreditation signifies simply the absence of a formal recognition of the technical capacity of the laboratories used by the experts proposed by both parties. As previously stated, this fact will be taken into careful consideration. With this ruling, all motions by parties with regard to the laboratories and their accreditation are now considered to be resolved. The arguments within these motions have been taken into consideration but are not necessarily

favorably reflected in this ruling. Finally, regarding the practice of judicial inspections, as previously noted, the parties disputed even the most mundane aspects of the handling of the case, and the need emerged for the Court to direct the proceedings, prioritizing the service of justice. 3) Thus, although the defendant has argued that it has been caused irreparable harm by not being allowed to carry out 64 procedures requested by the plaintiffs, whose waiver of the 64 judicial inspections was accepted by the Judge of this Court in the order issued August 22, 2006 at 11:00 a.m. (page 117589), which has been ratified on several occasions and became final. However, certain criteria issued by the defendant have been left awaiting a ruling, such as that stated in writing by Chevron in its motion of August 25, 2006 at 5:00 p.m. (page 118518), where it stated against this court that "Your Honor, from your acceptance of the claim of the plaintiff to waive the performance of judicial inspections ... it can be concluded that either the court has been misled, or that as its order is a resolution that not only addresses the progress of the proceedings, but also ... the court has jumped to conclusions and has favored the plaintiff ..." The defendant arrives at this conclusion based on the false premise that the waiver of inspections carries with it an acknowledgment by the court that the allegations by the plaintiffs have been proven, which is completely false, and has never been explicitly stated nor implied by any of the judges who have assumed jurisdiction in this case. When accepting the waiver, it is on the record that the judge simply accepted it, without any "accompaniment" or implicit recognition of any kind with respect to the claims of the plaintiffs. According to art. 114 CPC, each party must prove the facts it alleges, while the court must rule on the merits of the proceedings, so that implicit recognition has no place in the evidentiary stage, but rather the express recognition of the proven facts must be explained and reasoned in the final ruling. Thus, if the plaintiff has failed to produce evidence to convince the court, the court's ruling will indicate this and reject the claim of the plaintiff in whole or in part. It is noted that in the processing of this waiver, the motion of July 24, 2006 at 2:35 p.m., included a request in which the defendant "politely asked for new dates and times to be scheduled to carry out each and every one of the aforementioned judicial inspection procedures," referring to judicial inspections requested solely by the plaintiffs, and that

despite the fact that such procedures were not requested by Chevron at the appropriate procedural time. This new request was based on portions of texts submitted by the plaintiffs in which they talked about the principle of unity of evidence, and it was processed and denied in an order issued August 22, 2006, at 11:00 a.m. The defendant has repeatedly requested that this order be revoked, and this request has been denied and the fact that the order is enforceable has been ratified. However, what was stated in the motion filed on June 13, 2006, at 5:55 p.m. is also taken into account. There the plaintiffs address the principle of unity of evidence and its application to legal evidence, and the right of the party seeking evidence to produce or abandon it. It should be clear from the record that the defendant, Chevron, has been allowed to carry out all the procedures it requested in order to mount its defense and thus it is not accurate to speak of a lack of proper defense, irreparable harm, or favorable treatment to any party. These discordant phrases do not match the reality of the proceedings, which show on the contrary that the acts of the court in the conduct of this litigation have only prevented Chevron from assuming control of evidence requests that it did not make at the proper moment, requests in which it expressed an interest after-the-fact, one that is illegitimate and founded on a misunderstanding of unity of evidence. In this regard, the Court agrees with the words of Manuel Devis Echandia, who describes the principle of community of evidence as a consequence of the principle of unity, by clarifying that evidence "does not belong to the one that provides it and that it is improper to claim that it only benefits that party, since, once legally introduced to the proceedings, it must be taken into account in determining the existence or nonexistence of the fact referred to, whether it be beneficial to the one who provided it or to the opposing party, which may in fact invoke it" (see *Compendio de Derecho Procesal* [Procedural Law Compendium], Volume II regarding legal evidence). Therefore it would be a mistake to limit the impact of evidence submitted to the case file so as to only support the party that requested such evidence. However, we are clear that this does not imply in any way that a party to the proceedings may invoke this principle in order to appropriate an evidence request made by another, because the community principle applies to the evidence "once lawfully introduced into the proceedings." Therefore it is clear that an evidence request is not the same thing as "legally introduced evidence" and consequently such a request is not part of the proceedings, but rather belongs to the party who submitted it at the appropriate time. The case file, however, contains the plaintiffs' filing of December 15, 2006 (page 124894 to 124908), in which the plaintiffs, through a registered public document, ratify the waiver of inspections done by their defense attorneys, so that

this would gain final approval in a ruling dated January 22, 2007 (page 1256579). In addition, for the defendant, the motion filed on July 3, 2006, at 5:30 p.m. to which it makes reference in its motion of December 22, 2010, at 5:48 p.m., does not have any request requiring a response, and I would prefer to believe that this was an inadvertent error by the defendant to have included it on a list of matters to handle "before issuing a judgment." With this resolution, all filings by the parties related to the waiver of judicial inspections are deemed to have been addressed, the arguments of which have been taken into consideration but are not necessarily reflected in this ruling. In this way, to conclude the analysis of the pending matters related to the evidentiary stage, we must refer to: 4.2. Other Motions which contain pending requests related to mutual accusations of fraud, manipulation and alleged attempts to induce the court into error in various ways. Thus, in analyzing the accusations about the expert reports being tampered with or falsified, reports of inappropriate conduct by those collaborating with the parties, and lack of performance in evidence. In this order, we begin with the report of a) Falsification of the reports by expert Charles Calmbacher, filed by Chevron. The analysis of these facts may begin by noting that the reports by expert Charles Calmbacher were filed with the Court on time, added to the case file (page 52205 *et seq.* for the Shushufindi 48 report and at 46241 *et seq.* for the Sacha 94 report) and notice was given to the parties, who issued their position statements (see page 73145 for Chevron's position statement regarding Shushufindi 48 and 68452 for Chevron's position statement regarding Sacha 94). However, according to recent depositions of expert Calmbacher in foreign courts, which have been filed by Chevron with this Court in the filing of April 14, 2010, at 3:42 p.m. (page 168601 *et seq.*), in which he affirms that the reports submitted to the Court in the name of expert Calmbacher were not written by him, and that said reports would have been falsified and submitted without the authorization of the expert. Related to this subject, also having been incorporated into the case file are public statements given to the press by the expert (see plaintiffs' filing of July 7, 2010 at 5:15 p.m., page 185930 *et seq.*), where it shows that according to a note that was published in the newspaper *El Universo* in the city of Guayaquil, on August 17, 2004, "American Charles Calmbacher, industrial hygienist and toxicologist, indicated that despite the fact that Texaco stopped operating in the Amazon in the nineties, several health effects are now appearing because many

diseases have delayed effects of up to twenty years" (page 185945), due to which in handling the request by Chevron that the Sacha 94 and Shushufindi 48 expert reports be stricken from the record, and considering the gravity of the accusation, but also the fact that there is no reason for what Dr. Calmbacher has said, since it is obvious that he has been left with a sense of resentment on a personal level against the plaintiffs' team due to labor and money issues, in addition to his apparent contradiction with public statements, and since he has not been able to be reexamined, as well as to avoid potential contradictions or harm on an issue that it has not been possible to clarify, and without this affecting the integrity of the body of evidence, the comments and conclusions appearing as stated by Dr. Calmbacher shall not be taken into consideration for the issuing of this judgment, without impairment to other legal actions that the parties might pursue. B) As for the participation of the expert Richard Cabrera, in these proceedings, several excessively voluminous sets of requests have been brought relative to the lack of validity of his appointment or his report based on a very wide assortment of arguments, as we shall see below. For example, the case of participation of Cabrera in the company CAMPET as an argument to support an alleged conflict of interest, due to the fact that said company is, in effect, registered as a Petroecuador contractor, according to the accusation by Chevron in its filing of February 9, 2010, at 9:07 a.m. (pages 167039 to 167055). The defendant has alleged that there is a conflict of interest that would bar Cabrera's participation as a court-appointed expert due to the mere fact of his having participated in a company registered as a Petroecuador contractor, yet has failed to indicate how this participation would affect or benefit Cabrera's participation; on the contrary, it can be seen that this fact does nothing to block Cabrera's participation as an expert in these proceedings, and does not pose any conflict of interest, because, in fact, Petroecuador is not a party to these proceedings, nor does the registration as a Petroecuador contractor have any relation to these proceedings nor does it have any bearing whatsoever on the execution of the judgment. Likewise, the defendants, in their motion of May 21, 2010, at 4:35 p.m. (page 178982), have reported Cabrera's participation in the U.S. case, Arias versus DYNCORP, attributing certain statements to this expert which allegedly contradict what they have said in these proceedings and bar his participation as an expert. But upon reviewing the documents attached to the motion, it is apparent that cabrera was part of a team of professionals who participated in these proceedings in the U.S., without its being possible to attribute the conclusions of said work to him.

It is evident that an attorney who was also an attorney for the plaintiff years ago participated in this same lawsuit against DYNCORP, but he was not a party to these proceedings. These types of relationships do not pose any conflict for Engineer Cabrera's participation in this case, because the expert was named by this Court and not at a party's suggestion, directly by the Presidency of the Court from among a list of well-known experts, so that a history such as the one in question cannot constitute an obstacle for his participation. With regard to the lack of validity of the appointment and of expert Cabrera's report: It is on record throughout the case file that the defendant has filed a considerable number of motions requesting the quashing of expert Richard Cabrera's appointment and therefore of his expert report. The arguments for this supposed nullity have varied throughout the file, as in the case of the alleged defects in the expert's appointment, or the accusation that the plaintiffs used purportedly trumped-up reports by the defendants, or that the expert acted in collusion with the plaintiffs and their representatives. Concerning the first of these points, a review of the case file shows that there have been no defects in the appointment of expert Cabrera, or in the delivery of his report. There are no legal grounds whatsoever for quashing either his appointment or his expert report. It should be stressed that this issue has been resolved on several previous occasions, and no new evidence has been submitted that would suggest the existence of any grounds for quashing that appointment or expert opinion. Concerning the supposed use of trumped-up reports and a purported collusion with the plaintiffs, the Court assesses with extreme care the motion filed by Chevron on July 12, 2010 at 2:39 p.m. to which Chevron attaches a significant number of documents, e-mail contacts, several dozen videos and what it claims are their transcripts (in volumes 2011 to 2017, and others). Plaintiff has challenged the validity of these videos and their transcripts as "obviously manipulated evidence," alleging that they are only selected portions, edited and taken out of context from longer tapings which this Court has not been able to appreciate. However, due to the seriousness of the charges, and although the circumstantial evidence does not constitute proof, we must address the petition found at the end of this motion which, aside from making reference to the lack of validity for which we have found no legal basis, asks that this Court not consider expert Cabrera's report and also asks that the Judge "refrain from requesting the case file for ruling until at least December 1, 2010 and until Your Honor

investigates all the evidence related to expert Cabrera's fraudulent report." The latter petition would mean that this Court would suspend this proceeding based on a request from one of the parties that has a certain expectation in that period of time, which is contrary to public law, which orders that no incidental proceeding can suspend the verbal summary proceeding, which is the reason this petition was previously rejected. However, addressing the purpose of the defendant's motion that Cabrera's report not be considered, and endeavoring not to leave it in a state of defenselessness due to a lack of time that this type of trial cannot grant for submitting the evidence which would allow the defendant to prove its accusations against expert Cabrera and his expert report, the Court accepts the petition that said report not be taken into account to issue this verdict. C) With regard to the parties' mutual charges of inappropriate conduct by the opposing party's collaborators, the Court has analyzed Chevron's allegations regarding the acts of Mr. Steven Donziger, reviewing the defendant's motion of December 20, 2010 at 4:30 p.m. to which it attaches evidence obtained from the "plaintiffs' consulting U.S. lawyer," as it does in the motion of December 22, 2010 at 5:45 p.m. and others concerning this same issue, even though there is no indication in any part of the file that Mr. Donziger participated in this case, either as attorney or plaintiff or was in any way a procedural party. However, his ties to the plaintiffs' "legal team" are obvious, given his multiple public actions as the plaintiffs' spokesman. Nevertheless, according to our law, "Plaintiff is the party that files a complaint, and the defendant, the party against whom it is filed" (art. 32 CPC). Therefore, neither the experts nor their aids or any other support staff are parties to the proceedings. Hence, Mr. Donziger cannot be considered a party to these proceedings, nor are Mr. Donziger's acts binding upon the plaintiffs, nor can it be claimed that the plaintiffs should assume the consequences of those acts. Although Mr. Donziger is a practicing attorney and is in some ways linked to the plaintiffs, there is no record in the case file of any power of attorney granted to him by the plaintiffs to participate in their defense in this case. Therefore, insofar as concerns the merits of his statements, they are rejected – especially the unwarranted statements regarding the Ecuadorian Judiciary – and the Court does not recognize anything that Mr. Donziger might say or do when he is in front of the cameras or in any other act. No pressure has effectively been exerted on this Court. In addition, the Court notes that although it were to have the power

to judge Mr. Donziger due to his disrespectful statements, it could not do so based on such limited portions, chosen and edited from hours of taping, and without giving the accused to right to defend himself or explain the context of those statements, so that without detriment to the case file or prejudice to the parties' right to separately initiate the legal actions to which they believe themselves entitled, these charges are dismissed because they are not linked to a party to these proceedings. Similarly, we apply the provisions of art. 32 of the CPC to the charges made by the plaintiff against Mr. Diego Borja, who is the author of secret tapes used by Chevron's defense attorneys to charge the former President of this Court with supposed irregular conduct, as seen in the motion on pages 158420 to 158427, which was supplemented in the motion of July 13, 2010 at 8:48 a.m., denying that defendant's legal counsel had participated in planning the tapings, but acknowledging that "in fact, Diego Borja was an independent contractor of Chevron with a specific role." As a result of these charges, Judge Juan Núñez recused himself from the case and proceedings were initiated against him by the Judiciary Council. With regard to this issue, we note that the case file contains several dozen documents of different types signed by Diego Borja, all related to the samples collected and analyzed in laboratories by all experts suggested by the defendant, which unquestionably links him to the "team" that is defending the defendant. But just as with Mr. Donziger, his actions are not enough to consider him a party to these proceedings. If we consider the statements supposedly made by Diego Borja in conversations with Mr. Santiago Escobar, secretly taped by the latter and found in the transcripts submitted by the plaintiffs, we must understand that most of the samples collected by the experts suggested by the defendant have been manipulated (see motion of April 20, 2010 at 3:27 p.m. and its annexes), and they would lose all probative value. However, these tapes cannot be considered valid evidence because they were made secretly, just as Mr. Borja made them, which, despite everything, had the effect of putting the Ecuadorian judiciary in the center of a media scandal and delaying the proceedings. In addition, in the motion of April 20, 2010 at 3:27 p.m. (page 170980), the plaintiff acquiesced and asked that this evidence not be deprived of probative value, because it maintained that even despite the manipulation, it is proof of what was asserted in the complaint. This conduct, like Mr. Donziger's, is also reprehensible. However, according to art. 32 of the

CPC, Mr. Borja is not a party to the proceedings, nor can his acts or statements be attributed to the defendant. Therefore, sanctions against Chevron are not in order, and the parties retain their rights to separately initiate the legal actions to which they believe themselves entitled. e) To conclude, we must refer to what happened in the scheduled judicial inspection at the Guanta Station that had to be suspended at Chevron's request, which has provoked the most irate protests by the plaintiff. On page 81410, we find an official letter from Major Arturo Velasco, Head of Intelligence of GFE-IV-"RAYO," stating that "through information from the personnel of the Sucumbíos Intelligence Agency, it was learned that problems and incidents with the settlers and natives in the area of the El Guanta Station are anticipated on October 19, 2005. According to the information obtained by military intelligence, it is known that the intent is to detain the CHEVRON TEXACO executives and all others attending the judicial inspection by blocking the site's entrance and exit routes in order to force the signing of commitment documents for the delivery and fulfillment of several petitions." Therefore, he recommended that the activities in that sector be completely restricted because safety could not be guaranteed. This official letter was submitted at the office of the Clerk on October 18, 2005 at 5:00 p.m., followed by a motion from Chevron at 5:57 p.m. (page 81426) in which, referring to the official letter in question, it alleges "As you know, the guarantees needed to conduct the judicial inspection do not currently exist either in the area or at the site of that inspection [...] I have received instructions from my client not to appear at the aforementioned inspection [...] I respectfully request that the Court kindly suspend the inspection." This request was accepted by the Presidency, which subsequently provoked strong accusations from the plaintiff regarding manipulation and fraud by the defendant in using a bogus military report prepared at the request of the defendant itself. The Presidency notes that from page 93031 to page 93037 of the case file contain an official letter from the General of the Fabián Varela Moncay Brigade, Undersecretary of National Defense, remitting 6 standard pages with registered public documents bearing the respective official seals of the institutes concerning the aforementioned report of Major Arturo Velasco, in which Major Velasco himself states "Since I have been with this unit, the relations with the Texaco company executives have been good, mutually respectful, and with collaboration in various activities. On Tuesday, October 18 at approximately 1:00 p.m., a Texaco executive and

a service company worker, accompanied by a former colleague from the institution, Captain (R) Manuel Bravo, told me that they had to attend a court hearing in the El Guanta sector [...] that they had confirmed information that on their return, the roads were going to be blocked to demand a list of petitions and that their physical safety was at risk. In response, I told them that I could not provide them with military personnel for their protection, informing them that that is the job of the National Police. They told me that was not what they were requesting, that what they wanted was to have the court hearing suspended [...] and that they were asking for a member of the group's military intelligence to tell it to the Judge, to which I stated that I would do it myself. The Judge arrived and I told him that through military intelligence, we know that the roads are going to be blocked [...] I agreed to do so because he is my friend and I know that my captain [Bravo] is a serious man. The Judge assented, telling me that he would need a document from the institution indicating this fact [...] I told him that since he had already ordered the police, which is the agency in charge of that activity, it would be convenient to ask them [subsequently Captain Bravo] arrived at the office to ask me to help him with the document in order to at least make them see that the executives are going to have problems and, in view of his insistence, I agreed and I told him that the document is not backed by the institution, but rather is personal, and that I was doing it so that he could take the appropriate precautions [...] but only until the police report arrived; in addition, I told him that I could not deliver that document for any reason [...] I delivered the document to my captain, telling him that it had no validity because it did not bear the institution's logo; that it was only so that he could take precautionary measures needed for the safety of his executives, also that under no circumstances could it be disseminated." On this same issue, we can also read the report submitted by E.M.C. Colonel Miguel Fuertes Ruiz, stating that the Judge decided to suspend the judicial inspection based "on a report submitted by Major Arturo Velasco, Intelligence Officer (P-2) of the GFE-IV-DE-RAYO," indicating that through information from the AISU, they had learned that problems and incidents with the area's settlers and natives were anticipated during the aforementioned inspection. Major Arturo Velasco had provided that information at the request of Captain (R) Manual Bravo, a former military colleague of Major Velasco's, who worked at the company that provided security services to Texaco [...] It should be noted that no type of written or verbal information was provided by the AISU on problems or incidents that were going to occur with the inhabitants of the "El Guanta" sector during the judicial inspection." Hence, it is clear,

based on the statements of the document's author himself and of his superiors, that the content of Major Velasco's report is false in the part asserting that "through information from the personnel of the Sucumbíos Intelligence Agency, it was learned that problems and incidents with the settlers and natives in the area of the El Guanta Station are anticipated on October 19, 2005. According to the information obtained by military intelligence [...]," when in fact no type of written or verbal information was provided by the AISU on problems or incidents that were going to occur with the inhabitants of the "El Guanta" sector during the judicial inspection. This shows that the true and only source of information in Major Velasco's miniscule military intelligence report is Captain (R) Bravo, private security employee in the service of the defendant. With these antecedents, the Court has sufficient evidence to confirm that it was in fact misled by Chevron Corporation's attorney, Dr. Adolfo Callejas, when he asked the Court to suspend a judicial proceeding based on false information, or at least information that was manipulated and not corroborated by any official source, but was passed off as true and official, even though it did not have the backing of the military institution and being a document that could not be disseminated at its author's request, unquestionably issued on a personal basis and motivated in fact by a friendship and not by military intelligence information. However, the Court notes that even though this conduct of the defendant has impacted and hampered the processing of the case, because it caused the judicial inspection to be suspended by the ruling of October 18, 2005 at 5:59 p.m. (page 81531), it has not affected its final resolution. Therefore, it will simply be considered an example of procedural conduct upon conclusion of this final decision, the parties and/or third parties retaining the rights and actions to which they believe they are entitled and can exercise or are exercising in relation to this fact. We thus conclude the analysis of the parties' motions related to the processing of the case, declaring that all their legally acceptable petitions have been addressed, and we go on to the analysis of: 4.3.- New matters precedent. These are not dilatory objections raised in the answer to the complaint, but dilatory defenses that must be addressed by the Court because they have been raised by the defendant despite the fact that we are at a more advanced procedural point in the trial. Thus, even though the charges that several of the plaintiffs' signatures appear to be counterfeit, that the plaintiffs' attorneys lack a power of attorney, and even that the judge lacks competence due to the change of Constitution in 2008 appear to be

dilatory objections, they did not exist or were not discovered when the complaint had to be answered; therefore, they are considered as follows: a. Counterfeit signatures: With regard to Chevron's motions of December 20, 2010 at 8:50 a.m. and December 22, 2010 at 3:45 p.m. dealing with a handwriting analysis report from a foreign expert who is highly credentialed but has not been available to either the Court or the opposing party to be examined as would be proper prior to assessing his remarks, we see that the plaintiffs have ratified their participation in these proceedings on more than one occasion, so a handwriting inconsistency cannot be used as an argument to claim a forgery that the very author of the signature denies. The Court notes that not a single one of the individuals supposedly affected by the forgeries has supported Chevron's charge, therefore it is extremely reckless and evidence of bad faith toward the Court and the opposing party. The same thing applies to the allegations made by the defendant regarding the lack of "fingerprints," as argued in its pleading of December 22, 2010 at 3:49 p.m., because the lack of this formality is understood to have been remedied with the plaintiffs' subsequent acts, since a formality of this type can in no way hinder the administration of justice. The above also leads us to reject the accusations of false legal representation against the attorneys who have acted for the plaintiffs, Dr. Alberto Wray and Attorney Pablo Fajardo, who have appeared duly empowered by the plaintiffs and the Law in accordance with art. 40 of the CPC. B. Judge's lack of competency due to the change of Constitution. In the ruling of October 29, 2008 at 5:00 p.m., the Judge addressed a motion filed by the defendant on October 28, 2008 at 9:30 a.m. challenging the competence of this Court and requesting that it refrain from continuing to hear this case; the Judge denied that motion based on articles 11, numerals 3 and 75; 168, numeral 4; 172 and 426 of the Constitution. In addition, we see that page 151523 contains a resolution from the Financial Administration and Human Resources Commissions of the National Judiciary Council dated October 21, 2006, stating that "until the law regulating the makeup and functioning of the Judiciary Council is enacted and the Judiciary Council sets up the Provincial Courts of Justice and District and Criminal Courts, orders that the Superior Courts, District Courts, Criminal Courts and all other judicial offices continue to function in accordance with the provisions of the Basic Laws on the Judiciary, the National Judiciary Council and all other applicable laws insofar as not contrary to the Constitution." Moreover,

on pages 151525, this same institution clarifies that the designation of the Superior Courts must abide by the provisions of the constitutional rule, based on which the competence of the judges who were hearing cases was extended and they did not lose it in the cases they were trying. Therefore, these defenses are not legally admissible. 4.4. Chevron's objection to the experts hired by the plaintiffs to issue economic appraisal assessments for the plaintiff. We must address the fact that these experts have not acted as aids of the Court, nor have their assessments been considered as expert opinions; rather, they are third parties who were hired directly by the plaintiffs without the Court's involvement, even though it is true that the plaintiff committed fraud by using the work of Dr. Barnthouse, as Chevron charges in the motion of December 21, 2010 at 11:00 a.m. Along the same line of argumentation, Chevron refers to the Exhibit prepared by Dr. Allen, Dr. Picone, as seen in Chevron's motion of December 22, 2010 at 5:40 p.m., accusing the plaintiffs of ideological falsification of the content of the Exhibit, which would be a very serious offense committed by a party in a trial. The basis for this accusation is the Dr. Barnthouse testified that he reviewed expert Cabrera's report, but did not prepare a damage report himself, which is consistent what is stated in the plaintiff's motion of September 21, 2010 submitting precisely the Annex prepared by Dr. Picone, Dr. Barnthouse and several other annexes. The initial part of the motion states that the purpose of the brief is "to collaborate with the Presidency of this Court by providing him with our position with regard to the economic assessments applicable to the remediation of environmental harm. We hope that this document and its annexes give the judge a clear and up-to-date idea of the actual economic costs that repair of the harm caused by Texpet operations in the Amazon provinces of Orellana and Sucumbíos could come to entail;" while the motion ends by stating "To conclude, we would like to clarify that these economic assessments are submitted simply as a reference for the values involved in the repair of environmental harm such as those that can occur in this case, but this document does not define our claims or our ultimate aspiration in this." Hence, we see that the plaintiffs could not have wanted to "deceive" the Court with false damage reports, as the defendant alleges, because they clearly announced their intent when submitting the

documents and exhibits with economic assessments applicable to the remediation – not a damage report – in order to give the Court a clear and up-to-date idea of the economic costs; all in compliance with the Court's order of August 2, 210 at 9:00 a.m., which the defendant also obeyed within the respective term. Therefore, the accusation of ideological falsification is reckless, has no merit and is rejected outright. This resolution is applicable to the defendant's objection to the experts who authored the annexes, who are neither official experts nor aides, but rather independent hired experts, and should anyone consider themselves affected by any distortion in their statements or the misuse thereof, they may exercise the actions they deem appropriate; therefore the parties and third parties retain the rights to which they believe they are entitled to take legal action over this issue. 4.5 Sanctions on the attorneys for insults, slander and defamation. Innumerable motions were made by both parties during the proceedings asking the Court to punish the opposing party's attorneys for supposedly filing offensive motions. The Court notes that the case file contains various reprimands of different attorneys of both parties for having committed excesses or failing to show courtesy to the opposing party. Therefore, based on article 500 of the Penal Code, and understanding that this case has warranted a passionate defense by both parties, due to the fact that what was said in these proceedings has privilege and that the supposed insults have been mutually proffered, the Court invokes the adage commonly known as one insult wipes out another insult, or that an insult against an insult is a "draw," and therefore will not sanction any of the attorneys for the opinions expressed against the opposing party in the defense of this case, their right to exercise this action separately remaining intact should they deem it appropriate. However, this Court also had to reprimand the defendant's attorneys on repeated occasions for the accusations and terms used against this Presidency, in the person of the different individuals who have held this position, when they asserted and did not prove that the President of the Court supported the plaintiffs' attorneys in their "maneuvers," claiming that "This irregular situation of the expert's appointment for the "expert examination" has been full of defects which can only be explained by an undeniable and reprehensible collusion of interests" (see motion of December 13, 2007 at 9:10 a.m.), when the case file shows that no irregularity has been committed in that expert's appointment, to the point that even

the Human Resources Commission of the former National Judiciary Council issued an opinion in its resolution of February 20, 2008 at 10:44 a.m. in proceeding No. 240-2007-GC, initiated because of a complaint filed by the same Dr. Adolfo Callejas in his capacity as Chevron's legal counsel, with the same arguments he has used to accuse this Court of improper behavior, and which has been resolved stating in its pertinent part that "The infraction attributed to Dr. Germán Yánez Ruiz, President of the Superior Court of Justice of Nueva Loja, is the lack of probity or appropriateness in the appointment of an expert, incorrectly applying Art. 252 of the Code of Civil Procedure which indicates: "The judge shall appoint a single expert of his own choosing, from among those registered in the respective superior courts. However, the parties may elect the expert by mutual agreement or ask that more than one be designated for the procedure, which agreement shall be binding on the judge." In this case, each party suggested an expert, but these suggestions were challenged and no agreement was reached to elect just one. Therefore, the Judge, applying the aforementioned legal provision, decided to name a single expert; hence, his actions are within the constitutional guarantee of the independence which judges and courts have in the exercise of their jurisdictional authority, based on Art. 199 of the Constitution of the Republic, and no administrative infraction was committed for this reason." This shows that the accusation made against the Presidency of this Court is unfounded and gratuitous. And this has not been the only accusation; rather, on repeated occasions, references have been made to a "judicial lynching" supported by this Court, to the point that in the ruling of May 30, 2008 at 10:30 a.m. we see that the judge has rejected and has left inappropriate expressions in several motions filed by the defendant out of the case file: "Incorporate into the proceedings the motion filed by Dr. Adolfo Callejas Ribadeneira on April 18, 2008 at 4:48 p.m.; with respect to its content, the Presidency of the Court rejects the term denial of justice used by CHEVRON CORPORATION's Attorney because motions have been decided that abundantly have been submitted with respect to the issue of the sole expert report […]" and "Add to the case file the motion filed by Dr. Adolfo Callejas Ribadeneira on April 18, 2008 at 4:12 p.m. and with respect to its content be added to the record and be taken into account at the appropriate procedural moment, with the exception of the phrase "judicial lynching," which is not accepted because it is not true." And the Court had to warn Dr. Adolfo Callejas for another: "Incorporate into the proceedings the motion filed by Dr. Adolfo Calleja Ribadeneira on April 18, 2008 at

4:42 p.m.; with respect to its content, warn the Attorney who signed the motion to observe greater restraint and to refrain from making comments concerning the Judge's actions because, we repeat once again, the Judge is impartial [....]." These are not isolated incidents; rather there have been constant references to the Judge's prospective lack of impartiality throughout these proceedings which have even been repeated publicly by the defendant's spokespersons, and various affronts to his judgeship have come to Judge's attention, which will also be considered for issuing this final decision. 4.6 Lastly, with regard to the motions concerning the nullity of previous rulings that are final and conclusive, whose revocation has been requested more than once, the Court observes that art. 291 of the CPC states "Once the reversal, clarification, amendment or amplification has been granted or denied, it cannot be requested a second time," which applies to the motion of December 21, 2010 at 10:50 a.m. dealing with an issue that has already been addressed; therefore, the aforementioned rulings of Dr. Yánes must be observed. It also applies to all other pending cases of revocation, amendment or clarification that might remain outstanding and have been raised on more than one occasion. –**FIFTH.–** For that set forth in the preceding clauses of this judgment, there is no sign of any omission of substantive formality whatsoever, nor violation of the guarantees of due process or of procedure that could influence this decision; the summary verbal proceeding followed corresponds to the nature of the action for harm originating from an environmental impact; consequently the validity of the proceeding is declared. –**SIXTH.–** Considering the validity of the Law at the time this Presidency has reviewed the Ecuadorian environmental legislation in effect in the time in which Texpet carried out the Consortium's operations, highlighting the following provision: In R.O. No.378, dated December 17, 1921, the *Ley sobre Yacimientos o Depósitos de Hidrocarburos* [Law on Hydrocarbon Fields or Deposits] was published, in which was discussed the rights of the lessee based on the payment of a fee when the field was found on vacant land, and it specified that "The payment of this fee shall give the lessee the right to use, for the purposes of production and only in the amount necessary, the land, water, wood, and other construction materials that are found in the area of the contract, without depriving the villages and hamlets of the flow of water that would be required for their domestic needs and irrigation, without impairing in any way navigation, and without depriving the waters of their qualities of potability and purity and without [hindering] fishing." This Law was not in effect during Texpet's operations due to the fact that it was expressly repealed by the *Ley de Petróleo* [Petroleum Law], which was

published in R.O. No. 560, dated August 9, 1937, however its content should be taken into consideration, since this will be repeated, with certain variations, in subsequent legislation and in the concession agreements. The Petroleum Law would be in effect until 1971, that is, the year before the first barrel of Petroleum was extracted under the concession., which means that several wells had necessarily already been drilled while it was in effect, so these should have fulfilled its provisions, which ordered that the performance of the work had to be in accordance with the *Reglamento Técnico de Trabajos Petrolíferos* [Technical Regulations for Petroleum Work], which apparently were never issued as far as this Court has been able to ascertain, which means that, from the start of the Texpet operations until 1971, that is, the initial period in which a great part of the Consortium's facilities were built, there was no law in effect that established specific technical obligations that the operator should fulfill from the perspective of hydrocarbon technology, due to the fact that it was not until 1974 that the *Reglamento de la Exploración y Explotación de Hidrocarburos* [Hydrocarbon Exploration and Production Regulations] was published, in Supreme decree 1185, *Registro Oficial* 530 dated April 9, 1974 where it was specified that it was the obligation of the operator to "take all appropriate measures and precautions when performing its activities to prevent harm or danger to persons, property, natural resources and to sites of archeological, religious or tourist interest" (art. 41). However, for this time we must consider the fact that R.O. No. 186, dated February 21, 1964, includes the authorization for the Minister of Development, in the name and representation of the government of Ecuador, to grant Texas Petroleum Company a Hydrocarbon concession. This concession was granted by the military Junta of the government, considering "That the applicant company has all the necessary technical and economic resources to carry out an efficient exploration in the hydrocarbon field." In addition, the background information includes the fact that "Texas Petroleum Company likewise have expressed that they will assume joint responsibility with the two mentioned Ecuadorian companies, for all the obligations that the latter undertake toward the Ecuadorian Government, as a consequence of the transfer of the application of concession made by Texas Petroleum Company." From there it becomes clear the fact that one of the reasons that the Government of Ecuador authorized such a concession is the financial and technological capacity of the company Texas Petroleum Company, which agreed to be solidarily liable with the Ecuadorian companies. It is taken into consideration that the government guarantees the Concessionaire tranquil and peaceful possession of the lands which are national property, but protecting rights of third parties, in the

Sixth clause, which provides: “Possession of the area granted A) The Government, protecting rights of third parties, shall maintain the concessionaire in tranquil and peaceful possession of the lands that, being national property, were included in this concession.” On the other hand, the Tenth clause contains an important condition imposed on the Concessionaire’s right to use the waters in its operations: “The Concessionaire has the right, for purposes of this contract, to use the lands comprised within the areas that are the subject of clauses first and second, as well as the waters, timber and other construction materials that may be there, to destine them to the exploration, production, and development of their concession, without depriving the villages of the flow of water they require for their domestic needs and irrigation, or impairing in any way navigation, or depriving the waters of their potable and pure qualities, or hindering fishing.” Which implies that the use of the waters in the Consortium’s operations was permitted provided that they were not deprived of their qualities of potability and purity, which necessarily brings us to also consider the Thirty-Second clause, letter G) of which provides that the Concessionaire is required “To operate the concession employing adequate and efficient machinery for the purpose,” which has been constantly put forward by the plaintiff in its case, as will be seen later on. Likewise it is taken into consideration the fact that R.O. No.158, dated February 8, 1971, includes the Health Code, which contains the following rules of mandatory application, which were in effect for “any public or private matter or action” throughout the national territory:”Art. 1.– Health is the total state of physical mental and social well-being, and not just the absence of disease or disability. Art. 2.- All public or private matters or actions, shall be governed by the provisions contained in this code, in the special laws and in the regulations. Art. 3.- The Health Code governs in a specific and prevalent manner the rights and obligations and norms relating to protection promotion, repair and rehabilitation of individual and collective health.” These provisions would be applicable to the case at hand to the extent that we were to find negative effects on the rights to collective or individual public health, or also unfulfilled obligations or norms relating to the protection of these rights. Thus, with respect to what should be understood as “health,” this Court gives consideration to the concepts invoked, in the same way with respect to environmental sanitation one takes note of article 6, which says: “Art. 6.- Environmental Sanitation is the set of activities devoted to conditioning and controlling the environment in which man lives in order to protect his health.” While with respect to

prohibitions and obligations relating to the protection of health, we find that article 12 and article 25 contain similar provisions that envisage prohibitions on discharging substances into the environment, if they have not been treated until they are harmless to health: "Art. 12. No person may dispose of solid, liquid or gaseous wastes into the air, soil, or water, without prior treatment that makes them harmless to health Art. 25 Excreta, sewage, industrial waste may not be discharged, directly or indirectly into creeks, rivers, lakes, irrigation ditches, or any other watercourse for domestic, agricultural, industrial or recreational use unless previously treated using methods that make them harmless to health." These norms are mandatory for all persons, natural and legal, as article 16 expressly clarifies: "All persons are required to protect the water springs or water basins that serve the water supply, being subject to the provisions of this code, special laws and the regulations thereof." Likewise one takes into consideration "Art. 17 No one may discharge directly, or indirectly, harmful or undesirable substances in such a way that they could contaminate or affect the sanitary quality of the water and obstruct, totally or partially, the supply channels," to the extent that the substances dumped into the environment can be considered harmful, while to the extent that they can be considered toxic, corrosive irritating, flammable, explosive or radioactive, one will comply with what is provided in "Art. 29.– the possession, production, importation, sale, transport, distribution, utilization, and disposal of toxic substances and corrosive irritating, flammable or combustible, explosive or radioactive, products that constitute a danger to health, must be carried out under sanitary conditions that eliminate such risk and must be subject to the control and requirements of the pertinent Regulations." It is noted that although such regulations did not exist for the hydrocarbon industry, this is no hindrance to the prevailing obligation that such substances must be handled under sanitary conditions that eliminate such risk, so that we must evaluate whether the practices used by Texpet while it was operating the Consortium, such as the direct disposal into the environment of the formation water after a decanting process, are capable of eliminating the risks we have noted regarding the formation water. Concordantly, one takes note that the *Ley de Hidrocarburos* [Hydrocarbons Law] published in *Registro Oficial* No. 322 dated October 1, 1971, contains an express provision which imposes the obligation to "Adopt the necessary measures for the protection of flora and fauna and other natural resources," and " Prevent contamination of the waters , the atmosphere, and the

land" (see article 29, subsections s) and t), provisions that are similar, to those found in the subsequent codification of the Hydrocarbons Law, published in *Registro Oficial* No. 616 dated August 14, 1974 (article 30, subsections s and t) and in *Registro Oficial* No. 711, dated November 15, 1978, in article 31, subsections s) and t), being a constant in the hydrocarbon legislation in effect in Ecuador. One takes into consideration in a special way all these norms mentioned up to this point because they were in effect before the first barrel of petroleum from the Ecuadorian Amazon was produced in 1972, until then the Ecuadorian Amazon was known for being a zone free from all industry and human contamination, except for the ancestral arts of the peoples who lived there, so that we can have the certainty to reasonably assert that there is no doubt about the purity of the water up until that year, this purity of the water being a characteristic or condition that everyone has been required to protect since 1971. Then, along with the initiation of petroleum production in the Ecuadorian Amazon, the *Ley de Aguas* [Water Law] was promulgated, published in *Registro* No. 69, dated May 30, 1972, article 22 of which says: "All contamination of the waters that may affect human health or the development of flora or fauna is prohibited," so considering that pursuant to that which is established in its first article, the provisions of the Water Law governed from that date the use of maritime water, surface water, groundwater and atmospheric water in the national territory, in all their physical states and forms (article 1), starting on that date all contamination of water sources was prohibited, and also establishing that the "Right to use shall mean the non-transferable administrative authorization for the use of the waters with the requirements prescribed in this Law" (art. 5), so, concordantly, the right to use the waters granted to the operator in the Tenth clause of the 1964 Concession contract, which established the Concessionaire's right to use the waters without depriving them of their potability and purity, was also subject to the provisions of this law. If we analyze the Water Regulations, published in *Registro Oficial* No.233 dated January 26, 1973, we can find a definition of contaminated water in article 89, which says: '"Contaminated Water' is considered all that flowing or not which shows deterioration of its physical, chemical or biological characteristics, due to the effect of any element… and that as a result is totally or partially limited for domestic industrial, agricultural, fishing, recreational and other uses;" and another of what is considered "harmful change," in article 90, which says: "'Harmful change' is considered that which is produced by the effect of contaminants or

any other action susceptible to causing or increasing the degree of deterioration of the water, changing its physical, chemical or biological qualities, and , moreover, by the short-term or long-term harm caused to the uses mentioned in the preceding article," definitions that will be considered later on when evaluating the probative elements submitted by the parties. With respect to the Contract of August 6, 1973, on page 3292, in volume 33, there is a motion from Dr. Adolfo Callejas, Legal Counsel for Chevron, submitted on October 27, 2003, at 5:00 p.m., wherein invoking the aforementioned agreement the defendant points out: clauses 46.1- which says verbatim: "The Contractors shall adopt all convenient measures for the protection of the flora, fauna, and other natural resources, and shall also avoid contamination of water, atmosphere, and land, under the control of the pertinent organizations of the State" (emphasis was added by the defendant in its motion). This makes clear two elements that deserve the analysis of this Court: 1) that there was an obligation to employ, appropriate means to protect the environment, and 2) that the State had oversight and control authority. The obligation to employ the appropriate means to protect the flora and fauna will be considered later on, when we refer to the operational practices employed by the defendant and to their results, in order to evaluate in this way the effectiveness of the measures employed by the defendant to prevent harm to the environment, it must be put forward that the public interest in an industry does not contradict the obligation to use all means available to prevent harm, just as it does not release the industry from its obligation to remedy the harm caused to third parties. On the other hand, with respect to control by the pertinent State entities, it should be noted that the State's authority and/or obligation to control and/or oversee in no way implies that a potential and reprehensible inactivity by the public entities, would release the controlled entity from liability. Likewise, we have not found a legal basis that supports the theory that the liability of the controlled entity would be transferred to the controlling entity in the case that this entity failed in its duty to control. This is consistent with the theory that the administrative authorization of an activity does not impose the legal duty on those who are harmed to put up with them, especially when the technically and economically reasonable possibility of decreasing the occasional impacts has existed (see ruling No.589/2007 of May 31, Civil Division of the Supreme Court of Spain– RJ/2007/3431).It is understood that the permit or administrative authorization of an industry with instructions to prevent environmental harm is one thing, as happens in this case; and another very different thing is the existence of said

authorization implying that its holder can make a harmful use of the same, or even less still avoid having to answer to third parties for harm. Not even compliance with or observance of the industry regulations and other administrative norms exempts the industry from remedying the harm it causes, since these are cases in which objective liability prevails. With respect to the rest of the norms of this Contract, referring to the Government's inspection and oversight obligations, as well as its power to approve production rates and other related aspects, compliance with or violation of them will not be analyzed, since it is not within our purview to rule on the contractual relationship between the Government and the defendant, but rather on the harm allegedly caused by the manner in which the defendant operated the Consortium, regardless of the actions or omissions of the State, which has expressly protected the rights of third parties, in the Sixth clause of the aforementioned 1964 Contract. Finally, because of the special field of the subject matter, the *Reglamento de Operaciones Hidrocarburíferas* [Regulations on Hydrocarbon Operations], published in *Registro Oficial* 681 dated May 8, 1987, which indicated that "The operating company as well as the subcontracting companies engaged in hydrocarbon activities, pursuant to the laws and regulations for protection of the environment and in accordance with international practices in connection with preservation of the ichthyological resources and the wealth of the agricultural industry, must prevent any kind of environmental contamination stemming from their operations that could cause harm to human life and health, flora and fauna," are taken into consideration. The content of all these cited norms enables us to understand the legal framework that was in effect at the time, and consequently we can conclude that pursuant to the legal provisions in effect at the time Texpet was operating the Consortium, any form or mode of contamination resulted in a violation of law, so that incidents of minor or accidental contamination, related to hydrocarbon operations, would create liabilities that had to be compensated for also minor, in proportion to the harm caused, while the major incidents or the implementation of contaminating practices continuing over time would generate obligations corresponding to the magnitude of the harm. Under this mechanism most of the minor harm would go unnoticed in practice and would not require any remediation, nor in practice would actions be initiated to pursue compensation, for example, of a person who has contaminated the waters with the soap that washes clothing. These cited legal norms created a very reasonable legal system for environmental liabilities, since it established potential liabilities directly related to the harm caused, incentivizing caution as a means for reducing

the potential liabilities themselves and thus avoiding liability, and moreover establishing the positive legal mandate of adopting the appropriate measures to protect the flora and fauna. Thus any person, natural or legal, would have to address and answer for significant liabilities when that same person has created them, which is completely rational and just under any legal system. This Court does not find legal support for the fact that the defendant has asserted that the laws of the time in which the Consortium operated were inapplicable or impracticable, since such indifference on the part of the defendant toward the legal mandates in effect in Ecuador contravenes what is provided by the norms of the Civil Code which in its first article makes it clear to us that the Law is a declaration of sovereign will which, manifested in the manner prescribed by the Constitution, mandates, prohibits or permits, and in this case, the mandate of the cited laws was to take the appropriate measures to protect the flora and fauna, and general prohibition of contaminating the waters or proving them of their qualities of potability and purity. According to the norms that govern the interpretation and enforcement of the law which, in its Preliminary Title, Paragraph 4 regarding Judicial interpretation, provides in "The words of the Law will be understood in their natural and obvious sense, in accordance with the general use of the words themselves" (second rule of article 18), consistent with the first rule, which tells us that "When the meaning of the Law is clear, its literal content will not be disregarded, on the pretext of consulting its spirit." This first rule also tells us that "one can in interpreting an obscure term of the law, refer to its intent or spirit clearly manifested therein, or in the reliable history of its establishment," therefore supposing that one could find obscurity in the Mandate of the cited laws, we can affirm that the purpose or spirit of the legislation invoked in this ruling is clearly to prevent contamination, not to authorize it. The spirit of these legal regulations being so evident in the judge's opinion, and considering that article 13 provides that "The law is binding on all inhabitants of the Republic including foreigners: and ignorance of the law does not excuse anyone," we can say that under the law the defendant was obligated to comply with the legal mandates that have been set forth. Regarding the use of certain operating practices and compliance with the law in effect during the period of the consortium, upon close observation of Dr. Alberto Racines' participation in the representation of Chevron, during the inspection of the Yuca Sur Station he stated that, "The special reason for this I repeat, what I am getting at, is that Texaco in the time of it operated this station and all the stations of what was the former consortium and is now

the exclusive property of Petroecuador—what Texaco did was install a similar system, a system of pits in which further separation was carried out in each pit, hydrocarbons from water, and then there was a process of decanting of the elements that contained water, which were the heavier elements, and they sank, and the water flowed until it met certain standards, which, if I am not mistaken, did not exist at that time, at least in Ecuador. But complying with certain levels allowed for discharging that water into the environment, which was the practice, because the problem here is that whenever we talk about the way Texaco disposed of production water, it is always talked about as if the Wash Tank drained directly into the environment, which was never true. Historically, on all occasions, on that matter, I requested that the Expert perform an investigation of this matter, which is not very hard to do, because it is easy to see the construction plan. In the end, the General Hydrocarbons Bureau and the Ministry of Energy were the ones who always approved all the construction on the stations and the works carried out at the stations; there was an established procedure for discharging water into the environment; it was not discharged directly into the tanks, which is what is always said, it was discharged after the water was treated, which included oxygenation and aeration, which was the best way to naturally separate the elements found there. Unfortunately, seventeen or eighteen years after Texas stopped operating here, we do not know either the standards or the way, or the level of elements contained in the water discharged by Texaco, how it was discharged from those pits, nor will we ever know that, but we do know what the water from here contains, what was the process that gave rise to it, in order that the water meet certain parameters, which are now regulated." It was observed that this attorney stated to the Court that after the process he described, "the water flowed until it met certain standards, which, if I am not mistaken, did not exist at that time, at least in Ecuador," and repeated the idea that Texaco was complying with parameters even before they existed, when he maintained that the entire process was used "in order that the water meet certain parameters, which are now regulated" but consequently; they were not regulated earlier. This attorney is in fact correct when he states that at the time of the Consortium, the "standards" he referred to did not exist, and it is true that today, we will never know, "the level of elements contained in the water discharged by Texaco." However, the attorney's argument is not admissible: neither said lack of "parameters" nor the state supervision provided exempt Texaco from its obligation to comply with the legislation in effect, which required the oil company to operate using mechanisms to avoid harm to the flora and fauna, and

to refrain from removing from the water its qualities of potability and purity in order to comply with a clear, express, mandate. This does not require any regulation or parameter whatsoever. Instead, the Court must observe the knowledge the defendant had of the potential harm that could be caused by formation water after the treatment applied by Texaco in the Consortium, since it is clear that this knowledge would have had to be an integral component of the procedure established for proper evacuation of the water into the environment if Texaco was attempting to comply with the legal regulations invoked. Thus, the solution to this debate cannot be to ignore the Law in effect, as suggested by Chevron's defense attorneys, since the lack of regulations cannot be understood as implied authorization to remove purity from the water or to use practices that have put the health of individuals at risk. Moreover, the Court may not take cover behind a potential lack or obscurity of regulations in the administration of justice, since, as is stated in our binding precedent: once a civil suit has been filed, the Court must arrive at a resolution of it; it may not suspend or deny the administration of justice either on account of obscurity or an absence of the law, as is set forth in Art. 18 of the Civil Code (see *gaceta judicial* [judicial gazette], Year XXXV, Series V., No. 127, page 3025. Quito, March 21, 1936). Concurrently, it is set forth in Art. 28 of our Constitution, which provides that "judges, in the exercise of their functions, will be limited to judging and overseeing the operation of courts, subject to the constitution, international instruments on human rights and the laws of the Republic. They may not be excused from exercising their authority or handing down decisions over which they have jurisdiction due to a lack of regulations or obscurity thereof, and they must do so subject to the legal system, on the basis of the issues. The general principles of law as well as the opinion of legal scholars and binding precedent will serve for interpreting, integrating and delimiting the scope of the legal system, as well as for withstanding the lack or inadequacy of the legal provisions that regulate the matter." Thus the obligation of the judge is understood: to apply the law in effect at the time when the Consortium operated to the acts of the defendant company, based on a literal reading of the legal provisions invoked. Therefore, any discharge that could remove from the water its qualities of potability and purity or could harm flora and fauna, cause harm or threaten to do so to various individuals, would be an act contrary to the Law, even if Texaco thought the law did not apply to it. This is because it was established in the law that its application was mandatory, and there are no legal grounds that allow that the possible lack of regulations is sufficient justification to deny the application of the laws in effect during the period in which the Consortium operated. Moreover, it is suitable to

settle another matter debated in this lawsuit, since several of the different experts who have participated in this lawsuit have drawn up reports considering quality parameters currently in effect, which led to anger and claims by the defendant, whose defense attorneys invoked the principle that the law may not be retroactive, which would prevent the acts of their client from being judged under the provisions of laws that were not in effect in that period. It is in fact recognized that it would violate the most basic principles of justice to judge the acts of Texpet under the provisions of laws in effect today. This being the case, considering with due caution the retroactive application of the law, it is advisable to clarify that such parameters were not used to judge the acts of the defendant. It is evident that at the time of the operations, the operator of the Consortium did not have to comply with parameters set in laws in effect today, since they did not exist at that time. As we can see, the law in effect in the period in which Texaco operated through Texpet in Ecuador did not establish parameters, standards, or maximum tolerable limits. However, in environmental matters, they required the use of the appropriate measures to protect the flora and fauna and prohibited contamination of the water (Art. 12 and 17 of the Water Law), in addition to the provisions of the Civil Code, which establishes sources of obligations, as we shall see below. The laws in effect in that period established positive obligations, as follows: Art. 71 of the Hydrocarbons Act of 1971 imposed the obligation "to adopt the necessary measures for the protection of the flora and fauna and other natural resources," and "avoid the contamination of the waters, the atmosphere and the land" (see Art. 29, literals (s) and (t)); Art. 41 of the Regulations on Hydrocarbon Exploration and Production, in Supreme Decree 1185, published in the R.O. No. 530 on April 9, 1974, provided that the operator had the obligation "when it carries out its operations, to take all precautionary steps and measures in the situation to avoid damage or hazard to individuals, properties, natural resources and sites of archaeological, religious or tourist interest;" Art. 16 of the Water Law requires that "Every person is required to protect hydrographic sources or catchment areas that serve as a water supply, subject to the provisions of this Code, special laws and their regulations." Article 32, paragraph (g) of the 1964 contract states that the concessionaire is required to operate the concession using machinery that is suitable and efficient for the purpose of the contract." From that perspective, it is understood that this Presidency is aware of and agrees with the experts recommended by the defendant that there were no laws with numerical provisions, as explained above it must also be considered

that this lack of regulations or numerical standards does not render ineffective the other laws promulgated in that periods which is why all the obligations set forth above were in effect and were enforceable against operators of the Consortium which known "the level of elements contained in the water discharged by Texaco," the argument is not admissible that either said lack of "parameters" or the State supervision exempted Texaco from its obligation to comply with the law in effect, which required the oil company to operate using mechanisms to avoid harm to flora and fauna and to refrain from removing from the water its qualities of potability and purity. In fact, the record shows that the regulatory agencies imposed several penalties on Texpet because its operations failed to comply with legal requirements. For example, there appears in the case file official communication 006047, sent by the engineer Rodrigo Cisneros General Hydrocarbons Manager in charge, to Texaco's Manager on September 10, 1975, which, referring to a spill, states: "That such negligence has resulted in an oil spill and contaminated the ground with oil, pursuant to the provisions of Art. 30, paragraph (t) of the Hydrocarbons Act, thus violating the law […]" (page 155543). This contradicts the allegation by Chevron's defense attorneys in this lawsuit to the effect that their client always complied with the law in effect in Ecuador. The same goes for official communication 01905, sent to the same Texaco Manager, Michael Martínez, on March 15, 1976, by the General Hydrocarbons Manager, imposing a fine on Texaco "for failing to adopt the measures necessary to avoid the contamination of waters in the Shushufindi Field in the Oriente Region" (page 155546). Also to be considered is official communication No. 004335 DGHOCR, sent by the engineer Guillermo Bixby on July 25, 1974, Mr. M.A. Martinez, Texaco Manager, written "for the purpose of requesting that you impart the appropriate instructions to the company you manage so that it will avoid contaminating the waters in the Oriente Region in the areas in which it is carrying on various tasks […]" (page 155526), and stating that there is a legal violation in progress, along with a request for the cessation of said violation. The mere existence of all these sanctions imposed on Texpet and the Texaco Petroleum Company by the Government of Ecuador through administrative acts, in addition to being evidence of legal violations, shows us to penalize the noncompliance of a clear, express legal mandate such as the one invoked by the administrative act at issue does not require any regulation or parameter whatsoever. That is why when we analyze negligence, beyond the existence of a legal obligation to prevent

harm to the environment, we must address the complaint's ability to foresee the potential harm it could cause with the operational practices it used when it was operating the Consortium (dumping formation water into the environment following treatment given by Texpet, or the use of open, uncovered pits), since it is evident that such knowledge had to be considered an integral component of any established procedure to discharge into the environment, in the event the latter intended to comply with the legal norms in effect at that time. Therefore, the solution to this debate cannot be to ignore the law, as Chevron's defense proposes, since the lack of regulations cannot be understood as implicit permission to defile the water, or engage in practices that have placed human health at risk. Moreover, the Judge cannot take refuge in any potential lack or obscurity of norms in order to administer justice, since according to our jurisprudence: "Once a civil suit has been filed, the Judge must resolve it; he may not delay or refuse to administer justice due to a lack of applicable laws or obscurity thereof, as provided by Art. 18 of the Civil Code" (see *Gaceta Judicial,* Year XXXV, Series V, No. 127 Pg. 3025, Quito, March 21, 1936). Art. 28 of the Constitution is in agreement, providing that "Judges, in the exercise of their duty, shall confine themselves to rendering judgments and ensuring that judgments are enforced, in accordance with the Constitution, international human rights treaties and the laws subject to their jurisdiction in the event of lack or obscurity thereof, and must do so in accordance with the legal framework applicable to the subject matter. General legal principles, as well as *doctrina* and case law shall assist in interpreting, forming and defining the scope of application of the legal framework, as well as to supply any lack of applicable laws or the insufficiency thereof." Understanding in this way the judge's obligation to apply the law in effect at the time the Consortium was operating to the actions of the defendant corporation, by virtue of the literal reading of the norms cited, all dumping that rendered water impure and undrinkable, or harmed the flora and fauna, harmed undetermined individuals or threatened them with harm would be against the Law, regardless of whether Texaco considered the law overly severe, since it has been established as a matter of law that compliance with the law was mandatory, and there is no legal basis for stating that any potential lack of rules is sufficient justification to deny the applicability of the laws in effect at the time the Consortium was in operation. We must also settle another dispute in this case, since several of the various

expert who have participated in this trial have and prepared their reports using environmental quality parameters currently in effect, giving rise to displeasure and complaints on the part of the defendant, which has argued in its defense the principle that the Law cannot be applied retroactively, which would prevent their client's actions from being judged based on the provisions of laws that were not in effect at that time. This Court indeed recognizes that it would be a violation of the most basic principle of justice to judge Texpet's actions based on the laws currently in effect, and therefore considering the retroactive application of the Law with due care, we clarify that such parameters have not been used to judge the defendant's actions. It is obvious that the law currently in effect does not contain the parameters that the Consortium operator was required to comply with at the time of its operations, as they did not exist. As we have seen the law in effect at the time Texaco was operating through Texpet in Ecuador established no parameters, standards or maximum allowable limits, but merely mandated that the necessary procedures be implemented to protect flora and fauna, and prohibited water contamination (articles 12 and 17 of the Water Law); in addition to the CC provisions that establish the source of the obligations, as we shall see in the CC provisions that establish the source of obligations of what is to be done, to wit: article 71 of the Hydrocarbons Law of 1971 imposed the obligation to "Implement the necessary procedures to protect flora and fauna and other natural resources" and "Prevent the contamination of the water, the atmosphere and the land" (see article 29,subsections s) and t);article 41 of the Hydrocarbon Exploration and Production Regulations, in Supreme Decree 1185, published in *Registro Oficial* 530 of April 9, 1974, which stipulated that it was the operator's obligation to "take all appropriate measures and precautions when performing its activities to prevent harm or danger to persons, property, natural resources and to sites of archeological, religious or tourist interest;" Art. 16 of the Water Law directs that "all persons are required to protect the water springs or water basins that serve the water supply being subject to the provisions of this code, special laws and the regulations thereof;" the Thirty-Second clause letter G) of the 1964 Contract provides that the Concessionaire must "operate the concession employing adequate and efficient machinery for the purpose." As such, although this Court is aware and agrees with the experts suggested by the defendant in that there were no laws with numerical provisions, as we have explained above, this Court is also of the opinion that this lack of regulations, or numerical standards, does not deprive

the other laws promulgated at that time of any of their validity and therefore all the obligations concerning what is to be done transcribed above were in effect and the Consortium operator was bound by them. Moreover, by way of a parenthesis we will say now that, as we shall explain later on, this Presidency has also refrained from using the legal references made by the various experts suggested by the parties in establishing a toxicity threshold. Lastly, having studied the law applicable at the time for this case, this Court considers that the use of environmental quality parameters in effect cannot be considered an essential error in any expert report, since for the purposes of the judgment the Court has not used said parameters to establish any violation or liability, but they have served as another reference parameter for the judge regarding the current condition of the environment in question in accordance with our own measure of reality. Without these tools, the Court would have no local reference of the degree of contamination or in the best of cases would have been forced to limit itself to referencing the norms of some other country with a different from our own. We must emphasize that the use of environmental management instruments in effect does not even necessarily correspond to the levels the remediation must achieve, since this Court takes into account that the complaint requests the removal and proper treatment and disposal of the waste and contaminating materials still remaining in the pits and ditches dug by Texaco, and the cleanup of the rivers, streams, lakes, marshes and natural and artificial waterways, and understands that said claim does not necessarily involve using the laws currently in effect as reference parameters to be met in said remediation, and as such this Court has used them as simply another reference parameter, among all those provided by the parties ,in determining the possible existence and magnitude of any environmental harm. –**SEVENTH**.– CIVIL LIABILITY, THE BASIS OF OBLIGATION. Pursuant to article 1480 of the Civil Code, one of the many ways obligations may arise is as a result of an act that has injured a person or his property, such as delicts and quasi-delicts; in other words, due to unlawful acts governed by Title XXXIII, Fourth Book of the Civil Code (articles 2241 through 2261). Said articles provide that an act that has injured or harmed another is a source of obligations, but it is fitting to cite one of the most studied judgments in Ecuadorian law, that rendered by the First Civil and Commercial Chamber of the Supreme Court of Justice, on October 29, 2002 and published in R.O. 43 of March 19, 2003, which explains that “The Civil Code, which has followed classic doctrine,

considers unlawful acts to be not only the personal acts or omissions of the responsible party who intentionally or culpably causes harm to a third party (articles 2241, 2242, 2242, 2244 and 2245), but also includes harm caused by persons in their charge, or care or dependent on them (articles 2246, 2247, 2248, 2248 and 2252), or from the things that are their property or to which they help themselves (articles 2250, 2251, 2253, 2254 and 2255)" from which we infer that direct fault on the part of the responsible party is not required in every case, but that in many cases fault is assumed through the acts of third parties or harm caused by things the responsible party makes use of. Thus, the judgment continues: "Article 2256 of the Civil Code contemplates, as we shall analyze later on, extra-contractual civil liability for risky or hazardous activities in which negligence is presumed, which relieves the victim of the need to provide evidence of negligence, lack of care or skill; and the burden then rests on the defendant to prove that the event occurred as a result of *force majeure*, an act of God, the intervention of an extraneous element or the exclusive fault of the victim." It is worth remembering that article 2256 of the former codification of the Civil Code, is now numbered 2229, and is referenced in the first few lines of this judgment as the grounds for this complaint which claims the remediation of harm caused by the oil operations conducted by Texpet in the Concession, such that, since extra-contractual civil liability for hazardous activities has been invoked, this Court must examine whether the requirements have been met for this law to apply. For the analysis of such a delicate and complex issue we will once again use the analysis done by the First Civil and Commercial Chamber in the aforementioned judgment, since it provides a careful and brilliant analysis of each of the aspects that must be considered in Ecuadorian legal procedure, as follows: "For extra-contractual civil liability to exist, the following three assumptions or elements must be present: 1. Physical or moral harm or prejudice; 2. Established or pre-existing negligence; and 3. A causal link between the two." As such we shall proceed to examine each of these three elements, as follows. 1. The harm: the judgment of the First Chamber tells us that "Harm as a physical fact is different from legal harm. The latter only exists when certain mandatory criteria are met, which must occur together to the detriment of the injured party. Harm is legal, and therefore remediable, only when it is certain. The certainty of its existence is an indispensable assumption, since only harm that has been properly proven can give rise to liability. Those that are hypothetical or possible

are not subject to compensation. With regard to harm, it does not suffice to claim injury in the abstract or as a mere possibility; proof of real injury actually suffered is required; harm that has not been demonstrated in proceedings, with persuasive elements revealing an actual injury, do not legally exist." Therefore, we must face the fact that it does not suffice to claim harm; rather, for the purpose of liability, it is necessary to prove it precisely since it will be reparable when it is true. To this end, this Court observes that a large quantity and variety of harms have been claimed and that there are several hundreds of bodies of evidence that must be evaluated before it is possible to give a duly justified opinion regarding the existence of a real final injury that has actually been suffered. For this justified reason, an analysis of the existence of legal harm shall be presented later, when the evidence is assessed as a whole, without forgetting that this is a requirement for civil extracontractual liability which, if constituted, would complete this analysis. However, over and above the establishment of legal harm as such, this Court will consider that the harm may be present or future, as indicated by the First Chamber, which makes it clear to us that "The first thing is what has already occurred, what has been consummated. The future is what has not yet occurred, but already appears as the foreseeable extension or aggravation of real harm, according to the circumstances of the case and life experiences. Future harm is only established to the extent that it appears as, at least, a probable consequence of the prior deed when it is objectively known that it will occur within the natural and ordinary course of things." For this reason, when assessing the evidence, this Court must carefully study, the reasonable possibility of new harm appearing as a result of the prior deed. 2. Fault: With respect to the second element, we believe that extracontractual liability may be subjective or objective, due to fault or intentional misconduct; therefore, with respect to fault, it is appropriate to study the intent and awareness of the defendant in relation to the harm claimed, bearing in mind the decision used by us as a basis for this analysis, which tells us that "civil tort liability, in our body of laws, is in essence fault-based; meaning that it requires the presence of culpability as an indispensable element for its existence. Culpability explores the relationship that exists between the subject's intent and his act. Said intent is classified as deliberate when the subject wants [to commit] the act. And the consequences thereof, which are normally foreseeable, and it is culpable when the agent causes harm without intending to do so, while acting with imprudence, negligence or

a lack of skill, and, one may add, with the violation of legal or regulatory provisions. It is a concept in contrast with intentional misconduct because, while the fault refers to the act or omission that causes harm without intending to do so, with intentional misconduct, the offense is incumbent upon the harm caused *per se*. Simply put, fault consists of the omission of the conduct that may be required of the person committing the act. It is conduct contrary to the duty to prevent the foreseeable consequences." Within this framework, one observes that the plaintiff has repeatedly claimed that the defendant was legally obligated to prevent the harm that they assert was caused, besides the fact that they have asserted that the defendant had knowledge and awareness of the consequences of its conduct. These two aspects, if confirmed, would affect the level of fault, with the possibility even of constituting malicious conduct. Beginning with the alleged obligation that the defendant had to prevent harm to the ecosystem and to human health, in reviewing the laws in force at the time of Texpet's operations in Ecuador, we find that said obligation actually existed and was binding upon Texpet, thereby making it requirable conduct, meaning there is a legal obligation to carry it out. However, the defendant has argued in its defense that "It is not legally acceptable, then, based on what has been stated, to attempt to question in this complaint the conduct of TEXPET, as consortium operator, without properly supporting the reasons for such attack, as is required by Ecuadorian procedural law. The public settlement documents to which I have referred, as well as the various types of audits conducted while the 1973 concession Contract was in effect and after its termination, allow us to state that TEXPET acted as Consortium Operator in the manner so allowed and authorized by the government entities charged by law with directing and implementing the hydrocarbon policy formulated by the Ecuadorian Government, which complied with the terms of the mandate granted to it by the companies holding rights in the Consortium, which subjected itself strictly to the stipulations of the 1973 concession contract, of the laws in force at that time and of what constituted the most adequate operating practices in the industry in the years of the 1960, 1970 and 1980 decades" (see conciliation hearing and answer to complaint at page 259); therefore, this Court has noted that Chevron's defense counsel not only asserts that it complied with all legal and contractual provisions in force, but also that it was operating with permission and under the oversight of the Government of Ecuador. Therefore, to go into this analysis at length, it is appropriate not only to conduct an analysis of the legal provisions in force during the years that Texpet operated, but it will also be necessary subsequently to study

the effect of possible government oversight or supervision of the obligation of the defendant company or of the rights of third persons. Thus, in relation to the first matter, we must remember that we have already seen the legal provisions that were in force in Ecuador; therefore, later, when assessing the evidence as a whole, compliance with said provisions shall be evaluated since it involves application of historic legislation to confirmed facts on file. If it is also confirmed that a provision has been breached, it would suffice to constitute another pillar of liability, fault, since it is understood to involve an omission of conduct requirable of the defendant. Secondly, with respect to oversight or control by the Government of Ecuador of certain activities, it is plain that after reviewing the case file, it has been possible to establish that a legal provision neither exists nor has been alleged by the defendant supporting the hypothesis that state control or oversight releases Texpet from its legal obligation. As far as this Court knows, there is no doctrine or known cases in which state control has released the controlled subject from liability since this is generally construed as administrative responsibility exercised without prejudice to the rights of third parties. In fact, there are no legal grounds or case law supporting the theory that mere administrative authorization imposes a legal duty upon third parties to bear the harm that this may cause or, worse still, deprives them of their right to request redress for same. On the contrary, we find that Spanish case law, which has indeed developed this matter, as presented by the Honorable Francisco Marín Castán in the Decision of the Civil Division (Section 1) of the Supreme Court of Spain, in Decision No. 589/2007 of May 31 (RJ/2007/3431), which in turn cites the decision of December 12, 1980 (RJ/1980/4747), which tells us that: “the legal system cannot permit a specific form of economic activity, due to the sole fact of its representing a social interest, to benefit from such a singular policy that it is authorized to abolish or diminish, without just exchange value, the rights of private persons rather on the contrary the public interest of an industry does not contradict the obligation to undertake expedients necessary to avoid harm, thereby using the means that that technique imposes to eliminate emissions nor does it exclude the just requirement to compensate harm to assets caused to owners of neighboring properties, due compensation dispensing with all idea of fault because it involves liability with a strict note.” It appears pertinent to us to understand what this decision arrives at with regard to the matter

at hand, meaning, whether administrative authorization for the activity would preclude the matter being heard in the civil system; therefore, Judge Marín Castán concludes, in turn citing another decision, from February 19, 1971, which explains that "the installation permit of an industry is one thing, with an indication of the elements that must exist to prevent harm and hazards, this being the inherent duty of the administration, and it is another, quite different, thing when, as a result of not meeting the ordered requirements or because the elements used are defective or suffer from insufficiency, harm is caused at the property of a third party and a conflict follows, the matter is fully aired before the bodies of the civil jurisdiction" This opinion is shared by this Court since it is understood that neither heeding nor complying with applicable provisions release the obligated party from its liability nor from civil actions that third may initiate. Likewise, if we go into further detail in studying the case file, we find several administrative sanctions imposed upon Texaco for the acts of Texpet, while expressly excepting the rights of third parties. So the case file shows on page 155551, for example, which contains notification of a penalty imposed upon Texaco Petroleum Company, which expressly "protects the rights of third parties so that they may initiate any civil and criminal actions allowed by law" or also memorandum 07557 of December 13, 1976, sent to the General Manager of Texaco Petroleum Company, Michael Martínez, by the Secretary the Hydrocarbons Department, Ernesto Corral Buenos, in which one also reads with total clarity that "The rights of third parties are protected so that they may initiate any civil and criminal actions allowed by law" (page 155554). The case from Decision No. 3-77 of the Ministry of Natural Resources of July 19, 1977 (page 1555555) is identical. It is the same with the documents set forth on pages 155558 and 155562 et seq. The presence of these memoranda in the case file shows that the defendant was aware in advance that it was not protected from claims from third parties; rather, on the contrary, it was the rights of those third parties that were protected. This Court recognizes that the penalties imposed upon Texpet by the Government of Ecuador during the period of the Consortium's operation do not in any way imply redress for the harm caused, but rather a mere administrative sanction that reflects a violation of the law, without any harm having been repaired. With respect to the intent of the perpetrator of the harm, no part of the case file is considered to demonstrate that the company Texpet acted with the manifest and positive intent to cause harm; therefore, in principle, there was no deliberate intent; however, we cannot fail to

heed other elements of evidence submitted by the plaintiff with the intention of showing that the defendant had knowledge of the potential harm it would cause because of the way it was carrying out its activities and that it also had the knowledge and technical capacity to prevent them at a reasonable cost which, if true, would mean that said harm was not only foreseeable, but avoidable, therefore, since the duty to avoid such harm pursuant to historic law in force at the time was legally requirable, it would clearly result in conduct that is grossly culpable which, in civil matters, is comparable to intentional misconduct. For example, the case file contains, on page 155522, an official letter sent on March 21, 1983 by the then Governor of Napo, Ney Estupiñan Recalde, to Engineer René Bucaram, General Manager of Texaco, in which he tells him, "Dear Manager of Texaco, the people are clamoring about the grave harm being caused in the Shushufindi sector through the pollution of the waters, rivers, streams and creeks by the dumping of hydrocarbon wastes to which they are being subjected by workers of the CEPE-TEXACO Consortium." These words constitute a clear warning of a harmful situation in progress and that needed to be corrected, which is why the official letter continues: "Therefore, I most respectfully take this opportunity to request that you provide the appropriate means of preventing this harm from continuing which, as will not escape your enlightened attention, in the end will result in incalculable repercussions for the ecosystem and, especially, for the agricultural sector," denoting a very clear and timely request and warning to cease the activities that were causing harm, with the prediction that this harm could come to have "incalculable repercussions." This warning and request made to the defendant company are difficult for this Court to ignore. Nor can we ignore the fact that the plaintiffs have claimed that Texaco Inc. had the knowledge and technical capacity to prevent such harm at a reasonable cost, which if true, would mean that the harm was not only foreseeable, but also avoidable. Thus, since the duty to avoid such harm pursuant to the historic law in force at the time that the Consortium operated is legally requirable, it would clearly result in grievous culpable conduct. But before reviewing the evidence, let us see what legal doctrine says about criteria for judging liability, as stated in the ruling of the aforementioned First Chamber, as follows: "Doctrine recognizes two approaches to guide judgment. Basically the difference lies in the nature of the subject at the time of the foreseeability test: an abstract

model or a concrete one, the agent himself. The abstract model, also called the objective model, considers the general foreseeability of a sample or prototype subject. This involves judging the foresight of probable outcomes based on the typical actions of an average person, e.g., a good parent, a judicious person, etc. Meanwhile, the concrete, or subjective, model considers fault with regard to the agent himself. No comparison is made with any abstract or ideal type; instead, the focus is on the specific conditions of the injurious effect. In this case, under the objective approach, we would have to judge foreseeability based on the typical actions of a "good oil company" of that era, while under the subjective approach we would only look at what knowledge Texpet had and the specific conditions surrounding the injurious effect, as we did in our previous discussion of current legislation and the injured environment. Using the objective approach, this Court finds that to make an appropriate judgment of the foreseeability of injury based on the typical actions of a good oil company, we cannot make use of the various experts presented by the parties. Aside from the fact that these experts contradict one another, each of them has different perspectives regarding the same historical moment. However, the Presidency notes that the book *Primer of Oil and Gas Production* (pages 140620 to 140698 in the original, and pages 158756 to 158834 in the translation) does not answer to the interests of either party to this lawsuit, nor to partial historical perspectives, but rather it is a book that describes the technical principles of this industry for the same period in which the events at issue in this trial occurred. It was written in 1962, before the beginning of Texpet's operations in Ecuador, and therefore gives us the complete certainty of being an objective and unbiased text that closely reflects what could be expected from a "good oil company." Thus, careful attention was given to the fact that this book warns of the dangers of formation water and recommends that "extreme care must be exercised in handling and disposition of production water not only because of the possible damage to agriculture, but also because of the possibility of polluting lakes and rivers which provide water for drinking as well as for irrigating purposes" (p. 158811). If the defendant is shown not to have exercised extreme care in handling formation water, it may be concluded that it ignored warnings and failed to follow recommendations, as a "good oil company" would do, and that it is at fault in accordance with the objective approach.

We have also applied the subjective approach. Of particular importance under this approach is the fact that the chapter on “Special Problems” in the aforementioned book was written by T.C. Brink of Texaco Inc., as expressly stated in the acknowledgements at the beginning of the book. It is precisely this part of the book that contains the warnings noted by this Court, and therefore we concluded not only that Texaco Inc. had prior knowledge of the injury it could cause, since a decade earlier its own officers were writing books giving warning to this effect, but that this was the state of technical knowledge according to the American Petroleum institute. Although consideration was given to the many statements made by the defendant through its defense attorneys denying that they had acted with any malice, or even with a lack of expertise, it is evident that this argument is insufficient to absolve their client of legal liability. A defendant can always argue that it intended no harm, but as the First Chamber stated in the aforementioned ruling: “But even if there is not a foreseeable intent to cause injury, as would be the case with intentional misconduct, the adverse outcome still prevails because the subject failed to make sure to adopt the necessary measures to avoid it.” Thus, beyond the classification of the act as intentional misconduct or fault, what matters is the adverse outcome attained as a result of such conduct. In this regard, the clarification is made that “fault” and “intentional misconduct” are not opposite terms, but rather are differentiated by the manner of conduct. However, both definitely cause injury,” leaving us with an objective jurisprudential approach to liability, according to which the manner of conduct is not important, but the consequences of the act are. The ruling by the First Chamber which has served as a basis for discussing liability in this case provides a masterful explanation of this new type of liability, which starts out by considering new corporate phenomena, the principles of our civil law, and the legislation of other countries, which we echo for its well-reasoned explanation: The current world and that of the near future, with its extraordinary and steady accumulation of risks, calls for a more vigorous defense of human values, as a result of a science that is both all-providing and all-threatening at the same time. The multiplicity of actual contingencies of dangers and risks that currently seem uncertain because they are not yet realized, and aside from any idea of compensation, has led to a slow evolution of elements and knowledge that helped the most advanced legal systems enter into a risk-distribution mechanism whereby the risk victim would not be left unprotected.

This gave rise to risk theory, according to which whoever uses and takes advantage of any benefit-yielding medium generates social risks, and therefore must assume liability for the injury thereby caused, as the benefit that originates in this activity has its counterpart in the compensation for injury caused to individuals or their property. This is risk of advantage, with its origin in the Roman maxim emolumentum ibi llus (there where the benefit lies is also where the responsibility lies). The risk of a thing is a legitimate danger and socially accepted as the counterpart to the social or economic benefits that are entailed by the operation, use or utilization of the hazardous elements. For recognition of civil extracontractual liability, it is not required for there to be fault or intentional misconduct; it is enough for the injury to be a direct consequence of the event that gave rise to it. This is purely objective liability. The theory of objective liability has not been widely accepted in the laws of most countries and in the case law of foreign courts. Fault of the liable party must be proved in most jurisdictions. But as the burden of proof of fault is almost impossible or very difficult for the victim to meet in most cases, it was deemed necessary to reverse the burden of proof, in the sense that whoever uses and takes advantage of a risky thing is the one who must prove that the injurious act occurred as a result of *force majeure* or an act of God, or through the fault of a third party or of the victim alone. In other words, the fault of whoever uses and takes advantage of the risky thing through which the harm occurred is presumed. This theory has been gaining increasing favor, especially in case law, as seen in rulings handed down by the supreme courts of France, Argentina, and Colombia. I completely agree with this position, and this is why we adopted it as a basis for this ruling, in view of the fact that production, industry, transportation, and operation of hydrocarbon substances surely constitute high-risk or highly hazardous activities. In this regard, legal scholar Arturo Valencia Zea, in commenting on the provisions in the Colombian Civil Code regarding liability, which are similar to those in Title XXXIII of the Ecuadorian Civil Code, states: "The main source of injury historically lay in the act itself, in the that of people who were under the care of others and in certain things, such as animals and the collapse of buildings. But modern times, especially the 20th Century, created a new and ripe

source of harm: those caused by hazardous activities or operations, which originate in the use of all types of vehicles, machinery and new energy such as with automobiles, railways, aircraft, water and river craft, electricity, construction projects, etc. In order to find in favor of compensation for this type of harm, fault-based criteria were not enough, because in the majority of accidents, the cause is unknown; it's no wonder that they say that modern man "uses forces whose nature and power are unknown to him." Likewise, the criteria of simple presumption of fault, as with harm due to third-party action, lacks weight because the owner of an operation (railroad companies, car companies, factories, etc.) could very well show that he has put in place all the care necessary to prevent accidents and that they occur in spite of all the precautions taken. There is therefore the need to establish a new kind of liability for this class of harm, eliminating the criteria of fault by way of strict liability under the law or by establishing an absolute presumption of the same. The owner of the operations or industry must respond directly for harm whose cause stems from that industry or operation, such that he can only be released from liability if he can show that the harm was not caused by his operation, but rather by an outside factor (force of nature, third-party liability or by the victim himself). The owner of the operation cannot be allowed to be released from liability by proving the simple absence of fault, as it occurs with the liability for the outside factor referenced in Arts. 2347 and 2349" (*Derecho Civil* [Civil Law], Volume III, *De las obligaciones* [On liability], Bogotá, Temis, Eighth Edition, 1990, pages 230 and 231). The cited articles are equivalent to articles 2247 and 2249 of the Ecuadorian Civil Code. "These are currently equivalent to articles 2220 and 2222. Then the ruling goes on to explain how special liability was configured for harm caused in high-risk industries, based on the Zuleta opinion, giving a new interpretation to the equivalent to our article 2229, stemming from two criteria, the first: "I. The very placement of articles 2341 to 2356 [2214 to 2229 of the Ecuadorian Civil Code]." Let's look at these principles: 1. article 2341 [2214 of the Ecuadorian Civil Code] references harm caused by one's actions which generally have the same sense or spirit of human behavior that makes up the content of criminal liability. That is common law. 2. articles 2347 to 2349 [2220 to 2222 of the Ecuadorian Civil Code] refers to harm caused by another's actions and the responsibility that must be assumed by the parents of a minor, a guardian or ward, a master or employer, school

principals, etc. 3. articles 2353 and 2354 [2224 to 2226 of the Ecuadorian Civil Code] provide statutory standards regarding harm caused by animals, for which those who own or possess them must take responsibility. 4. articles 2350 to 2355 [2221 and 2227 of the Ecuadorian Civil Code] cover harm caused by the deterioration of a building or by things that fall from the upper part of it, for which responsibility must be taken by those who own or possess the construction or building. 5. Therefore, it is natural to think that article 2356 [now 2229 of the Ecuadorian Civil Code] references a separate kind of harm; and these are none other than those caused by hazardous activities or operations." And the second: "II. The same examples from article 2356 [2229 of the Ecuadorian Civil Code].- Let us look at the last two examples from this legal writing, according to which those who must take responsibility for harm caused are: a) whoever removes slabs from an irrigation ditch or pipeline, or uncovers them on a street or roadway, without taking the necessary precautions so that passersby do not suffer a fall, b) whoever, due to faulty construction or repair of an aqueduct or water source that crosses a roadway "keeps it in such a condition as to cause harm to those who travel the roadway," these were hazardous activities at the time when the Code was drafted; thus, doctrine and case law decided to broaden these applications to other cases of operations of industries or activities which present special hazards in modern times" (page 233, as previously cited). Likewise, we include the pertinent parts of a decision by the Supreme Court of Colombia related to the theory of presumptive liability in hazardous activities: "…an appeal to the supreme court would not follow the judgment indicated, as in any case the elements of harm and causation, already established by the Court and not challenged by an appeal to the Supreme Court, would add to the presumptive liability of the company sued because it is based on the compensation sought by the plaintiffs in a hazardous activity, to which article 2356 of the Civil Code [2229 of the Ecuadorian Civil Code] may be applied"… for Colombian case law, this very article has been what article 1384 has been to French case law, a reason for conflicting studies, because of a desire to include in the requirements all legal issues which may occur in the industrial and modern age with the gradual appearance of machinery and inventions which bring inevitable and unknown hazards. It has been said that it is a continuation of article 2341 *ib.* (2214 of the Ecuadorian Civil Code), which states that the responsibility to compensate it, due to the apparent repetition of the substantive part which is shown by the two requirements. Nevertheless, the court has repeatedly held the distinction between these two norms; as one refers to the fact of the man that has caused

a fault proven by the victim, on the other hand, the second refers essentially to an attributed "harm" or malice or fault of the person that caused it. The use of the word "attribute carries with it a presumption of malice or fault against the party, due to the performance of a hazardous activity or handling of a thing that involves a hazard, which can only be refuted by proving some grounds for exemption from liability, such as *Force Majeure*, Act of God, act or exclusive act of the victim. This regime favors the latter, since only the harm needs to be proven and the subsequent causal nexus in order for its action for harm to succeed (Darío Preciado Agudelo, *Indemnización de perjuicios. Responsabilidad civil contractual, extracontractual y delictual* [Compensation of damages. Civil contractual, extracontractual and criminal liability] Volume II, Bogotá, Ediciones Librería del Profesional, 1988, pages 805 and 806). As the defendant has expressed, the hydrocarbon activities that allegedly caused the harm, reparation for which is sought in this case, were lawful activities authorized by law. However, this court considers that the fact that it is a lawful activity simply involves the fact that "the risk of the thing is a lawful danger and socially accepted as counterpart to the social and economic benefits," and in no way means that because the activity is lawful, the party conducting it is exempt from liability, but rather on the contrary the development of the law has led to the following being established: "presumption of guilt of the person that uses and takes advantage of the risky thing by which the harm was caused." Considering that "the production, industry, transport and operation of hydrocarbon substances undoubtedly constitute high risk or hazardous activities," the need to apply this new type of liability is imperative because "the criteria of the simple presumption of guilt, as occurs with harm due to third parties, is lost as the owner of an operation (a railroad, automobiles, factories, etc.) could demonstrate that it has taken care in the case to avoid accidents and yet these occur in spite of all of the precautions taken," reason why the defendant may "only be exempt from liability if it demonstrates that the harm is not a result of the operation, but rather an extraneous fact (*Force Majeure*, fault of a third party or the victim itself)," as the absence of guilt does not release the owner of the operation from liability, since as has been explained, the regime favors the victim of the harm, who must only prove the harm and the resulting causal nexus in order for his action for harm to succeed. In view of the foregoing, what truly needs to be analyzed is causation. Causation: The First Chamber tells us that "The principle that there must be a cause and effect relationship between the

unlawful act and the harm is clear and irrefutable," wherefore we believe that the relationship of causation between the act and the harm is one of the suppositions that must occur for extracontractual civil liability, so that we must study how far the relationship of causation goes in this case. The Decision of the First Chamber notes that "difficulties often arise in practice in determining to what point an act may be caused by another. In most cases, the facts are not presented in a pure or simple condition, but rather on the contrary they are mixed or combined with other occurrences or even conditioned by different events, favored or limited by other concurrent, underlying or pre-existing facts." In the same way as in this case, the events are not presented alone, but rather mixed and influenced by a series of facts that have been alleged on their behalf by the parties to this case. It has been alleged, on one hand, that the environmental harm is not simply those impacts that are suffered by the ecosystem, but that also part of that same harm encompasses all of the consequences that the harm may produce, while on the other hand it has been alleged that the possible impacts on the ecosystem are not capable of causing more harm, demonstrating two opposite perspectives on a single topic, whereby in view of the complexity of this discussion, we are again led to look at the development of case law on this matter. "The problem has largely been debated by doctrine, and it has given rise to several different theories being held. The main ones are: 1.- Theory of equivalence of conditions, or *conditione sine qua non*. According to this theory, a fact may be considered to be the cause of another subsequent fact when if the preceding fact had not occurred, the subsequent act would not have occurred. Any prior fact that meets these conditions must be considered the cause of the harm. If there are several prior facts, there is no reason to prefer some and exclude others; therefore is also called the theory of equivalent conditions. This theory has been criticized because it infinitely extends the causal relationship, including the so called preconditions or cause of causes. 2.- Theory of proximate cause. The undefined propagation of causation, unique to the preceding theory, led to another: only the most proximate cause is relevant. This theory has been rejected for the simple reason that the last condition is the cause of the harm, but it may not always carry all of the harmful effects. 3.- Theory of efficient cause. Efforts have been made to overcome the aforementioned difficulties on the grounds that the cause must be considered the one that was most efficient in the production of the harm. But nothing much is gained with this theory because all it does is pass the problem along: on what basis will it be decided that

one cause is more efficient than another? 4.- Theory of sufficient causation. This theory, with which we agree, is the one toward which the majority of writers on legal doctrine and the case law of foreign courts are inclined. It consists in leaving the analysis of the matter of when the harmful action is likely to generate liability on the part of the perpetrator of the harm in the hands of the judge, which means that any general rule can be ignored and trust is placed in the discretionary powers of the judge. Finally, according to this theory, before anything else a criterion must be set to establish liability in an objective analysis related to the external character that links it to the causal nexus. Starting from the obvious fact that there is no positive standard that indicates to the judge which theory of causation to apply, the judge's discretionary authority must be invoked, as indicated by consistent case law, although that does not release the Judge from the duty to provide adequate grounds for his decision, for which reason this Presidency, before exercising this discretionary authority, must consider the theoretical development of this topic, as acknowledged by the cited ruling: "certainly, the theoretical development of the question has not come to an end. In France, for example, new explanatory and supporting theories have arisen in accordance with the necessities and requirements of the modern world. Among these theories we cite the following: the one called "the culpable creation of the unjustified risk of a hazardous situation," in the context of which the causal link is assumed to exist when the causal result preceded the configuration of an unjustified risk, or the culpable creation of a situation which would certainly entail risk; the theory of the "pursuit or deliberate continuation of the harmful behavior." This theory claims that the pursuit of the wrongful behavior must be continued without a break, and starting from the final harm it is necessary to reconstruct the chain of causes, explaining each illegal fact or event as a result of the wrongful nature of the previous fact or event until a potential break appears in the chain of causation." We think that in this case, we are precisely in the presence of one of these requirements and necessities of the modern world, and that the justice system must find a solution with the available sources of law and cannot skimp in the study and consideration of these theories, inasmuch as the judge has discretionary authority to apply them if he thinks they may be better suited to the circumstances of this case. The theory of "the culpable creation of the unjustified risk of a hazardous situation" tells us that when a situation that entails a hazard has been created, any harm that occurs should be understood to be a causal result of this risk, in this case, for example, the creation of a hazardous situation of the type represented by the presence of an industrial zone of the oil industry with the impacts that are generated on its

surrounding areas, the mere existence of harm would be sufficient to accredit a causal nexus between the harm and the hazard that had been created. Whereas the book to which we have made reference above (page 158811), "Primer of Oil and Gas Production," written in 1962, partly by an employee of the defendant company, acknowledges the hazards and problems in the handling of formation water, in application of this theory it would be correct to say that the defendant was fully aware of the hazardous situation that was being created, as a result of which any harm that was suffered by the sources of water as a consequence of the disposal of the formation water must be understood to have its cause in the hazardous situation that was knowingly created. On the other hand, the theory of the "pursuit or deliberate continuation of the harmful behavior" tells us that we start from the harm and work our way back by establishing a chain of facts or actions that result from the wrongful nature of the prior fact or action, so that in this case we would have to study each of the individual instances of harm that have been proven, and to the extent possible work our way back to the actions that caused them, determining whether they can or cannot be attributed to the defendant, so that in this case we would have to start from each instance of legal harm independently to analyze what the actions were that caused it, and determine whether the defendant is liable for those actions. Finally, we refer to two theories that have been developed by Anglo-Saxon case law which refer to causation in harm to human health: the theory of the substantial factor and that of the most probable cause, which are legal theories of causation developed in the USA, Australia and England precisely on account of the need to define the difference between legal causation and scientific causation. Therefore, the theory of the substantial factor does not require a mere scientific causation, but the reasonable medical probability that the conduct of the defendant was a factor that contributed substantially to increasing the dose of harmful substances and ultimately the risk of developing illnesses. Among the elements required for the application of this theory are these two: 1. reasonable medical probability, which means that it must be more than a simple possibility, which is defined as a more than 50% possibility, as a result of which it is obvious that in application of this theory it must be more probable than improbable that the defendant's conduct contributed to the generation of the harm; 2. The substantial factor, which requires that the harmful element cannot be merely theoretical nor can it play a secondary role in the generation of the harm. According to this theory, these elements must be considered without the need to investigate which of them was precisely the cause of the harm, due to the irrefutable lack of scientific certainty about which of the elements used by the defendant

caused the harm. with respect to the theory of the most probable cause, Australian case law tells us that causation can be established by a process of inference, which combines concrete facts even if the actual causation cannot be attributed to any one of them by itself, which means that there is no need for the cause of the harm to be any one single contaminating substance, but that it is sufficient if this contaminating substance has been a contributing factor, which means that the defendant's participation must be more than minimal, trivial or an insignificant factor. Therefore from this analysis, which only briefly summarizes the different theories that can be applied, it is obvious that due to the complexity of the case, the nature of the harm and the diversity of theories, it is imperative that in any consideration of the causation of the harm, we must study each type of harm separately, because not all types of harm are equal or have the same causation, so that within this theoretical framework, this aspect will be reviewed in greater detail below, with an analysis of the evidence in context and in its entirety in search of indications concerning causation. –**EIGHTH.**– The claim advanced in the complaint allows us to restrict the discussion strictly to the aspects the plaintiffs require leaving aside any possible harm the redress of which was not demanded. In this manner, let us address the claims that are transcribed at the beginning of this judgment, but commenting that the claims advanced in the complaint cannot contravene what is provided by Law, comment that is made in relation to the claim that "The resources necessary to cover the cost of the activities, whose execution is demanded, in the amount that shall be determined by an expert, according to the penultimate clause of article 43 of the Environmental Management Act, shall be delivered to the Amazon Defense Front, with the purpose of using them exclusively for the ends determined in the sentence, with the concourse and assessment of specialized international institutions," because the Environmental Management Act in the same article 43 authorizes the judge to identify the individual or legal entity that should receive the payment and perform the reparation work, indicating that "the Judge shall order that payment of harm be made to the institution that shall perform the repair work in accordance with this law," without it thereby being obligatory for the judge to confine himself to what is claimed in the complaint but rather by what is required by Law. In this point, it is also considered that the Government of Ecuador has proceeded to release Chevron from all liability by operation of the environmental Remediation contract signed with Texaco Inc. in 1995, just as occurred with the contracts that signed between the municipalities of Shushufindi, joya de los Sachas, and coca, and the Prefecture of Sucumbíos and Texaco, as contained in the record in volume 70,

for which reason "the institution that shall perform the cleanup work" may not be a public entity, because the Government has gone on record as receiving the environmental remediation work its satisfaction in accordance with the terms established in the contract, but not so the plaintiffs, who demand a comprehensive environmental cleanup that recovers the natural characteristics and conditions of the area affected by the oil operations begun by the company Texpet as operator of the Consortium. What can be gathered from there are two fundamental elements that must be considered by this presidency: 1. The payment that eventually will be ordered may not be directed to any public or governmental entity because the record shows that the State has released Texaco, and consequently Chevron, from all their responsibilities in relation to the environmental harm that is the subject of this complaint, such that the profit or use by the state the resulting sentence against the defendant in this lawsuit, would result in a breach of the provisions contained in said contract, an illegal situation that this Court is not willing to provoke; and 2. The cleanup or remediation work performed by State institutions, like any other state activity, must be confined to what the Law allows, thereby limiting its scope of action to what the Laws provide, as occurred in the case of the pits remediated as part of the separate remediation projects conducted in pits by Petroecuador (CEREPS, PEPDA), as contained in the expert report submitted to this Court by the expert Gerardo Barros. It is also noted that these projects are centered around the remediation of contaminated soils in the area of the pits, without considering other aspects that must be considered by this Court in attending to that requested in the complaint. In the case of the repair of harm demanded by the plaintiffs, we find that an environmental remediation that simply complies with the environmental parameters imposed in the legislation in force is not being pursued, but rather have expressly requested: "the elimination or removal of the contaminant elements that still threaten the environment and health of the inhabitants," for which they request the removal and proper treatment and disposal of the waste and contaminant materials that still exist in the pits or ditches opened by Texaco, and the cleanup of the rivers, streams, lakes marshes and natural and artificial waterways. To be specific, the complaint asks that the judgment order "the execution of necessary works in the pits opened by Texaco to recover the natural characteristics and conditions that the soil and surroundings had before suffering harm, therefore based on the

evidence submitted by the parties in relation to the work performed by Petroecuador in remediation of various fields, we can observe that in all them that which is established in the laws governing the subject was accurately observed, without the goal being to recover the natural characteristics and conditions that the soil and the environment had before suffering the harm. In this manner, the institution or entity to which payment must be made should be an entity independent of the State, but dedicated expressly to the work necessary to repair the harm in the terms demanded. –**NINTH.–** Having assessed all of the evidence in accordance with sound judgment, we are convinced of the existence of the following facts: 9.1 TEXACO PETROLEUM COMPANY WAS THE OPERATOR DESIGNATED BY THE CONSORTIUM FOR ALL OPERATIONS OF THE NAPO CONCESSION. Both parties have indicated the same dates, limits and parts of the concession held, which have historically been listed in the different Official Registrations, such as Official Registration 186 of February 21, 1964, through which the Government of Ecuador created a concession of more than one million hectares in favor of Texas Petroleum Company, which, in the same act transferred its rights to Texaco Petróleos del Ecuador and Gulf Ecuatoriana de Petróleos: R.O. No. 209 of June 26, 1969, in which the concession was reduced to 561,661 hectares; later R.O. Nos. 362 and 370 of August 3 and August 16, 1973, respectively, in which new contracts were signed and the area was established at 497,301 hectares, which is the area that finally became known as the Napo Concession (referred to in this ruling simply as the "Concession"), which initially belonged to a Consortium formed by Texaco Petróleos del Ecuador and Gulf Ecuatoriana de Petróleos; later, it was formed by the aforementioned companies plus CEPE, and finally CEPE would absorb Gulf's share, making it the majority partner in the Consortium. Thus this Court pays special attention to the fact that it has been proved, by means of the Napo Agreement entered into by and between Texaco and Gulf on October 22, 1965, in clauses 6.1; 6.2 and 6.4 [see translation in volume 93, pages 10,154-10,194], that from the outset the concession holders agreed to delegate all operations to the company Texpet, a fourth-level subsidiary wholly owned by Texaco Inc., which company was, in effect, the company that executed all of the Consortium's operations, under state monitoring and control, from the start until the end of its operations, as Dr. Adolfo Callejas recognized in the conciliation hearing when he responded to the complaint, saying "I believe it is necessary to mention to you, Mr. President, that, in managing consortia, the international practice commonly used in the oil industry is to designate one of the parties as

their operators, subject in all cases to the instructions of the co-owners who remain at all times fully responsible for the operations performed in their name […] From the Napo Joint Operating Agreement it can be seen that the operator was "…the Parties' exclusive agent and contractor" and was charged by its principals "to implement the work obligations of the Parties…." As a result the actions of Texaco Petroleum Company "as technically responsible and executor of the Consortium's obligations" and as in charge of the "design, construction, installation and operation of the infrastructure and equipment required for oil exploration and exploitation," acted as Agent of the co-owners and principals and with the prior consent and approval of Corporación Estatal Petrolera Ecuatoriana (CEPE), later Petroecuador, in its capacity as co-participant in the aforementioned Consortium." (page 247). Thus it is legally proved that the operation of the Concession was the responsibility of Texpet, which has been corroborated by the experts who participated in the different judicial inspections, and who in their reports have stated similarly that Texpet was the party responsible for conducting the operations of the Consortium until June 1990. The parties to the proceedings have not contradicted this fact; Nevertheless, it is noted that the defendant, although it has not indicated that it was unaware that it was the party responsible for the operations of the Consortium, has insistently alleged that it acted as the legal representative and that it was monitored by the partners, as on page 244, where it states that "Petroecuador held the majority interest and as such the beneficiary of the 1973 Concession Contract, which was legally operated by Texaco Petroleum Company (TEXPET) until June 30, 1990 and subsequently by Petroecuador, through June 6, 1992, the date on which the 1973 Concession Contract ended due to expiration of its effective term." Regarding the state monitoring and control that we referred to above, while in its acts as principal or Agent, we refer to Clause 46.1 of the 1973 Contract mentioned by Dr. Callejas on page 247, recognizing that that obligation states that: "Contractors shall take appropriate measures to protect the flora, fauna and other natural resources, and they shall also avoid polluting the water, air and land, under the control of the pertinent bodies of the State," with the reminder that every agent or principal is obligated to act in compliance with the mandate, and the laws in effect, being personally liable when their acts exceed or violate the limits of their mandate, in accordance with articles 2020 and 2035 of the Civil Code, which states that "The agent shall strictly adhere to the terms of the power of attorney, except in cases

where the laws authorizes him to act in another manner," such that apart from the will of the commissioning party, also stated in Clause 46.1 of the Contract, that is what had to prevail. 9.2 EXISTENCE OF ENVIRONMENTAL HARM. Having reviewed the different expert reports delivered to this Court by the different experts nominated by the parties and named by the Court, and also those who were appointed by the Court without being nominated by one of the parties, the existence of environmental harm that originated in oil-development activities that were carried out during the operation of the Concession has been demonstrated, as will be explained later upon evaluation of the results of the laboratory analyses of the samples taken by the experts. We must first clarify that this Court has not considered the conclusions presented by the experts in their reports, because they contradict each other despite the fact that they refer to the same reality, therefore the personal assessments and opinions of all the experts have been dispensed with and the technical content of their reports is what has been taken into consideration, especially the previously mentioned results, such that the judge has been able to form his own assessment, in accordance with the rules of sound judgment. From this perspective, before starting to evaluate the existence of harm according to the evidence provided for the case, it is appropriate that we define what the environment is, and what could consequently be understood as harm to the environment. According to *Informe sobre Desarrollo Humano Ecuador 1999* [Report on Human Development Ecuador 1999] on page 3208, which documentary proof has been entered into the case file at the request of the defendant, from a comprehensive perspective we can see that the environment is not only the flora and fauna and the setting in which they develop, but that the environment is also formed by institutions, economic, political and social relationships, and culture, among other values between individuals and the human community. Based on this definition, it would be appropriate to define environmental harm – in general terms – as any loss, decrease, detriment, reduction or harm caused to or inflicted on the environment or any of its natural or cultural components. In this lawsuit, both the elimination or removal of the contaminating elements that threaten the environment and the health of the inhabitants have been demanded (see the claims in the complaint, VI.1 and VI.2, respectively, on pages 79 and 80), as well as the repair of environmental harm under the protection of article 43 of the EMA, which, in its first section states: "The persons or entities or human groups linked by a common interest and affected directly by the harmful action or omission may file

with the court of competent jurisdiction actions for damages and for deterioration caused to health or the environment, including biodiversity and its constituent elements," all of which is in full agreement with the comprehensive perspective of environmental harm in the definition proposed above, and further, it agrees with what was stated in the Constitution in effect during that period (section 2 of article 19 guarantees the right to live in an environment free of contamination, of the *Codificación de Constitución Política de la República del Ecuador de 1984* [Codification of the Political Constitution of the Republic of Ecuador of 1984]). This leads us to understand that all of the complexities of environmental harm must be considered, heeding the different forms and derivations it may have on the components of the environment, because it is understood that the environment cannot be considered in isolation, but rather must be considered in connection with other rights, such as health. This criterion also agrees with the Resolution of the Constitutional Court 1457, of August 18, 2009, which tells us that, "In accordance with the regulation for applying the mechanisms of social participation established in the Law of Environmental Management, collective environmental rights are those rights shared by the community to enjoy a healthy environment that is free of contamination, and involving aesthetic, scenic, recreational and cultural values, physical and mental integrity, and in general, quality of life. And an ENVIRONMENTAL IMPACT is considered to be every positive or negative change to the environment that is caused directly or indirectly by a project or activity in a determined area. That is, environmental impact is every action of man that produces changes to the physical and human surroundings." Thus, and also considering that obligations are born from the real concurrence of the wills of two or more people, such as in contracts or agreements, and as a consequence of an act that has caused injury or harm to another person, as in crimes or quasi-crimes (art. 1453 of the Civil Code), we come to the conclusion that in the event that legal harm is proved in different components of the environment, and further if it is proved that this harm is caused by actions taken by the defendant Company, the source of the obligation to repair the harm of such components will be founded in accordance with the law. For the complex task of *avaluar* the presence of environmental harm, the first consideration is that there are more than 100 expert reports in the case file, which constitute an important documented source of evidence, provided by experts nominated by both parties and also provided by experts of the Court not nominated by either party, such that as a whole their information is reliable and allows the Judge to come to the conclusion that there are different levels of contaminant elements

that are from the hydrocarbons industry in the area of the Concession. The presence of these contaminant elements mainly leads us to note the existence of harm to the soil, which is an integral part of the ecosystem, and which, consequently, may potentially be seen as harm to various components of the environment, because depending on the level of danger of these elements and the level of exposure of people and the ecosystem to these elements, a decrease in human health or the health of the local flora and fauna could also be assumed. Thus, this Court believes that the sites where a direct impact has been proven (such as the soil around pits and some water resources) have not been the only legal asset harmed; in fact the harm frequently reaches other parts of the ecosystem, such as the flora and fauna, and possibly different parts of society that depend on the ecosystem. Thus, analysis of the different expert reports has proceeded considering that the environmental harm that are the object of this lawsuit are not only those that are caused by a direct impact to the ecosystem, but that due to their nature this type of harm also includes all harm that are a direct consequence of environmental impact. In that regard, it is seen that this is a technical matter; therefore the different expert reports presented throughout this lawsuit are considered. Starting with the presence of contamination in the soil, this Court considers the findings of the different experts who have participated in the judicial inspections that were undertaken within this lawsuit and that have presented the results of their experts. The reports presented by the experts nominated by the plaintiff and by the defendant show the presence of different concentrations of hydrocarbons and/or products used during drilling or preparation of oil wells. Before starting to review the results presented in the reports, it is appropriate to remember that this Presidency uses the different maximum allowable limits established in Ecuadorian legislation in effect only as a reference parameter in order to understand the true state of the area of the Napo Concession, and not for the defendant to comply with that rule, because due to the principle of retroactivity these rules cannot be applied to acts prior to its approval. However, by virtue of the fact that there were legal provisions in effect and applicable *herga hommes* in the period of Texpet's operations, it is considered that expelling solid, liquid or gaseous waste into the air, soil or water without prior treatment that would make them harmless to health was prohibited (Art. 12 of the Health Code, R.O. No. 158, of February 8, 1971). In oil matters,

the Hydrocarbons Law published in *Registro Oficial* No. 322 of October 1, 1971 was in effect, which with total clarity imposes the obligation of "Adopting the measures necessary to protect flora and fauna and other natural resources," and "To prevent contamination of the water, atmosphere and ground" (see article 29, literals s and t), which provisions are similar to those found in the subsequent codification of the Law of Hydrocarbons published in *Registro Oficial* No. 616 of August 14, 1974 (article 30, literals s and t), and in *Registro Oficial* No. 711, of November 15, 1978, in article 31 literals s and t, which was a constant in hydrocarbon legislation in effect in Ecuador. Regulatory standards also established rules to be considered in oil matters in which it was the obligation of the defendant "To take all measures and precautions of the case to perform its activities to prevent damages or harm to people, property, natural resources and to sites of archeological, religious or tourist interest" (art. 41 of the Regulation of Exploration and Exploitation of Hydrocarbons), in Supreme Decree 1185, published in *Registro Oficial* 530 of April 9, 1974), while they were contractually linked by Clause 46.1, which said "The contractors will adopt the appropriate measures for protecting the flora, fauna and other natural resources, and they will also prevent contamination of the water, the atmosphere and the ground under the control of entities belonging to the State." Finally, it is believed that the limits of the rights of the defendant were limited according to *R. O.* No. 186, of February 21, 1964, which, in the Tenth clause, states that "The concession holder has the right, for the purposes of this contract, to use the land that is located in the areas that are the matter of the first and second clauses, as well as the water, wood and other construction materials that were there, to use them for the exploration, exploitation and development of its concession, without depriving the villages of the flow of water that is indispensable to them for their domestic and irrigation needs, or to hinder navigation in any way, or to deprive the waters of their qualities of potability and purity, nor to disrupt fishing." Thus it is established that the defendant had the obligation to foresee and prevent the presence of products that are hazardous to health and/or the ecosystem, used during oil exploration in sites operated by Texpet, and therefore the presence of this type of substance that may place life and/or the health of people at risk and/or affect the development of the flora and fauna, in addition to revealing the existence of violations to the mentioned rules, would constitute evidence of legal harm, which, as such, brings with it the obligation to make reparation. Although it is correct to state

that many of these compounds (barium, cadmium, lead, chromium, etc.) are found naturally in the environment, and they are, in fact, absolutely necessary for the development of biological life, if they exceed certain limits they may be hazardous. For example, hexavalent chromium is subject to very strict limits all over the world, as it is an agent that is corrosive to tissues, and it is a known carcinogen. Recognition of hexavalent chromium as a "carcinogen" is also important, which the defendant has used through its defending attorney, Mr. Diego Larrea, during the judicial inspection of the well Cononaco 6 (see page 123108). Prior to evaluating the concentration of hexavalent chromium and other chemical substances present in the soil, the specific criteria contained in the document entitled "*Evaluación de Normas Internacionales Aplicables para los Cierres de las piscinas de los Campos Petroleros 1994-1998"* [Evaluation of International Standards Applicable to the Closing of Pits in Oil Fields 1994-1998]" are considered, presented as an annex or appendix by the experts that were nominated by Chevron, and the content does not present any reference value suggested by Chevron, therefore the content does not present any reference value for Chromium VI. In the same way that the challenge of that document is accepted as it was written by a party interested in the result of this lawsuit, because as noted in the lawsuit, King and Spalding has sponsored the defendant in several lawsuits in the United States, which maintain a direct relationship with this case (see page 4729). The fact that that document has served as the basis for different experts who were nominated by the defendant is also noteworthy. In the case of Chromium VI, in the opinion of this Court, any amount that exceeds what we find naturally in the environment must be removed due to the hazard that it represents, therefore, although its dumping was not regulated by the laws in effect at that time, nor was Chromium VI discussed in the "Evaluation of International Standards Applicable to the Close of Pits in Oil Fields 1994-1998," by elementary standards of justice, legality, decency and respect for human life, it is understood that, as Chromium VI is a known carcinogen, it is a hazardous substance that the defendant should have handled pursuant to the legal provisions in effect, such that any dumping of that substance that could place people or the ecosystem at risk created the obligation of repairing this situation, regardless of whether a product that causes such a risk is or is not regulated by the rules in effect at that time. The defendant's defense is taken into consideration, entrusted to Mr. Adolfo Callejas, who, during the judicial inspection of Sacha Sur (page 97523) stated: "[…] those rules contained in, for example,

the Law of Hydrocarbons from 1971, which said that flora and fauna will be taken care of in oil operations, for this to be done it had to be spelled out in the Laws, Regulations, parameters […],” but it is not assigned a value as it is contrary to law, while the Laws are to be complied with, and the principle of legality is a pillar on which the Administration of Justice is based, beyond any irreverent argument of some lawyer who intends to deprive the law of its meaning, whether out of conviction or as a matter of convenience. Thus, the lack of regulations or parameters regulating the dumping of Chromium VI into the environment did not in any way mean an implicit authorization to dump this hazardous substance into the environment. An exhaustive and complicated analysis of the results of the laboratory analyses presented as valid evidence during this lawsuit had to be performed, and the magnitude of this work is underlined in regards to which the experts nominated by Chevron have provided 50,939 results from 2,371 samples, the experts nominated by the plaintiffs have provided the case file with a total of 6,239 results from 466 valid samples; while the experts named by the Court, without nomination by either party, have provided 178 samples and 2,166 results (without considering the sampling done by the expert Cabrera); resulting in a total of 2,311 samples. To this we must add the 608 results presented by expert Jorge Bermeo, and 939 results presented on 109 samples collected by expert Gerardo Barros, which have also been taken into consideration, but with considerations annotated for each case. This reference to the magnitude of the numbers and the work that the judge has had to do to examine the truth in this case has been done with the intention of avoiding any minimal or involuntary error that could occur with such an assessment of the samples, because this is not a simple mathematical process; instead the evaluation itself of what the case file tells us, which is not given in black and white, but rather it is a series of shadings, such that a mere error in calculation would not change the criteria formed in the judgment by all of the accumulated evidence. It is further considered that this is not an accounting evaluation but a statistical evaluation, such that the result depends on what the sample represents, even with a certain degree of error, because what is truly of interest in this type of study is that all the elements of the sampled universe are known, and that all these elements have the real possibility of being included in the sample. Considering the facts shown in the record, such as the existence of a certain number of wells, stations and pits that were designed, built and operated by Texpet, in conjunction with the quantity or sample of

sites inspected, and the results of those inspections, it is considered that the valid samples in the record are representative of the state of the concession area. Thus, with considerations noted, analysis of the results of the samples taken in the field by the different experts who have participated in this lawsuit begins with an overall assessment of the results presented for Total Petroleum Hydrocarbons (TPHs). Taking into account that the defendant has alleged that TPH is not a good indicator of risk, in saying that, "Regarding that same matter, Your Honor, I am going to repeat something that I said a few days ago and a few judicial inspections back, which is that the content of TPH hydrocarbons does not measure toxicity or health risks because hydrocarbons are found in nature, for example in grass at 14 mg/kg, dry oak leaves at 18.00 mg/kg, in the acicula of pine trees with 16,000 mg/kg; and there are many non-toxic products that are derived from oil and used by people; we have oil for babies that many people have surely used, with 865,680 mg/kg of TPH; Vaseline, not the song but the product that is used for certain purposes, has 749,000 mg/kg" (see page 155068). However, the record also contains warnings regarding the potential harmful effects of TPHs on human heath, such as those of the expert Bermeo, who in the conclusion of his report tells us that "The analyses performed on fish skin determined the presence of total hydrocarbons in fish to be at values much higher than the maximum levels allowed in water, which, as there is no reference or standard in our country that indicates or determines the maximum quantity in which they can be present before causing problems in fish and therefore to the health of those who consume them, we use the permissible values for water as a reference, and from this point we can state that there is hydrocarbon contamination, which could become a food problem if it continues to occur. The Agency for Toxic Substances and Disease Registry – ATSDR – of the United States, indicates that these products are highly harmful to health, and they are the result of a mix of different products derived from oil (gasoline, lubricant oils, greases, tar, etc.), therefore the presence of total hydrocarbons in fish is the result of oil activities in the zone" (see pages 159373 to 159376). Further, the expert nominated by the plaintiffs, Edison Camino, has said in his report on Sacha 10, that "Some compounds of TPHs can affect the nervous system," and that "one TPH compound (benzene) is carcinogenic in human beings" (see report on pages 52,474 to 52,780).

Thus, in view of what has been stated by Gino Bianchi, defendants' expert, when defending the judicial inspection at the Lago Agrio 2 well, respecting that "the TPH is not used to assess potential health risks since it is only an indicator of the amount of oil in the sample and not the toxicity" but also that "oil toxicology properties can be characterized based on the following toxic components: Aromatic Volatile Hydrocarbons: Benzene, toluene, ethyl benzene and xylenes, Polycyclic Aromatic Hydrocarbons […]; Heavy metals: Barium, cadmium, copper, chromium, hexavalent chromium, mercury, nickel, lead, vanadium and zinc (see text in page 95701, which is identical to the statement of expert Jorge Salcedo in his report on the judicial inspection of Shushufindi 18 and Shushufindi 25 wells and reiterated by Gino Bianchi in his report about the judicial inspection of Guanta 7 well), this Court has decided that what is most appropriate is that TPHs be considered together with the rest of the evidence, since, even if it is not a precise indicator of health risks, it is a good indicator of the environmental condition in general, in terms of hydrocarbon impacts, although we must acknowledge that in order to identify potential health threats, other elements should be monitored. In this regard, and in agreement with the statement of expert Gino Bianchi on certain toxic compounds, the Yanacuri report on the above mentioned issue is considered, since it includes a specific concern about exposure to benzene, toluene and xylene (BTEX), which should be eliminated due to their water solubility, greater permanence in clay soil, and danger to health, to reach levels of natural occurrence in soils. Furthermore, this report states that "a number of epidemiological studies on various workers with different activities have shown carcinogenic effects of PAH's (see page 3352 and back page), known as polycyclic aromatic hydrocarbons, which are typically contained in formation water and, even if they are not that water soluble, can be attached to suspended solid elements and migrate long distances, even without undergoing degradation. But also, we consider that drilling muds are used for a variety of purposes, including control of the underground pressure and taking drilling cuts to the surface, and although they may vary in composition, they generally contain heavy metals such as mercury, lead, cadmium, zinc, chromium VI and barium. In this order, we will start with the presence of TPHs in the samples taken in the soils by the experts that participated in the judicial inspections, noting that 10% of the

total results are presented in ranges of above 5,000 ppm of TPH, 10.3% presented ranges that are from 1,000 ppm TPH to 5,000 ppm TPH, while 79.7% of the sample results show results below 1,000 ppm of TPs. However, it is noted among these TPH results, 80.4% have been brought by the defendants' experts (1,984 results), of which 88.2% (1,750 results) are below 1,000 ppm. The plaintiffs' expert have submitted 420 results, only 17% of the sample, and of these only 38% (160) are below 1,000 ppm, which is to say that 62% of the samples are contaminated above this level. This means that, initially, after the statistic analysis, it appeared to show that most of the data provided by laboratory results, when assessed together, indicated the presence of TPHs below 1,000 ppm, but if we analyze in detail, we discover this first statistical analysis could be slanted, because the sample includes an overwhelming majority of results presented by the defendants' experts, and the majority of those results represent the results below 1,000 ppm (70.9% of the total sample, which means more than 88.95% of this 79.7% of total results that are below 1,000 ppm of TPH). Thus, it is clear that by quadrupling the size of the sample with these data, the general assessment is incorrectly and inevitably influenced. According to the defendants' lawyers, this was due to a "Sample Homogenization" process, as discussed by the parties during the judicial inspection at Lago Agrio 15 well, where attorney Pablo Fajardo stated that "it has been common practice during the judicial proceeding of the defendants' technicians to take samples out of context, out of the pits, but for what reason? To say that there is no contamination. Logically, if I take a sample at the top of that hill, I will never find a proof of contamination. Samples should be taken where the pits are located, so that the presence or absence of hydrocarbons can be reported. Compound samples, what do they do? Maybe they take a sample in the location of the pit and two others away from the pit and later, during the sample homogenization, this type of evidence is considerably diluted or reduced. Thus, these are little technical traps to distort, reduce and make it appear before the Court as if there were no polluting elements, whereas this is not true, Your Honor," after which Dr. Callejas explained that

"what […] has been requested is a representative sample of the site, this site being quite a significant area which should be reflected in the sample. As the name suggests, a sample is an indicator of what can be found in the site. Which means it is not a trap. It is a system, first stated in the sampling and analysis schedule approved by both parties and, second, normally used in our country and all over the world, since it is a scientific way of doing it. The other one is simply a fishing expedition, to get what they wrongly call here, contamination, while it is the mere presence of hydrocarbon residues. As for how technicians working with experts appointed by us perform sampling, I strongly reject that fact that they are a trap for this Court. This is the right way to do it and the objective is, precisely to show the accuracy of what has been so lightly stated, about this oil having migrated, having moved and that these materials are all over the area, thus becoming an environmental disaster" (see pages 101119 to 101145). Later, during the judicial inspection of the Cononaco 6 well, counselor Pablo Fajardo would provide the following explanation regarding the work of the experts nominated by Chevron: "Maybe they take a sample from the pit, but if they find hydrocarbons they take two more away from the pit and I have an example here, if I may: Your Honor I want to show you what technicians working in this lawsuit do. If they find evidence of polluted mud or products, they mix this evidence with two higher proportions of non-polluted products, doing what is known as a homogenization process. Why do they do this? Only to dilute the existent pollution. If that sample includes so many thousands or grams of hydrocarbons, they end up recording double and where there were three, only one is recorded and thus, they say there is no contamination. What a trap, Your Honor, what a mockery they make of the Court. This is what experts and technicians working for the defendant have been doing and this is the reason why at the end they report that there are no hydrocarbons." This statement would be subsequently answered by Chevron's Counsel of Record, Dr. Adolfo Callejas: "They call representative and compound sampling what is exactly the opposite: what defendants' technicians do is called going fishing. They cast a line to see where they find a piece of crude and that is representative of the whole area. That is misleading, Your Honor, a lie and a farce. In every sampling activity, the intention is to obtain a representative sample of the site, of the whole surface, in its width and length and depth, counselor Pablo Fajardo.

This is why representative sampling, sampling homogenization is done, so as not to fool anybody, because if you what their technicians do, that is, analyze that piece of dark material you brought here today, that is not representative of the site." (See pages 123088 to 123123). Statements of the parties are taken into account and samples are considered as representative of the whole site from which they have been taken, which means that if they have been taken from a pit, the conclusion will be that the pit is contaminated but not the entire area. However, later the possibility of leaks from the pits will be discussed, so that the presence of contaminated soils is to be expected in the vicinity of the foci of pollution, consisting of the pits built and used by Texpet as a Consortium operator. However, to conclude the analysis of the presence of TPHs in the soils of the Concession area, the plaintiffs' experts are considered to have submitted samples amounting to 900,000 mg/kg. of TPH, highlighting, in contrast, the fact that the defendants' experts did not directly and fully analyze Total Petroleum Hydrocarbons but rather they analyzed DRO and GRO, which is equivalent to TPH for diesel and TPH for fuel, respectively. This complicated the comparison of the results obtained by experts of both parties, since some show Total Hydrocarbons, other divide Hydrocarbons between gas and diesel, which means they have to be added up to in order to have a relatively comparable equivalence with TPHs. Moreover, with TPH results we can state that every Consortium fields present similar characteristics, as it is evidenced by the samples taken in the different site inspections that pertain to each field. For the Sacha field, in the Sacha Norte 2 Station, apart from what has been mentioned before, the following samples are considered: ESN2-PIT3-SE2_sv and ESN2-PIT2-SEl_sv taken by the expert, Francisco Viteri, which come to 849,238 and 528,686 mg/kg. Accordingly, whereas sample SA14-AS_sv, submitted by Oscar Dávila from the inspection of Sacha 14, comes to 575,187 mg/kg, for the Shushufindi field we consider the samples submitted by José Robalino in his expert report as exemplary, from samples SSF4-PITl-SDl-SUl-R(1.3-1.6)_sv and SSF4-PIT3-SD1-SU1-R (0.0 a 0.4)_sv, taken during the judicial inspection at Shushufindi 4, which show results of 900,000 mg/kg. For the Lago Agrio field, we find the results submitted by the expert José Robalino, for samples LA02-PIT1-SD1-SU1-R (0.4-0.8m)_sv and LA06-PIT1-SD1-

R(1.4-1.9m)_sv, taken during the judicial inspections at Lago Agrio 2 and Lago Agrio 6, respectively, which come to 324,771 and 299,431 mg/ kg., whereas Luis Villacreces reports sample LAC-PIT1-SD1-SU1-R (1.6-2.4m)_sv, taken during the judicial inspection at Lago Agrio Central, that amounts to 317,375 mg/kg. For the Aguarico field, sample EACG-A2-SEl_sv, taken by the expert Luis Villacreces in the Aguarico Station, which comes to 333,262 mg/kg. whereas for the Guanta field, the same expert submits to us sample GTA07-PIT2-SEl_sv, taken in Guanta 7, which comes to 235,764 mg/kg. For the Auca and Yuca fields, sample AU01-PIT1-SD2-SU2-R (220-240cm)_sv and sample YU2B-Al-SEl_sv, submitted by Villacreces in his report on the inspection at Auca 1 and Yuca 2B wells, show an existence of 22,842.4 and 18,127.8 mg/kg of TPHs, respectively. With these results, we can also note that these amounts are the same as in the results of the samples taken in the inspections of the sites, remediated in accordance with the RAP and that continued in production after Texpet's departure from the Consortium (mixed operation), as the results obtained in Shushufindi 12 and Sacha 6 (see samples SSF13-PY0-SDl-SUl-R(2.1-2.3)_sv, SSF13-PIT3-SD2-SUl-R(0.2-1.0)_sv taken by José Robalino, the plaintiffs' expert, for TPH results and see sample SA-6-JI-SB6-1.6M, taken by the expert John Connor, showing results of 1,110 mg/kg of barium or samples SA-6-JI-PIT1A-SB1-2.40M, SA-6-JI-SB3-0.7M and SA-6-JI-SB3-2.1M which show results of between 0.13 and 0.15 mg/kg. of toluene, to which we will make reference later on) and in remediated sites as per the RAP, that were abandoned with no further operation (exclusively a Texpet operation), as reported in samples M2, taken by expert Pilamunga, an expert appointed by the Court, as per the judicial proceeding, for the judicial inspection of Aguarico 2 well and also the Shushufindi 18 well of TPH results for samples SSF18-Al-SUl-R(0.0m)_sv and SSF18-Al-SU2-R(0.0m)_sv As shown in SSF18-A1-SU1-R (0.0m)_sv and SSF18-A1-SU2-R (0.0m)_sv. As shown in the record, these TPH results are present for sites not remediated by Texpet, such as the Shushufindi 4 well and Lago Agrio 15 (see samples SSF4-PIT1-SDl-SUl-R(1.3-1.6)_sv; SSF4-PIT3-SDl-SUl-R(0.0-0.4)_sv; LA15-PITl-SD2-SUl-R(1.8-2.2m)_sv; LA15-PITl-SDl-SUl-R(1.8-2.2m)_sv and LA15-PIT2-SD2-SUl-R(1.4-1.8m)_sv), which gives us certainty that environmental conditions are similar in all of the sites, even if they have been covered by the remediation work mentioned and regardless of whether

they have been abandoned since then or are in operation. Thus, considering the existence of hydrocarbon impacts mentioned before, we have to analyze the scope or extension of such contamination in soils within the concession area, with the warning that it cannot be understood that all of the soil in the area is polluted but rather that the samples are representative of the sites from which they have been taken, but even so it is considered that based on the quantity and consistency of the data gathered in the 54 judicial inspections conducted at sites operated by Texpet, it is be appropriate to consider the possibility of extrapolating these data to other installations operated by Texpet, though they were not inspected during these proceedings, that is, we shall not proceed from the premise that the results of the samples from sites analyzed in the judicial inspections are direct evidence from uninspected sites, but rather that the quantity of inspected sites can lead to regarding them as a representative sample of the universe of sites operated by Texpet, so that results from the inspected sites can be extrapolated, an idea which is strengthened to a great extent, by the similarity of the results in the inspections that were carried out. Furthermore, this decision is made considering the defendant has recognized extrapolation as a valid system for arriving at conclusions based on a sample. In the motion submitted on October, 27th, 2003 at 5:00 p.m., Chevron's defense counsel says "May it please the Court to order the expert to gather official information from the National Bureau of Hydrocarbons, regarding wells drilled and reconditioned by PETROPRODUCCIÓN during said period, and let them select a representative number for the report, which will include the number of pits used in each case and the object or aim for which they have been used" (page 3330), making clear the suggestion to use a representative number for their report, which is precisely consistent with the same nature of the exploitation. In the opinion of this to Court, the 97 expert reports submitted by experts who performed judicial inspections for Texpet sites, constitute a reasonably representative sample of the universe of sites operated by Texpet when it was in charge of the concession, thus being a sample from which results can be extrapolated. Thus it is not necessary this Court to have inspected every hectare of the Concession nor each and every site operated by the defendant, but rather, based on the results obtained from a representative number of all the sites operated by Texpet, it is possible to deduce predictable results for the rest of the sites not considered in the sample. However, as we

as we had warned, apart from the presence of TPHs, which although they are an indicator of the presence of hydrocarbons in the area described, might not be good at indicating health risks, we will move on to analyze dangerous elements that must be monitored and, eventually eliminated, such as benzene, toluene, PAH's and heavy metals and/or anticorrosive agents used for drilling wells such as chromium VI, barium or mercury, which are elements of health concern. The degree of dangerousness of these elements is principally demonstrated by the plaintiffs reports, such as the expert Edison Camino, who refers to this issue in his report on the judicial inspection of the Sacha 10 well, in the chapter entitled *Impactos en la Salud* [Impacts on Health], from page 52529 onwards, and which is repeated on page 59798 in the expert report on the Sacha 51 well, in reviewing many elements he considers hazardous, but only some of them have been selected by this Court, depending on the degree of their hazardousness, persistence and solubility in water. In these opinions frequent reference is made to the Department of Health and Human Services (in the future, DHH by its acronym in English), the International Agency for Research on Cancer (IARC by its acronym in English) and the United States Environmental Protection Agency (U.S. EPA by its acronym in English) and the World Health Organization (WHO). On the other hand, the defendants' experts have concurred in mentioning the same U.S. EPA, the WHO and the American Society of Tests and Materials (ASTM by its acronym in English), as Gino Bianchi does in his toxicity assessment, on page 60496 and continuing, within the report on the same Sacha 51 well and on many other occasions the experts have made reference to the classification given by the Agency for Toxic Substances and Disease Registry (ATDSR by its acronym in English), so that every international source will be resorted to in order to establish in this proceeding the hazardousness of the elements reported in the judicial inspections. Having said that, and bearing in mind the hazards of certain contaminants, we have started the reference with the results of samples showing benzene, noting that benzene its water soluble and, even if it can be found naturally in the environment it is the most powerful carcinogenic agent considered in this decision, recognized as such by the IARC, the EPA and the United States Department of Health and Human Services. This is why we draw attention to the presence of at least 14 results reflecting the presence of benzene in the soils of the concession, between 0.056 and 18 mg /kg; the results of the samples taken by the

defendant's experts, Bjorn Bjorkman and Gino Bianchi, during the judicial inspections at Sacha Norte 2 and Sacha 13, respectively, showing an alarming 18 and 17 mg/kg (see samples RB-ESN2-PIT3-SE1 and SA_13_JI_AM1_0.1M respectively). Also, Chevron's expert, John Connor, submitted results showing quantities of 9.9 and 2.3 mg/kg. (see samples JL-LAC-PIT1-SD2-SU1.R (1.30-1.90) M and JI-LAC-PIT1-SD1-SU1-R (1.6-2.4)M) in the judicial inspection in Lago Agrio Central, whereas 0.22 mg/kg. [i]n sample JL-LAC-PIT1-SD2-SU2-R (2.0-2.5)M in the same inspection; as for samples from the plaintiffs' experts, we found one in South West Shushufindi and another in Sacha 51, with 5 and 1 mg/kg respectively (see samples SSF-SW-PNT-SCIIIb_sv and SA51-NE2(1.25-1.77m)_sv), which show an unusual presence of this hazardous agent which should be removed from the soil. Toluene is found naturally in crude oil and is water soluble. This element is associated with reproductive problems and other developmental defects, so that the presence of at least 10 results showing that the soils are contaminated with quantities between 0.12 and 97 mg/kg. reflects the impact on these soils and a potential health risk. The defendants' experts have submitted many samples with results representing toluene contamination, such as JI-SSFN-PIS3-(SS)-3,0M and JI-SH48-SW3-SB1(3) taken by Chevron's experts John Connor and Gino Bianchi respectively, showing results of 0.3 and 0.28 mg/kg whereas we found from 1 to 5 mg/kg; whereas we found 1 and up to 5 mg/kg. [i]n the results of samples SSF-SW-PNT-SCIIIb_sv and SA51-NE2 (1.25-1.77 m)_sv, taken by Oscar Dávila and Edison Camino in the judicial inspections of Shushufindi Norte and Shushufindi 51, respectively. We also have to consider samples SA-6-JI-PIT1A-SB1-2.40M, SA-6-JI-SB3-07M and SA-6-JI-SB3-2.1M, taken by John Connor, which show results between 0.13 and 0.15 mg/kg of toluene at the Sacha 6 well, which is a well that was declared remediated according to the RAP, all of which demonstrates to us the hazardous presence of a polluting agent and the urgent need to remove it from the Concession area. PAH's, which are also potentially carcinogenic, can deeply penetrate soils, especially if there is prolonged contact as would be the case with the waste pits, putting the soil and the groundwater at risk of contamination, underscoring the presence of 54 results between 1.1

and 3142 mg/kg., in the samples taken by the plaintiffs' experts, since the defendant's experts did not analyze this compound. On the other hand, the expert Luis Villacreces, in samples taken during the inspections of the Auca 1 well, Cononaco 6, the Sacha 51 well and wells 18, 4 and 7 at Shushufindi has provided results that exceed any standard of reasonable tolerance, with results such as 3,142 and 466 at Auca 1 in AU01-PITl-SD2-SU2-R(220-240 cm)_sv and AU01-Al-SDl-SUl-R(60-100cm)_sv; 2450 and 876 at Cononaco 6 in CON6-A2-SEl_sv and CON6-PITl-SDl-DUl-R(160-260cm)_sv; 154.152,73.6325,70.4021 at Shushufindi 18, at SSF18-A1-SU2-R(0.0m)_sv, SSF18-PIT2-SDl-SUl-R(1.5-2.0m)_sv; and SSF18-A1-SU1-R (0.0 m)_sv; José Robalino reported results of up to 42.47 at Shushufindi 4, whereas the expert Francisco Viteri reported 34.13 at Shushufindi 7 in SSF07-A2-SD1-SU1-R(1.3-1.9)_sv, all of which supports the opinion of this Presidency. Mercury has been considered as a possible human carcinogenic agent by the EPA and there are multiple studies showing the effects of mercury exposure, the most serious being permanent brain and kidney damage, which alerts this Court that alarming levels of mercury have been found in the Sacha, Shushufindi and Lago Agrio fields, where we found several samples reaching 7 mg /kg. taken by the experts José Robalino in the judicial inspection at Sacha Central (see samples -EST-Sl_sv and SAC-PITl-Sl-l_sv); and SAC-PIT-l-Sl-2_sv) and Xavier Grades at Shushufindi 8 and Lago Agrio Norte (see samples SSF08-PIT1-Sl_sv, SSF08-PIT1-S2_sv, SSF08-PIT1-S3_sv, SSF08-PIT2-Sll_sv, SSF08-PIT2-S3_SV, SSF08-PIT2-S4-l_sv, SSF08-PIT2-S5_sv, SSF08-P1T2-S6_sv, and also LAN-ESTA-B_sv, LAN-ESTA-Bl_sv, LAÑ-ESTA-B2_sv, LAN-ESTA-C_sv, LAN- ESTB-ASUEl_sv, LAN-ESTB-ASUE2_sv, LAN-ESTB-Dl_sv, LAN- ESTB-D2_sv, LAN-ESTB-El_sv). In light of these results, showing evidence of the presence of mercury in elevated levels in soil samples collected during the judicial inspections, there is evidence of a worrying presence of this element in the soil of the ecosystem of the concession. Lead is also found naturally in the ground, but it is well-known as an agent that is injurious to health, which is reflected for example in increasing restrictions on the use of leaded gasoline around the world, based on concerns about health, mainly reductions of cognitive ability, apart from being considered a reasonably presumed to be a human carcinogenic agent. Soil and water samples taken during the judicial inspections have indicated excessive lead levels that could pose health risks for

local populations. Lead levels in the ground are much higher than normal, which tends to corroborate that lead poisoning is a real risk. Despite these results it is observed that results amount to 294 mg/kg, as in sample JI-SSF-25-PIT2-SDl-(0.0M) taken by Chevron's expert, Jorge Salcedo, during the inspection at the Shushufindi 25 well, this has not been enough for these professionals to find a risk to human health. Also we highlight samples JI-CO-06-SB4-0.0M and SSF-13-JI-SBl-1.6M_tx, taken by the defendant's expert Ernesto Baca during the judicial inspections at the Cononaco 6 and Shushufindi 13 wells, reporting 98.8 and 98.6 mg/kg respectively. In tandem with this, the plaintiffs' expert José Robalino has reported similar results in samples SA18-SE3_sv and SA18-NEl-l_sv, taken during judicial inspections at the Sacha 18 well, amounting to 99.89 and 69.93 mg/kg, respectively. As regards cadmium, it is understood it can seriously irritate the stomach and the respiratory system and that there is scientific consensus on the fact that cadmium is, in fact or probably, a human carcinogen, so that the 151 results between 1.0003 and 315.79 mg/kg are indeed hazardous, of which we focus on sample JI-SA18-NE1-(SS), taken during the inspection at the Sacha 18 well, by Fernando Morales, Chevron's expert, where we can find 4.1 mg/kg. of cadmium; samples JI-SSF-07-SB1 1.2m (DUP), JI-SSF-07-SB2 1.40 m, JI-SSF-07-SB1 1.2m, JI-SSF-07-PIT2-SBC 1.7 m, JI-SSF-07-SB1 0m, JI-SSF-07-SB2 0m taken during the judicial inspection at the Shushufindi 07 well by the defendant's expert, Gino Bianchi, which provides results ranging from 2.6 mg/kg to 3.3 mg/kg; in the same way, samples taken by John Connor and Ernesto Baca in the judicial inspections at Sacha 6 and Sacha 14, respectively, in which we find results above 2 mg/kg of cadmium. The Plaintiffs' experts for their part report results reaching 315.79 mg/kg. (See sample SSF45A-Al-SE2_sv, taken at Shushufindi 45 A by Amaury Suarez) or the 16 mg/kg. and 5 mg/kg reported by Oscar Dávila in collected samples SSF-SUR-C1-TW(0.60-0.80m)_sv and SA14-P3 (0.10-0.80m)_sv taken during judicial inspections at Shushufindi Sur and Sacha 14, respectively, and the 7.9 mg/kg. found in sample LAN-ESTB-H2_sv, taken by Xavier Grandes during the judicial inspection at Lago Agrio Norte. As regards Chromium VI, we found 108 results between 0.42 and 87 mg/kg. Whereas the World Health Organization, the International Agency for Research of Cancer

(IARC) and the Environmental Protection Agency (EPA) in the United States have determined that chromium (VI) is a known carcinogenic agent for human beings, which make the results obtained from samples SA13-SEl(1.0-1.5m)_sv and SA13-SW3(1.0-1.4m)_sv, particularly serious, submitted with their respective chains of custody within Dr. Luis Villacreces' expert report as regards the judicial inspection of Sacha 13 well, which contains alarming levels of Chromium VI: 32.18 and 13.44 mg/kg. [r]espectively. The same expert also reported a sample with 87 mg/kg. taken during the judicial inspection at the Cononaco 6 well. As were samples SSF4-PIT1 -SD1 -SU 1 -R (1.3-1.6)_sv, SSF4-PIT5-SDl-SUl-R(1.2-1.6)_sv and SSF4-PIT5-SD2-SU2-R(1.6-3.3)_sv, submitted by José Robalino in his report of the judicial inspection at the Shushufindi 4 well (8.31 in the first two and 8.23 mg/kg. in the last one). Also, at the Aguarico field, sample RB-EAG-A1-SE4 taken by the defendant's expert, Fernando Morales, shows the presence of Chromium VI in levels hazardous to human health (1.11 mg/kg). At the Lago Agrio field we also find existence of Chromium VI in samples LA06-PIT2-SD1-SU1-R(1.8^2.8m)_sv, as shown in the report of the judicial inspection at the Lago Agrio 6 well, done by expert Robalino (3.62 mg/kg.). And finally, sample GTA07-Al-SDlTSUl-R(20-60cm)_sv indicates to us the presence of Chromium VI also at the Guanta field (1.9 mg./kg.), as stated in Villacreces expert report after the judicial inspection at the Guanta 7 well. Finally, several barium compounds are not water soluble and can cause effects harmful to health and even could cause cancer, even if barium is not specifically classified as carcinogenic by the International Agency for Research of Cancer (IARC) nor by the U.S. Department of Health and Human Services, however, this lack of classification does not mean that it is classified as a material that is harmless to health, so that considering the potential harm it could cause and lacking studies, we believe it is accurate to consider as a result that the large amount of results are dangerous that are over 751 mg/kg. and ascend to 10,100 mg/kg., this being one of the elements most widely reported, in all fields by both the defendants' experts as well as the plaintiffs' experts. Among the most notable results, we mention those in samples JI-SSF-25-PIT2-SD1-(0.0M), SSF-SUR-JI-SB5, SSF-SUR-JI-SB3 and JI-GTA06-PIT1-SD2, that exceed 5000 mg/kg and all of them taken by defendants' experts (first by Jorge Salcedo, second and third samples by John Connor

and fourth by Gino Bianchi) in different judicial inspections (Shushufindi 26 for the first sample, Shushufindi Sur for second and third, and Guanta 6 for the fourth). Also, the plaintiffs' expert, Mr. José Robalino, reported elevated results in soils at Sacha 18 and Sacha Central (see samples SA18-NW6-A2_sv, SAC-PITl-Sl-2_sv and SAC-PIT2-Sl_sv). We have found samples with barium content in samples SA-6-JI-SB6-1.6M, taken by the expert John Connor in the judicial inspection at the Sacha 6 well, a remediated well according to the RAP, which shows results of 1110 mg/kg of barium, and in the judicial inspection at the Sacha 57 well, a remediated site as per the RAP which has been exclusively operated by the defendant and where sample SA-57-JI-NEA-TW, taken by the defendant's expert Gino Bianchi, shows results of 1290 mg/kg of barium. On the other hand, if we consider the results of the samples taken from water, in relation to the prohibition against contaminating water in ways that might affect human health or the development of fauna and flora (art. 22 of the Water Law, published in the *Registro Oficial* No. 69 on May, 30th, 1972) and with the Health Code which imposed on the defendant the legal obligation to protect springs or hydrographic basins, that constitute the water supply, being subject to the regulations of this Code, special laws and their regulations" (art. 16), we are faced with the fact that in their majority we have in the record of the proceedings disturbing results for TPHs and other elements in the samples taken by the plaintiffs' experts and court experts, whereas Chevron's experts show results significantly lower for several elements and, in some cases, with no results for others, as is the case for Chromium VI and TPHs, which have not been analyzed by the defendant's experts. For this reason the information available in this case as regards the presence of hydrocarbon pollution in surface water sources has to be carefully analyzed, since it is scarcely reliable that on one hand results from the defendant's expert show relatively low pollution level whereas in several other studies, including one by Jorge Bermeo, a court appointed expert not nominated by either party, which reports the presence of elements of hydrocarbons in the water. Taking into account that the Court is not obliged to consider expert reports against its own judgment, since beyond the fact that the level of contamination presented by sources of surface water sources may vary depending on the site and the sampling method, we point out to the litigants that what cannot vary is the true fact

Mr. Rodrigo Pérez Pallarez, legal representative of Texaco Petroleum Company, in a letter addressed to Mr. Xavier Alvarado Roca, President of Revista Vistazo, published in several newspapers in the country, among which there is recorded in the case file the publication in newspapers El Comercio, on March, 16th, 2007, on page 6 of section 1, declares and acknowledges that "in Ecuador, 15,834 billion of gallons were dumped between 1972 and 1990 during the whole period of operation of the Consortium by Texaco." (page 140601), so that in light of the public statement of the legal representative of Texaco Petroleum Company in Ecuador, it turns out to be true that there was considerable dumping of formation waters into the ecosystem in the Concession area, whence it appears not only reasonable but also inevitable that an impact should have been caused on surface waters as a consequence of such dumping. Moreover, if we consider the amounts of formation waters dumped in relation to the hazardousness of the substance dumped, that is, the hazards that may arise from dumping formation water into surface waters used for human consumption, it is evident that people using these water sources were exposed to the contaminants that were discharged into it. Considering that formation waters have hydrocarbon solvents, such as BTex (benzene, toluene, ethyl benzene and xylene); PAHs (polycyclic hydrocarbons) and TPHs (total petroleum hydrocarbons) which we have already mentioned above because of the hazard they pose to human health, the harm and risk become apparent. The defense of the defendant has stated that during the judicial inspection at the Lago Agrio Central station: "Much has been said in the proceedings about the famous production water, formation waters; figures have been invented and astronomic amounts are mentioned with no real documentary base; we have never accepted, as has been stated erroneously, that the TEXACO Company dumped any oil into the environment, these figures have to be demonstrated by those asserting them. But, what is production water or formation water? It is simply the existing water inside geological formations containing oil in the earth, when the well is drilled it comes out together with the oil and has to be separated since it would be uneconomical and technically unsound to transport production water for long distances as is done with oil for selling it and refining it. Production water is characterized mainly by variable percentages of salt content, there are production waters which are much saltier than sea water, in some fields all over the world and other that have much less, as for example in the case of the Consortium, the Lago

Agrio field, according to existing published studies, production water contains five or six times less salt than sea water, which does not mean there is no salt, it does contain salt, but also in production water it contains small quantities of oil in the tank, since it separates because of the difference of gravity and chemical products these small quantities of oil that generally are between 20 to 40 parts per million, an insignificant amount, which is why in the case of the Consortium, after the production water was separated in the washing tank, it was sent to one or more of the pits, built in series, to get treated to achieve an even greater separation of these hydrocarbons, which were there, it also contains certain metals, we are not denying it, they are metals naturally found in oil in quantities that are also variable, the production water which is produced in the Oriente region of Ecuador, as it is called, contains metal in quantities which are not a significant risk to human health, as has been shown in different laboratory studies we have conducted at every Station we have inspected so far and as I hereby request to be done, as I shall duly confirm," however, sample results (see sample JI-LA-CENTRAL-PW, taken by John Connor, Chevron's expert, containing 1.31 mg/kg of barium) contradicts that affirmation in Chevron's defense, supporting instead what the plaintiffs have asserted, in saying "For instance, we know that formation waters contain 30% salt, which is obviously above levels, creating sodium chloride and, in turn a polluting chain that could even affect vegetation and prevent plant roots from developing normally" (see minutes at pages 102251 to 102308). We also recall the analysis of what can be expected from a "good oil company," wherefore one must consider very carefully the fact that important warnings had been written about the dangers of formation waters in 1962 and, in fact it was recommended that "extreme care should be taken in the handling and disposal of produced water not only given the possible harm to agriculture, but also because of the possibility of polluting lakes and rivers that hold drinking water as well as water for irrigation purposes" (page 158811), so, it becomes evident that we are not in the presence of a harmless element, as asserted by the lawyers conducting the defense of the defendant. On the contrary, as reported by Chevron's experts, "even if production waters do not contain significant concentrations of toxic compounds, this might represent a potential harm to receptive bodies and vegetation, given the

the elevated concentrations of salt (natural diluted minerals coming from production oil fields) (see page 70018) so that it turns out to be appropriate for this Court to conclude that formation water is an industrial waste, inevitably produced when oil is extracted, and that, considering its danger it should be treated with extreme diligence, which did not happen in the operation by Texpet. Another test that will be specially considered in the evidence consists of the interviews during the judicial inspections that will be analyzed further on in terms of people's own conception of their health in the sense that they concur in pointing to water pollution as the source of their health problems. With respect to the contamination of surface waters, it is also observed in the expert report by Bermeo that he has found contaminants in waters that probably do not come from hydrocarbon sources, such as fecal coliforms or other elements the expert affirms can arise from agricultural activities or even mining, even if there is no evidence of such an industry in the area. Considering that the presence of coliforms and other polluting agents not related to the oil industry cannot be attributed as a result of the defendant's activities, these proven harms shall not be considered as remediable in this proceeding, but rather the parties retain the rights to take such action as they may deem appropriate. As regards hydrocarbon pollution, the expert states that "the existence of heavy metals in the water, especially mercury (Hg), may lead to a decrease in aquatic resources due to toxicity. On the other hand, the property most of these metals have of being easily absorbed and bioaccumulative, enables them to become fixed in fish tissue so that they become part of the trophic chain." Moreover, in his conclusions he states that "The analyses performed on fish tissue showed the presence of total hydrocarbons in fishes at levels way above the maximum permissible levels for water, although there does not exist in our country references or standards that indicate or determine the maximum quantity that can be present before they cause problems to the fish, and in the end to the health of those who consume them, we take as a reference the permissible values for water and from this point we can state that there is hydrocarbon pollution; if it persists, it could give rise to a problem with food. The Agency for Toxic Substances and Disease Registry, or ATSDR in the United States, states that these products are highly harmful to health and are the result of a mixture of different petroleum derivatives and petroleum itself (gasoline, lubricant oils,

greases, tar, etc.), so that the total hydrocarbon presence in fish is the result of oil activities in the area." All of this information will also be considered in evaluating the possible impacts on human health; however, in the opinion of this Court the findings by Mr. Bermeo are sufficient to give an account of the presence of different types of contaminants in the water sources used by local residents. With regard to the pollution of other water sources, studies on groundwater carried out during this proceeding by both parties' experts for the judicial inspections are taken into consideration [which] present different conclusions, so that the Court has carefully studied the reports in order to reach its own conclusions. We observe that the different experts appointed by the parties have expressed themselves concerning the possibility of contamination of groundwater, indicating for example that "considering the non-soluble nature of degraded petroleum present in the subsoil and the low permeability of clay soils found at the site, soil leachates cannot cause an impact on the quality of groundwater beyond the limits for drinking water of the United States Environmental Protection Agency, U.S. EPA or the World Health Organization (WHO)" (see report on Sacha 21 by the defendant's expert John A. Connor, on page 24475) or that "the soil layer and remediated soils are made of clay and lime clay, which prevent significant infiltration of rain water and the consequent production of leachates from the soil in the area of the remediated pit. Due to low hydrocarbon solubility and low soil permeability, there is no potential impact on the groundwater of the site" (see report Sacha 10 of the defendant's expert, Gino Bianchi, page 29.792); in fact, even some of the experts have avoided the trouble of taking samples assuring that "There were no water samples taken from the brook since the degraded oil found in the remediated area and to the northeast of the platform has no migration potential by which it could reach the brook" (see report Sacha 10, submitted by defendants' expert, Gino Bianchi, page 29.748) Whereas, on the other hand, the plaintiffs' experts have stated that "toxic agents contained at these sites are hazardous since they can easily come into contact with local residents, considering that the area surrounding the well is used for livestock and farming. The groundwater used by families to prepare their food contains toxic agents coming from these contaminated

foci […]" (see report on Sacha 14, by Oscar Dávila, page 72.239) and that "It is clear that the oil went through the bottom of the contaminated areas, which shows that the soil does not form an impermeable layer and that in spite of this, it was not made impermeable to prevent the migration of oil to deeper layers. From what has been described above it can be deduced that groundwater is contaminated by hydrocarbon wastes which renders its use impossible due to the severe consequences for the health of people using this resource" (see report on Sacha 57, by José Robalino, on page 80.985; and see samples SA-57-JI-SW1, SA-57-JI-SW2, by the defendant's expert, Gino Bianchi, taken beneath a pit at Sacha 57 which, although it does not analyze TPHs, provides results of 0.022 and 0.031 mg/L., respectively), consistent with what is demonstrated by results from water samples beneath pits containing TPHs present, which we can observe in other cases where experts did take water samples in search of TPHs (see LAC-PITl-SDl-GW-NF(2.0m) and SSF13-PITl-SOl-GWl-NF(0.7), that were taken beneath pits and showing 61 mg/1 of TPH and 5.2 mg/1 of TPH, respectively, which gives us a good indication that the pits are a potential source of hydrocarbon contamination of groundwater, helping to prove that the presence of hydrocarbons buried at the pits entails a risk to the environment and eventually to flora, fauna and human health, since groundwater could become contaminated, thus becoming a risk to the health of people who come into contact with these waters. For the reasons stated, in the opinion of this Presidency to find the procedural truth regarding groundwater pollution, we must consider not only the presence of contamination in the samples on the effectiveness possibility that there exist seepages from pits in the vicinity. As regards the possibility of finding migrations or seepages, this Court has very carefully addressed what was stated by the parties during the judicial inspection at the Lago Agrio 15 well, where Dr. Adolfo Callejas, after requesting a lateral drilling on a slope where there was supposedly a pit, on behalf of Chevron stated that "the reasons for which there will be no oil flow in this area are that any material that might be there is in a state of advanced degradation due to the passage of time, one of the characteristics of degraded petroleum in its solid state , the natural soils of the area are clay, as we have observed, with low permeability, the degraded petroleum does not leach as dissolved petroleum" (page 101128), whereas the plaintiff, through its

Counsel of Record, attorney Pablo Fajardo, asserted that "although large quantities are not migrating, this substance is constantly diluting and coming out from there. And it is not a matter of its breaking down […] where there is soil that is mixed with these hydrocarbon elements such degradation does not occur [...] This degradation does not take place, the volatile elements do indeed disperse when the crude is exposed, but in this case, it is buried and owing to the large amount of petroleum, those heavy elements that are there and that keep on migrating progressively can never be eliminated [...]." After the drilling was performed, at the request of Dr. Adolfo Callejas, the stand was taken by the defendant's expert, Ernesto Baca, who said: "Here the soils, as can be seen, are laden with clay, the smell of the petroleum can be found in these horizontal distances, deeper, farther away from the actual slope in which there is a mixture because the slope descends gradually and there are some samples that are cleaner than others, but as the petroleum smell enters, the more it smells of petroleum, and it can be smelled in any sample" (page 10l133), indicating the presence of contamination originating from petroleum. From the foregoing, the existence of certain technical elements can be deduced which give rise to differences of opinion among the various parties' experts and among the parties themselves, so that it is appropriate for us to ascribe full evidentiary weight to the memo of November 24, 1976 (page 101106) sent to Michael Martínez, Manager of Texaco Petroleum Company, signed by Engineer Granja, Technical Assistant Manager, stating that on October 7, 1976, "seepages of crude occurred at the pits of the Lago Agrio 15 well, as a consequence of which a nearby stream was contaminated where a watershed originates, whose waters were contaminated in their course as far as the Aguarico, and causing damage at a farm belonging to a settler," indicating that at least at that time seepages occurred which caught the notice of the authorities. The defendant's impugning of this document, as carried out by Dr. Alberto Racines on page 101130, is not accepted since it is contrary to the law to claim not to know the significance of its contents merely because it is addressed to the agent and not the principal, seeking to induce the error of thinking that the Manager of the Texaco Petroleum Company, in his capacity as agent, was not the person to whom the memo in question should be addressed; on the contrary, the date on which the memo was sent and the persons who appear as sender and recipient confirm the reliability of the document to prove the plaintiff's contention. On the other hand, the fact that both the expert Gino Bianchi, as well as the expert Ernesto Baca, both expert witnesses called by the defendant, have repeated part of its

conclusions word for word, when on pages 60.529 and 66.129 (in the reports for Sacha 51 and Sacha 65, respectively) they have stated exactly the same thing, saying, "Upon evaluating the exposure from leaching into the groundwater and the surface runoff, it was found that the BTEX figures calculated in the more conservative manner are not sufficient to pose risks to health. This degradation swiftly eliminates light fractions of petroleum that are more mobile and toxic," creates doubts in the Judge concerning the impartiality of the expert witnesses who have been called by Chevron, since it is extremely difficult to understand how two independent experts should present conclusions that are exactly the same. For this reason it is reiterated that only those results of the analyses of the samples taken in the field by the different experts that were analyzed in the laboratory and whose results are recorded in the proceedings should be borne in mind, but not to consider the conclusions of any of the experts, for this Presidency does not share its criteria and is capable of reaching its own conclusions based on the results and sound judgment. These results indubitably constitute an indication of environmental harm, since they involve hazardous elements that were introduced in hazardous quantities into the ecosystem as a consequence of the hydrocarbon practices employed in the Concession by the operator Texpet; it remains to be determined to what degree these contaminants have altered the ecosystem and caused negative impacts to the environment and/or to its components, beyond the direct impacts to the soil and water to which we have already referred. But first it is fitting also to consider other environmental harm that have been proven in the proceedings, for which reason consideration has been given to the contamination and harm from hydrocarbons that could be attributed to third parties that are not defendants in this trial. Counsel for the defendant has certainly undertaken to document and has managed to prove with documentation the existence of environmental harm that are the responsibility of third parties, as shown in the statement of Dr. Patricio Campuzano during the judicial inspection at the Yuca Station (see record on pages 155678 to 155714, and the documents to which it refers), when he says, "As you shall be able to observe, there it is set forth in detail month by month in 1999, the stations where there was production of formation water, and the number of barrels that had been discharged into the environment. The things concerning the Yuca Station have been underscored for your benefit in order that they should be applied to this specific case. Without impairment to the fact that Decree 1215 which contains the Regulation for Hydrocarbon Operations considers that formation water *per se* is not a hazardous element, and so it is specified in the decree itself, as has been read. At all events I ask Your Honor

to consider the case that I am going to set before you, to which end let it be the expert designated herein who shall indicate the degree of conductivity the water has, ultimately, when discharged into the environment, based on Petroecuador's own reports. I am going to refer specifically to the month of January, 1999 in which 107,012 barrels of formation water were produced; 62,733 barrels were reinjected and 44,279 barrels were discharged into the environment. In February of 1999, 97,328 barrels of production water were produced, 52,437 were reinjected and 44,891 barrels were discharged into the environment. The report is quite extensive, and I repeat, the Yuca Station is given emphasis, there is information for the months of January, the months of April, July, October etc. At the end of this document by Petroecuador, a recapitulation is given which states: "The handling of Production Water at the Yuca Station, 1999," with a Statistical Pie Chart in which Produced Water is indicated with purple and indicates 1,174,108 of production water for 1999; water reinjected is shown in red, which amounts to 729,986 barrels of water reinjected for 1999, and water discharged into the environment is shown in green: 444,122 barrels, which is equivalent to 38%, Your Honor. In the same year a Statistical Chart is made, but this one is for the entire Eastern District for 1999, that is to say, for all the fields in Amazonia managed by PETROECUADOR. The produced water, as we see in this Table, was 65 million in round numbers. Produced water reinjected: 50 million barrels, and Water into the environment: 14 million barrels, equivalent to 22%, Your Honor. The same thing happens in 2000," and further on it continues. "In addition, Your Honor, I submit for your consideration, and shall give a copy to the Expert, another report by PETROECUADOR which is entitled: "*Protección Ambiental Distrito Amazónico*" [Environmental Protection Amazonian District] "Control of Accidents Spills of Crude and/or Spills" in which the spills that occurred in 2000 are highlighted, in this case, specifically at the Yuca Central Station, which is this facility, also known simply as "Yuca." On May 5, 2000 an accident takes place at the ACT platform (in upper case letters); the Expert should indicate what the initials "ACT" stand for. The description of the harm indicates that there is a rupture at the ACT meter and a possible failure of a check valve, and in bold type a statement appears that says "equipment failure;" it is indicated that the "damages caused" are to the well platform; surface area contaminated: 60 square meters, approximate volume spilled: 1.3 barrels; Third parties affected?: No; Percentage of Progress: 100%, remedied. This the Expert should know and it should be acknowledged so that it can also be appreciated that not only were there spills at this installation but also at the Yulebra Station, at the Yuca 06 well, and the Pindó Station,

Auca Este well, Yuca 04 well, and Auca Sur Station. On April 1, 2000, a spill takes place at the Auca Sur station. On April 2, a problem occurs at the 05 injector well at field Auca etc. Your Honor, this is going on in 2000. For 2001 there is another similar form from Petroecuador in which it just refers to, likewise, highlighting Yuca Central Station, in which it says that on February 9, 2001, at the "Yuca Central" Station there was a problem in the separator drain, due to a malfunction of the check valve, that is, of the equipment. This had a spill of a half a barrel of petroleum in the drainage area mentioned above. This is for 2001 and so it continues until December 2001, in which there was still another problem at Cononaco due to oil spills. For the year 2002, another similar form showing Environmental Protection of the Amazonian District, called "Control of Crude Spill Losses and/or Derivatives, from the "Auca Area" because all of this field is inside this area. And so it had highlighted for 2002 the spills that directly affect this Station. A similar form for 2003 with the same characteristics. A report that is exactly the same for 2004, with exactly the same characteristics, but basically emphasizing that it is a report by the actual owner of this installation. I am going to refer, Your Honor, additionally to a memorandum of the Municipal Government of Orellana by the Department of the Environment that says: Attention: Amazonian District Superintendant, Subject: Report of inspection of contamination by emissions coming from the camp. I do not wish to tire the Court, Your Honor, but it refers to an environmental contamination by a spill of crude from the Pipeline of the Yuca 12 Well, operated by the state company Petroproducción, on March 23, 2005 the affected farms were inspected, Adelmo Garrido was interviewed, probably the owner of the farm. And here it states that, on that date there had indeed been a problem of impact, to say the least, in the zone attached hereto, the Municipal Government of Orellana, through its Department of the Environment, with photos included, which provide a graphic account of the tip of the piping broken by the spill, the vegetation affected by the oil spilled, the pit affected by the spill, and, finally, the watershed of water for human consumption, to this day affected by the spill. This is the accusation made by the Municipal Government of Orellana.- Dept. of the Environment, at the Yuca 12 well. In tandem with what has been previously indicated, there is another form also issued by Petroecuador in which it can be appreciated that there have been other spills, and the form is entitled: "CLEANUP AND REMEDIATION OF CRUDES AND/OR DERIVATIVES EXECUTED BY DIRECT ADMINISTRATION"

in which it gives a chronological account, Your Honor, from January of 1995 to January 18, 2003, of the various spills that have occurred in Amazonia, and I have underscored those that have specifically taken place at Yuca Central, one on January 15, 1995, the surface area of the cleanup comes to 150 square meters. On January 17 there is another one of 150 meters, on June 12, 1995, there is another one that affects 6,000 square meters. In February of 1997 there is another one that affects 350 square meters. In November of 1998, 1,700 square meters are affected. On February 9, 2001, 250 meters are affected. In January of 2002, 3,030 meters are affected. There is another one that affects an additional 900 square meters on the same date." By the same token the content of the report by the expert Gerardo Barros merits consideration, which also shows the existence of polluting practices and effects in the operations conducted by Petroecuador, however this possible responsibility of third parties for environmental damages cannot be the object of this judgment since it was not included in the litigation, which is closed as specified at the beginning of this judgment. According to article 833 of the Code of Civil Procedure "the settlement hearing will begin with the answer to the complaint, which shall contain the dilatory and peremptory defenses to which the defendant believes he is entitled. Once the case has been answered on those terms, the judge shall seek attempt to get the parties to settle, and if he manages to do so, the case will be closed." In the present case the action was brought before the court without the presence or participation of any third parties apart from the plaintiffs and the defendant, and because article 492 of the Code of Civil Procedure provides that "In any trial, a third party may be heard who may be caused direct harm by the orders of the court. The complaint of the third party shall be considered incidental, without impairment to what is established in the following paragraphs with respect to third party actions," and considering that pursuant to article 493 of the Code of Civil Procedure "Third party actions of any kind whatsoever, whether brought in a plenary suit or in an enforcement proceeding, are always incidental," and considering that the latter do not have a place in this type of proceeding, the terms of article 486 apply, which provides that "Third parties of any kind that may consider themselves harmed by some ruling handed down in the summary hearing must file their complaint separately," in this way ensuring their rights. All of this is in agreement with what is shown in the record of the proceedings, inasmuch as on July 27, 2004, (see pages 8398-8401, document 79) Petroproducción appears in this proceeding. It is recorded that the Vice President of Petroproducción has delivered a power of attorney to Dr. César Abad, in light of which the presiding Judge, in his decision of August 26, 2004, at 9:00 a.m. (pages 9051-9053 front and back) in its relevant portion states: "Let the Record show, and let the parties be

so informed that the Mr. Engineer Fausto Jara Martínez, Vice President of the State Company Petroproducción, has granted a special power of attorney to Mr. César Abad López, and by the same token let the record show the motion filed by the aforementioned Doctor César Abad López," whereby Chevron, through a motion dated September 13, 2004, at ll:40 a.m., (page 9445) requests that Petroproducción clarify its intentions with respect to the role it seeks to play in the proceedings. In the decision of September 21, 2004, (page 9450) the Court stated verbatim: "Let the record show the motion filed by Dr. Adolfo Callejas, on September 13, 2004, at ll:40 a.m., and with respect to its contents, although Petroproducción is not a party to this proceeding, let notice hereof be conveyed to Dr. César Abad, legal counsel to the Vice President of that entity, so that he may provide clarification concerning the scope, implications and intentions of the motion referred to by the representative of the defendant company." Finally, on page 9458, (volume 87) there appears the motion by Petroproducción in which they state that Petroproducción, an affiliate of Petroecuador, is not a party to the proceedings in this matter. To issue this judgment this court considers that this trial was initiated against Chevron because of the operations performed by Texpet (a fourth-level wholly-owned subsidiary of Texaco Inc., with which it merged in 2002) in the Concession initiated under the 1964 Contract referred to above, which in its Art. 3.7 states that "The manner and means of conducting the operations that pertain to it according to this agreement shall remain at the complete and sole discretion of Texaco, so that it can search for and exploit petroleum, gas and other similar hydrocarbons in the contracted area [...]," wherefore it is these acts, performed by Texaco at its complete and sole discretion, and their consequences to the environment, that are addressed in this judgment. In the opinion of this Presidency there exist three weighty reasons to exclude the harm that are the responsibility of Petroecuador from the scope of the present judgment: 1) in this trial there appear as parties to the process only the plaintiffs and the defendant company, while the third parties that are presumably responsible for new harm (Petroecuador), have not been able to present any defense whatsoever in this proceeding; 2) no claim for reparation has been made for harm caused by third parties (Petroecuador), so that they do not comprise part of the action brought before the court with the complaint and the answering plea, and stating clearly that this harm will not be considered reparable by this ruling, while the parties are reserved of their right to claim such reparation, and 3) the obligation of reparation imposed on the perpetrator of a harm is not extinguished by the existence of new harm attributable to third parties. The destruction of the thing for

which reparation is supposed to be made, or that is supposed to be delivered, has been recognized by the law as a way of extinguishing obligations, yet notwithstanding this, it has not been alleged and it has not occurred in this case, since the thing for which reparation should be made has not been found destroyed, but rather it has been subject to various harms of different types and origin, making it newly clear that those harm that have not been the object of the complaint, which refers to the harm caused by the defendant, have not been considered as reparable by this judgment. To this end it is fitting to determine the existence of the harm for which reparation is claimed (see page 79), as has indeed been done heretofore with regard to the contamination whose source is from hydrocarbons, and yet, as we had previously warned, there exist other sources of potentially damaging contamination that have been recorded in the record, which have been indicated especially by the expert Jorge Bermeo, who in item 2 of his conclusions refers to Contamination of Water by Human Activities, indicating that "Another contaminating focus is that originating from direct discharges of previously untreated waste water into the rivers of the region, which can be observed in the number of colonies of fecal coliforms found by the PROTAL- ESPOL laboratories in most of the rivers in the zone," and in the report of the expert Herrera which referred to the environmental impact produced by poor management of the soil, wherefore it is fitting to invoke article 116 of the Code of Civil Procedure which establishes with all clarity that "The evidence must be limited to the matter at issue and the facts submitted for the court's decision." In this trial no municipalities have been sued or any other possible polluter (plantations, farms, estates or farmers), and although the mere possibility has been proven that some of these pollutants (coliforms or fertilizers) may also be agents potentially causative of some of the harm that have been proven, this possibility does not obviate the true and proven fact in the record that various agents used and/or produced during the exploitation of hydrocarbons are found to be present in the environment and that they are also potentially capable of causing them. Acting under the precautionary principle, all agents potentially harmful to health and the environment should be removed, but in this trial those responsible for contamination by coliforms and/or fertilizers have not been sued, wherefore there are no grounds for reparations for those harm that are the responsibility of the defendant, with such rights being reserved as may enable the parties to take action in the defense of their interests. Thus, to conclude with the analysis of the presence of hazardous elements resulting from the operations of Texpet in the Consortium, and considering that the results of most of the expert reports are similar,

we can arrive at the conclusion that 1. The operation of all the oil fields operated by Texpet visited during the judicial inspections have been governed by identical operational systems, which permits us to assume that the operational practices did not vary from one site to another and that the results have been the same; 2. The contamination in the area of the concession extends to 7,392,000 cubic meters (m3), a figure that is arrived at considering that we have 880 pits (proven through aerial photographs certified by the Geographic Military Institute which appear throughout the record, analyzed together with the official documents of Petroecuador submitted by the parties and especially by the expert Gerardo Barros, and aggravated by the fact that the defendant has not submitted the historical archives that record the number of pits, the criteria for their construction, use or abandonment) of an area of 60 x 40 meters, and because of the possibility of leaks and spills, it should be remediated in an area of at least 5 meters around the pits, and the pits have a depth of 2.40 meters (which is a reasonable estimate, considering that the pits have different dimensions, and as we noted above, the defendant has not presented an archive or historical record that details the number or the dimensions specified for the construction of the pits); 3. The surface water for human consumption has suffered a considerable impact because of the dumping of at least 16 billion gallons of formation waters during the operations of Texpet; and 4. There exist risks of leaks from the pits that could affect the groundwater. 9.3.-EXISTENCE OF OTHER KINDS OF HARM. Nevertheless, one cannot fail to observe the fact that the environmental harm described earlier and which are attributable to the activities of the defendant (in the soil and the water) can have especially severe consequences in cases in which the ecosystem that is affected is a place where groups live whose cultural integrity is firmly associated with the health of the land, inasmuch as environmental degradation can actually threaten the very existence of the group (see Orellana, *Castigo Criminal para el Daño Ambiental: La Responsabilidad Individual y Estatal en una Encrucijada* [Criminal Punishment for Environmental Harm: Individual and Governmental Liability at a Crossroads], Georgetown International). In this case the plaintiffs have alleged at least two impacts suffered by human beings: 1.Adverse effects on health, including elevated rates of cancer, miscarriage, high infant mortality and genetic deformities, and 2. Impacts on indigenous communities, including displacement from their ancestral territories, and loss of their cultural identity and integrity. We shall begin with the subject of human health, which is the most complex and urgent of all the issues brought before this Court. According to the United Nations Committee

of Economic, Social and Cultural Rights, health is "a fundamental human right that is indispensable to the exercise of all other human rights. Every human being has a right to enjoy the highest possible level of health to enable him to live in dignity." (General Observation No 14, General Assembly 2000[)], by which we understand that it is a necessary component of the right to life, such that an assault on people's health is tantamount to an assault on their lives. The force of this fundamental human right goes beyond any argument that the parties to the proceeding could raise, since this right is extensively developed in the different international instruments. Thus, in the International Covenant on Economic, Social and Cultural Rights, paragraph 1 of article 12, we find that it treats the "right of every person to the enjoyment of the highest possible level of physical and mental health." In paragraph 1 of article 25 of the Universal Declaration of Human Rights which asserts that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services." Furthermore, the right to health is specially recognized in sub-paragraph IV) of section e) of article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination, of 1965; and in an identical manner in section f) of paragraph 1 of article 11 and article 12 of the Convention on the Elimination of All Forms of Discrimination against Women, of 1979; as well as in article 24 of the Convention on the Rights of the Child, of 1989. In regional material one may observe article. 10 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, of 1988. In light of the standards cited, this Presidency recognizes that the right to health is especially linked to the right to human dignity, to non-discrimination and equality, since these are all integral components of it. To evaluate the possible adverse effects on human health caused by the contamination reported in the area of the concession, the following evidentiary elements are to be considered: copies of pages 41 to 45 of the document "*Situación de las Madres y Niños en la Amazonia Ecuatoriana. Salud, Nutrición y Crecimiento Físico en la Amazonia Ecuatoriana*" [The Situation of Mothers and Children in Ecuadorian Amazonia. Health, Nutrition and Physical Growth in Ecuadorian Amazonia] prepared by UNICEF. As indicated by the defendant, this document indicates what are the causes of infant mortality, which is supposedly at variance with what the plaintiffs are asserting, since they allege that the situation is similar in the rest of Ecuador. These data appear beginning on page 3201, and upon reviewing them we note that the different

provinces within the Amazon region report a specific number of cases of tumor-related deaths, which can be related to cancer as the plaintiffs allege, but for the province of Sucumbíos, there does not even exist any typology whatsoever connecting cancer as the cause of death, for which there seems to be an important bias in the data that does not allow for comparison or appreciation of the reality presented. As will be seen in due course, this bias repeats in the majority of official statistics, due mainly to a lack of State presence in the area. With respect to the certified copies of pages 81 and 82, "Coverage of Environmental Cleanup in the country and in the Amazon provinces in 1989 and 1990," a chapter of the aforementioned document cited earlier, it is taken into account as a statistical indicator of those items that take into account the relationship with environmental sanitation, that the Province of Sucumbíos has the lowest number of potable water connections in homes of all the Amazonian provinces, as well as access to public taps. This does not mean that the population in these areas does not consume water, but rather necessarily implies that the inhabitants of these provinces have a greater dependency on natural water sources. The document entitled "*Situación de la Salud en el Ecuador, Indicadores Básicas por region y por Provincia*," [Health Situation in Ecuador, Basic Indicators by Region and by Province], 2000 and 2001 Edition, is considered. As the defendants' allege, in this document it is revealed that, contrary to what the plaintiffs affirm, the situation of all cantons and provinces in Ecuador is very similar, and yet it is a known fact, public and notorious, that does not require evidence or proof, but is rather a matter of record as in effect there is information presented in "Coverage of Environmental Sanitation in the country and the Amazon provinces in 1989 and 1990," and on page 14 of the document entitled "*Endemain III" Informe de la Amazonía* [Endemain III Report on Amazonia], in its chapter "Household Characteristics by Study Area," Table 3.1, in which the Provinces of Orellana and Sucumbíos have suffered during decades of severe neglect by the State (access to health services is substandard, as is access to potable water), clearly evincing a significant gap in terms of the presence of the State and unsatisfied needs in the ambit of human health, which have been reflected in the almost total lack of state health services, preventing the population from accessing any type of prevention, diagnosis or treatment procedures, whatsoever, so that it is difficult for these provinces even to be considered as part of the official statistics, which is represent a significant bias to be considered. Pages 61-74 of the document entitled "*Informe sobre Desarrollo humano, Ecuador 1999*" [Report on Human Development, Ecuador 1999], published by UNICEF, in which data are presented on environmental policies and sustainability in Ecuador during the 1990s. It

is considered that the defendant alleged that although these data record environmental problems in Ecuador, techniques of petroleum exploitation do not constitute one of these environmental problems, however, on reviewing the document, the Court has found under the title "Some Facts and Figures on Ecological-Environmental Problems in Ecuador," in the literal e)the following text "Disorderly and irrational exploitation of non-renewable natural resources. These activities are carried out at the National level, the most notably chaotic and controversial being those related with oil and mining. Both oil and mining exploitation developed without any planning to determine the cost-benefit of such activities, which are authorized based solely on the presence of deposits, without any evaluation of whether or not they are comparatively profitable with the collateral impacts they can cause on society and the environment. In practice, most of the places where oil and mining activities are developed, which in several cases are in protected areas, have suffered elevated ecological impacts, either through pollution or destruction of the different renewable natural resources." The defendant has also alleged that on pages 63 and 64 of said report, points out the lack of environmental policies existing in the country during the 1980's, when incipient environmental protection policies had only just recently begun to take shape, and yet it does not take in this legal analysis carried out by UNICEF, and in turn will base its decision on its own analysis of environmental protection norms and its development, as has been stated above. As regards deforestation, what has been stated on page 66 is taken into consideration, concerning "the deforestation process is strictly related to the expansion of the agricultural frontier and spontaneous colonization of the tropical zones, with some exceptions." Certified copies of pages 160-166 of to the Report on human Development, in the Chapter entitled "Health Indicators in Ecuador by Regions, Provinces, Cantons and Residential Areas," in which according to the defendant it is shown that in all cantons in Ecuador the same data are presented, after an analysis of the data presented it can be observed that this is not entirely correct. The defendant has not considered the biases referred to above, caused principally by the lack of data caused by the State absence in these provinces, which has meant that they do not influence the data presented, being an incomplete reflection of the reality for the Court. Consideration is given to the certified copy of page 14, in the document entitled "Endemain III," Amazon Report, in the Chapter "Household Characteristics by Study Area", Table #3.1 published by CEPAR, in which

it is reflected that a very high 19% of inhabitants in the Amazon region use a River, Lake or Irrigation Ditch as a source of water supply, compared to 5.7% in other regions (1.3% in the Inner Region), showing beyond any bias, the dependence of the plaintiffs' from Amazonia on natural sources of water. With regard to tables 1, General Rates of the State of Health in the Ecuadorian Amazon Region, for 1967, 1970, 1974, 1978, 1982, 1986, 1989; 2, Life expectancy at birth in the Amazon Region, for 1962, 1977, 1980, 1985, 1980-1985; l-85-1990; 3, "Neonatal and Infant Mortality" 1989; 4, Infant Mortality Rate 1980-1989, these are taken into account to deliver this ruling with the annotated considerations. CEPAR's publication "*El peso de la enfermedad de las provincias de Ecuador – Años de vida Saludables perdidos por muerte prematura y discapacidad – Avisa*" [The Disease Burden in Ecuadorian Provinces—Years of Healthy Life lost to premature death and disability—Avisa], published in Quito on September 10th, 2000, has been taken into consideration as evidence, which calls to attention data referring to the quantity of available physicians per 10,000 inhabitants, as it shows a significant disparity among the various provinces, such as Pichincha, with 20.9 doctors per 10,000 inhabitants and 633 Health Care Facilities, and Sucumbíos, with 6.8 doctors per 10,000 inhabitants, and only 38 Health Care Facilities. In the second place, it is considered that the publication indicates that "the clustering of diseases was determined in the study from Mexico, and therefore for the study of the provinces no adjustment is necessary," which draws attention because there is a possibility that the situation in the entire territory of Mexico may not be comparable to what is experienced in the provinces of Orellana and Sucumbíos, which is sufficiently discussed in the study, and could represent a significant bias in the data presented. It is considered that out of the 3 disease groups encompassing 133 diseases, the first group refers to contagious diseases, pertaining to nutrition and reproduction, which would not be related to the object of this litigation. The second group includes non-contagious chronic diseases, and the third group includes deaths caused by violence, accidental or intentional injuries, so we are interested in the second group, which includes cancers, which account for 42.2% of the disease burden in the country (903.561 AVISA), which signifies a loss of 63 years of healthy life per every one thousand inhabitants. As this paper affirms, "Diseases grouped as non-contagious are a product of urbanization and of new lifestyles of the population, of new eating habits and little exercise." This tends to prove that this type of disease responds to

modern scenarios, in line with what has been declared upon examination by Mr. Silvio Albarracín during the Yuca 2B inspection, by Mr. Miguel Zumba in Sacha 13, and by Mrs. Amada Armijos, in Cononaco 6, whose interviews will be referred to further on. Finally, as regards this paper, the following is also considered in which it affirms: "Certainly, the disease burden is higher in those provinces located in the extreme lagging strata. In this province showing a high mortality rate, we find 17% of the disease burden in the country, although the burden only amounts to 9% of the population nationwide"; table 1, on page 28, shows that the Amazon Provinces have the highest poverty and abject indigence percentages and also in the AVISA rate per 1,000 inhabitants, which appear to indicate a relation between these indicators. However, on analyzing together the data presented not only in this study but also in the rest of the studies referred to, it can be concluded that it is not poverty that directly causes mortality, but rather a common denominator, because in other provinces with similar poverty indexes we do not find the same problem. This undoubtedly reflects the existence of other factors that could influence mortality rates, because poverty in itself cannot cause problems, but rather that poverty itself is the problem, and can derive in other problems that result from the inability or impossibility of accessing health services, due to extreme poverty or to the inexistence of these services. In fact, it appears all to the contrary, being that contamination is another factor that contributes to worsen poverty conditions, as it is observed that people who live in places affected by the effects of pollution have more problems to develop economic activities in these conditions. Likewise, we must necessarily remember and consider Expert Jorge Bermeo in the conclusions of his report indicating to us, "The analyses carried out in fish tissue determined the presence of total hydrocarbons in fish, in values way above the maximums allowed in water. Due to the lack of reference or norm in our country that indicates or determines the maximum quantity in which they can be present in water before causing any problems to fish and –to that end—to the health of all those who consume them, we take as a reference the permissible values for water, and from that point we can state that hydrocarbon contamination exists, which could evolve into a nutrition problem, if continued. The Agency for Toxic Substances and Disease Registry, ATSDR in the USA, indicates "these products are highly harmful to health, and are the result of a mixture of various products derived from oil and from

petroleum itself – (fuel, lubricant oils, grease, tars, etc.), due to which the presence of total hydrocarbons in fish is the result of oil activities carried out in the region" (see pages 159373 thru 159376). Next, as per number 84 of the test order, submitted by the plaintiff on October 27th, 2003, at 5pm, Expert Gerardo Barros was supposed to present a report on the "current use of the so-called pits in the drilling and reconditioning or maintenance of oil wells in the various reservoirs belonging to the Petroecuador-Texaco consortium, through a sample that the Expert would select from diverse wells in which the State-owned Company Petroproducción had carried out – either directly or through specialized contractors — such drilling, maintenance or reconditioning tasks in the fields stipulated — Lago Agrio, Sacha, Shushufindi, Auca and Cononaco, from July 1st, 1992 until the date of the report It will serve you, Your Honor, to have the Expert collect official information from the National Hydrocarbons Commission, regarding the drilled and reconditioned oil wells by Petroproducción during that period, and then have her select a representative number for her report, which will include the number of pits used in each case, and the object or destination for which they were used. However, in her expert report we notice the expert's tasks were not limited to what had been ordered, but rather were extended to oil fields that were not requested in the test order, she took several field samples, and made observations relative to health, which will not be taken into consideration for having far exceeded the object of said assessment report. Do not consider that all of the documents referred to above and submitted by the defendant serve precisely to contradict what plaintiffs have affirmed, but rather that they complement the complex scenario that must be analyzed length together, for which to continue the evidence provided by the plaintiff will be considered, who in support also have submitted studies to support their theses, and the Court is obliged to take them into consideration. In the Yana Curí Report, stated in volume 34, what first comes to our attention is the fact that the report was prepared by the Department of Health of the Vicarage of Aguarico, in collaboration with the School of Medicine and Tropical Hygiene of London, in response to a supposed challenge from the oil companies and the government, for them to present proof of the adverse effects on health. In regard to scientific evidence of the impact of oil on health, the report starts by referring to the studies performed on the impact of oil on animals, and then refers to

the impact of various phases of hydrocarbon activity on the health of people. The effects of crude on animals are found to be well documented, as appears in the data exposed, which talk for example of tumors on rats' skin after the application of crude on them (pages 3157), to weight loss and decrease in length of fetuses of pregnant rats that ate crude, significant differences in weight and to hemoglobin levels in otters' blood that live in contaminated areas of the Prince William Strait (page 3158), thus demonstrating that "exposure to crude oil can cause lesions in different organs, cancer, reproductive defects, and even death", both in domestic animals and in wild animals. With respect to the health impacts on humans, the study differentiates the impacts that can be suffered in the different phases of the oil activity cycle, and presents us with at least 3 ways through which oil and its components can enter into contact with people: through skin absorption, ingestion, and inhalation, clarifying that exposure is not necessarily limited to the contaminated area, as there are different mechanisms through which the components of contamination may migrate from one place to another. The impacts referred to in the exploration phase have not been documented, and respond to simple personal observations by the author, therefore these will not be taken into account. Conversely, during the drilling/production phase, despite indications that few studies have been carried out, and even that some of these do not show any relation to or excess illnesses; however, the information about the workers of oil and gas fields in the USA and the relation between their jobs and acute myelogenic leukemia will be timely considered, in the same way as the high incidence of leukemia among workers of oil fields in China. Taken into are account are those which indicate to us in the report respecting that "The effects on individuals facing acute exposure to crude are mainly transient and short-term, unless the concentration of compounds be unusually high". It is also considered the particular concern expressed in the exposure to benzene, toluene and xylene. In the same way, when it says "numerous studies on epidemiology performed on workers from different professions have shown the carcinogenic effects of PAHs." With respect to mercury, which is a heavy metal of particular concern for its toxicity on health, it is considered that this can be contained in drilling waste. In this way, the studies carried out in animals show the potential risk supposed to be in exposure to the various components of petroleum and/or to the chemicals used in its production, while

the great majority of studies performed on human beings referred to in this report have proved that exposed populations face an elevated risk of serious and non-reversible effects on their health, which – this being the case – have the potential of evolving into a important public health problem. Since the object of the study is that of "determining if environmental pollution due to oil activities in the East of Ecuador have affected the health of the population living close to the wells and oil stations", whatever is stated here will be applied to contamination originating in oil-related activities, irrespective of the party, consortium or operator. In general terms, the health of populations in areas near wells and stations were compared with the health of other populations that live far from these installations, in order to find out if pollution that originated in these locations is a contributing factor to the difference found. This study also includes an "environmental assessment", which was made on the basis of the collection of water samples, as indicated in the report. It can be appreciated, though, that the samples collected for the report were not collected as part of this proceeding or by order of any competent authority, reasons for which they will not be considered as a basis for delivering this ruling, but rather as a basis for the report. In terms of the execution of the judgment, the definition of "contaminated communities" in the report is taken into account in order to define what will be understood by such, stating that it refers to "those communities located within a distance of 5 km from a well or oil station, in the direction of the river current." This study is taken into consideration (together with its possible biases) because the steps followed a methodology seen by this Court as appropriate in an epidemiology study with the proposed aim, as the object of epidemiology is that of estimating the frequency and distribution of diseases in populations, and investigating the connection between specific exposure and the occurrence of a particular disease, although the field study may have been carried out between November 1998 and April 1999, a long time before this lawsuit started, thus, without the Court's intervention. Among the conclusions, the report's author asserts that it is difficult to establish a relation between contamination by oil and its impact because its effects are varied, and also due to the scarce information available on contamination in the past. However, he can assert that "women living near oil wells and stations present worse overall health conditions than those women living far from these oil wells and stations", adding that "there is a series of reasons suggesting that contamination originating from oil wells and stations is

responsible for the adverse effects on health previously described." The first reason that strengthens the idea of a relationship between exposure to contamination and worsened state of health is the fact of having compared a population exposed with a population not exposed to contamination, but geographically and socio-economically similar. The second reason is that the results found are statistically significant. The third reason is that the studies performed on animals and human, which alert us in a similar fashion to the risk to health posed by such exposure. And the fourth reason is that the results are in line with the effects known to occur through exposure to oil. As for the study entitled *"Cáncer en la Amazonía Ecuatoriana"* [Cancer in Ecuadorian Amazonia], which appears in volume 35, it is considered that this study also recognizes that "the information on the incidence of cancer in the region is sparse," that "In the Amazon Region there are no health care centers where cancer may be diagnosed or treated, and suspected cases may be referred to Quito", and that "hospitals do not have histopathological services or access to cancer treatment", which has already been advised before in this ruling, and has not been contradicted or discredited by any other evidence or proof in the record. It is this reasons for which the data from the Tumor National Registry critical, which although containing the cases diagnosed in Quito, includes 985 cases originating from the Amazon provinces, between 1985 and 1998. Despite this, it is recognized that "despite the high (95%) and comprehensive scope of the tumor registry in Quito, due to geographic and socio-economic difficulties faced by the peoples of this region to access adequate health services, cancer rates are in all probability underestimated". In this study, just as in Yana Curí, the exposed populations were compared with populations that had not been exposed to oil industry activities, but in this case, comparison was drawn defining the cantons exposed as those in which there had been oil exploitation during the last 20 years. The results show a standardized incidence rate of 39.49 per 100,000 men and 68.25 for women. The Relative Risk (Men RR: 1.40, Confidence Interval 95%; 1.15-1.71; and Women RR: 1.63; Confidence Interval 95%; 1.39-1.91) established in this report is statistical data of highest importance to delivering this ruling, as it can be used as a measure to evaluate the medical probability of an illness being caused by a given agent, wherefore this data will be considered to establish causation. This Court agrees with the report's conclusion that points to the data as suggesting a link between the risk of contracting cancer, and living in cantons with a long history of oil-related activities, as it

becomes inevitable to notice what all of these statistics indicate; for although the data on its own may not suffice to establish a causal relationship, this proof will be analyzed in conjunction with the evidentiary elements to form at an appropriate criterion for the judge, considering that these studies reflect group characteristics and not individual characteristics. In general, different epidemiological studies have demonstrated how the types of cancer found in the Amazon region are indeed related to exposure to oil chemical compounds, but particularly, the results of this study suggest a relationship between the incidence of cancer and living in cantons with oil-related activities, suggesting a causality factor given the intensity of the relation between exposure and some types of cancer, due to the evidence found in biological mechanisms through which some chemical components in crude oil may increase the risk of cancer; and because of the consistency with other investigations that relate chemical compounds in oil to cancer. As regards these two documents, the defendant has submitted the transcription of the interview conducted by Dr. Patricio Campuzano, lawyer representing the defendant, to Dr. Mishael Keish, carried out by Luis Velasteguí Galarza, expert appointed for this purpose, submitted before the Court on February 17th, 2010, at 5pm, in which, within what can be understood due to language limitations, Dr. Keish asserts that Dr. San Sebastián cannot establish causal relationships with the data he had, for which this Court cautioned that a reading of the works of Dr. San Sebastián it can be noted clearly that \ he has not done so, as he expressly states that the limitations of his work do not permit an establishment of a causal relationships. Therefore, the Judge understands that the data suggests a connection between oil-related activities and the harm caused to people's health. This same thing occurs with the deposition made by Dr. Patricio Campuzano, who in the judicial inspection of the Sacha Sur Station (see record on pages 97512 through 97585) on behalf of the defendant, expressed, among other things, the following, “In Epidemiology there are several available methods to draw valid and representative conclusions. One of these methods is carried out through surveys basically consisting of interviews of groups of potentially affected individuals. “These surveys go through several questions in order to draw conclusions. One of the questions they ask is if these individuals have access to medical centers to obtain diagnosis and medical treatment as needed”, which is in line with what has been indicated in the aforementioned reports, thus establishing

firm criteria that accompanies the reasoning of this Court throughout the whole judgment, understanding that there are various biases affecting the statistical data, one of the most important being the lack of access to health care centers. It is yet again noted that the defendant in this intervention has claimed that "Dr. San Sebastian's studies do not show cause and effect, Your Honor. You have the sacred duty at the corresponding procedural moment to set a ruling on this matter, and to do so, you must be absolutely sure that oil causes illnesses, that is, to have a connection, for this we have, from the epidemiological point of view, analyzed and questioned the scope of the studies made by Dr. Miguel San Sebastian", as was recorded in the minutes of the judicial survey. In the same judicial inspection, the plaintiff was represented by attorney Jaime Breilh, who submitted a document signed by several scientists from different continents (pages 97434 to 97438) in it the following was affirmed by Dr. Breilh himself: "This group of 50 world scientists agrees, in regard to the arguments, that, firstly, there do not exist or are not accepted in science perfect studies, there is no study that could be methodologically perfect. And I say that, after having struggled for 25 years of research in this country, in works publicized in different languages all around the world. But if there are studies, obviously, like in the case of San Sebastian, that go through rigorous revisions in order to be submitted into magazines, and those revisions include methodological revisions. What does a reviser do? I have been a reviser for articles about Egypt. What is it that you do? One doesn't say, the methodology is perfect or imperfect, what one says is that the methodology allows us to have a certain level of suspicion in order to assume the principle of precaution." Thus, we must repeat that the reading of Dr. San Sebastián's works clearly indicates that such reports do not establish cause and effect, but rather suggest an association, and that is how they will be considered by the Court, which will determine the existence of this causal nexus appreciating the evidence as a whole, therefore, Dr. Campuzano's words while analyzing the charts prepared by the Instituto Nacional de Estadísticas y Censos (Federal Census and Statistics Institute), which contain mortality rates based on the population of the year 1998, will also be considered jointly with the rest of the submitted evidence and also taking into consideration the biases that might affect the submitted statistical data. With respect of the field research report entitled "Texaco's Legacy: wells and stations", made in the year 2000 by experts Manual Pallares and Pablo Yépez, incorporated in the record by order of October 22nd, 2003, at 3 PM. One of the authors, Pablo Yepéz

states during his testimony that he was financed by Proteus foundation (page 2147), but this Court received a letter rogatory processed with information of such foundation refuting this testimony (see page 156033), which appears to be inconsistent and minimizes such report, since its origin is not clear. With this appreciation, it is considered that in the survey there appear several testimonies reporting health problems, starting from page 272 up to page 611, however, it is correct the appreciation that the defendant had in its impugnation of said Report,, in the sense that for the witness to be considered as such he/she must render their testimony before a competent administrative, judicial or consular employee, after swearing to fulfill the Law. However, it should be noted that the information compiled in this report, although it has been inappropriately called "testimony", is not valid, because a testimony is one given by the witnesses before the competent authority, which makes it quite clear that these are not witnesses testifying, these are simply surveys, which do not have the same dispositions that a testimony and the people polled must not swear oath. Having said this, it is quite obvious that said testimonies do not have the same value as if they were submitted by a witness swearing oath, before a competent authority, but they retain their value as a source of statistical information, as long as the information has been technically collected by a competent group of people. The field study entitled "A study to know the scope of the effects of the contamination of the wells and stations drilled before 1990 at the fields of Lago Agrio, Dureno, Atacapi, Guanta, Shushufindi, Sacha, Yuca, Auca y Cononaco", made by Roberto Bejarano and Monserrat Bejarano, included in the process by order of October 22nd, 2003, at 3 PM, and appearing on the file from volume 7, page 614, in which 1017 families were interviewed and of which 957 of them were severely affected; from the families affected, 42, 42%, that is, 4006, started legal actions to obtain remedies of their situation and only 17, 24%, that is, 70, obtained a result. The report says literally: "Based on observations of the different fields, wells, pits and direct conversations with families of the people involved and affected by the Ecuadorian hydrocarbon contamination", "The owners of the farms or the people who know the area where the wells and its respective pits are located always accompanied the technical team and they were the main source of information since they are the only ones that know the history of these places." It also says: "The direct contamination of the rivers, which are indispensable sources of water for most of the families, is one of the worst existing problems, since

it is used for cooking, drinking, bathing, washing clothes and animals. Because of these causes, the presence of illnesses originating from the exposure to and consuming of the water of the rivers created skin infections, intestinal and vaginal infections, and in many cases, cancer; in women, basically in the uterus, ovary and breasts; in general in the throat, stomach, kidneys, skin and brain." One of the authors of this report states in his testimony: "I was hired by The Front. I imagine that there is an inter-institutional agreement between Petroecuador and The Front, and that's probably why it was printed on Petro sheets." This witness assures that the samples were taken randomly; however, the challenge by the defendant to this evidence asserts the lack of impartiality of the authors, which is apparently corroborated by the testimony itself, because its author admits to have been hired by the *Frente de Defensa de la Amazonia* [Amazonian Defense Front], which could have affected his objectivity. In view of the aforesaid, this Court does not include this report as effective proof of the facts it contains, however they constitute levels that will be jointly considered with the rest. Finally, with regard to the harm to people's health, it should be noted that none of these harms or impacts to human health have been proven in a specious manner; that is, proof has not been presented of the existence of harm to the health of specific persons; rather, it has been proved, epidemiologically, that there exists harm to public health. Regarding the lack of proof of the harm or injuries to the health of specific persons, this Presidency notes that the plaintiff point of view is correct in the sense that no medical certificates have been submitted to show the existence of harm or injuries to or a specific health problem of a given individual; therefore, in order to make this decision, we consider, in the first place, that the reparation of particular harm has not been requested, rather the plaintiff requests, in regards to health: "contract on charge of the defendant, specialized persons or institutions in order to design and carry out a plan for the health improvement and monitoring of the inhabitants affected by contamination." (page 80); thus the submitted evidence does not necessarily refer to the particular harm, but to the harm to public health, which means that the fact that no particular injuries or harm have been proved is irrelevant; and in the second place, that the abovementioned claim is coherent with the object of the complaint, which is the reparation of the environmental harm that, as been shown, are those caused to the environment or some of its components; thus, we will only analyze the existence of harm to public health and if this harm is directly related to the reported environmental impacts for which

reparation is required. On this point, it seems appropriate to us to consider the idea of their own health that the inhabitants have, in their testimonies before this Court, in which, in a general manner, the interviewed inhabitants during the judicial inspections present a very poor picture of their own health, and consider themselves as having been affected by the operations of Texpet. This is as provided for by article 245 of the Civil Procedure Code which authorizes the Judge to "examine experienced people who know a place or house", during the formalities of the judicial inspections, emphasizing the procedural truth that all the statements received are identical, without a single statement indicating the contrary. Therefore, during the different judicial inspections, various statements were received from people describing their knowledge of the facts in this case. Therefore, in terms of health problems, the following statements, which concomitantly describe similar situations, mostly related to drinking water contaminated by hydrocarbon-c. Thus, Mr. Silvio Albarracín said during the inspection at Yuca 2B: "The presidency of the Court asked: 'Do you have cancer?' and the witness answered: 'No, my wife died of cancer three years ago.' The president of the Court asked: 'How long did your wife live here?' and the witness answered: 'She lived here for 18 years.' The presidency of the Court asked: 'Is there anything else that you can tell us about the subject that concerns us?'; the witness answered: 'This is contamination caused by Texaco; they have mainly contaminated the waters; that's why when I took my wife to the hospital, the doctors diagnosed her with cancer; it was SOLCA; when they asked from where we came, we told them from the East, and they asked us if it was an oil area and I answered yes, and he only said 'no wonder' and that was it' (see minutes on page 122533). Mr. Miguel Zumba, who declared during the Sacha 13 judicial inspection (see minutes on page 11722), said before the Court that: "Due to the contamination of the water one drinks, I've felt stomach and headaches; the whole family suffers from head and stomach aches; we've even gone to Petroecuador to notify them of the situation and they told us that we had to go to Quito to be examined; they even gave us a card to go to a specific place to do the exams, and we went to that place, but we didn't find the doctors because they were on vacation, or they told us to return the following day, and because of the distance, we didn't have time to wait, and we didn't have a chance to be seen by the doctors." This also confirms what was analyzed above

with regard to the difficult access that the affected people had to the appropriate health services and the absence of the state which implies an important bias in the official statistics. During the interview with Mr. Zumba, he also said that: “we were told that they couldn't find any kind of disease and they said that it could have been a very particular type of disease because they didn’t detect any uric acid, or diabetes, or cholesterol; that it could be a different kind of disease; perhaps a contamination. They asked us where did we come from and we told them that we came from the East, and they told us that we could be contaminated by oil.” This corresponds exactly to the statement of Amada Francisca Armijos Ajila, taken during the judicial inspection of the Cononaco 6 well (see minutes on pages 123088 to 123123), drilled in 1984, who tells us that: “the river was not contaminated when we arrived in 1982; but a few years later that changed, and since we were not aware of this, we kept on using the water up to the time when my husband got sick and died in the year 2002; he had cancer; he passed away; he’s been dead since March 22nd, 2002, when he died from cancer”, also stating that “We have had drinking water since last year, we couldn't use the water from the river to wash, to cook, from this contaminated river here that we call La Andina river. The last of my daughters is also constantly sick; she has great difficulty learning", thus implying a possible relationship between the death of her husband, who had cancer, and the usage of contaminated water with certain carcinogenic elements. In the same fashion, water is mentioned in the statement of Mr. Gustavo Ledesma Riera, given during the judicial inspection of the Shushufindi 4 well (see minutes on pages 74879 to 74904), who states that: “It all started when I bought this farm, and since we had no drinking water, since I couldn’t use the water from the streams, I followed my habit of digging a well to get good water to use”, stating that the well has a depth of 11 meters, as per the minutes of judicial inspection, in which the citizen also deposed and answered questions in the following manner: “When water started to come out; we left it like that for a day to see how much it would come up; when there was enough water, something appeared on top of the water, some kind of oil. Since we badly needed the water, we started to clean this [the water] and started using it up to ten months ago when we stopped using the water because all workers that would come up here would have their children fall ill, and even the workers got sick and we didn’t know why and now I have a terrible problem because no worker wants to come up here

because the situation is now public knowledge; everyone knows that there is no drinking water; I have water that I bring from another place; I have to bring it here with my car because this water is useless; the water from the surrounding streams is useless; nobody wants to drink this water because the situation is widely known due to the fact that eight to ten workers have come here with their families and all of them got sick; so now the word is out that no one should come to work at Mr. Ledesma's farm because there is no water to drink. Question: Has there been any technical or scientific analysis made to determine what the water contains? Answer: No, we've only had a doctor who asked a worker where did he drink water from and he answered from my well, and so we learned that it was contaminated." Lilia Perpetua Mora Verdesoto used identical words during the judicial inspection at Sacha Norte (see minutes on pages 1043921 to 104461) and said that she arrived at the area in 1985, and with regard to her own well, she said that: "we dug this well a few years ago to get water for drinking purposes; my husband dug it but it has dirty contaminated water; it has a terrible smell and a layer of oil; so I haven't been able to make juice and that's why we took water from the river for cooking, but the contaminated water that here goes directly into the river and into the stream from which we take water to drink." Similarly, Mr. José Segundo Córdova Encalada, who states that he arrived at the area in 1980, during the judicial inspection of Sacha Sur (see minutes on pages 97512 to 97585), declared that: "Why did my family fall sick? Because we used to walk, since we are not rich, around noon, and the nature of the area and the climate made the road smoke, which caused many men from this community to suffer from the middle of their bodies down and women had cancer in their reproductive organs, the body caught inhalations, and this from pure contamination; I am no expert on oil, but I think that it was surely caused by the fluid, it was as if your body was on fire," in addition to this, in the minutes, page 97539, one reads that: "The witness said: 'One of my father's uncles arrived in good health from El Oro province and only drank water in this area; I used to tell him to stop drinking the water, but he would not stop, and a year after that he felt sick and had a burning feeling in his stomach; they took him to Quito, he came to our house several times here and finally died; they found that he had cancer; my mother would usually come to give us lunch, she was nice and healthy, then she got a stomach inflammation, she hasn't died but the expenses have cost us heavily." In this same judicial inspection, the President of the Court also examined Mrs. María del Carmen Villota, as per page 97548 of the minutes, where

the lady states how she used to walk on the crude oil spread on the roads, and how the waters that would sometimes be mixed with something that the witness calls "crude", which she "would wash but it would stay the same; it was liquid like water", and she also declared before the Court that a few months ago she was diagnosed with cancer. Also in this judicial inspection, Mr. José Holger García Vargas, who said that his wife was confined to bed and blamed the contamination of the river for his and his wife's suffering, stated that he used the water from the river "because, at that time, we had no other place to take water from, we used the water from the river to shower and wash; and that's why we have fungi in our body and we haven't been able to cure that". This testimony is particularly indicative to the Court of the dependency of these people on the natural sources of water that were affected by the Texaco dumping. Then, Gerardo Plutarco Gaibor, during the judicial inspection of Aguarico Station (pages 82595-82642), who said that he has lived in the area since 1979, stated, in that very same inspection: "we arrived at that time, muddy, dark water ran through this stream and it was salty, I had a little house downstream from here on the left bank, where I moved in with my wife and my two daughters that I had back then. During this time the girls would go down to bathe in and drink that water and they got sick; they got typhoid fever, fungi, and we also got these problems because we didn't know it was contaminated, and we would bathe in it." His testimony contributes to prove that human beings used these waters and that the Texpet dumping caused unlawful exposure to the people who used that water. Mr. Gaibor also declared and showed to the President of the Court the marks of his disease, as per minutes stating: "I have diseases, as you can see, Your Honor, in these pictures; here you can see the fungi on my wife's skin; here is the side of my back; that's my belly; it has been years; my skin is contaminated; I still have the disease on my shin, I'm not cured. This has been going on for approximately 20 years . I still have these infections on my skin, Your Honor. I'm not lying, you can tell. So, this water, as you see there, is from where they were inspecting the pipe and a great deal of salty water spilled out." Concurrently, in the judicial inspection of Shushufindi 13 (see minutes on pages 74973-75013), Mrs. Aura Fanny Melo Melo declared that: "That water has always been like that; when it rains, more of it comes out, the grass that leads to the stream gets stained, it gets stained by crude oil; even my daughter, one time when she was looking for fish, put her foot in the stream and her foot started to

burn and it can't be cured. At Quito, she had a biopsy, they were able to remove the problem from the knee but not on the feet; look at her feet; at Quito, they did a biopsy and she has the scar, but she can't be cured, not with anything." Also, Mr. Pedro Chamba Paucar's statement, who says that he lived there since 1973 and stated during the Shushufindi Sur Oeste judicial inspection (see minutes on pages 10057 and subsequent), says that "Back then, I had a daughter that got sick and CEPE's Engineer told me not to bathe in that water, especially my wife who was pregnant that she not use the water, and that in a few days the problem would be solved." All these statements made before the President of the Court show a profound conviction among all the interviewed citizens with regard to the contaminated waters and their role as the cause of their health problems. However, there are many other statements that do not specifically refer to the contamination of the water but to the products deposited in the pits and other oil facilities, which, in many cases, came into contact with people, as it is shown on the testimony of Mr. Manuel Antonio Caba Caba, who during the Sacha Norte 1 judicial inspection (see minutes on pages 104391-104461) told us that he moved to the area in 1986 and that "My wife would let the cows graze near the edge of the pit and they developed a foot ailment, I would like you, the attorneys, and Your Honor, to verify this situation. Here is my wife, she has a foot ailment which might be curable, or which might spread to both feet." Further in the file, we find an interview with Romelia Mendúa, which was made by her interpreter Emergildo Criollo, during the Guanta 7 judicial inspection (minutes on pages 103431-103478): and she said "With the arrival of the company Texaco, we had contamination of the environment and of small and large rivers, and that's why we have suffered a lot because of the Chevron company. Also, some animals that we used to eat died out and that's why nowadays we don't have enough food; our children end up stunted; we have been suffering from unknown diseases since the arrival of the company Texaco." Then, the testimony of José Guarnan Romero, during the judicial inspection of the Aguarico 2 well, on June 12th, 2008, gives his version of how his wife, María Transito Romero Carannqui, died, and he also repeats what people told him saying that oil is responsible for his wife's accidental fall is due to the cancer that she contracted. There is also the statement of Mrs. Rosa Ofelia Guarnan Guarnan, during the judicial inspection at Yuca 2B well (see minutes on page 122533), and she said: "About a year now, I've been suffering and I've received treatment; I used to be quite fat and now I'm losing weight and according to the tests that they did on me they told me

that I have leukemia due to the contamination because we live right next to a well," and finally, we can also consider the Estación Sacha Sur judicial inspection (see minutes on pages 97512-97585) where Mr. Hugo Ureña was examined, as per page 97537, where the minutes declare that the witness has been living in the locality for over 34 years and that: "The witness declares that his father died of cancer, the same for an aunt and more recently, one of his nieces, who died from leukemia, at the age of 17. He indicates that his father's disease left them quite poor because they had to sell 63 head of cattle trying to cure him, and also they had to sell the car of one of the witness' brothers, but despite this, they couldn't save their father, who died a few months later of stomach cancer." This court recognizes that all these testimonies mentioned before are not decisive and irrefutable evidence that there is a health problem among these citizens; however, they can't be totally dismissed since we can observe the impressive coincidence between the facts described in all these statements, without a single statement or declaration to the contrary. The experts that have participated on this case submitted reports to this Court in their fields of expertise; however, they have not experienced living in that environment and they have no further historical knowledge than what they've found in a few documents. Not one of the experts that have participated in this case knows the historical reality better than those who have lived there; consequently, these statements will be considered with the value they deserve and in accordance with the rules of sound judgment, and together with the other evidence submitted by the parties. This Court also understands that the citizens that have been examined during the judicial inspections are not doctors or health care professionals, as was left clear by Chevron's Counsel of Record, Adolfo Callejas; who, during an examination of Mr. Carlos Cruz Calderón at Yuca 2B judicial inspection asked him: "How do you know that these are toxic [wastes]? what studies have you made to determine that they are toxic?" So, while recognizing this astute argument from the attorney to discredit a peasant, we should repeat that this Court will consider such statements, in accordance with sound judgment, and jointly with the rest of the scientific evidence that has been submitted by the parties. However, this Court is inclined to think that the coincidences in the testimonies corroborate what has been said, and leads us to think that the suffering mentioned in these statements is real. Regarding the means submitted to prove the existence of harm to public health and

its origin, that is, the surveys and the epidemiological studies, we should recognize that, by Law, we usually require definitive proof of the harm. However, the evolution of the Law has allowed the usage of other probative means. This is recognized by the Judicial Attorney General of the defendant, Adolfo Callejas, who, during the judicial inspection at Sacha 6 well, on August 18th, 2004, said: "There are two main ways of evaluating the validity of the complaints in terms of the human health: (1) The execution of an epidemiological study; and (2) Performing a risk assessment; both are based on a fundamental submission: "There must exist personal exposure to a harmful agent which can result in the contracting of a disease." Actually, in order for an environmental risk to exist it is necessary to have the following three (3) indispensable elements: 1. A source of contamination; 2 A way for the contamination to reach the receiver; and 3 A receiver for the contamination. If one or more of these elements does not appear, then there is no risk. If there were a risk and the three elements to complete the chain; there would still exist the possibility that the contamination is of such a low level that there is no harm at all. Some examples of contamination sources could be oil pits and oil spillage. In that case, the contamination could be transported by air, by surface water or groundwater or by direct contact. The receivers could be the inhabitants, their animals, their plants or their sources of water (streams or wells)." This important statement admits not only the means of evidence that could be used to evaluate the validity of the reclamations related to human health, but also recognizes the possibility that, given certain conditions, harm to human health might be caused. Concurring, one of the experts called by the defense also recognized this possibility by saying that "Although production water does not have significant concentrations of toxic components, it could represent a potential danger to receptive bodies and to vegetation due to its high concentration of salt (dissolved natural minerals coming from the production reservoir)" (page 70018). Having said this, we should analyze the possible forms of exposure of people to the environmental contamination reported, always remembering that we have repeatedly mentioned in the case file, and in this ruling, ingestion, inhaling and direct contact as main forms of exposure. Firstly, this Court observes that all these exposure mechanisms have been described by expert witnesses and by citizens of the area, which can be corroborated by analyzing the statements that were received during the judicial inspections, in which

in which populations of the zone have coincided in narrating the same forms of contact, such as the statement of Amada Francisca Armijos Ajila in Conocaco 6 (see minutes from pages 123088 to 123123), stating that "as we didn't know, we continued using the water until there came a time my husband fell ill and died in the year 2002." Likewise, Mr. José Segundo Córdova Encalada, in Sacha South (see minutes from pages 97512 to 97585) declared: "Now, why has my family fallen ill? Because we would walk on foot, since we aren't rich, at about noon. The local nature and climate made the road steam , from which originated many men from these communities suffer from their waists to their feet, and women got cancer in the reproductive organs, they got inhalations, and the cause of that was contamination. I'm not an expert in the field of oil, but I believe that that fluid affected them, such as the fever that took hold of their bodies." Apart from this, as we have annotated, on page 97539 states that The witness states that an uncle, a brother of his father, was healthy when he came from the province of gold, and used to drink water from here only. Don't drink that water anymore here, uncle, I used to say to him. I know something, don't drink that water, but he kept on drinking it and in a year's time more or less he felt burning pains in his stomach." Gerardo Plutarco (pages 82595-82642) also expressed that "there was a lot of murky and dark water flowing through the stream , and it was pretty salty, I had a small house, going down from here towards the left margin, where I settled down with my wife and my two daughters that I had at that time. Back then, the girls used to go down to the river to take a bath, to drink that water, and they would get ill, they would get typhoid fever, fungi, and we also got ill because we didn't know that that water was contaminated and we used to bathe ourselves there." Likewise, Mr. José Holger García Vargas, at Aguarica station (see minutes from pages 82595-82642) said that he used the water from the river "because at that time there wasn't any other place to drink water from, we drank water from the river, we took baths and washed ourselves there," all of which shows the different forms of exposure , to which we must add what has been stated by the expert Jorge Bermeo, detailed above, in connection with the risk that these elements enter into the trophic chain Having said that, and regarding the impact suffered on people's health due to the contamination of water, we will now consider the what was said by a field research study called "Study to ascertain the scope of the effects of contamination at the oil wells and areas drilled before 1990 the Lago Agrio, Dureno, Atacapi, Guanta, Shushufindi, Sacha, Yuca, Auca y Cononaco fields," prepared by Roberto Bejarano and Monserrat Bejarano, added to the proceedings on October 22, 2003 at 3p.m. and present from Volume 7, Page 614, which states:

"The direct contamination in the rivers an indispensable source of water for the majority of the families – is one of the worst problems at present since this water is used for cooking, drinking, bathing, washing clothes and for animals. As a consequence, exposure to and consumption of water from these rivers produce skin diseases, intestinal and vaginal infection, and in many cases, cancer, in women basically the uterus, ovaries and breasts, and, in general, the throat, stomach, kidney, skin and brain," which corroborates what was anticipated , in the sense that the natural sources of water of the Concession area have been contaminated due to the hydrocarbon activities performed by the defendant company, and that due to the dangerousness of the substances dumped and to all the possible mediums of exposure, this contamination puts the health and life of people in general at risk, as well as the ecosystem. However, this case is more complex since as we have cautioned earlier, as we have said above, the environmental harm previously described, which are attributable to the activities of the defendant (in soil and in water), can have particularly serious consequences in cases where there is an alteration to an ecosystem where there live groups whose cultural integrity is firmly associated with the health of the land, since that environmental degradation can threaten the very existence of the groups themselves. In this way, as regards the impacts on the indigenous communities, given that these human groups depended on hunting and fishing, the impacts suffered by the ecosystem affected them directly. Yet, this Court will consider that the decrease in hunting and fishing from which these indigenous communities depended on, although this affects their nutrition, and therefore, their right to health and life itself, is the result of the impacts suffered by the flora and fauna. As a consequence, we must occupy ourselves to repair the environmental harm caused to the flora and fauna in order to restore their source of subsistence and recover their traditional eating habits, looking to recover from this impact. On the other hand, when it comes to the losses of animals and domestic farming suffered by the citizens who have testified during the judicial inspections, we must observe that the compensation for this harm has not been specifically claimed, that is to say, a monetary compensation is not being claimed. What is being requested is that given that all the declarations heard during the judicial inspections are concurrent, they would contribute to reinforce the decision of the judge as regards the reality of the situation described. No doubt that all of this could have also affected their right to nutrition and, consequently, their right to life, for "The right to nutrition is a human right protected by the international law. It is the right to have access, in a regular,

permanent and free manner, whether directly through purchasing by money suitable and sufficient food, both on the grounds of quality and quantity, which relates to the cultural traditions of the population to which the consumer belongs and which guarantees a psychological and physical, individual and collective life free from anguish, satisfactory and with dignity ." (Ziegler, J., Report from the Special Rapporteur of the UN Commission on the Human Rights on the right to food, Committee on Economic and Social Rights, Geneva, March 2004). Under this framework, the following declarations, received during the judicial inspections, are considered : The declaration of José Guamán Romero in Aguarico 2 on June 12, 2008, who, from pages 141008 to 141009, given his version of how "I first cultivated coffee, then ranched, but the problem was with the pasture, everything died there, the grass died because of the problem with crude oil, everything was pure crude, the pigs died here, they were full of life and when you least expected it, they fell here." That is concurrent to the declaration given in the judicial inspection of Cononaco 6 by Telmo Ramírez on November 16, 2006, page 123100 stating that "the same thing happened with the cattle; I lost about ten heads of cattle. They drank water from here. I myself didn't know that it was contaminating when that happened; we lost like ten heads of cattle. I couldn't cure them with any remedy." The declaration of Daniel Barre, given on November 15, 2006 in the judicial inspection of Auca 1 (pages 122971-123007) is equally considered. Therein it that states that when questioned if he has animals, he responded that "of course, here the cattle have miscarriages and they are still-born because of the contaminated water they drink. Those responsible are the chemicals that are here and that get inside, since they go out little by little." The declaration of Manuel Antonio Caba Caba, who in the judicial inspection in Sacha North 1 (pages 104391-104461) indicates to us that he arrived to the area in 1986 and that he "first worked primarily with coffee, and I lost the coffee; then I ranched and I lost part of the pasture; I raised cattle, and my best cow got ill, it had a miscarriage." Similarly, the declaration of Mr. Gustavo Ledesma Riera, given in the judicial inspection of the well Shushufindi 4 on July 25, 2005 (pages 74879-74904), who indicates to us that "in view of that I was having many losses, I mean, the cattle and the pigs had died; I almost lost my daughter-in-law because she was trying to rescue the pigs that had fallen down in the pit when she fell down. Happily, the workers were near heard her crying out for help, so they came and rescued my daughter-in-law. I have proof of this, I mean, the doctors that looked after her." In the judicial inspection done in Sacha South station Mr. Hugo Ureña was interviewed, as stated on page 97537, where he stated that

he has “a property of forty hectares, most of which is covered with pasture, though he doesn’t have animals because they died and had miscarriages. We asked the company to acknowledge this and offer compensation to Mr. Ureña for his animals for which they conducted an investigation with some experts from the Department of Agriculture, who found oil in the livers, kidneys and intestines of the animals, but we cannot find an authority that does justice for us, they have never made good on their offers.” In the judicial inspection of Sacha North (pages 104391-104461), Mr. Carlos Quevedo Quevedo stated that he has lived in that area since 1970. He also stated that his plantations weren’t producing adequately. “A dirty liquid with a bit of oil was running and this fell in the streams. As regards the plantation, the plants were left damaged, the fruits were left totally contaminated, and consequently, I’ll mention the papaya, for example, the papaya tree was filled with fruits and producing fruits, but you ate them and they got that bad smell and the person that ate that got a headache and stomach-ache afterwards,” to which he added that “we don’t use the water from the stream because it’s useless, I have a little watershed or spring, and we use water from that little spring, and it’s not so good because it’s always bad.” Likewise, the deposition of Mr. Briceño Castilo José Antonio during the judicial inspection of Lago Agrio 2 (pages 87923-87965) is also considered. He stated before the Presidency of the Court: “Then this is what I can give faith of what here in this areas for example I had cattle, so here’s the evidence of what I had, that to lose the amount here the cattle drank this water. They didn’t die, however, they never procreated, they got skinny, they didn’t produce milk and everything was like that.” We also find the declaration of Celestina Piaguaje Payaguaje who states that she has lived in this area since 1973, and during the judicial inspection of the Aguarico station (pages 82595-82642) stated : that “Yes, from ’60 until ’69 I lived in the town of Secoya and Siona in a more dignified manner. There wasn’t any kind of contamination and everything was normal, as our lives, the people from the forest. We lived well from hunting and fishing and the environment was healthy. Then, the year ’70 onwards, everything changed completely, pretty brusquely.” She also refers to this when stating that “life seems to have changed completely, which obligated us to look for other ways of earning a living so we could have other alternatives to live a good life because we couldn’t hunt or fish any longer, so we had to breed cattle in order to have a good life so we didn’t have to look for a life which was different to traditional hunting and fishing,” and she made it clear that “we had to eat fish, but sometimes the catfish, for example, had their stomachs eaten away by the oil and they tasted different. That means

that they were already contaminated. This was with the small catfish as well as with the big ones." During that same inspection, Gerardo Plutarco Gaibor, who states that he has lived in the area since 1979, affirmed that: "And we came here ourselves with a few heads of cattle that drank that water and had miscarriages, they dried out and died, the cattle died, all the animals died because they ingested that water, Your Honor." The declaration of Anselmo Abad Vásquez, registered on page 79715, and given during the judicial inspection of Shushufindi 21, is also considered. There he states the following: "Yes, I had cattle, all of that was pure pasture; we can still see some grass there. My cattle got ill, they had some wounds. It isn't the typical *tupe*, and they wouldn't heal even if I tried to cure them, here we suffer from the lack of veterinarians, but we asked different people here and there wasn't any possibility to cure them, they got thin and died. Then, we realized that that was happening because of the contamination of water, I opted to look for springs and dig wells so the cattle would drink water from there and not from rivers, even today nobody can drink the water from the rivers." This is also concurrent to the declaration of Máximo Celso, on page 41659 in the judicial inspection of Lago Agrio North, he affirmed that "here I had a pig farm. I lost all of my pigs, a hundred and twenty pigs, from which there were thirty female pigs that procreated from the moment Texaco started to squander the water for this sector," to which he added: "at that time, I cultivated coffee. In the middle of the coffee plantation, I had a banana tree farm with a pig farm and I lost all my animals, because since then there was continuous formation water. The formation water crossed this sector to reach the area where it was finally dumped. They told us it was healthy, that it was even good for drinking. And I trusted that and didn't take my animals away from that place, because I believed what they had told me. When the animals, when the female pigs gave birth, their uterus were ejected, I consulted with a doctor and he told me that that was a very serious problem of contamination." Mr. Simón José Rogel Robles was also examined during the judicial inspection of Lago Agrio North (pages 41632-41693) where he stated: "My family and I lived on farming and cattle farming because everything was pasture from where we are walking now up to over there, so they drank that water and the cattle were useless to us because they became rachitic, practically we were taking a loss, or else they fell down and got soaked in oil and we had to keep washing them and selling them." In the judicial inspection of Shushufindi 13 (pages 74973-75013) Mrs. Aura Fanny Melo Melo stated: "I have cattle here but my cattle die, always, always. I gave Mr. Padilla, who was the President, some pictures, but I have one here and I'll give it to you, I can't find the others, some of my cattle were

as skinny as this when they died. A goat was practically losing its skin when it died, a piece of its snout fell off, but I didn't take any pictures of that because I didn't know anything, and the fish don't develop", whereas Mr. Pedro Chamba Paucar, who says that he has lived here since 1973, affirmed during the judicial inspection of South-West Shushufindi (page 10057): "five of my animals died and the others got rachitic and I had to sell them for half their price because they were going to waste". Likewise, in the judicial inspection of Shushufindi 48 (page 9407), Mr. Carlos Manuel Ajila Samaniego stated: "I have planted African oil palms; the palms are dying near the oil well, the one far from it is not dying, only the palms near the oil well are dying. Mr. Judge, over there there's a pit with the oil wastes, where there's water contaminated with oil, and it's very clear, maybe it's fifteen or thirty centimeters away". Rosa Ramos, who says that she arrived here in 1985, also stated in the judicial inspection of Sacha 53 (pages 9142-9171) that: "It was about eight years ago, they refilled this part that was an oil well. The animals fell in there and died when you weren't watching them." Mr. Carlos Cruz Calderón, during the judicial inspection of Yuca 2B (page 1225333) stated: "In this place, there was an oil pit where many barrels of oil were stored, into which fell many head of cattle, as well as pigs, chickens, and everything got lost there because it really was a well that had a great amount of oil." Similarly, Luis Vicente Albán, who says he arrived to this area in 1980, during the same inspection in Yuca B stated: "At that time, when I arrived here with my cattle, I took possession of the land, and started to work on the pastures as can be seen, and I didn't know that the oil was bad, so I started to fall sick and my animals started to fall sick and many of them have died. The contamination is still there and it continues down towards the little town. About 30 head of my cattle have died." Mr. Miguel Zumba, who testified during the judicial inspection of Sacha 13 (page 11722) stated: "When I bought the farm here I made excavations to extract water, the wells of water we called them, and found that entire sector was contaminated with oil. I even dug a deep well about 6 or 7 meters from the house, and we found the oil contamination when we reached approximately 3 meters down from the surface. We had already found oil contamination of rotten smelling mud, but it had oil. If you went deeper, there were oil and water, the well we had was about 12 meters deep more or less, and we found oil contamination even there, so we stopped digging. The well is open even today, but it is being covered with garbage. We dug another well a little bit further from there and we also found contamination at about 5 meters below the surface.

So, we dug another well about 60 meters from there, you can still see traces of it there, and we also found oil contamination. So, we had to take water from our neighbors and from the river. Practically, we had to boil that water so we could drink it, I bought the neighbor's water until I started to dig a well on the banks of the river, some 1.50 or 2 meters down, which is more or less at the same level of the river, so when the river dries out, the water dries out too. At the moment we have to do an extension of the well we find water with oil, though the contamination is not visible. We boiled that water so we could use it. Of course, the water was not completely clear and we used bleach and some other things, so the color of the water disappeared, but it had a horrible smell, a different smell, and certainly, that was the water used during the time we lived here, we brought water and caught the rain water.. Here, we mostly use the channels where the rain water is collected. We have always used that water. Many times, we boil it to use it, but on several occasions we couldn't boil it so we drank it as it was." Even though Dr. Adolfo Callejas during the judicial inspections of the well Shushufindi 48 (see minutes from page 9407) while exercising his right to examine the citizen who was giving testimony stated that "the result of farming is always random, it is defined by climatic conditions and by soil conditions," this Court does not think that the depositions made by the citizens interviewed are describing a random fact. Much to the contrary, the overwhelming coincidences among all the depositions, there not being a single contradiction among all the depositions, support even more the thesis that we are referring to continuous harm caused by contamination, and not by "fortuitous factors." All of the cited depositions invite us to the conclusion that the wild, domestic and farm animals exposed to substances derived from the oil industry were adversely affected, to the detriment of the productive capacity and quality of food of the people, which is a necessary right for the integral development of a person as well as for the conservation of his/her physical and mental faculties. On the other hand, the "loss of lands" alleged by the plaintiffs cannot be qualified as environmental harm, for it is not an impact suffered by the environment or some of its components, but if there exists harm it would constitute a patrimonial harm, strictly speaking. Therefore, and in order to analyze this item, the Court considers that in the first place, a prior ownership of the lands has not been proved, which would be necessary to be able to make use of the lands or be deprived of them. The acknowledgment of the ancestral ownership of these lands took place after the facts that originated this proceeding, therefore,

at the time they were forced to abandon their lands, they did not have any recognized right of ownership over these lands. Therefore, legally they could not have lost them. Nevertheless, the record has demonstrated that the displacement that these indigenous communities that inhabited the Concession area have been forced to embark upon, which constitutes another element that had an influence on the cultural impact, especially because they represented human groups whose existence was intimately linked to their natural surroundings. The main reasons for these displacements were the impact suffered by the lands and rivers, noise and contamination, because they changed the configuration of the ecosystem on which their cultural institutions depended, which inevitably forced them to migrate, to change and/or to adapt themselves to the new situation, as mentioned in the statement taken from Celestino Piaguaje, given in the judicial inspection of the Aguarico station (see pages 82595-82642), where he states that "Yes, from '60 until '69 we lived a life in the town of Secoya and Siona in a more dignified manner. There wasn't any kind of contamination and everything was normal, as were our lives, of the people from the forest. We lived well from hunting and fishing and the environment was healthy. Then, from the year '70 onwards, everything changed completely, pretty brusquely. First, we could see how the companies arrived, opening roads in the communities, and also the helicopters, with the building of landing pads so they could land, and we could see the Amazon plain reach our communities. It looked like a temporary change, but later the oil drilling and exploitation works were carried out. Thus I would say that this was the total life change, the moment we were forced to look for new means of life so we could have another alternative for a good life, because we couldn't hunt or fish any longer, so we had to breed cattle and have a good life so we didn't have to look for something different from traditional hunting and fishing. Well, as is the custom, we inevitably used hunting and fishing because there was no other custom. That's why we had to eat fish, but sometimes the catfish, for example, had their stomachs eaten away by the oil and they had a different taste. That happened with the small catfish as well as with the big ones. That's what we have seen. Do they still fish and hunt today? Well, these days, to be honest, not much. We are running out of animals to hunt and same with fish." This deposition corroborates the impact suffered by the cultures of peoples that depended on the forests to have a "good life" due to the oil operations that discharged their wastes in the same rivers they fished, thereby destroying with it their culture and customs. Additionally, the

plaintiffs have referred another element that had a cultural impact on aboriginal peoples, and they attribute responsibility to the same cultural interaction between oil workers and the communities. This Court, however, believes that such interaction, despite the impact it may have had on the culture of those indigenous peoples, cannot be considered environmental impact, because it is not a case of human action causing harm or impairment to the environment or any of its components, but rather people directly influencing other people. For the above reasons, it is considered that only the cultural harm suffered by the indigenous peoples that can be considered as environmental damage is the cultural damage caused by forced displacement, resulting principally from the impact on lands and rivers and from a decline in the species traditionally sought after for hunting and fishing, that forced them to modify their customs. On the other hand, the parties are hereby reminded that, under article 2216 of the Civil Code, both the causer of the harm and the causer's heirs are obliged to redress the harm. Therefore, even though the grounds for liability in this action (objective, no-fault) by the defendant and the legal harm proved in this case have already been ruled upon, it is relevant to review the causation of the various kinds of harm heretofore described. –**TENTH.**– Causation. At this point in the judgment it is appropriate to analyze the different theories of causation explained above to the harm recently described, since the same must be a consequence of the defendant's actions in order to provide grounds for the obligation to redress the harm. Under this consideration, this analysis begins taking into account separately each kind of harm, since as we will see below different theories of causation apply depending on the type of harm adequate and at tending always to the appropriate theory of causation, preferred in our legal practice, as shown by the quotations presented from the ruling by the First Civil and Commercial Chamber of the Supreme Court of Justice, issued on October 29, 2002, published in the *Registro Oficial* on March 19, 2003. 10.1. Causation for harm to soil and waters. In this manner, we begin our analysis to determine the causation of the harm found in the soils of the concession, considering in first place the nature of the activity that allegedly led to the harm in soils, that is, to the industry carried out by the defendant as operator of the Consortium, therefore in the opinion of this it is appropriate to apply the theory "Of the wrongful creation of unjustified risk from a dangerous condition", in whose context

the causal link is confirmed when the causal result preceded the configuration of the unreasonable risk, or else the negligent creation of a condition that certainly involved danger", from there it is appropriate to analyze: 1. if the practices employed by Texpet configured a risk, that is to say whether the hydrocarbon industry is in fact a dangerous industry (this characteristic was already established in lines above through jurisprudence, therefore now it is appropriate to make a factual analysis of the danger); that is, if the practices used by Texpet for developing its industry necessarily involved the generation of dangerous waste; then 2. whether this created risk danger has been unnecessary, that is to say if the risk created by that waste could have been prevented or at least reduced by the one who had created it; 3. whether the failure to prevent or diminish the risk, being able to do so, has in fact had the consequence of the occurrence of foreseeable harm; and 4. Lastly, we will evaluate the statements of citizens who say they have experienced these facts in a direct way, the same ones that have been received during the judicial inspections, and will be evaluated in order to corroborate or refute that found in this analysis. In this order, to determine whether the operations conducted by Texpet created a risk, let us see how 1. THE PRACTICES USED BY TEXPET IN THE DEVELOPMENT OF ITS INDUSTRY NECESSARILY INVOLVED THE GENERATION OF WASTE INTO THE ECOSYSTEM. To become convinced that the design and operation of the Concession by Texpet would necessarily generate waste we have taken into account the statement offered at the defendant's request by engineer Alfredo Guerrero, who during the judicial inspection at Guanta station, on page 155965, gave an explanation of the operation of the station and was questioned by engineer Olga Lucía Gómez at the plaintiff's request, appearing on the record as follows: "We are now at Guanta station, located in Sucumbíos province. As you can see, the manifolds are outside the station. This is a traditional production station, after the drilling of the wells is completed, the flow lines from all the wells come to the station which is where the fluid that every well has is directed straight to the station, after passing through the manifolds, which are three-way valves, because we need to know what the output is for each well, and it can be directed to the bigger separators that are for production or to the smallest one, which has a gauge that is for checking well by well, and you can measure what the product is of that well and be able to make any corrections that are necessary and carry out the workovers, in the separators that basically are

horizontal cylinders that have baffles and have plates, it is to change and give it direction so that the gas can rise to the upper part of the separator and through the yellow lines, be able to eliminate from the oil 95% of the gas that comes with it, as we know, an oil well consists of three elements, which are gas, oil and water, after the separators the output comes to the black tank that is called a wash tank, on leaving the separators chemicals are injected because of the speed at which it comes, the oil and the gas form too strong an emulsion and two kinds of treatment are needed to remove the water from the oil, which are mechanical and chemical methods, the mechanical methods are plates that change the flow so that the water, which is heavier, can be decanted and the chemical is so that it gets into the tensional space of the water and the oil, reduces the tension, breaks and separates the water. In the first wash tank is for decanting water; before entering the tank, there are some vertical cylinders that is the residual gas that comes from the separators and to be able to remove it, it is done this way because the tanks are atmospheric, they cannot rise more than six ounces because the top would burst open, from the black tank that was painted black, it is to be able to take advantage of the temperature of the environment, the higher temperature makes it easier to break up the water-oil emulsion, then it goes to the lead tank, which is a surge tank and where the station output will be gauged. From that surge tank, it goes to the pipeline pumps, which are what make the noise we hear now, to send the output to Lago Agrio. THE water that is in the wash tank goes to the water tank which is to for using it in the re-injection for the wells, here ends my description." The presidency of the Court asks the engineer Olga Lucía Gómez Cerón whether the separation system is a two- or three-phase system, to which she answers two-phase, in the face of which the engineer . Alfredo Guerrero declares, "I was the one who built the station, I made the request to the United States and all the equipment that was installed is three-phase, but here, due to the turbulent speed at which the liquids come, given the emulsion of the water and the oil, it cannot be separated, because it is a minimal amount that comes out of the lower section of the separator, those separators are API tanks and it is a separator that meets all the requirements, all of these are three-phase separators but they are working 99.9% as two-phase because of the emulsion, the surface tension of water molecules with the oil is too strong, that is why two methods are needed, mechanical and chemical, to be able to break up the emulsion and get the water to decant in the wash tank." Then the Presidency gives the floor to the engineer Olga Lucía Gómez, who says: "I just want to make a comment, on the following, if the

pumping system historically used by Texaco in the fields had not been used, which is an electro submersible system that exists in most of the fields, it is a system which, as I explained yesterday, is too aggressive because crude generation, although it needs to be high, also pulls a great deal of water and, of course, when this emulsion comes in with so much water that sometimes even exceeds the amount of crude in the output, as the emulsion depends on how the crude is removed from the oilfield, then a separator working on a two-phase level is not enough, although the engineer is right That this type of separators can also work as three-phase, historically they have not, they just break up the emulsion, remove the gas in a way that is not complete, the separator already comes built to be 95% to 98% efficient, but it is not because of the type of emulsion, so the gas still comes out with liquid particles and the crude and the water still come out with gas particles, which is why they have problems with the tanks that have to have this gas boot in order to evacuate the gas that is still left in the emulsion that enters here oil and water, there are still gas particles left even in the gas that comes out of the separator there are still liquid particles, the process in not complete, and what happens, the industry is losing, crude is being lost through the gas, too much water is being produced that has many corrosive levels, this may have helped cause so much rupture in the flow lines coming from the wells given the high corrosiveness levels coming in this crude, water and gas emulsion." The Presidency of the Court gives the floor once again to engineer Alfredo Guerrero who says: "I don't know if we can go to the records, we had three types of lift, in Shushufindi with gas, because of the gas oil ratio it had, in Sacha Auca, hydraulic pump which is injecting petroleum in order to draw more petroleum, which is a dual system, and the third, very simple one, was just in case there was a shutdown or other reason, was the electrosubmersible system, that is, electric pumps, it is false to say there were a greater number, today that may be so, but in the time of Texaco, when I operated here, the better part in Shushufindi were Gas lift, in Sacha and in Auca the Poweroil", The Presidency of the Court allows one last comment from the engineer Olga Gómez, who says: " actually in the decade of the 80s gas has been able to be reused, although historically burning gas was the most common in an oil field, the is good for reusing as fuel for generating here the very requirements of the station, as in the case of a refinery or as is the case of Shushufindi where the gas that is produced is reused." In this way, important technical knowledge

was made available to the judge, who considers it as a whole as a technical description of the process followed in the production stations, realizing that the emulsion obtained from the wells contains different products, in quantities that can vary, and that must be separated, giving as a result of this the obtaining of crude, gas and formation water, which are the very elements with which, according to the plaintiffs, the environment has been contaminated, therefore, later it is worth analyzing the record in search of an explanation of the final destination of each one of the components of the emulsion referred to by the experts. 2. Now, in order to determine whether this created risk or danger has been unnecessary or if it could have been avoided or at least reduced by the one who created it, we will analyze in the first place the defendant's actions, that is, the way in which it built its facilities and conducted its operations, so as later to determine its suitability for the handling of the produced waste. Thus we see that the different experts have given the details of the procedure and the techniques used by Texpet to build the facilities it would use to treat the waste it produced when it operated the Consortium, for which the expert reports by Gino Bianchi, Jhon Connor and Bjorn Bjorkman, foreign experts who have been suggested by Chevron's defense and who have been named as experts by the Presidency of this Court. THE expert report of Gino Bianchi on the judicial inspection of the Sacha 13 well gives us details as to the construction of these pits, saying that " The majority of the earthen pits (including the ones built in the Oriente Region of Ecuador), are built by excavating the soil to a depth of 1.5 to 1.8 m, below the surface, the soil was put around the perimeter to form high berms, of 1.2 to 1.5 m of height, the dimensions of the pits was established according to the estimated volume of material to contain." (Page 76309). These figures are consistent with those used to calculate the size of the pits, and confirm what has been said about the pits being mere excavations in the ground, without any type of covering, and are consistent with those of the other experts in noting that THE PITS BUILT BY TEXPET WERE EXCAVATIONS IN THE GROUND, WITHOUT ANY TYPE OF LINING. Although the experts suggested by Chevron have coincided in affirming that the Concession soils do not allow migration or seepage because they are impermeable, given that they have established in lines above that migrations and seepage were not only a possibility but also a documented reality even confirmed by the Court during the judicial inspection of the Lago Agrio

15 well referred to lines above.Then, according to reports by Jhonn Connor, we see that in the production stations these pits are used to decant the production water before discharging it into the environment. He says so, for example, in his expert report on the Shushufindi South Station, where he explains that in a manner " Consistent with the practices in effect in oil fields around the world, during the period of Texpet's operation in the former Petroecuador-Texpet Concession, decanting pits were used at the production stations in order to remove solids and oil from production water before its discharge into the environment" (page 70018), stressing the idea that the use of decanting pits prior to pouring their content into the environment was the practice in effect in oil fields around the world, and making clear to this Court that in that station " The 3 decanting pits were used for treating production water before its discharge, specifically for removing sediments and traces of oil" (see page 70011). The fact is noted that the declaration was the only process used for the treatment of production water prior to its discharge into the environment. This was corroborated by the expert suggested by Chevron, Bjorn Bjorkman , in his report on Sacha North 2, (see report in volume 958 and annexes up to volume 967), where he states that: "In the decades of Texaco's operation, the common practice all over the world was the treatment of waters in decanting pits and the discharge of the water into the environment" (page 105072). This idea that pouring substances into the environment was "common practice" in all the oil fields of the world has also been repeated by the expert suggested by the defendant, John Connor, who stated concordantly that: "the handling of production water through treatment in decanting pits and the subsequent discharge to the environment was the common practice around the world in the decades from 1960 to 1990"; he repeats in the same report, that "During the period in which Texpet served as operator of the Shushufindi North production station (that is to say, from 1975 until 1990), the use of earthen pits was a standard practice in the oil industry around the world, even in the United states" (page 70020). In order to issue this ruling it is noted that, apart from the abounding certainty that the pits were mere excavations in the ground, used to decant production water prior to its discharge into the environment, the experts suggested by Chevron insist that this was the standard practice around the world, which directly contradicts the plaintiffs' assertions in the complaint, therefore, it is up to the Judge to issue his opinion, based always on the elements contained

in the procedural record, but with no obligation to abide by the opinions of the different experts, who are auxiliaries of the Court meant to report to it on, technical matters to the best of their knowledge, for which reason the statements of the different experts will not be considered when they put forth conclusions of a legal nature, because affirming that "In Ecuador, during the period of Texpet's operations, there were no numeric criteria for the discharge of production water or reinjection requirements", or that "during that time (the period of Texpet's operation) in Ecuador there were no technical standards for the design or construction of decanting pits" (page 70020), they present the Court with a very biased and limited legal analysis, since the analysis of the technical expert exceeds his expertise and contains important flaws for having been limited to commenting on only some technical regulations for the oil industry, while not having considered the rest of Ecuadorian law in force at the time of the Consortium operations and that has been analyzed in previous lines. For this reason, with respect to all these statements, to the extent they can be considered the "state of the technology", what the experts suggested by the defendant have said will be taken into account but together with the other evidence in the record. This Court finds that in order to get a proper idea in time with respect to the state of the technology , we cannot consider only that stated by the different experts who have served as experts of the Court suggested by the parties , because apart from contradicting one another, each one demonstrates different perspectives of a same moment in history. Considering it important to clarify the apparent contradiction existing with the statements of the plaintiffs regarding the use of this type of pit and the discharge into the environment as a common practice for handling formation water, we should pay special attention to whether more unbiased and objective documents exist, that were written during the period we are concerned with and have not been prepared recently or at the request of either party, since although the experts have wanted to respect the historical perspective, any recent document may be biased by some subjectivity, having been prepared with the intent of influencing the outcome of this case. Considering that to issue this judgment it is appropriate to consider documents that have not been produced by experts suggested and paid by either of the parties, and that have not even been produced with this lawsuit in mind, because it in this Court's opinion those documents would reflect in a much more objective and unbiased manner the actual state of the technology during the period of the Consortium operations. This Court notes that the book "Primer of Oil and

Gas Production" (original on pages 140620 to 140698, translation on pages 158756-158834), written by the American Petroleum Institute, in special collaboration with T.C. Brink., from Texaco Inc., does not answer to the interest of either party to this lawsuit, nor to partial historical perspectives, but rather is a book that describes the technical principles of this industry for the same period in which the events at issue in this trial occurred. This document, which has been written in 1962, that is, before the beginning of Texpet's operation in Ecuador, gives us complete certainty of being an objective and unbiased text, that gives us a historical view of the state of the technology during the period of the Consortium operations, which is why its warnings as to the handling and the dangers of formation waters are very carefully considered: " Extreme care must be exercised in handling and disposition of produced water not only because of possible damage to agriculture, but also because of the possibility of polluting lakes and rivers which provide water for drinking as well as for irrigating purposes" (page 158811), which constitutes a warning and acknowledgment of the danger and possible harm, that apparently have been ignored by Texpet and that in fact go against the practices implemented by Texpet in the Concession described by expert John Connor as "the handling of production water through treatment in decanting pits and the subsequent discharge to the environment," and justified based on what allegedly "was the common practice around the world between in the decades from 1960 to 1990", which as we have just seen is false or at least contrary to the only historical document that we find in the record. Even though these recommendations were not part of any law, it is understood that both for their authors and for the period in which they were written, they clearly and objectively mark the State of the Technology, such that it is fair and appropriate to use these words, written before the events occurred that provoked these lawsuits to define the state of the Technology that Texpet was capable of and obligated to fulfilling, in contrast with the implemented practices that consisted in decanting formation waters in pits dug in the soil prior to their discharge in the ecosystem. As a contribution to this Official Letter 276-80 of June 25, 1980 is considered (see original on pages 3118 and 3892, and its translation on pages 4731 and 4732), which was sent to engineer Rene Bucaram regarding elimination of the pits, or their lining and enclosure in order to avoid contamination, in which the District Superintendent D.W. Archer, of Texaco Inc., indicates that the possibility of contamination is minimal and recommends not covering, enclosing or covering the soils of the pits. In this note, it is clearly stated that "the current pits

are necessary for efficient and economical operation of our drilling and workover programs and for our production operations. The alternative for using our current pits, is to use steel pits at a prohibitive cost," continuing with the explanation about the costs that this would imply and underestimating the problems or harm these pits would cause. This gives certainty that an alternative existed to the pits dug in the soil, but that this alternative was not considered mainly for economic reasons. The use of sheets or steel tanks was an economically more expensive alternative, but that it would have been reasonable to expect would have guaranteed that the content of the pits did not overflow or migrate through the soil, contaminating it as has been shown in the record. In the opinion of this Court it is appropriate to state that it has been precisely this type of decisions, motivated by merely economic reasons but that underestimate the potential harm implied to the environment and third parties, that caused the harms proven in this trial, since these managerial decisions based on costs, covert themselves into practices that have consequences for people who are not part of said management and who often are the ones that have to pay the real costs of such decisions. Likewise, with respect to the treatment of formation water, it is considered that the record contains a document issued by the Patent and Trademark Office of the United States, of the Department of Commerce of the United States, on June 18, 1974, for patent No. 3,817,859, that has Texaco Inc. as the holder of an invention called Waste Water Treatment Method, the original of which appears on pages 153722 to 153725, and its translations and other certificates on pages 156092 onwards. As regards this piece of evidence, it is considered that the plaintiff, through Dr. Alejandro Ponce, during the judicial inspection at Sacha North 1 (see Minutes on pages 104391 to 1044619), upon submitting a simple copy of this document,, that is identical to the one that appears on the referenced pages, said: "[...]the Company Texaco when in 1972, requests the Patent Office of the United States in which was granted a patent of invention on the method of waste water treatment that I take the opportunity to read, it constitutes a method for disposing of certain effluent streams of waste streams from processes through its injection into the subterranean geological formations that connect and level the formation of solid precipitates that cap the underground formation, moreover the inventors explain that certain effluent streams from the industries are waste, and they do not have an apparent one, these streams must be disposed of but doing so in or near the surface of the soil may cause severe contamination problems,

this is what Texaco says when it files its patent application in 1972." In relation to this document, Dr. Adolfo Callejas also referred at this same inspection saying: "Dr. Ponce said just a minute ago, that Texaco knew that discharging formation water was a contaminating act because it had submitted this patent, which moreover is a method discovered by Mr. Jack F. Tate, who ceded it to Texaco INC, the day of March 29, 1972, according to what is read in this document. But what Dr. Ponce said does not appear there; there it states the following: "In the background for the invention, certain effluent streams from industry are waste have no apparent use. These streams must be disposed of, but doing so on or near the surface of the soil; could cause considerable problems. Could, he does not say with cause, as he just mentioned lying and trying to deceive the Court, it says could, what he read before, thank God I still have a good memory; what he just read before said it could and now he changed, now he didn't say could, but rather causes;" After analyzing the statements of the two attorneys it is clear that both agree in that said document states that disposing of certain streams or effluents of the oil industry at the surface or near it "can" cause considerable problems, which is considered as a premise that denotes the acknowledgment of a possibility, parting from which this Court will go on with its analysis. Now, if we consider that the execution of the operational practices described in the expert reports had as a result precisely the discharge of these effluents on the surface, that Dr. Rodrigo Pérez Pallarez, acting as the legal Representative of Texaco Petroleum Company, has admitted publicly that "in Ecuador 15,834 millions of gallons were discharged between 1972 and 1990 during the whole period of Consortium operation by Texaco" (page 140601), and finally considering that these discharges "can cause considerable problems," it would be reasonable to presume that the reported environmental problems could have their cause in the discharges admitted by Dr. Rodrigo Pérez Pallarez. Additionally, at the judicial inspection of the Yuca Station (see minutes on pages 155678 to 155714), after receiving the mentioned patent through the corresponding request as was mentioned before, the parties again referred to this document. Dr. Diego Larrea, in defense of the defendant said: "Mr. President, it is one thing to have a patent that they probably had, it is another thing to implement it, and still another to have the equipment and make the investments. It turns out that attorney Prieto did not say that in Texas, where this regulation originated, there are thousands of pits that they say is the technology that with discrimination Texaco Petroleum Company applied here, since this

is the third world, but in fact in the first world there exists not the number of pits that in an exaggerated number my esteemed colleague Fajardo mentions, that already from yesterday to now rose from 900 to 1000. Over there, there are 20 thousand, 30 thousand, 100 thousand, 200 thousand in that state, in Louisiana there are more in Colombia there are more, in Argentina there are more pits with and without lining. Mr. President, I am not going to use my arguments, I will use the arguments of my colleagues from the other party, because maybe you will not believe me. They got upset, they got tired, they got bothered, 50 times we have talked about the same issue, we have shown how in Texas and Louisiana, I do not want to tire you, I will not enumerate the whole list nor the number of pits, but there are pits. Where does the logic of my colleague fail? There are a patent, yes there is a patent, it is a fact, no one denies it. It's another thing for that patent to be applicable. Texaco Petroleum Company has pits in Texas, in California and in other places where it carries out its oil production." The Court observes that the assessment of the defendant's attorney is correct, since being the holder of a patent does not necessarily imply the use of it, however we also note that said patent refers to improvements in reinjection equipment, while Dr. Larrea in his argument is referring to the use of unlined and open pits. The understanding that this Court has acquired on the topic this lawsuit allows it to observe that the eventual use of the technology described in the patent would have replaced the goosenecks, not the pits, thus the argument related to the pits in other countries is irrelevant as regards this evidence. The plaintiff, through attorney Julio Prieto, replied to what Dr. Diego Larrea argued as follows: "Dr. Larrea has said that it is one thing to have a patent and another to apply it. Yes, of course. But if in 62 it is drawn, and in 72 there is an improving patent, just the same year in which they produce the first barrel of oil in Ecuador, we show that there was the ability but the will was lacking on the part of the defendant company." This Court will stop on that point in order to analyze the fact that certainly that it has been proven that at that time effective technological measures to avoid dumping formation waters on the surface were available, in the same way that in lines above appear the fact that the Concession was granted by the Military Junta government of Ecuador to Texaco Inc. considering "That the applicant company has all the necessary technical and economic resources to carry out an efficient exploration in the hydrocarbon field" (see R.O. 186, February 21, 1964), a fundamental acknowledgment that is converted into an obligation that is also expressed in clause Thirty two, subsection G), of the authorization of the Minister of

Development in order to grant to Texas Petroleum Company, on name and representation of the Government of Ecuador, a hydrocarbon concession, that provides that the Concessionaire is obligated "To operate the concession employing adequate and efficient machinery for the purpose," denoting an express obligation of the defendant to use the best technological means available. Moreover, later the Regulations for Oil Exploration and Production, Supreme Decree 1185 published in the *Registro Oficial* 530 on April 9, 1974, establishing that the operator must "take all the appropriate measures and precautions when performing its activities to prevent harm or danger to persons, property, natural resources, and to sites of archeological and religious, or touristic interest" (art. 41), making it clear that the operator, despite being legally operated to exercise extreme care, to been far from taking all the necessary measures and precautions, avoiding through the protection of economic justifications taking the necessary precautions and utilize the technological resources that were available precisely to avoid such harm. "To have" a patent, that is, the ownership of a patent, implies rights to its owner, such as the legal capacity to use the protected technological advance, while the implementation of said protected technology in the field requires the will to do it. The mere granting of a patent necessarily implies a technological advance, since the novelty and industrial utility are some of the requirements that an invention must have to gain the protected provided by a patent, which is why necessarily the content of a patent should be "modern" or "innovative" ,as opposed to something already existing and known, The patent in question claims improvements in reinjection equipment, which implies the prior existence of this technology, the purpose of which has been clearly stated in the same patent: reinjecting the effluents of the oil industry because their streams could cause serious problems, which necessarily means that this problem warranted that Texaco Inc. Look for, invent, improve and register technological solutions, that undoubtedly constituted appropriate and efficient technology for that time, but that were not used by Texpet when it operated the Consortium in Ecuador. Everything noted in the lines above leads us to the conviction that the system implemented by Texpet for treatment of its waste did not eliminate or manage the risks in a manner that was adequate or sufficient, but rather economical. As it was designed, the pit system allowed for waste to be discharged to the environment, after a decanting process, that is, THE SYSTEM WAS designed TO DISCHARGE THE WASTE TO THE ENVIRONMENT, in an

economic way, but did not adequately address the risks of harm, but rather externalized them. It is foreseeable that this conduct would generate a negative impact on the recipient of these discharges, in which case we would be facing a situation of risk that was created when it could have been avoided. -3.- Thus, proceeding with the analysis of the causation of the environmental harm, we analyze whether the potential harm has really occurred, that is to say, whether THE SYSTEM ACTUALLY DISCHARGED THE WASTE INTO THE ENVIRONMENT, FOR WHICH WE TAKE INTO ACCOUNT THE ASSERTIONS of the legal representative of the company Texaco Petroleum Company. Rodrigo Pérez Pallarez, in a letter addressed to Mr. Xavier Alvarado Roca, President of the Vistazo magazine, that was published in several newspapers in the country, among which is included in this proceeding the publication in El Comercio newspaper, on March 16th, 2007, on page 6 of section 1, states that "in Ecuador, 15,834 million gallons were discharged between 1972 and 1990 during the whole period of Consortium operation by Texaco" (page 140601). Which confirms what the result or effect was of the practices used: after decantation and passing through the goosenecks, the formation water was discharged into the environment, inevitably contaminating the natural sources of water of the area upon which the inhabitants of the area depended, in a not inconsiderable amount and with dangerous substances, even when the law stipulated specific prohibitions in this sense, like the ones contained in the Health Code published in R.O.No. 158 of February 8, 1971, which provides that No one shall dump into the air, the soil or the water solid, liquid or gas residues, without prior treatment that makes them harmless to health. (art. 12). This dumping of formation water, after a simple and free process of decantation, directly into the ecosystem constitutes without a doubt, a definite harm, legally proven and publicly acknowledged by the legal representative of Texaco Petroleum Company, and its cause lies in the acts attributable to the defendant, who as we have seen was solely responsible for the technical aspect of consortium operations. -4.- As final element of certainty regarding the cause of this harm, the statements are considered with special attention that were offered by citizens who have been examined by the Presidency of the Court during the judicial inspections, under the legal authority contemplated in article 245 of the CCP, as all these coincide in their descriptions, giving realization to a general perception of contaminating practices during the Consortium period. The stories of how water sources were contaminated are frequent, like the statement of José Guarnán Romero at the judicial inspection of

the Aguarico 2 well (see minutes on pages 140787-140814), on June 12, 2008, who gives his version of how " when it rains, all the oil comes down to the stream and it gets contaminated", and that " here there were two oil tanks, they were big tanks and the guards would walk by there, but they would fall asleep and the tanks would overflow for as long as they wanted, and the oil would fall towards this side, which is why I said that the grass was useless.", or the statement offered at the judicial inspection of the Cononaco 6 well by Telmo Ramirez, on November 16, 2006, on pages 123100, that "All the mud would come out and the puddle overflowed toward the stream. There is there was no water wall, there wasn't anything, they didn't put a membrane, nothing. It just went clean the mud. And it all would go there. There are traces of barite all the way to the bottom down there, that is when it goes down, it disappears, no more, ah. I worked for Texaco for two years, I worked at this well 6, as production assistant; it was producing back then. When the wells were cleaned, the oil would come, they dumped the water in the tanks of …, they emptied it over here….. they dumped everything in the stream." It is considered that statements like these cannot be taken as technical proof, since the citizens providing statements are neither oil technicians nor experts in the field, yet, the fact that so many citizens remember and are in agreement when narrating the same events, serves this Court to come to the conviction that even though their statements may be imprecise from the point of view of oil techniques, they are truthful in the sense that they respond to evoking facts that rest coincidentally in the memories of all those questioned. Thus, the statement of Mr. Juan Zambrano, during the judicial inspection of Lago Agrio 11 A, tells us that "Here in this pit, a big pit of more or less forty meters, there would come some cars if I remember, they were called vacuum, really loaded, they would back in and dump all the crude from there everything got contaminated all the way down"; coincidentally with the statement of Mr. José Segundo Córdova Encalada, who says he arrived in the area in 1980, noted during the judicial inspection of Sacha Sur that "The contaminated waters were put by Texaco into a dirt pit that they had here, to which the vacuums came carrying crude from other pits, from other wells, that they accumulated here in front and when they needed some for a road the vacuum would come again and they would take the crude through my farm, where they left steaming in such a way that the poor people peasants from the countryside could not walk, and also products such as corn, which are produced every three months, would also got contaminated by the crude." Also considered is the statement at the judicial inspection of Auca 1 on November 15, 2006, of Daniel Barre , who says he arrived in the area on 1971 and that " Here they had put a tube , through which they dumped

this towards down below, since there was what they called parapet gooseneck, that contaminated this other area, as it came out towards over there, from here, everything is the same"; the statement of Ms. Cruz América Castillo Lamar, who lives in the area since 1973, and during the judicial inspection of the Sacha North station, said: "What I have seen is that there has been a lot of contamination, like say here, with our town, when they burned the oil here, all that smoke came out with sparks of oil and that contaminated the whole environment, even the water that was taken to drink in the little tanks that we had, it was as if lard had been put it, with little bits of oil, there was that on one side; and what is absorbed by a person as well, since this contaminates. Another thing was when they would spray the oil here, I think the pits would be filled too full, or it was just sprayed, I don't know, but the fact was that it spilled down, and it reached the stream and went on to the big river, and this went on for a long time, contaminating like that, we couldn't even bathe like we wanted, or wash our clothes, because the you needed the water". (Page 88991) The statement by Máximo Celso, on page 41659, during the judicial inspection of Lago Agrio North, was in agreement, when he was examined by the Presidency, he replied that "At that well after they burned the oil, that was hell, you had to stay several meters away, because the heat was unbearable, and the smoke was deadly, after two or three hours, it would rain oil. Back then the pit, so that they wouldn't dump water directly over there out the other side, they changed the direction so that it would all go into the stream that's behind the station. They created a pit that is now buried, and we made a fuss, because they were contaminating the part that was cultivated. Question: And this happened when Texaco was here? Answer: Precisely when Texaco was here, I remember the names of the men operating here as well.- Question: Did Texaco divert the water here that came out with the oil? Answer: They diverted the water with the oil. From there, there was a huge spill here; from here to over there, and the oil went that way and they burnt it. They would set fire to it. That was normally what they did to cleanup; there was a stench, after five days, because of the animals that had died; we saw dead deer, you know, animals ". In the same way, the statement of Mr. Simón José Robles, during the judicial inspection of Lago Agrio North, where he says "When Texaco made the pits, those enormous ditches they would fill with crude, and they burned, and there was smoke and it would sting for whole half days, the smoke would come out and at night we couldn't hang our laundry out, because those clothes would be black the next morning", and also, to the questions of the Presidency of the Court, on pages 41669, the following replies:" In which year did the contamination of the stream occur? Answer: the oil spill when

they changed the pit, because here in back, in the garbage incinerator, there was a pit there, where they would burn oil; they moved the pit more over this way and the oil spills began. Question: Who changed the pit? Answer: Texaco itself did that, Texaco stopped building the pit. Where the pits were where they would deposit the formation water", Another concurrent statement that this Court considers to issue its judgment is that of Mr. William Powers, expert who was interviewed at the request of the plaintiffs, who during the judicial inspection of Sacha South, stated that "both Chevron and Texaco are North American companies since before the second World War, dumping formation water with high salinity has been prohibited, because what is serious is the high salinity, more than the other components, to the surface water and ground water, there they always reinject that water since a long time ago, it is good that Petroecuador does it. However, it was the Law in United States to avoid contamination of fresh water by production water, when Texaco started its operations in Ecuador, the discharge of that water to streams and rivers never should have happened here". This Presidency agrees with this opinion, not because this is about North American companies that complied with other standards in their countries, but because having reviewed the historical legislation applicable to the Consortium operations, it has been made clear that, under the mandate of the Health Code, no person could eliminate into the environment wastes without treatment that would render them harmless, prohibiting the discharge of industrial wastes into any watercourse of household or agricultural use (arts. 12 and 25); according to provisions of the Water Law all contamination of water affecting human health or the development of flora and fauna was prohibited" (art. 22), by contractual clause the operator had to "operate the concession employing adequate and efficient machinery for that purpose", while according to the Hydrocarbon Law of 1971, Texpet had the obligation to "Adopt the necessary measures for the protection of flora and fauna and other natural resources" and to "prevent contamination of the waters, the atmosphere and the land" (see article 29, subsections s) and t), provisions that are similar to the ones found in the later codification of the hydrocarbon Law, published in *Registros Oficiales* No. 616, of August 14, 1974 (article 30, literals s and t), and in *Registro Oficial* No. 711,ofNovember 15, 1978, in article 31, literals s and t), being a constant in the hydrocarbon legislation in force in Ecuador. 10.2. Causation for harm to health. As we have warned in previous lines, when it comes to demonstrating causation in regards to harm to peoples' health it is necessary to apply theories of causation that

differentiate between the legal and the scientific, like the substantial factor theory and the most probable cause theory, since as we have seen in this case there is not a demand for reparation of harm to the health of specific individuals, but rather a claim for the "contract, on charge of the defendant, of specialized persons or institutions in order to design and carry out a plan for the health improvement and monitoring of the inhabitants affected by contamination", meaning that what should be analyzed is the presence of a public health problem and the causation of this harm applying the mentioned theories. In this light, the substantial factor theory indicates that we should analyze two elements: reasonable medical probability and the substantial factor. In this Court's opinion, considering the dependence of the area's inhabitants on the natural water sources and the discharges made by Texpet, it is appropriate to state that it is more improbable that the exposure of the effluents discharged by Texpet into the environment could have produced an adverse impact to their health, therefore there is a probability of at least 50% that Texpet's conduct was the cause of the health impacts, that is to say, there is a reasonable medical probability. In second place, the presence of the substances discharged by Texpet into the environment has been a substantial factor and not merely theoretical, rather it proves to be foreseeable that it has played a major role, since the health impacts were unforeseeable because they were substances that have a known potential for harm and because it is fully in accord with the ailments found in the inhabitants of the zone. In the opinion of this Court it has been reasonably and sufficiently proven both that an impact on public health exists and the fact that this impact has a reasonable medical probability of being caused by the exposure of the people living in the Concession area to the substances discharged by Texpet into the ecosystem. As we have seen, the record shows that thousands of human beings effectively have been exposed to a risk given the soil and water contamination, whose presence in the environment constitutes a substantial factor that was caused mainly by Texpet's activities as operator of the Petroecuador-Texaco Consortium. Turning to the theory of most probable cause, if we change the facts shown in the record, in a process or inference, we will see what those facts point to as contributing factors, and even though none of these factors can be attributed with either direct causation or exclusive responsibility, on the other hand, the coincidence of the results among the different scientifically supported epidemiological studies, as well as the assessment of risk to

human health, and the statements received during the judicial inspections have demonstrated satisfactorily that there are scientific bases for reasonably linking the claims concerning health made by inhabitants of the region with the oil contamination that derives from the Texpet's activities as the Consortium operator, which is a sufficient causal link for this Court in order to order reparation of the harm caused. 10.3 Causation for cultural impacts. Considering that an environmental impact is any human action that causes changes in the physical and human environment, and that in this lawsuit there is a claim both to remove or eliminate the contaminating elements that still threaten the environment and the health of the inhabitants (see the claims of the respondent, VI. 1 and VI.2 respectively, on pages 79 and 80), as well as to remediate environmental harm in accordance with article 43 of the EMA, which in its first subsection states that: "The persons or entities or human groups linked by a common interest and affected directly by the harmful action or omission may file with the court of competent jurisdiction actions for damages and for deterioration caused to health or the environment, including biodiversity and its constituent elements and in accordance with the holistic definition of environmental harm suggested in lines above, and also recalling what the Constitution in force at that time established (subsection 2 of article 19 of the 1984 Codification of the Political Constitution of the Republic of Ecuador guarantees the right to live in a pollution-free environment), we comprehend environmental harm in all its complexity, addressing the various forms and derivations that it can have on environmental components. Therefore, seeing the link between environmental harm and the rights of people, we have discussed the relationship between environmental harm and health impacts, but in the eyes of this Court a relationship also has become evident between the environmental impacts as the direct agent causing certain forced changes in the indigenous cultures that based their social system, their culture and their existence on a close bond with nature, thereby constituting the cause of a cultural impact suffered by these aboriginal peoples. The indigenous communities frequently depended on hunting and on fishing for their subsistence, but these were affected by the environmental impacts caused by the activities of the Consortium operator. This situation was expressed by Celestino Piaguaje, who was interviewed by the Presidency of the Court during the judicial inspection of Aguarico Station (see minutes on pages 82595-82642), and said: "Yes, from the year 60 to 69 the

Secoya and the Siona peoples lived in a better way. There had not been any kind of contamination and everything was normal, as were our lives, of the people from the forest. We have lived well from hunting and fishing and the environment was very healthy. Then, from the year 70 going forward, it changed completely, very brusquely. First, we could see how the companies arrived, opening trails in the communities and also the helicopters, making helicopter airports, and we could see the arrival in our communities of that Amazon plain. It looked like a temporary thing, but later on the oil drilling and production was done. From there, I would say, it seems like life changed totally, which forced us to look for new means of life so we could have another alternative for the good life, because now there was not hunting, nor was there any fishing, so we had to breed cattle and live well so we wouldn't have to look for something different than how we had lived from traditional hunting and fishing. That is what I can say as regards the difference that has been made." Likewise, Mendua Omenda Romelia, who was interviewed during the judicial inspection of the Guanta 7 well (see pages 103431-103478), makes us realize how she had the perception that her diet was affected by the defendant's practices, telling us that: "animals terminated, that we always ate, that is why now we do not have enough food, the children also end up little, we are suffering from unknown illnesses, with the arrival of the company Texaco." At this point we should make a digression and note that not all of the acculturation process experienced by the indigenous people has been caused by the activities of the defendant, rather, in many cases, it was a social phenomenon, such as migration and/or colonization; however in other cases the impacts are caused by environmental harm that can even affect the survival and food customs of a culture, inevitably changing it. Therefore, in the opinion of this Court, the impacts suffered by the indigenous people in their cultures have been partially caused by the defendant's activities, but they have also been caused by external agents, the activity of the defendant having been an important contributing factor due to the dependence and close relationship between the harmed ecosystem and the customs of the affected peoples. Up to this point the review causation of harm, which allows us to move on to announcing our conclusions. Thus, as regards the harm set out so far here, and following an opinion reiterated several times by the Supreme Court, in the sense that "Once considered the causal relationship between the illicit act and the harm, the judges must qualify each concrete case using the criterion of reasonableness.

This *Salda* understands that the different theories on the qualification of the causal link, that have been set forth in legal writings, are an important guide for the judge; but they do not limit his discretion to evaluate the relevant facts considering the specific circumstances of the matters submitted for his consideration" (see Resolution 168-2007, of April 11, 2007, case number 62-2005, Andrade c. CONELEC and other, and in the resolutions numbers 414-2007 of October 2, 2007, case 19-2005, Hermida Moreira and others c. Municipality of Cuenca; and,, 457-2007 of November 16, 2007, case 71-2005, López Yánez c. President of the Republic) this Court, based on the analysis and facts stated up to this point, considers that all of these factors lead to the conclusion that the way in which the Concession facilities were designed, built and later operated by the Consortium operator, Texpet, are the direct and foreseeable cause of the presence of contaminating agents that harm the ecosystem and people's health. For this Court, it is clear that in 1962 there existed texts written by experts from Texaco Inc., in the U.S., that recommended extreme care in the handling of production water in order to avoid possible harm, which shows that this was a known problem and therefore foreseeable, for which Texaco Inc. Had available technological solutions, the use of which undoubtedly would have contributed to avoiding potential harm to land and water sources, but that were not applied in the Concession operation for economic considerations, that is to say, during the operation of the Concession, Texpet failed to use the available technology (reinjection equipment, steel tanks) and recommended practices (reinjection of formation water) to avoid the occurrence of the foreseeable harm. A direct consequence of this omission is the admitted dumping of 15834 millions of gallons of formation water into the Amazonian environment, which it was foreseeable would cause harm, and moreover could have been avoided with the implementation of available technology. In much the same way, the construction of open-air pits without covering cannot be considered a recommended practice for environments where nearby water sources are in danger. There is no need for proof of public, well-known fact knowing that the Concession area, like all of that Amazon, is a zone of high humidity and rainfall, for which reason logic persuades us to think that the construction of this type of pit would not be a recommendable practice given the risk of foreseeable overflowing which would cause harm to nearby water sources. Moreover, as a direct consequence of the technology and operational practices used by Texpet, which contaminated the environment, thousands of citizens living in the area

have been affected, because they have found themselves forced to modify their culture and way of life due to the impacts on the ecosystem with which they are intimately linked, and also because a generalized problem has been generated that affects the health of people living in the impacted areas due to the activities described. Thus, after analyzing the different evidence presented in clarification of the issues in this case, for this Court it has been made clear that 1. Contamination exists that is attributable to the pattern of the Concession's petroleum operations, given that the way in which it was designed provided for the dumping of effluents into the environment, in spite of the existence of other alternatives that were technologically available. 2. The reported contamination can be considered dangerous, because there is an admission of the possibility that the dumping of fluids like the ones Texaco admits to having dumped, on behalf of Texpet, cause harm to agriculture and to people's health. This possibility of suffering a harm, which in this case is a risk to undetermined individuals, should not leave defenseless those threatened by the contingent harm because the legislator has wisely provided for (art. 2236 of the Civil Code) the popular action suit that has been brought, by means of which have been requested, among other things, the removal and the adequate treatment and disposal of the contaminating wastes and materials still present, the cleaning of rivers, streams and lakes, and in general, the cleaning of the soil, plantations and crops and so on, where there are contaminating wastes produced or generated as a consequence of the operations directed by Texaco, which are precisely those contaminants mentioned in the previous lines, included in the reports of the different experts who have submitted their reports, and that threaten with the possibility, admitted by the defendants, to damage undetermined individuals, such as the ones represented by the plaintiffs. 3. The dumping of the described contaminants could have been avoided by the defendant with the use of other technology available at that time, but that was ignored in the outline of operations of the Concession, which was under the complete responsibility of the company Texpet, operating as a fourth level subsidiary of Texaco Inc., which, in turn, publicly merged with Chevron, creating Chevron Texaco, the defendant company in this trial, that later changed its name to Chevron Corp. –**ELEVENTH.**– Fault. Despite not being necessary to go into an analysis of fault since this obviously is a case of objective liability, in the opinion of this Presidency it is advisable to analyze the degree of diligence with which the subject acts in relation to the harmful effects emanating from its conduct, and the degree of diligence that was required as operator of the Consortium. As

is well stated in the Resolution 168-2007, of April 11, 2007, case number 62-2005. Andrade v. CONELEC *et al.*, and in the resolutions numbers 414-2007 of October 2, 2007, case 19-2005, Hermida Moreira *et al.* v. municipality of Cuenca and 457-2007 of November 16, 2007, case 71-2005, López Yánez v. President of the Republic, in what constitutes a compulsory binding opinion "liability is objective, if it depends exclusively on the justice or lawfulness of the result of the subject's conduct, therefore it matters little whether the party in question has acted with wrongful intent or negligence," such that the harmful results of the defendant's conduct, as has been detailed lines above, are sufficient foundation defendant's responsibility, while "In the case of so-called risky activities, fault is presumed; thus it corresponds to the party in question to demonstrate that its conduct has been in keeping with the degree of diligence that the law in its activity," thus, deepening this analysis, and going beyond this presumption of fault, an analysis has been made of whether defendant's conduct has been in keeping with the degree of diligence that the Law requires of all industries and persons, for example by prohibiting the discharge of industrial waste into natural watercourses (Health Code, art. 12 and 15), and prohibiting all contamination that affects human health or the development of flora and fauna (Waters Law, Art. 22), with it being obvious throughout the record that there has been a constant violation of these provisions by the defendant. As we had warned lines above, in the event it is confirmed that the defendant's acts in the Consortium have violated legal norms that would be legally sufficient to establish another pillar of liability, fault, since it is understood to consist of the omission of some conduct required of the defendant, thus based on the analysis undertaken as to the presence of harm and its causality, in relation with the legal and contractual obligations that weighed on the operator of the Consortium, the foundation has been established for the fault of the defendant from the perspective of a lack of due diligence in a risky activity. The plaintiffs have alleged that Texaco Inc. had the know-how and the technical capacity to prevent such harm, which has been demonstrated to be true, such that the harm was not only foreseeable but also avoidable. Being so, and given the legally required duty of Texpet to prevent such harm under the historic legislation in effect during the period it operated the Consortium, in the opinion of this Presidency, the acts of the defendant clearly constitute grossly negligent conduct. –**TWELFTH.–** THE REMEDIATION CONTRACT AND RELEASE FROM LIABILITY. Very careful consideration is given to the fact demonstrated through documentation that there is a

Contract for Implementing of Environmental Remedial Work And Release From Obligations, Liability and Claims, between Texpet and the Minister of Energy and Mines and the Executive President of Petroecuador, signed on May 4, 1995, related to which also are in the record (several times) the respective "*actas*" that certify that various sites operated by Texaco have been remediated as required by the contract and to the satisfaction of the contracting parties. Nonetheless, in this case, the plaintiffs, who were not a party to the mentioned contract, maintain that beyond the possible fulfillment of the contract, there is contamination at these sites that signifies a risk to their health and their lives. It is the opinion that these citizens cannot see themselves deprived of their fundamental rights, and in exercise of them have brought action before the public body charged with administering justice, settling competence on this Presidency of the Court so it would pronounce on their claim for the redress of various environmental harms that supposedly occur in several of the same subject of the Contract As we have reviewed lines above, during the litigation it has been possible to confirm that many sites included in the RAP, which after the execution of the works were accepted as remediated by the Government, still nowadays have contamination at levels that are dangerous, which should be eliminated in order to protect the health of persons. We have not taken this particularity into account to qualify the validity of the contract, since that is not at issue in this litigation. In that regard it is not appropriate to pronounce on the contractual relationship between the parties that signed said contract, nor on the possible fulfillment or breach of the same, since we are not litigating over the contract, or casting doubt on its validity, which means that that the performance or nonperformance of the contract will not be analyzed since it is not at issue in the litigation, however, considering that many of the sites that were the subject of the remediation contract have also been the subject of the complaint, and considering that said contract does not affect third persons, that the defendant assumes remediation of the environmental harm that might remain at sites remediated according to the 1995 contract, does not undermine the validity of it between the signing parties. That said here also applies to the settlements signed with municipalities and provincial Councils, as explained in lines above, who will not be able to benefit from or administer funds generated by the execution of this judgment. –**THIRTEENTH.–** MEASURES OF REDRESS FOR THE HARM. Evaluating the various expert reports according to the rules of sound judgment, and considering the unanimous perception of the persons

interviewed over the course of this litigation during the judicial inspections, the conviction is reached that several types of environmental harm exist as well as others as a direct consequence of them. The results of the judicial inspections have demonstrated the presence of contaminating substances originating from the techniques employed for oil production, and likewise sufficient evidentiary elements have been presented that demonstrate reasonable probability that these contaminants could be the accusers of the harm reported to the ecosystem and to the health of persons, thus in order to protect the health and life of the human beings, they must be repaired until any risk that they represent is eliminated. We are reminded that the complaint has requested the removal and adequate treatment and disposal of the waste and contaminating materials still existing without any reference to a reference parameter as regards the level of clean-up to be attained, thus it is understood that the requested removal of this waste and contaminating materials should be complete to the extent technically possible, therefore the highest possible level of remediation should be applied, until things are returned to their natural state. In the opinion of this Court the remediation of the environmental harm shall be effective to the degree that the contaminating elements are removed and eliminated from the ecosystem until returning it to its natural state, but on the other hand, those harms that have a reasonable probability of having been caused by the presence of these contaminants, will not be remedied by themselves upon removing their cause, as is the case of the impacts suffered by the flora, fauna, aquatic life, and the health of the inhabitants of the zone. Seen this way, the environmental harms in the area in which the concession operated are very extensive and it is technically impossible to return things to their original state, to the point that in many of the cases the harm cannot be remedied, rather measures of mitigation or compensation will have to be established in the case, for example, of the existence of a serious harm to public health. For this reason this Court has believed it convenient to divide the various MEASURES OF REPARATION that can be applied to the harm proven, considering that these can be three types: (1) principal measures, focused on returning the natural resources to their basic state to the extent and as quickly as possible; (2) complementary measures, created recognizing that the principal measures can take time or not be altogether effective, and the aim of which is to compensate the fact that the primary redress not achieve the full restitution of the natural resources and to compensate for the time that passes without redress; and (3) mitigation measures, aimed at decreasing and mitigating the effect of harm impossible to redress.

Each of these measures deserves an independent analysis to identify the most appropriate according to the type of harm, analysis that should be carried out considering that for the award of redress of harm only those harms whose reparation was requested in the petitions of the complaint thing taken into account is the harm whose remediation was requested in the complaint and that also have been proven as required by law. Thus, in this matter, once again we shall be guided by what was requested in the complaint, based on which the case was brought and which must be proven by the plaintiffs. As we could read in previous lines, the complaint requested "1. The elimination or removal of the contaminant elements that still threaten the environment and health of the inhabitants. Consequently, the sentence shall provide for: a) Removal and adequate treatment and disposal of waste and contaminant materials still existing in pits or ditches opened by TEXACO and simply plugged, covered or inadequately treated; b) Sanitation of rivers, lakes, swamps, wetlands and natural and artificial streams and the adequate disposal of all waste materials; c) Removal of all the structural elements and machinery that stand out at wells, stations and substations that are closed, fenced off or abandoned, as well as the pipelines, tubes, intakes and other similar elements related to such wells; and d) In general, cleaning of lands, crop fields, crops, streets, roads and buildings where contaminant leftovers produced or generated as a consequence of the operations carried out by TEXACO existed, including the deposits for contaminant waste built as part of the badly enforceable environmental clean-up tasks. 2. The reparation of environmental damages, according to article 43 of the Environmental Management Act. Consequently the sentence shall order: a) execution of necessary works in the pits opened by TEXACO, in order to recover the natural characteristics and conditions that the soil and the circulating environment had before the damages; b) contract on charge of the defendant, specialized persons or institutions in order to design and carry out a plan for recovery of the native fauna and flora, where possible; c) contract on charge of the defendant, specialized persons or institutions in order to design and carry out a plan for the regeneration of aquatic life; d) contract on charge of the defendant, specialized persons or institutions in order to design and carry out a plan for the health improvement and monitoring of the inhabitants affected by contamination. The resources necessary to cover the cost of activities whose

execution is demanded, in the amount that shall be determined by an expert according to the penultimate clause of article 43 of the Environmental Management Act shall be delivered to the Amazon Defense Front, with the purpose of using them exclusively for the ends determined in the sentence, with the concourse and assessment of specialized international institutions," therefore, considering that it has been requested that the costs that these activities demand be delivered, we will analyze each one of the measures of reparation independently in order to identify the most appropriate one, according to the type of harm. In this way, with respect to the principal measures, we find that they are necessary to satisfy the plaintiffs' requested remedy of The elimination or removal of the contaminating elements that still threaten the environment and the health of the inhabitants. This requested remedy is admitted, thus, the defendant is ordered to remove completely the contaminating elements referred to in this judgment, in consideration that they threaten the environment and the health of the inhabitants, thus is ordered: a) "Removal and adequate treatment and disposal of waste and contaminant materials still existing in pits or ditches opened by TEXACO," as described in greater detail below. With respect to the "sanitation of rivers, lakes, swamps, wetlands and natural and artificial streams and the adequate disposal of all waste materials," we have already reviewed how it has been proven in the record that billions of gallons of contaminants were discharged into natural water sources, thus, it is ordered that they be cleaned to the extent possible, at the defendant's cost, for which every trace of the hazardous elements referred to in this ruling shall be eliminated from the sediments of the rivers, estuaries and wetlands, that have received the discharges produced by Texpet or the leaks from the pits constructed when it operated the Concession, for which the defendant is ordered to pay SIX HUNDRED MILLION DOLLARS (USD$600,000,000.oo) for the cleanup of groundwater, a figure that is lower than the average according to the economic criterion estimated by Douglas C. Allen, expert contracted by the plaintiffs to provide his opinions on valuation of their opinions of economic valuation, which is not in any way obligatory or binding for this Court, but rather a simple reference that is not accepted; nonetheless, the figure indicated should be sufficient for the contracting of persons with the necessary expertise to carry out this principal measure of reparation; while in relation to the requested remedy for "Removal of all the structural elements and machinery that stand out at wells, stations and substations that are closed, fenced off or abandoned,

as well as the pipelines, tubes, intakes and other similar elements related to such wells," this Court notes that the removal of abandoned infrastructure was demanded, but the requested remedy is not warranted, because it has not been shown on the record that said abandoned infrastructure causes harm or could cause it in any event. The same applies to item 1.d, which says "In general, cleaning of lands, crop fields, crops, streets, roads and buildings where contaminant left-over produced or generated as a consequence of the operations carried out by TEXACO existed, including the deposits for contaminant waste constructed as part of the badly enforceable environmental cleanup tasks," in the face of which it is considered that neither the presence of harm nor the need for cleanup of private lands, crops, streets or buildings has been shown in the record, as required by law. In second place, the complaint requests "2. Reparation of environmental damages, according to article 43 of the Environmental Management Act." To fulfill this requested remedy the complaint asks that the "execution of necessary works in the pits opened by TEXACO, in order to recover the natural characteristics and conditions of the soil and the circulating environment had before the damages" be ordered, which is related to item 1.a) of the requested relief, that refers, instead, to the soil inside the pits, while now the request extends to the reparation of environmental harm in the pits and in the surrounding environment, for which we again we take back up that stated by expert Barros for cleanup of soils, but with the considerations noted, ordering the defendant also to the reparation of the soil around the pits. As we can see, the plaintiffs have requested the removal of the waste and contaminating materials existing in the pits and in their surroundings, thus with respect to the cleanup of soils, note is taken of the valuation made in the Expert Report of the Court's expert, engineer Gerardo Barros, inasmuch as it contains a specific reference to the costs for soil remediation, which can be adjusted to the degree of environmental reparation necessary in this case, through mathematical calculations, considering the differences like the number of cubic meters to clean and the level of cleanup to be attained, and applied to the volume of contaminated soil that this Court has calculated to exist in the ninth section of findings in this judgment, in which we state that the contamination in the concession area amounted to 7,392,000 cubic meters (m^3) in this way, if we consider that the sums invested pro the projects referred to by expert Barros in his report are in *tre* messes 183 and 547 dollars per cubic meter,

taking an average value of 365 dollars per cubic meter, the figure amounts to 2,698,080,000 dollars. Nonetheless if the levels of cleanup obtained by the referenced projects are considered, we see that it attains a level of cleanup obtained by the referenced project , we see that they attain a level of cleanup of up to 1000 mg/Kg. Of TPHs, while the plaintiffs have requested the removal of all the elements that can affect their health and their lives, such that the level of cleanup should tend to leave the thing in the state they had before the consortium's operations, and not be limited to evaluating and eliminating the TPHs, which would cause the cost per cubic meter estimated based on the information provided by expert Barros to increase. This is consistent with that estimated by the plaintiffs in their motion of September 16, 2010, containing opinions of economic valuation requested, by this Court, in which they state that Douglas C. Allen, a specialized consultant "estimates potential costs to remediate soil at 356 well sites and 22 production stations could range from $487 million (for a 1000 ppm TPH cleanup) and $949 million (for a 100 ppm TPH cleanup), depending upon the objective sought with respect to ppm of TPH," demonstrating that the costs practically double upon increasing the level to 100 mg/Kg. Under this budget, the quantity that this Presidency estimates necessary for a cleanup of soils, should not exceed FIVE BILLION THREE HUNDRED AND NINETY-SIX MILLION, ONE HUNDRED AND SIXTY THOUSAND DOLLARS (USD$5,396,160,000.oo) and shall tend to recover the natural conditions of the soil impacted by Texpet's activities. Moving to the measures complementary to the reparation of harm, necessary to the extent that the primary measures will not, in-and-of themselves resolve all the harm in question, thus, continuing with the requested remedies, we note that the plaintiffs have requested b) the contracting at defendant's cost of specialized persons or institutions to design and implement a plan for recovering the native fauna and flora, where possible, and likewise c) the contracting at defendant's cost of specialized persons or institutions to design and implement a plan for the regeneration of aquatic life, all these issues referring to the life of the animals and the plants in the Concession area, that have suffered negative impacts from the hydrocarbons activities developed by Texpet, but that will be automatically remedied by the removal of the contaminating elements, therefore it is considered appropriate to order, as effectively is done, precisely the implementation of a program for the recovery of flora and fauna and of aquatic life, with a measure

complementary to the principal measures ordered lines above, since it is obvious that the originating flora and fauna will not recover on their own when the environmental harms have been removed, thus, a complementary measure will be required that remedies this problem. According to the plaintiffs, based on that stated by Dr. Lawrence W. Barnthouse, the figure to compensate the loss of habitat and services, environmental for 60 years, is between 874 and 1700 million dollars, however this figure includes compensations for past services lost, while what this supplementary measure pursues is to recover the native flora, fauna and the aquatic life of the zone, thus considering the differences it is estimated that at least TWO HUNDRED MILLION DOLLARS (USD$ 200,000,000.oo) are needed, divided into 10 million dollars per year, which should be sufficient to invest in programs for the recovery of the native species, for at least 20 years or until their presence is not necessary, for which they should be able to count on the joint work of specialized entities recognized in the field and the inhabitants of the area impacted by the Consortium's activities. This measure or reparation, to the extent that it is successful in returning the conditions of the flora and fauna to their natural state, will also help remedy the impact suffered in the diet of the indigenous peoples for the harm to their sources of subsistence. So also, with respect to water pollution, it is considered that despite the cleanup ordered previously, the people who depend on these sources will need an alternative for their most basic needs, therefore, as a supplementary measure the implementation is ordered of a potable water system or systems, which shall be constructed at the defendant's cost, and benefit the persons who inhabit the area that was operated by the defendant. For this item, consideration is given to what was stated by expert Gerardo Barros in his report, and the different sources contained in his annexes and other documents that reflect the costs of CEREPS [European Reference Centre for First Aid Education], UNICEF, and USAID programs (see documents in volumes 1501,1539,1557-1560,1573 and 1576) about the cost of water supply for the affected area, inasmuch as the various water supply systems using a local source vary between average values of 100 and 119 dollars per person, stating that the connection to the rest of the population (35% not serviced) would cost 7 million dollars. Expert Barros stated that "regional aqueduct systems not only are unnecessary, but the alleged cost of 430 million is enormously exaggerated in comparison with the actual cost for systems in the region," with which this Presidency is partially in agreement, since even though it is our opinion is cost of 430 million is

high, we do not agree that regional systems can be considered unnecessary, since the contamination of local waters is precisely the problem that makes it impossible that the collecting of water be local, which must be transported from other parts of the region through aqueducts, which would notably increase the cost of this project. Considering the differences between the projects that result in the cost difference, like the fact that it is planned for a 100 or 35% of the population and that it have the training for water from a local source or transport via an aqueduct, we find that it is appropriate to cover the 35% not covered by the mentioned projects with transported water, such that making the necessary adjustments that must be made considering the differences noted, the Presidency estimates that for this compensation measure ONE HUNDRED and FIFTY MILLION DOLLARS (USD$ 150,000,000.oo) will be needed Passing to the measures for mitigation of harm, contemplated for harm impossible to redress and for which suffering cannot be avoided, such as harm to the health of persons and in their cultures, considering that in the complaint “contract, on charge of the defendants, specialized persons or institutions in order to design and carry out a plan for the health improvement and monitoring of the inhabitants affected by contamination,” aspect that merits a thorough analysis, considering that a serious impact on public health has been demonstrated, provoked by the presence in the environment of contaminants coming from the hydrocarbon operational practices as they were implemented by Texpet, such that the individualized reparation of the health of the affected persons, who are undetermined, cannot be ordered, but measures can be ordered that equally tackle the problem in a general way, such as a health improvement plan, as was asked for among plaintiffs’ requested remedies, therefore the defendant is ordered to defray the costs for the implementation of a health system. This health system, to cover the health needs created by the public health problem occasioned by the acts of the defendant, will need at least ONE BILLION FOUR HUNDRED MILLION DOLLARS (USD$1,400,000,000.oo) to function in a permanent and sufficient manner. Also, addressed within the mitigation measures is the cultural harm, given that the occurrence of the described impacts on the indigenous peoples is a consequence of the conduct of the defendant, therefore, implementation is ordered of a community reconstruction and ethnic reaffirmation program, whose costs should also be covered by the defendant, in an amount ONE HUNDRED MILLION DOLLARS

(USD$100,000,000.oo) value obtained based on the costs for four years of nine and a half million dollars, of the CAIMAN project, referred to by expert Gerardo Barros in his expert report (see volume 1576 and 1577), and which can share its objectives with the mitigation measure ordered here, but that should also duplicate efforts to recover community organization and values and to reaffirm the ethnic identity of the different peoples, for a period of at least 20 years, which proportionally increases the costs. Finally, this Presidency considers that there also exists sufficient indications to demonstrate the existence of an excessive number of deaths from cancer in the area of the Concession, and even many of the people interviewed during the judicial inspections stated they suffer or have someone close to them suffering with some type of cancer, however we must note that the reparation of particular cases of cancer has not been demanded, nor are such cases identified, thus they are not remediable, but rather to the contrary, it is considered that this evidence together with the statistics reflects an aggravating factor to the public health problem referred to above. Considering that the lack of individualization of the victims does not free from the responsibility of repairing such harm, what is appropriate to analyze is who would be the beneficiary of said remediation, therefore, paying attention to the fact that it has that it has been proven that a serious public health problem exists, whose causes are reasonably attributable to hydrocarbons production, it becomes necessary that the mitigation measure ordered to cover the public health problem originated in Texpet's misconduct, be directed also at mitigating this public health problem, in this way increasing by EIGHT HUNDRED MILLION DOLLARS (USD $800,000,000.oo), the award for the provision of funds for a plan of health which shall necessarily include treatment for the persons who suffer from cancer that can be attributed to Texpet's operation in the Concession. –**FOURTEENTH.**– Considered as signs of procedural bad faith on the part of the defendant are failing to appear for the ordered presentation of documents or present an excuse on the date indicated; trying to take advantage of the merger between Chevron Corp. And Texaco Inc. as a mechanism to evade responsibilities; abusing the rights granted by the procedural Law, such as the right to submit the appeals that the Law provides for, such as the vertical right of appeal, repeated motions on resolved issues, and incidental pleadings that by mandate of the Law there is no place for within summary verbal proceedings, and that have each warranted admonishments and fines against the professionals that have defended the defendant from the different

Judges who have held the presidency of this Court; delays provoked through conduct legitimate in principle but whose use has unfair consequences for the proceedings themselves, such as refusing and blocking the payment of instated experts, thus preventing them from being able to commence their work, or drawing checks for the payment of experts in the name of the Court of Justice, or the well documented case of the videos that were illegally recorded by persons close to the defendant. Nonetheless, beyond this procedural misconduct and without prejudice to costs, considering the severity of the effects of Texaco's misconduct, the bad faith with which the defendant has litigated in this lawsuit and the lack of public recognition of the dignity and the suffering of the victims of the defendant's conduct, the punitive damages requested by the plaintiffs are considered, and it is noted that these were not requested in the complaint. But despite not being requested in express manner, this Court observes that a legal foundation has been presented, found in legal writings(see Pizarro, "*Derechos de daños*," ["Rights to Damages"] La Rocca, Buenos Aires, 1.996) based on a series of factors to be considered by the judge at the time of establishing this type of compensation, among which stand out: the severity of the offense, understanding in this case the harm caused even despite that it should have and could have been avoided; the particular situation of the one causing the harm, especially as regards its wealth, where the position of the defendant stands out; the benefits obtained through the wrong, as would be greater profits obtained by a lower cost of oil production; the antisocial nature of the misconduct, in attention to the protected legal rights; the future dissuasive purpose; the defendant's attitude during the case, qualifying the loyalty in the lawsuit toward the other party and with the Court; and the hurt feelings of the victims, which in this case even lacked recognition; all of which has been considered by this Presidency for having conformed to the universal principles of law that reign in our country and support such request, such that the acts of the defendant while it operated the Concession, its economic benefit obtained, the acts of its representatives, and its manner of proceeding in this case, make appropriate the application of this sanction, but not in the sum sought by the plaintiffs nor under the form of an alleged unjust enrichment, but rather this presidency, according to sound judgment, imposes a punitive penalty equivalent to additional 100% of the aggregate values of the reparation measures, which is adequate for the punitive and dissuasive purposes of this type of compensation, having at once exemplary and dissuasive purpose , seeking to recognize the victims and guarantee that similar misconduct not be repeated. Nonetheless,

considering that the defendant has already been ordered to redress the harm, and insofar as it serves the same exemplary and dissuasive purposes, this civil penalty may be replaced, at the defendant's option, by a public apology in name of Chevron Corp., offered to those affected by Texpet's operations in Ecuador. This public recognition of the harm caused must be published at the latest within 15 days, in the principal print media in Ecuador and in the country of the defendant's domicile, on three different days, which, if fulfilled, shall be considered a symbolic measure of moral redress and of recognition of the effects of its misconduct, as well as a guarantee of no repetition, which has been recognized by the Inter-American Court of human Rights for the purpose of "recovering the memory of the victims, acknowledgment of their dignity,[and …] transmission of a message of official reproval of the human rights violations involved, as well as avoiding repetition of violations" (see Hermanos Gómez Paquiyauri v. Peru. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110, Par. 223). – **FIFTEENTH.–** Finally, considering that it is necessary to establish an adequate mechanism for execution of the sentence, that makes it possible to ensure that the criterion of Justice employed in this judgment becomes a reality, thus ensuring the effective Judicial protection , and bearing in mind the legitimacy of a trusteeship as the way to fulfill the obligations has been recognized in Supreme Court resolutions numbers 168-2007 of April 11, 2007, case No. 62-2005, brought by Andrade v. CONELEC; and 229-2002, R.O. 43 of March 19, 2003, and seeking to protect the rights of the plaintiffs and of those affected through the application of the same criterion that has served to set the compensation, the following means of execution is imposed for the award of reparation of harm contemplated in part Thirteenth of the Findings: a) Within a period of sixty days of the date of service of this judgment, the plaintiffs shall establish a commercial trust, to be administered by one of the fund and trust administrator companies located in Ecuador in keeping with the terms of the Securities Market Law and other applicable laws. b) The autonomous endowment shall be comprised by the total value of the compensation that the defendant has been ordered to pay per part Thirteenth of the Findings. c) The beneficiary of the trust shall be the Amazon Defense Front or the person or persons that it designates, considering that "those affected" by the environmental harm, are undetermined, but determinable, persons united by a collective right, with the measures of reparation being

the way to benefit them. d) The instructions for the fund and trust administrator, that the trust agreement contains, shall include in a non exclusive way, but without being able to be contradicted, the following provisions: i. The entire endowment shall have as its purpose to cover the necessary costs for the contracting of the persons in charge of carrying out the measures of reparation contemplated in part Thirteenth of the Findings, and the legal and administrative expenses of the trust; ii. The representatives of the Defense Front, or those they designate on behalf of the affected persons, will constitute the board of the trust, which will be the body for decision-making and control, and will establish a reparation plan within the parameters established in part Thirteenth of the Findings of this judgment. iii. The Board has the power of selection of the contractors, who shall be persons with mastery in the arts and techniques applicable to each measure or reparation; for which prior to the selection of the persons contracted by the Trust to carry out the measures of reparation, the Board shall get technical advice and express a reasoned vote that shall be transcribed and submitted to the trustee; iv. The administrator, apart from exercising the legal representation of the trust, will supervise that the reparation plan is in keeping with the measures of reparation set forth in part Thirteenth of the Findings, and in advance also will verify that the contracts that are to be signed comply with the purpose of the trust; v. The administrator and the Board of the trust have the power to supervise the correct execution of the works by the companies contracted, directly or through supervisors and/or outside auditors; The lower Court, in the execution stage, will verify the exact performance of the obligation to constitute the trust within the term granted for such purpose; and subsequently, once they have been applied, will also ascertain the effectiveness of the measures of reparation, leaving the good management of the funds under the responsibility of the trustee. For the reasons set forth, **ADMINISTERING JUSTICE IN THE NAME OF THE SOVEREIGN PEOPLE OF ECUADOR AND BY AUTHORITY OF THE CONSTITUTION AND THE LAWS OF THE REPUBLIC,** the complaint filed by María Aguinda, Ángel Piaguage *et al.* against Chevron Corp. is accepted in part, and the defendant is ordered to pay the costs of the measures of reparation of the harm as set forth in part Thirteenth of the Findings, which it shall contribute to a trust as established in part Fifteenth of the Findings of this judgment. Additionally, by legal mandate, the defendant must satisfy an additional 10% of the amount ordered as reparation of harm in name of the Amazon Defense Front. With

costs. Due to the resignation of Madame permanent Court Reporter, acting as such is Gloria Cabadiana Guanulema, Esq. LET NOTICE BE SERVED. fs) Atty. Nicolás Zambrano, President of the Sole Chamber of the Provincial Court of Justice of Sucumbíos, which I convey to you for the appropriate legal purposes.

[illegible signature]
GLORIA CABADIANA, ESQ.
COURT REPORTER (A[cting])

[seal with emblem:]
PROVINCIAL COURT
OF JUSTICE
SOLE CHAMBER
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Certificate of Accuracy
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This is to certify that the attached translation is, to the best of our knowledge and belief, a true and accurate translation from Spanish into English of the attached document.
Por el presente certifico que la traducción adjunta es, según mi leal saber y entender, traducción fiel y completa del idioma español al idioma inglés del documento adjunto.

Dated: February 24, 2011
Fecha: 24 de febrero de 2011

Violeta Lejtman
Team Lead – Legal Translations
Merrill Brink International/Merrill Corporation

[firmado]
Violeta Lejtman
Líder del equipo – Traducciones Legales
Merrill Brink International/Merrill Corporation

Sworn to and signed before
Jurado y firmado ante
Me, this 24th day of
mí, a los 24 días del
February 2011
mes de febrero de 2011

Notary Public
Notario Público

[firmado]
[sello]

GINA ST LAURENT
Notary Public, State of New York
No. 01ST6146442
Qualified in New York County
Commission Expires May 15, 2014