

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARIA AGUINDA, et al., :  
 :  
 Plaintiffs, :  
 :  
 v. : 93 CIV. 7527 (JSR)  
 :  
 TEXACO INC. :  
 :  
 Defendant :  
 :  
-----X  
GABRIEL ASHANGA JOTA, et al., :  
 :  
 Plaintiffs, :  
 :  
 v. : 94 CIV. 9266 (JSR)  
 :  
 TEXACO INC. :  
 :  
 Defendant :  
 :  
-----X

**TEXACO INC.'S RESPONSE TO THE  
DECLARATION OF DR. RAMON JIMENEZ-CARBO**

January 25, 1999

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The Second Circuit's opinion confirms that Ecuador's Ambassador "represent[s] the State's position before foreign courts," and that this Court is entitled to rely upon the Ambassador's representations regarding this litigation. *Jota v. Texaco Inc.*, 157 F.3d 153, 163 (2d Cir. 1998).

Ambassador Ivonne Baki, Ecuador's current Ambassador to the United States, informed this Court unequivocally in her November 11, 1998 letter that "[t]he Republic of Ecuador is **not** willing, under any circumstance, to waive its sovereign immunity and be subject to rulings by Courts in the United States." See App. 17 (emphasis added). Her letter is unqualified and unambiguous, and she sent it in response to the Second Circuit's statement that Ecuador, upon resumption of the litigation in the District Court, "will have the opportunity to revise its position [on sovereign immunity] if it is so inclined." *Jota*, 157 F.3d at 163. Her letter also states that "the intervention of the Republic of Ecuador as a party is **not** necessary," and she expresses no desire on the Republic's behalf to renew the earlier motion to intervene. App. 17 (emphasis added).

Thus, three questions presented to this Court previously -- *i.e.* who speaks for the Republic, what is the Republic's position on sovereign immunity, and may the Republic intervene -- are no longer issues in these cases. Accordingly, this Court need not "reassess Ecuador's motion to intervene in the light of all the current circumstances," as the Second Circuit instructed, because that motion is now moot. *Jota*, 157 F.3d at 163.

While not an official representation of the State's position in view of the Second Circuit's ruling, the current Attorney General's

Declaration endorses the Ambassador's letter on the issues of sovereign immunity and intervention. He agrees that neither the Republic of Ecuador nor any of its entities, including Petroecuador, will agree to appear as parties to this lawsuit or waive sovereign immunity "explicitly or implicitly." Declaration of Dr. Ramon Jimenez-Carbo ¶4(a), (b). Again, there is no ambiguity. He expresses no desire to renew his predecessor's earlier motion to intervene, stating that "neither the [prior] Attorney General nor any other official of the Republic should have participated *whatsoever in any capacity....*" *Id.* ¶2 ( emphasis added ). He also agrees with Ambassador Baki that the Republic will **not** subject itself to this Court's orders and that the Republic will recognize a "determination" of this Court only as long as plaintiffs and Texaco Inc. are the sole parties. *Id.* at ¶4(c).

***But the Republic will not accept or agree in any manner to become or be treated as a party to the Lawsuit, since neither the Republic nor its institutions have been named or summoned as either plaintiffs or defendants, and consequently the Republic does not and will not accept any responsibility whatsoever in the alleged matter or occurrence, either as presented by plaintiffs in their complaint or allegations, or as answered or counterclaimed by defendants.***

*Id.* (emphasis in original). See also Plaintiffs' Exh. 21 at ¶2 (letter of Minister of Foreign Relations to an Ecuadorian congressman, confirming the Ambassador's letter to the Court "reflects specific instructions from the National Government" that took into account the "opinion of the Office of the Attorney General and other entities of the Ecuadorian government . . . .") It follows, therefore, that the Republic unqualifiedly rejects this Court's authority to order Petroecuador to "halt" its current disposal practices or issue any other orders demanded

by plaintiffs that address Petroecuador's practices or the Government's properties.<sup>1</sup> See Tex. Opening Br. at 10, n.4.

While Dr. Jimenez-Carbo states that the Republic of Ecuador will accept this Court's decision whether to retain jurisdiction (so long as the Republic is not treated as a party), neither his Declaration nor Ambassador Baki's letter states whether this Court should do so. Declaration of Dr. Ramon Jimenez-Carbo ¶4(c). In contrast to the former Attorney General's motion to intervene in 1996 expressly urging the Court to retain jurisdiction and grant intervention, the Government asserts no such position today, and does "not take any stand" on the litigation.

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<sup>1</sup> Without supporting citations, plaintiffs' opening brief (at 26) states that "the fact that the Government of Ecuador is willing to carry out *whatever equitable order this Court might issue* removes any indispensability for the *complete equitable remedy* the plaintiffs are seeking." Pl. Br. at 26 (emphasis added). The Government has expressed no such position. Ambassador Baki's letter states that "[t]he Republic of Ecuador is *not willing, under any circumstances*, to... be subject to rulings by Courts in the United States." Likewise, the Attorney General's Declaration only states that it will "do its best" to persuade plaintiffs to "invest" any judgment that plaintiffs may obtain for *monetary damages* in ecological remedies. This is a far cry from plaintiffs' statement that the Government will carry out "whatever equitable relief the Court might issue," including plaintiffs' request that Petroecuador "halt" certain current production practices. See Tex. Opening Br. at 10, n.4.

*Id.* ¶4(a); *Jota*, 157 F.3d at 160 (noting that "the Republic changed its position following the entry of judgment -- not only embracing the District Court's jurisdiction, but agreeing to participate, at least to some extent....") In a letter to an Ecuadorian congressman, Ecuador's Minister of Foreign Relations only states that this Court should apply applicable rules of international comity in deciding whether to exercise jurisdiction: "the decision regarding the venue where the lawsuit should continue, whether in the United States or in Ecuador, **must be made by the courts of the United States in accordance with the rules of international procedure applicable to these cases**"). See Plaintiffs' Exh. 21 ¶8 (emphasis added). He, too, is silent as to what that decision should be.

Thus, the Government's current position is to assert no position on the exercise of U.S. jurisdiction vis a vis the private parties. And, to the extent the Court views plaintiffs' claims as implicating the Government's or Petroecuador's interests and possibly requiring their presence for a fair adjudication of the issues, **every** current government official (Ecuador's U.S. Ambassador, Attorney General, and Minister of Foreign Affairs) reserves sovereign immunity, rejects this Court's jurisdiction, and refuses to participate in these cases or be bound by this Court's orders.

Regarding Ecuador's settlement with TexPet and Texaco, Ambassador Baki's letter confirms the final settlement agreement signed by the Government, Petroecuador, and TexPet and the resulting release of all claims against TexPet and Texaco as to Government lands, water, and former Consortium facilities. See App. 17 (noting the settlement "absolved, liberated, and forever freed" TexPet and Texaco). This

settlement precludes additional suits for additional remediation or repair of Government-owned lands or former Consortium facilities, which plaintiffs continue to seek. See Pl. Br. at 7-8 ( seeking "as a remedy the construction of produced water reinjection facilities which should have been constructed when the initial oil extraction wells were constructed.")

With respect to plaintiffs' Law No. 55 argument (Pl. Br. at 1), the current Attorney General's Declaration recognizes that the proper interpretation of Law 55 is a "matter that would have to be decided only by the courts themselves (the Judicial Branch), and not one to be decided by the undersigned or any other authority." Declaration of Dr. Ramon Jimenez-Carbo ¶7. His Declaration also confirms that the law's constitutionality has been attacked by jurists and legal scholars in Ecuador. *Id.*; App. 10 (Ponce y Carbo Aff.) ¶¶20-32 (explaining Law No. 55's unconstitutionality).

In sum, Texaco respectfully submits that there is nothing in Ambassador Baki's letter, the Declaration of Dr. Ramon Jimenez-Carbo, or the statement of Ecuador's Minister of Foreign Relations that should alter this Court's earlier decision to dismiss these cases on forum non conveniens or, alternatively, international comity grounds. Plaintiffs' claims and requested remedies necessarily involve the Republic of Ecuador and Petroecuador for all the reasons expressed in the international comity discussion in Texaco's Opening Brief (pp. 43-49) and in its Reply Brief, but the Republic and Petroecuador refuse to participate. Under these circumstances, Texaco respectfully urges this Court to dismiss these cases in favor of litigation in Ecuador where all interested

parties can be heard or sued under Ecuador's laws by an Ecuadorian court with appropriate enforcement powers.

Dated: New York, New York  
January 25, 1999

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true copy of TEXACO INC.'S RESPONSE TO THE DECLARATION OF DR. RAMON JIMENEZ-CARBO to be served upon the following by overnight delivery:

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This 25th day of January, 1999.

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