

Ecuador Court Rejects International Arbitral Interim Award in Chevron Matter

February 29, 2012 by [Louis M. Solomon](#)

In the environmental litigation pending against Chevron in Ecuador, the Court has issued a [ruling](#) showing respect but no deference to the international arbitral interim injunction issued against Ecuador on Jan. 25, 2012 (we [posted on the subsequent interim award](#) on 2/27/12). The decision, translated in the attached link, deserves attention for practitioners in international litigation and arbitration.

The Court speaks to this writer fully to appreciate the issues. There are competing principles at stake: an international arbitral tribunal on the one hand — which issued an order that enforcement efforts of the multi-billion judgment against Chevron should cease. On the other hand are the rights of the plaintiffs who secured the judgment, who (as best we can tell) are not parties to the international arbitration. The Ecuadorian court observed that the tribunal was permitting Chevron to obtain the interim injunction by posting a bond. Yet, as the Court observed, the bond posting exercising “is a right, not an obligation” for an appealing party. Apparently, in Ecuador, the sole means of suspending enforcement efforts is the posting of a bond, which we assume would be significantly higher than the \$50 million bond imposed by the arbitral panel. The Court was not willing to let Chevron avoid Ecuadorian law in order to stay enforcement. But it reiterated that a means did exist to avoid enforcement. It is not at all clear to this writer that a U.S. court would do anything different.

The Ecuadorian Court analyzed Chevron’s other argument: that Ecuador had obligations “at an international level” that would provide a legal mechanism for the Court “to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against Chevron”. The Court found “a potential conflict among international rules: on the one hand, the binding nature for the Ecuadorian State of arbitration awards (in investment matters) and, on the other, the effective [enforcement] of human rights”. By human rights we do not understand the Court to be addressing the rights of the underlying plaintiffs to environmental remediation but the right of a plaintiff to the rule of law so that judgments are entitled to enforcement and recognition absent some recognized, rule-bound exception applied. The Court analyzed the Vienna Convention and other international obligations and determined that in a case of conflict, and certainly in a case of doubt, it was its determination that human rights took precedence. Said the Court:

A simple arbitration award, although it may bind Ecuador, cannot obligate Ecuador’s judges to violate the human rights of our citizens. That would not only run counter to the rights guaranteed by our Constitution, but would also violate the most important international obligations assumed by Ecuador in matters of human

rights. . . . The rules of procedure and the rule of law in place in Ecuador impose on judges the duty to act in keeping with the Constitution, with international human rights instruments and with the law, . . .”

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