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COSTA RICA DECREES MORATORIUM ON OIL EXPLOITATION FOR REMAINDER OF PRESIDENT CHINCHILLA'S TERM

By George Rodríguez

Costa Rican President Laura Chinchilla's administration decided to say no to oil exploitation in this Central American nation's territory, declaring a three-year moratorium on the activity on Aug. 1.

The measure covers the remainder of the administration's four-year term (2010-2014), and it came amid loud protests from environmentalist quarters angered by news about a possible signing, by the Chinchilla administration and the US-based Mallon Oil Company, of a contract allowing the latter to explore and eventually exploit the oil and gas it might find in Costa Rica's northern region, bordering Nicaragua.

The exploration blocs the company has focused on include the spot on the eastern end of the border where the present Costa Rica-Nicaragua dispute erupted in October 2010, a conflict the International Court of Justice (ICJ) began studying in January, ordering, in March, both countries to comply with precautionary measures.

The story dates back to 1998, when René Castro, head of the Ministerio de Ambiente y Energía (MINAIE) in the administration of former President José María Figueres (1994-1998), signed a decree making it easier for foreign oil companies to work in Costa Rica.

The decree revoked 17 articles of the Ley de Hidrocarburos, in force since 1994, which included the prerequisite of an environmental feasibility study in order for a company to be awarded an oil-exploration contract. It stated that, to obtain the contract, the company needed approval for the starting, prospecting stage, for which they had only to collect data on the potential of the targeted territory. According to the 1998 decree, this consisted of a non-field study, leaving the environmental feasibility study for the later stages--those of exploration and exploitation.

Two years after the decree, and into the following administration--that of President Miguel Ángel Rodríguez (1998-2002), who is now appealing a five-year prison sentence in a corruption case—MINAIE declared Mallon Oil Sucursal de Costa Rica, the US company's local subsidiary, the winner of a public bid for exploration and exploitation of hydrocarbons in Costa Rica's northern region in May 2000.

Appeals immediately came from the environmentalist camp, which were eventually cleared off Mallon's path, with the most recent one, dating from July 6 of this year, still pending sentence by the Tribunal Contencioso Administrativo (TCA).

Costa Rican biologist Freddy Pacheco's appeal, aimed at having the 1998 decree declared illegal and unconstitutional, came with the present wave of protests triggered by news about the possibility of the Denver-based oil company obtaining a 20-year exploitation concession.

Newspaper reports on June 6 said that Mallon expected to extract 25 million barrels of oil per year, exceeding the national need of 19 million barrels a year and securing the company profits in the range of at least US\$7 billion during the targeted period.

Oil off the table

The following day, Chinchilla told a press conference that her administration was studying the possibility of setting up a public-private alliance for the eventual exploration and exploitation of hydrocarbons and also of limiting both processes to natural gas, excluding oil.

"We're analyzing two elements. First, the possibility that, instead of it being a process developed exclusively by the private company, a public-private alliance be set up jointly with institutions such as ICE or Recope," said the president, referring to the state-owned Instituto Costarricense de Electricidad (ICE) and the Refinadora Costarricense de Petróleo (RECOPE).

RECOPE, the Costa Rican oil refinery, "has experience, has knowledge," and "it's interested...in proceeding that way," said Chinchilla. "And the second element being valued regarding the eventual signing of the contract is the option to limit the exploration and exploitation processes only to natural gas, leaving out the exploration and exploitation of oil."

"This is not the first time I point out that it is scarcely convenient for Costa Rica to bet on highly polluting extraction industries as options for its economic growth," the president stressed. "On the contrary, the government...has launched a series of initiatives not only aimed at filling in the energy deficit...but we've also been advocating for...renewable sources of energy."

Costa Rica's first woman president added that "it's being said here and there that the government has revived" the possibility of hydrocarbon exploration up north, and she went on to say, referring to the 1998 MINAE decision, that "the government has revived nothing," since this is "something that has been alive for the past 18 years."

The day after Chinchilla's statements, Costa Rica's influential morning daily *La Nación* reported that Mallon was resorting to the Central America Free Trade Agreement (CAFTA) to pressure the government to sign the contract.

On Nov. 11, 2010, Pedro Oller, local representative of Mallon Oil, sent Anabel González, head of Costa Rica's Ministerio de Comercio Exterior (COMEX), a letter to that effect, according to the same news report. And on March 31, Mallon Oil sent Costa Rican Ambassador to the US Muni Figueres a letter along the same lines, with copies to two Republican senators and one representative, the paper added.

Alberto Trejos, head of COMEX when CAFTA was negotiated in 2003, was quoted by *La Nación* as saying that the treaty does not include hydrocarbon exploration.

"The country is not obliged under CAFTA to allow oil activity," which in turn falls under the Ley de Hidrocarburos, in compliance of which the Rodríguez administration "awarded the public bid to Mallon," Trejos explained, according to the daily. "What CAFTA does allow...is for a US company to seek international arbitration instead of going to a Costa Rican court."

Hours later, Chinchilla insisted that her priority on this matter was to hold talks with the company and limit the eventual contract to natural gas and to have a local public agency in it, so as not to leave only Mallon Oil in charge of carrying out the contract. "If we can't reach an agreement and if the company wants to file a suit with an international court, well, we'll just have to face up to it...we'd have to eventually seek arbitration," said the president.

Soon after, on June 11, the Frente Nacional de Lucha contra la Actividad Petrolera en Costa Rica started a broad-based movement against hydrocarbon exploration and exploitation in this country. And five days later, Costa Rican legislators, environmentalists, and former President Abel Pacheco (2002-2006) launched the Mesa Nacional de Diálogo and called for proposals to produce legislation in this field.

The Pacheco administration had also decreed an oil moratorium, but since it was not published in *Diario Oficial La Gaceta*, it was never in force.

A key promoter of the Mesa Nacional de Diálogo, Deputy Claudio Monge of the center-left Partido Acción Ciudadana (PAC)--the country's top opposition party and second political force--said in an interview that the Ley Nacional de Hidrocarburos needed to be changed as soon as possible, recovering the articles revoked by the 1998 decree.

Cabinet shuffle sends Castro back to MINAET

On Aug. 1, as part of a Cabinet reshuffle, Castro--the first foreign minister of the Chinchilla administration, who had been under heavy opposition and media fire for his handling of the present crisis with Nicaragua and for politically based appointments in the Costa Rican Foreign Service--went back to his old ministry, now called the Ministerio de Ambiente, Energía y Telecomunicaciones (MINAET).

Leaving one storm behind and immediately diving into another, before arriving at his new office--with a peaceful anti-oil demonstration waiting outside MINAET--Castro announced the moratorium decree during a press conference a few blocks away at the Casa Presidencial.

The brief text stated, in the first of its two articles, that "a moratorium is declared for a period of three years for the activity aimed at developing the exploitation of oil deposits in national territory." The decree "is in force upon publication," stated the second.

The first of two transitory articles said that all pending requests for exploitations "will be suspended," and, according to the second, "all rights acquired before the publication of this decree will be respected."

After reading the text, Castro pointed out that Mallon "hasn't signed the contract, yet" and that, even with a contract in force, local regulations give priority to public interest, "logically, respecting due process, recognizing responsibilities, if there were any. The Mallon scenario will

be defined by means of a concrete resolution that will take into account the contents of this decree. We're going to solve it individually and directly, enforcing this decree, of course."

"I have no knowledge of any other case, I don't know whether there are any ongoing procedures [similar to Mallon's], but, in any case, they'd be suspended," he warned. "We've decided to declare a moratorium" because, "essentially, we see there are a series of new elements. When the [hydrocarbons] law was drawn up...oil was between US\$10 and US\$20...and this criterion was taken into account for low royalties--of 15%--in our law. We all know the levels nowadays: around US\$100."

"The second element is...oil spills in the Gulf of Mexico and in other places, which have imposed changes in security, environmental, monitoring, control measures," elements that are "very important in the developed world, in countries with oil experience, and this had not been done in Costa Rica," added Castro. "And the third thing is that we don't have...the number of experts, geologists, oil engineers, people who'd control an activity such as this." Thus, "we think a three-year moratorium would allow for...the Asamblea Legislativa to make corrections and implement legal modernization."