SIX CONDITIONS THAT ANY MEASURE TO ALLEVIATE OIL SANCTIONS IN VENEZUELA MUST FULFILL

José Ignacio Hernández G.

October 2022

According to news reports, the U.S. Government could review license 8J to authorize Chevron to expand its oil operations in Venezuela, eventually, to undertake oil production directly. The final objective is to increase oil production in Venezuela, which has declined because of the PDVSA's collapse. The new license could be part of the negotiations between Maduro's Government and the Unitary Platform.

License 8J prevents several activities of Chevron, compared with the original license 8, issued in 2019. In any case, it seems that the objective is not to roll back the restrictions introduced by license 8F -which have been renewed until license 8J. Instead, the goal is to reform the original restrictions imposed in 2019, allowing Chevron to assume oil activities currently under joint venture control.

Beyond any reform in license 8J, several technical constraints will hinder the recovery of oil production. Also, it is necessary to bear in mind that according to the Venezuela Constitution and the Organic Hydrocarbons Law, Chevron cannot undertake oil production. On the contrary, international oil companies can only perform activities as minority shareholders of joint ventures that PDVSA controls.

The main question, thus, is not whether a new license should be issued to alleviate Chevron's constraints but the technical conditions that must guide any reform of license 8J.

Also, the U.S. Government allowed Eni and Repsol to renegotiate their debts with PDVSA based on an oil-for-debt program. However, PDVSA decided to halt the swap, asking those companies to supply fuel necessary for oil activities in Venezuela.

Any decision to alleviate the burdens of PDVSA's contractors (Chevron, Eni, and Repsol) is subject to genuine advance in the negotiation process between Maduro and the Unitary Platform. But, in any case, any measures that alleviate oil sanctions in Venezuela must fulfill six general conditions:

1. **Legality.** Chevron cannot obtain a license to undertake oil production because, following the Venezuela Law, only PDVSA -directly or through affiliates, including joint ventures- can undertake production. Therefore, a new regulatory framework is necessary to allow international oil companies to undertake oil production, protecting property rights. This framework is particularly relevant considering the expropriation risk in Venezuela. Also,

any debt renegotiation process (including the oil-for-debt program) must fulfill budgetary controls applicable to PDVSA. This reform and controls create a legitimacy problem: Can the National Assembly's fifth legislature implement the legislative reform and oversight the debt renegotiation?

2. **Transparency.** The sanctions policies towards Venezuela must be consistent with the U.S. anti-corruption policies, which require transparency standards. Any agreement between PDVSA and international oil companies, thus, should fulfill those transparency standards, particularly regarding the renegotiation of PDVSA's debt with those companies. However, in Venezuela, there are no checks and balances controls, as demonstrated by the high corruption perception in the country.

3. **Humanitarian priority.** The expansion of oil activities will favor Chevron and, eventually, PDVSA. Also, Eni and Repsol could be available to collect their outstanding debt. But will there be any direct benefit for the Venezuelans? It is necessary to adopt special fiscal rules to ensure that oil incomes resulting from any agreement with Chevron are administered following humanitarian standards. The Maduro Government doesn't have any capacity to administer with efficiency oil revenues. Quite the contrary, as a result of the institutional collapse, any oil income will be deviated to finance the transnational kleptocracy. As the Department of Justice concluded, PDVSA is a criminal instrument in that kleptocracy. Also, any debt-for-oil agreement should prioritize the humanitarian aid needed to address the complex emergency in Venezuela.

4. **Equality of treatment with creditors.** The external debt of PDVSA could be estimated at USD 72 billion. That debt has resulted in tens of international litigations and arbitrations, including in the oil industry, as is the case of Conoco and Exxon claims. PDVSA must provide equal treatment among its creditors. It is delicate to renegotiate only some of PDVSA's debt, such as Chevron, Eni, and Repsol's, excluding other creditors. This differentiated treatment can be considered discrimination, resulting in new creditors' claims against PDVSA and, eventually, Chevron, Eni, and Repsol.

5. **Human rights victims.** The Venezuelan human rights victims have been left behind as creditors, compared with the financial and non-financial debt creditors. Some of those victims already have declaratory judgments by U.S. courts, which could be enforced against the Government of Venezuela's assets and, eventually, private contractors' assets such as Chevron, Eni, and Repsol. This is another reason to implement strong transparency safeguards to demonstrate that PDVSA's contractors are not directly or indirectly collaborating with gross human rights violations attributable to Maduro's Government.

6. **Environmental damages.** Venezuela is responsible for the ecocide of the Orinoco Mining Arch. Consequently, it is necessary to increase the quality of the environmental control of extractive industries. Also, it is essential to consider the international obligations of Venezuela towards mitigation and adaptation actions related to climate change.

Any measure that alleviates the burdens international oil companies face due to the sanction policies, including the license 8J reform, must fulfill these six conditions that derive from U.S. policies. Particularly, those conditions consider that the root causes of the Venezuelan oil collapse are the predatory policies that destroyed economic rights and used the oil incomes to finance a transnational kleptocracy related to criminal structures designed to violate human rights systematically.