

Catherine F.I. Andrade  
Corporate Secretary  
Overseas Private Investment Corporation  
1100 New York Ave. NW  
Washington, D.C. 20527  
Via email: Catherine.Andrade@opic.gov

**Re: Public Comments on Environmental and Social Impact Assessment (ESIA) for Bajada de Polo Oeste and Vista Midstream Capex Project Application**

Dear Ms. Andrade,

Fundación Ambiente y Recursos Naturales (FARN), the Center for International Environmental Law (CIEL), and Friends of the Earth U.S. (FOE) respectfully submit the following comments regarding the Vista Oil & Gas Argentina S.A. and Aleph Midstream S.A. application for the Bajada del Palo Oeste and Vista Midstream Capex project.

We urge OPIC to reject this project. We note that the ESIA is incomplete and insufficient. It reveals that this project is not in compliance with OPIC policy, Argentinian law, or international law. The project threatens the human rights of nearby communities, putting their health, local ecosystems, and the climate at risk. Among its flaws, the ESIA:

- provides no alternatives analysis;
- fails to appropriately assess greenhouse gas emissions;
- failed to provide the public with appropriate consultation and did not obtain the free, prior, and informed consent of Indigenous Peoples, or even consult them at all; and
- presents an incomplete analysis.

Headquartered in Buenos Aires, Argentina, FARN promotes sustainable development through politics, law, and the institutional organization of society. CIEL uses the power of the law to protect the environment, promote human rights, and ensure a just and sustainable society. FOE strives for a more healthy and just world.

Thank you for your attention to this critical matter and for this opportunity to inform OPIC of the flaws in this project and its corresponding environmental and social impact assessment.

Respectfully,

Karen Orenstein  
Deputy Director, Economic Policy  
Friends of the Earth U.S.

María Marta Di Paola  
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Steven Feit  
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# Public Comments on ESIA for Bajada de Polo Oeste and Vista Midstream Capex (Argentina), Application by Vista Oil & Gas Argentina S.A. and Aleph Midstream S.A.

Fundación Ambiente y Recursos Naturales (FARN), the Center for International Environmental Law (CIEL), and Friends of the Earth U.S. (FOE) oppose the Bajada del Palo Oeste and Vista Midstream Capex projects, including any potential financing by the Overseas Private Investment Corporation (OPIC) or the U.S. International Development Finance Corporation (DFC). We write to express our concerns regarding this project and deficiencies in the environmental and social impact assessment (ESIA) issued thereof.

## Introduction

The enterprises Vista Oil & Gas Argentina S.A. (VOG) and Aleph Midstream S.A. (AM) are applying for financing from OPIC to drill and complete production of 110 wells to develop non-conventional oil and gas from the Vaca Muerta shale basin, as well as midstream facilities to gather, process, and transport production from Bajada de Palo Oeste (BPO) and Entre Lomas (EL).

Vaca Muerta, one of the largest deposits of shale oil and gas in the world, is shared by four states in Argentina: Neuquén, Río Negro, La Pampa, and Mendoza. Argentina's oil and gas development in Vaca Muerta is polluting the environment, trampling on the rights of the Indigenous Peoples of the Neuquén province, and impacting their health, water, housing, and cultural rights -- without effective consultation or obtaining their free, prior, and informed consent to the development.

This project will be built between Neuquén and Río Negro and has been screened as Category A because it has the potential to have significant and diverse adverse impacts on the nearby environment and the onshore area surrounding the wells and processing facilities. According to the ESIA, major impacts include the potential for accidental releases of oil and natural gas, which could adversely impact the safety of both drilling and plant personnel and the communities during product transport.

This project should be rejected. It presents unacceptable and un-mitigatable risks to local communities, the environment, and the climate. Moreover, the ESIA developed for the project reveals that this project is not compliant with OPIC's Environmental and Social Performance Standards, Argentinian law, and international law. Troubling problems with the project and with the ESIA include the following.

## Lack of compliance with domestic and international law

OPIC is required to follow international and domestic laws applicable to host countries. The following sections include references to national or provincial Argentinian law, as well as international legal obligations that apply to Argentina. The proposed project is in violation of these laws in the circumstances outlined below. This it is not only a matter of concern for the Argentinian legal system but a *direct violation of OPIC's own policies*.

OPIC's Environmental and Social Policy Statement (ESPS) includes multiple provisions prohibiting support for projects that violate host country laws, regulations, and standards, as well as obligations under international law. Several key provisions include:

- ESPS Section 3.6: "OPIC will decline support when...a project does not comply with the host country's environmental and social laws or regulations;"<sup>1</sup>
- ESPS Section 4.2: "[a]t a minimum, OPIC requires that all projects must meet...host country laws, regulations and standards related to environmental and social performance, including host country obligations under international law;"<sup>2</sup>
- ESPS Section 4.7: "[a]pplicants are required to meet...host country laws, regulations and standards related to environmental and social performance, including host country obligations under international law;"<sup>3</sup>
- ESPS Section 5.15: "[a]pplicants must meet the requirements of...host country laws, regulations and standards related to public consultation and disclosure of information;"<sup>4</sup>
- ESPS Section 6.2: "OPIC reviews information provided by the Applicant...Based on this information, OPIC develops appropriate undertakings (covenants) required of the Applicant which are included in the OPIC Agreement. The terms of the covenants take into account, among other things...host country laws, regulations, and standards, including host country obligations under international law;"<sup>5</sup>
- Appendix B: Categorical Prohibitions forbids support for "[p]rojects or companies known to be in violation of local applicable law related to environment, health, safety, labor, and public disclosure."<sup>6</sup>

The foregoing excerpts of OPIC's ESPS leave no doubt that OPIC requires supported projects and companies to comply with the legal requirements of the country within which the projects it funds take place. Violations of these laws, even in instances where such violations do not otherwise conflict with OPIC's ESPS, are therefore grounds for project rejection. This includes national, subnational, and applicable international laws.

### Overview of Concerns

- I. The ESIA failed to consider project alternatives, in violation of OPIC's ESPS and the laws of Neuquén Province;
- II. The ESIA failed to appropriately assess direct and indirect greenhouse gas emissions, in violation of OPIC's ESPS and Argentina's commitment under the Paris Agreement;
- III. The ESIA failed to conduct an appropriate public consultation, in violation of OPIC's ESPS and Argentinian law;

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<sup>1</sup> OVERSEAS PRIVATE INVESTMENT CORPORATION, ENVIRONMENTAL AND SOCIAL POLICY STATEMENT § 3.6 (2017), [https://www.opic.gov/sites/default/files/files/final%20revised%20ESPS%2001132017\(1\).pdf](https://www.opic.gov/sites/default/files/files/final%20revised%20ESPS%2001132017(1).pdf) [hereinafter OPIC ESPS].

<sup>2</sup> *Id.* at § 4.2.

<sup>3</sup> *Id.* at § 4.7.

<sup>4</sup> *Id.* at § 5.15.

<sup>5</sup> *Id.* at § 6.2.

<sup>6</sup> *Id.* at Appendix B, page 38.

- IV. The project sponsors failed to consult with and obtain the free, prior, and informed consent of local Indigenous Peoples in violation of OPIC's ESPS, and Argentina's commitments under the Convention Concerning Indigenous and Tribal Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples;
- V. The ESIA failed to conduct a complete analysis; and
- VI. The project threatens human rights, as warned in the recommendations of the United Nations Committee on Economic, Social, and Cultural Rights.

## I. Failure to consider alternatives

The ESIA fails to consider alternatives to this project, in violation of both OPIC's guidelines and locally applicable laws. Section 3.10 of OPIC's ESPS states: "The following general topics, when applicable, are examined during the environmental and social assessment review... Environmental issues, including... identification of project alternatives and opportunities to minimize adverse impacts and maximize benefits."<sup>7</sup>

A footnote to IFC Performance Standard 1.7, which OPIC's policy incorporates by reference, clarifies this requirement, noting, "For greenfield developments or large expansions with specifically identified physical elements, aspects, and facilities that are likely to generate potential significant environmental or social impacts, the client will conduct a comprehensive Environmental and Social Impact Assessment, including an examination of alternatives, where appropriate."<sup>8</sup>

Finally, the evaluation of project alternatives is also required by local law. Neuquén's law 1875 and decree 2656/99 require descriptions of project alternatives and explanations for their dismissal in EIAs for projects with significant environmental impact.<sup>9</sup>

All of these standards should have been applied to the proposed project. The ESIA process should have considered alternatives, including the no-project option. In particular, there should have been an evaluation of alternative projects to produce renewable energy. OPIC is funding other wind energy projects *in Argentina*, and notes in the ESIA that, "The Project area is characterized by persistent and intense wind."<sup>10</sup> As such, at minimum, the no-project alternative and the development of wind energy should have been included in the study.

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<sup>7</sup> *Id.* at § 3.10

<sup>8</sup> INTERNATIONAL FINANCE CORPORATION, PERFORMANCE STANDARDS ON ENVIRONMENTAL AND SOCIAL SUSTAINABILITY § 1.7 (2012), [https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES&CVID=jkV-X6h](https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS_English_2012_Full-Documents.pdf?MOD=AJPERES&CVID=jkV-X6h) [hereinafter IFC PERFORMANCE STANDARDS].

<sup>9</sup> Provincial Law of Neuquén No. 1875, Annex III, <http://www.cean.gob.ar/wp-content/uploads/2016/05/leyprovincial1875-decreto2656-leyt.o.2267.pdf> ("PROJECT LOCATION AND DESCRIPTION ... description of project alternatives and reasons for their dismissal.") [Ley Provincial Nº 1875, Anexo III ("UBICACIÓN Y DESCRIPCIÓN DEL PROYECTO ... Descripción de las alternativas del proyecto y motivos para su desestimación.")].

<sup>10</sup> ERM, Environmental, Social, and Health Impact Assessment (ESHIA) for Vista Onshore Operations: Executive Summary 11 (2019), [https://www3.opic.gov/Environment/EIA/vistaaleph/ESIA/Chapter\\_1/Chapter\\_1\\_Executive\\_Summary.pdf](https://www3.opic.gov/Environment/EIA/vistaaleph/ESIA/Chapter_1/Chapter_1_Executive_Summary.pdf) [hereinafter ESIA Executive Summary].

The ESIA's failure to consider alternatives to the project is justified by subdividing the project into component parts, and implausibly claiming that they are too small to necessitate an alternatives analysis. However, this Category A project is certainly equal to the sum of its parts, and an alternatives analysis was required to have been conducted for the project as a whole, including in terms of location and in comparison to other energy production options and the no-project alternative. Because no such analysis was performed, the ESIA is not in compliance with OPIC policy or locally-applicable provincial law.

## II. Failure to appropriately assess direct and indirect greenhouse gas emissions (GHGs)

OPIC requires sponsors with high-emitting projects to quantify the GHGs of such projects. IFC Performance Standard 3, from which OPIC's own standard is based, states, "[f]or projects that are expected to or currently produce more than 25,000 tonnes of CO<sub>2</sub>-equivalent annually, the client will quantify direct emissions from the facilities owned or controlled within the physical project boundary, as well as indirect emissions associated with the off-site production of energy used by the project."<sup>11</sup> A footnote clarifies that this includes "non-energy related sources such as methane and nitrous oxide, among others."<sup>12</sup>

The ESIA fails to accurately and appropriately account for emissions of GHGs, in violation of OPIC policies and in contravention of Argentina's commitment under national and international law to reduce its GHG emissions. This large project will produce significant direct and indirect emissions, as well as produce fossil fuels which will produce additional significant emissions when combusted.

For the upstream portion of the project, the ESIA claims that "estimated emissions and GHG expected to be contributed by the VOG project are approx. 119,400 tnCO<sub>2</sub>e per year."<sup>13</sup> However, the ESIA provides no basis for this estimate, such as a description of engineering specifications for planned equipment and processing. Furthermore, the ESIA does not include *any* estimate of emissions from the midstream portion of the project, and does not address or justify this exclusion.

Argentina is also a signatory to the 2015 Paris Agreement, the global pact to limit "the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels."<sup>14</sup> The agreement also includes a commitment to "[make] finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."<sup>15</sup> This international agreement was codified into Argentina's national law in 2016.<sup>16</sup> As such, Argentina has domestic and international legal obligations to pursue efforts to limit fossil fuel production and

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<sup>11</sup> IFC PERFORMANCE STANDARDS, *supra* note 8, at § 3.8.

<sup>12</sup> *Id.* at § 3.8, note 6.

<sup>13</sup> ERM, Environmental, Social, and Health Impact Assessment (ESHIA) for Vista Onshore Operations: Cumulative Impacts 22 (2019),

[https://www3.opic.gov/Environment/EIA/vistaaleph/ESIA/Chapter\\_7/Chapter\\_7\\_Cumulative\\_Impacts.pdf](https://www3.opic.gov/Environment/EIA/vistaaleph/ESIA/Chapter_7/Chapter_7_Cumulative_Impacts.pdf).

<sup>14</sup> Paris Agreement, T.I.A.S. No. 16-1104 (Dec. 12, 2015), art. 2.1(a),

[http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf).

<sup>15</sup> *Id.* at art. 2.1(c).

<sup>16</sup> National Law No. 27,270, Approve the Paris Agreement (Sept. 1, 2016),

<http://servicios.infoleg.gov.ar/infolegInternet/anexos/265000-269999/265554/norma.htm> [Ley Nacional Nº 27.270, Apruébase el Acuerdo de París].

GHG emissions as well as orient financial flows pursuant to the goals of the Paris Agreement. The proposed project would produce significant emissions directly and indirectly, and the ultimate combustion of fossil fuels produced will further exacerbate the climate crisis and compromise global commitments to reduce GHG emissions. Moreover, financing for this project is in direct contravention of the objective of aligning financial flows with low-carbon and climate-resilient development.

### III. Failure to conduct appropriate public consultation

The consultation process was highly insufficient and flawed. Interviews were not appropriately representative, social information was not collected well, and the public was not provided with adequate information for the public hearing. Moreover, as will be discussed in the next section, there was a complete failure to consult with indigenous communities, as required by national and international law, as well as OPIC policy.

Flaws included:

- Interviews lacked representation of key stakeholders, including local organizations, Indigenous Peoples, and people from nearby cities and those settled in the indirect area of influence.
- Interviews were conducted by Vista Oil & Gas employees, not by ERM staff who produced the ESIA.
- The social component was based on secondary information from official sources and only two days' visit on the ground, which is especially meager given the potential geographical scope of the project.
- While the ESIA points to a lack of updated data from the national census, it failed to consult the Neuquén and Río Negro official statistics sites, which publish such local information.

The ESIA notes that a public audience was held on May 3rd, 2019.<sup>17</sup> However, the environmental under-secretary from Neuquén misrepresented the project, saying that the project receiving comments was only an oil pipeline, not the overall project which includes the drilling of 110 wells and the development of a 33 kV network for feeding surface facilities.<sup>18</sup>

### IV. Failure to obtain free, prior, and informed consent from Indigenous Peoples

Vista's ESIA claims that no indigenous populations have been identified within or near the Projects' sites. This is blatantly false. There are (at least) two indigenous Mapuche communities in the Añelo Department in the immediate vicinity of the project: Kaxipayiñ and Campo Maripe. Moreover, the map of social influence includes all the Neuquén and Río Negro provinces.<sup>19</sup>

This erroneous claim is especially egregious given that local communities of Indigenous Peoples have had recent conflicts with oil and gas companies in this area. In 2013, one of the two

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<sup>17</sup> See ESIA Executive Summary, *supra* note 10, at 17.

<sup>18</sup> Call for Public Hearing in Añelo, Government of Neuquén Province, <https://ambiente.neuquen.gov.ar/convocatoria-audiencia-publica-en-la-localidad-de-anelo/> (last visited Aug. 25, 2019) [Gobierno de la Provincia del Neuquén, Convocatoria a Audiencia Pública en Añelo].

<sup>19</sup> A complete communities list is available at <http://datos.jus.gob.ar/dataset/listado-de-comunidades-indigenas/archivo/ed21e2f7-961f-4b19-8a00-0030c6cdd6ef>.

aforementioned communities, Campo Maripe, was terrorized while protesting oil and gas development in the nearby Loma Campana concession.<sup>20</sup> In 2018, the Neuquen Mapuche Federation initiated a lawsuit against several domestic and international oil companies for failure to properly manage fracking waste near the town of Añelo.<sup>21</sup> Both of these incidents occurred in the vicinity of the proposed project, and Vista should have been aware of the presence of these communities. A failure to consult and attain their free, prior, and informed consent (FPIC) is a violation of these communities' rights under Argentinian and international law and a violation of OPIC's policies, and should invalidate this project.

Given the false assertion in the Vista ESIA that there are no Indigenous Peoples, the requisite consultations were not conducted, and as such the project is illegal under international and domestic law as well as in violation of OPIC's standards. Argentina has ratified the Convention concerning Indigenous and Tribal Peoples in Independent Countries and is a signatory of the United Nations Declaration on the Rights of Indigenous Peoples, and this project is subject to IFC Performance Standard 7, all three of which require FPIC of Indigenous Peoples affected by projects.

The Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169), which Argentina has ratified, enshrines in law the right of Indigenous Peoples to "participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly."<sup>22</sup> The United National Declaration on the Rights of Indigenous Peoples, to which Argentina is also a signatory, further recognizes the requirement of FPIC of Indigenous Peoples for projects which may affect them.<sup>23</sup> In particular, FPIC is required for "administrative measures that may affect them,"<sup>24</sup> as well as in cases of storage or disposal of hazardous wastes.<sup>25</sup> Significant administrative permitting is required for various stages of this project, and the disposal of hazardous waste may directly affect the lands of Indigenous Peoples (data about hazardous waste disposal is limited, which will be discussed in the next section.) International law and Argentina's state commitments therefore require the sponsors of this project to obtain the free, prior and informed consent of potentially affected Indigenous Peoples.

Finally, IFC Performance Standard 7 mandates that project sponsors identify all communities of Indigenous Peoples within the project area of influence,<sup>26</sup> and then pursue "an engagement process with the Affected Communities of Indigenous Peoples" and include "stakeholder

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<sup>20</sup> See Press Release, Observatorio Petroleo Sur, Anti-fracking mobilization suppressed and indigenous houses burnt due to resistance over Chevron-YPF agreement (Sept. 3, 2013), <http://www.opsur.org.ar/blog/2013/09/03/anti-fracking-mobilization-suppressed-and-indigenous-houses-burnt-due-to-resistance-over-chevron-ypf-agreement/>.

<sup>21</sup> See *Indigenous Argentine Group Sues Energy Multinationals*, PULSE.NG (Dec. 17, 2018), <https://www.pulse.ng/news/world/indigenous-argentine-group-sues-energy-multinationals/6z8cszk>.

<sup>22</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, (June 27, 1989), art. 7.1, <https://www.refworld.org/docid/3ddb6d514.html>.

<sup>23</sup> See United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf).

<sup>24</sup> *Id.* at art. 19.

<sup>25</sup> *Id.* at art. 29.

<sup>26</sup> IFC PERFORMANCE STANDARDS, *supra* note 8, at § 7.8.

analysis and engagement planning, disclosure of information, consultation, and participation, in a culturally appropriate manner.”<sup>27</sup>

The project sponsors did not consult any Indigenous Peoples in the preparation of their ESIA, and certainly did not obtain their free, prior, and informed consent. As such, this project is in violation of international and Argentinian law, as well as OPIC’s policies, and must be rejected.

## V. Failure to conduct a complete analysis

The environmental and social analysis for this project is markedly incomplete. The risk to communities and the environment from this project is severe, and it is not justifiable to proceed with such an inadequate understanding of what the impact is likely to be.

Notable gaps in the ESIA include:

- The ESIA lacks sufficient information about the most dangerous air pollutants and their impacts on human health, such as hydrogen sulfide (H<sub>2</sub>S); volatile organic components (VOC); methane and ethane; benzene, ethylbenzene, toluene, and xylenes (BTEX); glycols; and polycyclic aromatic hydrocarbons (PAHS).
- The ESIA provides wholly inadequate detail on the stages of the construction, operation, and maintenance of the *midstream* portion of the project.
- The ESIA provides insufficient explanation and detail on how negative impacts will be avoided or mitigated. For example, it states, “Impacts to native flora and fauna habitats will be reduced given the reduction of clearing activities, vehicle and machinery movements, and consequently the reduction of particulate and noise emissions; and risks for environmental contingency (leaks and/or spills of fluids from vehicles, dispersion of solid wastes, etc.) occurrence will be reduced.”<sup>28</sup> However, specifics on how such negative impacts will be reduced are unclear or absent.
- Terrestrial flora is analyzed, however, there is no mention of impacts on microbiota and ichthyofauna related to the affected flora. Further, the analysis is static and fails to address expected impacts of climate change on the various organisms. Yet another section of the ESIA emphasizes “the effect on the plant cover will last for a long time due to the low natural recovery capacity of vegetation.”
- The ESIA asserts that significant risks related to physical hazards affecting nearby communities are not expected due to the distance to the project areas. However, this assertion is premature, as the ESIA fails to consider the impacts of waste disposal, despite many of the project sites being located in cities. Also, the ESIA should have considered the impact of strong winds that facilitate exposure to hydrogen sulfide and/or other hazardous compounds in air, as well as dust and combustion gases, that could result in dangerous chemical products affecting people’s health.
- The ESIA does not include information on the chemical substances used for the preparation of water-based and oil-based mud as well as their quantities. It only very inadequately states that they “will be finally defined by the specialized third-party company contracted by VOG for providing mud services and agreed with VOG mud specialists.” This also raises concerns about when and where VOG’s responsibility ends. In another example, the flow-back water treatment is expected to be collected and

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<sup>27</sup> *Id.* at § 7.10.

<sup>28</sup> See ESIA Executive Summary, *supra* note 10, at 9.



transported for off-site treatment at authorized and licensed third-party contractors' facilities.

- The ESIA chapter about waste should include an analysis of the impact of the Añelo's landfill on the total amount of waste this project will generate (at least 30kg/day of solid waste). With regard to the oil-based mud and the flow-back sands, the ESIA states that all hazardous wastes will be transported "for proper treatment at authorized and licensed hazardous wastes external operators."<sup>29</sup> However, it lacks critical information on the treatment and the operators that will be involved in this process, which is particularly dangerous due to the environmental impacts of the drilling process. Further, the ESIA lacks an examination of the cumulative impacts of waste disposal.
- La Pampa and Mendoza provinces are very close to the areas of direct influence of the Vaca Muerta basin, but there is no mention of them as part of the indirect area of influence.
- The sand suppliers mentioned in the ESIA have questionable environmental records. In fact, Jan De Nul (Arenas Argentinas S.A.) is extracting sand from Paraná River without having completed the process of studying environmental impacts. Further, the site is a buffer zone of a Wetland of International Importance (RAMSAR site).<sup>30</sup>
- The section on ecosystem services is very deficient. All of the noted services are related only to shrubs, and there is no mention of provisioning services (cattle raising, for example), nor cultural services. Also, there is no mention of cumulative impacts on ecosystem services such as climate regulation, pest regulation, erosion regulation, soil fertility, water cycling, etc.

The failure to conduct a complete analysis is especially concerning in the wake of the recent audit of OPIC from the Office of Inspector General (OIG) of the US Agency for International Development. This audit reviewed OPIC's investments in Chile's renewable energy sector and determined that OPIC was unable to meet its requirements for data collection and oversight. In particular, it noted that "weak processes and internal controls—including unverified borrower self-assessments, outdated policies and procedures, and poor records management—hindered the ability of OPIC staff to ensure its projects comply with environmental and social laws, adequately manage and monitor OPIC-backed projects, and identify risky clients."<sup>31</sup>

The Vaca Muerta project now under consideration poses enormous risks to communities and the environment in the surrounding area, and it should not proceed without a thorough understanding of what its impacts are likely to be. OPIC should not approve a project with so many gaps in its analysis. The OIG's audit raises significant concern that, if approved, there will not be the necessary rigorous review, oversight, and monitoring of project development to ensure compliance with OPIC policy and applicable Argentinian and international law.

## VI. Potential violation of human rights

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<sup>29</sup> ERM, Environmental, Social, and Health Impact Assessment (ESHIA) for Vista Onshore Operations: Mitigation Measures 14 (2019),

[https://www3.opic.gov/Environment/EIA/vistaaleph/ESIA/Chapter\\_8/Chapter\\_8\\_Mitigation\\_Measures.pdf](https://www3.opic.gov/Environment/EIA/vistaaleph/ESIA/Chapter_8/Chapter_8_Mitigation_Measures.pdf).

<sup>30</sup> See Delta del Paraná in Argentina Designated as a New Ramsar Site, RAMSAR.org (Jan. 26, 2016),

<https://www.ramsar.org/news/delta-del-parana-in-argentina-designated-as-a-new-ramsar-site>.

<sup>31</sup> OFFICE OF INSPECTOR GENERAL, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, AUDIT REPORT 9-OPC-19-022-P 23 (2019), <https://oig.usaid.gov/sites/default/files/2019-02/9-OPC-19-002-P.pdf>.

In October 2018 the Committee on Economic, Social, and Cultural Rights (CESCR) published their recommendations for the State of Argentina. Among the recommendations was a conclusion that unconventional oil and gas development – commonly known as hydraulic fracturing or fracking – threatens the rights of those in the region and exacerbates the climate crisis.<sup>32</sup> This proposed project to drill 110 unconventional wells is in direct contravention to the recommendations of the CESCR, and threatens the human rights of those in the region where drilling would take place as well as those affected by the ongoing destabilization of the climate. OPIC should not support projects which are likely to result in considerable and foreseeable human rights violations.

## Conclusion

The ESIA for the Bajada de Polo Oeste and Vista Midstream Capex project is insufficient and reveals that this project is not in compliance with OPIC policy, Argentinian law, or international law. The ESIA provides no alternatives analysis; fails to appropriately assess greenhouse gas emissions; failed to provide the public with appropriate consultation and did not obtain the free, prior, and informed consent of Indigenous Peoples, or even consult them at all; and presents an incomplete analysis. It threatens the human rights of nearby communities in opposition to the recommendations of the Committee on Social, Cultural, and Economic Rights, putting their health, local ecosystems, and the climate at risk. OPIC should reject this project.

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<sup>32</sup> See Committee on Economic, Social, and Cultural Rights, Concluding observations on the fourth periodic report of Argentina, E/C.12/ARG/CO/4 (Nov. 1 2018), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fARG%2fCO%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fARG%2fCO%2f4&Lang=en).