

Examen Periódico Universal de la ONU
Tercer ciclo de participación de la sociedad civil

Informe: Incumplimiento de las obligaciones extraterritoriales de la República Popular de China: violaciones a los derechos humanos en el Complejo Hidroeléctrico Cóndor Cliff – Barrancosa en el río Santa Cruz

ANEXOS

Anexo I

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TO: Mr. Xuhua You, Vice-President and the Chief of the Project Management Department at China Gezhouba Group International Engineering Company.

SUBJECT: Meeting in Beijing on September about Dams on Santa Cruz River, Argentina

Dear Mr. Xuhua You:

We are pleased to have the opportunity to get in contact with you. We would like to share information about various recent developments on the Kirchner-Cepernic Complex in Argentina, and to respectfully request for an in-person meeting at your offices in Beijing or Hubei on September 8th or 9th , 2016.

To introduce our organization, Fundación Ambiente y Recursos Naturales (FARN) was created in 1985 as a non-partisan, non-profit, non-governmental organization whose mission is to promote sustainable development through policy, law and the institutional organization of society. FARN works closely with other organizations in its public policies in Argentina and also at a regional level researching international investment in large infrastructure projects. One of the projects is the Kirchner-Cepernic Complex project, in Santa Cruz river, which CGGC is one of the actors regarding its construction.

For us, this is a valuable opportunity to engage a constructive dialogue and share with CGGC some relevant information that could be interesting for you.

We also would like to congratulate the efforts that China is making on reducing its ecological footprint with ambitious targets to reduce green gas emissions and enacting new environmental policies and regulations. We also highly appreciated the fact that a number of Chinese enterprises have stated that they want to more on the environmental and social fronts when operating overseas. All of these are important motivations for FARN to reach out Gezhouba in China and give us hope that it will possible to engage in a constructive dialogue with your company.

Earlier this year we've sent to your offices in Argentina one letter related to the Guideline on Environmental Protection in Investment and Cooperation Overseas from the Ministry of Commerce and Ministry of Environmental Protection of China remarking some points that generated some concern in our civil society, but we didn't receive any answer. We think that these guidelines are really important for countries that receive China's cooperation and celebrate its implementation.

Regarding the Kirchner-Cepernic Complex, as you maybe already aware, this project is highly contentious in Argentina and there are many doubts of its environmental and financial feasibility, in addition with the lack of compliance of Argentina's laws.

Environmental concerns

The Kirchner-Cepernic Complex will alter the watercourse of the Santa Cruz River, will turn over 50% of it into surface water bodies, and will clearly affect its volume and leave 47,000 hectares of our Patagonia under the water. This project may generate irreversible loss of and severe damage to the rich biodiversity, flora, limnological communities, as well as cultural values, due to the loss of archaeological information and paleontological heritage. In particular, the focus is on how the Perito Moreno Glacier may be affected by the fact that the height of the Argentino Lake will no longer depend on natural level changes but on the country's power demand.

This Patagonian glacier, known as the 'White Giant', is one of 48 glaciers fed by the southern Patagonian Ice Field shared with Chile which is the third largest ice concentration in the world after the North and South Poles. Also, the glacier is a UNESCO world heritage and it is considered a marvelous spectacle of nature.

Although the Environmental Impact Assessment (EIA) consultation process was held, it was characterized by the absence of essential information. The lack of information on how the Santa Cruz River diversion will affect the biodiversity and critical and fragile ecosystems – especially in glaciers and the periglacial environment– prevents us from making a comprehensive assessment of the environmental impacts caused by the dams. Moreover, the main defects of the EIA process –both in terms of design and implementation– caused such state of affairs to continue. Also it is important to point out the absence in the EIA of important actors such as Argentine Institute of Nivology, Glaciology and Environmental Sciences (IANIGLA), the Ministry of Environment and Sustainable Development and the Administration of National Parks.

Furthermore, the EIA was not preceded by a more exhaustive assessment. Prior to the EIA of the Kirchner- Cepernic hydroelectric project, a participative Strategic Environmental Assessment should have been conducted –pursuant to the laws in force– to analyse to a more strategic and ample level this kind of decision.

Economic concerns

According to official information the Kirchner-Cepernic Complex is not the best ranked energy projects, since there are at least twelve better ranked projects with a more promising economic, social, energy and environmental feasibility perspective. This has been widely informed to the public by the media.

In this regard, a study¹ conducted by the former Division of Energy of Argentina and the company Emprendimientos Energéticos Binacionales S.A. (EBISA) entitled “Evaluación expeditiva de aprovechamientos hidroeléctricos” [“Expeditious assessment of hydroelectric projects”], which assessed 30 hydroelectric projects taking into consideration economic, technical and environmental aspects, is worthy of note that, as for their economic qualification, the Kirchner and Cepernic dams are ranked 23rd and 25th, respectively.

Both dams are expected to contribute to the Electric Power National Interconnected System, but the technical studies indicate that the plants will have a capacity factor of 32% and that they will be located in an area where high voltage power lines can only transport 43% of the energy produced. The construction of a power line to transport the rest of the energy would have an approximate cost of US\$ 2 billion, which would increase 45% the value of the work –which was already too expensive in light of the projected benefit.

Public consultation concerns:

The citizen participation mechanism², which intends to integrate the citizen –either collectively or individually– to the decision-making process, presented serious shortcomings that prevented an effective and genuine participation of the public. The short period of 6 business days -which elapsed between the publication of the notice and the date of the hearing- prevented a substantive participation of people that were willing to present important views to enrich the debate.

In consequence, the Patagonian Environmental Lawyers Association and the Forest Bank Foundation decided to take legal action against National State and Santa Cruz Province in the Supreme Court of Justice³ to the defects of the environmental impact assessment processes, especially the fact that the appropriate environmental impact studies were not conducted. The Supreme Court recently decided to intervene in this case, requesting

¹ Available (in Spanish) at: http://www.ebisa.com.ar/sites/default/files/Evaluacion_proyectos_hidroelectricos_Resumen_Ejecutivo.pdf

² In compliance with articles 19, 20 and 21 in the General Environment Law No. 25675, available (in Spanish) at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/79980/norma.htm>

³ CSJ 005258/2014-00 “Asociación Argentina de Abogados Ambientalistas de la Patagonia c/Santa Cruz provincia de y otros/amparo ambiental” [Argentine Patagonia Environmentalist Lawyers’ Association v. Province of Santa Cruz et al on environmental amparo action].

information from the government about the coverage and implementation of environmental impact assessment and public participation mechanism⁴.

The environmental implications of this project on the last Patagonian glacial river and as the third largest ice concentration in the world that several organizations formed the coalition "Rio Santa Cruz Without Dams" to request the dismiss of the Kirchner-Cepernic Complex. FARN, Birdlife Argentina, Forest Bank Foundation, Wildlife Foundation Nature for the Future and Argentina Wildlife Foundation are part of this coalition⁵.

Given the scale of this project and the potential impacts at the local and global levels, we consider of crucial importance to have an opportunity to meet with you in-person. We will be happy to provide more information (please see also attached of Dams on Santa Cruz River: impacts and violated rights⁶) and would much appreciate your views on the following topics:

- After the revision of the project (made by the company and the new government), it was agreed to reduce the amount of turbines from 11 to 8 in the dams to reduce the impact on the environment; are you planning to present a new EIA regarding this change? How Gezhouba will address key aspects in the environmental impact? For example within the impact in the Perito Moreno Glacier as it is mentioned in Represas Patagonia's (joint venture between Electroingeniería, Hidrocuyo and Gezhouba) Environmental Management Plan⁷.
- Have you made an economic feasibility of the project? Could you share it with us? Are you aware of the difficulty of repaying investment linked to the price of energy?
- We are aware that many of the Chinese environmental and social guidelines promulgated by a number Chinese public institutions that strongly emphasize the importance that Chinese companies put on the compliance of the host-country laws and to prevent acts of corruption. As you may be aware through the Argentine and international media, pitifully, some of the negotiations around the Kirchner-Cepernic Complex have been tainted by illegal actions and corruption. We would like to know if Gezhouba is taking, or plan to take, any specific measures to address these problems.

We will much appreciate the opportunity to meet with you and your staff to provide additional information and to discuss concerns before mentioned. We will be extremely thankful if you can confirm your availability by 8th or 9th September.

⁴ Supreme court's judgment is available at <http://tuespaciojuridico.com.ar/tudoctrina/wp-content/uploads/2016/04/document10.pdf>

⁵ Rio Santa Cruz Without Dams website: <http://www.riosantacruzlibre.org/>
Some of the impact in the media <http://www.lanacion.com.ar/1912677-salvar-el-rio-contra-las-represas-ambientalistas-se-unen-por-el-santa-cruz;> [http://www.eldiarionuevodia.com.ar/regional/info-general/2016/6/16/reclaman-santa-cruz-represas-24894.html;](http://www.eldiarionuevodia.com.ar/regional/info-general/2016/6/16/reclaman-santa-cruz-represas-24894.html) [http://diariohoy.net/interes-general/reclamos-ecologistas-contra-la-construccion-de-dos-represas-72039;](http://diariohoy.net/interes-general/reclamos-ecologistas-contra-la-construccion-de-dos-represas-72039)

⁶ This paper is a summarized version of "Dams over the Santa Cruz river: a decision calling for a participative, informed and strategic discussion". The summary in English and the full version of the document in Spanish are available at <http://farn.org.ar/archives/20398>

⁷ Available at <http://www.represaspatagonia.com.ar/files/EIA%20PRESAS%20SC%20-%20Resumen%20Ejecutivo%20-%20Rev0.pdf>

We look forward to your kind response and remain at your disposal to provide more information that would be useful to you.

Thanks for receiving our letter and we hope to meet with you soon.

Yours sincerely,

Anexo II

Buenos Aires, 6 de Marzo de 2017

China Development Bank Corporation
Bank of China
Industrial and Commercial Bank of China
Comisión Reguladora Bancaria de China

Copia a:
Ministerio de Hacienda y Finanzas Públicas
Congreso de la Nación Argentina

Asunto: Decisión de la Corte Suprema de Justicia de la Nación Argentina con respecto al Proyecto del Complejo Hidroeléctrico Kirchner-Cepernic (KCHP)

Estimados Señores y Señoras:

En primer lugar, la coalición “Río Santa Cruz sin represas” quisiera expresarles nuestros mejores deseos. Asimismo, nos gustaría aprovechar esta oportunidad para continuar con los esfuerzos que la Fundación Ambiente y Recursos Naturales (FARN) inició el año pasado para exponer nuestras inquietudes con las empresas y los bancos chinos involucrados en el Proyecto del Complejo Hidroeléctrico Kirchner-Cepernic (Kirchner-Cepernic Hydropower Project, KCHP). La coalición “Río Santa Cruz sin represas” está formada por FARN, Aves Argentinas, Fundación Banco de Bosques, Fundación Vida Silvestre y Fundación Flora y Fauna Argentina y la Fundación Naturaleza para el Futuro (FuNaFu). Esta coalición fue establecida en respuesta al proyecto KCHP debido a las enormes implicaciones ambientales de este sobre el último río glaciario de la Patagonia y en la tercera mayor concentración de hielo del mundo.

Con esta carta, la coalición quisiera destacar la importancia del fallo de la Corte Suprema de Justicia de la Nación Argentina (21 de diciembre de 2016) y expresar nuestra preocupación con respecto a la presión financiera y legal de los acreedores chinos manifiesta en la carta enviada al Ministerio de Hacienda y Finanzas (10 de marzo de 2016) y que podría evitar el pleno acatamiento del fallo de la Corte Suprema por parte de los prestatarios argentinos.

El pasado 21 de diciembre, un fallo precautorio unánime de la Corte Suprema de Justicia de la Nación Argentina suspendió la construcción de las represas. La decisión de la Corte indica que la construcción de las represas podría no continuar hasta que los organismos gubernamentales nacionales y provinciales correspondientes realicen y aprueben, en forma adecuada e independiente, una evaluación de impacto ambiental (EIA), y que se lleve a cabo una audiencia pública en el Congreso de la Nación. La Corte Suprema de Justicia estableció que el Poder Ejecutivo (el Gobierno de Argentina) no ha cumplido con sus obligaciones de

acuerdo con la Ley 23.879 (Ley de Impacto Ambiental de Obras Hidráulicas)⁸. El fallo de la Corte fue en respuesta a una solicitud de medida cautelar presentada por la Asociación Argentina de Abogados Ambientalistas de la Patagonia (diciembre de 2014)⁹ y de la Fundación Banco de Bosques (octubre de 2015)¹⁰, justificada por el Art. 41 de la Constitución Nacional Argentina¹¹.

No obstante, consideramos que es poco probable que se pueda realizar una nueva evaluación de impacto ambiental de manera científica e independiente si, en forma prematura, el contrato de obras de KCHP (que se inclina fuertemente a favor de los acreedores) asume la ejecución de los proyectos e impone cargas financieras enormes al Gobierno argentino si los proyectos de modifican o se cancelan.

La China Development Bank Corporation (CDB), el Bank of China Limited y el Industrial and

Commercial Bank of China, advirtieron al Gobierno argentino (en la carta enviada el 10 de marzo de 2016 con referencia a varias cláusulas del contrato de obras de KCHP, incluida la cláusula de “incumplimiento cruzado” relacionada con el contrato de obras del Belgrano Cargas) que, en caso de que ocurran demoras o cancelaciones, se producirá un “incumplimiento” de acuerdo con el contrato de obras del KCHP y esto dará lugar a la cláusula de “incumplimiento cruzado” en el contrato de obras del Belgrano Cargas. Asimismo, los bancos chinos indicaron que la implementación exitosa del proyecto KCHP “... también sentará las bases para una futura cooperación económica más profunda entre China y Argentina”.

Tal y como reconoció la Corte Suprema de Justicia de la Nación Argentina en su fallo del pasado diciembre “... la magnitud del proyecto requiere una reflexión profunda, científicamente probada, socialmente participativa y valorativamente equilibrada...”. Sería conveniente que los acreedores chinos garanticen públicamente el espacio y el tiempo (sin represalias financieras) de manera tal que los argentinos puedan reevaluar el proyecto de acuerdo con sus leyes y acatar por completo el fallo de la Corte Suprema, incluso si el resultado de la evaluación de impacto ambiental recomienda no continuar con el proyecto.

⁸ <http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/279/texact.htm>

⁹ CSJ 005258/2014-00 “Asociación Argentina de Abogados Ambientalistas de la Patagonia c/Santa Cruz provincia de y otros/amparo ambiental”. La opinión del Fiscalía General de la Nación, que consideró que el caso no se encontraba bajo la jurisdicción original de la CSJN, está disponible aquí: http://www.mpf.gob.ar/dictámenes/2014%5CIGarcia%5Cdiciembre%5CAsoc_Abog_Amb_CSJ_5258_2014.pdf

¹⁰ CSJ 004390/2015-00 “Fundación Banco de Bosques para el manejo sustentable de los recursos naturales c/Santa Cruz, provincia de y otros s/ acción declarativa de inconstitucionalidad”.

¹¹ La Corte Suprema funciona como tribunal de última instancia. Sus fallos no se pueden apelar. Es importante destacar la independencia de la Corte Suprema del Poder Ejecutivo. Por ejemplo, la Corte Suprema suspendió los trabajos de la empresa minera El Desquite S.A. en la provincia de Chubut. El fallo está disponible en: http://farn.org.ar/mineriayagua/documentos/fallo_villar.pdf

Al respecto, también es importante recordar el Párr. 6.4 del contrato de obras de KCHP, con respecto a la “Utilización”, que hace referencia a que la participación de los acreedores se llevará a cabo “si las condiciones (...) del contrato se han cumplido”, y el Párr. 20.2 con respecto al “Cumplimiento de las leyes”, que señala que el Gobierno argentino “cumplirá en todos los aspectos con todas las leyes a las que esté sujeto”. Es claro que acatamiento de las leyes nacionales es una de esas condiciones y, lamentablemente, esto no se ha cumplido en términos de la Ley 23.879. Ahora, el Gobierno argentino debe respetar plenamente el fallo de la Corte Suprema de Justicia de la Nación Argentina, que seconsidera parte de la “legislación nacional”. Estas obligaciones se especifican en el Párr. 20.17 “Cumplimiento ambiental” y en el Párr. 20.18 “Reclamos ambientales”. En la carta queda claro que un reclamo ambiental puede bastar, en las circunstancias adecuadas, como “Efecto adverso material”, como un fundamento para no continuar con el proyecto. De manera aún más específica, el Párr. 21.8 deja en claro que una orden judicial puede servir como Efecto adverso material. Sobre esta base, es importante que los bancos garanticen que esta cláusula no se implementará si la nueva evaluación de impacto ambiental solicitada por la Corte Suprema establece que no se debería continuar con el proyecto por razones ambientales.

También nos gustaría llamar su atención en lo referente a la implementación de la Directiva de Crédito Verde de China, en particular con relación al Art. 15 que señala que: “Las instituciones bancarias fortalecerán la debida diligencia en la otorgación de créditos (...) de manera tal que se garantice que la debida diligencia sea completa, exhaustiva y detallada”. Será importante saber si los acreedores chinos realizaron la debida diligencia adecuada en términos del Art. 15 antes de otorgar el crédito al Gobierno argentino, y saber más específicamente sobre los hallazgos de la debida diligencia con relación a la implementación de la Ley 23.879 y de otras leyes en las que se basó el fallo de la Corte Suprema. Además, abogamos para que los acreedores chinos actualicen su evaluación preliminar de impacto ambiental y de riesgo de otorgamiento de crédito teniendo en cuenta que los documentos existentes presentados por el prestatario ya no son válidos.

No podemos dejar de resaltar la importancia de la evaluación de riesgos ambientales y sociales del proyecto KCHP. A este respecto, consideramos que la Directiva de Crédito Verde es una herramienta importante no solo para ayudar a los acreedores a evitar realizar inversiones dudosas, sino también para impedir que el prestatario adquiera deudas innecesarias y elevadas.

Por último, quisiéramos informarles que el 25 de noviembre de 2016, la coalición “Río Santa Cruz sin represas” ha presentado una queja en la Oficina Anticorrupción Argentina con respecto al nombramiento del señor Jorge Marcolini como subsecretario de Energía Hidroeléctrica. De acuerdo con la Ley 25.188¹² (Ley de Ética en el Ejercicio de la Función Pública), el señor Jorge Marcolini no debería haber sido designado en este cargo debido a un conflicto de intereses basado en el hecho de que se desempeñaba como gerente de proyectos de Ingeniería y Asistencia Técnica Argentina S.A. (IATASA), una consultora que elogió la

¹² <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60847/texact.htm>

construcción del KCHP¹³. Recientemente, recibimos una carta de la Oficina Anticorrupción en la que se requería más información sobre el caso. Tomamos esto como una señal de que se está realizando una investigación profunda al respecto.

En sintonía con las palabras del presidente de la República Popular China en la última reunión anual del Foro Económico Mundial en Davos, en las que pedía a las economías más poderosas del mundo que desarrollen un modelo de gobierno justo y equitativo que sortee los desafíos del cambio climático, esperamos que este fallo de la Corte Suprema de Justicia de la Nación Argentina brinde la oportunidad de suspender este proyecto y garantizar que no tendrá graves impactos ambientales y económicos. De lo contrario, tememos que la construcción del KCHP será recordada en la historia como la colaboración chino-argentina más equívoca de todos los tiempos, precisamente en un momento en el que la protección de los glaciares para abordar el cambio climático se encuentra entre las prioridades más importantes de la humanidad.

Atentamente.



¹³ El documento “Determinación de la función “altura-caudal” (curva H-Q) para el río Santa Cruz a la salida del Lago Argentino”. Disponible en: http://www.santacruz.gov.ar/ambiente/audiencia_publica/Rio_Santa_Cruz/informe/Informe_Curva%20h-Q%20embocadura_%20Firma.pdf (páginas 11-13).

Anexo III

Buenos Aires, July 31st, 2017

China Development Bank Corporation
Bank of China
Industrial and Commercial Bank of China
CC: China Regulatory Bank Commission
CC: China Gezhouba Group Corporation (CGGC)

Subject: Comments on the Kirchner-Cepernic Hydropower Project (KCHP) Environmental Impact Assessment (EIA)

Dear Madams and Sirs,

The Coalition "Santa Cruz River without Dams" would like to take this opportunity to continue our efforts (see letters sent on July 18th 2016 and March 6th 2017) to discuss our concerns with the Chinese banks and companies involved in the KCHP Project.

With this letter, the Coalition would like to share our observations on both scope and procedural aspects regarding the new KCHP EIA discussed in the public hearing that took place on July 20th and 21st at the National Congress in response to the ruling of the Argentinian Supreme Court (December 21st, 2016)¹⁴. You might not be aware, but this is the first time in Argentina that the Supreme Court mandates a public hearing on an EIA at the National Congress, which speaks to the immense importance of the environmental implications of the KCHP for all Argentinians. More than 120 participants including public officials, NGOs, experts, and residents of Calafate, Santa Cruz (located near where the KCHP will be developed) were present at the public hearing. Not surprisingly, public authorities supported the KCHP while the rest of the participants insisted that the KCHP should not continue.

Despite the fact that the Ministry of Environment and the Ministry of Energy have already approved the new EIA¹⁵ (conducted by Emprendimientos Energéticos Binacionales S.A. (EBISA)), it became clear during the public hearing that this new EIA was incomplete, hurried and violated several procedures. All of these, we hope, will be taken into account in the dictum that the National Congress will promulgate in upcoming days. We summarize our observations in the following points:

¹⁴ Ruling of the Argentinian Supreme Court available at (in Spanish): <https://es.scribd.com/document/334794433/Fallo-de-la-Corte-sobre-represas-de-Santa-Cruz#download> (Last visit 28.07.2017)

¹⁵ EBISA's Environmental Impact Assessment available at (in Spanish): <https://www.minem.gob.ar/prensa/26446/estudio-de-impacto-ambiental-de-los-aprovechamientos-hidroelectricos-del-rio-santa-cruz-presidente-dr-nestor-carlos-kirchner-y-gobernador-jorge-cepernic.html> (Last visit 28.07.2017)

Concerns regarding the scope of the new EIA:

1. The new EIA does not comply with the addendum for the Commercial Contract of August 2016, where it is specifically required that the new EIA must include the two hydroelectric dams, the 500kW power line and all related public works necessary to ensure the connection of the KCHP to the Argentine Interconnected System. Moreover, one of the main reasons in which the Supreme Court based its decision to have a new EIA and that such should be approved by national -and not only local- public institutions, was precisely the fact that the installation of the power line would impose environmental impacts in a large part of Argentine territory, going beyond the Santa Cruz Province. The environmental and social impacts assessment of the 500kW power line and related works are not taken into account in the new EIA.

2. Despite the modifications made to the original project in order to reduce the impacts on glaciers, the new reservoir quota of the Kirchner dam does not ensure adequate decoupling of Argentino Lake, risking impacts to the Perito Moreno glacier. In addition, the Upsala and Spigazinni glaciers –both dependent on the Argentino Lake- are also in danger. It is of great concern that the new EIA does not address these issues, as was noted by the Argentine Institute of Snow and Glacier Research and Environmental Sciences (IANIGLA)¹⁶, which is part of the National Council for Scientific and Technical Research (CONICET). CONICET has pointed out that "The preliminary review of the EBISA report suggests that there are important inconsistencies and omissions in the information related to the glaciers of the Santa Cruz river basin, that we consider should be the object of a specific study".

3. The dams will flood priority areas and irreplaceable biodiversity, affect migratory fish, contribute to the extinction of endemic species such as Macá Tobiano (provincial natural monument). The Macá Tobiano, according to the International Union for the Conservation of Nature (UICN), is one step away from global and irreversible extinction; that impact is not fully and exhaustively reflected in the new EIA. For example, the new EIA shows a critical lack of understanding regarding the seasonal presence of Máca Tobiano in the estuary of the Santa Cruz river since studies for the new EIA were conducted during the months when the Máca Tobiano does not inhabit the estuary, and have basic errors on names and utilize outdated taxonomic classifications.

4. Regarding the cultural and archaeological heritage, the KCHP will affect cave paintings and stamped petroglyphs as well as sacred sites for native communities. The technical report presented by the National Commission of Historic Sites and Property¹⁷ of the Culture Ministry explains that the mitigation measures contained in the new EIA "do not reflect the

¹⁶ IANIGLA's study and letter available at (in Spanish): <http://farn.org.ar/wp-content/plugins/download-attachments/includes/download.php?id=22628> (Last visit 28.07.2017)

¹⁷Ministry of Culture study available at (in Spanish): <http://farn.org.ar/wp-content/plugins/download-attachments/includes/download.php?id=22635> (Last visit 28.07.2017)

magnitude of the irreversible loss of archaeological heritage that the construction of the dams will cause".

5. The right to Free, Prior and Informed Consent established by ILO 169 and ratified by Argentina (1992) has not been fulfilled by the government of Argentina despite the fact that the KCHP will affect the territories of Mapuche – Tehuelche Communities.

Concerns related to procedural aspects:

1. The Coalition considers that shortcomings of the new EIA are in part due to the lack of time needed to conduct a comprehensive and detailed assessment study. This pressure was created by the Chinese government in order to rush the new EIA and resume activities on the KCHP. We recognize the responsibilities of the Argentinian government for not pushing back against such pressure; and we strongly reject the role of the Chinese government in creating it. Such pressure is clearly reflected in the minutes of the meeting of the 3rd China Argentine Dialogue for Economic Coordination and Cooperation (April, 2017)¹⁸ in which the Chinese part states that “On Santa Cruz Hydro Project Station project, the Chinese strongly requires the Argentine side to finish the procedures for the environment impact assessment by April 30th, finish the review and public hearing by Congress before late May, and approve full resumption of the main project by the end of May”. Concern about this urgency and pressure are reflected in the reaction of the Argentinian Minister of Energy, who stated during the public hearing: “Someone asked if we would have done this if we had not had any commitment, the answer is probably not at the speed we are doing it”¹⁹.

2. In Argentina, for a company or consultant to be able to conduct an EIA, it is necessary to be registered in the Environmental Impact Consultants Registry (EICR) under the Ministry of Environment. EBISA, the company that carried out the KCHP EIA was not registered in the EICR when it conducted the assessment. EBISA fulfilled its registration on July 4th, 2017, almost a month after having published the new KCHP EIA (June 14th, 2017). Therefore, there is no assurance about the technical capacity of EBISA to carry out the new EIA.

3. Another source of concern are the conflicts of interest between the public institutions and the public officials that conduct and approved the new KCHP EIA. Firstly, we challenge the fact that EBISA (a public entity operating under the Ministry of Energy and Mines) is the entity that conducted the new KCHP EIA, taking into account that the Ministry of Energy and Mines is one of the entities responsible for approving such EIA. Secondly, we challenge the role that the Under-Secretary of Hydroelectric Energy, Jorge Marcolini has played. Mr. Marcolini is subject of a criminal complaint for conducting "negotiations incompatible with

¹⁸ Minutes of the meeting available at: <http://lt.dplract.net/aa2ae9a04be62fc5a800d066ef3f6102-44ed70d36e9914b7fd75445ccf9b7091> (Last visit 28.07.2017)

¹⁹ Words of the Energy Minister available in the Public Hearing available at (in Spanish): <https://www.youtube.com/watch?v=4yEPqpZRV8c> Minute: 2:45:20 (Last visit 27.07.2017)

his public function". According to the indictment, Mr. Marcolini's obligation to receive and review the EIA as a public official, was incompatible (and created conflicts of interest) with his role as Director of EBISA, the state-owned company that conducted the new EIA. Not only has he played a double role in running the company that developed the new EIA and being one of the authorities of one of the public institutions that approved the new EIA, but he has also promoted the KCHP from the private sector as Project Manager of Ingeniería y Asistencia Técnica Argentina S.A. (IATASA), a private consultancy firm which praised the construction of the KCHP.

We hope you find our letter useful to your analysis of the reputational and financial risks of the KCHP, given the active economic and political support provided to the project from the Chinese government and Chinese banks. It is clear to us that the legal and environmental challenges of this investment project are not going to be resolved in the short term. On the contrary, we firmly believe that this project will never earn the necessary "social license" of the Argentine people and much is yet to be addressed and resolved by the courts and political arenas of our country.

Finally, we want to invite you to reconsider the KCHP and to leave behind old energy paradigms. We prize China efforts to curb green gas emissions and to promote wind and solar energy and green finance at home. The Coalition will be the first to support bilateral cooperation that does not repeat the mistakes of the past, but invests in a truly clean energy future.

Sincerely,



**Fundación Vida
Silvestre
Argentina**



**Fundación
Ambiente y
Recursos
Naturales**



Aves Argentinas



**Fundación
Banco de
Bosques**



**Fundación Flora
y Fauna
Argentina**

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