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The Destiny of the Biobío River

- Hydro Development at Any Cost -

ÑUKE MAPUFÖRLAGET

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Interculturalism and Transnationality**

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Introduction

The Mapuche people are the largest ethnic group in Chile and constitute approximately 10% (more than 1 million) of the Chilean population. Pehuenches, people of the *pehuen* tree (araucaria) area, is a branch of the Mapuche people, who live in the Andes and alongside the Biobío River (Hernandez 1998:8,22). Home to numerous unique plant and animal species, the natural environment connected to the Biobío River is quite fragile, and several species are dependent upon the river for their survival.

In 1990, the newly elected Chilean government approved plans for hydro development on the Biobío River by ENDESA, a Chilean private energy and resource-development corporation. Implementing this project would require invoking the National Energy Law (decreed during Pinochet's regime in 1982) to privatize Pehuenche reservation land. ENDESA asked the World Bank Group to provide funding for state-sanctioned, private development of six hydroelectric dams. The World Bank Group funds such private-sector development projects through its subsidiary, the International Finance Corporation (IFC). In December 1992 IFC board approved the decision to invest in the Pangué Dam project, and in October 1993 the IFC and ENDESA signed an investment agreement providing a US\$170 million loan to ENDESA to construct the Pangué dam, in return IFC got a 2,5% equity interest in Pangué S.A., the ENDESA subsidiary that built and operates Pangué (Johnston and Turner 1998: 6). The IFC also brokered funds from several European public and private source, a US\$28 million loan through the Swedish board for Industrial and Technical Cooperation (BITS) and a US\$ 14 million from the Norwegian Agency for Development Cooperation (NORAD) (Minutes from the Norwegian Parliament, 19/03 1997). Finally, ten European Banks gave US\$100 million dollar. When the World Banc leader - James Wolfensohn - after several independent investigations of the Pangué project had to go public with an apology to the Pehuenche people, it was already late - ENDESA had refinanced the project.

Now the battle is about Ralco - the second dam of totally six planned dams (Pangué, Ralco, Huequecura, Aguas Blancas, Quintremán, Ranquil and Queuco). Ralco is the most extensive dam, and will, when ready, put an area of 3.467 ha under water, forcing some 91 Pehuenche families to move from their lands. Today, 84 Pehuenche families have signed the contract to move, but 7 families are still resisting, claiming the right to their land and the river they have lived by - and of - for centuries. The national Indigenous Law, which came into force in 1993, proclaims that the Pehuenches - as indigenous beings - cannot be forced to move from their land (Ley Indígena, No 19.253, article 13). ENDESA dismisses the relevance of this law, arguing that under the 1982 Energy Law, the nation's need for energy supersedes indigenous rights. It is now for the court to decide which of the Laws that is superior, the national Energy Law or the Indigenous Law. Meanwhile, ENDESA is carrying on with the project, even though independent investigations and also reports from the Chilean Department of Energy (CNE) show that, there is no need in Chile for the energy that the plants will produce (Johnston and Turner 1998: 10).

The Biobío project and the Pangué dam was the first environmental question that created public debate in Chile after the fall of the dictatorship of Pinochet, partly as a result of the newly obtained freedom when democracy was reintroduced, partly because the projects and its owners

had such strong liaisons to the Pinochet regiment (Silva 1997: 193). Thus, the fight to stop the hydro development projects on the Biobío River is said to be a crucial test for Chile's fragile democracy. Two new laws providing citizen rights and public participation guarantees - the Chilean environmental Law from 1994 and, as mentioned, the Chilean Indigenous Law from 1993 - are being tested by citizen groups opposing the project. If Ralco is finally approved, it is hard to see how there can be any legal way to stop the four additional dam projects that are planned by ENDESA on the Biobío River. Thus, the Ralco Dam has also become a rallying cry for Chile's indigenous movement. It is the first time that the Indigenous Law has been tried in court against another law, and if the dam is approved, the National Indigenous Law - designed to protect the rights to land, water, and resources of indigenous peoples - is said to be meaningless.

The Biobío project has been object to much discussion and criticism both on an international and a national agenda. Indigenous organizations, governmental institutions, grass root organization, individuals, politicians and others have publicly questioned and denounced their rejection of the project. And, as mentioned, information and facts from several independent sources have shown the needlessness of the project, but still the hydro development project has been "pushed through" and in this very moment 40% of the Ralco dam is completed. Thus, the underlying motivation for this article is to give an understanding of why it has not been possible for the opponents to stop the project, and to show the obstacles and hinders that the project has passed one its way. It is also the intention of the article to illustrate the long term consequences of Nordic Aid projects, because even though both NORAD and BITS later withdrew themselves from the project, the aid that they provided turned out to be the key that paved the way for further development on the Biobío River.

The Pehuenche People

Chile's Biobío River, in the IX Region, has its origin in the Icalma- and Galletué- lagoons in the Andean mountains, near the Argentine border, and flows through basalt canyons and alpine forest of araucaria pines before reaching the Pacific Ocean nearly 400 kilometers below, close to the town of Concepción. The Biobío River runs through the heart of Pehuenche territory. The Pehuenche people have lived with the Biobío for hundreds of years, and their livelihoods and culture are highly dependent on the river (Brown 1997a). The Biobío River is divided into two sectors, the upper (Upper Biobío) and lower (Bajo Biobío) part. Upper Biobío, where the constructions are taking place, consists of seven Mapuche-Pehuenche communities (Callaqui, Pitiril, Cuñicu, Malla-Malla, Trapa-Trapa, Quepuca Ralco and Ralco Lepoy). According to figures from 1992, a total of 3.975 people live in the area (CONAMA 1996:7).

The Pehuenche Indians are descendants of mounted warriors who held back the Spanish conquest for more than 200 years, with the Biobío River as the natural borderline. The Pehuenche people were also the leading middlemen in the Chilean and Argentinean livestock trade across the pampas in the 18th and early 19th centuries, and the only indigenous group to retain a distinctive identity (Villalobos 1989; Mandrini 1991). They comprise a single ethnic group with a shared, distinctive identity. They are related to other Mapuche speakers in Chile, but there are notable dialectic differences. Thus, they are described as the last Chilean indigenous group to live by traditional means on traditional lands.

The Mapuche-Pehuenche Indians of the Upper Biobío lives in extreme poverty (CONAMA, 1996:7). In Chile in total 16,1% of the population live below the poverty line, while the percentage in Alto Biobío reach 22,3% (El Sur, 18/02 2001). 30% of the Pehuenche Indians are analphabets and the malnutrition reach more than 10% (Guzmán 1998:1). The Pehuenche people struggle for economic survival under harsh climatic and economic conditions, primary as forest people. Outside traders and woodcutters often take advantage of Pehuenche marginality and isolation, further impoverishing them. Non-Indian traders pay the Pehuenche Indians only half the prevailing regional prices for their livestock and timber.

In the last century, the land held by the Pehuenche people has shrunk from 54 million hectares to 30,000 hectares due to military take-over and non-Indian territorial expansion (Nordbø 1998: 96). By 1929, territorial expansion by non-Indians and military defeat reduced the Pehuenche's holdings to seven reservations (*reducciones*). Even during the last two decades the Pehuenche Indians have lost territories, much due to two decrees that Pinochet designed and implemented during his dictatorship, whith the obvious aim of dissolving the last part of the indigenous tribes society in the Southern part of Chile (Ibid., Silva 1997:198). Thus, during the last century the Pehuenche Indians have constantly being forced further up the valley of Biobío. With the Ralco dam the Pehuenche Indians are once again obliged to accept land higher up the valley (at 1000 meter above sea level), where the climatic conditions are even tougher and the soil even more impoverished.

Gathering forest products and cutting timber, the Pehuenche people's economy and culture rest upon unrestricted access to renewable natural resources like wood for building and fuel, piñon nuts, medicinal plants found in ecological micro-niches, pastures, etc. Very little food is purchased. Taking advantage of summer pastures, Pehuenche collect piñon (*Araucaria* pine nuts), which are their primary source of nourishment. They also feed the nuts to their animals and occasionally market them. Piñon nuts are not only a staple in their diet; the piñon tree and its fruits are important sacred elements of their culture. Pehuenche means "people of the pehuen," or Monkey-Puzzle tree, on which the piñon nut grows. After forestry, animal husbandry plays an important role in Pehuenche subsistence, even though it does not represent a substantial part of the net community product (Silva 1997: 198). This annual transhumance is marked by an elaborate ceremony, the Nguillatun, through which the Pehuenche believe they maintain the order of the universe. Each community has access to summer pastures.

The Pehuenche have no institutional mechanisms through which to express their claims, except their traditional chiefs. Except when threatened by external force, the Pehuenche political organization is democratic, based on a consensual chief (*lonko*) who provides guidance and has limited ceremonial authority. The Pehuenche are unfamiliar with the dominant society's institutions and rules. Some are fugitives because of inadvertent violations of the deforestation law. Others are under court injunctions and enmeshed in battles over land tenure. Faced with multiple threats to their land, resources, economy and culture, the Pehuenche lack legal representation.¹

¹ Where no other source is referred, the information is based on Downing (1996: 11-15) and Johnston and Turner (1998:7-9).

The Biobío River is no doubt in the core of the Pehuenche people's life and culture, and with the support of the environmental grass root organization fighting for the Biobío and the rights of the Pehuenche Indians - GABB (Grupo de Acción por el Biobío) some Pehuenche families have struggled against the dam constructions for more than 10 years. In front of the resistance is a group consisting of five women – Mapu Domuche Newén (Women with the Power of Land) - and the leader is the 64 years old Nicolasa Quintremán, a traditional Pehuenche woman protecting her ancestral land and culture. Together with GABB Mapu Domuche Newén has obtained the Right Livelihood Award, also known as the Alternative Nobel Prize (Stockholm 1998) and the Petra Kelly Prize (Berlin 2000) for their resistance. Earlier, Juan Pablo Orrego, the leader of GABB has obtained the prestigious Guzman Prize.

Ralco - The Silenced Dam

In 1992 ENDESA began the constructions on the Pangué Dam, and the 450-MW dam began operating in 1997. The total costs of the project was, as mentioned, stipulated to US\$470 million and in December 1992, the International Finance Corporation (IFC) - the World Bank's private sector arm - approved a loan of US\$150 million to the project. In response to concerns voiced by the co-financial institutions (NORAD and BITS) regarding the environmental impacts of a series of dams on the Biobío River, the IFC asserted that Pangué was the only dam planned. Despite these promises, which enabled IFC to avoid taking into consideration the cumulative impacts of more than one dam, a second project, Ralco - a large reservoir dam upstream, is now in works. Ralco will have far more devastating impacts than Pangué. The 155-meter-high Ralco Dam is projected to generate 570 MW of electricity at full capacity. Ralco's powerhouse will be 10 km downstream from the dam itself and the corridor between the dam and the waterfall cone will be entirely dry, while 60 km of the Biobío River valley and various tributaries will be inundated. The operation of Ralco will cause a monthly fluctuation of the water level of the reservoir of 20 meters (IRN 1997-8).

One of the questions that has been asked is how IFC, NORAD and BITS could neglect and even deny the fact that Pangué was constructed to work together with five other dams, - among them Ralco? Both IFC, NORAD and BITS seemed to accept the fact that one would have to look at the cumulative impacts if more than one dam was planned on the river. Thus, in order to be able to support the Pangué project IFC, NORAD and BITS had to deny any knowledge about the Ralco dam (Usher 1997: 174). However, it has been proven that this was not the case.

In an interview with journalist Ann Danaiya Usher in October 1994 (Ibid.:175) Per Berg, Vice VD for waterpower at Kværner - the multinational Norwegian company that delivered the turbines to Pangué - admits that it was commonly known that the Biobío project consisted of six planned dams. Furthermore, he admitted that Kværner consecutively had handed on all obtained information to NORAD and BITS. Ralco was the most crucial part of the dam-project from the very beginning and was already included in the report *Hydroelectric Resources of the Biobío watershed 1990*, that the ENDESA engineer Rudolfo von Bennwitz Bastián published in 1990 (Ibid.: 173-4).

Pangué is currently producing just a fraction of its expected output, due to continuous drought. Thus, it is no surprise that for ENDESA the purpose of the Ralco dam is to slow siltation that

impairs Pangué's performance and to manage the flow into Pangué during low periods of peak electricity demand (Johnston and Turner 1998:9; Silva 1997:203). Furthermore, ENDESA already in 1992 applied for the legal permission to use the river in the Ralco area for hydro electrical development purposes (Moraga 2001: 128). ENDESA has studied the Biobío River for decades and has stated that to dam the river is necessary in order to turn Chile into a modern society, and to reassure the economic growth in BNP that Chile has experienced the last decades. In response to critics who say the dam is unnecessary since Chile began importing natural gas from Argentina, Adolfo Ochoa, assistant manager of construction for ENDESA in Pangué, argues: "The energy-generating power of water is the cheapest way for Chile to go ... gas is an important part of (Chile's) energy mix, but that doesn't change the need for Ralco. This dam figures in all the energy supply calculations for the next 10 years." (The Christian Science Monitor, 21 May 1998).

Thus, in 1994 ENDESA publicly announce their intention to construct Ralco, and started to present the project and the reallocation plan to the affected Pehuenche Indians. In 1995 the project is presented to regional governmental institutions, including the National Indigenous Development Commission (CONADI) and environmental commissions in the Chilean Senate and the chamber of deputies (Moraga 2001: 128).

A strange candidate for Nordic Aid

After the coup against Salvador Allende in 1973, Sweden and Norway were among the countries that opened their Embassies to protect people that were persecuted by the regime of Pinochet. For the 17 years that the dictatorship lasted, the Nordic aid to Chile consisted of international lobbying to isolate the Pinochet regime, to give support and asylum to political refugees, to fortalice human rights and to help groups that worked for restoring democratic constitutions (Usher 1997:171; Silva 1997:194). When Pinochet finally left power in 1989 and public elections were held the following year, Sweden and Norway resumed normal diplomatic connections with the new president Patricio Aylwin. Between 1991 and 1993 the Norwegian government gave US\$14 million in humanitarian aid to Chileans that went back to Chile and to exposed groups in Chile. However, after president Patricio Aylwin's trip to Norway and Sweden in 1993 the aid from the Nordic countries changed dramatically (Ibid.).

The Swedish Minister of Aid, Alf Svensson, explained in May 1993 that the Swedish Agency for International Technical and Economic Co-operation (BITS) would be given the assignment to renew the official connections between Sweden and Chile. Similar actions were initiated in Norway. Obviously, the public version of this change in policy was to support the new and fragile democracy of Chile, but in practice it meant spending money earmarked for aid to finance part of Norconsult's and Kværner's involvement in the Pangué project.

In order to be able to give aid to the Pangué project NORAD and BITS had to make several strange political maneuvers. First of all, they had, as explained above, to deny the existence of Ralco and the four other planned dams on the river. Secondly, is Chile not considered as a "developing country", and certainly not among the "most needed countries" normally granted to receive aid according to OECD-rules (Usher 1997: 170). Furthermore, in the case of Pangué, the aid was – in reference to normal procedures - not given to the local community or to a State

Authority, but to ENDESA, at that time already a multinational Chilean company, and as mentioned with strong liaisons to the former military dictatorship (Silva 1997: 204-205). The agreement between the company and the Nordic Aid Institutions had not even got any form of guaranties from the Chilean state or government. Finally, Pangué was considered a profitable project that could stand on its own financial feet (Usher 1997: 169).

The case was, however, that without the aid from NORAD and BITS Kværner would not have been in a position to compete with the other bidders, and would probably have lost the contract, but "Kværner trusted in their Minister and she accomplished their expectations, this was really the game of Kværner" (Ibid.:178). In the Norwegian case, Kværner had first via informal channels contacted NORAD in order to discuss the possibility of obtaining aid to finance most of the turbines to the Pangué project. NORAD was, however, a bit doubtful, probably because the fact that the dam-building's ecological consequences and the situation of the Pehuenche Indians in those days was "a hot potato" in Norway. Thus, the decision to apply for a loan through Kværner's Swedish subsidiary, Kværner Turbin, turned out to be an intelligent move, since BITS then stood for the majority of the financial aid and only left a small sum to NORAD (Ibid.:177-8).

No matter the costs...

In the very beginning of April 1993, BITS explained that they would give aid to Pangué under the condition that certain environmental questions were cleared and reviewed. However, it was already then clear that these environmental considerations only would deal with the effects of Pangué, and not of other dams planned on the river. The consultant firm Sweco was hired to evaluate the environmental statement (EIS) that was put upon ENDESA by the IFC as a part of the loans conditions. Without this demand, there would probably not have been any Environmental Statement at all, as is the case for former dam projects in Chile (Silva 1997: 195). The evaluation resulted in a ten pages report, conducted by Dick Johansson and Carl Arne Schmidt, upon which BITS made their final decision. A first glance, Sweco's report seemed to be very critical to ENDESA's investigation, and pointed at many of the same weaknesses that critics in Chile had highlighted earlier. The most extensive Chilean critique of ENDESA's environmental impacts, had been put forward by researchers from Euro-Latin American Research in Environmental Science (EULA) at the University of Concepción to the Chilean parliament in August 1992, six months after ENDESA had published their report. This report was withheld by ENDESA for two years (Ibid.:196). Johansson and Schmidt's report stated that ENDESA's statement was vague and that it was lacking details and facts. Still, the conclusions of Sweco's report did not give any recommendations that BITS should not support the Pangué project. They argued that Chile had ratified the Convention on Biological Diversity and that the development of the Pangué-dam already was initiated (Usher 1997: 177).

In Norway, however, it was necessary with an official guarantee to calm the critics, which were worried that constructing Pangué would pave the way for more dams on the Biobío River. Patricio Aylwin even admitted that there were plans to construct more dams on the river, but promised the current Norwegian prime minister Gro Harlem Brundtland, that he personally would oppose that these plans were put into action (Ibid.: 179). In a meeting with GABB and representatives from the Pehuenche Indians held at La Moneda, the presidential palace in

Santiago-Chile, Aylwin expressed the same intentions (Silva 1997: 199). The Norwegian prime minister and the minister of aid chose to trust in Aylwin's words, and neglected the technical information available, which clearly indicated that the dam was to be built. The promise from Aylwin was understood as a political guarantee and the facts that the aid would go to a private company and that the Chilean government was not formally involved in the deal was ignored (Usher 1997: 179).

As time passed and according to Norwegian policy and procedures, several external institutions evaluated the environmental statement (EIS) of ENDESA. While BITS had given this task to Sweco, NORAD gave similar tasks to two state authorities: the Norwegian Water Resources and Energy Administration (NVE) and the Norwegian Directorate for Nature Management (DN), finally an anthropologist was also involved in the evaluation. NVE, just like Johansson and Schmidt presented several critical points regarding the quality of ENDESA's report, and also of the project itself. In its first report from May 1994, NVE confirmed that Ralco was the most known dam of the other dams planned on the river. NVE highlighted that the two Francisturbines of 250 MW were too big for Pangué as a stand alone project. NVE did not, however, come to the same conclusions as Sweco. While Sweco basically had given Pangué the green light, NVE was more resistant to the project. This was without doubt connected to the even stronger critique that DN had presented. DN even concluded that IFC in a very clear manner had broken the World Bank's own policies for hydro development projects, a fact that neither Sweco nor NVE had mentioned (Ibid.: 180). The list of violations was long: IFC's violation of environmental assessment; violation of environmental policy for dam and reservoir projects; confusion related to Ralco and other dams' status; lack of relevant background information; lack of reassurance of a minimum flow of the river in order to avoid the river bed to dry out; and lack of consideration for the strong resistance from the local population. DN even pointed at the fact that Chile, as earlier argued, was a strange candidate for Norwegian aid.

After such an extensive and serious critique, it is difficult to understand how NORAD still could approve Pangué, and even the new general director, Sven Holmsen, admitted that he found the project rather questionable (Ibid.:180). However, the political pressure to force the project through - no matter the costs - must have been strong, because NORAD asked NVE to redo the evaluation, and this time to "get the answers right". NVE did not visit the site of the dam nor Santiago. Instead NVE went to IFC's main office in Washington D.C. to gather more information. The conclusion of the second report, which was published on the 21 of June, was far less critical. NVE even put forward an excuse to IFC regarding their former statement that IFC had broken World Bank policies, and claimed that this statement was due to lack of access to important documents (Ibid.: 181). Norheim-Larsen approved Norwegian aid to Pangué on August the 30th 1994.

In order to use Nordic aid to finance the Pangué-project one had to neglect several environmental and social considerations and close one's eyes to the plans of further dam development on the Biobío River. However, there was also another factor that could obstruct the financing of Pangué, - OECD-policy. To evade OECD-rules required advanced bureaucratic manipulations (Ibid.). In 1991 the OECD-countries had agreed upon a new policy for financing of export contracts with aid - the Helsingfors decree - which implied that it was no longer possible to use aid to finance profitable or economical sound projects. Since Pangué was a profitable project, it was not legitimated to receive aid according to the new rules. BITS, who had decided to support the bid

of Kværner, evaded the new rules by turning the Pangué-project in to OECD a month before the new policy was put into force in February 1992.

Among the companies competing with Kværner over the contract to deliver equipment to Pangué, were also Canadian companies, and the 23 of December 1992 the Canadian Export Development Corporation sent a rather irascible telex to OECD, demanding that the Pangué-project was not to be financed with aid and encouraging Spain to withdraw from the project. The telex stated that the project had been initiated by the private sector, without any public involvement or ownership and without economical guarantees from the Chilean state. Furthermore, the telex also pointed at the fact that Pangué was an economical solid project (ibid.: 182).

Some months later Sweden, through Eva Walder-Brundin from the Ministry of Foreign Affairs' Trade Department, placed a suggestion to the member countries of OECD, that Pangué should be accepted as a "no aid common line" project. The OECD terminology "no aid common line" refers to a project that all parts evaluate as a project that is not suited to obtain aid. This request is not binding juridical wise, but is, in accordance with all statements that have consensus within OECD, morally binding for the member countries. Several countries like Ireland, Portugal, Japan, Holland, France, Finland and Italy supported immediately the suggestion from Sweden. Spain was the only country that refused the suggestion, with the result that the Sweden's proposal was discounted and there was no hinder for the financing of Pangué with aid-money (ibid.: 183).

Evading responsibility

In August 1995 several non-governmental organisations (NGO)'s and committed persons from Chile, Norway and Sweden wrote a letter to the Nordic governments, claiming that they take "retroactive responsibility" for Pangué, since ENDESA at that time had confirmed their plans to build Ralco. The letter included two concrete demands: That the deliverance of the two Francisturbines (which were about to be mounted at Kværner's fabric in Oslo) should be held back, in order to await a guarantee from ENDESA that Ralco was not to be built; or that an environmental statement of the cumulative effects of several dams on the Biobío River was accomplished (ibid.: 185).

In December the Swedish Sida² had a "dialogue" with the Chilean Environmental Ministry (CONAMA) regarding the possibility of assisting them with the environmental statement (EIS) for Ralco. They finally reached the conclusion that *a public review had to be done in Chile by competent Chilean authorities* (ibid.: 188, cursive by author). As a reply to the non-governmental institutions demand for a guarantee from ENDESA, GABB got nearly US\$30 000 to contract consultants which could evaluate ENDESA's environmental statement (EIS) for Ralco.

At the same time, NORAD and the Norwegian aid-system handled the Biobío case in a totally different manner and ignored the letter of protest from 1995. The aid was legitimised with the argument that one could not demand countries in the South, which had not reached the same level

² Sida was reorganized from the bottom, and four different parts of the Swedish aid-bureaucracy, including SIDA and BITS, were put together into one organization with the "new" name Sida (with small letters).

of development as the Nordic countries to live up to the strict Norwegian environmental criterias related to hydroelectric development. Usher writes: "They (red.: NORAD) was not experiencing the same existential crisis that had paralyzed the newly reorganized Swedish aid bureaucracy, and had clearly made a stand regarding the Norwegian stance on "hydroelectric power and environment"" (Ibid.: 190).

The Norwegian government only canceled NORAD's loan agreement with Pangué S.A., the subsidiary of ENDESA, in May 1997, when ENDESA, after the strong critics from IFC that followed Hair's and Downing's reports (see following sections), canceled the contract with IFC and evaded the critique by refinancing the project through the German Dresdner Bank. At that time, however, most of the Norwegian aid was already paid and used.

Downing's Report and the Pehuen Foundation

In May 1995 The World Bank hired anthropologist Theodore Downing to evaluate the effectiveness of the Pehuen Foundation, an agency created by ENDESA to mitigate and provide aid to affected Pehuenche Indians.

Downing submitted his report "A Participatory Interim Evaluation of the Pehuen Foundation" to the IFC in May 1996, but the report was withheld from the public and the affected Pehuenches for 18 months until December 1997 (ibid.: 4; Brown 1998). Withholding critical information was, as argued above, not a new strategy in the history of the Pangué-project. However, due to the withholding of his's report, Downing failed a complaint with the American Anthropological Association (AAA) that ENDESA and the IFC unjustifiably delayed the release of his highly critical evaluation, and withheld his report from the Pehuenche Indians and the Chilean public in an attempt to protect the business interests of their client. As a result of the report and the withholding of it, the Committee for Human Rights of AAA, accused the World Bank of a range of human rights abuses associated with the funding of the Pangué Dam.

Johnston and Turner (1998: 3-4) list Downing's main findings that included the following contentions: 1) IFC and ENDESA violated the Pehuenches' human rights. They negotiated secret covenants on the future of an ethnic group without the knowledge or participation of the group or the government authorities responsible for indigenous affairs (red.: CONADI). They implemented a program of resettlement that failed to incorporate the rights of indigenous peoples, and they failed to adequately compensate all affected peoples; 2) ENDESA used the Pehuen Foundation, an organization created as a result of those secretly negotiated agreements, to funnel funds allocated for Pangué-area communities into the community adjacent to Ralco, a planned second dam. This action showed that the IFC project was not for a stand-alone dam, as it had publicly claimed, but to set up the infrastructure to build a series of dams. Furthermore, Pangué appointed a non-Indian (who is also co-owner of a company involved in preparing the resettlement plan for the Ralco dam) as President of the Pehuen Foundation. This supports the contention that the Pangué dam and the Ralco dam are interlinked, rather than separate projects, and that their cumulative impacts should have been evaluated from the start; 3) The IFC and ENDESA failed to identify in their initial evaluations the impact of the Pangué dam on indigenous peoples and the cumulative impacts of funding a project that lays the groundwork for subsequent dam development projects. This represents a deliberate attempt to avoid the World

Bank's policy directives that protect indigenous rights for its projects; 4) The IFC's and ENDESA's selective distribution of Downing's report on a confidential basis to the non-indigenous representatives on the Pehuen Foundation board, while withholding it from the Pehuenche board members, constituted racial discrimination.

During the 18 months that the IFC kept Downing's report secret, ENDESA was negotiating resettlement packages (exchanging ancestral land rights for land high in mountains, several hours distant from their homes) with individual Pehuenche families, with the assurance that the Pehuen Foundation would implement the resettlement program. ENDESA visited Pehuenche house after house, offering boots, electric stoves, roof of sink, etc. if they sign the contract to move. Silva (1997:200) compares the methods used by ENDESA with those used by the Spanish conquistadors: "it is today's equivalent of the glass-pearls of the old colonists".

Downing's evaluation of the Pehuen Foundation demonstrated that the Foundation failed to meet the economic, social, cultural and environmental needs of the Pehuenche Indians already affected by dam development on the Biobío River. Today, several families that have been relocated to the El Huachi and El Barco areas have publicly denounced ENDESA's failure to honour its commitments to them in exchange for their land. These denouncements have been made personally to President Lagos and published by large regional daily newspapers and by *El Mercurio*, Chile's main newspaper. Complaints mention, among other factors, the livestock's miserable condition during the heavy winter snows - according to Downing, some 1.5 meters of snow covered the resettlement area in July 1997 (Johnston and Turner 1998: 9), lack of technical assistance, shortage of firewood and failure to build a medical post. Downing's report also questioned the ability of the Foundation to mitigate the impoverishment that will result from resettlement associated with further dam development. Withholding this crucial documentation on the functional viability of the Pehuen Foundation from the people the foundation was supposed to serve, prevented the Pehuenche from making an informed decision about their future.

The report also criticizes IFC's claim that the problems associated with the project are part of IFC's "learning curve". The CfHR recognizes that Bank projects have a history of devastating impacts on indigenous people, and challenges their excuse of learning by mistakes: "The Bank has had to "learn" the same lessons and draw the same conclusions again and again ... the Bank must recognize and take responsibility for the damage IFC's project has inflicted on the Pehuenche, as well as the far greater damage that mass deportation from Ralco will cause" (Ibid.:4).

The CfHR concludes that the "IFC withheld Downing's report because of the political volatility of the information and findings in it [...] the release of the Downing report would have damaged efforts to have Ralco approved. This in turn would have damaged IFC's investment (red.; the 2.5% equity share)" (Ibid.:15).

Hair's Report, IFC and ENDESA

In November 17 1995 a group of nearly 400 Chilean citizens with GABB and including Pehuenche Indians and other concerned individuals, filed a complaint with the World Bank's

Inspection Panel - the independent team charged with investigating affected people's claims on Bank projects - alleging that the IFC violated Bank rules on environmental assessment, environmental policy of dam and reservoir projects, indigenous peoples, involuntary resettlement, management of cultural property, wild lands protection and management, and project supervision, as laid forth in "IFC: Environmental Analysis and Review of International Finance Corporation Projects". In addition, it appears that funds allocated to Pangué, S.A. for the Pangué dam were put towards the Ralco project, in clear violation of the loan agreement (Johnston and Turner 1998: 11).

This was the first claim ever filed against the IFC, and although the claim was rejected by the Inspection Panel on the ground that the IFC is exempt from the Panel's jurisdiction, President James D. Wolfensohn of the World Bank, responding to concerns from the Bank's Executive directors, promised an "impartial, internal review" of the Pangué loan. Wolfensohn also insisted that the IFC had no plans to provide financial support for Ralco (Cockburn 1997; Winthrop 1997). Wolfensohn ordered a broad inquiry into the project's environmental and social concerns. The inquiry was carried out by former National Wildlife Federation president and past president of IUCN Jay Hair, and resulted in the report "Pangué Hydroelectric Project (Chile): An Independent Review of the International Finance Corporation's Compliance with Applicable World Bank Group Environmental and Social Requirements".

Hair's report was released only in mid 1997. Blasting the IFC for disregarding its own policies, the report states: "IFC did not follow fundamental World Bank Group requirements in any consistent or comprehensible manner throughout the development and implementation of the Pangué project" (Brown 1997b). Hair's original external audit excerpted and reproduced portions of the Downing report, including (quoted in Johnston and Turner 1998: 12): 1) evidence of severe and uncontrolled deforestation and other environmental problems; 2) documented failures to comply with environmental protection measures specified in the IFC/ENDESA agreement; 3) suggestions that IFC staff misled the IFC board and public investors about IFC's knowledge of ENDESA plans to build a second dam (Ralco); 4) charges that IFC failed to enforce World Bank Group policies and regulations in handling the Pangué loan.

While the independent review is highly critical of the IFC's involvement in and ENDESA's handling of the Pangué project, it does not reveal the full extent of the problems found by the team. At least one-third of the report has been cut (Brown 1997b; Johnston and Turner 1998: 11). At press time, Wolfensohn revealed that "in light of the risks of litigation and legal liability" he would not release the complete Hair report (Brown 1997b). But in a July 25 1997 letter protesting the censorship, Hair told Wolfensohn that "there are numerous deletions that appear to have been made for no other reason than to avoid embarrassing the individuals who made certain decisions regarding the Pangué project or how it was supervised by IFC" (Ibid.). Hair's letter to Wolfensohn is particularly critical of cuts that seemingly had nothing to do with "commercial confidentiality," making specific reference to an eliminated section that revealed the IFC's own lack of compliance with World Bank environmental and social requirements. "The fact that the IFC was not in substantial compliance with over 80 percent of those requirements for the Pangué project was a fundamental conclusion of our report and should have been disclosed to the public," Hair wrote (Johnston and Turner 1998: 11).

Instead, IFC glossed over this important matter in their rebuttal statement by noting, "IFC

considers that the Pangué project complied with five out of eight policies and procedures applicable to the project ” (Crawford 1997). “That was very misleading, inaccurate and self-serving statement,” Hair continues. “If the public had access to the full report I do not believe many objective readers would agree with IFC’s characterization of their level of compliance with World Bank Group requirements of the Pangué project” (Brown 1997b).

Perhaps anticipating the disclosure problems, the review team stated in the report itself that it contained no proprietary or confidential business information, and recommended that the Bank publicly release the full report. “Sporadic and partial release of information invites abuse, engenders suspicion, and fails to capture the benefits that a fuller policy of disclosure would bring,” it stated. The full report was delivered to the Bank in April 1997, but the edited version was only made available on July 15 (Brown 1997b).

In February 1997, the IFC threatened to declare ENDESA in default for failing to meet environmental conditions set out in its contract for Pangué. Wolfensohn told the company that it: “appears to have taken a less than constructive approach to its environmental and social obligations ... under the IFC financing agreements. If ENDESA continues on the course it seems to be have taken, we are heading towards a conflict and will have no choice but to declare ENDESA in default” (Switkes 1997). Wolfensohn wrote the letter shortly after receiving Hair’s report. ENDESA evaded the threat by refinancing the loan with Dresdner Bank in Germany. Dresdner officials told a German NGO that the IFC itself recommended ENDESA refinance through Dresdner Bank, which also turns out to be the major shareholder of the World Bank (Jaña 1998: 2).

The Chilean Environmental Law and CONAMA

The question of why the IFC decided to keep Hair’s and Downing’s report secret and give in to ENDESA’s demands, must be understood in the broader context of roughly contemporary developments and controversies related to the Biobío project (Johnston and Turner 1998:15).

In December 1994, ENDESA voluntarily asked CONAMA to evaluate the Ralco-project, and the 1st of September 1995 ENDESA and CONAMA signed a private and bilateral agreement, where the content and form of the Environmental Statement (EIS) for Ralco is settled (Moraga 2001: 128), and in the end of March 1996, ENDESA present the EIS to CONAMA. In April the same year CONAMA invites diverse public and private institutions to comment upon the EIS for Ralco, herein CONADI, the regional authorities and the regional Environmental Ministry.

During the spring of 1996, GABB commissioned a critique of the EIS for Ralco, prompting CONAMA to declare it unsatisfactory. CONADI expressed the same critical attitude, and in June they publicly manifesting their disapproval of the reallocation sites offered by ENDESA and apply formally to Mideplan (the Chilean Ministry of Planning) that Upper Biobío is declared “Indigenous Development Area” (Moraga 2001: 129).

A total of 22 different public institutions and 4 ministries evaluated the Environmental Impact Statement of Ralco, all of them being highly critical towards the project and recommending that it be rejected (Guzmán 1998:3). As a result, the revision committee of CONAMA coordinated by its Executive Director declares the Ralco’s EIS unsatisfactory in June 1996 (Johnston and Turner

1998:15). However, already in August the same year CONAMA informs ENDESA that they will accept an addendum to ENDESA's former EIS studies. This was the first time in CONAMA's history that this happened, as the procedure is to demand a new EIS study and not an addendum. It was clearly the pressure from ENDESA and high government officials that convinced CONAMA to back off (Busto 1998). In the middle of September ENDESA solitudes authorisation from CONAMA to start the initial works on Ralco, and already the day after the permission is given by Vivian Blanlot, the Executive Director of CONAMA (Moraga 2001: 129).

On February the 6th 1997, one day before ENDESA hands inn their addendum to the EIS, the World Bank leader James Wolfensohn informs the Chilean Government that ENDESA did not comply with their social and environmental duties during the construction of Pangué. In the beginning of March CONADI hand in their second report/information to CONAMA, alleging that the Ralco project is illegal according to the Indigenous Law of Chile, and thus must be rejected. Shortly after the inauguration of Pangué, obviously worried about the intervention of high ranking officials in the approval process of Ralco, the socialist deputy Juan Pablo Letelier, together with 39 other deputies, decided to site a special session in the Parliament in order to investigate what was really going on within CONAMA. Thus, it seemed like a strange coincidence, that the Presidency's general secretary, Juan Villarrú, postponed the session three times and the session was finally held in the beginning of June, six days after CONAMA's final approval of Ralco.

On the 20th of March, the Director of CONADI, Mauricio Huenchulaf, personally denounce his rejection of the Ralco project. And the 21st CONAMA informs ENDESA that they will have to redo the addendum and hand in a second version. Later the same month, Upper Biobío is declared Indigenous Development Area, together with two other areas in Chile: Lago Budi and San Pedro de Atacama. This is the first time that any area in Chile is given such priority (Moraga 2001: 130). In the beginning of April 1997, ENDESA apply for the electrical concession, in order to be able to transmit the electricity that Ralco will produce to the rest of the country. This concession is the last, and most important administrative permission, in order to move on with the Ralco dam.

Later the same month, apparently frustrated with the stance of that central persons within CONADI are expressing, the Chilean president at that time, Eduardo Frei - himself a hydraulic engineer - replace Huenchulaf with Domingo Namuncura, who is known to be a strong advocate of the Ralco project. At the same time two other government appointed members are removed (Ibid.). Again, it might seem like an odd coincident, that the board of CONADI at that time was in the middle of the process of evaluating the resettlement agreements that ENDESA had made with the individual Pehuenche Indians, and that in this evaluation the director's vote was the swing one. However, the removal of the CONADI representatives provoke the Ralco opponents, and with three of the women from Mapu Domuche Newén in front, they fail a lawsuit against ENDESA and CONAMA demanding that the EIS procedure on the Ralco's dam project has to be declared null and void, and that further construction on the dam had to be stopped until the courts had ruled on the issue of the legality of the EIS. The judge Mario Carroza demands that the works must be suspended, but already the day after, the Court of Appeal overrules the decision, and allows ENDESA to continue the constructions.

In the middle of May 1997 ENDESA hands in their second addendum and CONADI shortly after hands in their third report - "Opinión sobre el Addendum No2 del EIA del proyecto Central Hidroeléctrica de Ralco", which is their comment to the second addendum of ENDESA. Despite the removal of three of the main opponents to Ralco within CONAMA the report is still highly critical towards ENDESA's second addendum, and reach the same conclusions as in the report over the first Addendum from ENDESA. But still, twelve hours after having received the negative report from CONADI, CONAMA accepts the addendum from ENDESA, as stated in its report "Informe Técnico del EIA del proyecto Central Hidroeléctrica Ralco, de ENDESA" (Moraga 2001: 130).

CONAMA gives the final approval of the Ralco project's environmental assessment in June 1997 in the report "Calificación Ambiental del Proyecto Central Hidroeléctrica Ralco", thus with three main conditions: increasing minimum river flows, increasing technical assistance to the Pehuenche Indians from four to ten years, and establishing a biological reserve to replace forest resources lost through dam construction and subsequent flooding (Johnston and Turner 1998:16). Vivian Blanlot, expressed that these conditions were the minimum environmental standards that CONAMA could accept. Provoked by the conditions ENDESA claimed that: "CONAMA is exaggerating and exceeding their authority" (Nesheim 1997). Shortly after, Blanlot left her position supposedly due to "personal reasons". The new director, Rodrigo Egana, reduces the minimum environmental conditions that Blanlot had put forward, for instance the reservoir is reduced from 3800 ha to 1700 ha and the minimum flow of the river is reduced from 32 to 27,1 m³. Blanlot had also demanded that an environmental audit of Ralco had to be commissioned by the public institutions. Egana also changes this and allows for ENDESA to commit the audit.

The Indigenous Law and CONADI

After CONAMA's approval of Ralco, the only thing that stood in the way of the Ralco dam was the Indigenous Law – and the Pehuenche families that remained opposed to the project. As stated, the Indigenous Law prohibits the selling of Indian lands, but does allow them to be traded for other land, with the owner's written consent and with the accept of CONADI (National Indigenous Development Commission).

Thus, in June 1997 inhabitants from Quepuca Ralco and Ralco Lepoy appealed CONAMA's decision to the Court of Appeal in Santiago, claiming that CONAMA is neglecting their rights according to the Indigenous Law. Several Indigenous Organizations from Santiago and Temuco publicly demonstrates their support to the affected communities. Thus, in September 1997, CONADI again publicly question the legitimacy of the individual resettlement agreements and the methods under which they have been collected. This is as a result of a visit that the new director of CONADI, Domingo Namuncura, has made to the reallocation site El Barco. He states that the climatic conditions in the area are to extreme and thus not suited for farming or animal household (Moraga 2001: 131). In the same period nine Pehuenche lonkos reiterate their previous opposition to Ralco and their refusal to move. In fall 1997, the Chilean public has an opportunity to review and comment on the Ralco dam's EIS and in October six of the seven Pehuenche leaders meet to review the EIS and vote to reject resettlement (Johnston and Turner 1998: 16). All through this period, the IFC refuses to release Downing's report.

On January 8, 1998, despite lack of approval from CONADI which is a necessity according to the Indigenous Law, ENDESA announces that it will complete agreements with contractors in February 1998 and begin bidding in March 1998 for two civil construction projects: a tunnel and the dam itself. ENDESA get the final permission to start the construction of the hydraulic works (central, bridges and dam) in February 1998 (Ibid.).

On the 19th of April 1998, James Wolfensohn - the President of the World Bank - admits that the Bank when financing the Pangué-project made serious mistakes and he promises justice. This admittance was made during a press conference held at the Second Summit of the Americas in Chile and was widely spread by the Chilean media, Wolfensohn expressed: "...I am personally committed to guarantee that the affected families receive a fair deal. If we contributed to the problems, I want to make sure that at least we contribute to the solution. I take it as a moral responsibility and I am trying to solve their situation ... I am doing all there is in my hands in order to guarantee fairness for those families and this will be done" (IRN: Bio Bio Update #9). The 20th of April 1998 the report "The Mapuche-Pehuenche and the Hydroelectric Project of Ralco: an Indigenous People at Stake" was made public in Chile. The report was produced after an investigation carried out by the International Federation of Human Rights (FIDH) between July 3rd-11th 1997 by Thomas Berger, former judge of British Columbia's Supreme Court and Claude Katz, FIDH Secretary General. The 31 page report, written in French and translated into Spanish, comments on the current indigenous legislation, the Chilean government role and the negotiation process that ENDESA is carrying out with the Pehuenche families that will be affected by the not yet authorized Ralco dam project. The report states: "... the will of the Chilean government to protect the indigenous peoples is what is at stake", the report concludes (Ibid.).

Actions and reactions

In June 1998 the Pehuenche Indians and environmentalists prepare for actions aiming at paralyzing the works of ENDESA. Hundreds of people (students, environmentalist, volunteers and other Mapuche- and Indigenous organizations) are entering Upper Biobío in order to support the fight for the Biobío River. On the 4th of July they take the bridge Ñiereco, which is the gate to the communities. Mapu Domuche Nehuén together with other Pehuenche Indians and environmentalists fighting for the Biobío block the road for ENDESA's machinery, and the 23th CONADI, partly as a result of a report made by René Abeliuk regarding the initial works at the Ralco construction site, demand ENDESA to stop further constructions immediately. As a result the constructions were paralyzed from August to December. At the same time CONADI announces that the process of analyzing the land-exchange deals will take place between the 6th and 7th of August.

In an desperate attempt to crush opposition to the Ralco dam Frei demands the resignation of Domingo Namancura in August 1998 - the day before CONADI has to vote for acceptance or opposition to the land-exchange deals between the individual Pehuenches and ENDESA. Shortly before, two other government appointed members, Mylene Valenzuela and Cristián Vives, were asked to resign. Reportedly, they were also opposed to Ralco. Removing Namancura seems a strange move, since it was Frei that nominated Namancura for the position in the first place. After having fired the former Director Mauricio Huenchulaf, Frei had to fight hard to get the board of CONADI to accept Namancura, because he was known to be a proponent of the Ralco project.

However, Namancura took his job more serious than Frei approved, spending much time in the upper Biobío interviewing Pehuenche families and investigating the land barter contracts between Pehuenches and ENDESA. Namancura, like Huenchulaf, announces that he will vote no to the exchange deals, and since the board of CONADI consists of 8 indigenous leaders (it was at that time commonly known that they would vote against the project) and 8 non-indigenous (pro Ralco), the swinging vote was the one of the director.

On the 6th of August several Pehuenche-Indians and supporters are waiting outside the seat of CONADI in order to demonstrate their opposition to the Ralco project and in an attempt to try to convince the non-indigenous leaders to vote no. But, when the members of the national board of CONADI appears, they are meet by the police who want let them pass. In an attempt to justify the action, a press conference is held, where the Minister of Mideplan is beaten with teacups and plates by Mapuche women. ENDESA informs CONADI that they will not stop the constructions. On the 7th the board members try once again to meet, but are again stopped by the police and the door locks are changed, which make it impossible for them to enter the building.

The 10th of August a protest march to the Chilean congress in Santiago is organized and finally on the 13th of August, due to the pressure, a dialogue between the Pehunche Indians and the government is initiated. However, no mayor results are achieved. On the 17th of August, Rodrigo González López, is nominated as the new director of CONADI, but the indigenous members of the board are not willing to accept a non-indigenous as leader of CONADI and threatened to resign from the board and remove themselves from any further negotiations with the government. Thus, late August 1998, Pehuenche representatives files a claim with the Human Right President of Chile, Mr. Sergio Ojeda, claiming their right to be accept as people – pueblo – according to the norms of the International Rights and Legislation for the Protection of Indigenous People's Rights, such as article 169 of the OIT, the American Declaration on the Rights of Indigenous Peoples, and other international agreements.

During the fall of 1998 new information for the Agricultural Ministry ratify and expand the critical evaluation of the reallocation sites El Barco, Santa Laura and El Huachi. And in December 1998, the director of GABB, Juan Pablo Orrego, obtains the Alternative Nobel Price, created by the Swedish writer Jakob von Vexkull in 1980.

CONADI was, due to the above events, left altered and inactive for several months during the fall of 1998, but finally in January 1999 CONADI publicly announce that they are about to finish the evaluation of the land permutes and that the majority of the individual resettlement agreements have been accepted. The eight indigenous representatives of the board are not present. The new director, Rodrigo González, use the police to trough demonstrators out of the room where the meeting is taking place (Ibid).

As a response to CONADI's acceptance of the land exchange deals, several protests and manifestations are taking place in upper Biobío. Foreigners are being expelled from the country and several Pehuenche-Indians are being imprisoned (Moraga 2001: 131). In one case, on the 19th of February 1999, where the demonstrators are blocking the road to the Belsaco- ENDESA construction site, a special trained fraction of the Chilean police, after orders from Governor Coronata, enters the area and without further talks 27 people, among them 10 Mapuche-Indians and the sisters Bertha and Nicolasa Quintremán, of 70 and 64 years are put in prison. Among other means the police use helicopters and microphones to spread the masses. At that time, 10

families had still not made any negotiation with ENDESA regarding resettlement packages and in April, these families apply for legal and juridical assistance from CONADI, but the director Rodrigo González deny any help (Moraga 2001: 133). In the same month ENDESA-Espana is taking control of the holding company Enersis and later the same spring, Enersis is taking control of ENDESA-Chile.

In the middle of July, in order to reduce the tension and pressure for Indigenous People in the whole area of Araucanía, the government initiates several town councils in the different communities, but are only taking into consideration individual pledges, ignoring inquiries from the Indigenous Organizations. CONADI is withholding information and distorting agreements done with the Mapuche Indians.

In August 1999, Lonkos together with representatives from Mapu Domuche Nehuén are visiting La Moneda (the presidential palace) and the Supreme Court and high military instances, in order to express their rejection of Ralco and to question the presence of the military in the area of upper Biobío. The 9th of September 1999 the Sixth Civil Court of Santiago demands that the works in Ralco are stopped in accordance with the lawsuit failed against CONAMA and ENDESA on the 6th of June 1997. The works are paralyzed for 23 days.

Frei's presidential period is coming towards the end, and in January 2000 the Ministry of Economy gives ENDESA the final electrical concession for the construction of Ralco. However, the concession is, after a claim from GABB regarding lack of antecedents sent back to the Ministry for revision. The demonstrations and protests in support of the Pehuenche families that are still resisting in upper Biobío are augmenting towards the end of 1999 and the beginning of 2000. On March 1st 2000 ENDESA decide to stop the works at the construction site, according to the official version as an act of company prudence in order to await the final legal authorizations. However, it is rather evident that paralyzing the constructions also serves another purpose; namely putting pressure on the Frei Administration to speed up the process, since Richardo Lagos – the new Chilean president during his election period publicly has announced that: “Chile needs to respect its Indigenous Law”. Finally, on March the 11th only few hours before leaving office, the Frei Administration accepts the revised decrees. ENDESA immediately takes up the constructions. The administrative process in front of the concession has been widely debated in Chile, since it turns out that the permission had been treated directly by the Juridical Department, and thus omitting the normal administrative procedures.

At the end of March 2000 representatives from Mapu Domuche Nehuén and their lawyers bring in two claims for the Court of Appeal in Santiago. The first is claim that ENDESA does not have the rights to the water in Ralco and the other for neglecting and not respecting the Indigenous Law. The following months are characterized by demonstrations, marches and confrontations between the police, the army and guardians from ENDESA on the one side and Mapuches, environmentalists, activists, volunteers and other national and international supporters on the other side. The area of upper Biobío is highly militarised and the tension is increasing. In June, three ex presidential candidates are sending a letter to the Presidential Palace – La Moneda – pledging that Ralco is stopped. And at the end of June the Quintremán sisters of Mapu Domuche Nehuén receive the Petra Kelly Price, from the Henrich Böll foundation, for their resistance. In the middle of September the families that still are resisting receive the notification of electrical servitude, and in the beginning of October the Ralco case is presented to the general secretary of Amnesty International. On October the 10th ENDESA is given the Water Rights for Ralco.

There are still lawsuits pending in the Ralco case. The most important are two claims against Ricardo Lago and the Minister of Economy, José de Gregorio brought in for the Court of Appeal in Santiago by the Quintremán sister from Mapu Domuche Newén. The first is demanding the nullification of the Electric Concession given to ENDESA by the Frei Administration and the second is for violations of the National Indigenous Law. The two lawsuits have been postponed several times. lately, the court was gathered to reveal the cases in the end of April 2001, but still no verdict is reached. Judge Mario Carroza was removed from the case three days before the court was set. Furthermore, in the lawsuit regarding the nullification of the EIS for Ralco brought in for the Sixth Civil Court of Santiago no verdict is reached either, and thus this specific case has been pending in the system for four years.

Lately, the Ralco opponents have received unexpected help from “above”. Due to heavy rain in the south of Chile the Ralco dam wall has broken, and the output is a six months delay in the works.

Concluding Remarks

The Biobío project has been widely discussed both on a national and international level. The opponents, with the women from Mapu Domuche Newén in front, have been numerous and from very different segments of the society. Both indigenous people, grassroots organization, individuals, politicians and others have publicly questioned and denounced their rejection of the project. Information and facts from several independent sources have shown the inessentiality of the project, but still the hydro development project has been “pushed through” and speaking 40% of the Ralco dam is completed. In this article the aim has been to give an insight into *how* this process has proceeded. However, in order to understand *why* it has been so important to reassure the continuity of the project, one must know about the historical and social context in which the project has been initiated and governed.

Chile's growth rate of seven percentages a year is the driving force behind the push for increased energy growth rates. Chile is called the “Jaguar” due to the economic growth the country has experienced the last decades, and the democratic elected government have all had to face the pressure to maintain the growth rates. It would be different if the power and the wealth were distributed among all the people, but Chile is owned by 46 families, and they are the primary beneficiaries. Chile, like other Latin-American countries, pays a heavy price for the economic growth. The relationship with northern countries is still basically based on the colonial model. Selling of natural resources, ending up paying for it with enormous environmental and social costs.

If we look closer at the three laws that are being tested in the Biobío-case (the Environmental Law, the Energy law and the Indigenous Law) it is obvious that at least in two of the cases, the premises underlying the laws and the circumstances in which they have been made, seem to be more than unfavourable in relation to complying with what one would expect was the aim of law.

For instance, until 1994 Chile did not have an environmental law on the books. The motivation for passing the first environmental law in 1994 was in reaction to the North American Free Trade Agreement (NAFTA), because the Chilean government knew that the US would not enter into economic trade with Chile unless they had some sort of environmental standards. But it was the

industrialists and the wealthy who were lobbying for the law. NGOs and environmentalists were against it because the law is designed to authorize projects. It starts with the assumption that projects must and will be built, and that they only require mitigation and compensation. In the law there is no mention of protecting water, soil, forest ecologies, or watershed systems.

Furthermore, we have earlier mentioned that the project and its owners have strong liaisons to the former Pinochet regiment. ENDESA was a state-owned company that was privatized only shortly before Pinochet left office, and ENDESA practically wrote the water and energy laws, which today allows them to take the Biobío River's water for free and turn it around to make millions. ENDESA is the richest company in Chile, even richer than the cooper companies.

Regarding, the Indigenous law how was made in 1993 by the Aylwin administration and was designed as a transitory law, meant to last for no more than six months. Being temporary, the transitory law allowed for the president to personally appoint and remove the members of CONADI, as has been demonstrated in this article. Although, several of the paragraphs of the law has been proven weak and not capable of protect the rights of the indigenous people of Chile, the law is still in function, seven years after its “date of expire”.

There are still many unanswered questions and several loose ends in the Biobío project that require further investigation. Following the process closely, it has struck me that the different claims that the opposition to Ralco have failed against ENDESA and diverse governmental institutions seem to be hanging in the law-system for a disproportionate amount of time, while the claims and appeals put forward by ENDESA and their spokesmen are handled, almost without exception, the following days. It is tempting to ask whether the delays that the opponents are facing are made on purpose? Because it is a fact that the more the constructions in the Ralco area are advancing, the more unlikely it will be that the court rule in favor of the Indigenous Law. It seems that ENDESA and their collaborators are applying a “war of exhaustion”. After having fought for years the Pehuenche Indians are getting tired and the more the constructions are advancing, the more disillusioned they are becoming.

There are several other irregularities and questionable events in the Ralco dam process. For instance, the Canadian Export Development Corporation was in 1992, as earlier stated, the strongest opponent to financing the Pangué-project with money earmarked for aid. However, recently the Export Development Corporation (EDC) of Canada’s government granted financing equivalent to US\$17 million for the ENDESA company to purchase generating equipment for the Ralco Power Station, from the ABB Power Canada company of Tracy, Quebec (IRN: Bio Bio Update #20).

Another similar coincidence is that of Spain. Spain was in 1992 the only country refusing to accept the Pangué-project as a “no common line project”. Seeing this in relation to Spain’s later involvement in the project by taking the control of Enersis and ENDESA-Chile, it is tempting to question the contacts that Spain and ENDESA-España already at that time had with ENDESA and others central persons in Chile, and to what extent the refusal of accepting Pangué as a “no aid common line project” had something to do with this. Facing the government of Lagos, that as mentioned, seems to be less preoccupied with the necessity of the project, the director of ENDESA-España, Martin Villa, sent a personal letter to Lagos highlighting the benefits and necessities of the Ralco dam.

It is said that the reason why ENDESA was so eager to push the Biobío project through, was in order to be one step ahead and avoid future competition when the natural gas from Argentina would enter the Chilean market. Speaking, the “ENDESA-group” has managed to obtain 90% of the Chilean energy market, and has thus little to fear from any competitors. It is also said that president Frei’s close friendship with owners and directors within the ENDESA conglomerate, plus own business interest in the project, have been among the main reasons for Frei’s eagerness to reassure that the Ralco project was approved while he still was in office, no matter the costs. However, in order to be verified, these allegations require further investigations.

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