

**The Ralco Dam And The Pehuenche People In Chile:
Lessons From An Ethno-Environmental Conflict.**

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INTRODUCTION.

Chile's economy has been growing steadily during the last two decades. The fast economic growth of the country started in the 1980s during the military dictatorship of General Pinochet (1973-1990) when market liberalisation was implemented by the so called "Chicago boys."¹ Measures adopted by the authoritarian regime's economic team included privatisation of the productive public sector, cutting state regulatory and welfare functions and institutions, reducing public expenditures, opening the economy to external trade to attract foreign capital, and liberalisation of domestic prices, the financial system and the labour market. Exports based on the extraction of natural resources derived from mining, fishing and forestry boomed during this period (Altieri and Rojas, 1998).

Although concern for social inequity motivated the introduction of some changes to this policy in the 1990s when a coalition of democratic parties (*Concertacion de Partidos por la Democracia*) assumed power in 1990, the export oriented resource based economy promoted during the 1980s continued to be implemented. Moreover, political democratisation of the country enabled the *Concertación* governments to sign free trade agreements and strengthen economic relations with many nations. Among these agreements, those signed with Mexico and Canada, and more recently with the European Union should be mentioned.² Chile also became a member of MERCOSUR, a free market association including Argentina, Uruguay and Brazil, and joined APEC, the Asia Pacific Economic Conference.

As a consequence of this economic policy, large development projects, know in Chile as *mega-proyectos*, have been implemented in the last decade. Investment capital for these projects, most of which are based upon the use and appropriation of lands, waters, forests and subsurface resources, has been provided both by national and international corporations, as well as by multilateral financial institutions. State intervention in these developments, as

¹ Those who introduced these neo liberal policies had been trained in previous years at the Chicago School of Economics.

² A free trade agreement with the United States is currently being negotiated.

we will see in this article, has also been relevant, both as an investor and as a regulator of private investment.³

Similar to what has occurred in other parts of Latin America and throughout the world, many of these developments have been implemented on indigenous lands or on territories which are claimed by them. Unfortunately, Indigenous rights to natural resources, which are central to their economies and cultures, were left with no protection under the law for indigenous protection enacted in 1993 as we will see later in this article. Consequently, they can be ceded by the state to non-natives who can develop them, notwithstanding their location within indigenous lands. The protection of the environment that these projects impact is also weak. Although environmental impact assessment (EIA) studies were introduced by legislation in 1994, these studies have not impeded the implementation of many of these projects, notwithstanding their impact on natural resources or local communities⁴ (Castillo, 1999).

The impact that these investments are having on Mapuche⁵ territory in the south of Chile, which is rich in natural resources, is enormous. The forest industry, for instance, which produces timber, wood chips and paper for foreign markets, has experienced enormous growth in the last thirty years, acquiring 1.5 million hectares in this part of the country, many of which are claimed by the Mapuche.⁶ An important part of these lands has been planted

³ The Chilean state has actively participated on mining activities in the north of the country, and on highway construction in the south. State agencies such as the National Commission on Energy (CNE), the National Commission on Environment (CONAMA), the National Corporation on Indigenous Development (CONADI) or the National Corporation of Forestry (CONAF), have also intervened administrating and regulating natural resource investments.

⁴ A critical study of the four first years of implementation of the EIA process showed that 95 per cent of the projects that had gone through this process had obtained the permit requested from the environmental agency (CONAMA). Only 5 per cent of these projects were rejected (Castillo, 1998).

⁵ Mapuche population today is estimated in one million.

⁶ Mapuche people were settled in *reducciones* (reserves) by the Chilean state in the late 19th and early 20th centuries. Five hundred thousand hectares of a traditional territory of 10 million hectares were assigned to the Mapuche. Lands acquired by forest companies belonged to Mapuche clans before settlement by the state. Other lands had been part of their *reducciones* and were sold throughout the last century to non-natives in accordance to laws that promoted the division of communal lands. Others had been occupied (*tomadas*) and planted with trees by Mapuche families during Allende's government. These lands were later recovered by their former owners during the counter agrarian reform process which took place during the military regime.

by the companies who now own them with exotic species for fast growth (radiata pine and eucalyptus) (CONAF, 2002).⁷

These plantations have surrounded Mapuche communities, resulting in important changes not only in landscape, but also in the soil, which has been damaged by tree resin and erosion. The same plantations have affected creeks and water sources, most of which have dried up from increased water absorption by the new trees. Finally, they have introduced serious alterations in Mapuche traditional activities. Many Mapuche have left their farming activities on their lands to work at temporary jobs at forest companies.

Indigenous communities directly affected by this industry claim property rights over these lands. Some of these lands have been purchased by the National Corporation for Indigenous Development (CONADI) an agency created by legislation in 1993. Most land claims, however, have not been satisfied at the present because of the limited funds available.⁸ Few forest companies, particularly one owned by Swiss capital (Millalemu), have entered into agreements with Mapuche communities, granting them back those lands which they prove had belonged to them in the past. Chilean forest corporations with investments in the area,⁹ have been much more reluctant to negotiate with the Mapuche, alleging the prevalence of their property rights over Mapuche aboriginal title.

Frustrated with this situation, Mapuche communities have decided to take direct actions aimed at recovering lands or forests which they consider to belong to them or call public attention to their problems. From 1997 until today, numerous direct actions, including attacks on forest industry properties and plantations, land occupations and road blockades, have been implemented by Mapuche organisations against forest companies asking them to leave their territories. Government reactions have been contradictory. While CONADI has negotiated with forest companies the acquisition of lands in conflict for Mapuche families, the government has generally used different mechanisms, including repression, to impede the continuation of Mapuche actions against

⁷ One of these forest companies, MIMINCO, a national private enterprise, has more than 350.000 hectares of land devoted for this purpose, most of them on Mapuche territory.

⁸ According to CONADI, Mapuche land has been increased in 150.000 hectares from 1994 to 2000. Most of these are state owned lands transferred to the Mapuche by the state. Those purchased for Mapuche by CONADI through its land fund amount to less than 40.000 hectares (CONADI, 2001).

⁹ Forestal Miminco and Forestal Arauco.

the forest industry. Conflict among Mapuche community and forest companies present in their territory increase over time. No resolution to this conflict can be seen in the short term.

Large plantations in central and southern Chile are also a concern for the environmental movement. According to this movement, this monocultive plantations result in the substitution of the temperate rainforest which exist in the area and in the loss of biodiversity. Due to this situation, environmentalists have recently launched a campaign to boycott Chile's forest related product in the United States and Europe.¹⁰

Highways that are currently being constructed crossing the heart of Mapuche territory also have negative impacts on the Mapuche people, their cultures and environment. The first of these highways planned by the Ministry of Public Works, the Coastal Highway, is being constructed along the Pacific coast of southern Chile, from the region of Bío Bío to the region of Los Lagos, crossing through densely populated Mapuche territories (Lake Budi in Araucanía, home of the Mapuche Lafquenche, and San Juan de la Costa in Los Lagos, home of the Mapuche Huilliche).

The second is a high speed highway going from Santiago to Puerto Montt, more than a thousand kilometres long. Several kilometres of this highway cross through Mapuche lands, affecting ten communities surrounding Temuco, in the Araucanía region. The highway is being constructed in an area which is currently occupied by agricultural lands and sites of historical and cultural significance to the Mapuche. As in the case of the Coastal highway, it has been resisted by the communities due to its negative impacts. Mapuche communities directly affected were neither informed nor consulted by the government until the construction of these highways was seen as inevitable.

However, probably the best example of the impact caused by *mega-proyectos* on Mapuche territory, is the case of Ralco, a hydro dam which is being built, with government approval, by ENDESA, a multinational company, on Mapuche Pehuenche lands. Due to its significance as a conflict from an

¹⁰ This campaign has been promoted by *Defensores del Bosque*, an NGO which promotes the conservation of Chile's native forests. These and other NGOs have promoted certification of Chile's forest products according to international standards defined by ISO 14.001 and by the Forest Stewardship Council (FSC). Only 236 thousand hectares of a total of 2.1 million hectares of plantations have been certified according to these international standards (Giglio, in Chile Sustentable ed., 2002).

environmental and from an indigenous rights perspective, this paper will focus specifically on this case. It will first describe the characteristics of this project as part of a series of hydro dams planned in the upper Bio Bio river since the 1960s. It will then refer to the environment and the people that are being affected by this project. It will identify the different actors or stakeholders, both national and international, involved in the conflict created by this development, and describe the strategies by them implemented in this case. Finally the paper refers to the current situation of this conflict, and reflects on the lessons and challenges that arise from this paradigmatic case.

THE BÍO BÍO HYDROELECTRIC PROJECT.

Since the 1960s ENDESA (National Energy Enterprise), a state enterprise privatised during the military regime, and currently owned by a Spanish corporation (ENDESA España), has been planning the construction of several hydroelectric dams on the Bío Bío river. According to ENDESA, whose plan was designed to respond to the growing power demand coming from national industries, six dams were to be constructed along the Bío Bío river, four of them located in the Alto Bío Bío in lands owned or claimed by the Pehuenche. In total, the proposed dams have the capacity to generate 2,680 MW of power. The area to be covered by water was of approximately 22 thousand hectares. Water rights needed for this purpose were to be requested by ENDESA from the state in accordance to the law (GABB, 1992).

In the late eighties, ENDESA initiated its activities leading to the construction of Pangué, the first of the dams planned in the area. Pangué, with a capacity to generate 450 MW of power, was finished in 1994, flooding an area of 500 hectares. This dam was constructed in lands that were legally owned by non-Natives, but historically claimed by the Pehuenche of Ralco (GABB, 1992). Moreover, a total of 100 persons (ten to twelve families), most of them Pehuenche (Hair et al., 1997; Gabb, 1992), were relocated as a consequence of the flooding of their lands.

At a time when Chile had no legal protection for indigenous land rights or for environment threatened by these kind of developments, Pangué was constructed with no consultation with Pehuenche communities and no serious concern for its social and environmental impacts. The lack of compliance of the Pangué dam with the World Bank's environmental and social requirements, in particular those dealing with indigenous peoples and involuntary resettlement, was stressed by an independent review prepared in

1997 for the International Finance Corporation (IFC), an entity that had financially supported this project (Hair, 1997). It was also denounced by Pehuenche people, who dominantly opposed this project due to the threats that it posed on their land rights, as well as due to the social and cultural impacts it would have on their communities (Piñaleo in Aylwin and Besnier, 1990; Gabb, 1995).

In 1994 ENDESA announced its plans to construct Ralco, a second dam to be built up stream in the same river. The *Grupo de Acción por el Bío Bío* (GABB) had warned public opinion years earlier, without being heard, that Pangué could not function efficiently without Ralco, a large dam which would provide sufficient water to fill its reservoir during the dry summer season. Unlike Pangué, Ralco with an investment of approximately US \$ 500 million, and a capacity to generate 570 MW of power, would flood an area of approximately 3,500 hectares, mainly composed of lands which had been legally entitled to Pehuenche. Moreover, Ralco would require the relocation of a large population (approximately 675 persons), five hundred of whom were Pehuenche of the communities of Quepuca Ralco and Ralco Lepoy (Comision Nacional del Medio Ambiente, 1997).

This project, however, was to comply with the requirements established in the 1993 indigenous law as well as with the environmental protection law of 1994. The first law, established that indigenous lands may not be sold except among communities or individuals belonging to a same ethnic group. According to the same law, exceptionally these lands may be exchanged for non-indigenous lands of a similar commercial value with authorisation from CONADI.¹¹ The second law mandates that an environmental impact assessment is to be undertaken prior to the implementation of projects which may cause environmental impact, including those impacts that result from relocation or from the alteration of life systems and customs of human groupings or communities. Moreover, this law also ensures the right of the communities affected by these projects to be heard by CONAMA, the environmental agency, before any decision concerning them is taken.¹²

The Environment and People Affected by Ralco.

¹¹ Article 13, Law No. 19,253 of 1993.

¹² Articles 11; 26 to 31, *Ley de Bases del Medio Ambiente* No. 19,300 of 1994.

The Ralco dam is being built in the Bio Bío river, historically and geographically the most important river in Chile. Four hundred km. long, this river originates in the lakes Icalma y Galletué and ends near the city of Concepción, in the Arauco Gulf. The upper part of the Bío Bío River is located in the Andean range, while the lower part flows wider and quiet through agricultural valleys. The Bío Bío provides drinking water for over a million of people and provides important nutritive elements for the Gulf, one of the most important fishing areas of Chile. The upper Bío Bío is an area of enormous relevance for the diversity of flora and fauna since it contains a mix of species pertaining to the dry areas of the north and the humid areas of the south. Of 243 species of vertebrates in danger of extinction in Chile, 77 are in the Upper Bío Bío. The area also contains five volcanoes, of which, three are active.

Ralco project is located in the heart the Pehuenche territory (*Pehuenche* means people (*che*) of the pine nut (*pehuen*) in their native language). The *pehuen* is the fruit of *Araucaria Araucana*, an ancient pine tree that grows in the Andean highlands. Pehuenche were initially distinguished from the other Mapuche people, for culture, language and their physical aspect. Since the 18th century they have progressively become part of Mapuche culture and traditions, sharing the same language (*Mapudungun*). The Pehuenche economy rests upon unrestricted access to renewable natural resources; pine nuts, wood for building or fuel, pastures and gathering of forest products. In the summer Pehuenche families and their animals migrate to the high Andean *veranadas*, areas at 900 to 1,000 metres above sea level, for the collection of the *pehuen*. During the rest of the year, being these areas covered with snow, they live in the *invernadas*, areas at 600 metres above sea level, near the Bio Bío River. The *pehuen* is essential both in their material and in their cultural and religious life. This nut is their primary source of nourishment. Pehuenche obtain flour, milk and alcohol from it, they consume it with bread and other food. They use it also to feed their animals (sheep, goats, cattle, horses). The *Araucaria* and its fruits are important sacred elements in Pehuenche's culture¹³ (Nesti, 1999).

¹³ A description of the sustainable use that the Pehuenche make of resources existing in their *invernadas* or lowlands or *veranadas* or highlands, is contained in a study prepared by two agronomists of the Universidad de la Frontera in the communities Quepuca Ralco and Ralco Lepoy. This study highlights the richness of Pehuenche traditional knowledge, and the ways in which this knowledge is manifest in their agricultural and forestry practices (see Claudia Barchiesi and Aliro Contreras, "Sustentabilidad del Sistema Productivo Pehuenche," in Morales et al., 1998). Consistent with this study, José A. Curriao, Chief of Quepuca Ralco, affirms that in the past every Pehuenche had its own animals, cultivated its land, and food was sufficient (interview with the author, October 1998).

Current Pehuenche population has been estimated at 10,000. They live in seven communities occupying nearly 30,000 hectares that surround the Callaqui volcano. Some lands (*reducciones*) comprising a small percentage of their traditional territories, were acknowledged to the Pehuenche by the government of Chile after the occupation of the Araucanía. The remaining Pehuenche population was left landless, living in areas that were fraudulently appropriated by non-natives since the late 19th century. In recent years, after the agrarian reform process, these lands were transferred to them by the Chilean state. The entitlements made to them, however, did not respect their traditional forms of communal ownership of land, imposing on them instead private ownership. Within this reduced land base, they were obliged to abandon their nomadic lifestyle of the past and become sedentary people as other Chilean peasants who settled in the area. Notwithstanding the many adversities they had to face in their new restricted habitat, the Pehuenche were able to maintain their distinct culture and adapt it to the new context in which they were living. Moreover, they were able to develop a self-sufficient economy based on the sustainable use of resources existing in their lands.

Actors Involved in the Ralco Conflict and the Strategies they Implemented.

Due to the many complexities of the Ralco project -political, financial, cultural and environmental among others-, the actors or stakeholders involved in this development have been numerous. They include ENDESA, the Pehuenche people, the environmental and human rights movement, the Chilean government, the World Bank and the International Financement Corporation, as well as international NGOs. The main characteristics, as well as the role played in this polemic initiative by some of the most relevant actors are described bellow.

ENDESA.

ENDESA was a state owned corporation privatised during the military regime in the 1980s. The acquisition of ENDESA by Chilean entrepreneurs that had been closely connected to the military regime, raised questions about the transparency of the privatisation process of this large company. By the end of the military regime in 1990, ENDESA and its related companies had control of both power generation and power distribution throughout the country. This corporation showed little concern for the environment. It showed even less

concern and respect for indigenous peoples and their rights. The advent of political democracy, however, obliged them to change their attitude, and to enter into a dialogue with the state, the local communities and the recently born environmental movement. The need to obtain the funding requested from the International Financement Corporation, a branch of the World Bank, made possible the construction of Pangué, but also obliged them to change, at least in part, their attitude on these matters.¹⁴

Due to the absence of a legal framework for the protection of the environment and of indigenous land rights in the country at that time, as well as the lack of information and awareness existing in Chilean society about the negative impacts provoked by these type of developments, Pangué, the first dam proposed in the Bío Bío, encountered few obstacles for its approval during the first Concertacion government (Aylwin, 1990-1994). Deliberate misinformation on the side of the company of the fact that Pangué and Ralco were closely interconnected, also contributed to the approval of this first dam.

The scenario became more complex for ENDESA with the approval of legislation which protected indigenous lands and made environmental impact assessment mandatory for this type of development. ENDESA did not only have to comply with the obligations established in these laws, but also had to deal with the critiques that had been made by several studies in relation to the violation of the World Bank directives on environment and social policies on dam and reservoir projects, including operational directives 4.20 on Indigenous Peoples and 4.01 on Environmental Assessment (Downing, 1996; Hair et al., 1997).

ENDESA strategy since 1994, when the construction of Ralco - the second dam planned in the Bio Bio - was announced, was aimed at obtaining government approval. Although EIA did not become mandatory until 1997, when a decree regulating these studies was dictated by the government, ENDESA agreed to perform an EIA for this hydroelectric project. ENDESA strategy became more sophisticated when the first Ralco EIA report was rejected in 1996 by more than 20 public agencies which had to analyse the project's compliance with law. Relations with the government, and in particular with President Eduardo Frei, a hydraulic engineer, were

¹⁴ The IFC gave a US \$ 170 million loan to ENDESA for the Pangué dam. US \$ 28 million were provided by the Swedish Board for Industrial and Technical Co-operation, US \$ 14 million were provided by the Norwegian Agency for Development Co-operation and US \$ 100 million by 10 European banks (Nesti, 1999)

strengthened at that time. A media strategy warning the public of the need for Ralco's power to support industrial development, was implemented by this powerful enterprise. These strategies resulted, as can be seen later in this article, in the final approval of the project by CONAMA.

The strategy implemented by ENDESA with the Pehuenche, a powerless group within Chile, was also sophisticated. In an agreement signed by ENDESA with the IFC to mitigate the impacts of the Pangué dam over the Pehuenche communities, a foundation (*Fundación Pehuen*) was created. Residents of the directly affected communities (Callaqui, Pitiril and Quepuca Ralco) would be supported by the Foundation with programmes aimed at promoting their social and economic development. However, this Foundation started to be used for the purpose of pressuring Pehuenche to abandon the lands necessary for the construction of Ralco in an open violation of the agreement and of World Bank directives (Downing, 1996).¹⁵

When in 1996 the communities to be directly impacted by the Ralco dam expressed their unanimous opposition to the project in the context of the EIA study, ENDESA strengthened its efforts to obtain Pehuenche approval for the initiative. Funds and employment were offered to the Pehuenche families whose lands were necessary for the project. New lands for relocation were purchased by ENDESA, making them available to the Pehuenche. Agreements with Pehuenche families whose lands had to be exchanged for other lands of a similar commercial value in accordance to the indigenous legislation of 1993, were negotiated. The use of pressure and manipulation by the enterprise's personnel for this purpose is well documented.¹⁶ It should be highlighted that ENDESA, in its strategy with the Pehuenche, never considered them as a people with collective rights. They were not even considered as communities that had to be approached through their traditional leaders. Rather it considered the Pehuenche as individuals with which agreements on a case to

¹⁵ *Fundación Pehuen* has now expanded its activities to Quepuca Ralco and Ralco Lepoy, the two communities directly affected by the Ralco project.

¹⁶ CONADI documented all the anomalies that characterised the contracts signed individually by Pehuenche the with ENDESA with this purpose. In its report CONADI states that the land exchange contracts were not signed with the free will of the Pehuenche (ARCIS, 2002). An extensive analysis of these anomalies was made by Domingo Namuncura, the Director of CONADI at that time, who was fired by President Frei because of his opposition to Ralco (Namuncura, 1999).

case basis were to be negotiated.¹⁷ This was obviously a strategy of divide and conquer, which was successfully used with the Pehuenche.

ENDESA's strategy did not change substantially after 1998, when ENDESA España, a large multinational corporation with investments throughout the world, took control of its board of directors. The influence of this company in the politics of Spain is well known. The pressure that they have placed, through the use of political, economic and media influence, both on the President Frei (1994-2000) and President Lagos (2002- 2006) administrations for the completion of Ralco, has been enormous.

The Pehuenche.

The Pehuenche people have been central actors in this conflict. Pehuenche communities were not informed of the Bío Bío hydroelectric project when feasibility studies were being made in the 1960s in the area by the state owned ENDESA. It was only in the mid 1980s that their chiefs were informed by environmentalists that this company was planning to flood their lands. During the construction of Pangué the Pehuenche became aware of the negative consequences that this hydro development would have on their communities. Consequently, their leaders made public their concerns and opposition to this project. The absence of an adequate consultation process during this period, abuses committed by ENDESA to families living close to the Pangué site, contributed to Pehuenche opposition to this project.

Opposition to the construction of Pangué dam triggered the creation, in the early 1990s, of the *Centro Mapuche Pehuenche del Alto Bío Bío*, an organisation which brought together the chiefs and members of the seven Pehuenche communities of the Alto Bío Bío. Although this organisation was unsuccessful in its attempts to stop the construction of Pangué, it was able to generate a process of ethnic revival and mobilisation without precedent in Pehuenche society. It also implemented several initiatives aimed at providing Pehuenche communities with sustainable development alternatives to those proposed by ENDESA.¹⁸ The *Centro Mapuche Pehuenche* also contributed to

¹⁷ According to ENDESA representative for the Pehuenche, María Antonia Abad, the fundament for this strategy was the respect for the individual (interview held July 2001).

¹⁸ Among these initiatives, those aimed at improving the quality of the animals they bred, mainly cattle, goats and sheep, to the production and commercialisation of traditional crafts, and to self-managed tourism within their territory, are to be mentioned.

generate sensitivity within sectors of Chilean society, in particular human rights and environmental advocates, which resulted in the creation of a non-native movement in defence of the Bío Bío and the people threatened by the dams.

Plans to construct Ralco were made public in 1994. In the context of the EIA study of this second hydro dam to be built in the Bío Bío, the majority of the members of the two communities directly affected by Ralco showed their opposition to this initiative due to the many and significant social and cultural impacts Ralco would have on them. Among the main criticisms made to this project by them was the fact that cemeteries where their ancestors were buried would be flooded and that they did not want to be relocated from their traditional lands. Moreover, they argued that they could not identify other lands which had the geographic characteristics and resources (*invernadas* and *veranadas*, Araucaria forests, waters, etc.) that are necessary to maintain their economy and culture. They also argued that the loss of their traditional lands and the cultural impact to be produced by this project could not be materially compensated or mitigated. Finally the same communities demanded instead, governmental support to enable them to continue to live in their traditional lands and improve their living conditions.¹⁹

As a consequence of the material offerings which were made by ENDESA, which included new houses, lands located both in *invernadas* (lowlands) and *veranadas* (highlands), employment opportunities, as well the manipulation of information,²⁰ most of the Pehuenche families directly affected by the dam signed individual contracts with this enterprise. In these contracts they agreed to exchange the lands they owned, needed for the construction of Ralco, by other lands that had been purchased by ENDESA for this purpose. Only seven women, heads of Pehuenche families, have refused to sign these contracts until today. These women, who are organised in *Mapu Domuche Newen*

¹⁹ This opposition was expressed in letters that were addressed by chiefs and members of the communities of Quepuca Ralco and Ralco Lepoy to the Director of CONAMA, the environmental agency, in June of 1996, in the context of the environmental impact assessment of Ralco (see María A. Relmuan, "El Proyecto Central Hidroeléctrica Ralco en el Alto Bío Bío: La Visión de las Comunidades," in Morales et al, 1998). A similar position was expressed at that time by the *Centro Mapuche Pehuenche del Alto Bío Bío* in a letter addressed to the Director of CONAMA.

²⁰ ENDESA agents represented to Pehuenche families that the project had already been approved by the government. The same agents warned the Pehuenche that if they resisted signing the proposed land swaps, they risked losing their lands (Information provided to the author by different Pehuenche families affected by this dam in the Alto Bío Bío area from 1996 to 2001).

(which translates women with the strength of the earth), have stated their intention to stay in their current lands. This is seen as an open challenge to the Ralco project. As one of them has affirmed: "I was born on this land and I want to die in this land.... How can I abandon my grandparents and my great grandparents."²¹ Consistently, they have continued to fight against Ralco nationally and internationally. Two of them, Berta and Nicolasa Quintreman, have become well known and received international awards. They are considered a symbol of resistance to economic globalisation which threatens cultural diversity and the environment. Their struggle in Chilean courts to stop this project, however, has not to date been successful.

The acceptance of ENDESA's offerings by Pehuenche families directly affected by Ralco cannot only be explained by pressure and manipulation on the side of the enterprise, but also by the absence of the Chilean state in the area. Pehuenche people lack adequate access to basic social services, such as health and education. Job opportunities are almost non-existent in the area. In this context, it is not surprising that many Pehuenche families ended up giving in to ENDESA's pressure, accepting to exchange their ancestral lands for those offered by the enterprise.²²

Years of fight, however, have weakened Pehuenche resistance to Ralco and introduced division amongst them. Mapuche organisations from the Araucanía have arrived to the area in solidarity with the Pehuenche who resist Ralco. One of these organisations, the *Consejo de Todas la Tierras* (Council of all the Lands) has a strong presence in the area. This organisation has promoted the creation of a new Pehuenche organisation, *Consejo de Longkos* (Council of Chiefs) mainly composed by men, creating tension with the existing organisations.

Government.

The Bío Bío hydroelectric project has been supported by the *Concertación* governments. It has already been said that Pangué was approved during the first government of the *Concertación* (Aylwin administration). President Frei was an open supporter of Ralco since it was made public by ENDESA in

²¹ Nicolasa Quintreman, an elder from Ralco Lepoy, in Clifford Krauss, "Indians Make a Stand on a Historic River in Chile," *New York Times*, August 16, 1998 at 3.

²² Relmuan, in Morales et al, 1998.

1994. His public statements criticising those who impede development for environmental reasons, his personal involvement in the process leading to the approval of this project by the National Commission on Energy, is well documented. So is his intervention in the process leading to the approval of Ralco by CONAMA against the opinion of more than 20 public agencies that analysed the project (Moraga, 2001).

Probably the best known of Frei's interventions in favour of Ralco, was that made in CONADI. In accordance with the 1993 indigenous law, this entity has to authorise the land swaps required by ENDESA to implement the project. Two Mapuche National Directors of this entity were removed from their position by President Frei due to their criticisms to Ralco. In 1999, after the appointment of a third Director, in this case a non-native, the National Council of this entity proceeded to authorise the majority of the land swaps and rights of ways concerning indigenous lands requested by ENDESA. The remaining land swaps, except those of the seven Pehuenche women that refused to abandon their lands in the flooding area, have been authorised by this Council since then.²³

The reasons that explain President Frei's personal involvement in the approval of the Ralco dam are unclear. Some analysts have affirmed that he had economic interests in this development. There is evidence that Sigdo Koper, the enterprise that Frei owned in part before assuming the presidency, participated in the construction of the Pangué y Ralco dam. The relationship between some of his cabinet members as well as of members of his family with ENDESA and its subsidiaries is documented²⁴ (Opaso, 2001).

Although initially the Lagos administration (2000-2006) was dubious about Ralco, shortly after assuming power it gave clear signals in support of its continuation. Investments involved in this initiative in a period of global economic recession ended up convincing a government lead by a socialist President. Moreover, the Lagos administration has had to deal with road blockades and civil disobedience, including truck burning, in the area where Ralco is under construction. These events have been triggered by the

²³ In a session held in January of 1999, without the participation of Indigenous representatives that are part of this body, 64 of the 84 land swaps and rights of way submitted to its analysis were authorised by this entity, 9 were rejected, and 7 left for a later analysis.

²⁴ The flag of Sigdo Koper, the enterprise that Frei had owned until 1994, waved at the Pangué dam wall in its inauguration in 1996.

frustrations of those who oppose this project and have not been heard until now. Recently, a group of more than 50 Pehuenche blocked the road to the area where Ralco is being built in protest for lack of action on a compensation agreement (*Protocolo*) signed in 1998 with them by ENDESA and the government.²⁵ The protestors were violently repressed and arrested by the police. Those beaten by the police included elders, women and children. Government sued those arrested invoking the antiterrorist law. Some of the Pehuenche arrested on that occasion are still being prosecuted by the military court in a neighbouring city of Chillan (Opaso, 2002).

Environmentalists and Human Rights Groups.

Environmental advocates were the first to inform the Pehuenche communities and Chilean society in general of the existence of plans to build a series of hydro dams in the Bío Bío river. It was in early 1990 that *Grupo de Acción del Bío Bío* (GABB), a coalition of individuals and organisations including environmentalists, human rights advocates and indigenous representatives, was created. GABB lobbied against the Pangué project at the national and international level. Nationally its work was initially oriented at creating awareness within society of the threats that this project posed to the environment and biodiversity of the Bío Bío, as well as to indigenous peoples' survival. It campaigned against this project at the parliament and government institutions. Internationally GABB lobbied at institutions involved in the Pangué project, including the IFC and the World Bank as well as at foreign governments, such as Norway and Sweden, whose aid or technical assistance, was given to this project. GABB also worked actively in the Bío Bío providing information about this project to Pehuenche communities and promoting their organisation. It also presented several legal remedies in Chilean courts attempting, without success, to stop the dam and afterwards Ralco.

Probably one of the most relevant actions undertaken by GABB internationally was the complaint issued to the World Bank Inspection Panel in 1995, alleging IFC violation of Bank's directives on the environment and on indigenous peoples. Although the complaint was rejected due to the fact that IFC was outside the Panel's jurisdiction, the World Bank requested a

²⁵ In the 1998 agreement signed with the Pehuenche families from Quepuca Ralco and Ralco Lepoy to be affected by the project, ENDESA offered a package of compensation measures which included the construction of new houses and the hiring of Pehuenche in the projects and other matters. Such compensation would be financed both by the government and the company.

study (Hair, 1997) which demonstrated that most of GABB's complaints were true. Although GABB does not continue to exist today, some of its members as recently as July 2002 presented a new petition to the World Bank Inspection Panel to address similar issues, asking compensation for the cumulative damages caused with Bank involvement by both by the Pangué and Ralco dams. Due to its actions in defence of the environment, its leaders were awarded the Alternative Nobel Price in 1998.

Aside from GABB, several other organisations have been involved in defence of Pehuenche people and environment threatened by this project. The Institute of Indigenous Studies of the University of la Frontera at Temuco, did a critical analysis of the EIA prepared by ENDESA in the Ralco project for CONAMA. In its report the Institute warned CONAMA of the threats that the Ralco project posed to the subsistence of the Pehuenche people and culture.²⁶ The Department of Human Rights and Indigenous Studies of Arcis University in Santiago, has been in charge of defending the rights of the Pehuenche people in the Chilean courts. Several remedies and injunctions have been presented by this Program on behalf of those Pehuenche that oppose the dam. Almost all of these remedies have been rejected by the tribunals, that are vulnerable to the influence of powerful sectors of society.

Finally, international NGOs have also played a significant role in the campaign against Ralco. NGOs such as International Rivers Network, Friends of the Earth, Swedish Society for Nature Conservation from an environmental perspective, and DOEN from Holland, Cultural Survival and American Anthropology Association, and the International Federation on Human Rights (FIDH) from a cultural and human rights perspective, have played an active role in the struggle against this dam at international forums. Their involvement proves that globalisation is a process that not only involves entrepreneurs and governments, but also civil society in general.

The FIDH sent a mission to the Bío Bío in 1997. In its report this mission acknowledged that important rights today recognised to indigenous peoples internationally were not being guaranteed by this project. It also encouraged

²⁶ In its report the Instituto affirmed that "the future of the communities affected (by Ralco) is in danger due to the threat that this project will impose to their ancestral lands, their cultural patterns as well as their forms of traditional organisation." Instituto de Estudios Indígenas, Universidad de la Frontera, "Evaluación Social del Estudio de Impacto Ambiental del Proyecto Hidroeléctrico Ralco" (Report addressed to CONAMA, Temuco, 1996), in Morales et al., 1998) (trans. by the author).

the Chilean government to take all the steps that are necessary to ensure that these rights are protected to the Pehuenche in the case of Ralco, a case which its authors consider as a template of what could happen in the future to other indigenous peoples in the country (FIDH, 1997).²⁷

Conflict Resolution.

Today the Ralco dam is already partly built. In a last visit to the area in May of 2002, you could clearly see that most of the Pehuenche families in the Ralco area had been relocated from their traditional lands, and were living in lands given to them in exchange by ENDESA. The only houses and livestock in the area were those of the seven Pehuenche women and their families that have not agreed to give their land to the corporation. New roads had been built, the native forests existing in the flooding area was being cut, the wall of the new dam was under construction, and trucks carrying rocks and cement rushed up and down the roads.

ENDESA affirms that one third of the investments considered for the Ralco dam have already been made. Surprisingly in a country where the prevalence of law is constantly being affirmed by authorities and by forest corporations whose land are being taken (*tomadas*) by Mapuche communities, ENDESA is in practise, appropriating the land owned by the seven Pehuenche families who live in the flood area without their authorisation.

As CONAMA clearly stated in 1997 on its final environmental review of the Ralco project, its authorisation was complementary to that which had to be granted not only by CONADI, the indigenous agency, but also by each of the Pehuenche families to be relocated from the area. Supreme Court decisions on legal suits against government authorisation of the Ralco dam have also insisted in this point. However, in March of this year, the Minister of Economy, responding to a request by ENDESA, appointed a Commission to asses the compensation to be paid to these families for the easements needed on their land for the construction of the Ralco dam²⁸ (ARCIS, 2002).

²⁷ The authors of this report include Claude Katz, French lawyer and Secretary General of the FIDH and Thomas R. Berger, Canadian lawyer and indigenous rights advocate.

²⁸ The government and ENDESA are making use of D.F.L. 1 of 1981 (Ley Electrica or power law), a law passed during the military regime which allows expropriation and the acquisition of rights of way for the purpose of the construction of power plants.

It is evident that ENDESA is trying to win time. Once the investment is made, and the dam wall is constructed: ¿Who is going to oppose the completion of Ralco? Once again, the rights of the Pehuenche people are not being respected. Once the Ralco dam wall is built: ¿How can the seven Pehuenche families that live in the area to be flooded by Ralco choose whether they want to stay on or leave their lands?

The conflict created by this dam has not yet been solved. Everything indicates, however, that Ralco will finally be imposed on those who opposed its construction for social and environmental reasons. However this conflict is resolved, the Bío Bío environment has already been seriously damaged. Impacts caused in the construction area are enormous. Downstream impacts generated by Pangué, such as floodings in the city of Concepción, have occurred in the winter of this year (2002). Negative impacts on the Pehuenche people are also visible. Relocation of the population, the stress caused with the presence of ENDESA and a large number of labourers in the area for more than a decade, has already resulted in the fragmentation of their communities as well as the erosion of their culture. As social scientists warned years before, Ralco can end up as the ethnocidium of the Pehuenche people (Morales et al., 1998; Molina, 1998; Nesti, 1999).

For the Pehuenche people Ralco proves that, as in the past, their opinion is not relevant for the Chilean government and society, that their rights as the first inhabitants of the Bío Bío are not respected. As Chief Jose A. Curriao affirms:

It seems that the government does not want to respect the law, nor the Indigenous peoples of Chile. It wants to sell everything, not only the Pehuenche, but all indigenous peoples in Chile. It does not want to take us into consideration... Government authorities should acknowledge, with their hand on their hearts, that we do not come from a foreign country, that we are the primitive inhabitants of this land, that we belong to this land, we were born and raised here, in our country, in our Pehuenche community.²⁹

If Chilean society acknowledged that Pehuenche people are the original inhabitants of the Alto Bío Bío, and had recognised to them the rights which

²⁹. Jose A. Curriao, interview with the author, 1998 (translation by the author).

derive from this circumstance, probably the history of this people would have been different than is described here.

Lessons and Challenges that Arise from this Conflict.

There are many lessons to learn from the Ralco case and from the way the conflict created by this project has been handled by the actors involved, in particular by ENDESA and the government. Among the most relevant which should be mentioned are the following:

i. Environmental awareness and protection.

The Ralco case makes it clear that economic development does not always go hand in hand with consciousness about environmental problems associated with development. In the case of Chile, environmental awareness is fragile. Those who are concerned about the environmental impacts of large developments such as Ralco, still represent a small percentage of the population. Those who are in a position to influence public opinion on this matter, as was President Frei during his administration, believe and affirm that the environment should not impede economic development. Chile seems to be fascinated with the its macroeconomic achievements of the last two decades. Concern for its maintenance, particularly today, in the context of an international recession, does not enable decision makers to assess projects such as Ralco with a long term perspective. Awareness on the environment and on the need to make an adequate use of the country's natural resources to achieve long term sustainable development has to be created.

Ralco has also shown the shortcomings of Chile's environmental legislation enacted in 1994. Community participation in the EIA process for projects such as Ralco is very limited. The need to strengthen this participation from the early stages of projects under environmental assessment is required to make it more effective, as has been stressed by different analysts (Sabatini, Sepulveda and Blanco; 2000). Community access to information is also needed. Adequate consideration of the cultural dimension of impacts associated with developments involving indigenous peoples has been stressed (Morales et al, 1998).

ii. Respect for indigenous peoples and their cultures.

Chile has historically denied its ethnic and cultural diversity. For many years the country's ruling elite promoted the idea that ours was a racially homogenous society composed mainly of European descendants. Statistics, however, showed in 1992 that almost 1.3 million, almost ten percent of the population, considers itself as indigenous.³⁰ The rights that were acknowledged to indigenous peoples in the 1993 law, are limited when compared to those that are being acknowledged to these peoples internationally. These rights include not only land rights, but also rights over natural resources which are essential for the maintenance of their cultures, as well as the right to control their political, economic, and cultural development.

The disassociation existing between land rights and resource rights (water, forests, and marine resources, among others) in the national legislation, has enabled ENDESA to appropriate the waters it needs to proceed with its projects in the Alto Bío Bío. Moreover, the rights contained in the 1993 law have not been respected in the Ralco case by the government and by ENDESA. The need to amend the law to establish effective protection for the rights acknowledged today for indigenous peoples in international conventions such as Covenant 169 of the International Labour Organisation (1989), is urgent. So is the need to introduce changes to the existing legislation to impede indigenous involuntary relocation from their traditional lands.³¹ Legal changes should also ensure that developments such as Ralco respect the collective nature of indigenous peoples. In order to impede manipulation, the law should guarantee that negotiations with these peoples on development projects are done collectively through indigenous representatives mandated by their communities, and not individually on a case to case basis as occurred in Ralco. Finally, there is a need to incorporate in law the traditional knowledge of indigenous peoples in decisions concerning their lands and territories.

iii. Need to strengthen democracy, transparency, civil society participation and a culture of dialogue for conflict resolution.

³⁰ This statistic place Chile as one the countries in Latin America with a highest percentage of indigenous population.

³¹ Provisions aimed at impeding involuntary resettlement, or at least guaranteeing Indigenous participation and compensation when it occurred, were included in the law proposal sent by the government to the legislature in 1991. They are also included in the provisions of Covenant No. 169 of ILO which was also sent to Congress at that time. Unfortunately, to date none of the two initiatives have been approved.

The imposition of Ralco to the Pehuenche people and Chilean society by ENDESA and the government has shown many of the weaknesses of the post Pinochet democracy. Aside from the shortcomings of the environmental and indigenous peoples legislation, the binominal electoral system in effect has left many sectors of society, such as indigenous peoples and environmentalists, with no political representation in the legislature, as well as in local governments. Aside from this, there are no mechanisms that provide incentives for the participation of civil society in the resolution of conflicts as Ralco. On the other hand, although on a recent pole on transparency Chile ranks first in Latin America, the Ralco case has shown that transparency continues to be a serious problem in Chilean society. There has been a lack of transparency from ENDESA when presenting its hydroelectric project with the purpose of impeding its downstream overall environmental assessment. There has also been lack of transparency in the government in granting ENDESA the permits required for this initiative to proceed.

The fact that both the government and the corporation behind Ralco have not been able to consider the perspective of those who opposed this project cannot be seen as a coincidence. It is the consequence of an authoritarian culture where dialogue is not practised, where decisions are taken by those who have political and economic power, where those who are powerless are not heard. As the UNDP Human Development Report (2000) affirms, Chilean society is characterised by the lack of collective spaces for debate, the perception that conflicts constitute a threat to unity and the existence of high level of interpersonal mistrust (UNDP, 2000).

There is an urgent need to strengthen democracy opening spaces and mechanisms for public participation. There is a need create a culture of dialogue where agreements become a means to solve conflicts, where legitimacy of other perspectives and representations is recognised, where responsible participation in the design of agreements is promoted, and where trust between parties involved in agreements is created. These are among the changes that have to be introduced in Chilean culture to enable an adequate resolution of environmental conflicts (Sepulveda, 2001).

iv. Need to make use of international mechanisms for environmental and human rights protection.

In the globalised world in which we are living, the potential of international mechanisms for the protection of the environment and of the indigenous rights

affected by developments such as Ralco is enormous. Paradoxically, in the case of Ralco, the main international mechanism used in the defence of the people and the affected environment, has been the complaints filed against ENDESA at the World Bank Inspection Panel (1995 and 2002) alleging IFC's violation of the Bank's directives on the environment and on indigenous peoples.

International human rights mechanisms have not been adequately used in this case. Although the Ralco case has been denounced at international forums such as the UN Working Group on Indigenous Populations, it has not been taken to the UN Human Rights Committee or the Inter American Commission on Human Rights until today.³²

This contrasts with the growing use that indigenous peoples have been making of these international forums in recent years. This is specially applicable to the Inter American system, where indigenous peoples from North, Central and South America have filed complaints alleging the violation of their rights recognised at the Interamerican Human Rights Convention.³³ The landmark decision made by the Interamerican Human Rights Court in the *Awas Tingni* case last year cancelling a forest exploitation concession granted by the Nicaraguan government on indigenous lands on grounds that it violated indigenous customary property rights, created expectations on indigenous peoples of the possibilities that the Inter American system brings for the protection of their rights. If used in the case of Ralco, probably the resolution of this conflict would have been different.

v. Need to look at new mechanisms for environmental conflict resolution.

In contrast with Canada and the United States, where alternative and collaborative systems of conflict resolution, including mediation, conciliation and negotiation have been developed, litigation and confrontation are the mechanism normally used for conflict resolution in Chile. The Ralco case has demonstrated the ineffectiveness of such mechanisms for environmental conflict resolution. Litigation is slow and expensive. In the case of the *Bío Bío*

³² Lawyers involved in the Ralco case have argued that domestic remedies have not been exhausted. This argument is questioned by those who affirm that Chilean court decisions already made on this case could have been challenged at international human rights courts.

³³ Compliants to the Inter American system has been filed in the last years by indigenous peoples of Colombia, Brazil, Belize, Canada, the United States, Nicaragua, among other countries (See Anaya and Williams, 2001)

hydroelectric project, litigation has been used without success by its opponents since the early 1990s. Confrontation not only involves economic costs, but also has important social costs. Experiences throughout the world, in different cultural contexts have demonstrated the convenience of using these mechanisms for the resolution of conflicts dealing with the use of natural resources (Buckles ed., 2000). Although these mechanisms do not necessarily eliminate conflicts, they have allowed their management in a positive manner, transforming conflicts and impeding the violence associated with them (Galtung, in Buckles ed, 2000). The applicability of these mechanisms in the case of conflicts involving indigenous peoples, their land and resource rights, has been well documented (Barsh and Bastien, 1998). There is a need to look at these mechanisms as well as their potential for the management/ resolution of environmental conflicts taking into account the institutional constraints that exist in Chile.

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