

Hydroelectric Development on the Bío-Bío River, Chile: Anthropology and Human Rights Advocacy

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Until recently, the Bío-Bío river cascaded through the heart of Pehuenche territory. Today the river is harnessed by the Pangué dam and the soon to be completed Ralco dam. The hillsides have been stripped of their timber and the river valleys flooded. Many of the Pehuenche—a cultural group often described as the last Chilean Indigenous group to live by traditional means on traditional lands—have lost their homes and are being forced to accept resettlement in the distant and difficult mountains. The Pehuenche had no opportunity to participate in the decisions to dam their river, deforest their hills or flood their valleys. And the Pehuenche had no opportunity to help shape the varied remedies offered by project developers as meagre compensation for the loss of ancestral lands, resources, community cohesion and way of life. Inept planning and inadequate local involvement in decision-making resulted in hydroelectric dam development without adequate assessment of the real human and environmental costs. The end effect is that a small, poverty-stricken band of Pehuenche Indians have been forced to subsidize Chilean hydroelectric power development at the cost of their economy, resources and culture.

As illustrated in the previous chapter by Mapuche activist Aldisson Anguita, the Pehuenche and their neighbours have not accepted their fate quietly or with ease. The struggle to secure Pehuenche rights to participate in development decisions has been a lengthy, tumultuous process involving local, national and international actors whose efforts to draw public attention to inequities and abuses have been successful, yet meaningful remedy remains elusive. In this chapter we outline the events and actions that structure this dam development controversy; describe efforts to document and remedy institutional failures in World Bank-funded development planning, impact assessment, resettlement planning, and implementation

of mitigation programmes; describe efforts to encourage institutional action by filing human rights complaints within the World Bank, and when these failed to produce meaningful remedy, to file human rights complaints in an independent forum of a scientific organization (the Committee for Human Rights of the American Anthropological Association); summarize the political outcome of these efforts; and, finally, we briefly discuss some of the lessons emerging from this decade and more of struggle to halt dam development on the Bío-Bío river.

Dam Development Decisions and Controversy

In 1989 hydroelectric dam development on the Bío-Bío river was first proposed by Empresa Nacional de Electricidad SA (ENDESA)—a private energy and resource development corporation in Chile. In 1990, the newly elected Chilean government approved plans for hydroelectric development of the Bío-Bío river. Implementing this project would require invoking the Electrical Services Law (decreed during Augusto Pinochet's regime in 1982) to privatize Pehuenche reservation land. ENDESA applied for a loan to the private-sector arm of the World Bank Group—the International Finance Corporation (IFC)—to finance the construction of the state-sanctioned, privately owned Pangué Dam. ENDESA did not request, nor did the IFC make any reference to, involvement in another five hydroelectric dams on the Alto Bío-Bío river. In 1990 the IFC began appraising the Pangué Dam proposal.¹

In December 1992, the IFC board approved the decision to invest US\$150 million in the Pangué dam project. On 22 October 1993, the IFC and ENDESA signed an investment agreement providing a US\$170 million loan to ENDESA to build the Pangué dam, and US\$4.7 million in equity for the Pangué project. Both parties accepted the state of New York as the legal jurisdiction. Since the agreement was secret, the Pehuenche had no way to know that arrangements were being made about them.² The loan agreement, in addition to containing plans that would determine the fate and livelihood of an Indigenous nation, granted the IFC a 2.5 per cent equity interest in Pangué SA, a subsidiary wholly owned by ENDESA (then a Chilean company). Pangué SA would build and operate the hydroelectric facility. At the same time that the IFC finalized its Pangué funding agreement with ENDESA, work began to develop the initial plans for the second dam, the Ralco dam, immediately upstream from the Pangué.

Development plans and financing decisions occurred despite the many and vocal protests by various Pehuenche, Chilean citizens, and nongovernmental organizations who expressed deep concern over the environmental and social impacts of building the first and then second of a proposed series of six dams on the Bío-Bío. Beginning in 1991, the Pehuenche community and their advocates participated in public protests and letter-writing campaigns, and provided testimony to the Chilean public, Chilean government and international forums. They expressed opposition to the dam project and their desire to retain their ancestral lands. As the years went by and development decisions fuelled the early stages of dam construction (clearing of hillsides, building of roads), local protests continued and were further strengthened with increased references to Chilean laws protecting Indigenous land rights. These laws include the Chilean Constitution adopted in 1990, the October 1993 Indigenous

Peoples Law, and the March 1994 Environment Law. Under the 1993 Ley Indígena (Indigenous Peoples Law), the Pehuenche control their lands. The national Indigenous development corporation, Corporación Nacional de Desarrollo Indígena (CONADI), a government agency formed by this law, has the fiduciary right to accept or refuse transfers, exchanges, privatizations or expansions (*permutas*) of Indigenous lands.³ And, under the 1994 Environment Law, a similar commission—Comisión Nacional del Medio Ambiente (CONAMA)—was established to review and approve all development-related decisions affecting the natural environment. The Chilean environmental organization GABB—Grupo de Alto Bío-Bío—emerged as a major force in Chilean politics, educating citizens about the environmental impacts of dams on the Bío-Bío and the importance of enforcing the newly created laws. GABB developed close collaborative ties with a number of international NGOs, most notably the International Rivers Network (IRN), whose educational efforts brought the issue to the awareness of tens of thousands of environmental activists around the world.⁴

Dam development protests citing violations of Chilean national law were dismissed by ENDESA as irrelevant, since the project was approved prior to the formation of these laws. Furthermore, ENDESA argued that under the 1982 Energy Law, the nation's need for energy superseded Indigenous rights. In response, dam opponents argued that Pangué was designed to work in conjunction with a large reservoir dam upstream (Ralco), that the government should consider environmental and social effects of building two dams before giving approval to build Pangué, that new development proposals should be assessed for their individual and cumulative impact, and that development decisions should reflect full compliance with current Chilean law.

Public protests against the World Bank funding of the Pangué dam were widely covered in the Chilean and international media, and this coverage raised considerable concern among private investors who were brought in following the initial IFC/ENDESA financing agreement. Pangué project supporters, including IFC staff, produced rebuttal arguments describing Pangué as a single, stand-alone dam unrelated to ENDESA's other dams, and a hydroelectric development project that was located adjacent to but not on Pehuenche lands. Thus, the project reportedly would not involve any involuntary resettlement of Pehuenche.⁵ The IFC's assurance that Pangué was a stand-alone dam, and ENDESA's assurance that it would only use IFC funds for this single dam, calmed investor fears, and the project proceeded. In 1996, despite long and intense protest in Chile and abroad, the Pangué dam was completed and its reservoir filled.

Efforts to Halt Further Dam Development and Seek Redress for Problems Resulting from Pangué Dam Construction

The intense period of national and international protest in the early and mid-1990s provoked a wide array of responses. The Pehuenche and Mapuche communities became increasingly politicized by their conditions and experiences, and their place-based issues involving land and resource rights increasingly came to be seen as national issues. National and international nongovernmental organizations developed close collaborative ties to communicate and encourage political action. The Chilean government was continually challenged by the

contradictions between rights-protective legislation and the lack of political will or power to enforce the law (challenges that produced significant political fallout). And the World Bank saw its image and actions placed under increasingly critical international scrutiny.

In 1995, in response to Chilean and international advocacy criticizing Bío-Bío dam development and human rights abuses, the IFC hired Dr Theodore Downing (President Emeritus of the Society for Applied Anthropology) to conduct an external audit of the social impacts of the Pangué dam. Specifically, Downing was asked to evaluate the efficacy of the Pehuen Foundation, an organization created by IFC and ENDESA to offset the socio-economic impacts of hydroelectric development. In October 1995 Downing travelled to Chile and met with some sixty stakeholders representing different sides of the dam development conflict. Downing presented the evaluation plan to the IFC, which accepted it, completed his fieldwork in November and December 1995, and submitted his report to the IFC in May 1996 (Downing 1996).

The Downing audit findings supported conclusions that the Pehuen Foundation implemented a programme of resettlement that failed to incorporate the rights of Indigenous peoples, and failed to compensate all affected peoples adequately—in direct violation of the World Bank Group's involuntary resettlement and indigenous policies. In addition to these and other critical findings, Downing documented those instances where Foundation objectives were being met, and also offered a number of specific recommendations to address past failures and improve the ability of the Pehuen Foundation to address the socio-economic needs of the Pehuenche community.

On 17 November 1995, while Downing was in the field conducting his Pehuen Foundation evaluation, a group of nearly four hundred Chilean citizens, including Pehuenche Indians, environmentalists and other concerned individuals, filed a complaint with the World Bank's Inspection Panel.⁶ This complaint was unrelated to Downing's investigation. The Chilean NGOs, led by GABB, alleged that the IFC had violated Bank rules on environmental assessment and its own environmental and social policies on dam and reservoir projects, Indigenous peoples, involuntary resettlement, management of cultural property, wildlands protection and management, and project supervision, as set forth in 'IFC: Environmental Analysis and Review of International Finance Corporation Projects'. They were unaware that Downing had discovered and was reporting the same conclusion from within the IFC. Both the Downing report and the Chilean complaint charged that IFC funds allocated to Pangué SA were appropriated and applied to the Ralco project, in clear violation of the loan agreement and the IFC's assurances that its loan funds would be used only for Pangué, not Ralco.

The World Bank Inspection Panel, in reviewing the November 1995 petition filed by GABB, rejected the complaint on the grounds that the IFC, while a member of the World Bank Group, sponsored private/public partnerships whose actions fell outside the Panel's jurisdiction. The Inspection Panel refused to investigate. Responding to the concerns of the Bank's executive directors, however, World Bank President James D. Wolfensohn promised an 'impartial, internal review' of the Pangué loan, and reiterated that 'the IFC has no plans to provide financial support for Ralco' (cited in Cockburn 1997).

In May 1996 the IFC received Downing's report. According to Downing's statements, on the day he submitted his report, IFC and ENDESA announced their new agreement to use the Foundation to mitigate the social impacts of Ralco dam construction—especially resettlement. Two weeks later IFC staff submitted a summary of Downing's report to ENDESA for their approval before releasing it to the Pehuenche in completion of the participatory evaluation. ENDESA rejected the summary and threatened to sue the IFC and Downing if they released the report to the Indians or the public (Downing, personal communication). The IFC agreed to suppress the Downing report and terminated the final phase of his investigation—a reporting requirement included in Downing's consultant contract that involved disseminating findings and recommendations to Pehuenche and the broader Chilean community.

At the same time that the IFC accepted and then censored the Downing report, in the spring of 1996, GABB commissioned a critique of the Ralco environmental impact statement (EIS). The resulting report prompted the Chilean environmental agency CONAMA to declare the Ralco environmental impact statement unsatisfactory. The GABB critique found that not only did the EIA omit an analysis of environmental impacts, it lacked details on resettlement plans for the more than five hundred Pehuenche who would be moved for the Ralco dam. Subsequent pressure from ENDESA and government officials prompted CONAMA to retract its finding.

Also in the spring of 1996, World Bank President James Wolfensohn contracted Jay Hair, President Emeritus of the National Wildlife Federation, to evaluate ENDESA's compliance with the IFC/ENDESA agreement (including environmental and social-impact mitigation plans) and review the findings of the still censored Downing report. Commissioning another independent evaluation provided a legitimate excuse to delay the release of the Downing report (a tactic that ultimately kept the Downing findings secret until the Ralco comment period had passed and development plans were approved). Wolfensohn's actions also served to deflect public criticisms over the failure of the World Bank Inspection Panel to investigate the environmental and social complaints associated with Pangué dam.

In February 1997, in response to the abundant evidence of project failures and political pressures emerging from all quarters, the IFC served notice to ENDESA that failure to meet the environmental conditions of their loan would result in a declaration of default. Rather than take action to comply with contracted obligations, ENDESA found a way to deflate the power of the World Bank in this affair by seeking financing elsewhere. In March 1997, the World Bank Group/IFC loan was repaid by ENDESA with funds secured from a German private development bank consortium (Dresdner Bank). This action reduced IFC participation to its 2.5 per cent equity in Pangué SA.

In March 1997, CONADI released a report stating that the Ralco project was illegal according to Chile's 1993 Indigenous Law. In response, Chilean President Frei fired CONADI's director, Mauricio Huenchulaf, a strong Pehuenche supporter. ENDESA then announced that the Pehuen Foundation would be the vehicle for Ralco resettlement.

Jay Hair submitted his report in April 1997. On 15 April 1997 participants at a workshop in

Gland, Switzerland, co-sponsored by the World Bank and the World Conservation Union (IUCN), discussed the findings of a review of fifty World Bank-funded dams, carried out by the Bank's semi-independent Operations Evaluation Department (OED). The need for a truly independent review of dams was identified, with workshop participants concluding that the primary operating assumption behind dam funding—the benefits of large dams 'far outweighed' their costs—was based on inadequate data and flawed methodology. The IUCN and World Bank agreed to fund an independent 'World Commission on Dams'.⁷

On 16 April 1997, Juan Pablo Orrego, director of GABB, was awarded the Goldman Environmental Prize, the equivalent of the Nobel Prize for environment protection. This award further increased international attention to the issues and concerns surrounding the hydroelectric development of the Bío-Bío.

On 25 April 1997, the IFC and ENDESA signed a private agreement to address outstanding environmental and social impacts resulting from IFC's investment in Pangué. Like the original agreement between IFC and ENDESA that established the Pehuen Foundation, agreement was negotiated without the awareness or involvement of the Pehuenche, and without disclosing the complete terms of the agreement to the affected people, the Chilean government or the public.

In June 1997, CONAMA approved the Ralco project environmental assessment with three conditions: increasing minimum river flows, increasing technical assistance to the Pehuenche from four to ten years through the Pehuen Foundation, and establishing a biological reserve to replace forest resources lost through dam construction and subsequent flooding.

Human Rights Complaints

In the months while Hair was producing his report, Downing continued to seek public dissemination of his findings. His efforts generated significant internal discussions but no satisfactory resolution. On 16 December 1996, after sending scores of memos to IFC management about the violations of IFC Indigenous and resettlement policy in the Pangué project and the need to ensure that the Pehuenche were opportunely informed, Downing filed the first human rights complaint ever made inside the World Bank Group (Downing 1996). He alleged that specific management and staff had intentionally and wilfully violated the human and civil rights of the Pehuenche.

Among the key elements of the Downing complaint is the concern that withholding key documents containing evidence of the failures of the Pehuen Foundation to meet the social, environmental and resettlement obligations of the Pangué Project violated the political and civil rights of the Pehuenche, especially given that this information was central to determining the validity of Ralco dam project plans, which relied on the Pehuen Foundation to implement social impact and resettlement programmes. Downing's complaint was assigned to the IFC senior vice-president and chief counsel for investigation. Two months later, executive vice-president Lindbak informed Downing that the complaint had been thoroughly investigated by his chief legal counsel and was without merit. Downing

responded with a second human rights complaint to the World Bank's ethics officer, alleging an IFC cover-up, noting that he, as the complainant, had never been interviewed during the thorough investigation. This complaint was similarly dismissed.⁸ One result of Downing's efforts to demand from the World Bank public disclosure of his findings was the Bank's threat of a lawsuit garnering Downing's assets, income and future salary if he disclosed the contents, findings and recommendations of his independent evaluation.

In July 1997, IFC staff released to its board and to the public a heavily redacted version of the Hair report, explaining: 'The remaining portions of the Report are not released based on the advice of external legal counsel' (Lee 1997: 3; Cockburn 1997). Portions totalling one-third of the document had been deleted, including much of the material describing social impact and possible human rights violations. And the report was edited in ways to distort Hair's findings. Large sections of still-censored Downing report on the social impacts had been copied, almost verbatim, into the Hair report and were redacted again. Enough did get through to indicate that, while Hair found that the IFC failed to comply with 80 per cent of its environmental and social directives, the IFC version of his report says: 'The IFC considers the Pangué Project complied with five out of eight policies and procedures applicable' (quoted in Crawford 1997).

In September 1997, CONADI publicly questioned the legitimacy of individual resettlement agreements between Pehuenche families and ENDESA, saying that ENDESA had omitted key information on the resettlement site's location and setting when gathering signatures. Nine Pehuenche lonkos reiterated their previous opposition to Ralco and their refusal to move. In fall 1997, the Chilean public had an opportunity to review and comment on the Ralco dam EIS, which proposed mitigating adverse social impacts through the Pehuen Foundation. In October 1997, six of the seven Pehuenche band leaders met to review the Ralco EIS and voted to reject resettlement.

In the fall of 1997, unable to get the IFC to release his findings, and concerned that the Ralco development decision would be finalized without key information, Downing formally filed his third human rights complaint, this time with the American Anthropological Association Committee for Human Rights (CfHR). In November 1997, the AAA invited Downing, Chilean sociologist Claudio Gonzalez Parra, and representatives from the IFC and World Bank to present their sides of this story to the AAA membership at an Open Forum, and to discuss the human rights complaints in greater detail at a meeting of the AAA Committee for Human Rights. In addition to the censorship complaint, the CfHR received testimony that in the building of the Pangué dam some Pehuenche families were forcibly evicted from their lands, receiving no resettlement assistance. Most notable was the experience of the Sotomayor Riquelme family: their home and property were flooded, resettlement assistance was not provided, and the Pehuenche family were struggling to survive while living in the animal shed on relatives' land.

The CfHR found the case to be within its area of concern, and voted to investigate the complaint. Over the next four months, through testimony, interviews and review of public reports, planning documents and various communications, the CfHR explored whether the IFC-sponsored development of the Pangué dam violated the rights of an Indigenous

community; whether censorship of the Downing report violated the rights of an independent evaluator to disseminate scientific findings in ways that reflect ethical, human subject and contractual obligations to an affected community; and whether this censorship violated the rights of that community to information concerning the terms and performance of organizations operating on their behalf.

The CfHR review was partially enhanced by unanticipated access to the censored Downing report. On 24 December 1997, Downing finally received notice from the IFC that it would not seek legal remedy if he copied and distributed his report, providing that he added a qualifying statement that the report was not an official IFC document. The IFC granted this permission to release Downing's research findings after the public review period for the Ralco project had expired. Thus, while the CfHR had the opportunity to review the Downing evaluation as part of their inquiry into human rights abuse, the Chilean people did not have access to this critical information when they most needed it. During the eighteen months that the IFC kept Downing's report secret, ENDESA negotiated resettlement packages with individual Pehuenche families, with the assurance that the Pehuen Foundation would implement the resettlement programme. These assurances were made despite ENDESA having on file the evidence provided by Downing that the Pehuen Foundation failed to meet the economic, social, cultural and environmental needs of the Pehuenche already affected by the Pangué dam, and lacked the technical means to mitigate adequately the impoverishment that would result from resettlement associated with further dam development.

By withholding this crucial documentation on the functional viability of the Pehuen Foundation from the people that the foundation was supposed to serve, the IFC and ENDESA prevented the Pehuenche from making an informed decision about their future.

On 8 January 1998, despite lack of approval from CONADI, ENDESA announced that it would complete agreements with contractors in February 1998 and begin bidding in March 1998 for two civil construction projects: a tunnel and the dam itself. Construction of Ralco dam required the displacement of more than 1,000 people, including 600 Pehuenche from the communities of Ralco-Lepoy and Quepuca-Ralco. ENDESA relocated some Pehuenche on farms in the snow-covered Andean highlands above the dam and others onto downstream settlements. Construction in the area has continued, as have civil protests.

AAA Committee for Human Rights Findings

In March 1998 the AAA's CfHR released the results of its inquiry in the form of a briefing paper (Johnston and Turner 1998). This report included quotations from statements and press releases issued by Carol Lee, vice-president and general counsel of the IFC, acknowledging that some of the IFC's decisions and actions were flawed; noting that the IFC should have taken a more systematic approach to analysing environmental and social impacts in the Pangué project before funding; acknowledging that the IFC should have handled the Indigenous peoples' issues more thoroughly, especially the project's indirect impacts on Indigenous people; and admitting that the lack of informed participation by Indigenous people has been a weakness of the project (IFC 1997b: 2, cited in Johnston and Turner 1998).

According to Lee, problems associated with the project should be understood as part of IFC's 'learning curve', and IFC shortcomings, while unfortunate, were 'consistent with the environmental procedures in place at the time' (Lee, statements to the CfHR and IFC 1997b: 4, cited in Johnston and Turner 1998). And, Lee argued, the project itself was improved as a result of IFC's involvement. IFC's contributions included requiring an environmental-impact statement, publicly disclosed in Chile; involvement of a wide variety of stakeholders in development planning and project implementation; establishment of an ecological station to monitor downstream effects; establishment of the Pehuen Foundation, an innovative mechanism for returning corporation profits to the community; and revision of the Foundation operating procedures to include some changes recommended by Downing (increasing Indigenous participation in the Foundation and including Pehuenche personnel in Foundation activities; development of a culturally appropriate information and participation programme; adopting the Pehuenche language as a working language of the Foundation). Finally, the IFC noted that the public controversies and experience have prompted a number of changes at IFC, including adding staff, creating an environmental review unit, and drafting proposed human and environmental policies and procedures.

However, while acknowledging that mistakes were made and people and their environment suffered as a result, the IFC did not acknowledge responsibility for providing meaningful remedy to the varied problems resulting from their past failures. The CfHR review concluded that the IFC refusal to release Downing's 1996 report not only violated professional ethics and contractual obligations of an individual scientist and his obligations to the 'human subjects' involved in his study, but violated the civil and political rights of an Indigenous nation.

The CfHR confirmed Downing's human rights allegations, noting that the IFC failure to release Downing's 1996 report to the Pehuenche in a culturally appropriate and timely manner meant that the Pehuenche were asked to sign resettlement agreements—exchanging ancestral land rights for land high in mountains, several hours distant from their homes—without an understanding of the effects of the Pangué dam development or the potential effects of the proposed Ralco dam. And, the Pehuenche were not informed about how the Pehuen Foundation is structured, what role it is supposed to play in funnelling income back into the Pehuenche community, or of their constitutionally protected right to participate in the decision to build a dam within their ancestral territory. The CfHR concluded that, in censoring Downing's evaluation findings, the IFC was able to protect the economic interests of its private partner, by knowingly withholding from the Pehuenche information that directly affected their constitutional rights, their social welfare, and their ability to recognize and address developing threats to their cultural survival.

Disseminating CfHR Findings to Encourage Meaningful Remedy

On 19 March 1998, AAA President Jane Hill submitted a copy of the CfHR report with a covering letter to World Bank President James Wolfensohn. In this letter Hill urged Wolfensohn to consider concrete actions that might provide remedy to those individuals, families and communities whose lives have been irreparably harmed by the IFC behaviour in

this case; and actions that might minimize and prevent the incidence of similar abuses in other development projects. She requested an apology to Dr Downing and the reinstatement of his working relationship with the World Bank; the adoption of a uniform and uniformly binding commitment to guarantee the human rights of all groups impacted by World Bank development projects; the institution of organizational changes that will prevent project-level implementation from ignoring the Bank Group's directives on human rights, resettlement and participation by local populations; and improvement in project information flow and accountability for human rights within the Bank Group's structure, and beyond the Bank to public groups and peoples affected by those projects.⁹

In an effort to educate its professional membership and the international human rights community about the details of this case, the AAA posted the CfHR briefing paper on its website, together with related correspondence between the AAA and the World Bank. Within a few weeks, a number of non-profit organizations created weblinks to the AAA report. The report was translated into Spanish by GABB.¹⁰ The AAA also worked to inform its membership and other professional organizations about the investigation findings and recommended actions. The CfHR report authors developed news articles for the *Anthropology Newsletter* and the American Academy for the Advancement of Science (Johnston and Turner 1998b) and published an abstracted version of the report in the journal *Identities* (Johnston and Turner 1999).

In April 1998, while attending the Summit of the Americas meeting in Chile, World Bank President James D. Wolfensohn apologized for the Bank's alleged participation in the Ralco hydroelectric project in southern Chile, noting that it will displace some 96 Indigenous Pehuenche families from their homes on the upper Bío-Bío river. Wolfensohn said to reporters covering the Summit that Ralco 'was not one of the high points in the bank's experience'.

On 30 September 1998, having received no response from the World Bank to the earlier letter and report, AAA President Hill sent a follow-up query. On 21 October 1998, World Bank President James D. Wolfensohn replied, noting that while 'there were serious shortcomings in the way that IFC handled the Pangué project' as a result of close scrutiny and review of Pangué and other projects, IFC has expanded its review staff and put into place 'new and more stringent environmental and social review procedure' and 'safeguard policies which follow closely those of the World Bank'.¹¹ Regarding the 'lack of progress made in responding to the March 1998 report' Wolfensohn suggested that it was 'important to recognize that IFC's capacity to influence outcomes of the projects it helps finance varies, depending on when in the project cycle intervention is needed', and that the responsibility for defining the issues addressed by client companies in private-sector projects 'must, by their scope and nature, be in the domain of the national government'. Thus, according to Wolfensohn, IFC in its current relationship to ENDESA has 'no leverage to address existing deficiencies in the social area'.¹²

In late 1999, recognizing the growing need for some mechanism to allow project-affected parties the opportunity to lodge complaints and resolve conflicts, the IFC and the Multilateral Investment Guarantee Agency (MIGA) established the Office of the Compliance

Advisor/Ombudsman. This office receives and explores the environmental and social concerns voiced by people affected by projects financed or insured by IFC and MIGA.¹³ In May 2000 the IFC held a public meeting introducing to the nongovernmental community their new ombudsman, Meg Taylor. CfHR member Linda Raben attended, and raised questions concerning the status of complaints associated with the Indigenous peoples involuntarily displaced by the IFC-financed Pangué dam, especially the status of the Sotomayor Riquelme family. IFC Ombudsman Meg Taylor indicated a lack of familiarity with the development project and its social complaints, and requested additional information, promising that her office would look into the matter.

In July 2000, with no evidence of action coming from IFC, the CfHR provided copies of its briefing paper and associated AAA–World Bank correspondence to Claudio Gonzalez Parra, the Chilean sociologist working with Pehuenche peoples displaced by the Pangué and Ralco dams on the Bío-Bío river in Chile. Gonzalez used these materials to support a formal request for intervention by the IFC ombudsman to examine, among other concerns, the case of involuntary displacement experienced by the Pehuenche Sotomayor Riquelme family. Also in July 2000 the CfHR provided a copy of its briefing paper ‘The Pehuenche: Human Rights, the Environment, and Hydrodevelopment on the Bío-Bío river, Chile’ to the World Commission on Dams (WCD) for consideration during its July 2000 meeting in South Africa. The WCD was considering using IFC-financed Pehuen Foundation as an example of an innovative model appropriate for public involvement in hydro-dam development. Review of the CfHR report allowed the WCD to consider some of the human and environmental problems emerging from the performance of the Pehuen Foundation, and this case study helped inform the WCD’s recommendations on social impact mitigation and equity participation in future dam development.

On 7 February 2001, the AAA and its CfHR sent a letter of concern to Meg Taylor, noting the lack of action on the July 2000 complaint filed by Gonzalez Parra on behalf of the Sotomayor Riquelme family. The 7 February 2001 letter also cited findings from the World Commission on Dams review of hydroelectric dam development on Chile’s Bío-Bío river, which noted a range of unresolved mitigation issues. With this letter, the AAA formally added its name to the 150 nongovernmental organizations from 39 countries who endorsed the WCD report and called for the World Bank and other public financial institutions and agencies involved in dam building to adopt WCD guidelines and provide reparations to affected communities.

The Impact of Human Rights Advocacy on the Ground and within the World Bank

In July 2001, AAA member Ted Downing reported to the CfHR that ENDESA (Spain) had arranged for the Pehuenche Sotomayor Riquelme family to receive 30 hectares and a house. No arrangements had been made to compensate them for pain and suffering associated with five years of involuntary displacement.

In Chile, the Ralco dam development proceeded, as did public protests over construction and forced resettlement. In March 2002 a massive protest took place in the upper Bío-Bío, with

Pehuenche families and their supporters blocking the road and inhibiting transport of a generator meant to power the hydroelectric plant at Ralco dam. Police response was violent, and fifty-five people—the majority of them Pehuenche—were arrested and charged in military courts for alleged attacks against the police.

On 1 July 2002, GABB filed a ‘Petition to address outstanding issues of IFC financed and partly owned Pangué/Ralco projects’ with the IFC office of the ombudsman. This petition requested the Ombudsman’s assistance in shaping concrete remedies to resolve outstanding issues arising out of IFC involvement in the Pangué/Ralco hydroelectric project in the Upper Bío-Bío. The petition was filed by GABB with the signed support of Pehuenche and other residents in the immediate and downstream regions of the Pangué and Ralco dams. The complaint was filed against the IFC as it financed Pangué/Ralco projects and was partial owner of Pangué. Shortly after receiving the complaint, the IFC quietly sold its remaining 2.5 per cent ownership of Pangué.¹⁴

On 2 September 2002 the IFC office of the ombudsman announced its intent to mount an investigation into unresolved issues surrounding its financing of Pangué dam and the subsequent construction of Ralco. The field mission was scheduled to begin on 18 November 2002, with a report due by the end of that year. The ombudsman’s office will present its findings to ENDESA, IFC and the complainants.

The previously isolated Bío-Bío region is now characterized by unchecked in-migration, land speculation and deforestation. The area has attracted a number of independent timber contractors who give Pehuenche landowners small sums of money, harvest their trees and leave, making the landowners unwittingly responsible for the violation of Chilean forestry laws, which require permits and reforestation. Fines have been levied, and a number of Pehuenche, unable to pay the steep fines, live in fear of losing their land rights or are currently threatened with eviction. As indicated in the previous chapter in this volume and evidenced in recent events, the Ralco dam development controversy continues as Pehuenche communities resist resettlement, protest dam development activities and related deforestation, and deal with the difficult outcomes of increasingly violent confrontations.

On 6 November 2002 the Chilean Anti-terrorist law 18.314 was invoked in relation to filing charges against Victor Ancalaf Lalaupé, a leader in the Mapuche activist community. Victor Ancalaf was charged with participating in a civil protest over Ralco construction that resulted in the explosion of an ENDESA subcontractor truck. The Pehuenche and the broader Mapuche community are increasingly concerned that their struggle to halt further development will be formally recast as a terrorist movement.¹⁵

In December 2002 the Organization of American States’ (OEA) Inter-American Human Rights Court in San José, Costa Rica, accepted an amicus brief filed by Chilean and international advocates on behalf of people affected by the Pangué and Ralco dams. On 12 December 2002 the OEA court ordered the Chilean government not to allow any further negotiations between ENDESA and Bío-Bío area residents ‘until the Inter-American Human Rights Court has adopted a definite position’. The Costa Rica-based court was to conduct an in-depth analysis and issue a final ruling in mid-February 2003. Also on 12 December 2002,

ENDESA announced that Nicolasa Quintraman, an elderly Pehuenche woman and one of the leaders in Ralco protests, had signed a 'promise of exchange' with ENDESA representatives exchanging 3.1 hectares for a 77-hectare plot of land near Santa Barbara and compensation of some US\$290,000. By mid-January 2003 other Pehuenche families had issued a statement indicating that they would not negotiate with ENDESA and would remain claimants in the OEC petition.

In May 2003, the Office of the Compliance Advisor/Ombudsman for the International Finance Corporation and Multilateral Investment Guarantee Agency released their report evaluating IFC involvement in the Pangué dam. It is a highly critical indictment of IFC actions with recommendations including: immediate publication of the Hair report; publication and translation of the Downing report to allow dissemination of his findings and communication of how the IFC has responded to his recommendations in a culturally appropriate manner; and acknowledgements that IFC obligations remain concerning the Pangué dam and the related Ralco dam projects. Most significantly, the report calls for a system-wide review of projects to determine whether similar existing obligations remain in other IFC partnership agreements, especially those involving equity investment (IFC 2003).

The Creation and Erosion of Human Rights Protection Mechanisms

This case illustrates the importance of local, national and international communication and advocacy in lodging human rights complaints and applying the sustained political pressure that may eventually produce some measure of remedy. It also illustrates the relative lack of power that World Bank consultants—let alone affected organizations and communities—have in communicating flaws in the decision-making process and encouraging remedy for problems resulting from an imposed vision of 'development'.

The fact that the Sotomayor Riquelme family received compensation for their losses is a hugely significant fact, in that it represents an example of World Bank action that acknowledges some measure of responsibility and produces some measure of remedy. Their compensation was the result of negotiations between IFC and ENDESA, which in turn were a direct response to the many years of advocacy efforts by Downing, Claudio Gonzales Parra, and the support provided by national and international organizations (GABB, International Rivers Network, and many others) and professional groups (such as the AAA Committee for Human Rights). Whether this singular measure of remedy is a reparations precedent that can be built upon remains to be seen.

This case reflects in many ways the social trajectory and experiences of large dam development projects around the world. The World Commission on Dams (WCD) thematic review, 'The Social Impact of Dam Development on Indigenous Peoples and Ethnic Minorities', found a number of commonalities. Dam development typically produced cultural alienation; resulted in the dispossession of land, resources and the means to sustain a self-sufficient way of life; involved a lack of consultation and meaningful participation in decision-making processes; involved a lack of, or inadequate, compensation; generated human rights abuses; failed to spread the benefits of development; and lowered living

standards. The WCD found that problems are rarely the simple result of failures of a single actor such as the state, but more typically involve failures of multiple actors including states, public and private financing institutions, and private organizations and entities engaged in planning, designing, building and implementing mitigation measures (including compensation and resettlement programmes), and managing dam development projects. This is certainly the case in the development of Pangue and Ralco dams.

The WCD, in its final report, called for reparations for dam-affected communities, noting that such remedy is warranted under existing international law, and that moral and legal culpability includes those parties who planned and authorized projects, as well as those who benefited from dam development projects—including states, funding institutions, contracting and construction companies, and energy and water system management companies. The WCD also noted that meaningful reparations require efforts to repair, make amends and compensate for damages. Given the nature of damages resulting from loss of land and a way of life, reparations imply remedies that:

- acknowledge and attempt to repair, make amends and compensate for past failures;
- address human environmental needs and reflect a commitment to restore human and environmental integrity;
- involve equitable decision-making processes;
- create or strengthen rights-protective mechanisms where claims can be made, damages assessed, culpability assigned, and remediative activities devised and implemented (see also Johnston 2000).

The conclusion that those who funded, built and operate the enterprises associated with large-scale development have some obligation to people whose lives and livelihoods were adversely affected along the way is, as things stand, an illusive ideal. Under prevailing conditions, the control of power in development decision-making and implementation lies in corporations and political institutions, rather than with project-affected peoples.

For a brief period of time (much of the 1990s), the international political climate and the operating culture of institutions and corporations increasingly supported endeavours that enhanced human rights and protected the environment (as evidenced by global treaties, social and environmental rights-protective policies, ethical codes of corporate conduct). However, while the nations of the world passed human rights and environment legislation, and organizations like the World Bank became increasingly transparent (see Cernea 1997), a major shift occurred in development financing. The financing of public utilities—water supply, electrical generation, and telecommunications networks—increasingly occurred via privatized processes. By the late 1990s the mode of operation evidenced by the IFC/ENDESA relationship—where public financing was used in private partnerships to fund development projects that first and foremost meet the interests and needs of the private partner—became the norm. What this case suggests is that international development financing through private partnerships require that institutions and agencies negotiate in secret, retain control over ‘sensitive’ human and environmental information, and thus have the means to circumvent rights-protective laws, policies and procedures presently contained in national governments and multinational lending agencies. This case demonstrates a culpability gap—one that is likely to widen in the years to come.16

Notes

1. Sources for the events reported in this timeline include the 1996 Downing report; letters and documents published on the Mapuche Foundation worldwide website (the Consejo Inter-regional Mapuche, Mapuche Inter-regional Council, website is www.bounce.to/cim). Also articles and supporting documents published on the International Rivers Network website (www.irn.org), including: *World Rivers Review*, August 1997; IRN Press Release of 30 July 1997; Letter from James Wolfensohn, World Bank President, to Andrea Durbin of Friends of the Earth, 2 June 1997; *World Rivers Review*, June 1997; *World Rivers Review*, April 1997; IRN/CIEL Press Release of 26 February 1997; *World Rivers Review*, June 1996; *World Rivers Review*, January 1996; *World Rivers Review*, Fourth Quarter 1994. Also, 'Bío-Bío Updates', nos 1–7, Grupo de Accion por el Bío-Bío of Chile (Action Group for the Bío-Bío–GABB), translated by the International Rivers Network and published on the IRN website. News on Ralco construction plans derived from translated press reports from *El Mercurio* and *El Diario*, provided by International Rivers Network, 22 January 1998; and subsequent updates posted on the Rehue Foundation website covering Mapuche and Pehuenche issues in the Alto Bío-Bío (www.xs4all.nl/~rehue).
2. The anthropologist Downing would later argue both within the IFC and in his complaint to the AAA that the formation of a secret agreement without the knowledge of the people, or their government, was a human rights violation.
3. CONADI is composed of representatives from the different governmental ministries and eight Indigenous representatives.
4. See the Bío-Bío campaign briefings, newsletters and reports on the IRN website, and broader analysis of the adverse impacts of large dam development in McCully 1996 (2002).
5. From the viewpoint of the IFC staff and ENDESA, this meant that there was no need to provide the assurances and planning that would have been necessary had the dam affected Indigenous peoples or involved involuntary resettlement (known as Operational Policies 4.20 and 4.30 at that time; see www.displacement.net for additional detail.)
6. The World Bank Inspection Panel is a fact-finding body that operates on behalf of the Board to investigate the performance of the Bank and not the borrower. The Inspection Panel was established by resolution of the Board in 1993; its stated purpose is to review available material and determine whether there is a serious Bank failure to observe its operational policies and procedures with respect to project design, appraisal and/or implementation. The Inspection Panel examines only those material adverse effects, alleged in the request, that have totally or partially resulted from serious Bank failure of compliance with its policies and procedures.
7. The World Commission on Dams was later established in May 1998. The WCD was an independent, international multi-stakeholder process involving twelve commissioners

representing science, industry, government, funding agencies, NGO advocates, and project-affected peoples. The WCD commissioned intensive reviews of large dam projects from around the world; thematic reviews of funding, development, and operational issues; and held a series of hearings soliciting testimony from tens of thousands of dam-displaced peoples. The Commission's final report, 'Dams and Development: A New Framework for Decision Making', was released in November 2000. Reports, thematic reviews, briefing papers and related materials can be found on the WCD website at www.dams.org.

8. Downing reports that in a conversation regarding the status of this second complaint, the ethics officer asked, 'What do you expect me to do with a complaint filed against my boss?' As a result of his whistle-blowing efforts, Downing was blacklisted by the World Bank Group, ending his thirteen years of consulting on social development issues.

9. Letters on the Pehuenche matter are posted at www.aaanet.org/committees/cfhr/pt-pehuenc.htm.

10. See, for example, the Lawlink website, Aboriginal Justice Advisory Committee page on the Mapuche People, www.lawlink.nsw.gov.au/ajac.nsf/pages/mapuche. For the Spanish translation, see www.derechos.org/nizkor/espana/doc/endesa/aaa.html.

11. Within the World Bank Group, the Pangué case became known as the private-sector Narmada—meaning that it was a watershed event in which a cluster of issues changed how the organization did business. In this case, it was how they approached social issues. Before Pangué, the IFC had almost no staff social scientists. Following Downing's complaint, they brought over anthropologist and resettlement specialist Dan Aronson from the IBRD for temporary assignment to build a social science core staff which now is reported to be about fifteen professionals.

12. Letter posted at www.aaanet.org/committees/cfhr/rptpehuenc.htm.

13. The role of the ombudsman includes: advising and assisting IFC and MIGA in dealing with sensitive or controversial projects, either at the request of the president or IFC's or MIGA's management or on the suggestion of the ombudsman; assisting in efforts to respond to complaints from external parties affected by IFC or MIGA projects; investigating complaints, as appropriate, in consultation with affected parties, project sponsors and IFC's or MIGA's management, with the goal of correcting project failures and achieving better results on the ground; communicating directly with complainants and affected parties, while respecting the confidentiality of sensitive business information; reporting on his or her findings and recommendations to the president, who will determine what actions are required; and making recommendations to the president regarding to what extent and in what form the findings will be disclosed to the IFC or MIGA Board of Directors, affected parties and the public. Abstracted from the Office of the Compliance Advisor/Ombudsman for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) webpage, www.ifc.org/cao/ImpactCAO.pdf. See also the Compliance Advisor/Ombudsman (CAO) article, 'Building Accountability From the Ground Up', *IFC Impact Magazine*, vol. 3, no. 4, Fall 1999.

14. This sale was confirmed in a 7 November 2002 conversation between Barbara Rose Johnston and the executive assistant to the IFC Director of Corporate Power.

15. Source: www.mapuche.nl/news/list, 15 November 2002.

16. For a detailed analysis of the human rights culpability gap within the World Bank, see Clark 2002. In this essay Clark not only criticizes the lack of effective mechanisms for airing complaints and resolving conflicts; she assess the impact of recent changes in World Bank social and environmental policy that suggest significant erosion of basic human rights and rights protective mechanisms. In addition to the critique, Clark outlines creative suggestions for developing remedial mechanisms.

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