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The Pehuenche, the World Bank Group and ENDESA S.A. violations of Human Rights in the Pangué and Ralco Dam Projects on the Bío-Bío River, Chile.

[Español](#)

Committee for Human Rights American Anthropological Association

[When the Committee for Human Rights takes up a specific case of human rights abuse, it may prepare a Briefing Document, written by one or more of its own members, or commissioned from a knowledgeable colleague. The briefing document is reviewed, perhaps edited, and adopted by the Committee as a whole and then, together with recommended actions, transmitted to the president of the American Anthropological Association. A Briefing Document is not an official document of the Association, but provides essential information supporting the action recommendations the Committee recommends to the Association president.]

Executive Summary

This report was prepared by the Committee for Human Rights of the AAA in response to a complaint from a member of the Association, Dr. Theodore Downing. Downing had served as consultant for the International Finance Corporation (IFC) in an evaluation of the efficacy of the Pehuen Foundation, an organization created to offset the socioeconomic impacts of an IFC-financed project, the Pangué Dam, the first of a interrelated pair of dams on the Bío-Bío River in southern Chile. This evaluation was prompted by complaints of abuses perpetrated against Pehuenche Indians through the Pehuen Foundation. Downing found numerous grave abuses, but the IFC, together with the private Chilean developer ENDESA, suppressed his report. This placed the anthropologist in the professionally untenable position of being unable to reveal to the Pehuenche information that directly affected their rights and social welfare and the developing threat to their cultural survival.

According to Downing, the IFC failure to release Downing's 1996 report to the Pehuenche in a culturally appropriate manner, as mandated in his original contract, 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 Pangué Dam development or the potential effects of the proposed Ralco Dam development. Furthermore, they were not informed about how the Pehuen Foundation is structured, what role it is supposed to play in funneling 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. These and other actions that have accompanied the construction of the Pangué Dam violated the human and constitutional rights of the Pehuenche. The plan to immediately begin constructing the second dam, Ralco, will, if no changes are made, result in a dramatically larger violation of Pehuenche human rights.

The present Report of the Committee for Human Rights presents the evidence this Committee's review and analysis of the evidence, leading to the twelve recommendations for action listed in Part IV of this Report. We propose that the American Anthropological Association, the International Finance Corporation, the World Bank Group, ENDESA, S.A., and others take these twelve actions on behalf of the Pehuenche, on behalf of the anthropological consultant in this case, and on behalf of all anthropologists. These actions address the roles that the IFC, the World Bank Group, ENDESA S.A., the Chilean Government, private banks and others played in this case, the remedies required to restore Pehuenche rights on the Bío-Bío, and the changes required to prevent these actors from setting in motion future development projects that will violate the human rights of other peoples in another places.

The Pehuenche, the World Bank Group and ENDESA S.A.

Report of the Committee for Human Rights

American Anthropological Association

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Part I: The Human Rights Complaint

In 1997 a member of the American Anthropological Association brought to the Association's Committee for Human Rights (CfHR) a complaint involving alleged violations of the rights of the Pehuenche

indigenous people, as well as his rights as an anthropological researcher and consultant. The Pehuenche were threatened with forcible resettlement as a result of the construction of a hydroelectric dam at Pangué, and a second dam at the nearby site of Ralco, both located in their ancestral territory on the Bío-Bío River in southern Chile. The complaint denounced actions by project funders, the private developers and the foundation established to mitigate the social impacts of dam development. These include the International Finance Corporation (IFC), a member of the World Bank Group which financed the dam project;¹ ENDESA (Empresa Nacional de Electricidad S.A.), a Chilean-based transnational corporation; Empresa Electrica Pangué S.A. (hereinafter Pangué S.A.), a limited liability subsidiary of ENDESA and the recipient of an IFC loan for the construction of the dams; and the Pehuen Foundation, set up by the latter in consultation with the IFC.

The IFC had retained the anthropologist, Dr. Theodore Downing, as a consultant to investigate and report on charges by Chilean environmental and indigenous support groups and journalists that ENDESA and a foundation it had set up, the Pehuen Foundation, had committed abuses against the Pehuenche Indians who lived in the area. In his complaint to the CfHR, Downing alleged that ENDESA violated Pehuenche human rights with the knowledge, acquiescence and, at least in some cases, active collaboration of IFC personnel. The IFC, he charged, had also violated his rights and professional obligations as an anthropologist by keeping secret his report on his investigation and threatening to sue him if he made it available to the Pehuenche themselves or revealed its contents to the public. These actions of ENDESA and the IFC, Downing asserted, violated his rights and professional obligations as an anthropologist whose participatory research methods required him to share his findings with the people he had studied.

Downing's primary complaint was that ENDESA and the IFC withheld his report from the Pehuenche and the Chilean public in an attempt to protect the business interests of their client. They did this because the Downing report contained unfavorable environmental and social information (including evidence of extensive deforestation, severe impacts on Pehuenche land rights and failure on the part of the Pehuen Foundation to meet its stated objectives). Withholding this report, Downing and others have argued, constituted a breach of individual and group civil and political rights. These breaches of rights were especially serious because ENDESA was trying to negotiate further resettlement of Pehuenche to enable it to build a second dam at Ralco on the Bío-Bío River. They charged that ENDESA and the IFC had agreed to restructure and expand Pehuen Foundation objectives to allow it to assist resettlement of more than 1000 people, one fifth of the total tribal population, from the Ralco area.

The specifics of Downing's complaint include the following contentions:

1. IFC and ENDESA violated the Pehuenches' human rights. They negotiated secret covenants on the future of an ethnic group without the knowledge or participation of the group or the government authorities responsible for indigenous affairs (the National Indigenous Development Commission, or CONADI). They implemented a program of resettlement that failed to incorporate the rights of indigenous peoples, and they failed to adequately compensate all affected peoples.

2. ENDESA used the Pehuen Foundation, an organization created as a result of those secretly negotiated agreements, to funnel funds allocated for Pangué-area communities into the community adjacent to Ralco, a planned second dam. This action showed that the IFC project was not for a stand-alone dam, as it had publicly claimed, but to set up the infrastructure to build a series of dams. Furthermore, Downing argued, Pangué appointed a non-Indian (who is also co-owner of a company involved in preparing the resettlement plan for the Ralco dam) as President of the Pehuen Foundation. This supports the contention that Pangué Dam and Ralco Dam are interlinked, rather than separate projects, and that their cumulative impacts should have been evaluated from the start.

3. The IFC and ENDESA failed to identify in their initial evaluations the impact of the Pangué Dam on indigenous peoples and the cumulative impacts of funding a project that lays the groundwork for subsequent dam development projects. This represents a deliberate attempt to avoid the World Bank's policy directives that protect indigenous rights for its projects.

4. The IFC's and ENDESA's selective distribution of Downing's report on a confidential basis to the nonindigenous representatives on the Pehuen Foundation board, while withholding it from the Pehuenche board members, constituted racial discrimination.

During the 18 months that the IFC kept Downing's report secret, ENDESA was negotiating resettlement packages with individual Pehuenche families, with the assurance that the Pehuen Foundation would implement the resettlement program. Yet, Downing's independent evaluation of the Pehuen Foundation demonstrated that the Foundation failed to meet the economic, social, cultural and environmental needs of the Pehuenche already affected by dam development on the Bío-Bío. It also sharply questioned the ability of the Foundation to mitigate the impoverishment that will result from resettlement associated with further dam development. Withholding this crucial documentation on the functional viability of the Pehuen Foundation from the people the foundation was supposed to serve, prevented the Pehuenche from making an informed decision about their future. The IFC failed to release his 1996 report to the Pehuenche in a culturally-appropriate manner, as mandated in his

original contract. This meant that ENDESA asked the Pehuenche to sign resettlement agreements (exchanging ancestral land rights for land high in mountains, several hours distant from their homes) without giving them an understanding of the effects of Pangué Dam development or the potential effects of the Ralco Dam development. Furthermore, they were not informed about the Pehuen Foundation's structure, its role in funneling income back into the Pehuenche community, or their constitutionally protected right to participate in the decision to build a dam within their ancestral territory.

CfHR's Declaration on Anthropology and Human Rights states in part:

As a professional organization of anthropologists, the AAA has long been and should continue to be concerned whenever human difference is made the basis for a denial of basic human rights, where "human" is understood in its full range of cultural, social, linguistic, psychological, and biological senses.

Anthropologists have often confronted cases of forcible resettlement of peoples with whom they have worked. A disproportionate share of the people resettled to make way for development projects are indigenous peoples, cultural minorities or marginal groups otherwise distinguished by collective cultural or social differences from dominant state populations and transnational elites. Singling out such groups on the basis of their cultural or ethnic differences for treatment that violates their rights constitutes the sort of abuse of human difference that the CfHR's Declaration on Anthropology and Human Rights addresses (Turner 1997).

Obstruction or denial of a people's ability to know, dispute or otherwise participate in plans to resettle them in a less viable environment clearly constitutes a denial of human rights. Such a complaint of discriminatory treatment on grounds of racial and cultural identity calls for the Association's Committee for Human Rights to investigate under the terms of its operating guidelines.

Pursuant to its charge from the Association, the Committee for Human Rights agreed to investigate the issues in Downing's complaint that pertain to the concerns of this Committee. The present report is the outcome of this investigation. The Committee consulted independent sources of information about the case, including World Bank staff members from both the IFC and the IBRD. As part of this effort, it held an open forum at the Association's Annual Meeting in November 1997, to which it invited representatives of the IFC, the IBRD, Chilean sociologist Claudio Gonzalez Parra, and Downing to speak and respond to questions from members of the Committee and the Association at large. Committee members also met and spoke extensively with these and other people connected with the case. No member of the Committee personally visited the Bío-Bío region. Thus, our analysis is based on

the information available in the publications and from the individuals listed above. Our findings follow.

Part II: The Pangué/Ralco Case

The Bío-Bío river runs through the heart of Pehuenche territory. The Pehuenche were the leading middlemen in the Chilean and Argentinean livestock trade across the pampas in the 18th and early 19th centuries, and the only indigenous group to retain a distinctive identity (Villalobos 1989; Mandrini 1991). They are described as the last Chilean indigenous group to live by traditional means on traditional lands.

In 1989, the newly elected Chilean government approved plans for hydrodevelopment of the Bío-Bío River by ENDESA, a private energy and resource-development corporation. Implementing this project would require invoking the Electrical Services Law (decreed during Pinochet's regime in 1982) to privatize Pehuenche reservation land. ENDESA asked the World Bank Group to provide funding for state-sanctioned, private development of six hydroelectric dams. The World Bank Group funds such private-sector development projects through its subsidiary, the International Finance Corporation (IFC).

In 1990 the IFC began appraising the Pangué Dam proposal, the first of the six proposed dams on the upper Bío-Bío River. In December 1992, the IFC board approved the decision to invest in the Pangué Dam project. In 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. The IFC also holds a 2.5% equity interest in Pangué S.A., the ENDESA subsidiary that built and operates Pangué and plans to construct a second dam (Ralco) on the Bío-Bío. The IFC brokered an additional US\$28 million from the Swedish Board for Industrial and Technical Cooperation (BITS), US\$14 million from the Norwegian Agency for Development Cooperation (NORAD) and US\$100 million from 10 European banks. The World Bank Group/IFC loan was bought out in March 1997, when ENDESA secured funds from a German private development-bank consortium (Dresdner Bank).

Consequently, the IFC participation now continues only in its 2.5% equity in Pangué S.A. The buyout followed a long period of national and international controversy over the social and environmental impacts of the development discussed below.

To facilitate the implementation of the hydroelectric project, in 1990 the Chilean government and ENDESA paved a road that runs eastward from the Pan American Highway into the very isolated, upper Bío-Bío escarpment. In 1991, an anthropological consultant from the Pangué project's environmental-assessment team found that Bío-Bío hydrodevelopment posed a threat to Pehuenche culture, which in his judgment was already declining as a result of an

"inevitable" process of the blending of culture. The environmental assessment judged the project to be a positive development that would facilitate the sale of Pehuenche forest and agricultural products and improve their depressed economic state. Other anticipated effects included the employment of 240 to 340 Pehuenche, increased training of the underqualified labor force and poverty abatement.

Predictions of potential negative impacts focused on the loss of culture (see Downing 1996:10-11).

Funding agencies, Chilean governmental agencies, non-governmental organizations and environmental activists raised concerns about the environmental impact of building the proposed series of six dams on the Bío-Bío. Dam opponents argued that Pangué was designed to work in conjunction with a large reservoir-dam upstream (Ralco), and that the government should consider environmental and social effects of building two dams before giving approval to build Pangué. Project plans included building a powerhouse between the Pangué and Ralco dam sites to regulate water flow and allow more efficient generation of power. IFC staff told the IFC board that Pangué was a single, stand-alone dam, and that ENDESA would use IFC funds only for this single dam (reiterated in Lee's 1997 statements to CfHR). The IFC's assurance that Pangué was a stand-alone dam calmed investor fears, and the project proceeded.

According to the IFC, "eight non-indigenous families (53 people) had to be resettled because of the building of the Pangué project" (IFC 1997b:3). According to the 1996 Downing report, and to statements that Theodore Downing and Chilean anthropologist Claudio Gonzalez Parra gave to the CfHR on November 22, 1997, three of the families who accepted resettlement packages were indigenous. Two were classified as non-Indian because interviewers spoke with male heads of households and overlooked the presence of Pehuenche wives. Also, Downing and Gonzalez noted, a ninth family refused resettlement and this Pehuenche family was forcibly evicted. Those who received a small cash settlement have found it insufficient to meet resettlement needs. Most are now destitute, as are the members of a Pehuenche band (12 to 14 additional families with homes on the Pangué dam shoreline), threatened with eviction from the edge of the Pangué reservoir. Of the 100 or so people directly affected by Pangué Dam, Downing and Gonzalez estimate that approximately 77% are indigenous people.

The Pehuenche: Ethnographic Context

The upper Bío-Bío, where the Pangué dam was built and the Ralco dam is planned, is home to the Pehuenche, an indigenous group that is culturally and linguistically Araucanian, like the Mapuche and other neighboring peoples (Hilger 1966:xv-xvi). Given the lack of

recent ethnographic work on the Pehuenche, **the following six paragraphs are abstracted from the Downing report**, whose ethnographic findings the World Bank has not disputed (see Downing 1996:11-15).

The Pehuenche are marginalized, indigent descendants of mounted warriors who held back the Spanish conquest for more than 200 years. They comprise a single ethnic group with a shared, distinctive identity. They are related to other Mapuche speakers in Chile, but there are notable dialectic differences. Within their midst, especially in Pitril, live poor non-Indians (*colonos*), many of whom share the Pehuenche worldview and occasionally intermarry with them. Until recently, conflict between Pehuenche and *colonos* was minimal. Ethnohistorians estimate that the tribe held 54 million hectares in the last century, including abundant lands in lower altitudes near the Laja. By 1929, territorial expansion by non-Indians and military defeat reduced the Pehuenche's holdings to seven reservations (*reducciones*). Today the Pehuenche gather forest products, cut timber and herd their cattle, sheep and goats on 30,000 hectares of temperate forests on the steep escarpments encircling the snowcapped Callaqui volcano.

The Pehuenche struggle for economic survival under harsh climatic and economic conditions, maintaining a close attachment to ancestral territories and nature. The Pehuenche are forest people. Their economy and culture rest upon unrestricted access to renewable natural resources: piñon nuts, pastures, wood for building and fuel, medicinal plants found in ecological micro-niches, etc. Little food is purchased. Their land-use requirements for basic subsistence extend beyond the boundaries of their territory as established by the dominant society and include parts of a recently created national park. Households employ a mix of survival strategies, including gathering of forest products, transhumance, weaving and some migrant labor. Most families participate in all these activities, but specialization occurs. Access to the forest protects those below the poverty line from becoming indigent and those below the indigence line from starvation. Wood cutting provides the principal source of income for at least 30% of the households.

Taking advantage of summer pastures, Pehuenche collect piñon (*Araucaria* pine nuts), which are their primary source of nourishment. They also feed the nuts to their animals and occasionally market them. Piñon nuts are not only a staple in their diet; the piñon tree and its fruits are important sacred elements of their culture. In a culture known worldwide for its cosmological sophistication, the piñon tree is at the center of their most sacred ceremonies. Pehuenche means "people of the piñon."

After forestry, animal husbandry plays an important role in Pehuenche subsistence, even though it does not represent a substantial part of the net community product. In the summer,

Pehuenche families and their animals migrate to the high Andean cordillera, between their winter camps (*invernadas*) on the mountainous slopes surrounding the Callaqui volcano and summer highland pastures (*veranadas*). This annual transhumance is marked by an elaborate ceremony, the Nguillatun, through which the Pehuenche believe they maintain the order of the universe. Each community has access to summer pastures. The soils are in poor condition and cannot support intensive grazing, yet people in Callaqui, Pitril and Quepuca-Ralco have family or individually owned herds. In 1991, the three communities had about 1400 sheep, 1600 goats, 950 cattle and 170 horses. They practice limited subsistence horticulture, planting wheat and potatoes in spring and summer. Outside traders and woodcutters often take advantage of Pehuenche marginality and isolation, further impoverishing them. Non-Indian traders pay Pehuenche only half the prevailing regional prices for their livestock and timber.

The Pehuenche have no institutional mechanisms through which to express their claims, except their traditional chiefs. Twenty years ago many of their leaders were executed without trial following the fall of President Allende.² Except when threatened by external force, the Pehuenche political organization is democratic, based on a consensual chief (*lonko*) who provides guidance and has limited ceremonial authority. Succession is ill-defined and transitions are gradual--as one *lonko's* support waxes, that of another wanes. The size of a chief's group varies, depending upon his acceptance as a leader by others and his ability to maintain effective communication over a large area. The sociopolitical organization is in constant flux, but not necessarily conflictive. Non-Indians can readily make mistakes by calling *lonkos* "authorities" and assigning them powers that their peers do not recognize. In attempts to deal with a loose, band-level organization as if it were an organization, non-Indians have sought out and often designated a single, internal "authority" to speak for the group. In contrast, respected Pehuenche leaders see themselves as representatives, not autocratic authorities.

The Pehuenche are unfamiliar with the dominant society's institutions and rules. Some are fugitives because of inadvertent violations of the deforestation law. Others are under court injunctions and enmeshed in battles over land tenure.³ Faced with multiple threats to their land, resources, economy and culture, the Pehuenche lack legal representation.⁴

Dam Development: Controversy, Advocacy and Inquiry

The Downing report describes rapid social, cultural, economic and environmental transformation. 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, have lost their land rights or are currently threatened with eviction for this and other reasons.

ENDESA continues building roads and related infrastructure in the area to prepare for building Ralco, the second of six planned dams on the Bío-Bío, in the heart of Pehuenche territory. Ralco is immediately upstream from Pangué and will be 155 meters high with a reservoir of 3400 hectares. At full capacity, Ralco is projected to generate 570 MW of electricity. From ENDESA's point of view, Ralco will slow siltation that impairs Pangué's performance and manage the flow into Pangué during periods of peak electricity demand.

Construction of Ralco dam will displace more than 1000 people, including 600 Pehuenche from the communities of Ralco-Lepoy and Quepuca-Ralco. ENDESA proposes to relocate the Pehuenche to farms in the snow-covered Andean highlands above the dam. While this area approximates the summer environment of the Pehuenche territory, it does not provide warm river lowlands for them to weather the cold winter months. According to Downing, some 1.5 meters of snow covered the resettlement area in July 1997 (midwinter in Chile), halting the planned visit of the provincial governor. Development of the region has stimulated a rapid increase in the non-indigenous population of the area and encouraged land speculation. There are plans for a ski resort. All of these factors may have a disintegrative effect on Pehuenche culture.

While the construction and operation of Ralco seems certain to earn big profits for ENDESA, the contribution to the Chilean national energy grid has been called into question. A study entitled "Efficient Use of Electricity in Chile (1994-2020),"⁵, noted that with nine thermal generating stations planned to be powered by natural gas piped from Argentina via one or two new pipelines, and eight smaller hydroelectric projects on tap, Ralco would provide energy far in excess of what Chile will need in the foreseeable future, and only at an unacceptably high social and environmental cost. This report prompted comments by Maria Isabel Gonzalez, executive secretary of the Chilean Department of Energy (CNE) in *La Nación* (a Santiago newspaper) that CNE is exploring alternatives to building Ralco (International Rivers Network Biobio River, Chile Campaign Information Package, 1996:29). An earlier article, predicting an energy glut on the Chilean market based on a 1993 preliminary version of the "Efficient Use" study, prompted articles in *The Economist* (November 4, 1995:71), and *The Globe and Mail Report on Business*: "Chile Facing an Electricity Glut," by Oxford Analytica (August 21, 1995).

Since 1989, various Pehuenche have participated in protests, sent

letters and provided testimony to the Chilean public, Chilean government and international fora (including the IFC board), expressing their opposition to the dam project and their desire to retain their ancestral lands. Pehuenche land rights are guaranteed by the Chilean Constitution, the 1993 Indigenous Peoples Law and the 1994 Environment Law. Under the Indigenous Peoples Law, the Pehuenche control their lands and have the right to refuse any deal offered them by ENDESA. ENDESA dismisses the relevance of this law, arguing that under the 1982 Energy Law, the nation's need for energy supersedes indigenous rights.⁶

In May 1995, The IFC hired anthropologist Theodore Downing as an outside consultant to conduct an interim evaluation of the Pehuen Foundation. This evaluation was to focus on the degree to which the Pehuen Foundation had met its original operating goals. (These did not include resettlement; thus, Downing was not asked to assess the efficacy of Pehuen Foundation-related resettlement efforts). Downing designed a participatory fieldwork strategy and negotiated a contract with IFC that included reporting the findings of his research to the Pehuenche in a culturally appropriate fashion. Downing traveled to Chile in October 1995 and met with some 60 stakeholders representing various sides of the dam development conflict. With their collaboration, he designed an evaluation strategy. The evaluation methodology included post-research workshops to present and discuss research findings to the various stakeholders, in culturally appropriate fora and in native languages. Downing presented this plan to the IFC, which accepted it. Downing completed his fieldwork in November and December 1995 and submitted his report to the IFC in May 1996.

On November 17, 1995, while Downing was in the field conducting his Pehuen Foundation evaluation, a group of nearly 400 Chilean citizens, including Pehuenche Indians, environmentalists and other concerned individuals, filed a complaint with the World Bank's Inspection Panel. They 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." In addition, the Chilean complaint charged that funds allocated to Pangué S.A., appropriated Pangué dam funds 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 Inspection Panel rejected the complaint on the grounds that the IFC was outside the Panel's jurisdiction. Responding to the concerns of the Bank's executive directors, however, Bank President James D. Wolfensohn promised an "impartial, internal review" of the Pangué loan. Wolfensohn also insisted that "the IFC has no plans to provide financial support for Ralco" (Cockburn 1997; Winthrop 1997).

In May 1996, as a result of the Chilean complaint, Wolfensohn appointed ecologist 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). Hair submitted his report in April 1997. In July 1997 IFC staff released (to its Board and to the public) a heavily censored version of the Hair report with the IFC's response. Portions totaling one-third of the document had been deleted, including much of the material describing social impact and possible human-rights violations. Dr. Hair wrote a letter of protest, noting:

There are numerous deletions that appear to have been made for no other reason than to avoid embarrassing the individuals who made certain decisions regarding the Pangué project or how it was supervised by IFC. This created a distorted picture of key events associated with the project.

Hair also said that the IFC's rewriting of his report was "misleading, inaccurate and self-serving." According to his findings, the IFC failed to comply with 80% of its environmental and social directives. The IFC's 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).

What Was in the Downing Report?

In reviewing Downing's report, CfHR found a mixed record of positive achievements and notable failures by the Pehuen Foundation, followed by Downing's detailed set of suggestions to restructure Foundation activities and organization in ways that would directly involve and benefit the Pehuenche people. Hair's original external audit excerpted and reproduced portions of the Downing report, including evidence of severe and uncontrolled deforestation and other environmental problems; documented failures to comply with environmental protection measures specified in the IFC/ENDESA agreement; suggestions that IFC staff misled the IFC board and public investors about IFC's knowledge of ENDESA plans to build a second dam (Ralco); charges that IFC failed to enforce World Bank Group policies and regulations in handling the Pangué loan.

Downing's external audit found that ENDESA, its subsidiary, Pangué S.A., and the Pehuen Foundation have interacted with Pehuenche individuals and families, offered resettlement packages in exchange for land titles, but withheld critical information from them, failed to provide information in culturally appropriate ways and did not structure opportunities for decision making at the tribal level.⁷ Much of the economic development activity of the Pehuen Foundation involved distributing goods and services to nearby Pehuenche communities (though not to all of the Pehuenche directly affected by Pangué dam).

Through the year 2001, Pangué S.A., agreed to provide the Pehuen Foundation the greater of (1) an annual amount equal to 0.30% of the company's net income or (2) the equivalent of 5780 Unidades de Fomento. After 2001, the company will provide the Foundation with an annual amount equal to 0.30% of the company's net income. As of 1996, the company had not registered profits; thus they provided the Foundation about US\$130,000 per year. IFC and Pangué negotiated the size of the payment without informing or consulting with the Pehuenche or doing any technical study of the costs of meeting the objectives. Downing found that between 1992 and 1996, residents of Callaqui and Quepuca-Ralco earned US\$250,000 of direct Foundation program benefits and more than US\$575,000 in project-related wages. The government spent another US\$1.6 million on the region.

Despite this influx of dollars, Downing's data suggest no substantial trend toward poverty alleviation in Pangué dam-affected communities (Callaqui, Pitril and Quepuca-Ralco). The company failed to incorporate four of the five critical elements of the IFC/Pangué agreement into the Foundation's statutes and operational agenda. Specifically, it failed to realize its commitments to:

make the Foundation a vehicle for sustainable development that will provide long-term benefits to the Pehuenche by promoting their socioeconomic development; prepare to mitigate effects of construction activities (with construction scheduled to end in 1997); preserve and reinforce cultural identity; make its best effort to arrange for the supply of electric power to the communities.

Furthermore, in discussing the deforestation that accompanied Pangué dam development, Downing noted that from 1988-1994, timber worth between \$US3 million and \$18 million had been stripped from Pehuenche community lands as a direct and indirect effect of building Pangué Dam.⁸ In short, Downing found that the small, poverty-stricken band of Pehuenche Indians is, in essence, subsidizing Chilean hydropower development at the cost of their economy, resources and culture. Chilean anthropologist Claudio Gonzalez Parra echoed Downing's findings in statements and supporting documents he provided to the CfHR in November 1997.

In his report and statements, Downing noted that the Pehuen Foundation was an innovative creation with laudable goals and objectives, and his review found some evidence of its positive effects on some families in some Pehuenche communities. However, although Pangué S.A., hired some Pehuenche, and three Pehuenche served on the Pehuen Foundation board, no Pehuenche was involved in efforts to set up the Foundation and establish a plan for effective and sustainable development. Nor were the Pehuenche involved in the April 1997 agreement between IFC and ENDESA to use the Foundation in resettling the much higher number of families affected by construction of Ralco dam.

Both the developer and the lender interpreted "informed participation" by the Pehuenche to mean simply ensuring the presence of Pangué-area *lonkos* at some Foundation board meetings. The *lonkos*, however, do not have authority formally recognized by the Pehuenche to make decisions binding on their groups. Furthermore, their fluid and dispersed leadership pattern makes it difficult to determine who speaks for the entire group. Political organization is based on kinship, and the Pehuenche community consists of highly individualistic groups of families and lineages (Downing 1996:13).

Efforts by the IFC, ENDESA, Pangué S.A., and the Pehuen Foundation to secure the Pehuenche's "informed participation" were fatally flawed from the start. According to Downing, Foundation staff were "culturally untrained, inexperienced in indigenous and rural development and included only Spanish speaking, non-Mapuche staff" (1996:43).

In addition, Downing's ethnographic work on Pehuenche sociopolitical structure suggests that IFC, ENDESA and the Pehuen Foundation made fundamentally erroneous assumptions concerning Pehuenche political structure. Though elected by their communities, Pehuenche representatives on the Foundation board can be replaced by a Pangué company appointee if they do not appear at a meeting. They can be removed from the board if its voice vote decides that they are an impediment (1996:16-17). However, as Downing noted, elected representatives lack reporting and feedback mechanisms to dispense information in their communities and seek community-wide input. From the Pehuenche perspective, representatives do not have the authority to speak on behalf of the community. Downing's report identified these problems and said that only a general assembly of the entire tribe would provide the culturally appropriate forum and result in authoritative decisions reflecting the tribe's will in reference to Ralco resettlement, Pehuen Foundation structure and activities and related decision-making processes. Claudio Gonzalez Parra echoed this point in a paper he submitted to support his statements to the CfHR:

We have been discussing and researching and offering opinions from a perspective that oftentimes leaves aside the views of the Pehuenche people of the Alto Bío-Bío, a practice that has a long history. The Pehuenche communities of the Alto Bío-Bío are their own actors with their own opinions, desires and specific wants in this respect. If we do not treat their views with due respect we will not make proper use of what the Pehuenches desire (1997:2-3).

Withholding the Downing Report

Why did the IFC not release the Downing Report to the Pehuenche (as promised in 1996), to the public in 1997 (as NGOs, CONADI and other Chilean government agencies demanded, and as IFC promised

Downing in his terms of employment), or even to the IFC board? According to the IFC, the Downing and Hair reports contained statements and conclusions that Pangué S.A., and its parent company ENDESA considered erroneous, defamatory or confidential:

In order to preserve its effectiveness in the private sector marketplace, IFC must respect business confidentiality and avoid disclosure that would materially harm the business and competitive interests of its clients (IFC 1997b:6).

To us it appears that the IFC withheld Downing's report because of the political volatility of the information and findings in it. The report contained evidence of extensive, unmitigated damage resulting from deforestation of Pehuenche community lands, multiple confirmed threats of involuntary relocation, practices by the Pehuen Foundation that constitute a dramatic assault on the customs and cultural traditions of the Pehuenches, and actions to cover up vital information that would permit the discussion of alternatives to lessen the present cultural, economic and environmental damage (Gonzalez Parra 1997:5).

The IFC's standard contract for consultants gives it exclusive control of the results of consultants' project evaluations for three years; consultants who sign this agreement legally lose the right to disclose or circulate the results of their research without the permission of the IFC during this time. To avoid the restrictive constraints of this standard arrangement, Downing negotiated a special provision in the "Terms of Reference" of his evaluation study of the Pehuen Foundation. This provision was to protect his right to share the results of his research both with the Pehuenche and the Chilean public:

The consultant is expected to assist the Foundation to present a summary of the findings to the three communities, ENDESA, Board of Directors, Pangué's Board of Directors, the IFC, and to a workshop of the private sector and indigenous people of Chile (International Finance Corporation, Terms of Reference for An Interim Evaluation of the Pehuen Foundation, July 26, 1995).

By refusing to hold the promised "workshop" or to distribute Downing's report to the Pehuenche representatives on the Pehuen Foundation board, the IFC and ENDESA thus violated the explicit guarantees of the "Terms of Reference" of Downing's consultancy agreement. They also violated the Pehuenche people's right to know and participate in plans for their resettlement. The IFC backed up its demands that Downing not divulge his findings to the Pehuenche or the public by threatening him with the loss of his consultancy job and possible legal action (statements by Downing and Carol Lee, CfHR Forum, November 20, 1997; Downing letter to Terence Turner, February 2, 1998). It thus sought to prevent Downing from fulfilling his professional and ethical obligations to the Pehuenche and the public.

In reviewing the documents and statements provided to the CfHR, we see that release of the Downing report would have damaged ENDESA's efforts to have Ralco approved. This in turn would have damaged the IFC's investment. 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 showed the report to the Indians or the public (Downing, personal communication).

The question of why the IFC decided to keep Downing's report secret and give in to ENDESA's demands must be understood in the broader context of roughly contemporary developments and controversies related to the Bío-Bío project.⁹ During the spring of 1996, at about the time the IFC was deciding to suppress the Downing report, GABB (Grupo de Acción por el Bío-Bío) commissioned a critique of the Ralco environmental impact statement (EIS). The resulting report prompted CONOMA (the Chilean environmental agency) to declare the Ralco EIS unsatisfactory. According to newspaper reports, pressure from ENDESA and government officials prompted CONOMA to retract its finding. Furthermore, in May 1996, CONADI (National Indigenous Development Commission) 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 Henchuaif, a strong Pehuenche supporter. ENDESA then announced that the Pehuen Foundation would be the vehicle for Ralco resettlement. This development apparently provoked World Bank President James Wolfensohn to appoint Jay Hair to audit the Pangué dam project's performance and effects. Later the Bank released Hair's report in heavily censored and altered form, as described above.

In September 1996, the Pangué Dam was completed and its reservoir filled. In February 1997, the IFC threatened to declare ENDESA in default for failing to meet the environmental conditions of the Pangué agreement. In March 1997, ENDESA refinanced its loan through the Dresdner Bank of Germany, thus effectively removing the Bío-Bío project from IFC's interference (Aslam 1998). The Dresdner Bank deal reduced IFC's financial involvement in the project to its 2.5% equity interest in Pangué S.A.

On April 25, 1997, less than a month after Jay Hair completed his review and submitted his report, 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, the April 25, 1997, 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, CONOMA approved the Ralco project environmental assessment but recommended that Pangué propose an alternative resettlement site. CONOMA suggested that the currently designated location, which the President of Pangué S.A., happened to own, be designated a biosphere reserve. In July 1997, the IFC released its heavily censored version of Hair's report, explaining, "The remaining portions of the Report are not released based on the advice of external legal counsel" (Lee 1997:3; Cockburn 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.

Throughout this 18-month period, the IFC refused to release the Downing report. On December 24, 1997, Downing finally received notice from the IFC that it would not seek legal remedy if he released copies of his report, providing that he add a qualifying statement that the report is not an official IFC document. IFC granted this permission to release Downing's research findings well after the public review period for the Ralco project had expired. On January 8, 1998, despite lack of approval from CONADI (the agency that must, under Chilean law, approve privatization of Indian land), 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. The company planned to sign contracts for generating equipment in March. Heavy construction work on Ralco dam is now scheduled to begin in August or September 1998.

Throughout 1996 and 1997, ENDESA was involved in intense negotiations with the Chilean government and the Pehuenche over resettlement planning for Ralco. Resettlement plans hinged on use of the Pehuen Foundation as a resettlement agency, and the Downing report documented its flaws, failures and institutional conflicts of interest. IFC staffers were obviously aware of and involved in these resettlement planning efforts; Downing and others occasionally spotted them looking over the Ralco area with ENDESA personnel (Downing statements, 1997). We infer that the IFC censored Hair's report and withheld the Downing report to help ENDESA's plans succeed.

While IFC staff may have justified this as necessary to avoid threatened legal action against them by ENDESA, it nevertheless

contributed to a violation of Pehuenche rights. The IFC concealed critical information about the adverse social and environmental impacts of Pangué dam construction and the Foundation's failure to meet four of its five mandated sustainable-development goals, until it was too late to stop the Ralco project. As the direct result of these actions, approximately 20% of the Pehuenche population now faces involuntary resettlement to summer pasture lands where winter snows severely inhibit travel and subsistence activities.

IFC Response to Critical Evaluations of the Social and Environmental Problems Associated with the Pangué and Ralco Dam Projects.

Both the IFC's response to Hair's report and statements at the CfHR forum by Carol Lee, Vice-President and General Counsel of the IFC, acknowledged that some of IFC's decisions and actions were flawed. The IFC has continued to insist, however, that the project itself was improved as a result of IFC's involvement. IFC contributions included:

- requiring an environmental-impact statement, publicly disclosed in Chile;
- involvement of a wide variety of stakeholders;
- establishment of an ecological station to monitor downstream effects;
- establishment of the Pehuen Foundation, an innovative mechanism for returning corporation profits to the community.

The IFC acknowledges that it should have taken a more systematic approach to analyzing environmental and social impacts in the Pangué project before funding. It says it should have handled the indigenous peoples' issues more thoroughly, especially the project's indirect impacts on indigenous people.

It admits that lack of informed participation by indigenous people has been a weakness of the project (IFC 1997b:2). Lee said that problems associated with the project should be understood as part of IFC's "learning curve"; IFC shortcomings, while unfortunate, were "consistent with the environmental procedures in place at the time" (Lee, statements and IFC 1997b:4). These 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.

As evidence of progressive change in the Pehuen Foundation, IFC staff distributed to the CfHR minutes from a May 28, 1997, meeting of the Pehuen Foundation board. The Pehuen Foundation's new operating principles integrate changes recommended in Downing's report, including measures to increase indigenous participation in the Foundation, such as the design of a culturally appropriate information and participation program; adopting the Pehuenche

language as a working language of the Foundation; and including Pehuenche personnel in Foundation activities. Yet the IFC continued to keep secret the record of its meeting with non-indigenous Pehuen board members at about the time they were discussing plans for the Pehuenche's mass resettlement in the Ralco area.

Human Rights Questions.

The performance of the IFC and ENDESA raises several hard questions:

1. In examining the context in which ENDESA first secured funds to support Pangué dam construction, we found that IFC staff failed to incorporate information from existing project reports that identified affected peoples as members of an indigenous group. They also failed to involve the population as informed participants. When problems became evident, they failed to take adequate action to remedy them, or to hold anyone accountable. These actions denied the Pehuenche the protections supposedly guaranteed by policies and directives. In statements to the CfHR, IFC Vice-President Carol Lee acknowledged that "mistakes were made" in presenting the Pangué project proposal to the IFC board. Specifically IFC staff failed to identify indigenous peoples and apply World Bank policies relating to indigenous peoples. However, the dam has been built, and the IFC loan has been repaid. Other than its 2.5-percent ownership of Pangué, the IFC no longer has a role in the Chilean project. **Who is now responsible for addressing the social, economic, political and cultural survival problems the Pehuenche face--problems caused by ineffective planning and flawed decision making in building the Pangué (and now the Ralco) dam?**

2. Downing's report reveals the ways in which the Pehuen Foundation evolved from a worthy and innovative approach for reinvesting private corporate profit back into host communities, to an operational reality which failed to meet four of the five IFC/Pangué agreement objectives. Human and environmental conditions have significantly worsened, and the Foundation has become a vehicle for Ralco resettlement rather than meaningful and sustainable redevelopment. These failures stem partly from the IFC's failure to provide for the Pehuenche's informed participation and lack of structural opportunity for such participation. The Foundation itself was established as a result of secret negotiations between IFC and ENDESA on ways to mitigate the social impacts of Pangué dam, and it was restructured in April, 1997, to allow for Pehuenche resettlement as a result of Ralco Dam. It is evident that the lack of informed participation contributed crucially to the Foundation's subsequent failures to meet mandated goals. **Does negotiation of secret agreements about the future of an ethnic group, without the knowledge or participation of the group or the government authorities responsible for indigenous affairs (CONADI), constitute a violation of human rights? If so, should the agencies**

under whose aegis the violations occurred be responsible for taking remedial action? Should they also make material restitution to the victims of their acts, who may now be expelled from their land and deported ("resettled") to an unsuitable area where they will probably find it difficult to survive?

3. The Pehuen Foundation is the proposed vehicle for mitigating the social impacts of Ralco, the second dam. Despite receiving requests from the Pehuenche, the Mapuche, the Chilean government, academics and NGOs for access to the interim evaluation report, the IFC decided to withhold the report from distribution until after completion of the review period for the Ralco Dam environmental assessment. This affected the Pehuenche's ability to participate in decision-making processes in an informed and equitable manner. **Does the IFC's censorship of key information bearing on their livelihood, lands, forests and cultural future constitute a violation of the Pehuenche's human rights? What recourse do people like the Pehuenche have when project planning, funding, oversight and implementation happen in ways that protect private business interests first and foremost while (wittingly or not) creating situations where human rights are abused?**

4. In its July 1997 statement, the IFC argues, "Pangué is a project with limited environmental and social impacts" (1997b:15). Hair's and Downing's reports indicate that IFC and ENDESA staff manipulated Pangué project language to suggest the project was a stand-alone dam, rather than part of a larger, two-dam project. IFC's characterization of Pangué as a stand-alone dam justified infrastructure development (roads, social-impact mechanisms like the Pehuen Foundation) essential to the planned series of dams on the Bío-Bío. Downing's evaluation presented evidence that ENDESA used IFC loan funds earmarked for Pangué (for social-impact mitigation through the Pehuen Foundation) to support Ralco development. These are violations of the IFC/ENDESA loan agreement, at least as publicly disclosed, as well as World Bank directives. But the loan has been sold off, IFC has only a 2.5% interest in Pangué, and no financial involvement in Ralco. **Who is responsible for addressing the social, economic, political and cultural survival problems that the Pehuenche will face as a result of the deceptive manipulations that accompanied the planning and construction of Ralco dam?**

5. Responding to intense demands from Chilean citizens, Pehuenche and Mapuche tribal members, NGOs and governmental organizations, the World Bank authorized an independent audit of the Pangué project, and the IFC hired Jay Hair and Theodore Downing to conduct environmental and social-impact audits. The resulting reports were highly critical of IFC, ENDESA, Pangué and the Pehuen Foundation. The IFC heavily censored Hair's report (cutting references to Downing's conclusions) and completely censored the Downing report until December 24, 1997. Restricting the flow of information during a critical decision-making process,

and especially withholding information from the affected peoples, effectively prevented the Pehuenche from making decisions in an informed fashion. **Who is responsible for repairing the damage to Pehuenche rights to self-determination?**

6. Finally, as Claudio Gonzalez Parra reminds us, for the Pehuenche the main question is:

whether the Pehuenche people are to benefit from the fruits of the project, or will subsidize the hydroelectric development of Chile at the sacrifice of its economy, its resources and its culture? (1997:7).

Part III: Privatization, Institutional Irresponsibility and Violations of Human Rights in World Bank-funded Development Projects: Wider Implications of the Panguel-Ralco Case

We left unanswered the questions with which Part II of this report closes, not merely as a rhetorical device, but in recognition that the World Bank's institutional structure and mode of operation effectively render them unanswerable. As the account of the IFC's performance in Part II has shown, an intricate hierarchy of indeterminacy and structural ambiguity extends from IFC operatives at specific project sites: through confidential covenants with private borrowers, through the IFC's alleged inability to enforce conformity to those covenants by the borrowers once they have the money in hand, through IFC directors' lack of knowledge of specific acts and undertakings of IFC project staff, to the quasi-autonomy of each institution of the World Bank Group, up to the President of the Bank as a whole. This structural indeterminacy provides few if any perches for the proverbial chickens to come home to roost, where questions of moral or legal responsibility for project abuses and failures are concerned. It has only been intensified by the use of that institutional framework to expedite the privatization of publicly funded development through the IFC and private corporations like ENDESA.

The loose organizational links between the members of the World Bank Group constitute a system of structural ambiguity that allows it to accommodate the contradiction between its increasing commitment to economic privatization and its continuing public commitment to environmental, social and human-rights safeguards. Thus, the IFC colludes in, or passively tolerates, practices by the private corporate recipients of its loans that violate the IBRD's environmental and social covenants. At the same time it denies institutional responsibility for all untoward human and environmental consequences resulting from such practices. A case in point is the failure of either the IFC or anyone else in the World Bank, up to and including President Wolfensohn, to take personal responsibility for

withholding Downing's report from the Pehuenche--grossly violating their basic human rights and the Bank's own directives requiring indigenous peoples' informed participation in projects affecting them.

Further, we find unconvincing the World Bank's claim that the IFC, though part of the "Bank family," is outside the bank's control and the reach of its standards on indigenous participation in development projects that affect them. It should not take a serious human rights violation by the IFC to suggest to the Bank that it impose Bank-wide standards. The Bank set up the relationship, and it has to own up to the consequences. Nonetheless, in reply to Downing's charges that the IFC bore some responsibility for this action, Jannik Lindbaek, Executive Vice-President of the IFC, insisted that the IFC bears no responsibility because it exercises no control over the actions of the Pehuen Foundation, which is now under the exclusive control of Pangué S.A. As Robert Winthrop comments on this contention:

The IFC's position seems particularly dubious, since establishing a foundation to benefit the Pehuenche [the Pehuen Foundation] formed a key element of IFC's conditions for financing the Pangué hydro-development (Winthrop 1997:36).

As for Lindbaek's protestations that IFC was "looking for ways to present the substance of the evaluation to the Pehuenche," while keeping the text of the report itself secret from them, Winthrop remarks,

Far from honoring the plain language of [World Bank Operational Directive 4.20, calling for keeping indigenous people apprised of project plans so they can be "informed participants" in "decision making"], it is difficult to see in this history of the IFC's relationship with the Pehuenche anything but the exercise of public relations and exculpatory legalisms (Winthrop 1997:36).

Responsibility does not appear to stop with Lindbaek. According to columnist Alexander Cockburn, after initially calling for Downing and Hair to prepare their critical reports, Bank President Wolfensohn subsequently "presided over interminable deception and cover-up, starting with the suppression of [both] reports" (1997:9).

Institutional Irresponsibility and the Pressure to Lend.

In assessing the nature and extent of institutional responsibility for the abuses in the Pangué-Ralco affair, we must take into account the World Bank's attempts to prevent such abuses. Over the past several decades, gigantic projects have devastated the environment and populations of vast areas, including many indigenous or tribal peoples. Deeply flawed initiatives, like the World Bank's Polonoroeste project in the Brazilian Amazon and its Sardar Sarovar Dam project in India, have led to mounting criticism and political

pressure on the governments and multilateral banking institutions that plan, instigate and/or finance most major development projects (Rich 1994a:25-48; Schwartzman 1985). Some governments and multilateral institutions involved in development have attempted to respond to criticism by adopting guidelines or covenants to minimize damage to the social arrangements and environments of populations affected by their projects. Some, like the World Bank, have hired anthropologists and other social scientists as consultants or permanent staff to help formulate guidelines for socially and environmentally responsible development practices and to evaluate the social and cultural effects of projects.

What IFC Counsel Carol Lee called "mistakes" and "shortcomings in IFC performance" appear in a different light in the context of the World Bank's management of dam projects and other large development schemes requiring resettlement of local populations during the past 25 years. Pangué-Ralco's main "shortcomings" have occurred all too frequently in previous projects.

Local populations, in many cases comprising indigenous peoples, have usually not been informed in a full or timely manner of the plans for their displacement. They have not had opportunities to participate effectively in the planning process. Project planners have either bypassed their leaders and political processes or given them only token roles, while ignoring their protests. The schedule of removal and resettlement has usually accorded with the pace of project construction rather than the needs of the people.

Resettlement has almost invariably been to poorer areas, involving substantial lowering of living standards for the displaced people.

Compensation (when paid at all, often after long delays) has almost invariably been too little to offset the real costs to the displaced people (Rich 1994a).

The Bank has repeatedly recognized and criticized such "mistakes" in internal Bank reviews and reports. These have frequently led to the drafting of new policies and the hiring of more anthropologists and other expert advisory staff, who in turn have prepared more forceful and specific operational directives, such as the ones on indigenous peoples and resettlement we referred to earlier. Many have been flouted by projects like Pangué-Ralco. In sum, the Bank's "learning curve" has had a cyclically recursive configuration: the Bank has had to "learn" the same lessons and draw the same conclusions again and again, but the process does not prevent the recurrence of the problems. Indeed, the IFC's latest Web-page posting of a new and improved policy can be seen as an example of this process. The Bank has yet to demonstrate the ability to put enough teeth into its own directives and monitoring procedures to make them reliably enforceable. This reluctance clearly stems from a deeper unwillingness to impose serious impediments to the overriding pressure to lend. As two critical analysts of the Bank's performance

have pointed out:

Clearly, such institutional problems will not be solved either by an Inspection Panel or by yet another review of the Bank's record on evictions and resettlement. Indeed, the attention that previous reviews drew to the problems surrounding resettlement quickly waned. The lessons are clear: the World Bank will not change without significant and sustained pressure from the public, concerned groups and parliamentarians. Without such pressure, the Bank will continue to fund projects which displace the poor into even greater poverty, often for projects which are economic as well as social disasters (Wilks and Hildyard 1994:229).

Bank officials, whether from the IBRD or IFC, can no longer shrug off responsibility for chronically repeated violations of human rights and their own social and environmental standards as simple "mistakes" or "learning experiences." The IFC and the Bank Group as a whole must bear responsibility for failure to correct and prevent repetition of problems, like those in Pangué-Ralco, that both the Bank and its critics have long recognized. In the present case the Bank must recognize and take responsibility for the damage the IFC's project has inflicted on the Pehuenche, as well as the far greater damage that mass deportation from Ralco will cause. The Bank must call publicly for a halt to the resettlement, at least until adequate and comparable land can be found, and the Pehuenche themselves arrive at a truly informed and democratic acceptance of the plan. It must also make full restitution to the people whose lives it has already disrupted and impoverished. In short, the Bank and the IFC cannot chalk up Pangué and Ralco to a "learning experience" and walk away from the human rights abuse they have precipitated.

Hiring anthropologists and adopting environmental and social covenants represent welcome and appropriate responses to criticism and political opposition. But they may also be seen as defensive measures, to which the institutions under criticism can point as evidence of their good intentions and commitment to environmental and human rights values. For major multilateral institutions like the World Bank, dependent on the political and financial support of democratic governments responsive to domestic and international public opinion, these measures have become essential political conditions of existence.

Bank officials from President Wolfensohn down are wont to cite the Bank's numerous operational directives when responding to criticisms of Bank performance. Over the years, the Bank has adopted these directives on topics such as resettlement and the special problems of indigenous peoples, in efforts to prevent the recurrence of abuses perpetrated in previous Bank-funded projects. In fact, the Bank's policy on indigenous peoples is "strong." Its Operational Directive 4.20, promulgated in 1991, spells out in enlightened and detailed terms the importance of ensuring indigenous peoples' full and informed participation in implementing

development projects that impinge upon them, protecting their lands, etc. (World Bank 1991). The problem, however, is not with the letter of the Bank's policy directives, but with the way its projects subsequently proceed to violate them. ENDESA and the IFC violated virtually all the main provisions of the operational directive on indigenous peoples in the Pangu-Ralco project, a project that began after it and other relevant operational directives had been in effect for a half-dozen years. The Pangu-Ralco project also blatantly violates the World Bank's directive on resettlement, which has been on the books since the early 1980s.

We believe that the reasons for this chronic divergence between preaching and practice lie partly in the supremacy of the pressure to lend over other determinants of Bank policy and performance (Wilks and Hildyard 1994:228), and partly in the institutional structure of the Bank, which may be seen as the material manifestation of this overriding imperative. As a leaked report of the 1992 Bank Task Force on Portfolio Management admitted, "The Bank's pervasive preoccupation with new lending" takes precedence over all other considerations, with the result that "evidence of gross non-compliance [with Bank directives and covenants] is overwhelming" (World Bank 1992:ii,iii,8; cited in Wilks and Hildyard 1994:228).

In the instances of breaches of rights, environmental values and contractual obligations in this case, the IFC consistently chose the course of action that would permit the project to go ahead, leaving human rights and social and environmental costs negotiable, postponable or dispensable.

The IFC's behavior in this and other instances thus exemplifies Johnston's notion of a "project culture." In their analysis of water-development and management conflicts, Johnston and Donahue observed, the initial funding of projects creates momentum in itself, and despite changing times and needs, efforts to "fix" nature or protect human investment may . . . continue to be funded for [political] reasons . . . rather than the actual viability of the project. Efforts to change or transform the focus of projects continually confront the entrenched "project culture" (1998:4).

This project culture appears to be omnipresent in the IFC and elsewhere in the World Bank Group (Payer 1982; Rich 1994b; Wilks and Hildyard 1994).

The juxtaposition between the World Bank Group's public commitments to socially and environmentally enlightened principles and policies, and the IFC's funding of private contractors to carry out projects that violate these standards, makes the Bank Group as a whole vulnerable to charges of institutional hypocrisy. From an organizational standpoint, it would be hard to imagine a more effective institutional design for having one's cake of public social and environmental responsibility and eating it too, albeit in secret.

One of the most significant moments in the CfHR's public forum on the Pangué case came when Theodore Downing and others directly asked officials from the IFC and the IBRD (International Bank of Reconstruction and Development, the main member of the World Bank Group) if they thought the IFC or any part of the World Bank Group bore any responsibility for making restitution to the Pehuenche Indians for any of the damage that had been, or was about to be, done to them as a result of the project it had funded. The Vice-President of the IFC and other members of the IFC and IBRD staffs responded, both publicly at the forum and privately to members of the CfHR, that they acknowledged and deplored the serious "mistakes" made and wrongs committed against the Pehuenche, mostly by ENDESA personnel but also through IFC involvement and policy decisions. When the question of responsibility was raised, however, no one answered. The anthropologist then rephrased the question: had anyone in the Bank thought about anything that it might now do to help the Pehuenche deal with some of the damage? Again there was silence.

Privatization

The damage to the environment, society and human rights inflicted by the Pangué-Ralco project has many precedents in World Bank-financed, grand-scale development projects requiring the removal and resettlement of local populations. Hydroelectric dams have regularly been among the worst offenders in all three categories. In certain respects, however, Pangué-Ralco exemplifies tendencies that, although not new, are assuming ever-greater importance in the financing of development by multilateral lending institutions and other public agencies. The specific abuses in the Pangué-Ralco case must be understood in the context of chronic structural and policy problems of the Bank Group in general and the IFC in particular.

Within the World Bank, the IFC is the point of convergence of these chronic institutional problems--problems that result from the recently intensified emphasis on privatization in development financing associated with economic globalization, and accompanying pressures for the abolition of public control over economic activity.

The IFC's performance in Pangué-Ralco cannot be fully understood simply in terms of the replication of generic Bank patterns. While the abuses that arose and were fostered within the context of the Pangué-Ralco Project share general properties with IBRD public-sector projects, they exemplify global structural problems. Funding of development projects through direct lending to private corporations, rather than to governments, accentuates these problems. No review of the problems of the Pangué-Ralco project and their wider implications would be complete without examining this aspect of the case. This is particularly so since the privatization of development (in the form of direct lending or contracting by

public institutions such as government agencies and multilateral development banks to private corporations) is becoming more widespread.

Privatization means the transference of social responsibilities, political functions and financial resources from the public to the private corporate sector. It accompanies the trend towards the globalization of production and markets and the weakening of state controls over economic activity (Greider 1997:27-53, 382-383; Korten 1995:70-80, 91-93; Mittelman 1996:231; Sassen 1996a:23-24, 56; 1996b:40-42). In the context of transnational lending for development, privatization means that the public institution lends directly to a private corporation or consortium, which then becomes responsible for carrying out the project. Such arrangements pose dangers that are not different in kind from those that arise in development projects funded and carried out by public agencies; they are intensified forms of the same problems. Privatization exacerbates the tendency for development projects to operate beyond effective public scrutiny and political control, not to mention the input, influence and criticism of anthropological consultants. Both as a theoretical principle and a practical tendency, privatization is thus at cross purposes with the enforcement of effective restraints or controls by publicly funded institutions or democratic political processes.¹⁰ For all of these reasons, the tendency toward privatization in development is therefore of special concern to anthropologists and their professional association.

Private corporations are generally less susceptible to public criticism and influence than public institutions, lacking as they do the political controls and legal obligations that render the latter publicly accountable for their actions. This is not to overlook the legal regulations to which corporations are subject, but rather to point out that they tend, for practical purposes, to be less accessible to public control or political influence.¹¹ Private corporations rarely subscribe to social or environmental covenants on the lines of publicly funded multilateral development banks like the World Bank. They almost invariably lack general policy covenants protecting the human rights and environmental quality of the peoples and regions their operations affect. They are also much less likely than governmental or international agencies to employ anthropological consultants or other social scientists to advise on the social and cultural impacts of their projects.

In addition to these discrepancies at the level of abstract principles, there is also a pragmatic difficulty. Once a public lending authority turns over the money to a private developer, it loses much of its leverage to compel conformity with whatever standards or restraints it may have imposed as conditions for granting the loan. When implemented in the context of "development" projects, privatization thus poses special problems and dangers for the social groups most directly affected, as well as for anthropologists who either do

research on such groups or work as consultants or employees of development agencies. These problems and dangers are exemplified by the Pangu-Ralco case. ENDESA and the IFC remained impervious to criticism by Chilean governmental agencies and non-governmental organizations, and they threatened and censored the anthropological consultant, Theodore Downing.

In the light of these considerations, the World Bank Group's increasing emphasis in recent years on lending directly to private-sector corporations gives grounds for concern. One index of this shift in the overall orientation of World Bank Group policy is the relative decline in the volume of lending over the past decade by the International Development Agency (IDA), the member institution of the Bank Group that specializes in concessionary lending to poor countries at sub-market rates of interest.

In contrast, the volume of lending by the IFC, the Bank Group's institution that specializes in lending to private-sector borrowers, has increased dramatically. The IFC lends directly to private corporations at competitive rates and achieves a positive rate of return on its operations, in contrast to the IDA, which regularly runs at a loss. The volume of lending by the IFC and the proportion of total World Bank Group lending represented by IFC loans have both risen significantly in recent years. Since its founding in 1956, the IFC has lent a total of US\$21.2 billion and underwritten or arranged syndications for US\$15 billion more, making it "the largest multilateral financier of private projects in the developing world" (Aslam 1998). In 1997 alone, IFC loans totaled US\$3.3 billion, or 14% of all IFC lending in its 42 years of existence (Aslam 1998). The 1997 IFC Annual Report (1997a: 10) shows the striking rise in volume of lending and number of IFC-supported projects over the past 10 years (from 95 projects in 1988 to 276 in 1997, and from total IFC lending of US\$1.039 billion in 1988 to US\$3.405 billion in 1997).

The Bank's turn toward privatization has been associated with a tendency to deemphasize social and environmental considerations as criteria for loans (exemplified within the World Bank Group by the approach of the International Development Agency), in favor of a more exclusively economic approach that focuses on optimizing positive rates of return on development lending. These trends are clearly in line with current political pressures for privatization, deregulation and denationalization, which are integral aspects of the accelerated globalization of the world economy. Pressures for competitiveness in global markets are widely adduced as necessitating the removal of political and governmental controls from economic activity, and the consequent relaxation of institutional safeguards for social and ecological values. Multilateral financial institutions such as the Bank and the IFC have been among the most powerful advocates of privatization, and as such have increasingly promoted channeling development loans through private contractors (Payer 1991:96-97).

In tacit recognition of the conflict between privatization and the social and environmental policy goals articulated in IBRD Operational Directives, the IFC has carefully refrained from committing itself to the letter of the IBRD's environmental and social directives. The IFC has maintained that it conforms to the spirit of these covenants but reserves the right to "interpret" them to suit the circumstances of individual cases (and individual private borrowers). The IFC does incorporate environmental and social covenants into each loan agreement with a private recipient, but it reserves the prerogative to keep part of all of these covenants secret, selectively eliminating the opportunity for public disclosure or accountability. The IFC staff is not required to make these covenants known to the IFC board of directors, who are thus prevented from (or absolved from responsibility for) intervening in specific projects to uphold social and environmental commitments that may have been part of the loan agreements (Christopher Chamberlain, Bank Information Center, personal communication, January 23, 1998). Structurally chartered secrecy pervades even internal communications between IFC project staff engaged in local-level operations and higher IFC administrators and directors.¹²

For example, at crucial junctures of the Pangué project, IFC project staff colluded with ENDESA personnel in manipulating the Pehuen Foundation and preparations for the Ralco Dam. IFC spokespersons claimed that the IFC staffers on the ground did not communicate their actions to IFC administrators in Washington (IFC Vice President Carol Lee in statements to the CfHR Forum, November 1997, confirming assertions by Theodore Downing on the same occasion). In this way IFC Directors may retain, whether by inadvertence or design, a measure of what may be characterized as "structural irresponsibility" for the specific actions of IFC project personnel.

In any case, as the IFC's performance in the Pangué dam case shows, IFC officials tend to be unwilling to hold private contractors to account for violations of social or environmental covenants to which they may have agreed as conditions of the loan. As IFC and IBRD personnel argued to Downing and members of the CfHR, once the money has changed hands, the IFC cannot effectively insist that companies conform to their commitments. In her presentation to the CfHR forum, Lee described how, despite their personal anguish over keeping the Downing report from the Pehuenche, IFC officials decided to go along with ENDESA's demands to this effect. To oppose them, they protested, would have served only to forfeit whatever residual influence IFC might have retained over the loan recipient's performance. The IFC can, of course, use this argument to excuse itself from standing by its principles or covenants whenever it appears that doing so might disrupt the project or IFC's overall relationship with the loan recipient or with its commercial clients generally. Pressures and ambiguities such as these, which privatization exacerbates in ways the IFC-ENDESA relationship

exemplifies, may thus render irrelevant progressive social or environmental principles and directives that the public-sector-oriented institutions of the World Bank have adopted and publicly touted.

Bank authorities have pressured the IFC to bring its operational standards more into line with the operational directives of its public sector-oriented subdivisions, the IDA and the IBRD. Until recently the IFC resisted all such pressures to adopt explicit, general, "social" and environmental covenants to which it could be held publicly accountable. Finally, in November 1997, it took the unprecedented step of producing a draft document spelling out specific social and environmental commitments, as well as policies on public disclosure.

In the month the present report was written (January 1998), the IFC took the even more unprecedented steps of posting this document on its Web page and inviting public scrutiny and critical input. The document contains seven general statements on social and environmental policies. These are to guide, but not take the place of, the specific covenants in loan agreements with individual borrowers; these will remain secret as before. In place of disclosure of these operational covenants, the IFC offers an "Environmental Action Plan," promising to disclose "summaries" of the environmental and social covenants it makes with borrowers or loan recipients in individual cases. These summaries would only have the status of interpretations, with no determinate relation to the precise wording of the covenants with borrowers for specific projects. They would not, in other words, have the legal force of commitments for which the IFC and its private-sector partners would be legally or even administratively responsible. The new "Action Plan" thus protects the IFC's perennial policy of keeping the content of its covenants secret and avoiding specific, publicly binding commitments for the conduct of the projects it funds. The substitution of "summaries" for the actual covenants will continue to keep the public from holding the IFC or its private partners responsible for violations of specific social or environmental conditions of their loans. In sum, the new IFC guidelines offer no substantial change in the IFC's policy on public disclosure.

Conclusion and Action Recommendations

In conclusion, this report finds that numerous violations of human rights, environmental values and the terms of a consultancy relationship occurred in this case. The IFC clearly violated the terms of its employment agreement with Downing, which called for timely sharing of the results of his research with the community and making the results of his evaluations publicly available. In threatening him with a punitive lawsuit if he disclosed the content of his report, the IFC abused its relation with him as a consultant. Denying Downing's report to the Pehuenche representatives on the Pehuen Foundation Board while distributing copies to the nonindigenous representatives

constituted what Downing termed a "racist" act. This is clearly an act of ethnic discrimination that in principle and fact cannot be countenanced. As such, it specifically contravenes the terms of the CfHR Declaration on Anthropology and Human Rights, which states that the American Anthropological Association has the right and the responsibility to protest the denial of basic human rights based on social, cultural or racial differences. (See also the AAA's Statement on Problems of Anthropological Research and Ethics, 1967; Statement on Ethics, 1971, amended 1990; and proposed Code of Ethics, 1998.)

The denials and violations of rights in this case resulted partly from the institutional cultures of the IFC, the World Bank and ENDESA. They must also be understood within the broader context of the global economy and the political climate in which the World Bank Group, and other public institutions engaged in private-sector lending, operate. The conflict between economic privatization, human rights and social, cultural and environmental values has become an increasingly pervasive feature of the contemporary world, especially in institutions that fund development. In this political and economic context, participating in development projects or development-oriented institutions, whether public or private, raises hard questions for anthropologists. In the words of Robert Winthrop,

The Pehuenche case raises a number of policy-related issues, matters of both substance and strategy. What control should we as anthropologists expect to have over our work products? Can we define standards for professional practice regarding our obligation to share the findings of our applied research with affected communities? Can we define anthropologically defensible standards and guidelines for effective consultation by institutions sponsoring social change? (1997:36)

The profession indeed needs to formulate clearer and better answers to these questions. As a step in this direction, the Committee recommends that the Association formally condemn the IFC's action in keeping secret Downing's report as a violation of the human rights of the Pehuenche, Downing's terms of employment as an IFC consultant, and Downing's professional responsibility as an anthropologist to share his research results with the people he studied and communicate his results to the public.

The Association should make it clear that it will not tolerate attempts to force its members to withhold information or act in ways that contradict the anthropologist's professional obligation not to harm the interests of the people affected by their research or other professional activities.

Nor will the AAA condone attempts by any institution to force its members to carry out clandestine research, either before or after the

fact (the latter being the effective result of the IFC's withholding of Downing's report).

Although preparations are proceeding for forcible removal and resettlement of the Pehuenche population of the Ralco area, the Pehuenche have not yet been moved. There is still time to stop a large proportion of the damage now in store for the Pehuenche before it happens. Even the Chilean government's own National Energy Commission (CNE) and several Chilean environmental and human-rights organizations have questioned that any economic need for the Ralco dam could justify its construction in light of its great social and ecological costs.

Accordingly, in the name of the Declaration on Anthropology and Human Rights that forms part of its operational guidelines, the CfHR recommends that the Association, through its president, call upon the Chilean government to stop the forcible resettlement of the Pehuenche of the Ralco area and the construction of the Ralco dam that would make the resettlement necessary. In addition, it should call upon the IFC and the World Bank Group, ENDESA and the Chilean government to enforce the human rights guarantees of the Chilean constitution and international human rights law, including measures that: (1) ensure the full involvement of Pehuenche in all development plans affecting them; (2) ensure that any resettlement or other impact mitigation measures are shaped and implemented with informed Pehuenche consent; (3) ensure that consent is secured through culturally appropriate decision-making processes that reflect group rather than individual consent; and (4) provide the means and mechanisms that allow compensation to the Pehuenche by those institutions responsible for the damages they have incurred.

Part IV: Summary of Proposed Actions

I. The American Anthropological Association should

1. Issue a condemnation of the IFC's action in preventing Theodore Downing from disclosing information to the Pehuenche that threatened the cultural and human rights of the Pehuenche. These actions violated his contractual agreement for participatory methodology and would contravene the professional ethics of any anthropologist.

2. For the benefit of those who contract the services of anthropologists, restate that an anthropologist's first professional responsibility is not to harm the cultural and human welfare of a host society. Anticipating that other colleagues may be less aware of ethical dangers than was the case here, it may be useful for the AAA, in consultation with other relevant groups (such as the National Association of Practicing Anthropologists and the Society for Applied Anthropology) to facilitate drafting of suggested guidelines

of rights and responsibilities for consultants and their potential employers.

3. Share this report and copies of its letters with the Pehuenche and with Chilean anthropologists, using the good offices of Claudio Gonzalez Parra and Theodore Downing. Issue and distribute this report publicly.

II. The International Finance Corporation (IFC) and the World Bank

4. The World Bank Group, including the IFC, should work with the CfHR, AAA and other professional social science groups in developing and implementing a human-rights policy fully consistent with international human-rights covenants.

5. The IFC and World Bank need to share the same resettlement, indigenous peoples', human-rights and disclosure policies, guaranteeing that any proposed project that will affect a local society be fully and effectively shared with the society's members in a culturally appropriate manner. The people of that society should participate meaningfully in the IFC's assessment of the proposal and, if the project moves beyond the proposal stage, in its subsequent implementation.

6. The IFC and World Bank should publish a detailed, analytical report chronicling the Pangué-Ralco project from its inception to the present, identifying the specific failures by IFC and its associates that led to:

- the appropriation of Pehuenche land and forest resources;
- the failure to adequately inform the Pehuenche population both in the Pangué and in the upstream areas now under threat;
- the failure of the Pehuen Foundation to fulfill its original objectives, becoming an obstacle to the protection of Pehuenche rights rather than an effective vehicle for ensuring them;
- the professional conflict its contract process creates when anthropologists inside or outside the IFC and World Bank collect information that affects the human and cultural rights of a population but cannot convey it to that population.

Moreover, that report should be widely distributed throughout the IFC, from the field level to highest management, in order to inculcate its lessons in the IFC and the World Bank Group.

7. The IFC should promptly return to the Pangué-Ralco area to work out with the Pehuenche people an equitable and appropriate compensation, from its own resources, for its part in the damages already done to these people and their resources. It should pressure

and work with ENDESA and the Chilean Government to remedy Pehuenche losses.

8. The IFC should work with the Chilean Government and the Pehuenche people to identify and acquire alternate lands, acceptable in size and cultural appropriateness to the Pehuenche as a whole, that will be made available to those already dislocated by the Pangué Dam and, if the Ralco dam is completed and future dams are built, to those who will be displaced.

9. The IFC's first priority should be to design development projects that will not abuse the human and cultural rights of the affected peoples. IFC should work in consultation with anthropologists and other skilled professionals to establish mechanisms and opportunities that facilitate local participation in decision-making processes.

III. ENDESA and the Chilean Government

10. As the private corporation engaged in Bío-Bío River hydroelectric development, ENDESA S.A., is not only responsible for carrying out the social and environmental covenants established in the IFC/ENDESA funding agreement, it is also responsible for ensuring that its plans and conduct accord with Chilean law, especially the laws pertaining to the environment and indigenous peoples. As a publicly-licensed Chilean corporation, ENDESA must accept its obligation to honor the human, cultural and legal rights of the Pehuenche and other locally affected people.

11. Operating under a constitutional framework that protects indigenous land and resource rights, and as a signatory to international human rights instruments, the Chilean government will need to play a strong and active role in guaranteeing the human and cultural rights of the Pehuenche. This includes protecting the Pehuenche's right to say no to further hydrodevelopment plans on the Bío-Bío within the framework of Chile's Indigenous Law.

IV. Dresdner Bank, International Banking Associations, and National and International Lending Agencies

12. The private-sector financial institutions located in many countries must develop and observe financing standards that honor the human and cultural rights of peoples affected by development projects. These include:

- fully informing such peoples of the proposed project in culturally appropriate and effective ways;
- listening carefully to their responses;
- gaining broad-based, fully informed consent;
- joining with them in planning the project in ways that minimize

- disruption to their way of life;
- remedying unavoidable disruptions fully and acceptably;
- fully compensating them for losses in ways that strengthen their social and cultural integrity;
- involving them centrally and publicly in evaluation at all stages.

All organizations planning, financing, insuring and underwriting development projects must share and observe these standards.

Notes

1. The World Bank Group comprises four quasi-autonomous institutions that nevertheless share a common President and personnel office. The International Bank of Reconstruction and Development (IBRD) and the International Development Association (IDA) comprise the World Bank proper. Together with the Multilateral Investment Guarantee Agency (MIGA) and the International Finance Corporation (IFC), which is legally, financially and operationally separate from the World Bank, they make up the World Bank Group. The former two lend directly to national governments. The latter two lend to the private sector, with the IFC making direct loans to private corporations, while the MIGA deals with loan guarantees.

2. Pehuenche informants described to Downing a scene where 20 of their leaders were bound with ropes and thrown, while still alive, into the raging waters of the Bío-Bío River. All 20 leaders died.

3. In September of 1992, before the IFC Board presentation, the Chilean government planning agency MIDEPLAN documented and predicted that the increased land values and subsequent land speculation would create a problem at Los Avellanos. The technical report predicted that private developments would be planned on the north shore of the Pangué reservoir which would drive up the value of land which is cross claimed by the Pehuenche and a local land speculator. The Pehuenche have occupied this land since before recorded records in the region, but lost a legal battle in the 1940s for title to the land. The speculator did not try to evict them until the parcels became potentially valuable recreational housing development sites. As a result of the Pangué Project, these properties now have considerable value. According to Downing, the speculator has now sold most of the lots along the north shore to huincas from Santiago and other parts of Chile, has listed for sale the Pehuenche occupied parcels, and has threatened more than 12 families with forced eviction. He also placed a restraining order on their spokesman and highly respected elder, Antolin Curriao, which is limiting his ability to defend his clan (Downing 1996:70).

4. The Pehuen Foundation has not offered legal assistance to the Pehuenche. According to Downing, if it does, it will have a conflict

of interest, since three members of the seven-member board are company employees. A fourth, the board's President, is also President of Pangué S.A., and a business partner in a company under contract to ENDESA to prepare the Ralco resettlement plan. Legal assistance from CONADI (the Commission charged with implementing the Chilean Indigenous Rights Law) is also problematic. CONADI lacks the institutional capacity to defend the interests of the Pehuenche communities. Its single lawyer does not have a staff and receives a gasoline allowance of only 150 dollars for the entire fiscal year; his regional office is 300 km from Pehuenche territory. The Pehuenche do not have travel funds to meet with him. CONADI has been ineffective in dealing with small conflicts and is already overwhelmed by the negotiations with ENDESA over the issue of land exchange in Ralco-Lepoy, which is only one part of the overall resettlement planning problem. National and international public advocates for Indian rights and the environment have not provided legal assistance to the Pehuenche (Downing 1996:65).

5. Energy Research Program at the University of Chile, the International Institute for Energy Conservation (Latin American Office, Santiago) and the Natural Resources Defense Council (NRDC) of the U.S., released May 9, 1996.

6. Relevant legislation and rights-protective policies include the World Bank Indigenous Peoples and Involuntary Resettlement policies, the Chilean constitution, the 1993 Chilean Indigenous Rights Law, CONADI (the Commission charged with implementing the Chilean Indigenous Rights law), and United Nations Human Rights instruments signed by Chile (Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, American Convention on Human Rights, Declaration on the Right to Development, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights). United Nations Human Rights Instruments are published in *The United Nations and Human Rights 1945-1995*, The United Nations Blue Book Series, Volume VII, Department of Public Information, United Nations, New York.

7. The ethnographic record depicts the Pehuenche as a dispersed group whose political structure is decentralized. The dam development controversy is playing a significant role in generating tribal structure and cohesion. The Committee's use of the term, tribe, reflects the language used by Downing and the Pehuenches themselves.

8. This estimate is based on the value of timber on Pehuenche lands cut and sold in connection with the construction of the Pangué Dam. Deforestation in the Pangué dam region (and thus, profits by Pangué S.A. and ENDESA) and deforestation in the broader area occurring because roads were built and independent timber harvesters were attracted to the area. These operators typically gave Pehuenche land

owners small sums of money, harvested their trees and left, leaving the Pehuenche landowner unwittingly responsible for the violation of Chilean forestry laws which require permits and reforestation) (Downing 1996:67).

9. Sources for the events reported in this time line 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 <http://www.bounce.to/cim>; Crawford 1997; and articles and supporting documents published on the International Rivers Network website (<http://www.irm.org>), including: World Rivers Review, August 1997; IRN Press Release of July 30, 1997; Letter from James Wolfensohn, World Bank President, to Andrea Durbin, of Friends of the Earth, of June 2, 1997; World Rivers Review, June 1997; World Rivers Review, April 1997; IRN/CIEL Press Release of February 26, 1997; World Rivers Review, June 1996; World Rivers Review, January 1996; World Rivers Review, Fourth Quarter 1994. Also, Biobío Updates #1-#7, Grupo de Acción por el Biobío of Chile (Action Group for the Biobío-GABB), translated by the International Rivers Network and published on the IRN WWW site. News on Ralco construction plans derived from translated press reports from El Mercurio and El Diario, provided by International Rivers Network, 22 January 1998. The Rehue Foundation, Netherlands (which has an English/Spanish/German web site covering Mapuche and Pehuenche issues in the Alto Bio Bio) is <http://www.xs4all.nl/~rehue>.

10. Privatization in this context (as a transfer of control and productive operations from an original financial and administrative source to an independent operator) may be understood as a more general aspect of globalization as it affects policy towards the private sector. One of the most prominent processes comprised by globalization is "outsourcing," or the subcontracting by private corporations to other private manufacturers in regions with lower labor or material costs or weaker environmental standards of the production of components, or whole commodities, that they then incorporate in their own manufacturing processes or product lines. When labor unions or human rights organizations in the outsourcing corporation's home country point to sweatshop conditions or other labor or environmental abuses by its subcontractors, the former may disclaim responsibility on the grounds that it has no administrative control over its subcontractors (Barnet and Cavanagh 1994:325-329). The agreement of Nike and other shoe corporations to police overseas contractors to ensure no child labor is used is exceptional. The points of leverage thus far on corporations and private financing sources involved in Third World development are elusive. Nonetheless, extending human rights standards to the private sector is a principal new frontier for those engaged in human rights work, requiring a new tool kit of methods.

11. Private-sector corporations engaged in development work

regularly argue that issues such as social effects, environmental impacts and human rights concerns are public-policy or governance issues and not their responsibility. For a cogent discussion of the need for private corporations to assume responsibilities in these areas see Control Risk Group 1997.

12. See for example, sections 8.01 to 8.10 of Review of IFC's Policy on Disclosure of Information (Draft, 11/17/97), Draft Environmental, Social and Disclosure Policies and Review Procedure, posted on the IFC website through March 20, 1998.

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