

## UNSUSTAINABLE DEVELOPMENT IN THE SOUTHERN CONE: THE RALCO DAM PROJECT

*Robert Lindsey*

“If we don't have this land, we are nothing.”

-Nicolasa Quintremàn, Pehuenche resistance leader (Langman 1).

Since Empresa Nacional de Electricidad S.A. (Endesa) announced the construction plans for “Central Hidroelèctrica Ralco” in 1994, the hydroelectric project has been a source of conflict. Before discussing the Ralco case, though, it is essential to provide the historical background of multi-national corporate development in Chile. Chile has experienced rapid economic growth since the 1980s. The military dictatorship of General Augusto Pinochet (1973-1990) implemented neo-liberal economic policies, which initiated the privatization of the public sector (Aylwin, “The Ralco” 1). The State privatized Endesa during this period, at the cost of enormous fiscal losses for Chilean citizens. In 1990, the democratic coalition (Concertaciòn de Partidos por la Democràcia) assumed power under President Patricio Aylwin. In an effort to promote political democratization, the Concertaciòn government implemented international negotiation and trade through large development projects known as “mega-proyectos” (Aylwin, “The Ralco” 3). “Investment capital for these projects [mega-proyectos], most of which are based upon the use and appropriation of lands, waters, forests, and subsurface resources, has been provided both by national and international corporations, as well as by multilateral financial institutions” (Aylwin, “The Ralco” 3). The mega-proyectos, and the land and natural resources they require, have had devastating effects on the Chilean environment and indigenous groups.

The Ralco hydroelectric dam is one of these mega-proyectos. Ralco is the second of six hydroelectric dams along the Bio Bio River in a hydroelectric project proposed by Endesa, a multinational corporation specializing in private energy generation and resource development (Johnston 6). The hydroelectric construction project, valued at US\$ 485.9 million, is Endesa's attempt to meet the increasing power needs of the Chilean industrial sector (“Proyecto” vi). Ralco will generate 570MW of power through creation of an artificial lake on 3,467 hectares of land, the majority of which is legally owned by the indigenous Pehuenche communities of Ralco Quepuca and

Ralco Lepoy (“Proyecto” vi). The dam will necessitate the relocation of approximately 675 people (Aylwin, “The Ralco” 8).

#### *Antecedents: The Pangué Dam*

In 1990, President Aylwin approved Pangué, the first dam along the Bío Bío, in response to a lack of national energy development alternatives (Moraga 127). The Pangué project is closely linked to Ralco. In 1992, Endesa acquired funding for the Pangué project from the International Finance Corporation (IFC), a subsidiary of the World Bank Group (Johnston 6; Moraga 127). The IFC assured its investors and the Chilean public that Pangué was a “single, stand alone dam” in response to concern that Pangué was proposed to work in unison with a second and larger dam, Ralco (Johnston 7-8). The Grupo de Acción de Bío Bío (GABB) forewarned the Chilean government, Chilean citizens, and international community that “Pangué could not function efficiently without Ralco” (Aylwin, “The Ralco” 8). However, GABB’s appeals went unheeded, and Pangué’s construction opened the gates for Ralco construction. The Pangué dam was completed in 1994, flooding 500 hectares of land and forcing the relocation 100 Pehuenche people (Aylwin, “The Ralco” 7).

The Concertación government responded to increased national concern over indigenous rights and environmental protection with new legislation. During the Pangué dam construction in 1993 the government ratified the Ley Indígena N° 19.253 (The Indigenous Law) in order to protect the rights of nearly 998,385 people (about 928,060 of whom were determined to be Mapuche) or about 10% of the country’s total population (Bello 11). The Indigenous Law protects the land and culture of the indigenous people, though not their natural resources. In 1994, the Concertación government institutionalized the Indigenous Law by forming a bureaucratic agency, Corporación Nacional de Desarrollo Indígena (CONADI), to protect indigenous rights under the law. That year, the government also passed the Ley Ambiental N° 19.300 (The Environmental Law), which formed an environmental protection agency, Comisión Nacional de Medio Ambiente (CONAMA). The Environmental Law required CONAMA to approve all private investment projects through environmental reports.

The completion of the Pangué dam in 1994 did not solve the Chilean energy deficiency problem, and national and industrial development required further energy provisions. But the possibilities for energy development expanded during the mid-1990s. While 1990, hydroelectricity appeared to be the only option for energy development to the government, there were in fact other viable energy options, most notably through various conservation methods—but hydroelectricity promised to be the most economically effi-

cient (Orrego). And by the mid 1990s the construction of natural gas pipelines from Argentina provided a tangible alternative to hydroelectric energy (Echaurren). Yet Endesa still maintained that Ralco would best meet Chile’s energy needs. Ricardo Mutis M., the managing engineer of the Ralco project, emphatically asserts that, “[b]ecause of the geography, this country must have many hydroelectric dams. It is the cheaper solution. That is real!” (Mutis) Mutis asserts that Chile’s natural geography, which has an abundance of rivers and mountains, makes it “natural to build hydroelectric plants” (Mutis). Chilean President Eduardo Frei (1994-2000) agreed with Endesa and adamantly supported Ralco construction. Approval of the Ralco project

The Frei regime approved the Ralco, despite CONAMA and CONADI’s rejection of Endesa’s initial proposals. In June 6, 1997, CONAMA approved the project through Resolución Extenta N°010/197, under the stipulation that all of the families affected by the construction voluntarily agreed to relocation (Castillo 59). The first two CONADI directors condemned the Ralco project, fearing it would have disastrous effects on the Pehuenche communities and their culture (Namuncura 99, 125-126). However, the third director under Frei, Ricardo Gonzalez, authorized land negotiations between the affected families and Endesa. Seven Pehuenche families have still refused to sell or leave their land. Despite this, Endesa began construction of the dam infrastructure without the approval and land agreements of all of the affected families, in clear violation of Indigenous Law and CONAMA’s stipulation under Resolución Extenta N°010/197 (“Resolución”).

#### *Approval of Ralco Dam Construction*

On March 11, 2000, the last day of his presidency, Frei authorized the Concesión Eléctrica N° 31, giving official approval of Ralco construction under the 1982 Ley General de Servicios Eléctricos (Moraga 134). The Pehuenche landowners immediately petitioned the government Concesión in the Santiago Appeals Court (Moraga 135). The Appeals Court rejected the Pehuenche’s petition. The Pehuenche families continued to fight the decision, bringing the case to the Chilean Supreme Court, but the Supreme Court affirmed the Appeals Court’s ruling. On April 5, 2002 the government, under president Ricardo Lagos, issued the Comisión de Hombres Buenos to assess the value of the indigenous land of the seven families who refused to negotiate land exchange with Endesa (“Ralco Battle” 4). Under the commission, Endesa would be able to purchase the indigenous land from the resisting families, against their will. The Pehuenche families appealed the government commission on April 20, but the Appeals Court deemed the petition inadmissible on the grounds that the petition was not filed within

two weeks of the commission (Celedón). Currently, over sixty percent of the dam is constructed and it began operation at the end of 2003 (“Luis”). Chile needs energy development to meet increasing national power demands. The nation has turned to hydroelectric power, provided by dams like Ralco. Ralco will satisfy current Chilean energy demands and provide energy for the country for nearly one hundred years (Moraga 27). However, the project is socially and economically inefficient. Because it will not diversify Chilean energy sources, Ralco will further destabilize the energy situation and will inflict higher tax rates on Chilean citizens than the natural gas alternative. Furthermore, Ralco construction requires 675 indigenous people to be relocated from their native land, which is protected under national law 19.253. Endesa’s “*faits accomplis*” business strategy, its construction of the dam without the authorization of all of the affected indigenous families, has violated national law 19.300. Endesa actions also violate national law 19.253 because they impede indigenous cultural development. The Chilean government’s continuous support of the Ralco project and Lagos’ presidential decree undermine the international law of the Organization of American States (OAS). The Frei administration’s unwavering support of Ralco and its efforts to make the project a reality have called into question the integrity of the administration and the role of personal interests in its decision making.

Inaccurate media reports have also helped to further Endesa’s cause and to create public misconceptions concerning the Ralco project. I will provide evidence for the previously stated points and clarify public misconceptions of Ralco, notably surrounding the Chilean courts’ rulings. I will offer recommendations for a more efficient Chilean energy plan and for the international prosecution of the Chilean government for violating human rights laws. I will also suggest reform of the Chilean indigenous law and a transformation of CONADI and CONAMA from political organizations to independent and autonomous associations.

### *Chilean Court Rulings*

The reactions to the Chilean court rulings on Ralco construction have been marked by common misconceptions. The frequent misapprehension by national and international media is that the Chilean courts based their ruling on an interpretation that the 1982 Electricity Law supersedes the 1993 Indigenous Law (“Ralco Battle” 4). If this were the case, Endesa would have a green light to construct Ralco regardless of other relevant laws (“Deputy” 1). The media depicts the consequences of the project as necessary evils, since it portrays the dam’s construction as legally permissible. The destruction of the Bio Bio ecosystem and seizure of indigenous lands are represented as the lamentable outcomes of a legal ruling. However, this common understand-

ing of the legal basis for construction of the Ralco dam differs from the text of the Chilean Appeals Court verdict, which was upheld by the Supreme Court.

The Pehuenche families filed a petition on March 30, 2000 against the government commission of the same month, which permitted Ralco construction under the 1982 Electricity Law. The Appeals Court rejected the Pehuenche petition and thus upheld the status quo of Chilean national law. Contrary to common perception, the verdict did not undermine the authority of the Indigenous Law and Environmental Law. The court’s ruling explicitly requires that all relevant national laws be respected under Ralco construction (Ruedi). The Appeals Court ruling reaffirms the construction of Ralco under the Electricity Law, but states that the regulations of the national agencies, CONADI and CONAMA, must be respected.

Even though it rejected their petition, the Court’s verdict is actually beneficial to the Pehuenche’s case. Roberto Celedón, the lawyer for the Pehuenche states, “It favors our interpretation between the Electricity Law and Indigenous Law” (Celedón). Celedón finds the ruling favorable because it requires Ralco construction to comply with Indigenous Law, as stated in the regulations of CONADI. The court decision did not rule in favor of the Electricity Law over the other relevant laws to the case, but rather stated that all laws need to be respected under the affirmation of the construction.

Under the ruling, Endesa needs to adhere to, together, the regulations of the Environmental Law, the Resolución under CONAMA, the Indigenous Law, and the Electric Law. All are on the same plan. Endesa needs to respect all of these laws, according to the Court, as no law is superior to another other (Celedón).

Although the Court rejected the Pehuenche petition, the verdict clearly defines the legal requirements for Ralco construction. The Court upheld the government’s commission for Endesa to build Ralco, but they reaffirmed the legal requirements to which Endesa must adhere.

### *Environmental Ramifications*

Chile needs energy development, but the debate over the Ralco project’s economic, social and environmental viability has yet to be resolved. The artificial lake will flood approximately 3,500 hectares of land in the Bio Bio watershed, mostly comprised of native forest. Beyond this certain damage, the environmental debate consists of contradicting reports, making the other environmental ramifications of the project unclear. The Bio Bio is the habitat for seventy-seven vertebrate species and various native flora and trees based on CONAF’s statistics (Moraga 57). Endesa asserts that none of these species

are threatened by Ralco construction, whereas environmental reports from independent groups estimate that twenty groups of flora and fauna will become extinct as a result of the Ralco dam. Despite these findings, CONAMA approved the project—after the required national environmental reports (EIA) were conducted—on the condition that indigenous families voluntarily agree to relocation.

### *Social Ramifications*

The social ramifications of Ralco, most notably the relocation of the Pehuenche people, are the central concern in this debate. Endesa asserts that the relocation of the indigenous people from their native lands is in their best interests. Endesa executive Ricardo Mutis states, “The indigenous people are very happy with relocation... Relocation is much better for them” (Mutis). Mutis goes on to explain Endesa’s assertion that Ralco construction benefits the affected indigenous people, and furthermore that the Pehuenche are happier on their new lands than on their traditional land: “The people [Pehuenche] are much better off. The old land was very poor. Now they have water, electricity, better roads. Many have cars, whereas before they used only horses” (Mutis). Endesa contends that, through relocation, it has provided the indigenous people with modern amenities and has saved them from a life of poverty.

Furthermore, Endesa is establishing a ten-year, four part program to help the indigenous people develop their new land. The first component is cultural. Endesa will aid the Pehuenche in maintaining their cultural heritage. Secondly, Endesa will help the indigenous people create facilities so that they can benefit economically from the increasing tourism in the region. Third, Endesa will provide education and health care access to the Pehuenche. And finally, Endesa will assist with agricultural production, most notably in resource assistance with cows (Mutis).

Endesa’s position, as stated by Ricardo Mutis, is that the Pehuenche are happy with relocation. However, this contradicts the events and testimonies of Pehuenche families in the Bio Bio. Since Endesa entered the Bio Bio and Ralco construction began, a strong resistance movement has arisen amongst the Pehuenche (“Ralco”). This Pehuenche’s movement has reached a national and international forum, where Pehuenche leader, Nicolasa Quintremàn, has pleaded their case against relocation. The presence of this movement demonstrates that many Pehuenche are not happy with relocation, but rather want to prevent it at all costs.

Although there is strong resistance to relocation, it is possible that Endesa’s contention that the Pehuenche are happy with relocation was in reference to those people who have already been relocated. However, this asser-

tion is contradicted by the testimonies of the Pehuenche people. Former CONADI president Domingo Namuncura conducted eleven different interviews from November 1997 to May 1998 with indigenous people who were relocated as a result of Ralco. Remigio del Carmen Marihuan B., a Pehuenche who was relocated due to the Ralco project, notes, “I was not interested in moving, but how [could I prevent it], Endesa wanted it” (Namuncura, 191). Many Pehuenche, like Carmen Marihuan, did not want to move from their native lands but felt they had no choice due to the interests of a powerful corporation. Carmen Marihuan and other Pehuenche agreed to relocate because they felt Endesa’s seizure of their lands was inevitable and it was better to receive something in exchange for it as opposed to nothing. They therefore voluntarily accepted relocation, but are not happy to have left the land of their ancestors.

Mutis also contends that the Pehuenche people are “better off as a result” of relocation. He supports this assertion by pointing to the poverty of the native lands and the benefits of the new land, including water, electricity, better roads, and car ownership. It is true that the native lands are economically poor and the new lands provide modern amenities. Therefore in terms of economic development for the Pehuenche societies, the Pehuenche people seem better off with relocation from Endesa’s perspective. However, the best interests of the Pehuenche cannot be explained in terms of economic development or determined from the perspective of Endesa. The best interests of the Pehuenche need to be examined from their cultural perspective. Nicolasa Quintremàn explains that, in the Pehuenche culture, her people have no need for the economic developments that are offered with relocation (Moraga 3). From the perspective of the Pehuenche, quality of life is synonymous with remaining on the native lands of their ancestors, as that land is the basis of their culture. As Quintremàn elaborates, “If we don’t have this land, we are nothing” (Langman 1). Relocation makes the Pehuenche better off in terms of Endesa’s perspective, but from the perspective of the Pehuenche people, relocation strips them of the very essence of their lives and culture.

The native land of the Pehuenche is the focal point of their culture, and it will be lost under the artificial lake (Langman 1). Likewise, nine of the Pehuenche sacred cemeteries will be flooded (Moraga 16). The very nature of Endesa’s development program will destroy Pehuenche culture. Previously marked by a life of subsistence on native lands, the Pehuenche culture will now rely on tourism and agricultural marketing (Mutis). Endesa argues that these changes improve the lives of the Pehuenche. However, it is clear that from the perspective of many Pehuenche, their culture will be destroyed as a result of this “improvement.”

*Economic Efficiency of the Project*

While the social and environmental consequences of Ralco are debated, Endesa defends the project based on its economic viability. Endesa contends that hydroelectricity provides the most efficient and cost effective alternative to Chile's energy concerns (Mutis). Endesa has a seemingly strong argument as the project cost is five hundred million dollars and the marginal cost of operation for hydroelectric energy is nearly zero. Furthermore, Ralco will provide energy for Chile for an estimated one hundred years (Moraga 27). However, while Ralco construction is extremely cost effective for Endesa, the economic interests of Chilean citizens would be better served through natural gas development. Although hydroelectric energy is extremely cost effective to operate, those minimal marginal costs do not always equate to low costs for the citizens (Echaurren). As Chilean energy is concentrated in hydroelectric plants, energy production is highly dependent on rainfall. As a consequence of this dependency on weather patterns, the risk of energy crisis is very high. The inherent risk in hydroelectricity dependency is increased in central Chile, which is subject to patterns of draught followed by heavy rain—all of which is heightened by the presence of the El Niño current (Echaurren). This pattern was evident with the draught and ensuing Chilean energy crisis of 1998-1999 and with over flooding of dams due to increased rain in the two years that followed.

Economically, these risks are transferred in the form of energy taxes on Chilean citizens ("Crisis" 14-15). Energy companies increase taxes due to the high risk of the overall system in order to mitigate their losses in case of an energy crisis (Echaurren). Therefore although hydroelectricity has a marginal cost close to zero, the risk of the hydroelectric dominated system results in high tax rates on Chilean citizens.

Endesa controls 55% of the energy of Central Chile. Ralco will provide an additional five percent of the energy supply for a total of 60% of the region's energy, all of which is hydroelectric (Echaurren). With the addition of Ralco, the energy system of the region becomes more dependent on hydroelectricity. This increased dependency is counterbalanced by increased electric rates on Chilean citizens, as has been the case since 2000 under the Ricardo Lagos administration ("Electricity" 4). Most recently, in October 2002, "Chile's National Energy Commission (CNE) approved a 4.9% increase in the price charged by electric power generators to distribution companies. In turn, this represents between 40 and 50% of the price charged to consumers." Electric bills will increase by 2.5% for consumers between November and April, despite a higher availability of water resources. Even though water is more accessible, prices for the consumer still rise ("Electricity" 4).

This increase in consumer prices is in response to an increase in the price charged by electric power generating companies to distribution companies. Therefore, the recent CNE approval will equate to an increased price rate on Chilectra, the central distribution company in Chile, from Endesa. It is important to note that Chilectra and Endesa are sister companies, both owned by Endesa España. Therefore, the increased price rate transfers Endesa España's money from one sister company to another. In other words, the inefficiency of the Chilean energy system benefits Endesa España. Furthermore, the higher tax rates justified by the risk of energy crisis translates into large profits for the corporation in years without energy crises, meaning that the burden of the increased price rates therefore falls entirely on the Chilean citizens.

Ralco creates an even less efficient overall energy system, because it fails to diversify the Chilean energy system, making it more prone to failure. Although the overall system is less efficient, Ralco is economically beneficial to Endesa. Ralco provides Endesa with a higher market share, in which they can capitalize on increased price rates on their 60% stranglehold on the market (Echaurren). Endesa's asserts that "[h]ydroelectric energy is cheap energy...It is the cheaper solution" (Mutis). However, Endesa's contention is one-sided. Ralco is very cost beneficial to Endesa because despite the project's lack of efficiency, the increased market share will provide the company with larger overall economic gains, while Chilean citizens bear the economic costs. Echaurren and the former President of the Chilean Commission of Energy (CNE), María Luisa Gonzalez, conducted unpublished mathematical studies on the cost effectiveness of Ralco. Their conclusions, citing an increase in the electrical tariffs due to Ralco of approximately \$0.00022, stated that Ralco would cost, \$47-159 million more, depending on other assumptions, than the construction and operation over the same time period of an equivalent natural gas plant (Echaurren; Moraga 67).

*Endesa: "Hechos de Consumados" Operation Policy*

Juan Pablo Orrego, president of Grupo de Acción de Bío Bío (GABB), characterizes Endesa's construction operation and business policy as "Hechos de Consumados" or "faits accomplis" (Orrego). The policy implies that once everything is built, no one will oppose its operation—an "act now, ask questions later" business strategy. As Aylwin, Echaurren, and Orrego have all explicitly pointed out, "When Ralco is finished its multi-million dollar construction, who will oppose its operation in favor of seven indigenous families?" (Orrego; Echaurren; Aylwin, "The Ralco" 21). Endesa's "faits accomplis" policy seems unethical as construction steamrolls ahead with seemingly little regard for anything along the way. However, the more important, yet

debatable question is, have Endesa's policies been illegal? As will be shown, they have. Endesa has violated the 1993 Indigenous Law and CONAMA's Resolución Extenta N°010/197.

CONAMA's approval of Ralco under Resolución Extenta N°010/197 is not unconditional. Their sponsorship is contingent on the authorization of Ralco by all of the affected families. Seven Pehuenche families, led by the internationally outspoken Quintremán sisters, have maintained their refusal to leave their native land under any circumstance. Nicolasa Quintreman, states, "I am not afraid. I will not move from my land and my roots. Not even gold will induce me to move" ("Ralco Dam"). However, Endesa continues to construct Ralco under their "hechos de consumados" strategy. Endesa is breaking the Environmental Law through their continued construction of Ralco, despite the Pehuenche families' resistance.

Endesa's violation of the 1993 Indigenous Law is not as clear-cut as their violation of the CONAMA resolution. In their January verdict, the Supreme Court specifically addressed Article 13 of the Indigenous Law. They ruled that Endesa has not yet violated the Indigenous Law with the construction of the dam and that the construction of the dam wall does not violate the land rights of the seven Pehuenche families who live in the water basin of the artificial lake, next to the wall (Orrego). This verdict leaves the conflict unresolved as the Pehuenche's maintain their refusal to leave and Endesa continues to build the dam with the public intention of flooding the Pehuenche land. The Supreme Court decision on Article 13° of Law 19.253 postpones the legality of the conflict until Endesa completes Ralco construction and is ready to fill the artificial lake. However, the Indigenous Law protects more than just the land, but the indigenous culture, as well. Although the conflict concerning indigenous land rights remains unresolved, Endesa has broken Article 1° of the Indigenous Law, which protects the cultural development of the indigenous people (Ley N° 19.253).

The development of indigenous culture has not been respected or protected by Endesa's construction of Ralco, as in necessary under Artículo 1° of Ley 19.253. The relocation of the communities of Ralco Lepoy and Quepuca Ralco has not promoted the development of Pehuenche culture, as Article 1° requires. On the contrary, Endesa has destroyed Pehuenche culture through Ralco construction, as discussed later in the "social ramifications section."

#### *The Role of the Chilean Government*

The Frei and Lagos governments have both actively supported Ralco construction. The Lagos administration has failed to enforce the national environmental law and the Appeals Court verdict concerning Ralco. Speculation that there was a conflict of interests in the Frei administration's

connection to Ralco is supported by the administration's methods to approve the project. Furthermore, Frei and Lagos issued government commissions with respect to Ralco, which violate the international human rights laws of the Organization of American States (OAS).

The Ricardo Lagos government has not enforced national law, 19.300, or the ruling of the Appeals Court concerning Ralco construction. The regime has failed to correct Endesa's clear violation of CONAMA approval, sacrificing the rights of the indigenous people.

Eduardo Frei's active support for Ralco construction seems to have been motivated by interests other than national energy concerns. The specialized political organizations designed to assess the need and consequences of dam construction, strongly rejected the Ralco project. The Chilean Department of Energy issued its recommendation against Ralco. In 1997, María Isabel González, the head of the CNE under Frei, stated, "Chile does not need Ralco until 2020 with all the other energy sources available" (Langman 3). The organization claimed that the current energy status was sufficient, especially with the natural gas pipelines from Argentina in the midst of construction. CONAMA initially rejected the prospects for Ralco construction with resounding certainty (Moraga 129). CONADI also rejected Ralco construction under the strong opposition from two consecutive directors, Mauricio Huenchulaf and Domingo Namuncura. The CNE, CONAMA, and CONADI are not independent and autonomous organizations, but rather political organizations of the government. Frei himself appointed the directors of these organizations. The CNE, CONAMA, and CONADI all rejected the Ralco project due to its inefficiency, its devastating effects on the environment, and its compromising of indigenous rights, respectively. Regardless of these recommendations, Frei continued to support Ralco.

Frei simply ignored the recommendations of González and the CNE, as their support was not legally necessary to authorize Ralco construction. However, under the 1993 Indigenous Law and 1994 Environmental Law, the authorization of CONADI and CONAMA, respectively, are necessary to legally construct Ralco. But the authorization of CONAMA and CONADI alone are not sufficient for the legal construction of Ralco. Under the Indigenous Law and Resolución Extenta N°010/197 of the Environmental Law, all of the affected members of the community also need to agree to construction. These laws prohibit construction if only one of the affected families do not approve the project. Frei's methods of ensuring ratification from these organizations call into question his personal motivations for Ralco construction.

Although no legal sanctions have been filed against former President Eduardo Frei and his staff, their private connection to the dam construction questions the integrity of their decisions as public servants. Jorge Rosenblut,

a senior staff official of the Frei regime, has faced allegations for his biased endorsement of the Ralco project. Under Frei's mandate, Rosenblut ordered CONAMA to approve Ralco, despite the rejection of the project by twenty governmental agencies on the technical committee for the environmental agency (Langman 2). Rosenblut's directive to CONAMA to ratify Ralco, despite the recommendations of the experts that sat on the environmental board, could be viewed as an endorsement of economic development at all costs. However in 2000, "Rosenblut was named president of Chilectra, the power distributor and subsidiary of Endesa España" (Langman 2). His position as president of Chilectra, Endesa's sister company, reflects on the integrity of his recommendation to CONAMA to authorize Ralco.

Eduardo Frei, Chilean President 1994-2000, strongly advocated and worked towards the approval of Ralco. Frei, an electrical engineer, wrote his thesis on the Ralco project (Langman 2). However, his intervention in the approval of the dam supports speculation that his private interests were involved. Before assuming the presidency, Frei was a partner and major shareholder of Sigdo Koppers, the consulting firm that built the electro-mechanical design for the first dam on the Bío Bío River, Pangué (Langman 2). The Pangué dam is closely interconnected with the Ralco dam, as the former is dependent on the latter to function properly. When Frei's efforts to approve the project are placed in the context of his private ties to Sigdo Koppers and speculation of campaign donations, his actions are suspicious. He fired two well-respected directors of CONADI after they identified the dangers of Ralco on the Pehuenche culture (Langman 2). Both Huenchulaf and Namuncura refused to authorize the relocation of Pehuenche families. The 1993 Indigenous Law requires the director of CONADI to sanction all land negotiations that involve non-native actors. The directors of CONADI determined that relocation of the Pehuenche due to Ralco construction would invoke irreplaceable damage on the indigenous culture. Therefore, the two previous directors, in coordination with the law, rejected Endesa's offers for land exchange. Frei told former CONADI director, Domingo Namuncura in reference to Ralco construction, "If you don't agree, then you have to leave [position as CONADI director]" (Opaso 1). Frei fired both CONADI directors because their judgments made it impossible to acquire Pehuenche land for Ralco. CONADI directors' decision to prevent indigenous land exchange with Endesa would have prevented Ralco construction. The construction of the Ralco dam was essential for the full operation of the Pangué dam, as the two projects are closely interlinked. If Frei had private interests in Pangué, he would need the construction of the Ralco dam to be successful in order to capitalize on his interests.

### *Violations of International Law*

The Lagos administration issued the Comisión de Hombres Buenos on April 5, 2002 to assess the property values of the seven remaining families at Ralco in order to help Endesa purchase them ("Ralco Battle" 4). This commission directly violates the 1993 Indigenous Law and the January 2002 Supreme Court verdict, which requires the indigenous law to be respected in Ralco construction. Not only has Lagos ignored Endesa's violation of the law, but he also has created a commission, whose very objective is to violate Chilean law and the rulings of its courts. Furthermore, Lagos's commission directly violates the international law of the OAS.

The Chilean State has violated International Human Rights Law under Frei and Lagos's leadership, in respect to the Ralco conflict. Chile is bound to the international law of the Inter-American Commission of Human Rights due to its membership in the Organization Of American States. Article XVIII of The OAS's indigenous rights doctrine protects Traditional forms of ownership and cultural survival. Rights to land, territories and resources. With these in mind, the Chilean State has violated international law. Lagos's commission violates section 3ii of Article XVIII, which states that "[s]uch titles may only be changed by mutual consent between the state and respective indigenous peoples when they have full knowledge and appreciation of the nature or attributes of such property." The objective of the Comisión de Hombres Buenos is to take possession of the indigenous lands without their consent. Lagos's commission clearly and directly violates the international law of the OAS. The Concertación Eléctrica under the Frei regime also violates the international law of the OAS.

According to section 2 of Article XVIII, the Pehuenche have a definitive right to occupy and use their native land in the Bío Bío. Frei's commission compromised that inalienable right by permitting construction, which restricted Pehuenche access and use of their native land. Frei's commission puts his administration in violation of international law.

### *Recommendations: International Courts: Prosecution of Chilean State*

The Chilean State has violated the international law of the Organization of American States. Based on the precedents set by the Inter-American Court for Human Rights, the Pehuenche should appeal to the Court. Roberto Celedón, the lawyer defending the Quintermán sisters and Pehuenche in the national courts, asserts that "the courts and government have not respected the indigenous rights, the only justice is at the international level" (Langman 1). Although the Chilean courts and government ignored indigenous rights

laws, based on precedent, it is probable that the Inter-American Court for Human Rights will not do the same. Celedón seeks justice and the preservation of land for the seven families who have still refused relocation.

The Pehuenche people's claim to recover confiscated land from Ralco construction (or remain on it as is the case of the seven families that refused to leave) is based not only on an interpretation of international law, but also by two precedents set by the Inter-American Committee on Human Rights, of which Chile is a member and active supporter. In November of 2001, the Court ruled in favor of the Mayagna indigenous group, in a petition against the Nicaraguan Government (Armstrong). The structure of the Mayagna case is remarkably similar to that of the Pehuenche case against the Chilean government.

In a landmark decision affecting the territorial rights of indigenous peoples, the Inter-American Court of Human Rights recently found that the Mayagna Indian community of Awas Tingni, on Nicaragua's Atlantic Coast, has collective rights to its traditional lands, resources and the environment. The ruling found that by granting concessions to a foreign company to log on traditional Mayagna lands without Awas Tingni's consultation or consent, the Nicaraguan government violated the community's human rights and property rights (Organization of American States).

Similar to the Nicaraguan case, a multinational corporation, Endesa, confiscated Pehuenche land against strong resistance, and is constructing a dam without the consent of all of the indigenous landowners. Furthermore, the Chilean government supported the seizure and issued government commissions to permit the land takeover. However, as seen in the Mayagna case, national law or government commissions do not justify violating human rights. The government's Concertación Eléctrica and Comisión de Hombres Buenos permitting Endesa's confiscation of indigenous lands is a direct violation of Pehuenche human rights.

In August 2002, the Inter-American Committee on Human Rights ruled in favor of a petition by members of the Western Shoshone Nation against the United States for depriving them of their land and due process rights. The United States Bureau of Land Management confiscated millions of acres of land in Nevada against the will of the Western Shoshone, an act based in conjuncture with a 1966 Indian Claims Commission ruling. The US government compensated the Western Shoshone with over twenty-six million dollars for the land takeover against the will of the indigenous people. Also, the US Supreme Court upheld the land appropriation on the basis that the native land rights were void when the Interior Department received the compensation funds from Congress (Armstrong). The Inter-American commission concluded in the Western Shoshone case,

[A]ny determination of the extent to which indigenous claimants maintain interests in the lands to which they have traditionally held title and have occupied and used is based upon a process of fully informed and mutual consent on the part of the indigenous community as a whole. This requires as a minimum that all of the members of the community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives (Armstrong).

The conclusion of the Inter-American Commission clearly states that the indigenous community must be in mutual consent and fully informed to exchange their traditional lands with non-indigenous peoples. Furthermore, all members of the indigenous community must be provided with correct and thorough information on the details and consequences of this land exchange. The facts of the Ralco case violate these requirements to uphold the human rights of indigenous people. Similar to the Western Shoshone case, the Pehuenche are not in mutual consent over land exchange, as seven families have refused relocation. Furthermore, as clearly emphasized in the eleven interviews between Domingo Namuncura and the relocated Pehuenche, many people were not fully aware or informed of the land exchange (176-227). Jose Benitez V. explains, "I don't know how to read or write, but I signed. My wife does not know, either. Another person signed for her" (Namuncura 176). Benitez signed the contract for relocation with Endesa, but neither he nor his wife was fully informed of the consequences of relocation.

As a member of the Organization of American States, Chile is obligated to uphold international law. In the construction of the Ralco dam, international standards for human rights have not been upheld by the Chilean state. The precedent that the Inter-American Human Rights Court set in its ruling in favor of the Mayagna and Western Shoshone against their respective governments indicates that the Pehuenche case against the Chilean state will also have favorable results for the indigenous groups.

#### *Chilean Energy Reform: Natural Gas Development*

In order to create a more stable and economically efficient Chilean energy system, there needs to be a greater balance between natural gas and hydroelectric energy. Ricardo Mutis acknowledges this, stating that "the country must have two kinds of energy: natural gas and hydroelectricity." The valid argument against natural gas development is that while it is not as expensive to construct the infrastructure, operation costs are very expensive. However, I am not proposing a radical shift to a sole dependency on natural gas. I am

only proposing a more balanced system of hydroelectricity and natural gas. As the CNE suggests, "The interconnection of gas with Argentina permits the incorporation of gas as a strong alternative of energy for diverse uses, including the protection of electric energy, to avoid water draughts that have had effects of large proportions" ("Crisis" 13). If natural gas represented a more equal portion of the total energy reserve, the high risk of failure of the system would be greatly reduced. This would prevent energy crisis, such as in 1998-1999 when "the limitations of hydroelectricity were significantly exposed" ("Crisis" 17). Furthermore, the increased electrical taxes on Chilean citizens would be reduced by the decreased risk in the overall system.

A greater balance between hydroelectricity and natural gas will provide the most stable and economically efficient energy system. Therefore, Chile needs to concentrate its energy development on natural gas plant construction until it represents a more equal share with hydroelectricity in the overall system. Currently, there exists natural gas pipelines from Argentina, with a strong possibility of further development. There is also the possibility of development of pipelines from Peru and Bolivia (Orrego).

#### *National Reform*

Despite their lack of ability to stop the Ralco dam's construction, the Ralco resistance movement has created the foundation for national reform. CONADI and CONAMA need to become independent and autonomous organizations in order to allow the agencies to effectively protect their respective interest groups without political manipulation. The Indigenous Law also needs to be reformed to include protection of the natural resources of the native lands.

CONADI and CONAMA must be reformed to become sovereign organizations. Under the current system, both agencies are under the control of the government, and therefore subject to political influence. Presently, CONAMA and CONADI can be utilized as tools of government officials for their own objectives, as Frei demonstrated in the Ralco case. However, neither CONAMA nor CONADI were created as a medium for exercising political directives. Instead, they were created in conjuncture with the 1993 Indigenous Law and 1994 Environmental Law, respectively, as mechanisms to assure the protection of the indigenous people and the environment under law. However, Frei's manipulation of these organizations has proved that neither CONADI nor CONAMA can function as designed as long as they remain under the political realm. Consequently, these organizations need to be reformed as autonomous institutions in order to ensure the integrity of their conclusions. The national government should not have any influence on the selection of their respective board of directors, as is currently the case.

As independent organizations, CONAMA and CONADI would be able to make non-political conclusions and more effectively uphold the Indigenous and Environmental Laws.

In addition to revisions of CONAMA and CONADI, the Indigenous Law must also be reformed to ensure that it is not sidestepped. Ralco illustrated that the Indigenous law is not respected by corporations, the Chilean government, or the Chilean courts. The Indigenous Law must be revised to include protection of natural resources (Aylwin, "The Ralco" 23-24). The law must include protection of native forests and water. The current Indigenous Law only protects the native land. This legal reform would protect Indigenous land and resources from private appropriation.

It is imperative that the reform of CONADI, CONAMA, and the Indigenous Law occurs immediately to prevent future land appropriation and environmental destruction. Ralco was the second of six proposed dams by Endesa on the Bio Bio. Under Endesa's "faits accomplis" operation policy, construction plans are not slowed by pending court rulings. It is imperative that these reforms are enacted immediately, as timing is essential to protecting the Bio Bio and the Pehuenche people. Currently, Endesa is assessing land for the construction of the other four dams (Echaurren). The Inter-Monopoly Commission has issued a non-binding recommendation to prevent Endesa from accumulating more Chilean water rights, as they already possess more than 90% (Orrego). Yet the Inter-Monopoly Commission's recommendation will not prevent Endesa from further hydroelectric development. The only way to prevent continued unsustainable development is with the immediate action and reform

#### *References*

- Armstrong, Jeff. "International Human Rights Commission Finds Land Claims Process Violates Indigenous Rights". *Native American Press*. August 16, 2002.
- Aylwin, José. "The Ralco Dam and the Pehuenche People in Chile: Lessons from an Ethno-Environmental Conflict". *Conference Towards Adaptive Conflict Resolution*. University of British Columbia, Vancouver, Canada: September 25-27, 2002.
- Aylwin, José. "Indigenous Peoples Rights In Chile: Progresses and Contradictions in a Context of Economic Globalization". *Canadian Association for Latin American and Caribbean Studies (CALACS) XXVIII Congress*. Vancouver, B.C., March 19-21, 1998.
- Bello, Alvaro, Angélica Wilson, Sergio González, and Pablo Marimán. *Pueblos Indígenas: Educación y Desarrollo*. Temuco: Instituto de Estudios Indígenas Universidad Frontera, April, 1997.
- Castillo Sánchez, Marcelo. *Analysis Crítico del Sistema de Evaluación de Impacto Ambiental Ley N°19.300*. Santiago: Red Nacional de Acción Ecológica, 1998.
- Celedón, Roberto. Pehuenche lawyer for all legal matters concerning the Ralco hydroelectric project. personal interview. Santiago: December 3, 2002.
- "Crisis: Eléctrica". *CNE Comisión Nacional de Energía Chile 1998-1999*. Santiago: Comisión Nacional de Energía.

- "Deputy Demands 'Zero Tolerance' for Violent Indigenous Groups". *Chilean News Review*. Santiago: Issue 721, March 8-14, 2002.
- "Fact Sheet No. 9 (Rev.1), The Rights of Indigenous People". *Office of The High Commissioner for Human Rights*. Program of Activities for the International Decade of the World's Indigenous People (1995-2004) (par. 4), General Assembly resolution 50/157 of December 21, 1995.
- Echaurren, Hernán. Director EXXAL and member of GABB. Personal interview. Santiago: December 2, 2002.
- "Electricity Bills Will Increase in November". *Chilean News Review*. Santiago: Issue 752, October 25-31, 2002. p. 4
- "El Sector Hidrocarbos en Chile". *CNE Comisión Nacional de Energía*. Santiago: Comisión Nacional de Energía, January, 1999.
- Godoy, Hugo L. "Chile Makes Environmental U-turn". *Latinamerica Press*. July 4, 2002.
- Johnston, Barbara. "The Pehuenche, the World Bank Group and Endesa S.A, violations of Human Rights in the Pangué and Ralco Dam Projects on the Bio-Bio River, Chile". *Committee for Human Rights American Anthropological Association*. March 1998.
- Lamberz, Inge. "Pehuenche Minority Fights for Their Land". *Friends of the Earth International*. November, 22, 2002.
- Langman, Jimmy. "Chile Dam Plan: Death of a Culture?" *Miami Herald*. November 6, 2002.
- Lara Rocha, María Raquel, ed. *Desarrollo Rural en la Araucanía: Estrategias Carencias y Propuestas de Acción*. Temuco, Chile: Universidad de la Frontera, 1993.
- Ley Nº19.253. "Planificación y Cooperación". Valparaíso: National Congressional Library.
- Ley Nº19.300. "Planificación y Cooperación". Valparaíso: National Congressional Library.
- "Luis Rivera Novo, Chairman of Endesa Chile Visits the Ralco Plant Works". *Endesa Press Release*. July 29, 2002
- Moraga, Jorge R. *Agua Turbinas: La Central Hidroeléctrica Ralco en el Alto Bio Bio*. Santiago: Observatorio Latinoamericano de Conflictos Ambientales, 2001.
- Morales, Roberto U., ed. *Ralco: Etnocidio en Territorio Mapuche*. Temuco: Instituto de Estudios Indígenas Universidad Frontera, 1998.
- Mutis, Ricardo. Managing Engineer of the Ralco Project. Personal interview. Ralco: January 13, 2003.
- Namuncura, Domingo. *Ralco: Represa o Pobreza?* Santiago: LOM Ediciones, June, 1999.
- Opaso, Christian. "Los Negocios Secretos del ex Presidente Frei". *El Metropolitano*. Santiago: January 12, 2001.
- Organization of American States. "Doctrine and Jurisprudence of the IACHR Indigenous Rights (1970-1999)". <<http://www.oas.com>>
- Orrego, Juan Pablo. Director Fundación Terram and former director of Grupo de Acción de Bio Bio (GABB) from 1991-2001. Personal interview. Santiago: November 29, 2002.
- Pollak, Leah. *Between Ski Masks, NAFTA and the EU: The Zapista and Mapuche Break of a Social Contract*. Duke University: Undergraduate Historical Thesis, November 11, 2002.
- "Proyecto Central Hidroeléctrica Ralco". *Estudio de Ambiental*. Santiago: Vol. 1, 1996.
- "Ralco". A film directed by Esteban Lorrain. Chile: 1999.
- "Ralco Battle Enters Home Run". *Chilean News Review*. Santiago: Issue 731, May 17-23, 2002. p.4.
- "Ralco Dam Spurs Protests in Santiago". *El Mercurio*. October 12, 1997. Translated by Rehue Foundation.
- "Resolución Exenta Nº 010/97". *Comisión Nacional del Medio Ambiente*. Santiago: June 6, 1997.
- Ruedi, María Elena. *Corte De Apelaciones*. "Recurso de Protección N 1388-2000 AC. 1440 y 1441". Contra Ministro de Economía. Santiago: July 25, 2000
-