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THE INSPECTION PANEL

**THE BIOBIO DAMS IN CHILE:
VIOLATIONS OF WORLD BANK POLICIES AND LACK OF
ACCOUNTABILITY AT THE INTERNATIONAL FINANCE CORPORATION**

CLAIM BEFORE THE INSPECTION PANEL OF THE WORLD BANK

AND

PETITION BEFORE THE IFC BOARD OF EXECUTIVE DIRECTORS

**Filed by Grupo de Accion por el BioBio (GABB)
on Behalf of Pehuenches and other Chileans**

NOVEMBER, 1995

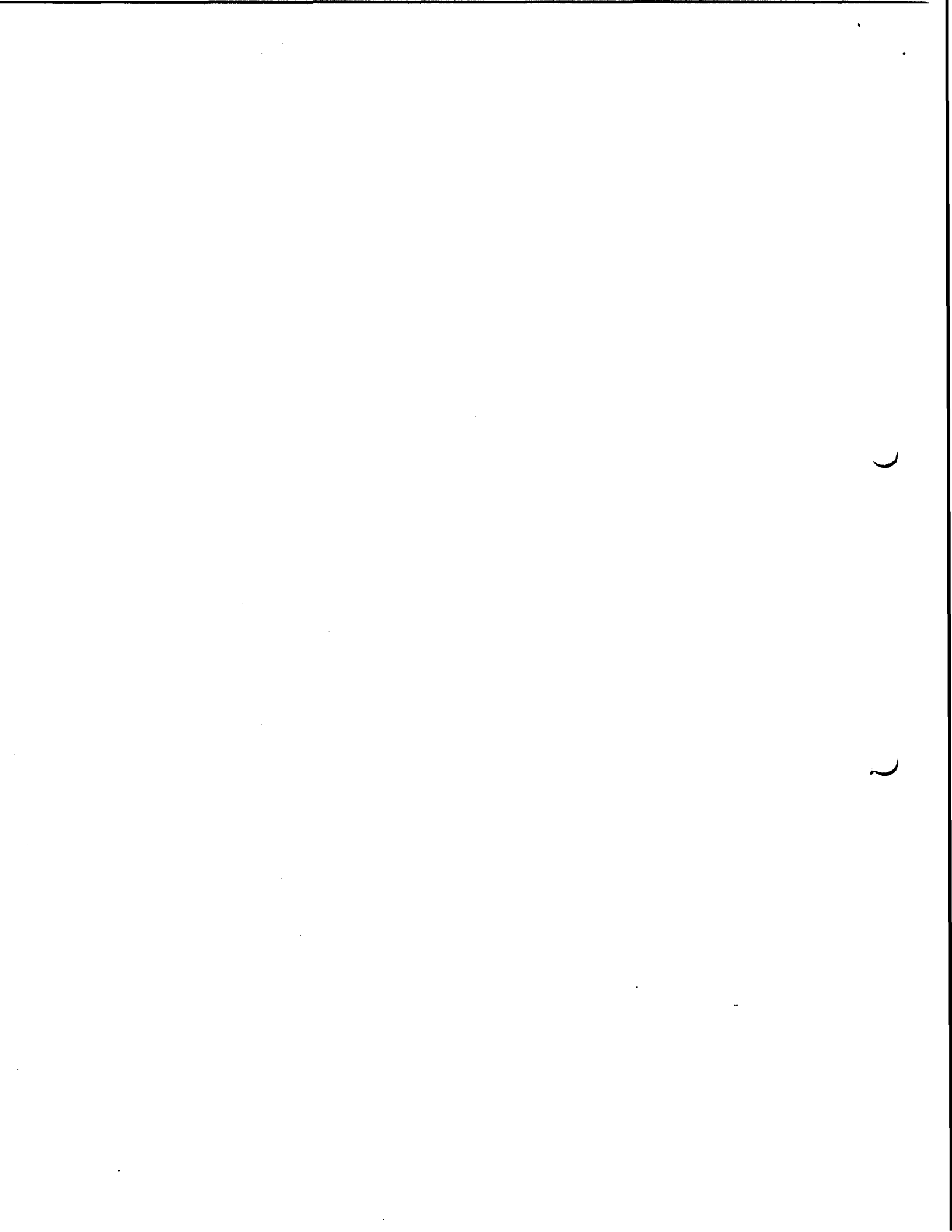


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CLAIM FOR AN INSPECTION PANEL INVESTIGATION REGARDING THE IFC-FINANCED PANGUE/RALCO HYDROELECTRIC COMPLEX ON CHILE'S BIOBIO RIVER

I. INTRODUCTION

The International Finance Corporation (IFC), a member of the World Bank Group, is the main creditor of a Chilean company, Pangué S.A., which is currently well advanced in the building of the Pangué/Ralco complex of dams on the upper Biobío River. The IFC provided Pangué S.A. a direct loan of US \$70 million and syndicated another US \$100 million with ten European banks to enable the Chilean company to begin construction on the Pangué Dam, the first of six functionally interconnected dams and plants planned for the hydroelectric complex. The IFC is also a 2.5% owner of Pangué S.A., which is otherwise owned by Empresa Nacional de Electricidad Sociedad Anónima (ENDESA), Chile's largest utility.

The Pangué/Ralco complex of dams has become very controversial in Chile because of the historical, cultural and ecological importance of the upper Biobío region (See Annex A). The region is home to all of the remaining Pehuenche people of Chile, whose livelihoods and traditions will be lost by the development of the Pangué/Ralco complex. The Biobío provides drinking and irrigation water, recreation, fish habitat and other valuable resources to over 1,000,000 people. The Upper Biobío is one of the ecosystems with highest biodiversity and endemism of the whole country with a number of plant, animal and fish species, found almost nowhere else in the world.

This claim is filed with the World Bank Inspection Panel because there is nowhere else to turn to request accountability and respect for the Pehuenche and others concerned with the future of the Biobío River. All other recourse has failed and we believe that all members of the World Bank group should be subject to open oversight and accountability mechanisms to assure that they comply with established policies and procedures, particularly those intended to protect the environmental and social rights of affected people.

For further background on the Biobío Region, the river and watershed, the indigenous people affected, the legal-historical context of the Pangué/Ralco hydroelectric complex and ENDESA, see Annex A.

II. CLAIMANTS

The "Grupo de Acción por el Biobío" (GABB), in our name and in representation of:

- A) 47 local Pehuenche, inhabitants of the Quepuca-Ralco and Ralco-Lepoy Indigenous communities, directly affected by the Pangué/Ralco hydroelectric project, whose names, legal mandates and geographical locations we attach in Annex B.

- B) 194 citizens living in the lower part of the Biobío basin (Concepción/Talcahuano area shown in the map), also directly affected by the same projects, whose names and legal mandates we attach in Annex B;
- C) Chileans living in the cities of Santiago (65 people), Valdivia (15 people), Temuco (13 people) and Viña del Mar and surrounding cities (52 people), also directly claiming to be directly affected by the same projects, whose names and legal mandates we attach in Annex B;
- D) Guido Girardi, Alejandro Navarro, Mario Acuña, members of the Chilean Congress, whose legal mandates and names we attach in Annex B. In the case of Guido Girardi and Alejandro Navarro, special mandates are included on official Congressional stationary.

III. IFC INVOLVEMENT IN THE APPRAISAL AND IMPLEMENTATION OF THE PANGUE/RALCO HYDROELECTRIC COMPLEX IN THE RIVER BIOBIO

The IFC has been the major international institution leading the efforts to finance the Pangué Dam, the first of six dams of the Upper Bio Bio Hydroelectric Complex. The IFC was closely involved in the appraisal and design of the Pangué Dam, in reviewing the environmental impact assessment completed on the Pangué Dam, and in requiring several activities, including completion of additional cumulative impact studies and the creation of the Pehuén Foundation, to mitigate environmental and social impacts of the Pangué Dam. As such, the IFC lent essential international prestige and credibility, which continues to insulate ENDESA's mistakes regarding the Pangué/Ralco Complex from public scrutiny.

More specifically, the IFC has the following involvement in the Pangué/Ralco Hydroelectric Complex:

1. The IFC provided Pangué S.A. a direct loan of US \$70 million and syndicated another US \$100 million with ten European banks for the Chilean company, thus becoming the main financier for the Pangué Dam (having a total cost of approx. US \$ 470 million).
2. The IFC is the main creditor and 2.5% equity owner of Pangué S.A., which is currently building Pangué Dam, and according to the Chilean press recently reported that Pangué S.A. is "in charge of" Ralco. See newspaper article in Annex M. Because of the IFC's ownership in Pangué S.A., it is now also responsible for ongoing violations of World Bank policies and Chilean laws aimed at the protection of the environment and indigenous peoples affected by the construction of Pangué and the development of Ralco.
3. The IFC was also instrumental in the release US \$28 million of mixed credits from the Swedish government and US \$14 million from the Norwegian government for the financing of the turbines and technical studies respectively. The loans from both nordic

countries were provided from development aid funds and we believe were granted in part on the basis of assurances by the IFC that the Pangué project had been properly evaluated, that it complied with World Bank guidelines and procedures and that no more hydro projects were to be built in the Biobío in the near future.

4. The IFC is charged with ensuring that ENDESA complies with the project investment agreement, which contains an estimated eighty (80) different environmental and social covenants (including at least several linked to the planning and construction of the Ralco dam). As a result, the IFC plays a role in the continuous monitoring of the implementation of the Pangué/Ralco dams and of critical mitigation measures, including those aimed at compensating the Pehuenche and at ensuring that cumulative environmental impacts studies are adequately carried out, before any further hydro developments in the region. Although the loan agreement, including these covenants, has not been made public, we have reasons to think that a number of them are not being, or will not be, met.

5. The IFC's support for the Pangué Dam was provided with complete knowledge that Pangué was only the first in a series of functionally interconnected dams (including most notably Ralco) planned for the Biobío river. ENDESA released a plan for six dams on the BioBio as early as 1990. See ENDESA Map and other documents in Annex C. The connection between Pangué and Ralco was raised with the IFC in numerous meetings and letters prior to the time the loan for Pangué was approved. Because the environmental damage from Ralco is much greater than Pangué, ENDESA downplayed their intentions to build Ralco and successfully convinced the IFC to focus only on Pangué. They even issued a different public relations brochure in 1992 that was essentially the same as the 1990 brochure, but with a focus only on Pangué. IFC's position at the time of the loan approval was that they would require a cumulative impact study whenever a second project in the basin was built. As a result, the IFC did not require a cumulative impact study, a mistake that causes problems to this day.

6. The linkage between Pangué and Ralco is built directly into the design of Pangué. The Pangué dam cannot operate at peak efficiency without a large accumulation reservoir upstream (namely, Ralco) to provide adequate water storage for the regulation of the Biobio flow. Although at the time of loan approval, IFC determined that Pangué was viable without the addition of Ralco, the studies assumed that Pangué could completely and routinely dry up the flow of the river. The efficiency of Pangué is greatly reduced once you consider the requirement to maintain ecological flow for fish habitats and water users, as required by the IFC loan agreement and by new Chilean regulations on fishing. The only way to provide those flows has been the construction of a Ralco-like dam. The IFC was fully aware of this at the time of approving the Pangué loan, but they chose to believe ENDESA's assertions that Ralco was a provisional project.

7. The Ralco dam is being implemented at this very moment. For example, ENDESA has purchased a large estate (El Barco) which they need only for the resettlement of Pehuenche peoples who will lose their lands if Ralco is built. Endesa's subcontractors

have continued with advanced drilling studies, and persons connected with ENDESA, subcontractors, and the Pehuen foundation have been actively trying to persuade members of Pehuenche communities that they will have to move from their lands because of Ralco. ENDESA recently also sought to renew its provisional electrical concession for Ralco, initially given in 1991. ENDESA's President, Jose Yuraszeck, clearly affirmed during an April 1995 stockholders meeting that Ralco was a project "in implementation." Endesa has taken these actions despite an apparent promise in the loan agreement that they will not start Ralco until completing an adequate cumulative impact assessment. In addition, as stated above, at least one newspaper has reported that Pangué, S.A. is "in charge" of Ralco. This, too, would violate the loan agreement. It also deepens IFC's responsibility for Ralco, because IFC is a 2.5% owner of Pangué, S.A.

IV. THE INSPECTION PANEL'S COMPETENCE IN THE CASE

We approach the recently created Inspection Panel of the World Bank because all other recourse has failed and because we believe that all members of the WB group should be subject to adequate fiscalization to assure that they are operating according to set policies and procedures. The Panel is the only avenue remaining for the Pehuenche and other affected persons to investigate the IFC role in the Pangué/Ralco issue. Given the long history of controversy over these projects and the IFC's equity position in the Pangué company, GABB and other concerned parties in the region no longer have confidence in IFC's objectivity in supervising implementation of the project. Enlisting the assistance of the Panel can provide clear answers to the issues raised and a credible set of opinions regarding the appropriate role of the IFC now and in the future.

There is no reason why the Panel process should not also apply to IFC projects. Although the Resolution creating and empowering the Inspection Panel has only been voted on by the IBRD and IDA Boards of Executive Directors, nothing in the Resolution states that it cannot review IFC-financed projects. The Panel rules state that the "forum is available when adversely affected people believe the Bank itself has failed, or has failed to require others, to comply with its policies and procedures...." Operating Procedures, at 5. This language should extend to IFC-financed projects, because IFC-financed projects are subject to World Bank policies and procedures.¹ In the absence of an IFC-authorized Panel procedure, the resolution and operating procedures of the World Bank Inspection Panel should apply to the IFC. Even the Bank's General Counsel has stated that the Panel applies to other institutions, like the Global Environment Facility, where the Bank plays a critical administrative role.²

Moreover, the IFC is an international bank and a member of the World Bank Group,

¹See, e.g., IFC Environmental Review Procedure, page 1.

²Shihata, The World Bank Inspection Panel,--.

whose investment policies and operations must ultimately be accountable to the persons affected by their finance decisions. This public ownership of the IFC makes it mandatory that it complies with relevant international standards, particularly those policies and procedures promulgated by the IFC and the World Bank. Furthermore, notwithstanding specific differences in project cycles, procedures and confidentiality requirements, we believe it to be of the upmost importance that IFC-financed projects meet the same standards set established by other members of the World Bank Group, particularly those promoting sustainable development and respect for human rights.

Structurally, the IFC's membership, its Board of Governors, and its Board of Executive Directors are essentially the same members as those of the IBRD and IDA. The IFC's President is the same as the World Bank President, currently Mr. James Wolfensohn.

In addition, the IFC is required to follow many World Bank policies and directives. Even where it has its own policies, such as in environmental assessment, the purposes, goals and basic approaches are often essentially the same as the parallel IBRD policies or directives. Thus, the 1990 IFC "Procedure for Environmental Review of IFC Projects (the "IFC Environmental Procedure") states that "the purpose of the environmental review process is to determine if the project is in compliance with appropriate Bank guidelines and policies."³ Similarly, in paragraph 5, the 1990 policy states: "It is the Environmental Advisor's responsibility to coordinate with the Bank, to determine if the project conforms with the appropriate Bank guidelines and policies...." Also, important to this claim is the requirement in the 1990 Environmental Policy, para. 13, that: "During project supervision it will be necessary to monitor the project to ensure compliance iwth the appropriate Bank guidelines and poicies, as well as any other conditions contained in the enviornmental clearance."

The linkage between the IFC and the Bank's environmental guidelines and policies was made clearer in IFC's 1993 Environmental Analysis and Review of Projects (the 1993 IFC Environmental Policy). There the IFC reaffirmed its commitment to following appropriate World Bank environmental policies and guidelines, including explicitly guidelines and policies relating to Indigenous Peoples, Wildlands, Biological diversity, Cultural Properties, Dams and Reservoirs, Induced Development, Involuntary Resettlement, and Protection of Watersheds.⁴

In the case of the Biobio, the need for the independent perspective of the Inspection Panel is clear. The opportunity has to be taken to conduct an in-depth investigation now;

³1990 IFC Environmental Policy, at para. 12; *see also* para. 6 ("Normally, Bank guidelines (or if more stringent, the local requirements) will apply to IFC projects"); para. 1 (All "projects will be subject to an environmental review process to ensure that they are consistent with the spirit and intent of the appropriate Bank guidelines and policies").

⁴1993 Environmental Policy, Annex B.

otherwise we fear that the IFC financing will all be disbursed and the numerous environmental and social covenants in the loan agreement will never be met. In addition, harms resulting from violations of World Bank policies and procedures applicable to the IFC will never be remedied.

We believe that in the Pangué/Ralco project the two primary justifications for the inspection process are met, as specified in the Inspection Panel Operating Procedures. Those procedures state that the Panel "is available when adversely affected people believe the Bank itself has failed, or has failed to require others, to comply with its policies and procedures." We believe that in this case, and given the information we provide in this claim, the Bank has failed to require the IFC to comply with its policies and procedures. This is particularly true when WB staff has been involved in the past, and continues to be involved with the Pangué project, answering the multiple inquiries and assisting to some of the numerous meetings that this project has generated since 1990, conducting investigations or involved in other project related activities.

Such an investigation should serve not only to prevent furthering ecological and cultural devastation in the Biobío, but also to strengthen the IFC and the other members of the World Bank Group. IFC and other WB staff's refusal to follow WB stated directives and policies undermine other WB and international institutions efforts to adequately manage Chile's main river basin. We must learn from past mistakes. The consequences of the irregularities that took place with IFC involvement with the Pangué project are being felt today and will surely aggravate in the near future. What is at stake is not only the survival of a threatened indigenous group and an unique natural environment. Also at stake is the World Bank's commitment to its stated policies and procedures, the Bank's ability to fiscalize the adherence of these principles by part of its member groups, and the ability to take corrective action. The positive outcome of this claim and other actions that the Bank can take will surely benefit not only the Pehuenche and the Chileans whose rights continue to be violated, but also all other people and governments that will approach the World Bank assuming that the objectives and policies that appear on paper will in fact be implemented in reality.

V. POLICIES AND PROCEDURES VIOLATED BY THE IFC

As detailed in the following sections of the claim, the following policies and procedures have been violated by the IFC:

IFC: Procedure for Environmental Review of IFC Projects (1990)

IFC: Environmental Analysis and Review of International Finance Corporation Projects (1993)

WB Operational Directive 4.00, Annex B, Environmental Policy for Dam and Reservoir Projects

WB Operational Directive 4.20; Indigenous Peoples

WB Operational Policy Note 11.02. Wildlands: Their Protection and Management in Economic Development

WB Operational Policy Note 11.03. Management of Cultural property in Bank-Financed Projects

WB Operational Directive 4.30: Involuntary Resettlement

WB Operational Directive 13.05: Project Supervision

In addition, we believe the IFC is abdicating its obligation to adequately monitor compliance with the numerous environmental and social conditions of the loan agreement as required in its 1990 Environmental Policy.

VI. THE RIGHTS AND INTERESTS OF THE PEHUENCHE ARE BEING HARMED AS A DIRECT RESULT OF IFC VIOLATIONS

The Pehuenche living in the immediate area of the Pangué/Ralco projects, have the following rights and interests which are being harmed or threatened by the IFC-financed Pangué/Ralco projects:

a. The right accorded by national laws (Chilean Law 19.253 of 10/05/1993) to defend our indigenous territories and culture, maintain the integrity of our natural resources, specially in Areas of Indigenous Development, such as the Upper Biobío, and take part in decisions related to issues that affect our peoples. These rights are specifically mentioned in Title II, Paragraph 1, On the Recognition, Protection and Development of Indigenous Lands; Title III, Paragraph 2, On the Areas of Indigenous Development; and Title V, paragraph 1, on Indigenous Participation, of the Chilean Indigenous Law. (See Annex D.)

Today the Pehuenche face the loss of territory that they have occupied for many years, their area's natural resources on which their livelihood depends are being developed without any sustainable planning, their communities and traditional leaders are being deceived and pressured by Fundación Pehuen and other Endesa and/or Pangué-related personnel and subcontractors, and they are not being adequately consulted in matters that affect their future, as is required by the new Indigenous Law.

b. As indigenous citizens of Chile, a country member of the WB group and the IFC, the Pehuenches have the right to have the World Bank Group member institutions comply with WB Operational Directives and Policies and to ensure adequate fiscalization and grievance procedures when those Directives and/or Policies are violated.

The Pangué/Ralco projects, financed and now partly owned by the IFC is again trying to impose on the Pehuenche a project on which they have never been adequately consulted. Annex G shows some of the many occasions in the past few years that Pehuenche leaders have clearly opposed the building of the Pangué/Ralco complex.

The Pehuenche's present situation is a direct result of the inadequate environmental assessment of the Pangué/Ralco project, of the lack of informed participation in the appraisal and implementation of this project and of the lack of implementation and supervision of mitigation measures. The situation reflects serious violations of the environmental and social assessment policies of the IFC and the World Bank, as well as the World Bank Indigenous Peoples Policies (which the IFC must follow). We also believe the current situation and pressure being placed on the Pehuenche violates the loan agreements between the IFC and Pangué and ENDESA. These agreements apparently contain requirements to assess "cumulative environmental and socio-economic impacts" before beginning Ralco. (see Annex F: References to Loan Agreements.) Finally, the current situation is in violation of Chile's new Indigenous Peoples Law.

a. The Fundacion Pehuen and others related to ENDESA are Trying to Persuade Pehuenche to Leave Their Ancestral Homes Because of Ralco.

The Fundacion Pehuen and other Pangué/ENDESA related-personnel involved in the EIA for Ralco and in prospective work for the dam, are deceiving and pressuring the Pehuenche communities to relocate, despite the fact that Ralco has not been authorized by the government and despite Pehuenche rights, under the new Indigenous Law, to remain on their land.

The Pehuenche living in the area of the Pangué/Ralco project are suffering the loss of part of their traditional territory and the natural resources on which they have depended on for many years. Mitigation plans that were supposed to be in place for Pangué have not been adequately implemented, resulting in increased logging activity, in uncontrolled real estate development in the shores of the future lake, and in the transfer of land Pehuenche claim belong to them, to new private owners.

Furthermore ENDESA, its employees and subcontractors, including the Pehuén Foundation continue to trespass in Pehuenche lands, without consulting them and disregarding their leaders's explicit instructions; the Pehuenche are pressured to accept resettlement for the construction of the Ralco dam, being given false information regarding the status of Ralco and about their rights; once again this denies the Pehuenche the chance to protect their territory and culture and to have an informed participation in matters that directly and vitally affect them, rights explicitly stated in WB/IFC Operational Directives and Policies and now in Chile's new national indigenous law.

Specially serious is the fact that the El Barco estate has been purchased by ENDESA. El Barco is , despite no cumulative studies having been completed for the dam and no

authorization yet given by the government. Pehuenche families are being asked to sign documents agreeing to resettle in El Barco, and some families that resided there have actually been forced to leave.

During a visit to the Ralco-Lepoy community that took place in September, 1995, the Pehuenche of 40 families that agreed that GABB represent them before the panel coincided in telling us that:

"ENDESA says that we have to leave the lands that we now occupy and to go to other lands that they bought further up, in the "El Barco" estate ..." (Annex ???).

b. ENDESA's Subcontractors Have Continued With Ralco-Related Field Work on Pehuenche Land Without Permission and Prior to Completing the Cumulative Impact Studies.

The "invasion" of Pehuenche land by ENDESA's subcontractors whom, without permission have come into their lands and conducted prospective field work has meant an impact on the integrity of the Pehuenche territory, apart from the total lack of respect towards their rights as indigenous and Chilean citizens to be asked permission to enter their lands and, in the case of prospective works for Ralco, to be informed so as to understand their purpose, to be consulted and even to deny access to their lands, if they wish to do so.

This is for example the case of Maria Calpan Quipainan, a woman from Ralco-Lepoy whose land was broken into by ENDESA's subcontractors, without permission, and 60 holes between 40 and 80 meters deep were dug. These holes are part of the ongoing efforts to plan and begin the construction of the Ralco dam at the earliest possible date, as demonstrated by ENDESA executives public statements and the still unsuccessful attempt to renew the provisional electrical concession for Ralco.

Such renewal of an electrical concession contradicts the Chilean government's recommendation regarding new generating plants, and also violates indigenous rights, as explained in a letter sent by CONADI to the government (see Annex I).

c. The Fundacion Pehuen's Operations Are Disrupting the Traditional Leadership and Cultural Structure of the Pehuenche

The Fundacion Pehuen is entering the Pehuenche community of Ralco Lapoy that will be affected by the construction of the Ralco dam and being asked to give up their traditional lands and their rights under the indigenous law to protect those lands. The Fundacion is going beyond its mandate to offer benefits to the Pehuenche affected by Pangue to try to facilitate the removal of Pehuenche people in anticipation of the construction of Ralco. We believe and claim that this violates the IFC loan agreement, the charter establishing the Pehuen Foundation and reflects the lack of supervision of this project by the IFC. This is also a violation of WB Indigenous Peoples policy.

The Pehuenches traditional leadership structures have been disregarded, as reflected by the Fundacion Pehuén's refusal to listen to the appeals of Pehuenche leaders. This is specially serious in the Ralco-Lepoy community, where their leaders explicitly told the Fundación Pehuén to abandon the community, as seen in a message delivered on October 8, 1994, to the President of the Republic. The message states:

Through this letter we appeal to you with the purpose of asking Your Honour that the Ralco-Palmucho dam is not built because many people from both communities, Ralco-Lepoy and Quepuca Ralco, will be flooded.

This is why we approach you and ask you for Protection and Justice in the Law.

Because all of the lands on the banks of the Biobío are going to be inundated a total of 870 Pehuenche families ask that the dam is not built.

We also want to let it be known of the intentions of the Pehuén Foundation that has come to offer projects. The community does not agree to accept this. We say that they can mean treason for our community.

The message to the President was signed by Manuel Neicuman, Lonko of the Community, and Laureano Ancanao, President of "Indigenous Community Manuel Neicuman of Ralco-Lepoy." A community meeting when this letter was written and when the Ralco-Lepoy community explicitly asked the Fundación to leave has been documented in a videotape that can be made available.

The dignity and rights under the New Indigenous Law and under WB guidelines have been violated because of the misinformation the Pehuenche have been exposed to and the pressure they have been subjected to by ENDESA, its subcontractors and the people of the Fundación Pehuén so that they accept to be resettled.

We understand this has been the case with many families, among them the family of Juan Pablo Gallina, who are part of this claim and who have strongly protested about these practices.

d. The Fundacion Pehuen Is Threatening the Pehuenche Cultural Integrity

The Fundacion Pehuen is disregarding the New Indigenous Law and the government institution in charge of indigenous affairs (CONADI). A clear example of this is the educational research that the Fundacion Pehuen is carrying out and the proposed educational programme the Fundacion intends to develop in the area. This kind of activity is clearly a function and responsibility of CONADI, which is also carrying out preliminary studies for the implementation of an 'intercultural' bilingual education programme in areas with a high concentration of indigenous people, such as the Upper Biobío. The Fundacion

has not even attempted to work in coordination with CONADI in such a vital area as the education of indigenous children, in this case the Pehuenche.

Basically, through the Fundacion Pehuen, ENDESA/Pangue S.A. has been offering financial support to the five small rural schools of the area. GABB witnessed how Fundacion official advised the Director of the Ralco School, one of the most important of the area, with a high number of Pehuenche children, to get out from the municipal system within which they operate today and to look for support from the private sector, meaning, of course ENDESA and 'friends'.

It is obvious to us that now ENDESA wants to manipulate the population of the area through the schools and their directors for the building of Ralco. For a real non-conditioned improvement of the education in the upper Biobío a very different thing would be to fund what appropriate agencies such as CONADI and the Ministry of Education, in close coordination with the Pehuenche communities, could decide to implement and without a Ralco dam in between or as an end result of these 'educational activities'. We see all this again as a public relations ploy of ENDESA, in view of the mounting local criticism against the implementation of Pangue and absolutely consistent with ENDESA's intense and all-encompassing efforts for the implementation of the Ralco dam.

These worries are also being raised by CONADI officials in charge of implementing the new bilingual educational plans, as can be seen in the letter sent to GABB (see Annex I).

We question whether they have the technical expertise in the areas of cultural anthropology, as implicitly required by Paragraph 14(c) of the World Bank Indigenous Peoples Policy. That policy states that

"the institutions responsible for government interaction with indigenous peoples should possess the social, technical, and legal skills needed for carrying out the proposed development activities. They should normally involve appropriate existing institutions, local organizations, and nongovernmental organizations with expertise in matters relating to indigenous peoples."

Although this policy refers to situations where the government is the borrower, there is no reason not to apply it where a private company is the borrower and gets involved in development issues relating to indigenous peoples.

e. The Loss of Ancestral Territory

The Pehuenches have lost part of the territory traditionally occupied, that they have been reclaiming for years and that, through the new Indigenous Law, they could recover for

themselves. This refers to a portion of the north bank of the future Pangu artificial lake, as is documented in the study entitled "Territory and Pehuenche Communities of the Upper Biobío" (August, 1992), commissioned by the governmental "Special Commission for Indigenous Peoples" (CEPI) and conducted by Raul Molina and Martin Correa. See Annex H.

Despite that the initial EIA done for Pangu included the conclusion of an expert anthropologist, Mr. Rodrigo Valenzuela, who estimated that the impacts on the Pehuenche were impossible to mitigate (Annex J), the loan was approved and certain conditions were agreed upon, among them the protection of the integrity of their cultural and social integrity and the protection of the watershed. But these supposed mitigation measures have not worked and the impacts that we feared are rapidly occurring. Two specific losses of Pehuenche territory are taking place right at this time, in spite of agreements between Pangu S.A., the IFC and the Chilean government regarding the protection of Pehuenche lands and culture, and also despite the New Indigenous Law which grants protection even to lands historically occupied by indigenous peoples (that is, without legal titles to those lands).

1. The Sale of the El Avellano Estate

In the case of the Pangu project, Mr. Enrique Richards, the legal owner of "El Avellano", an estate located along the north bank of what will be the future Pangu lake, is selling land that the Pehuenche have long occupied and claimed for themselves, and that they have been trying to recover with the support of CONADI (National Corporation for Indigenous Development). Mr. Richards has been publicizing the sale of these lands in local and national newspapers. (Annex ???). Today, Mr. Richards, who has titles to these disputed lands, is threatening the Pehuenche with eviction.

Only days before filing this claim Pehuenche families from the area have sued Richards and the new owners of the plots that he has sold in "El Avellano". These plots can be seen clearly as the shaded areas in a photograph in Annex ??? that shows the real estate office's subdivision chart.

Why were the Pehuenche who live in "El Avellano" and nearby regions not considered "affected parties" when now they are being threatened with eviction as a result of the construction of Pangu? These people should have been provided the protections allowed under the Indigenous Peoples and Resettlement policies. The plight of these families was specifically raised in a government report issued by MIDEPLAN in 1992. See Annex H.

There are clear violations of WB and IFC policies and directives that indicate that these impacts should have been studied and taken care of. These policies refer to both the WB Operational Directive 4.00 that says that Indirect Impacts or Induced Development issues have to be studied, and also to the Operational Directive 4.20: Indigenous People.

In Section 14(b) of OD 4.20, for example, it is stated that:

"... Studies should make all efforts to anticipate adverse trends likely to be induced by the project and develop the means to avoid or mitigate harm ..."

From an internal IFC memo written by Robin Glantz, and from the several meetings that IFC people say they had with CEPI (Indigenous Affairs Office during Aylwin's government, which became CONADI), it is clear that the IFC officials should have known that the territory where Pangué/Ralco is being built as well as the surrounding area is Pehuenche land. This land has not only been inhabited by Pehuenche for hundreds of years, but also that under the new law that was being developed during the time when the IFC was considering its loan to Pangué S.A., and which is now in effect, these lands could be protected and/or recovered, and are in the process of being declared an "Area of Indigenous Development" under the Chilean Indigenous Peoples Law. See Map in Annex B.

Robin Glantz in her Memo of August 14, 1992, on page 2 states that:

"... Chile is in the process of democratization, with some historical developments underway ... Other important legislation pending approval, which gives a sense of where Chile is going is: a new forest law, an indigenous community law ..."

Apparently the IFC did not bother to get a copy of the study and to consider its findings.

' In the land tenure and historical study conducted by CEPI and completed in August 1992, on pg. 193, we read:

" ... the Pehuenche, before the formation of the "Las Huellas" and "El Avellano" estates, have occupied and exercised rights over the lands of Ralco, up to the area of 'El Moro' Creek. Thus they have never recognized foreign ownership of these lands, which they have reivindicaded as their own until this day.."

On page 201, the study mentions that:

" ...The Quepuca-Ralco indigenous community demands, among other things, the return of the Pehuenche lands of "El Avellano" ... the recognition and return of the land of this estate to those whom from immemorial times have occupied them and who presently occupy them ... [they also ask] for the end of all types of pressure to evict them by part of Mr. Enrique Richard and to do what is necessary to prevent that these lands, particularly those used during the winter season, are inundated by the waters of the planned Pangué dam ..."

Furthermore the study mentions that:

" ... this demand has remained in force by the families that live in "El Avellano" and

families of the "Malla" sector.."

When interviewed for this study, the Pehuenche clearly stated that "El Avellano" was, and still is, part of their historical demands.

2. The Loss of the El Barco Estate

Another loss of territory that has affected Pehuenche as a direct result of the Pangué/Ralco project is the loss of the "El Barco" estate which was recently bought by ENDESA for the future resettlement of the Pehuenche of Ralco-Lepoy whose lands would be flooded by the Ralco dam. See ENDESA deed in Annex H. It has to be noted that the Ralco dam has not been authorized and not even recommended by the Chilean government's national energy commission.

Regarding "El Barco", now owned by ENDESA, in the August 1992 CEPI study, pg. 203, under the subtitle "Demands of the Ralco-Lepoy Community", letter d, we read:

"Recovery of "El Barco" estate. The cacique (traditional leader) Manuel Neicuman and the older members of the community state that these lands were Pehuenche and that the summer occupation sites of the present "El Barco" estate, and near the lake, was occupied by their grandparents and parents, until they were evicted by the Bunster family and his descendants. Because of this they say that in the past the El Barco estate belonged to Guayalí, but that Guayalí was Pehuenche land. At the present time, the demand of the cacique and the community of Ralco-Lepoy is the recovery and transfer of the "El Barco" estate to Ralco-Lepoy, indicating that a year ago its owner offered to sell it to the Ministry of Agriculture."

Through the new indigenous legislation Pehuenche could have reclaimed and recovered these lands. Now, it seems ENDESA will offer Pehuenche lands to the Pehuenche in exchange for other Pehuenche lands affected by Ralco. So in reality they will get what they already own in "compensation" for their lost lands.

GABB believes this violates Chile's new indigenous law, certain conditions in the IFC loan agreement, as well as the World Bank Indigenous Peoples Policy.

VII. CHILEANS THAT LIVE DOWNSTREAM IN THE BIOBIO BASIN ARE THREATENED IN THEIR RIGHT TO A HEALTHY ENVIRONMENT AND PRODUCTIVE ACTIVITIES

Chileans living on the Biobio basin, downstream from the Pangué and Ralco projects, have the following rights and interests violated by the IFC-financed Pangué/Ralco Complex:

a. The right under the Chilean Constitution to live in a contamination-free environment and the right to carry out economic activity. The lack of an ecological flow for the Biobio river

threatens to seriously affect both their health, work and quality of life. Despite repeated warnings by the region's main academic institution, EULA, and an explicit accord of the Regional Council, Pangué has not made any commitments to maintain a flow that assures that no negative impacts will occur to the drinking water and fisheries industries. Furthermore, despite promises by ENDESA, no basin-wide downstream impact study is taking place and there is no independent supervision of the limited downstream studies that are being carried out.

In addition to violations of IFC and World Bank policies, the current situation violates our rights under the Chilean Constitution. Chapter III of the Constitution grants to all citizens, among other rights, the following:

- i) The right to life and to the physical and psychic integrity of the person (Article 19, n° 1).
- ii) The right to live in an environment free of contamination. It is the duty of the State to make sure that this right is not affected and to oversee the preservation of nature (Art. 19, n° 8).
- iii) The right to health protection (Art. 19, n° 9).
- iv) The right to develop any commercial activity that is not contrary to moral, public order or national security, respecting the legal norms that regulate the activity (Art. 19, n° 21)

b. As citizens of Chile, a country member of the WB group and the IFC, the citizens of the Biobio basin have the right to have the World Bank Group member institutions comply with WB Operational Directives and Policies and to ensure adequate fiscalization and grievance procedures when those Directives and/or Policies are violated.

Because of serious violations in conducting the EA for Pangué and Ralco, in the lack of public participation allowed during the appraisal and implementation processes, and in the current failures to comply with promised mitigation actions, an important part of the region's cultural heritage is lost; their health is being threatened because of possible impacts of Pangué's operation on the contamination levels of drinking water, and as local fishermen their economic activity is being threatened.

More specifically, as citizens of Chile, a country member of the WB group and the IFC, Chileans living downstream also have the following rights:

a) The right to demand that WB Group member institutions comply with WB Operational Directives and Policies throughout the development of a project supported by a WB member.

b) The right to demand an adequate supervision of these projects.

c) The right to demand grievance procedures when these ODs and/or Policies are violated.

Our interests have been harmed in a number of ways relating to continuing damage and potential future damage caused by the flawed process of evaluation and authorization of the Pangué project. These flaws continue to cause problems today, which will be magnified by the imminent construction of Ralco. The following are separate violations and separate bases of our claim:

a. Pangué was authorized without any proper baseline environmental studies. ENDESA disregarded the recommendations that emanated from the pre-feasibility studies carried out by the University of Concepción. One (1987) through which the experts evaluated the possible construction of six hydro projects in the Upper Biobío River and a second one (1989) which evaluated the possibility of constructing the Pangué project in the same river. The recommendations of these studies indicated clearly that no industrial intervention of the Biobío River should be authorized on the basis of the information available on the river continuum from source to mouth, on the watershed, on terrestrial and aquatic fauna and flora, and on other uses of the river's waters. The experts recommended in-depth research for several years in all these areas before proceeding with any dam. Particularly refer to the presentation of the scientific team of the EULA Project of the University of Concepción to the Natural Resources Commission of the Chilean Parliament in August, 1992. (See "Análisis del Informe de Evaluación de Impactos Ambientales Relevantes del Proyecto Pangué Realizado para Pangué S.A. por Ecology & Environment, Inc. & Agrotec Ltda. August, 1992), Annex M.

This information was, of course, available both to ENDESA and the IFC. The fact that ENDESA did not comply with these recommendations was timely and publicly denounced by many national and international social organizations.

b. Environmental impact study on Pangué was completed after the decision to authorize the project. The Pangué project was authorized by the Chilean government in May 1990. The EIA for Pangué carried out by Agrotec Ltda. and Ecology & Environment Inc. was released to the public in February, 1992, this is, 22 months after the authorization. It is clear, then, that Pangué was authorized without considering its environmental --social and ecological-- impacts. This is a direct violation of WB/IFC environmental policies, which require environmental assessments be conducted **before** decisions. *See, e.g.,* 1990 IFC Environmental Policy, para. 2 ("The procedure outlined in this document is aimed at ensuring that information necessary for the environmental review is made available in a timely fashion, and that the necessary environmental clearance is given prior to submission of the project to the Board.")

c. The above-mentioned EIA done for the Pangué project did not adequately assess

downstream impacts. After much pressure from the public, the Chilean government and the IFC, and close to a year after the IFC's loan to Pangué S.A. had been approved, a downstream impacts assessment was done by the same consultants that had done the previous inadequate EIA for Pangué. The "Assessment of the Downstream Impacts, Pangué Power Station, Region VIII, Chile", dated November, 1993, did not reach any definitive conclusion about a Flow Release Management Plan (FRMP) or a Minimum or Ecological Flow. Contravening minimum accepted international standards, supposedly a FRMP is being refined now in parallel with the construction of the Pangué dam and plant which is today approx. 70% complete.

d. Reduced flows from the dam threaten the general health of people living below the dam with contaminated water. Given that the building of dams in the Upper Biobío will directly degrade the quality of the river's water and the trophic chain of the fluvial ecosystem due to the predictable increase in the level of contamination of the waters of the Lower Biobío and the impact this could have on the drinking water of the cities of the Concepción area that is taken directly out of the river. At the very least by reducing flows at certain times, it will increase concentrations of pollutants downstream all the way to the ocean. The seriousness of this issue can be gauged by the fact that ESSBIO, the local water distribution company, considered becoming part of the 1992 injunction filed by GABB, Pehuenche, Water User Coops. and thousands of other Chileans. Mr. Arodis Lepe, technical director of ESSBIO, and also Councilman for the Regional Government of the Eighth Region, can attest to this fact.

e. Reduced flows caused by the Pangué/Ralco dams threaten one of Chile's most important fisheries, located in the Arauco Gulf. The reduction of nutrient levels in the Arauco Gulf (where the river enters the ocean) will result from an important part of nutrients being captured by the Pangué/Ralco dams, that would create a permanent barrier to the upper third sector of the basin, where close to 15,000 affluents feed the main course, providing uncontaminated and vital nutrients to the river and thus to the Arauco Gulf, where one of Chile's main fisheries areas is located.

It is important to note that the Federation of Small Fisherman, two of whose leaders are part of this claim, filed an injunction in 1993, claiming the imminent danger of a negative impact on their economic activity. Despite the fact that the injunction was later thrown out of court because of technical reasons, it was processed by the courts. (Annex E) It is also important to note that the scientific community, mainly the EULA Center of the University of Concepcion, has explicitly alerted ENDESA and the Chilean congress about these dangers (see Annex J). Furthermore the Regional Council of the Regional Government of the Eighth Region, in a public declaration put out in August of 1993, expressed concern on this matter and asked to revise studies that ENDESA promised to make, but that up to this date has not.

f. An adequate flow management regime has not yet been developed for Pangué/Ralco, as required by the loan agreement. This is an important regional issue that

has not been adequately resolved. The agreement of the Regional Government reads, in part:

Agreement of the Regional Council of the Regional Government of Bio-Bio

Concepcion, August 16, 1993

...The Regional Council, in compliance with its obligation to protect the health of the population, to preserve the environment of the region and to promote the harmonic and fair development of its territory in the economic, social and cultural realm, AGREES TO:

1. Demand that in the operation of the Pangué Dam, under every circumstance, the minimum historical flow be respected, and which should be considered as the minimum ecological flow until a smaller one be technically determined;
2. To establish, by whomever it corresponds to, an efficient control system, that permanently guarantees the ecological flow and the periodical return of the sediments to the river.
3. To gather, from the Pangué S.A. company, the conclusion of the studies of environmental impact on the Arauco Gulf, demanded by the International Finance Corporation, affiliate of the World Bank Group, who financed the project. Regarding the seriousness of said studies, this Regional Council reserves the right to evaluate them and emit an opinion in that regards at the appropriate time...

See Annex D.

The fact that until this day downstream users have no assurance that their health and fishing activities are not going to be seriously affected constitutes a violation of the loan agreement that assured that an adequate study and operational flow plan was going to be implemented. Although the IFC reports that these studies are being made, there are founded reasons to think that these studies, once again, will not be adequate. We say this, in part, because a report completed for the fisheries regional director by EULA report on these studies concludes that no adequate base studies are being carried out (see Annex J).

It is important to note that the EULA project of the University of Concepcion has a long history of involvement with the study of ENDESA's hydroelectric projects and that in recent years they have gathered a tremendous amount of systematic information on the basin, undoubtedly the most complete in the world, in an effort that has merited the recognition of UNESCO and other international institutions (see Annex J).

The Chilean Congress, in its April 1995 Accord also clearly asks for a minimum flow to be established and conveys the fact that, according to what the Chilean Congress knows no adequate supervision of impacts, nor the independent evaluation of a minimum flow are taking place, regardless of what the IFC responds when inquired by interested parties (see Annex D).

The April 1995 accord specifically asks the Executive branch to:

"3.- To instruct the Regional Environmental Commission (COREMA), so that by itself or through a third party, it supervises the impacts on the natural sytem that are occuring in the area [due to the building of the Pangué dam], providing the COREMA with the human, technical and economic resources necessary for carrying out this task.

4.- To recommend to the National Water Directorate so that, together with the National Energy Commission and the National Environmental Commission, they all agree with Pangué S.A. electrical company a Flow Release Management Plan."

Because of serious violations in the EA of Pangué, in the Public Participation during the appraisal and implementation processes and currently in the promised mitigation actions the downstream users of the Biobío face potentially increased health problems due to increased contamination levels of the water we drink. In addition, local fishermen face a loss in fish productivity due to the decline in nutrients expected to flow from the Biobío into the Arauca Gulf after construction of Panuge and Ralco. We believe these impacts result from a failure of the IFC to comply with environmental policies that require the study of cumulative impacts before decisions are made; as well as a failure to enforce the loan conditions requiring cumulative impact studies and minimum flow regimes.

g. Pangué/Ralco is Being Implemented Before Cumulative Studies are Completed.

Despite many efforts beginning in 1990 to ask IFC and ENDESA to study the cumulative impacts of the multiple dams planned on the Biobío, the IFC approved the Pangué dam before completing cumulative impact studies. IFC announced in several letters and other releases that they would require cumulative impacts before additional projects were constructed. According to page 14 of the project summary presented to the IFC Board in December 1992, ENDESA and Pangué must complete a cumulative impact study before commencing Ralco:

..."Furthermore, in its efforts to ensure that cumulative effects of future projects are considered, IFC has obtained from ENDESA and Pangué an undertaking that their evaluation would consider cumulative environmental and socioeconomic impacts. Finally, the Chilean Government has stated that they would require a full EA for any future projects, which would include a cumulative impacts statement, as well as convoke a national debate, if and when other projects on the Biobío River are proposed to the CNE for consideration..."

See Annex ---. In addition, a World Bank report issued December 19, 1994, entitled "Chile. Managing Environmental Problems: Economic Analysis of Selected Issues", states in section 1.84, page 26, that, in reference to the Pangué project:

"...Several NGO's have criticized the project in view of the cumulative impact of possible additional hydro-projects on the Bio-Bío river. The Chilean Government has clearly stated that it will require a full environmental assessment, including cumulative impacts, of possible additional future projects on the river.."

It is a violation of IFC/WB policies not to evaluate cumulative impacts of a series of dams. IFC's 1993 Environmental Policy specifically states that the "environmental analysis [which is defined as the "process of evaluating the environmental impact of a project"] involves consideration of ... **cumulative impacts** of existing projects, the proposed project, and imminent future projects." (Page 9.)

Similarly, World Bank O.D. 4.01 promotes regional environmental assessments "where a number of similar but significant development activities with potentially cumulative impacts are planned for a reasonably localized area." (Page 2, para. 5). Regional EAs are intended to make sure that synergistic, interactive and cumulative impacts are not missed in evaluating projects separately. "Regional EAs are particularly useful when they precede the first in a series of projects or development interventions in an undeveloped region, where a region is slated for major developments, where **cumulative impacts** are anticipated, or in regional planning or agro-regional zoning. (Page 2, para. 5). The World Bank's *Environmental Assessment Sourcebook* also supports the need to assess cumulative impacts "when a number of development activities are planned or proposed for a relatively localized geographic area, such as several projects in one watershed." (Vol. 1, Page 12, para. 40)

Major steps to implement Ralco are clearly underway and continuous. ENDESA has recently purchased the El Barco estate, lands long claimed by the Pehuenche. The only reason for ENDESA to purchase these lands is to provide the place to the Pehuenche who must be resettled if Ralco is built. (ENDESA is thus preparing now to give the Pehuenche land Pehuenche already claim as part of the resettlement from the lands they currently occupy that will be affected by Ralco). ENDESA has also continued with exploratory drilling in anticipation of building Ralco. ENDESA have backed up these deeds with public statements of their intention to build Ralco, but no cumulative impact study has been completed yet. See Annex C. ENDESA is conducting such a study, but we believe by the time it is completed, and reviewed by the public and the IFC, all of the IFC's loan will be disbursed and there will be no opportunity to ensure the quality of the study.

h. The Original EIA Failed to Look at Natural Gas Alternatives. In spite of the clearly insufficient EIA done for Pangué many here in Chile accepted resignedly the building of this dam as a politically consummated fact and because at that moment it was presented as the only power generation alternative to meet Chile's energy needs in the years to come.

Now, ENDESA is publicly announcing that, given Chile's pressing energy needs, it will build Ralco earlier than planned, this is, in the year 1997, immediately after Pangué is commissioned, so that the plant could be operating by the year 2002 (we enclose clippings, Annex C). Paradoxically, the imminent arrival of natural gas to Chile is a fact and offers an excellent power generation alternative. According to the National Energy Commission (CNE), with a combination of thermal plants (combined cycle) fired with natural gas and hydro plants that are well advanced in their planning our country can amply meet its power needs for the next ten years. The conclusion of the CNE is that the consideration of the Ralco project should be postponed until the year 2005 (CNE, "Infrastructure Plan", January and October 1995).

It has to be noted that the alternative of natural gas was not even considered in Monenco AGRA Inc.'s study "Assessment of Electric Power Generation Alternatives" (October, 1992) commissioned by the IFC and that supposedly examined the options available to Chile to meet its power needs. According to the IFC itself, Monenco's study --which now we can see was fundamentally wrong in its predictions and estimates-- was determinant in the IFC's decision to support and participate in the Pangué project. This failure to study all feasible alternatives as part of the EIA violates WB/IFC policies.

Just as importantly, now the use of natural gas gives ample time to properly monitor the effects of the Pangué plant on the Biobío and to carry out the appropriate studies of the Biobío's basin and of the river continuum --including cumulative impacts studies of all the dams planned-- that should have been done before authorizing any hydro development of the Biobío given the unique social, cultural and ecological characteristics of the basin and river.

ENDESA is now announcing as a fact an earlier start of the Ralco project when not even the problems and impacts of the Pangué project are being properly avoided, monitored or mitigated and when the Ralco project has not been evaluated yet through the EIA process and when none of the land tenancy conflicts with the Pehuenche have been solved. Now, ENDESA is publicly announcing that, given Chile's pressing energy needs, it will build Ralco earlier than planned, this is, in the year 1997, immediately after Pangué is commissioned, so that the plant could be operating by the year 2002. (See Annex D)

In addition, ENDESA is beginning major steps to implement Ralco before finishing the cumulative impact study and the study of all alternatives as is required under the IFC loan agreement. We believe that if nothing changes, all of the money will be disbursed under the IFC agreement before ENDESA complies with these conditions relating to Ralco and then IFC will have no leverage to force compliance.

VIII. CHILEANS RESIDING OUTSIDE THE BIOBIO BASIN ARE SUFFERING THE LOSS OF AN IMPORTANT PART OF THEIR CULTURAL HISTORY

Chileans residing in outside the Biobio basin have the following rights and interests violated by the IFC-financed Pangué/Ralco Complex (these rights and interests are also shared and claimed by the Pehuenche and Chileans living downstream of the Pangué Dam):

a. The right to protect the country's cultural property, wildlands, biodiversity and indigenous cultures.

b. The right to be heard and to participate through the democratic process in matters that affect our country. Our right to have our opinions considered in WB/IFC project has been consistently violated since 1990. Not only weren't we heard in our opposition to forever destroy the most biodiverse part of our main river, but now, despite promises and agreements to the contrary, no protection is in place for the indigenous communities and the areas natural resources and furthermore, ENDESA is announcing the imminent construction of Ralco, the largest of the dams.

c. As citizens of a country member of the WB group (including the IFC), to have its member institutions comply with WB Operational Directives and Policies and to ensure adequate fiscalization and grievance procedures when those Directives and/or Policies are violated.

The Pangué/Ralco project has, for several years, been a major issue, both in Chile and at the World Bank Group. A high former Chilean government official, National Energy Commission head Jaime Toha, categorized the conflict as the "major ecological-economic conflict" of the Aylwin administration, the first democratically elected government after almost two decades of authoritarian rule. IFC officials on the other hand have admitted that the Pangué/Ralco project has been their most difficult project in terms of environmental and social issues raised both before loan approval and afterwards.

A major reason for the continuing debate over the issue is the cultural value given by Chileans to the Biobio river, its ecosystem, the Pehuenche that survive in the Upper Biobio and its value both as an historical symbol and as the "battleground" where different development schemes for the country are being decided.

It is not by chance that the conflict has reached the highest level of the Chilean government and international finance institutions such as the WB Group. Chileans from all over the country have joined in efforts to protect the river. Thousands of them were part of an injunction filed in 1992, in what is regarded as the most massive such legal effort filed to date in Chile (see Annex E). Similarly, the 145 Chileans that are part of this claim and that nonetheless do not live in the Biobio basin, strongly feel they have been directly affected by the Pangué project and the imminent construction of Ralco.

It is not fair and/or accurate to think that direct impacts are only those that can be quantified in monetary terms and economic loss, or that occur to people living full-time in the region. People who want to use the region, or who are interested generally in the conservation of Chile's cultural past and of its biodiversity are also directly and adversely

affected by this project.

a. The Pangué/Ralco Dam Violates the Policies for Management of Cultural Property

The Biobio river complies fully with the "cultural property" definition as understood both by the United Nations and the World Bank. The Biobio is both a main "historical" site and a place of "unique natural values". It is thus covered by the WB Operational Policy Note No.11.03 entitled "Management of Cultural Property in Bank-Financed projects". It is also important to note that in footnote 1 of page 1 of that policy it is clearly stated that the IFC is fully covered by this directive. We believe the Pangué project violates this directive.

The Biobio is a major historical landmark for the general population and specially for the Mapuche indigenous communities, among them the Pehuenche. The river marked the border of the Mapuche nation for centuries, both during the Spanish colonial period, during the independence of Chile, and indeed today important indigenous groups regard it as their natural frontier. The Biobio lends its name to the whole eighth region and also to one of the provinces located in the area of the Pangué/Ralco projects.

b. The Pangué/Ralco Dam Violates the Policies for Protection of Wildlands and Biodiversity

The area to be flooded and otherwise damaged by the Pangué/Ralco complex is a wildland of special concern as defined in the WB Operational Policy Note 11.02 (OPN 11.02). As the WB's *Environmental Assessment Sourcebook* further explains, "Wildlands of special concern are those recognized as exceptionally important in preserving biological diversity or performing environmental services." (Vol. 1, Page 76, para. 3). The Biobio River and forests surrounding the project are of such exceptional importance. They are known sites of rare and endangered species. Vulnerable and rare species of flora include the Araucaria, Ciprés de la cordillera, Lhueque, Guindo santo, Radal enano, Chupon, Chupalla, and Chagual. Endangered, vulnerable and rare fauna include the Gato del pajonal, Guiña, Pudu, Puma, and Quique (mammals); the Carpintero, Choroy, Bandurria, Torcaza, Pato rinconero, Peuquito and Aquila de cola rojiza (birds); the Culebra de cola larga, Culebra de cola corta, Lagarto llorón, and Largentija café chica (reptiles); the Rana grande and Ranita de Darwin (amphibians); and the Carmelita, Bagre, and Tollo de Agua Dulce (fish).

Operation of the dam will produce changes in the river's chemistry and flow which may cause local extinction of the Tollo de agua dulce, Bagre, and Carmelita fish. Flooding of the reservoir will destroy habitat for several of the bird and reptile species listed above, killing the young in the year that the reservoir is filling. The existence of the reservoir will induce development and road construction, which will in turn encourage further logging of the surrounding native forests, containing the terrestrial flora and fauna of special concern. In addition, the wildlands will then be threatened by conversion to agriculture.

The wildlands of and surrounding the Biobio River are seriously threatened by the Pangué/Ralco complex. Without any wildlands policy of its own, the IFC must be required to follow OPN 11.02, which states that "the Bank's general policy regarding wildlands is to seek to avoid their elimination and to assist in their preservation." (Page 6). The *Environmental Assessment Sourcebook* further explains the Bank's general policy on wildlands: "The Bank normally declines to finance projects involving conversion of wildlands of special concern, even if this conversion occurred prior to the Bank's being invited to participate in the project." (Vol. 1, Page 76, para. 4). The IFC's construction and operation of the Pangué/Ralco complex violates these WB policies.

c. Chileans are being denied the right to public participation and its democratic institutions the right to exercise their legitimate role.

The Pangué process has been an example of the lack of public participation by part of civic organizations, local and regional institutions and even the parliament. With regards to the regional and local non-participation there is even a college thesis on the issue (see Annex J). It is one of at least half a dozen college thesis that have been done in Chile, the United States and Europe on the Biobio controversy.

The Chilean parliament has issued two accords specifically related to the Biobio issue, the first in 1993 (see Annex D), the latest in April of 1995 (see Annex D) The agreements of the accord speak clearly on the interest of the parliament, representative of the Chilean people, in terms of the Upper Biobio, and the disregard and open contradiction that the present implementation of the Pangué/Ralco project represents. We believe this goes against WB Policies that demand that there be a respect for host country regulations. This we believe applies both too specific laws that are presently being violated, as is the case with the Indigenouis Law, and to the parliamentarian accords.

The April 1995 Parliamentary Accord reads in part:

"Regarding the construction of the Pangué dam in the Biobío River, VIII Region, 16 "Diputados" (Members of the Lower Chamber of the Chilean Parliament) who subscribe the present agreement propose the following,

to officially communicate to the President of the Republic, so that, if he is willing, he proceeds to implement, or orders the implementation of the following measures:

- 1.- To enlarge, to the Upper Biobío, the Protection Area that exists today in the Andean 'cordillera' and 'pre-cordillera' zones of the Region.
- 2.- To strenghten the Ralco and Upper Biobío National Reserves and to declare National Reserve the "Porvenir" estate, which is located in the Quilaco county, actually a property of the State Bank of Chile.

3.- To instruct the Regional Environmental Commission (COREMA), so that by itself or through a third party, it supervises the impacts on the natural system that are occurring in the area [due to the building of the Pangué dam], providing the COREMA with the human, technical and economic resources necessary for carrying out this task.

4.- To recommend to the National Water Directorate so that, together with the National Energy Commission and the National Environmental Commission, they all agree with Pangué S.A. electrical company a Flow Release Management Plan.

5.- To declare the Upper Biobío an "Indigenous Development Area".

6.- To design and implement a 'Sectional Plan' for the banks of the artificial lake that will be created by the dam, so that an harmonious development of the area is guaranteed.

7.- To design and implement an Eco-Tourism Development Project in the area.

8.- To promote a special programme of public investment, of a temporary nature, within the Santa Bárbara and Quilaco counties, in the areas of education, health, housing, drinking water, sewage, rural telephones and road infrastructure.

9.- To promote a special electricity and energy programme for both counties.

10.- To carry out special training programmes for the creation of jobs, the promotion of production and small enterprises.

Signed by Members of the Parliament

Mrs. Jara, Acuña, Pérez, Ceroni, Aguiló, García, Tuma, Palma, Rebolledo, Pollarolo, Ulloa, Ortiz, Gutiérrez, Barrauto, Urrutia, Navarro.

Agreement N° 245, Presented during the Session of the House N° 56; Date: 11/4/95; Hour: 2.17 p.m."

The fact that three members of parliament are part of this claim speaks for itself in terms of the seriousness of the present violations and the concern expressed by Pehuenche, GABB and other Chileans, including elected officials.

d. All of the parties to this claim have suffered from a lack of supervision of the loan conditions.

We believe that the 1990 IFC Environmental Policy, para. 13, and WB OD 13.05 on

Project Supervision have been violated and continues to be so.

Page 1, clearly stated that one of the main purposes of project supervision, is:

"a) to ensure that the borrower implements the project with due diligence to achieve the agreed development objectives and in conformity with the loan agreement"

Furthermore footnote 2 states that:

"Inter alia to ensure that Bank funds are used only for the agreed purposes of the loan"

We claim that:

-Supervision has been far from adequate and false information is being related to interested parties, among them public officials.

What we document in this claim and what is told interested parties is a clear example of inadequate/and or false information. We believe the last charge is very serious, but let us provide you with one example:

In the letter sent to the US Executive Director's office regarding Pangué, it is stated that, in relations to the watershed protection plan:

"Pangué has received funding from the Regional Government Council to develop a "Pangué Sectional Plan" to standarize land use practices in the areas adjacent to the reservoir lands" (see Annex??)

This is just not true, as is documented in a letter sent to GABB in late October 1995, stating that the study at that time had not even been put for a bid!

These and other statements that are on the letter do not reflect the serious problems that are taking place and that we believe require not only an immediate inquiry on the status of the loan agreement, but also a suspension of the disbursement of the loan until all of the environmental and social conditions are met.

Among the violations, we believe are occuring (although recall that we have not been given access to the loan agreement, despite several efforts to ask for it):

Pangué is using Bank funds to begin implementation of Ralco, in total violation of the loan agrrement (at the very least the Pehuen Foundation is taking steps to convince Pehuenche to resettle from areas affected by Ralco, not Pangué).

The watershed is not being protected adequately.

The cumulative impact study is not completed, even as important steps are being taken to implement Ralco.

We are convinced that many of the loan conditions will not be met before all of the money is disbursed by the IFC, and that then those conditions will never be met.

IX. AS A NATIONALLY RECOGNIZED GROUP DEDICATED TO THE PROTECTION OF THE BIOBIO REGION, GABB IS ALSO DIRECTLY AFFECTED BY THE PANGUE/RALCO PROJECT.

GABB, as a legally authorized organization, dedicated to the conservation and sustainable development of the upper BioBio region and the preservation of the Pehuenche culture, have the following rights and interests violated by the IFC-financed Pangué/Ralco Complex:

- a. We have a specific, well-documented and long-standing interest in the preservation of biological and cultural diversity found in the upper Biobio Region.
- b. As the primary group monitoring the plans and impacts of the Pangué/Ralco project our members have and as citizens of a country member of the WB group (including the IFC), to have its member institutions comply with WB Operational Directives and Policies and to ensure adequate fiscalization and grievance procedures when those Directives and/or Policies are violated.

GABB is unquestionably harmed by construction of the Pangué/Ralco dam for essentially the same reasons noted above with respect to Chileans living outside the BioBio basin. GABB is even more directly affected by this project, as it is organized solely to work on issues involving the BioBio region. Throughout the past several years, GABB has consistently demonstrated its specific commitment and interest to the future of the region. It has been monitoring the development of the Pangué/Ralco complex for years. For these reasons GABB brings this claim on its own behalf as well, because it is directly affected by the IFC's failure to follow its policies and to supervise the loan adequately.

X. EFFORTS TO CONTACT THE IFC

GABB and their colleagues abroad have been in constant contact with the IFC and World Bank officials about these same problems with Pangué/Ralco for the past five years. This past fall, we have written letters to the World Bank which were forwarded to the IFC and which have not been answered in writing. We have held meetings both in Santiago and in Washington in the past few months to discuss these matters. In the most recent meetings at IFC, we were told that a written response would be forthcoming from the IFC after the current supervisory mission. We also met with the supervisory mission in Santiago and they stated in a meeting that they did not yet see any significant violations of the loan agreements. Because of this initial suggestion that the supervisory mission will conclude that

nothing is wrong, because of the long history of flawed implementation, and because time is running out for disbursements from the IFC to Pangué, we have filed this claim now.

A representative list of correspondence and meetings is provided in Annex L.

XI. CONCLUSION AND REMEDY REQUESTED

We ask that the Inspection Panel investigate the ongoing problems with implementation of the Pangué/Ralco dams and the serious violations of the loan agreement identified in this claim. We also ask for the following relief:

(1) that disbursements under the IFC agreement be suspended until full compliance with bank policies and the loan agreement is assured;

(2) that no further work be done in preparing for the construction of Ralco until a national debate is held, as recommended by the IFC and more recently by Chilean Parliamentary accord.

(3) that the Pehuen foundation's board be restructured to allow for greater Pehuenche control, that more financial resources be returned to the Pehuenche communities, that the foundation stop being used to convince Pehuenche's living in the area affected by Ralco to sacrifice their rights under the Indigenous law (rights they have not even been informed about), and that they stop working in the community of Ralco-Lepoy.

(4) that independently verified baseline studies about all downstream and cumulative impacts from the plans be completed to international standards before further installments of the IFC loan are disbursed.

(5) that all of the approximately 80 environmental and social covenants in the loan agreement be made publicly available.

(6) that all monitoring and mission reports be made public, including the most recent supervision mission occurring this week.

(7) that the evaluation of the Fundación Pehuen being conducted currently be provided to the public.

ANNEXES

List of Annexes

- A. Background Information on the Impacts of the Pangué/Ralco Dams on the BioBio Ecosystem and the Pehuenche Indigenous Peoples
- B. Legal Mandates and Maps
- C. Endesa and Pangué, S.A. Documents
- D. Chilean Laws, Resolutions and Public Declarations
- E. Legal Actions Filed Regarding the Pangué/Ralco Dams
- F. References to the Loan Agreement Available to Claimants
- G. Pehuenche Letters and Petitions
- H. Territory Lost Due to Induced Developments
- I. Documents Relating to the Pehuen Foundation
- J. Alternative Studies of the Pangué/Ralco Dams
- K. IFC and Other Memoranda
- L. Correspondence With IFC/World Bank
- M. Documents Relating to the Ralco EIA