



## **Assessment Report**

**Assessment by the Office of the Compliance  
Advisor/Ombudsman in relation to a complaint filed  
against IFC's investment in ENDESA Pangué S.A.**

**May 2003**

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## Executive Summary

This is an assessment of a complaint brought before the office of the Compliance Advisor/Ombudsman (CAO) regarding the Pangué hydroelectric dam project. The assessment report addresses the issues raised in the complaint and concludes with suggestions to the complainants and the IFC on how these issues may be addressed. The CAO may assist the complainant further in resolving the issues of concern if the complainant so wishes.

The assessment was carried out in accordance with the operational guidelines of the CAO. The assessment report is the conclusion of the assessment phase of the complaint process. In accordance with the operational guidelines the assessment report is prepared for the complainant and shared with the other parties to the complaint (here ENDESA and IFC). If the complainant chooses to make the report public, the CAO will then publish the report on its website.

While the CAO presumes maximum disclosure and transparency, the CAO is bound by the information disclosure policy of the IFC. In the course of assessing the complaint the CAO has collected and reviewed information from many sources, some confidential and some not. This assessment report is crafted in such a way to provide answers to the complainants without compromising legitimate business confidential concerns of IFC's clients.

The Pangué Hydroelectric Project is a 450MW hydroelectric dam (completed in September 1996) on the Bio Bio River in Chile. The dam was built and operated by Empresa Eléctrica Pangué S.A. (Pangué S.A.), owned 97.5% by Empresa Nacional de Electricidad S.A. (ENDESA), and 2.5% by IFC. IFC held 2.5% of the equity interest in Pangué following the investment agreement in October 1993 until divestment in July 2002. IFC also invested and arranged loans of 170 million in the project, which were prepaid in May 1997.

The complaint was received on July 2, 2002 and acknowledged on July 3, 2002. The complaint was appraised and then accepted on July 8, 2002. The assessment of the report took place from October 2002 to March 2003 and a field mission was completed in November 2002.

Days after the complaint was received, on July 12, 2002, IFC completed its exit from the project. This was not communicated to the CAO until September 10, 2002. The CAO accepted the complaint despite IFC's exit as the CAO considered that the issues raised by the complaint related directly to IFC's role in the project over a number of years, to promises and commitments made and to previous opinion by independent investigations and consultant reports that IFC needed to undertake certain actions. The CAO considered that this placed the complaint well within its mandate to provide a mechanism for complaint to parties affected by the investments of IFC.

Many of the issues raised in the complaint can be directly traced to concerns and complaints made known to ENDESA, Pangué S.A. and IFC at the time of the investment and the pre-investment due diligence. Many of them have been voiced through the Hair

Report. Indeed from the CAO's review of the files and from information accompanying management's response to the CAO, many of them surface again and again in back to office reports and in the exchanges between IFC and ENDESA. What then explains the inaction that frustrates and angers the communities affected?

Throughout the CAO's review of documents and interviews with local people contradictions abound about what has been disclosed to whom, when and how. That this degree of uncertainty of information, lack of clarity and confusion exists is testament itself that in this case the communication between IFC, Pangué S.A., the communities and in some cases the Pehuen Foundation, has sometimes failed.

Perhaps in part due to the unique role in the history of IFC played by Pangué the degree of secrecy and the tentative approach to disclosure in this case are unparalleled in the experience of the CAO. The lack of disclosure has hampered the ability of communities and internal constituencies of the IFC, alike, to understand the project, the role played by IFC and agreements made between IFC and the sponsor, in some cases on behalf of the communities.

The cloak of secrecy that covers all things related to Pangué is at odds with evolving attitudes and practices within ENDESA, Chile and IFC. This has constrained IFC's ability to learn lessons from the tensions around this project. The apparent missed opportunity in discussing the Hair report findings openly within the corporation has limited the institutional memory upon which the corporation depends as it embarks on similar projects in later years. Whether or not the corporation agreed with every conclusion or recommendation of the Hair report is not a principal concern from a learning perspective.

While acknowledging that evolving best practice in IFC means that if the Pangué project were to go ahead today many things would hopefully be done differently, as mentioned in the body of the assessment report, IFC should consider that it has some outstanding obligations to those affected so that they may be in the best position to continue building a sustainable relationship with ENDESA, Pangué S.A. and with other parties to the development of the Alto Bio Bio region.

The IFC has suffered untold reputational harm from the way in which the Hair Commission's report was dealt with, the failure to reach agreement to publish in full and the failure to adequately circulate and discuss internally.

Although more than six years ago, the Hair Report pertained to issues still present and of concern to the communities affected by Pangué and by the larger dam system development of Pangué/Ralco.

The CAO suggests that IFC reconsider publishing the Hair Report, looking at the report with today's standard of disclosure. The question of business confidentiality should be easier to resolve as presumably much more is in the public domain and just as IFC has revised its interpretations of business confidentiality and what it urges from companies, so have many companies, including multinationals such as ENDESA.

There are other review documents commissioned by IFC that rightly belong in the public domain and whose conclusions materially affect those affected by the project. In particular the Downing report, which despite its controlled release to the Pehuen Foundation, was the focus of many requests for information from people in the area

needs to be more effectively re-released. Just as consultation must be undertaken in a culturally appropriate manner, so should document release.

Similarly, the downstream impacts studies, according to IFC, have only been released through an academic conference in Chile. However, this was not known by the people party to the complaint, nor to academics in who study the river, nor to the fishermen's union, or government officials in CONAMA. These studies should be made available to the public and relevant authorities in appropriate ways.

Other information that rightly belongs in the public domain includes emergency response plans and other operational details that may be necessary for the public to be able to understand how the dams operation may affect them and what precautions or actions they may need to take.

In the agreement between ENDESA and IFC of August 2000, IFC's potential exit from the project was conditional upon a number of social obligations being fulfilled by ENDESA. Despite the considerable effort put into securing commitment to these obligations by IFC, the exit took place without any independent verification by IFC that the obligations had been met. In fact a supervision visit to verify the status at exit was undertaken some 5 months later and two weeks after CAO's visit to the site for its assessment mission.

On the basis of its assessment the CAO makes a number of recommendations to IFC that it feels would help meet the concerns of the complainants.

The following recommendations for action by IFC acknowledge that IFC is no longer an equity investor in Pangué S.A. and as such has no formal leverage. However, the agreement of August 2001 remains in effect until its terms and conditions have been fulfilled. Further, IFC has in the past recognized the effective relationship environmentally and operationally of Pangué and Ralco. The CAO believes that IFC has an obligation to disclose to those affected by the project, information which will be of material use to them as they engage in negotiations today with Pangué S.A. and ENDESA over their future.

**The CAO believes that it would be an important part of other ongoing continual improvement processes within IFC for the Pangué project and the Hair Report process in particular to be used as learning tools in order to examine carefully what should be strengthened for future dam, hydroelectric projects and projects where IFC must engage with indigenous peoples.** While the project appraisal and due diligence may be considered ancient history by some, taking place over ten years ago, IFC remained an equity investor until last year and chose not to update its requirements of Pangué S.A over the period of its partnership.

The complainants in addition to their concerns around the future of Pangué and now Ralco, have expressed to the CAO, in clear terms, their concerns that no one should have to experience what they have had to and wish that some consolation will come from IFC's taking on board its lessons.

**With regard to the Pehuen Foundation, the CAO considers that IFC has an interest in the future working of the Foundation as it forms part of IFC's legacy in the project. Agreements made between IFC and Pangué S.A on the allocation of funds**

to the Foundation should be disclosed by IFC and made available in appropriate ways, widely within the community.

The CAO believes IFC should revisit its decision not to undertake any further external review of the Foundation. The CAO recommends that such a review take place and considers that it may make an important contribution to further strengthening the Foundation to meet the very real demands the community places on it. The review could be a vehicle for gaining greater clarity for all parties on issues of persistent confusion and could form the basis for a renewed partnership in administering and supporting the Foundation.

The CAO considers it a matter of priority that the detail of the August 2001 agreement between IFC and Pangué S.A. be disclosed by IFC to enable the El Avellano families to negotiate effectively with Pangué S.A. on their own interests. IFC should also report to the El Avellano families on whether it believes the August 2001 agreement has been complied with and what measures it took to assure that this was the case before it exited through the disposal of shares in July 2002.

The IFC should ensure that in future projects that the present information disclosure policy is interpreted in such a way to ensure the release of technical reports and supporting or additional reports that contextualize environmental assessment documents, environmental management plans and/or shed light on environmental and social impacts during implementation. The CAO recommends that IFC press Pangué S.A. to disclose the results of monitoring and supervision in relation to the downstream impacts and that IFC despite its exit from the project, request that Pangué disclose the original report. This could be construed as an act of good faith as IFC pursues other business opportunities with ENDESA.

The CAO recommends that IFC review projects within the portfolio, in particular equity investments, where the investment agreements are out of step with the present norm in terms of their environment and social covenants or stipulations and assess whether there are risks to the projects, to project stakeholders or IFC resulting from the absence of contractual enforcement of safeguards.

The CAO recommends that IFC as a past and future partner of ENDESA urge Pangué S.A. to disclose and consult more fully its emergency response plans and that IFC take steps to ensure that it has emergency response plans in other projects within the portfolio that predate current practice in comment and consultation.

The CAO believes that IFC should investigate whether in this case IFC acted in the best interests of its shareholders and fulfilled any obligations to other shareholders. The CAO recommends that the President through whatever appropriate mechanism ensure that he is satisfied with the business practice in this case and that any lessons are learned for future portfolio management.

The CAO recommends that IFC review its current policy, procedural guidance and practice to ensure that there is a clear framework for cumulative and strategic environmental and social impact assessment. This should provide clarity on when this is necessary and how this determination is made and how such assessment should

be carried out. The CAO recommends that this reform of policy and guidance, however it is carried out, be communicated internally and externally.

**The CAO recommends that IFC strengthen its sponsor due diligence to include the environment and social performance and commitment to corporate social responsibility of all potential clients, including the records of parents and subsidiaries.** As the CAO has recommended in other reports, including its review of impact and effectiveness of IFC Safeguard Policies, IFC senior management should be satisfied that sponsors, in particular those in whom IFC invests equity, share IFC's values. In response to this complaint IFC should, as it moves forward with other investments with ENDESA and its subsidiaries, ensure that the problems that the CAO suggests have plagued this project and its relationship with ENDESA are not repeated.

The CAO has a number of recommendations related to disclosure and transparency.

**The CAO believes that IFC should reconsider disclosing the full Hair Report. In addition IFC should report to those who once formed Grupo de Acción por el Bio Bio (GABB) and complainants to the CAO, living in communities directly impacted by Pangué, how it responded to the Hair Report and what actions were taken with Pangué S.A.**

**The CAO recommends that IFC ensure that the Downing Report is translated and disseminated together with a record of what has been done in the intervening years to address its recommendations and that this should be discussed in each of the communities covered by the Foundation.**

**While the CAO does not recommend that investment agreements are disclosed, the CAO acknowledges that to the extent environmental and social commitments between a sponsor and IFC are covenanted in investment agreements, details of these should be disclosed in some form.**

**Looking forward, IFC should in the context of a comprehensive new approach to transparency and disclosure, consider how IFC can indicate to the Board and publicly what it expects to achieve in a project, both in terms of contractual commitments on compliance and then specifically what is the goal of any additionality in terms of sustainability. IFC should report on progress towards these goals over the life of the project. This would meet the demand for information between board approval and possible OEG evaluation, five years after the project enters the portfolio.**

# 1 Introduction

This is an assessment of a complaint brought before the office of the Compliance Advisor/Ombudsman (CAO) regarding the Pangué hydroelectric dam project. The assessment report addresses the issues raised in the complaint and concludes with suggestions to the complainants and the IFC on how these issues may be addressed. The CAO this office may assist the complainant further in resolving the issues of concern if the complainant so wishes.

The assessment was carried out in accordance with the operational guidelines of the CAO. The assessment report is the conclusion of the assessment phase of the complaint process. In accordance with the operational guidelines the assessment report is prepared for the complainant and shared with the other parties to the complaint (here ENDESA and IFC). If the complainant chooses to make the report public, the CAO will then publish the report on its website.

The assessment report follows the complaint in itemizing its responses to issues raised. The complaint is annexed to the assessment report.

While the CAO presumes maximum disclosure and transparency, the CAO is bound by the information disclosure policy of the IFC. In the course of assessing the complaint the CAO has collected and reviewed information from many sources, some confidential and some not. This assessment report is crafted in such a way to provide answers to the complainants without compromising legitimate business confidential concerns of IFC's clients.

## 2 Background

### 2.1 *The project*

The Pangué Hydroelectric Project is a 450MW hydroelectric dam (completed in September 1996) on the Bio Bio River in Chile. The dam was built and operated by Empresa Eléctrica Pangué S.A. (Pangué S.A.), owned 97.5% by Empresa Nacional de Electricidad S.A. (ENDESA), and 2.5% by IFC. IFC held 2.5% of the equity interest in Pangué following the investment agreement in October 1993 until divestment in July 2002. IFC also invested and arranged loans of 170 million in the project, which were prepaid in May 1997.

ENDESA first approached IFC in 1989. In December 1992 IFC's board approved loan and equity investment in the project with conditions on disbursement related to environment protections and downstream impacts. A further report by IFC management was presented to the Board in December 1993.

IFC's appraisal of the project took place from 1990-1992 at a time when the environment and social safeguard policies, guidelines and guidance as they apply today, did not exist. The question of which policies did apply was a subject reviewed by the independent team lead by Dr. Jay Hair in its report to the President in 1997. The Hair Report noted



that it considered that nine specific World Bank Group policies were relevant to the Pangué project.<sup>1</sup>

## ***2.2 Previous and existing complaints and investigations***

The Pangué project has been the subject of a complaint to the Inspection Panel of the Bank in November 1995 from Grupo de Acción por el Bio-Bio (GABB). The Inspection Panel's mandate did not include the activities of IFC. The Inspection Panel rejected the complaint and the President, in response to a petition for action, asked Dr Jay Hair to look to investigate the complaints against the IFC and to produce a report to be publicly disclosed.

The synonymous report became the focus of activism around the transparency and accountability of IFC when heavily redacted to protect business confidential information to ENDESA and Pangué S.A. it emerged into the public domain after conflict between the Hair team and IFC.

IFC in its Statement of IFC about the Report by Dr. Jay Hair on the Pangué Hydroelectric Project, noted that information “those aspects which focus primarily on Pangué S.A.’s performance are not being released in the absence of its express consent.” The Statement went on to say that IFC’s must balance its need to be transparent and open, as well as to respect business confidentiality and avoid disclosure of information that would materially harm the business and competitive interests of its clients.

Nevertheless, the disclosure of a redacted approach dismayed both the Hair team and those who had filed the original complaint. The experience of the Hair team, and their frustrations, detailed in correspondence to the President became one of the drivers for the creation of some form of recourse and accountability mechanism at IFC. This resulted in 1999 with the decision of the President to create the Office of the CAO.

The first case that the CAO assessed was a complaint from one individual against IFC in relation to Pangué. This was resolved through negotiation and mediation after more than one year.

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<sup>1</sup> These were noted in the Hair Report as the Procedure for Environmental Review of IFC Projects (March 1990-92); Internal Procedure for Environmental Review of IFC Projects (December 1992 – September 1993); Environmental Analysis and Review of IFC Projects (September 1993); OD4.0, Environmental Policy for Dam and Reservoir Projects (April 1989); OP Note 11.02, Wildlands: Their Protection and Management in Environmental Development (June 1986); PO Note 11.03, Management of Cultural Property in Bank Financed Projects (September 1986); OD 4.20, Indigenous Peoples (September 1991); OD 4.30, Involuntary Resettlement (June 1990); and OD13.05, Project Supervision (March 1989; revised January 1993).

## **3 The Complaint**

### ***3.1 Summary of the process***

The complaint was received on July 2, 2002 and acknowledged on July 3, 2002. The complaint was appraised and then accepted on July 8, 2002. The assessment of the report took place from October 2002 to March 2003 and a field mission was completed in November 2002.

Days after the complaint was received, on July 12, 2002, IFC completed its exit from the project. This was not communicated to the CAO until September 10, 2002. The CAO accepted the complaint despite IFC's exit as the CAO considered that the issues raised by the complaint related directly to IFC's role in the project over a number of years, to promises and commitments made and to previous opinion by independent investigations and consultant reports that IFC needed to undertake certain actions. The CAO considered that this placed the complaint within its mandate to provide a mechanism for complaint to parties affected by the investments of IFC.

The complainants and other external stakeholders have raised questions on the relationship between the complaint and the timing of the exit of IFC from the project through the exercising of its put option on its equity investment. As can be imagined exercising put options requires planning, prior notice and coordination. The CAO has verified to its satisfaction that the beginning of the procedure to exit Pangué was in place before the complaint was received by the CAO.

CAO corresponded with the complainants, the IFC and with the project sponsor ENDESA and sought clarification and information on issues raised in the complaint. The CAO reviewed project documentation, documentation provided by the complainant and from the project sponsor as well as from government authorities in Chile. All parties to the complaint provided the CAO with detailed responses to the questions asked and the CAO acknowledges their cooperation.

### ***3.2 Summary of the complaint***

The complaint is complex and covers a range of issues from the environment and social impacts of the projects and the mitigating measures undertaken at the behest of IFC following previous investigations, as well as operational and safety issues relating to the dam. The complaint further contains concerns related to the Ralco dam and to the way in which IFC exercised its responsibilities as a shareholder in Pangué. The complexity of the complaint also arises from the history of the project and many years of contention about the project and its impact. The complaint is annexed to this assessment report.

### ***3.3 Scope of the complaint and the mandate of the CAO***

The mandate of the CAO is restricted to the environmental and social policies of IFC and the conflicts related to environmental and social outcomes on the ground. Of course environmental and social outcomes are at times intrinsically linked to economic and financial structures, relationships between IFC and its sponsor and to the roles of other actors. The CAO may only address itself to the conduct of IFC, though in the process of resolving disputes actively through negotiation or mediation, all relevant parties may be engaged.

### **3.4 Limits of the project**

One of the central themes of the complaint and of discussion of the project throughout IFC's involvement in it has been the extent to which, financially, economically, politically, technically and environmentally the Pangué dam could be considered as a stand alone project, separate from the dam system planned for the Bio Bio river. This is particularly important as the construction of the Ralco storage dam above Pangué goes on and compounds the environment and social impacts in the river valley.

During the preparation of Pangué the World Bank Group made clear that it would not finance subsequent dams on the river. But, the arguments from the complainants are that as it was always envisaged that Pangué would form part of a larger system and that the design of Pangué was tailored to a system where IFC should have ensured that environment and social assessment took into consideration the cumulative impacts of the dam system. Further, that as Ralco impacts the operation of Pangué then the environment management plans as well as the operational plans for Pangué should be amended as a response.

This assessment is primarily concerned with Pangué, where IFC invested. However, to the extent that the complainants allege that the two projects, Pangué and Ralco cannot be separated, that they form two parts of one project, and to the extent that Ralco affects the environment, social and operational parameters of Pangué, the assessment does consider Ralco, as IFC has itself done. The complainants have also raised questions regarding IFC's conduct in protecting its assets as water rights were transferred between Pangué S.A. and ENDESA. These are examined by the CAO and brought to the attention of the President for his consideration of any further investigation and action that he may want to undertake.

### **3.5 The Hair Report<sup>2</sup>**

The CAO has read the unredacted and redacted versions of the Hair Report and considered that its task in assessing the complaint was not to redo the work of the Hair team. The CAO considered that while IFC management differed with some of the conclusions drawn and recommendations made by Hair, the substantive frame of the report was not contested. The concerns that emerge from the report, the conclusions and the recommendations are depressingly prescient in many cases. This begs a further question of why the Hair Report did not do more to stir IFC to work to prevent a difficult situation at the project site from worsening.

The complaint to the CAO addresses actions that the complainants feel should have been taken as a result of the Hair Report. To this extent and having read and found resonance with the Hair Report's conclusions, the CAO sees its work as building on much of the work of Hair.

IFC contests that the purpose of its redaction of the Hair Report was not to hide from the critique offered by the Hair team, but rather to protect the business interests of its client, Pangué, S.A. The CAO has reviewed the redacted report against the non-redacted

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<sup>2</sup> The CAO wishes to acknowledge the assistance it gained from members of the Hair Team who clarified aspects of the Hair Report process. The CAO also wishes to remember the long service to the environment and those whose lives directly depend on natural resources, of Dr. Jay Hair, who sadly passed away while this assessment was underway.

report. At best the CAO considers IFC to have been conservative in its attribution of what constitutes business confidentiality. At worst it would appear that the redactions serve to protect the reputations of ENDESA, Pangué S.A. and IFC.

Aside from the substance of the redaction, the manner of the redaction, the dissatisfaction of the Hair team with the process, and then the redacted version of the report made public did little in the eyes of the complainants or other interested external stakeholders, to instill faith in IFC's intent.

Beyond the public relations aspects of the Hair Report redaction, the redaction has had two long lasting impacts. First, the those who have been skeptical and concerned around the Pangué project were not satisfied in any way by the release of the report and the absence of dialogue and interaction with those whose complaint had led to the Report's inception compounded the distrust. Secondly, the redaction and the confidentiality surrounding the full report in part may explain why so few people within IFC have ever read the report. The Hair Report's treatment and lack of internal disclosure prevented internal discussion and learning from mistakes from what was, by any measure, a complex and difficult project.

Given the recent exit from Pangué, the CAO feels that it would be an important part of other ongoing continual improvement processes within IFC for the Pangué project and the Hair Report process to be used as learning tools and to examine carefully what should be strengthened for future dam, hydroelectric projects and projects where IFC must engage with indigenous peoples. The complainants in addition to their concerns around the future of Pangué and now Ralco, have expressed to the CAO in clear terms, their concerns that no one should have to experience what they have had to and wish that some consolation will come from IFC's taking on board its lessons.

The CAO feels that IFC should reconsider disclosing the full Hair Report. In addition IFC should report to those who once formed GABB and complainants to the CAO, living in communities directly impacted by Pangué, how it responded to the Hair Report and what actions were taken with the company or with other authorities.

## **4 Assessment**

### ***4.1 Measures intended for social mitigation***

#### **4.1.1 The Pehuen Foundation – its use and role**

*The complaint alleges that the Pehuen Foundation has been used for the purposes of pressuring the Pehuenche to abandon their land and as a tool to pave the way for Ralco. This was raised as a fear by the complainants earlier and addressed in the Downing Report, but inaction has allowed the Foundation's role in this regard to be institutionalized.*

IFC denies any knowledge of Pehuen Foundation activities that have been undertaken in order to facilitate Ralco. Clearly the incorporation of the communities of Quepuca-Ralco and Ralco-Lepoy into the Foundation has caused confusion for some. IFC maintains in contemporaneous reports of staff that the decision to incorporate these two communities was made by a decision of all the communities involved in the Foundation on the basis

that having been part of the Foundation's activities before their resettlement as a result of Ralco they should not be excluded in their new communities of El Barco and Ayin Mapu.

The Downing Report raised concerns as early as 1996 that the way in which the Foundation was incorporating those impacted by Ralco ran the danger of sending conflicting messages to communities persuaded to accept that the Pehuen Foundation would be the vehicle for activities of social development promised in the context of Pangué. Furthermore at this time concerns were raised about the need for transparency in the source and amount of funds available to the Foundation and indeed these were taken up by IFC with resulting disclosure in the 2001 Annual Report of the Foundation. In the August 2001 agreement between IFC and Pangué S.A. to itemize anew issues that should be taken care of prior to IFC's exit through its disposal of shares, IFC and Pangué S.A. stipulated levels of support to the Foundation through the year 2010 and then subsequently.

#### **4.1.2 Promises made, but not kept**

*The complaint alleges that a number of commitments that were made and that the Pehuen Foundation was due to carry out, have not materialized. The same promises are now being repeated but as compensation for unrelated activities. The complaint refers specifically to the electrification of Quepuca-Ralco. The complaint also alleges other broken promises in connection to agreements made between the company and the government relating to the communities of Quepuca-Ralco and Ralco-Lepoy, which are directly affected by the Ralco project. The complaint traces demonstrations that were stopped, ending in violence, in March 2002, to the litany of promises made and broken in the minds of Pehuenche communities and to the mode of operation of the company ENDESA, in the community.*

IFC has stated to the CAO that it believes the Foundation has met its responsibilities to fulfil promises and programmatic commitments, for example, in relation to the provision of electrification to the communities of Quepuca Ralco, Pitril and Ralco Lepoy. Yet at the time of the assessment visit by the CAO Quepuca Ralco and Pitril were not yet fully connected to electricity. It is the CAO's understanding from interviews with IFC and from IFC management's response to the CAO, that IFC was supposed to satisfy itself that commitments extracted by IFC, from ENDESA, of which this is one example, were complied with, before exit and that the agreement of August 2001 was a binding agreement to that effect. However, IFC did not undertake any site visit or supervision of the August 2001 agreement prior to the disposal of shares. The notice to exercise the put option was served only months after the August 2001 agreement.

In statements to the CAO in October 2002 IFC management clarified that IFC had exited Pangué through the disposal of shares in July 2002 and had therefore no longer any responsibilities in relation to the project. The CAO was surprised that IFC decided to undertake a supervision visit in December 2002, just days after the assessment visit of the CAO team.

The purpose of the IFC supervision visit was to ensure that the August 2001 agreement was complied with as the August 2001 agreement was still in effect despite IFC's exit from the project. This apparent contradiction or belated clarification is significant to the complainants who wish to know what they can expect from IFC despite its exit from

Pangue, given that IFC reached agreements with Pangue S.A. on critical social and environmental aspects of the project, although these agreements are not disclosed.

#### **4.1.3 Pehuen Foundation structure and governance**

*The complaint alleges that the Pehuenche representation and involvement in decision making of the foundation is inadequate and continues to contravene the recommendations of IFC funded investigations into the operations and governance of the Pehuen Foundation.*

The accounts of the complainants and the IFC staff who have visited and supervised the Foundation directly contradict each other on the extent to which Pehuenche directors have decision making control, the extent to which the staff of ENDESA are involved in the running and decision making of the Foundation and the extent to which the communities served by the Foundation have a sense of ownership of the Foundation.

The CAO regrets that in light of the controversy in the past around the operations and governance of the Foundation, and around the Downing report and its partial disclosure, that IFC did not consider that a follow-up review of the Foundation's work was deemed necessary. IFC has stated to the CAO that it does not believe that such a further review is necessary. The CAO considers that IFC should revisit its decision and that some form of external review of the foundation may make an important contribution to further strengthening the foundation to meet the very real needs the community places on it. The review could be a vehicle for gaining greater clarity for all parties on issues of persistent confusion and could form the basis for a renewed partnership in administrating and supporting the foundation.

#### **4.1.4 Funding**

*The complaint alleges that the use of funds at the disposal of the Pehuen Foundation for the mitigation of impacts by the Ralco project presents a dilemma for the IFC in that the Pehuen Foundation, established to support the community impacted by Pangue, is now being used for a project which the IFC took great lengths to separate itself from and which the IFC has said it is not supporting.*

*Furthermore the complaint alleges that the funding levels of the Foundation while it appears to be higher than originally committed, this may be to incorporate the communities affected by Ralco not Pangue. If the Foundation is now operating to support impacts from Ralco then the Foundation should include and disclose that it will be receive a percentage of the revenues from Ralco in addition to Pangue.*

The CAO concurs with the complainants that “the long term remedies for the many problems that have been encountered by the Fundación Pehuen can only be proposed and resolved by the Pehuenche communities, with adequate information and external advice”. Despite the interventions of IFC staff in order to secure changes in light of the Downing Report, the Foundation still has significant reputational problems with parts of the communities it serves. There would appear to be continuing dispute around governance and the manner of Pehuenche participation in the decision making in the foundation and there is confusion over the role of the Foundation in relation to communities affected by Ralco and the Foundation's funding relative to Pangue and Ralco.

IFC was instrumental in the establishing of the Foundation and has provided the only form of oversight of the Foundation's operations. IFC management clarified to the CAO that it has no intention of continuing any monitoring role after the disposal of shares. However, given that the Foundation is the principal mechanism for delivering the commitments made by ENDESA as a result of IFC entreaties at the time that IFC was an equity investor, and given that by IFC's own admission some of those activities have been delayed and are still not completed, it is reasonable for community members to expect that IFC have a continued interest in the Foundation's proper functioning.

The Foundation is the sole vehicle for delivering social development benefits to the communities impacted by Pangué.

There are contradictory versions of events from IFC and from Mr. Downing in complaints to the ethics officer of IFC in 1997, and the fears and concerns of the complainants cannot be eased by a state of confusion and lack of clarity as to what the Foundation is doing, how it is being governed and its level of funding. The CAO considers that a community foundation that suffers from confusion and lack of credibility in sections of the community it serves may need to examine its communication, management and governance structures again in that light.

The CAO notes that the continuing problems of the Foundation in the realm of communications, delivery of programs, clarity on funding levels, scope of mandate, were all presaged in reports of Mr. Downing and in reports of IFC staff in supervision visits. That the concerns expressed by complainants to the CAO simply reiterate concerns of the community in 1995 should be of serious concern to IFC.

## **4.2 The families at El Avellano**

*The complaint expresses concern that the situation of the families residing in El Avellano is still not resolved.*

The specific issues of each of the families residing on the El Avellano parcel of land is treated in detail in the August 2001 agreement between IFC and Pangué S.A., the agreement that supercedes the March 1987 agreement, made following pre-payment of IFC's loan investment. The specifics of this agreement are still considered confidential and cannot be disclosed by the CAO.

The CAO considers it a matter of priority that the detail of the agreement between IFC and Pangué S.A. be disclosed by IFC to enable the El Avellano families to negotiate effectively with Pangué on their own interests. That such an agreement could be entered into with Pangué S.A., while clearly in good faith, without engaging the families themselves appears as a paternalistic act on IFC's behalf and has had the unintended consequence of disempowering and embittering the families.

IFC considers that a better agreement is possible now than was the case in 1997 and was upbeat in its response to the CAO. But this optimism sits at odds with the disillusionment of the families as they continue their negotiations with Pangué S.A.

That the El Avellano families' situation be successfully resolved was a contingency for IFC's exit and much was made of this by IFC with the CAO. However, there appears to

have been no IFC independent verification that the situation was concluded before exit and as the assessment report is completed. El Avellano families are still in negotiation with Pangué S.A. and reporting that Pangué staff are indicating that the August 2001 agreement is not binding. At this point IFC has relinquished whatever little leverage it once had and the El Avellano families consider themselves abandoned by IFC.

To restate, the CAO understands that the IFC acted in good faith with the best of intentions in negotiating with Pangué S.A. that the El Avellano families be offered a fair resettlement package. However, the manner of its negotiation and the lack of consultation and transparency has backfired on IFC.

### **4.3 Environment and Safety Issues**

#### **4.3.1 Environment**

*The complaint asserts as was asserted in the original complaint to the President of the World Bank Group in 1995 that the downstream impacts of Pangué have not been adequately assessed, monitored and managed, through an appropriate operational plan. The complaint asks that downstream impact studies and monitoring data be disclosed.*

The CAO feels that the findings of the Hair Report relating to the disclosure and analysis of downstream impacts at the time of assessment and due diligence are complete and has nothing to add to its conclusions.

With regard to the continued need for downstream monitoring and impact assessment, this is an essential part of any environmental management plan for a project of this type. That an adequate environmental management plan is in place, is complied with and is enforced is the joint responsibility of ENDESA, Pangué S.A., CONAMA and IFC as an investor with a specific interest and commitment to the environment and social outcomes of projects.

The CAO has established that IFC on one occasion when it was made aware that downstream impact monitoring had been suspended by ENDESA, moved to ensure that it was restarted. On the questions of disclosure the CAO has received conflicting information from IFC staff and management. IFC staff have indicated that the downstream impact reports were disclosed at least to the academic community in Chile, while in IFC's management response IFC indicate that the original study of downstream conditions was not disclosed by Pangué S.A. and IFC could not disclose this if they chose not to. IFC asserts that it has requested Pangué S.A. to disclose the original study.

The CAO found during the course of its assessment that many stakeholders are deeply concerned at the lack of information about the downstream monitoring process or its data. The concern stretches from river users along the length of the river, to local authorities, academics at universities in Concepción as well as other sites in Chile, local people and the central government agencies responsible for environment protection and management and emergency response coordination.

It is difficult to imagine that a water course of such significance to ecosystem health, as well as to economic and social development, and under pressure from multiple users, is not the subject of much greater study and that the data of any downstream monitoring



would not be public and available for others to use and examine. While IFC states that it has urged the company to disclose the downstream impact report, it is not clear that IFC engaged with Pangué to encourage them to meet with community leaders in communities along the river and impacted by it on the data and the monitoring system or to encourage them to partner with agencies and groups in the area who have concerns about the future of the river.

The CAO is concerned that with burgeoning and changing demands on the river, from afforestation, pulp and paper operations, increased population and other light industrial use, mean that the sharing of information and partnership between Pangué S.A. and others is essential in understanding and planning for the sustainability of the river and that IFC in failing to move the company has towards such a partnership should reflect on the risks to itself as a corporation.

The CAO hopes that best practice in IFC would mean that any similar project in future would demand the disclosure of reports that have a direct bearing on the environment performance of a project and its impact on affected communities' livelihoods. The IFC should ensure that in future projects that the present information disclosure policy is interpreted in such a way to ensure the release of similar reports or that IFC revises its disclosure policy to specifically note that the information contained in these technical reports must be released. The CAO suggests that IFC disclose the results of its monitoring and supervision in relation to the downstream impacts and that IFC despite its exit from the project, request that Pangué S.A. disclose the original report. This could be construed as an act of good faith as IFC pursues other business opportunities with ENDESA.

IFC has expressed confidence to the CAO that the downstream impacts of the project are minimal and that if issues had been revealed in monitoring data submitted by Pangué S.A. to IFC, IFC would have acted to mitigate problems. Unfortunately this is of little comfort to communities concerned about the health of the river. Once again the lack of disclosure, communication, consultation and participatory process between IFC, Pangué S.A. and the communities has undermined the work IFC has clearly undertaken in good faith and to some effect.

IFC has in its response to the CAO indicated that there are no outstanding environmental reporting requirements on Pangué S.A. following IFC's disposal of shares in July 12, 2002.

During the field visit undertaken as part of the assessment the CAO was made aware of programs in the Alto Bio Bio region supported by the World Bank to support community participation in management of rivers and streams. This would appear to be a missed opportunity for the World Bank Group to use its leverage as a Group.

### **4.3.2 Safety**

#### **4.3.2.1 Flooding**

*The complaint expresses the deep concern of the complainants concerning the potential for flooding as the result of heavy rains and flood events as well as possible technical flaws in the construction of Ralco and inadequate emergency response systems in place by Pangué. The complainants allege that there is no emergency response plan known or*

*understood by the communities living downstream of the dam and that there is no prior notice of planned releases by the dam.*

IFC clarified for the CAO that it does not have a copy of any emergency response plan, as this was not demanded in the investment agreement in 1993. While the CAO accepts that in 1993 this may not have been a policy requirement within IFC, it seems sensible that as an equity investor with environment and social policies and with a development mandate, IFC may have considered an emergency response plan a critical piece of supervision material, if not in 1993 then in the subsequent years as IFC's policy framework was made more robust. Here as in other areas raised within the complaint, the CAO observes that IFC was not able to evolve its relationship with its partner, ENDESA as IFC's policies and approaches evolved.

IFC clarified that for projects undertaken today the review of an emergency response plan by IFC together with consultation with downstream authorities and communities would be standard consideration in project appraisal.

In other projects IFC has requested successively more and more information in annual monitoring reports to reflect changes in the project or changes in IFC policy demands and sensitivities. This does not appear to have been the case with Pangué.

The CAO recommends that IFC review projects within the portfolio, in particular equity investments, where the investment agreements are out of step with the present norm in terms of their environment and social covenants or stipulations and assess whether there are risks to the projects, to project stakeholders or IFC resulting from the absence of contractual enforcement of safeguards.

The CAO recommends that IFC as a past and future partner of ENDESA urge Pangué S.A. to disclose and consult more fully emergency response plans.

#### **4.3.2.2 Seismic and volcanic activity**

*The complaint expresses concern that seismic activity in the region poses a risk to Pangué and to the new construction of Ralco and seeks confirmation that adequate monitoring is taking place by ENDESA and that the emergency response plan is comprehensive in its treatment of seismic events.*

As noted previously IFC does not have a copy of any emergency plan developed by Pangué S.A., though it has expressed to the CAO its confidence that any emergency response plan does adequately address seismic and volcanic events though this seems to be aspirational on IFC's behalf. The CAO considers that the seismic and volcanic history of the region adds particular importance to the need to consult and disseminate an emergency response plan. Again if this was not a policy requirement in 1993 it was, as IFC admits, standard practice by the late 1990s and it is reasonable to expect that IFC would have pressed for this during supervision and in its frequent exchanges with the project sponsor.

#### **4.3.2.3 Structural damage of Pangué**

*The complaint is concerned that the structural integrity of Pangué be independently verified.*

IFC has informed the CAO that at its request Pangué S.A. did submit its original operational brochure to engineering societies in Santiago. The CAO refers the complainants to the conclusions of the Hair Report written months after Pangué began to generate power, that it considered the engineering and construction of the dam to be in line with the high standards prevalent within this industry sector in Chile.

With IFC no longer a partner in Pangué S.A. the responsibility for ensuring the safety of the dam remains solely with the relevant ministry in the Chilean government, in this case the ministry of public works.

### **4.4 Ralco**

#### **4.4.1 IFC's relationship to Ralco and IFC responsibility for impacts of Ralco**

*The complaint addresses the construction of the storage dam, Ralco, above Pangué and the next component of the dam system on the Bio Bio. While the complaint recognizes that IFC is not an investor in Ralco it holds that Pangué and Ralco form two parts of one project and that IFC is therefore implicated in Ralco's construction. Specifically the complaint states that Pehuen Foundation resources have been used for mitigation of the social impacts of Ralco in contravention of the Foundation's statutes.*

*The complaint specifically requests that IFC interject to ensure the immediate suspension of Ralco, and that it clarify its relationship to Ralco. The complaint also requests that IFC should transfer the ownership of shares to a Pehuenche controlled institution and that processes be put in place to secure the long term financial security of the communities impacted by Pangué-Ralco. The complaint asks that the compensation and financial and technical assistance be extended beyond the current commitment of 10 years.*

The issue of the cumulative impacts of Pangué-Ralco was addressed in the Hair Report. Clearly at the time IFC was making the decision to invest in Pangué the form of the future dam development was already clear. IFC did review the EIA prepared for Ralco and demanded that an addendum to the October 1996 Pangué Plan of Operations was prepared to take into account Ralco's construction. This was prepared in June 1997. In IFC management's response to the CAO, IFC confirms that it considered there was a significant impact of Ralco on Pangué in that Ralco would control water flow into Pangué. The IFC also confirms that the environment and social policies invoked on Ralco were those in place in 1993.

As a result of stipulation by IFC in its investment agreement with Pangué S.A. that no future dam development occur on the Bio Bio without a comprehensive environmental agreement. IFC recognized the cumulative impact of Pangué – Ralco. This is confirmed by the addendum to the Plan of Operation, which acknowledges, belatedly, that Pangué depends on Ralco for maximum efficiency, controlling the flow of the river across seasonal fluctuations.

The complaint is also concerned with the behavior of IFC at the time of the Ralco EIA approval process in 1997. This is noted in the Hair Report and in subsequent correspondence from Dr. Hair to the President of the World Bank Group. At the time of Board approval of the Pangué investment IFC management was aware that Ralco would be the next proposed construction on the river. In November 1992 the then President of the Bank Group, Lewis Preston assured the Board that IFC management would through agreements reached with ENDESA/Pangué ensure that cumulative and environmental and social impacts would be considered.

Any concerns on IFC's part on the cumulative impact of Ralco and Pangué and in particular concerns that the Pehuen Foundation had problems were not made public at a time and in a way that would have facilitated Chilean authorities and the Pehuenche communities engagement and interaction in the Ralco EIA process.

The Hair Report concluded, and the CAO concurs, that the environmental impact assessment for Pangué was not sufficiently cumulative in its assessment of environmental or social impacts. While IFC did review the EIA of Ralco and did make comments and suggest additional reports, studies, including cumulative downstream impacts, this did not constitute a cumulative environmental and social impact assessment of Ralco.

Until the time that IFC disposed of its shares in July 2002 it could be argued that Ralco, because of its material impact on the operation of Pangué and together with Pangué, Ralco's cumulative impact on the environment and social development of the area, should be considered as an associated facility covered by the policies of IFC.

However, in IFC management's response to the CAO in the course of the assessment, it is stated that IFC considers Pangué and Ralco as two separate projects. IFC believes that it "did what it reasonably could" as an investor to address cumulative environmental and social impacts posed by Ralco.

IFC does not accept that it bears any responsibility for those claiming to have been affected by Ralco.

IFC's technical consideration of Pangué and Ralco as two distinct projects is belied by the impacts on the ground, the operations of the Pehuen Foundation, ENDESA's relationship with Pangué and Ralco and the undoubted cumulative impacts of the project, environmentally and socially,

The CAO considers that IFC not only did not contribute fully to ensuring a comprehensive and cumulative impact assessment for Pangué – Ralco, but that by failing to disclose its opinion and concerns and findings at the time of Ralco's EIA approval, IFC impeded the necessary full and frank consultation required of a project of this magnitude and potential impact.

While the CAO is aware that the present policy requirements on environmental impact assessment disclosure, consultation and scope were not in place in 1993, at the time of the investment agreement, nor in 1996 and 1997 at the time of Ralco's approval, best practice in the mid-1990s would have demanded disclosure and EIA addenda and modifications to Pangué's environment assessment and environment management plan. Once again while working in good faith, the incremental approach taken by IFC coupled with a lack of disclosure, had less than the desired effect.

#### **4.4.2 Water rights**

Subsequent to the submission of the formal complaint the complainants and their representatives raised with the CAO issues regarding the transfer of water rights from Pangué S.A. to ENDESA, the owner of Ralco, in 2002 and asked whether or not IFC was informed at the time of the transfer. The complainants allege that the transfer of water rights had a material negative impact on the value of Pangué S.A. The complainants allege that ENDESA acted in its interests and did not protect the interests of minority shareholders in Pangué S.A..

IFC has confirmed to the CAO that it was in receipt of information in 2000 that an easement of water rights should be created by Pangué S.A. to ENDESA. However, IFC also states that it only became aware in July 2002 of the issue of the transfer of water rights and this was subsequent to IFC's notice to ENDESA of its intention to exercise its put option, the negotiation of the price of the shares, agreement from management to make the sale and the completion of the sale.

The CAO believes that IFC should investigate whether in this case IFC acted in the best interests of its shareholders and fulfilled any obligations to other shareholders. The CAO recommends that the President through whatever appropriate mechanism ensures that he is satisfied with the business practice in this case and that any lessons are learned for future portfolio management.

The CAO also notes that attempts by lawyers and others to raise concerns with IFC regarding the transfer of water rights were received by IFC, but never acknowledged again compounding IFC's reputation and image of aloofness and non-engagement in the project.

## **4.5 Disclosure and Transparency**

*The Complaint raises disclosure and public access to information throughout the complaint. Transparency is the leitmotif of this complaint. The complaint concludes by asking for responses on the disclosure of a number of critical documents and information which it argues are pertinent to the present day development of Ralco, as well as the historic record of the development of Pangué.*

### **4.5.1 Downing Report**

The complaint asks that the Downing Report be disclosed publicly and specifically to the Pehuenche communities affected by the project.

According to IFC the Spanish translation of the Downing Report was disclosed to the directors of the Pehuen Foundation in late March 1997 and was discussed with the officers of the Foundation by IFC staff in early April 1997. The author of the report decried this process of disclosure and appealed to IFC to fully disclose the report in a culturally sensitive manner to all the Pehuenche affected by the project and connected to the Foundation.

Mr. Downing filed an official ethics complaint against IFC staff regarding their management of the report process and their failure to disclose the Downing Report in accordance with IFC policy (in a culturally appropriate way) to all those affected and with an interest in the report. It was two days after Mr. Downing's complaint was filed that IFC sent a Spanish translation of the report to Pangué S.A. and according to IFC, Pangué S.A. then sent the report to the Pehuenche directors of the Foundation. Another two days later IFC staff met with the directors to discuss the report.

By any measure this does not equate to disclosure in a manner that would allow the Pehuenche to consider the report and its findings, engage in discussions among themselves and allow their leaders to bring responses, concerns and questions back to IFC or the authors, the foundation or Pangué S. A. The disclosure did not respect the cultural and organizational norms of the communities concerned.

The CAO therefore is not surprised that large numbers of community members state that they have never seen or known of the recommendations of the Downing Report and that they call today for its disclosure. The partial disclosure of the Downing Report is particularly frustrating in that IFC was well intentioned in commissioning the report and the Report was an important attempt to address concerns in the original structure, governance and operations of the Foundation.

The CAO concludes that in this case the mishandling of the disclosure of the Downing Report has served to undermine the work of IFC and of the Foundation in the past and has contributed to the atmosphere of confusion and mistrust about the operations of the Foundation today and the intentions of Pangué S.A. shareholders in establishing the Foundation.

CAO notes that IFC considers that the creation of the Foundation was at the time a groundbreaking innovation. However, its reputation has been sullied by the failure to be open, transparent and participatory in its review.

The partial disclosure of the Downing Report was a point of contention as the impacted communities and Chilean authorities sought to engage ENDESA over the construction of Ralco and IFC should accept responsibility for constraining the dialogue at that time.

The CAO recommends that IFC ensure that the Downing Report is translated and disseminated together with a record of what has been done in the intervening years to address its recommendations and that this should be discussed in each of the communities covered by the Foundation. The IFC should also reconsider its decision to undertake no further evaluations of the Foundation. In the opinion of the CAO the Foundation forms one of the only lasting social development impacts of IFC's involvement in Pangué and as such its successful operation is essential for IFC to achieve over time its development impact.

#### **4.5.2 Hair Report**

*The complaint calls for the full disclosure of the Hair Report.*

The Hair Report is discussed earlier in this assessment report. The CAO concurs that the Hair Report should be re-released taking a more realistic approach to business confidentiality.

#### **4.5.3 Loan agreement and March 1997 agreement**

*The complaint calls for the disclosure of the Investment Agreement and the post-prepayment agreement of March 1997.*

The CAO does not consider that Investment Agreements per se should be placed in the public domain. They are contractual documents. However, the CAO acknowledges that to the extent environmental and social commitments between a sponsor and IFC are covenanted in investment agreements, details of these should be disclosed in some form.

In the March 1997 agreement, which is superseded by the August 2001 agreement, IFC, in good faith, negotiated with Pangué S.A. a series of environment and social conditions that would have to be met before IFC's disposal of shares. Once again IFC's intent is undermined by the lack of consultation and communication with those directly impacted by these agreements, in particular the El Avellano families.

IFC has indicated to the CAO that it considers the August 2001 agreement to be legally binding despite IFC's disposal of shares in July 2002, to the extent that the issues addressed in the agreement are still unresolved and current. The CAO is concerned that as negotiations ongoing between ENDESA and the El Avellano families, the El Avellano families are ill served by not knowing what IFC considers ENDESA's obligations to be, and by having no communication with IFC. The CAO considers that IFC is de facto undermining the El Avellano families' ability to negotiate with Pangué S.A.

While the CAO accepts that the binding characteristic of the August 2001 agreement may not be enforceable it recommends that IFC considers disclosing the agreement to facilitate the successful conclusion of negotiations between the families and ENDESA and to protect IFC's reputation.

Looking forward, IFC should in the context of a comprehensive new approach to transparency and disclosure consider how IFC can indicate to the Board and publicly what it expects to achieve in a project, both in terms of a fundamental contractual commitments on compliance and then in specific terms in any additionality. IFC should report on progress towards these goals over the life of the project. This would meet the demand for information between board approval and possible OEG evaluation, five years after the project enters the portfolio.

#### **4.5.4 Downstream impacts and flow release management plan**

*The complaint calls for the disclosure of downstream impacts studies and flow release management plans.*

The environment and operational issues are addressed earlier in the report, but the CAO concurs with the complainants that the IFC should disclose or seek from Pangué S.A. the disclosure of reports and reviews that are essential to communities and authorities that have a direct role in the management of the shared resource, the river Bio Bio. While the CAO accepts that at the time of the investment agreement in 1993 it was possible for IFC not to seek disclosure of these kinds of report, it is not common practice today, nor has it been common practice for some time.

#### **4.5.5 The role of disclosure in sustainable development**

Perhaps in part due to the unique role in the history of IFC played by Pangué the degree of secrecy and the tentative approach to disclosure in this case are unparalleled in the experience of the CAO. The lack of disclosure has hampered the ability of communities and internal constituencies of the IFC, alike, to understand the project, the role played by IFC and agreements made between IFC and the sponsor, in some cases on behalf of the communities.

Business confidentiality is enshrined in IFC's disclosure policy. However, it may be interpreted expansively or minimally. The CAO has been urged not to judge the actions of IFC staff and management in the early and mid 90s by the standards of today, 2003. But the discussion of disclosure relates to recent and present activities. Communities consider that they have the right to know if the World Bank Group is exiting a deal especially when they understand that the exit is predicated upon conditions being met by the sponsor that directly affect them. They want to have access to independent monitoring and verification reports of social and environmental issues, which directly concern and impact them. They have a right to know the substance of negotiations that are being undertaken on their behalf. They have a right to know the operational and emergency planning that may impact their lives and security. They have a right to expect that a project of the World Bank Group will at the very least protect them, to the extent possible, from negative development impacts and where unintended impacts occur that mitigation measures are discussed and agreed with them. These rights and issues of respect are not ones that evolve as policies evolve, they are fundamental. They were in 1993 and then are in 2003. The policy framework with which IFC works to ensure that they are upheld has evolved, but IFC did not deal transparently with the people affected by this project.

Throughout the CAO's review of documents and interviews with local people contradictions abound about what has been disclosed to whom, when and how. That this degree of uncertainty of information, lack of clarity and confusion exists is testament



itself that in this case the communication between IFC, Pangué S.A., the communities and in some cases the Pehuen Foundation, sometimes failed.

The cloak of secrecy that covers all things related to Pangué is at odds with evolving attitudes and practices within ENDESA, Chile and the IFC. This has constrained IFC's ability to learn lessons from the tensions around this project. The apparent missed opportunity in discussing the Hair report findings openly within IFC has limited the institutional memory upon which the corporation depends as it embarks on similar projects in later years. Whether or not IFC agreed with every conclusion or recommendation of the Hair report is not a principal concern from a learning perspective.

## **4.6 IFC agreements with UN**

*The complaint calls for the release of documents relating to the UN and UN agreements with the IFC.*

After review of this issue in the complaint and discussion with the IFC staff concerned, the CAO concludes that there has been some confusion created inadvertently. The IFC as part of the Bretton Woods Institutions is part of the UN system. There are no agreements with the UN that refer to human rights or any other issues relating to aspects of this project.

## **4.7 Institutional issues**

### **4.7.1 IFC and ENDESA**

*The complaint suggests that it is crucial, both for those people affected by the Pangué/Ralco projects, but also for the credibility of the IFC and the avoidance of similar experiences in the future, that IFC refuse to fund new projects sponsored by any ENDESA controlled companies throughout the world.*

IFC has informed the CAO of one other investment with ENDESA and the CAO is aware that there have been other preliminary conversations with other ENDESA subsidiaries that appear not to have progressed to the project phase. The complaint calls for blacklisting. The CAO believes that it is more important for IFC in each project to undertake a thorough review of the potential project sponsor to satisfy itself that the sponsor shares IFC's values and commitment to environment and social development. The CAO recommends that IFC strengthen its sponsor due diligence to include the environment and social performance and commitment to corporate social responsibility of all potential clients, including the records of parents and subsidiaries. As the CAO has recommended in other reports, including its review of impact and effectiveness of IFC Safeguard Policies, IFC senior management should be satisfied that sponsors, in particular those in whom IFC invests equity, share IFC's values. In response to this complaint IFC should as it moves forward with other investments with ENDESA and its subsidiaries, ensure that the problems that the CAO suggests have plagued this project and its relationship with ENDESA are not repeated.

## 5 Recommendations for action

The following recommendations for action by IFC acknowledge that IFC is no longer an equity investor in Pangué S.A. and as such has no formal leverage. However, the agreement of August 2001 remains in effect until its terms and conditions have been fulfilled. Further, IFC has in the past recognized the effective relationship environmentally and operationally of Pangué and Ralco. The CAO believes that IFC has an obligation to disclose to those affected by the project, information which will be of material use to them as they engage in negotiations today with Pangué S.A. and ENDESA over their future.

**The CAO believes that it would be an important part of other ongoing continual improvement processes within IFC for the Pangué project and the Hair Report process in particular to be used as learning tools in order to examine carefully what should be strengthened for future dam, hydroelectric projects and projects where IFC must engage with indigenous peoples.** While the project appraisal and due diligence may be considered ancient history by some, taking place over ten years ago, IFC remained an equity investor until last year and chose not to update its requirements of Pangué S.A. over that period of its partnership.

The complainants in addition to their concerns around the future of Pangué and now Ralco, have expressed to the CAO in clear terms, their concerns that no one should have to experience what they have had to again and wish that some consolation will come from IFC's taking on board its lessons.

**With regard to the Pehuen Foundation, the CAO considers that IFC has an interest in the future working of the Foundation as it forms part of IFC's legacy in the project. Agreements made between IFC and Pangué S.A. on the allocation of funds to the Foundation should be disclosed by IFC and made available in an appropriate way widely within the community.**

**The CAO believes IFC should revisit its decision not to undertake any further external review of the foundation. The CAO recommends that such a review take place and considers that it may make an important contribution to further strengthening the foundation to meet the very real needs the community places on it.** The review could be a vehicle for gaining greater clarity for all parties on issues of persistent confusion and could form the basis for a renewed partnership in administering and supporting the foundation.

**The CAO considers it a matter of priority that the detail of the August 2001 agreement between IFC and Pangué S.A. be disclosed by IFC to enable the El Avellano families to negotiate effectively with Pangué on their own interests. IFC should also report to the El Avellano families on whether it believes the August 2001 agreement has been complied with and what measures it took to assure that this was the case before it exited through the disposal of shares in July 2002.**

**The IFC should ensure that in future projects that the present information disclosure policy is interpreted in such a way to ensure the release of technical reports and supporting or additional reports that contextualize environmental assessment documents, environmental management plans and/or shed light on**

**environmental and social impacts during implementation. The CAO recommends that IFC press Pangué S.A. to disclose the results of monitoring and supervision in relation to the downstream impacts and that IFC, despite its exit from the project, request that Pangué disclose the original report.**

**The CAO recommends that IFC review projects within the portfolio, in particular equity investments, where the investment agreements are out of step with the present norm in terms of their environment and social covenants or stipulations and assess whether there are risks to the projects, to project stakeholders or IFC resulting from the absence of contractual enforcement of safeguards.**

**The CAO recommends that IFC as a past and future partner of ENDESA urge Pangué S.A. to disclose and consult more fully its emergency response plans and that IFC take steps to ensure that it has emergency response plans in other projects within the portfolio that predate current practice in comment and consultation.**

**The CAO believes that IFC should investigate whether in this case IFC acted in the best interests of its shareholders and fulfilled any obligations to other shareholders. The CAO recommends that the President through whatever appropriate mechanism ensure that he is satisfied with the business practice in this case and that any lessons are learned for future portfolio management.**

**The CAO recommends that IFC review its current policy, procedural guidance and practice to ensure that there is a clear framework for cumulative and strategic environmental and social impact assessment.** This should provide clarity on when this is necessary and how this determination is made and how such assessment should be carried out. The CAO recommends that this reform of policy and guidance, however it is carried out, be communicated internally and externally.

**The CAO recommends that IFC strengthen its sponsor due diligence to include the environment and social performance and commitment to corporate social responsibility of all potential clients, including the records of parents and subsidiaries.** As the CAO has recommended in other reports, including its review of impact and effectiveness of IFC Safeguard Policies, IFC senior management should be satisfied that sponsors, in particular those in whom IFC invests equity, share IFC's values. In response to this complaint IFC should as it moves forward with other investments with ENDESA and its subsidiaries, ensure that the problems that the CAO suggests have plagued this project and its relationship with ENDESA are not repeated.

The CAO has a number of recommendations related to disclosure and transparency.

**The CAO believes that IFC should reconsider disclosing the full Hair Report. In addition IFC should report to those who once formed GABB and complainants to the CAO, living in communities directly impacted by Pangué, how it responded to the Hair Report and what actions were taken with Pangué S.A.**

**The CAO recommends that IFC ensure that the Downing Report is translated and disseminated together with a record of what has been done in the intervening**

**years to address its recommendations and that this should be discussed in each of the communities covered by the Foundation.**

**While the CAO does not recommend that investment agreements are disclosed, the CAO acknowledges that to the extent environmental and social commitments between a sponsor and IFC are covenanted in investment agreements, details of these should be disclosed in some form.**

**Looking forward, IFC should, in the context of a comprehensive new approach to transparency and disclosure consider how IFC can indicate to the Board and publicly what it expects to achieve in a project, both in terms of a fundamental contractual commitments on compliance and then specifically what is the goal of any additionality in terms of sustainability. IFC should report on progress towards these goals over the life of the project. This would meet the demand for information between board approval and possible OEG evaluation, five years after the project enters the portfolio.**

## **6 Conclusions**

Many of the issues raised in the complaint can be directly traced to concerns and complaints made known to ENDESA and to IFC at the time of the investment and the pre-investment due diligence. Many of them have been voiced through the Hair Report. Indeed from the CAO's review of the files and from information accompanying management's response to the CAO, many of them surface again and again in back to office reports and in the exchanges between IFC and ENDESA. What then explains the inaction that frustrates and angers the communities affected?

Throughout the life of IFC's engagement in Pangué, IFC has stuck fast to its assertion that Pangué represents a significant contribution by the IFC and that the project has limited environmental and social impacts. IFC has noted that it had limited leverage, with an equity investment of 2.5% and that it undertook interventions with ENDESA for the betterment of the communities. Nevertheless and as the CAO has concluded on other equity investments where problems have arisen, the promise to the community of the World Bank Group's engagement sits at odds with the reality of the leverage IFC is prepared to exert. This is exacerbated by poor communication with the community and no mechanism for engagement and dialogue. This is all the more remarkable given the furore that surrounded the Hair Report. IFC asserts that it did respond to the Hair Report and from the files it is clear that some of the issues raised in the report formed the basis of engagement with ENDESA and the focus of supervision visits in the subsequent years. However, IFC would have been better served by engaging with the community subsequently to the Report and ENDESA and either through the development of a participatory process and/or through disclosure of IFC's plans to rectify the shortcoming catalogued by the report.

It would be inappropriate to end this assessment report without acknowledging that which cannot be expressed with words, with assessments, with policies or procedures, with monetary compensation or with findings by ombudsmen, courts or any other authorities. It is that for many people for more time than we can conceive of, the harmony of the natural and spiritual systems in the Alto Bio Bio has been sacred for the

people who have lived their for many generations and continue to live there. No matter the rights or wrongs of the construction of a dam system in that region respect and awe for the construction as desecration should be in our minds and extra care, extra due diligence and humility should be the mark of corporate, government or international organization's activities.

## Annex 1: The complaint<sup>3</sup>

*JULY 1, 2002*

**Petition to address outstanding issues of IFC financed and partly owned Pangué/Ralco projects**

### Background and Purpose of claim

The present petition seeks concrete remedies to resolve outstanding issues arising out of IFC involvement in the Pangué/Ralco hydroelectric project in the Upper BioBio. Some of the claimants have been raising these issues for more than ten years and despite the introduction of social and environmental covenants to the loan agreement, the independent investigations that took place in 1996-1997 (Downing and Hair), and the agreement supposedly concluded in March of 1997 between the company and the IFC, these issues remain outstanding till this day.

Furthermore, the damages caused on the claimants that were detailed in the many communications with the Bank and in the complaint presented before the World Bank's Inspection Panel in November 1995, far from being avoided or mitigated, have increased, affecting persons and communities in several parts of the basin and the country.

### Scope of Claim

The present complaint is filed against the IFC financed and partly owned Pangué/Ralco projects. As we detailed in the 1995 Panel Claim, funds from the Pangué project have for years been used for the Ralco project; Pangué and Ralco are functionally interrelated and their environmental impacts should have been cumulatively assessed; mitigation/compensation measures for the Pangué project overlap with the Ralco project; and IFC management denied crucial information regarding the Ralco project to the IFC Board, Chilean citizens and Chilean government agencies. These actions and omissions render the IFC responsible for the construction of Pangué and Ralco.

### Claimants, Documentation and Procedural Issues:

We are submitting the main part of this claim by electronic mail. We are also sending (by express mail) a paper version of the claim, copies of the documents labelled as annexes in the main text, and the original signed mandates from the claimants (of which they have kept a copy), including name, ID numbers, address, signature. Original (November 1995) or new claimant status (firmante original) is also mentioned (Annex I. A-F). The mandates signed with my name (Cristian Oposo) and p.p. next to it are mandates given orally, that can be verified if necessary.

We have avoided resubmitting an analysis of specific WB and IFC policies that have been violated (and that we believe continue to be violated today) because such analysis was presented in detail in our complaint of 1995. We ask that the original complaint and its annexes, as well as the Downing and Hair reports, be also considered as background for this complaint

Regarding procedural issues we would like to recommend that if the CAO office proceeds with a formal investigation, something we of course believe is amply justified, there is adequate outreach among different groups and individuals affected by the Pangué/Ralco projects and that

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<sup>3</sup> The names of complainants have been removed from the complaint in order to preserve the confidentiality of their identity. The 83 individuals and groups who signed to the complaint are known to the CAO and the eligibility of the complaint in that they are affected by the project, verified.

investigations and possible negotiations are not limited necessarily to only the individuals and/or groups specified in this last claim.

This is particularly important in the Pehuenche communities, where in order to respect their traditional leadership and social structures, potential investigations and negotiations should be carried out in a communal manner and in a culturally appropriate fashion (bilingual and with adequate notice and external advice).

Furthermore the mandates signed by the claimants specify that the mandate given to my person "has the aim of making contact (with your office) and provide future advise, but does not imply that negotiations be carried out in my name".

## 1. SOCIAL MITIGATION MEASURES

### 1.A. Pehuen Foundation and other social mitigation/compensation measures

#### *Illegal use of Foundation for Ralco relocated persons.*

The use of the Pehuen Foundation for the purposes of pressuring Pehuenche to abandon their land, practice that violated not only the original intent of the foundation, but that also violated its own charter and that helped pave the way for Ralco, was detailed in the November 1995 claim and was also pointed out by Ted Downing's independent report. Instead of dealing with these matters, the use of the Pehuen Foundation for the Ralco project has now been institutionalised.

As was denounced by Downing in May of 1996, ENDESA is using the Pehuen Foundation to channel funds for the people relocated by Ralco, contradicting its aims and involving the World Bank in a project, which they declared they would not fund.

As can be seen in the photocopies attached (Annex II), the two new Pehuenche communities created with the forced relocation of Pehuenche (El Barco and Ayin Mapu) are now an integral part of the foundation. According to information provided last year by an ENDESA employee, official representatives from these two communities would be officially incorporated as directors of the foundation.

#### *Other illegal overlaps with Ralco project*

Not only is the company using funds of the Foundation and incorporating communities outside their mandate, but some of the commitments that were made in terms of carrying out infrastructure and productive activities in Quepuca-Ralco, have not been implemented and are now being promised as compensation for those "indirectly" affected by Ralco. Such is the case with the electrification of Quepuca-Ralco and other social benefits that should have been implemented regardless of the Ralco project. The only one of the three communities that have been provided with electricity, as was the promise for the three communities recognized as affected by Pangué (Callaqui, Pitril and Quepuca-Ralco), is Callaqui. Both Quepuca-Ralco and Pitril still lack this basic service, and is now being offered (in the case of Quepuca-Ralco) as compensation for Ralco.

That a company that generates electricity has not even been able to provide nearby communities with this service is symbolic of the lack of will and disrespect towards the local communities.

In 1998 ENDESA and the Chilean government, informally, and with no adequate Pehuenche community input, negotiated what is known as the "Protocolo" (Annex III) by which it was recognized that Pehuenche families from Quepuca-Ralco and Ralco-Lepoy were in fact affected by the Ralco project (even though this had not been recognized in the EIA process) and that they would be offered a package of compensation measures that included the construction of houses, the hiring of Pehuenche in the project and other matters, and that such aid would be financed jointly by the government and ENDESA. The original "Protocolo" ended late last year and the government and ENDESA held several meetings, during which the demands of the communities were not heard. Formal demands from the Pehuenche were not seriously considered and we understand no new Protocolo has been accepted and signed by the

Pehuenche. Furthermore, the government has formally recognized that they and ENDESA have not fulfilled their promises (Annex IV)

In March of this year, during the transport of the first of two generators for the Ralco dam from the port of Talcahuano to the Upper Biobio a massive protest took place in the Malla sector of Quepuca-Ralco, resulting in the violent repression of Pehuenche families that had blockaded the road. Fifty-five people, the majority of them Pehuenche were arrested and now face charges in the Military Courts because of supposed attacks against the police. The repression provoked national commotion and a formal petition to investigate the action of the police. The protest actions also provoked a strong presence of police in the area and the filing of an Antiterrorist Demand by part of the government for the burning of an ENDESA truck that took place at a nearby date. We enclose the front cover of a newspaper where one can see the extreme protection that the generator transport had after the protests (Annex V). The generator by the way was kept several days in Pangué premises, a symbol of the close links between both projects.

The protests that took place in early March and that still are having an impact for the Pehuenche elders, women and children that were severely beaten and that are still testifying in the military court of Chillán, show the desperation of some of the Pehuenche communities because of the unfulfilled promises of ENDESA and the government. These promises not only have to do with the Protocol promised as compensation for the Ralco project, but with the company's operation in the area, beginning with the Pangué project. It is fair to ask why ENDESA, instead of complying with the promises made to the community of Quepuca-Ralco as a result of the Pangué project, now seeks government funds and conditions such aid to the Ralco project.

The protests show not only the extreme distress of the Pehuenche with ENDESA's promises but also show how the company still refuses to seriously negotiate with the Pehuenche and limits their dealings with them with paternalistic and imposed compensation measures, that they are not even willing to comply with.

#### *Power structure.*

Regardless of the incorporation of the new directors (from the relocated communities), something totally outside the original mandate and aim of the foundation, the foundation is still controlled by ENDESA employees, which have the majority of the votes and hold the key executive positions.

We believe that Pehuenche representation and their involvement in decision making are far from the original objectives of the foundation and contravene the recommendations of two Bank funded investigations that have called for a restructuring of the foundation and a reorientation of their work.

Thus, as was denounced in the 1995 claim, ENDESA institutionalised the use of the Pehuen Foundation for the Ralco project. If we consider that the IFC is still owner of a percentage of the Pangué dam stock, the reality today is that the IFC, or if you will a partially owned IFC project, is funding the mitigation efforts of a dam that the Bank officially refused to consider for funding, thus continuing to violate basic rights of the Pehuenche.

#### *Future funding levels.*

According to the year 2000 annual report of the Foundation (Annex VI) the current funding appears to be substantially higher than was originally committed and could appear as following some of the recommendations made in the Downing report. Nevertheless, two issues must be examined:

i.- Is the increase in the amount of funding a result of the incorporation of the relocated communities to the work of the foundation?

We believe that this is the case and consider that this goes against the aim of the Foundation and furthermore has not been a product of free and informed negotiation with the communities.

ii.- Is this funding legally binding?



The increase in funding is not only illegally related to the Ralco project, but there is no proof that it is fair and sustainable in time. There appears only to be a legally binding commitment for a much smaller amount of money (Annex VII). Why has the company not considered providing a permanent and significant source of financing for the Pehuenche by offering a percentage of the income of Ralco, as is the case with Pangué?

## REMEDIES REQUESTED

We believe that the long-term remedies for the many problems that have been encountered by the Fundación Pehuen can only be proposed and resolved by the Pehuenche communities, with adequate information and external advice. In this regard, remedies include the immediate separation of the Pehuen Foundation from the Ralco affected Pehuenche, the restructuring of Pehuen Foundation in order to have real Pehuenche control, the appropriate funding levels, and the proper distribution of the Downing and Hair reports. The mode of implementation has to be detailed by the Pehuenche themselves.

### 1.B. El Avellano families affected by Pangué

The situation of the Pehuenche families living till this day in the El Avellano sector constitutes one of the best examples of issues that were overlooked despite IFC management being aware of their existence during the project appraisal and evaluation and that are outstanding to this day.

Presently as has been expressed by Seferino Vallejo, one of the claimants, ENDESA is offering to purchase a certain amount of land that is considered by them insufficient; is not considering buying land for all the families that reside there (such is the case with Irma Jara, another claimant); refuses to consider repurchasing land sold to external parties that plan to build resort homes in the vicinity, and is not considering financial or technical support for their development, apart from inadequate amounts offered through the Fundación Pehuen and the new Protocolo that is supposed to be implemented.

ENDESA has unofficially offered to purchase 164 hectares for 18 families that reside in the area. They refuse to consider purchasing the whole or an important part of the El Avellano state that begins in El Morro creek. This is specially serious because according to Pehuenche tradition, the use of winter and summer lands is an integral part of their culture and the families of El Avellano have for many, many years been making use of both the *invernada* sectors where their houses are located and *veranada* sectors that are in hills nearby that are not being considered for purchase. Furthermore the company is refusing to buy the lots that have been sold to outside parties that expect to develop the area.

The case of Irma Jara (one of the claimants), whom the company is not considering to buy land is particularly troubling. Irma Jara for years has been a strong opponent of ENDESA projects and has refused to leave her land. As a result she has not only suffered insecurity because of many threats of eviction by part of the "legal" owner, but was physically assaulted in 1996 after moving her home to the side of the road before the filling of the Pangué reservoir. Jessica, one of her daughters had to drop out of elementary school in order to be close to her mother in the midst of the threats and uncertainties.

Mrs. Jara family was offered a small parcel of land and a house on the Los Notros sector, where some of the those affected by Pangué were relocated. Nevertheless, because she does not want to leave her land, she has never formally accepted this home, even do she does make use of it and her husband (not Pehuenche) did subscribe documents in his name.

Irma Jara's husband and daughter were both violently arrested in the March protests.

## REMEDIES REQUESTED

El Avellano corresponds to the historical territory of the families, and ENDESA should transfer the property of El Avellano estate to the holders of ancestral title (see annexes original claim). This should also include the purchase and transfer of lots that foreigners have acquired in

the area, as well as an appropriate financial and technical assistance package to assure that they can survive in the future as a Pehuenche community.

Irma Jara has the right to remain on her land in El Avellano despite making use of the Los Notros parcel, because El Avellano is the land of her ancestors, and also because she has the rights to compensation for the grievances she has suffered as a result of her refusal to move and her leading role in denouncing her problems to the public.

## 2. ENVIRONMENTAL MITIGATION, COMPENSATION AND SAFETY ISSUES FOR PANGUE/RALCO PROJECTS.

As we mentioned in our 1995 claim, and as has been explicitly recognized by IFC management, the downstream impacts of the operation of the Pangué dam need to be adequately assessed, monitored and managed, through an appropriate operational plan. As bank management was advised in written correspondence, and as later reaffirmed by the Hair investigation, these downstream impacts should have been appraised before the approval of the loan. Nevertheless, the loan was approved pending a three-phase study that should have culminated in appropriate mitigation measures and/or operational rules for the dam.

We believe it is urgent for the company and the IFC to release these studies to the public and governmental authorities in order to evaluate its findings and the operational guidelines that were supposedly put in place. This is specially important for those claimants living in the near vicinity of the dam, the agricultural water users, the inhabitants of Santa Barbara, Quilaco, Hualqui, Chihuayante, Concepción, Talcahuano and other towns; the fishermen's association of Concepción (FEREPA) and the Regional Government, many of whom signed the original claim and a significant number which have reaffirmed their demands in this new complaint.

On the other hand, as can be seen in the August 16, 1993 accord of the Regional Government, (Annex VIII) the regional body has an explicit interest in learning the results of the downstream impact studies demanded by the IFC. In the accords, ENDESA assured the Regional Government that an adequate minimum flow would be maintained, that sediments would be returned to the river and that detailed studies would be completed. Such studies should be evaluated, refined/and or conducted, and made available to the public.

### 2B. Reservoir area and basin protection of wildlife, forests and fish.

Apart from the downstream impact studies in reference to possible impacts on agricultural users, fishermen and others, it is important to evaluate the effectiveness of measures taken to protect wildlife, forests and fish in the reservoir area and the basin. This refers to the sectional plan in the reservoir, the impact on the fish population and the measures that have been taken to put an end to the increasing post-Pangué deforestation of native forests in the Upper Biobío, as documented in the Downing report.

Among these impacts and in view of the interest of inhabitants of Santa Barbara and other basic settlements to recover the river shoreline as a recreational area, information should be provided about the impact of the Pangué flow regime on the survival of wildlife in the area, including birds, fish and other living species.

### 2C. Safety Issues

#### *Flooding*

An event that took place in early 2001 clearly demonstrates the potential hazards of inadequate and undisclosed emergency response plans. During four days, there was very heavy raining in the area. The heavy rain, the serious technical flaws of the construction of the retaining wall for Ralco and the inadequate emergency response system that is still not in place for accidents at Pangué resulted in damages to property and the psychological and physical integrity of downstream inhabitants.

As a result flooding occurred in several urban sectors downstream, among them in La Suerte sector near Los Angeles, in Santa Juana, Hualqui and Chiguayante. Sixty four persons of

the Hualqui town filed an injunction (recurso de protección) in which they claim that due to the irresponsibility of ENDESA there was no adequate notice of the flooding and asked for an early response plan for emergencies and the construction of infrastructure to avoid future events. Although the original injunction (Annex IX) was thrown out of court, a new injunction was recently presented and is being reprocessed ( Annex X).

On the other hand, ENDESA publicly admitted having opened the gates of the Pangué dam in order to avoid further damages provoked by the collapse of the Ralco retaining wall. Although ENDESA maintains they were not responsible for the accident, their insurance company thinks differently, having concluded that the damages were responsibility of the company. In any case, apart from the irresponsibility and evident technical negligence of not building a wall and accompanying deviation channel that could survive historical flooding, the fact is that the accident, the flooding that followed and the damages provoked on hundreds of families downstream clearly show the non existence of adequate safety measures and publicly informed emergency plans. (Annex XI)

The floods, although provoked by a natural phenomena, no doubt were compounded by the fact that the provisional wall collapsed and that in order to avoid more damages, Pangué had to release important amounts of water. The irresponsibility of ENDESA subcontractors in their estimates of the flows that could occur at Ralco that provoked the collapse and the lack of an emergency system prevented the avoidance of the flooding of several towns.

This year, the insurance company of ENDESA refused to pay for the damages of the destruction of the provisional wall, alleging that it was responsibility of the company.

Furthermore several inhabitants of Santa Barbara suffered extreme psychological stress because of the fear of another mayor accident with Pangué, all in part due to the uncertainty of the possible threats and an adequate emergency response plan in place.

Another safety issue for downstream users is the lack of a scheduled and/or publicly informed release of flows from the Pangué dam. Several incidents, that could have had tragic consequences have occurred south of Santa Barbara, where local inhabitants, used for years to fishing and carrying out other recreational activities in islands that are in the middle of the river and that can, during the summer, be accessed by foot, have suddenly been surrounded by an increasing and unnatural flow increase and been stranded in dangerous conditions, on one occasion having only been able to be rescued by firemen after a whole rainy night. This apparently has also occurred in other downstream locations. An explicit request made to ENDESA by the Santa Barbara Fire Department for a boat in order to be able to rescue people stranded under these conditions has never been answered.

### *Earthquake*

Another potential security hazard has to do with the presence, in the vicinity of the Pangué dam and the proposed Ralco site, of four volcanoes, two of them active. As has been mentioned by EULA in their preliminary assessments for the hydro projects in the Upper Bio Bio (see annexes of original claim), there is a potential risk due to the possible melting of glaciers following eruptions of the volcanoes. This risk has been publicly acknowledged by ENDESA in an academic paper presented in 1990 by Rodolfo Von Bennowitz, then Chief of Development of ENDESA. In pages 128 and 129 of his presentation the official recognizes that one of the active volcanoes could have an eruption that could be disastrous, and that ENDESA would locate instruments in the volcanoes in order to give adequate notice in case of an emergency (Annex XII). It is important to note that at this time Lonquimay is not the only active volcano of the four. The Copahue volcano had significant activity in the year 2000, causing alarm among government officials and local inhabitants. Luckily this time there were no damages, but the point is that ENDESA and the IFC should assure not only that they are monitoring seismic activity, but also that an adequate emergency system is in place.

The dangers of a possible eruption of the Callaqui volcano were also made known in an evaluation of the Ralco EIA conducted by an academic institution (EULA of the University of Concepción) that had been involved in the initial evaluation of the Upper BioBio hydroelectric series of 6 dams. (Annex XIII).

Furthermore the results of induced seismic effects from Pangué and Ralco should be made public and/or be conducted. We are not experts in seismology but we do know that Chile is an area where numerous earthquakes have occurred, among them the MOST POWERFULL recorded in history (9.5 magnitude and 5.360 deaths) that took place in 1960 with the epicentre less than one hundred and fifty miles from the Upper Biobío. (Annex XIV)

#### *Structural Damages of the Pangué dam?*

For years there have been unconfirmed accounts that the Pangué dam has structural damages that could be a potential hazard for downstream inhabitants. Although we have no details on the exact nature and extent of the structural damages, the fact that this has been mentioned in an official statement from local Pehuenche leaders (among them Antolín Curriao from Quepuca-Ralco), that governmental authorities promised to investigate, and that the issues was formally raised during the legal proceeding (Annex X), we believe it is an issue that should be investigated.

Furthermore we include photographs taken in September of 1996 that could be related to this structural damage (Annex XV)

### REMEDIES REQUESTED

#### *Flooding*

- The downstream inhabitants that were affected by the 2001 floods, enhanced by the release of water from the Pangué dam, should be compensated for damages by the company.
- Furthermore appropriate infrastructure should be constructed to prevent further damages in the future.
- An emergency contingency plan should be developed and/or refined and made known to the general population of the basin.
- \* Flow releases should, if possible, be scheduled and publicly informed, and /or other measures are taken to prevent further “trapping” of recreational users of the river.

#### *Earthquakes*

- Confirm that adequate instrumentation is in place at the volcanoes near Pangué/Ralco, and/or fund and install such instruments at the earliest date.
- Have an emergency plan shared with local emergency authorities and the general population of potentially affected areas downstream.

#### *Structural Damages of Pangué?*

- Independent investigators should verify if there is structural damage at the dam and measures should be taken to deal with the problem.

### 3. BANK RESPONSIBILITIES FOR PEOPLE THREATENED AND/OR RELOCATED BY RALCO PROJECT

The main impact of the violation of Bank policies and procedures during the appraisal, approval and supervision of Pangué, violations that we think continue to this day, is the illegal construction of the Ralco dam. Although not directly funded by the IFC, the institution is conclusively responsible for Ralco's implementation, having been advised early on by Pehuenche leaders, Chilean and international NGOs, and even bank consultants, of its imminent implementation and impacts. The use of Pangué funds and the Pehuen Foundation in the implementation of Ralco, the denial of key documents to government agencies and the public during the appraisal of Ralco and the use of bank consultants and misleading statements

concerning the compliance of the Ralco resettlement plan with bank policies are the main reasons why we believe the IFC is responsible for the Ralco project.

Thus, it is the IFC's responsibility to use its leverage to prevent the completion of the Ralco dam and to undertake appropriate compensation measures.

#### *Communications with Bank management regarding the Ralco project*

The communications with several managers of the IFC and other WB Group staff and officials and the lack of a justified and timely response by part of the Bank is well documented.

Already in November of 1991, during the appraisal of the project, a WB consultant advised about the imminent construction of Ralco and its severe impacts on the Pehuenche population. The letter also refers to agreements of ENDESA with the Bank, concerning complying with "policy criteria of the WB" and a promise to not displace indigenous people without their "full, free and informed consent".

The letter (Annex XVI) dated November 7, 1991 read, in one of its parts:

From Scott Guggenheim (Anthropologist, Consultant to the WB)  
to Kent Lupberger

*[...] The 450 MW Pangué dam has become highly visible, both within Chile and abroad. Both ENDESA and its critics see Pangué as the first of several (up to six) large hydroelectric projects on the upper Bio-Bio River. Several of these, particularly the 720 MW Alto Ralco (the project next in the pipeline), would have substantial social and environmental impacts. Chile's weak environmental and social policy framework impedes environmental review and planning..*

*[...] From the social perspective, it is the Alto Ralco high dam (upstream of Pangué) that is causing the most concern because it would inundate Pehuenche lands and displace a sizable Indian community. ENDESA will update all social and environmental studies for this project to ensure that they meet the policy criteria of the World Bank....*

*[...] ENDESA has agreed to make a publicly disseminated statement that no indigenous people affected by any future ENDESA project in the Bio-Bio will be displaced without their full, free and informed consent.*

A year later, on November 23, 1992 the investment proposal presented by IFC to its Board (which proceeded to approve the project) also spoke about the cumulative effects of Ralco, although the proposal postponed considering the issue if and when other project were presented for financing, assuring furthermore that ENDESA and the Chilean government would consider cumulative impacts and convoke a "national debate" if other projects were proposed. These cumulative impact studies have never been undertaken.

The proposal to the Board (Annex XVII) stated the following:

#### November 23, 1992

*Report to the Board of Directors of IFC From Lewis Preston, President of the IFC*

*...Although some critics recognize that Pangué is an acceptable project, they are very concerned about the cumulative effects of other potential projects on the Bio-Bio River. Most of the criticism focuses on the impact of a total of six potential dams on the Bio-Bio River. If the IFC were asked to look at other projects on the Bio-Bio River in the future, IFC's evaluation would consider cumulative impacts. 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 socio-economic impacts. Finally, the Chilean Government has stated that they would require a full EIA 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 Bi-Bio River are proposed to the CNE for consideration"*

The IFC investment team not only irresponsibly refused to consider cumulative impacts of the first dam of a series planned and publicly announced as an hydraulic series of six dams, but did not even require considering the downstream impacts of the first dam, based on assurances by the company that they would complete a three phase study in the future and apply appropriate mitigation measures for the unknown impacts.

Regarding the Pehuenche communities, the IFC investment team announced the creation of a Pehuenche controlled Foundation that would compensate for the social, ecological and cultural impacts of the Pangué dam.

Six months before the presentation to the Board ENDESA was well advanced with the Ralco project, something Bank management, according to written documentation and statements, was definitely aware of. In June of 1992 ENDESA already had in its hands the preliminary environmental assessment for Ralco, including precise numbers of potential relocated persons and massive ecological impacts.

In May 1996 a consultant contracted by the IFC to evaluate the situation in the Upper Biobio, specifically the social mitigation and compensation measures for the Pangué project, concluded there were serious problems with Fundación Pehuen and advised of the overlap with the Ralco project, which was then being reviewed by the government (Annex XVIII).

*May 9, 1996*

*From Theodore Downing (IFC consultant)  
to Martyn Riddle, Technical and Environmental Department, IFC*

*.....Two items of information in this report are time sensitive:*

*Ralco dam: ..... On 6 May 1996, after completing the evaluation, I learned from external sources -not the IFC, ENDESA or Pangué- that ENDESA intends to use the Pehuen Foundation for the central role in the resettlement mitigation of Ralco-Lepoy and Quepuca-Ralco. Since the Pehuen Foundation emerged from and is part of the IFC/Pangué agreement, ENDESA's decision catapults the IFC and the rest of the World Bank Group, into becoming unwilling parties to what may become the most controversial resettlement of an Indigenous people in South America in several decades.*

Furthermore the letter pointed out that it was urgent to release the findings of the evaluation to the Pehuenche and other interested parties, in view of the review that was being conducted for the Ralco project. Downing at the time stated:

*[...] The Ralco EIA is with CONAMA and opportunity for commentaries will close on 8 July 1996. Although Ralco is not an IFC project, this interim evaluation points out an improper mitigation of the Ralco resettlement and construction (that) will substantially reduce the ability of the Pehuen Foundation to meet the IFC Agreement objectives. In many ways, this upstream impact on the Foundation has already begun...sharing the interim evaluation of the Pehuen Foundation with Pangué, ENDESA, the Foundation, the Chilean government and the Pehuenche will facilitate a cooperative resolution of these issues. Without this information, all parties will make serious mistakes....*

In April 1997 Mauricio Huenchulaf, then head of the governmental indigenous office, CONADI, also demanded that it was extremely urgent for the Bank to provide open access to all information and documentation in view of the finalization of the review of the Ralco EIA. (Annex XIX)

April 15, 1997

*From Mauricio Huenchulaf, National Director CONADI (Chilean government Indigenous Affairs Office)  
to James Wolfensohn, President IFC*

*...during January of 1997, Chilean NGO's made public the conclusions of the evaluation of the Pehuen Foundation ordered by the IFC...with surprise we realized that it had been in IFC hands for more than 10 months. Additionally we noted the explicit recommendations of the consultant that the report be made available as soon as possible to the Pehuenche, the government and Chilean NGO's, for the process of Environmental Impact Assessment of the new hydroelectric dam that Endesa S.A. is planning for the Upper BioBio, called Ralco Hydroelectric Dam...*

*...we ask you for...open access to all the information and documentation related to the Pangué Project and its impact on Pehuenche families, including the reports and complementary documents of the evaluations ordered.*

*Due to the fact that the environmental impact assessment of the Ralco project is in its last phase, access to this documentation is extremely urgent (underlined in the original. Translation by C.O.)*

A month before WB President James Wolfensohn sent a letter to Chilean Minister of Finance Eduardo Aninat, admitting non-fulfillment with environmental and social obligations, mentioning the Ralco project specifically, and emphasizing that the company was in a situation of imminent default. (Annex XX)

In part, that communication of February 6, 1997 read:

*From James Wolfensohn, President of IFC  
to Eduardo Aninat, Minister of Finance of Chile*

*..The conditions of financing provided for several obligations to be undertaken by Pangué S.A. and ENDESA, its parent company, in the areas of the environmental and social impacts. I regret to inform you that ENDESA appears to have taken a less than constructive approach to its environmental and social obligations in particular with regard to the preparation of a satisfactory cumulative impact assessment for the Ralco project and is in a situation of imminent default under the IFC financing agreements.*

*You should also be aware that two independent reviews of the project-drafts of which have been made available to Pangué- are highly critical of IFC's handling of the environmental appraisal and supervision of the Pangué project and of the compliance of Pangué S.A. and ENDESA with their obligations under the IFC agreements. It is our intention to disclose these two reports, despite the strong objections of Pangué S.A. We will of course remove any confidential business information but we owe it to our shareholders and to the other stakeholders of our organization to be as transparent and open as possible....*

Regardless of the specific petition of Bank consultants and government officials, and the awareness by part of IFC top management of the seriousness of the situation, the information of the official investigations (Downing and Hair) was not disclosed. The Hair report was heavily censored and finally released a few days AFTER the Ralco project had been approved by CONAMA (the Chilean environmental agency).

In a letter addressed to Mr. Wolfensohn Jay Hair expressed his dismay about the censorship of the report and again made references to the Ralco project. (Annex XXI)

*...An impression is created that the problems are all in the past, and only of historical interest, though our report, in the redacted portions, refers to current problems related to both Pangué and Ralco, including decisions made while our*

*work was in progress. Most notable was IFC's deletion of any information regarding current ongoing problems such as the 1997 Operating Plan for the Pangué dam or references to IFC's responsibilities for certain aspects of the proposed Ralco project...*

In his report Hair had specifically pointed out to Bank management their responsibility for further hydroelectric development in the Biobio. (Annex XXII)

*...“Although IFC does not plan to participate in the funding of subsequent hydroelectric projects on the Biobio River, in our view, it does share responsibility for the future development of the Biobio River System because it provided the initial funding- and the “credibility” that goes with (or should go with) a World Bank-sponsored project- that now provides the basis for a long-term multiple dam building process to proceed...”*

*.... “The decision to put the first dam on a major world-class, white-water river such as the Bio-Bio was a major and irreversible choice. Although that was a Chilean choice and not IFC's, the World Bank must accept its fair share of the responsibility for that decision being taken without having completed a high-quality, rigorous environmental analysis. Given the magnitude of the consequences of that decision, this was one of the mayor reasons why (as documented in this Independent Review) the failure of the Pangué Project to comply in a consistent manner with well-established World Bank standards and recognized environmental analysis and impact mitigation best practices was so incredibly important”...*

We believe the Bank clearly shares responsibility for the Ralco project not only because it provided the initial funding and the political support for hydroelectric development of the Upper Biobio, but also because Bank officials and personnel concealed crucial information to the Board, the Pehuenche, the general public, and the Chilean government, thus aiding in the inadequate assessment of Ralco.

Furthermore Bank personnel and a consultant that has worked with the Bank, acting apparently on his own behalf, gave political and technical backing for the relocation plan for Ralco that was presented to the government. We attach two pages of that plan, (Annex XXIII) where it is clearly stated that the plan complies with WB policies and details this compliance! Although Leopoldo Bartolome, the consultant does not officially sign the plan, he was hired by CONAMA to review the plan and we must assume was partly responsible for the inaccurate statements alleging the plan complied with WB policies.

Another troubling aspect of the attitude and actions that apparently have been taken by WB and IFC personnel, and that are in dismal contradiction with Mr. Wolfensohn's statements concerning ENDESA's non compliance with environmental and social commitments, is the fact that according to statements made by the Dresdner Bank President, the IFC itself had recommended ENDESA to the Dresdner Bank! Such recommendations were probably made by high level officials at the IFC, considering that the IFC and its operations must of been very familiar to Mr. Jurgen Sarrazin, who according to the 1997 IFC Annual Report, (Annex XXIV), was one of ten officers of international financial institutions that were part of the official IFC Banking Advisors Group!

These statements followed criticisms about the provision of funds for the prepayment of the Pangué loan, which thus involves IFC officials in aiding the prepayment of the loan and limiting the banks leverage over the company. We attach an electronic article mentioning the above. (Annex XXV)

What would have been the outcome of the Board meeting of December 1992 if Board members had been adequately informed of the real magnitude and impact of the hydroelectric series that they were giving initial funding and political support for?



What would have happened with the Ralco project if the Bank would have kept its promises to release the Downing Report to the Pehuenche in a timely and culturally appropriate fashion?

What would have happened with the Ralco project if the Hair report would have been released in its entirety prior to the government environmental approval of Ralco?

What would have happened if both reports had been provided to CONAMA and CONADI during their appraisal of Ralco?

What would have happened if WB president had complied with his promises to release both reports to the public and had declared ENDESA in default, as should have been the case?

Would ENDESA have been able to prepay their loan and thus avoid Bank scrutiny if IFC had not helped secure loans for the prepayment?

We have no doubts that if the Bank and IFC personnel had complied with Bank policies and had not concealed material information, the Board would not have approved the Pangué loan and the Ralco project would not have been approved.

## REMEDIES REQUESTED

ENDESA and the IFC have already caused significant negative impact on the Pehuenche's social structure and cultural identity, as well as the destruction of ecosystems. Nevertheless there are steps that the Bank should take to partly mitigate the impacts of the project on the Pehuenche and the environment, and to assure that similar mistakes not be repeated in the future.

- Immediate suspension of Ralco project, including indirect aid.

Apart from the remedies requested in other parts of this complaint, we believe the Bank should immediately suspend any indirect relationship with the Ralco project, that is that no funds go to unauthorized Fundación Pehuen activities related to the Ralco relocated population.

Most importantly we believe the Bank should find avenues of interactions with ENDESA and its subsidiaries, through the holding of any loan and/or other financial arrangement with the World Bank Group, in order for an immediate suspension of the Ralco project if and until there is free and informed consent from all the affected Pehuenche and if a serious negotiation, including non-construction of the project, is carried out, cumulative studies are conducted and a national plebiscite conducted, all conditions that had been promised by ENDESA, the IFC and the Chilean government. More on this in Section 5.

- Clarification of WB view of Pangué/Ralco projects and alleged support of Ralco

We believe the Bank should also make an official statement regarding the alleged compliance of the Ralco relocation plan with WB policies. The Bank should also clearly state that its policies respect the right of indigenous population to remain on their land and that they do not favour relocation unless there is free and informed participation.

We believe the Bank should also clarify that the Ralco project did not comply with the cumulative impact studies, according to international standards, that was promised by the company and that was part of the loan agreement.

The Bank should also disclose the agreement supposedly signed in early 1997, in which the company made a commitment to resolve outstanding issues. These documents should be made available to the public, to appropriate governmental offices and to the appropriate judges overseeing cases related to the Ralco project.

- Transfer of shares and financial assistance

The IFC should transfer the ownership of Pangué shares to a Pehuenche controlled institution as compensation for damages. This should be accompanied by other grants and/or loans and appropriate technical advice to use the funds.

Such compensation should be provided for people affected directly and indirectly by Pangué AND by Ralco. The environmental, social and cultural impacts have already accumulated far beyond what was predicted by the Pangué project. There are many individuals, in fact whole indigenous communities, affected by Ralco and others that been doubly affected by both.

In fact we could we believe fairly say that the whole Pehuenche territory has been affected.

Negotiations should be conducted by a representative Pehuenche organization in order to funnel this assistance to a Pehuenche institution. Fundación Pehuen, even if they stop working with Ralco relocated communities and change their power structure, is probably not a good instance to channel further assistance, given its history, its legal structure, and its relation to ENDESA.

It should be noted that the Upper BioBio has been declared an Indigenous Development Area under the terms of the 1993 *Indigenous Peoples Law* and the Pehuenche are slowly, but surely, coordinating their local leadership in order to have a community wide leadership. Such Pehuenche created and controlled organization should be the recipient and administrator of the transferred IFC assets and other financial and technical cooperation.

- Adequate compensation and living conditions for relocated persons, threatened families, and affected communities.

The Bank should assume its responsibility for the fact that Ralco is being implemented without adequate environmental assessment and without the informed participation of the Pehuenche. If the project is suspended by the legal proceedings that are taking place, the Bank should provide financial and technical support so that relocated families can return to their land and recover their traditional livelihood if they so wish.

The Bank should compensate Pehuenche threatened by Ralco with appropriate financial and technical assistance as compensation for the hardships they have suffered as a consequence of IFC's mistakes in assessment, approval and supervision of the Pangué/Ralco projects.

If the Ralco project is implemented and becomes operational, the Bank should assure that the Pehuenche relocated families and the other Pehuenche communities affected have enough financial and technical assistance for the full operation of the project. Presently the company has only committed assistance for 10 years.

Such financial compensation should be negotiated with the appropriate Pehuenche authorities, in a culturally appropriate fashion and with adequate technical advice, and should consider a percentage of the profits of the company.

#### 4. PUBLIC DISCLOSURE AND RELEASE OF INFORMATION ISSUES

Although mentioned in other parts of the compliant, the public release and appropriate dissemination of several documents and investigations is a key remedy that the Bank should implement in order to prove its publicized transparency and in order to seriously seek correction of past mistakes. Once again, due to the fact that the Ralco dam, although it is being constructed, does NOT still have the approval required by part of ALL the Pehuenche and due to the fact that the courts could demand a new environmental assessment and/or prevent the company from inundating non transferred Pehuenche land, the release of this information once again is TIME SENSITIVE and EXTREMELY URGENT.

#### REMEDIES REQUESTED

- Release of information and investigations to affected and/or interested parties

*Downing Report*

We believe this report should be released to the general public, but especially to the Pehuenche, as was the original commitment, by Downing and other appropriate Mapuche speaking persons. It should also be presented to the national and regional governmental indigenous affairs offices.

#### *Hair Report*

We believe this report should be translated and released in its entirety to the general public, to the groups that filed the November 1995 complaint and to appropriate governmental offices. It should also be made available to the Courts that are reviewing the Ralco project.

#### *Loan Agreement and Post prepayment March 1997 Agreement*

We believe the contents of both of these documents should be released to the general public and especially to the Pehuenche and downstream inhabitants and governmental bodies potentially affected by the measures that were promised.

#### *Downstream Impact Studies and Flow Release Management Plan*

We believe the contents of both of these documents should be released to the general public and especially to the Pehuenche and downstream inhabitants and governmental bodies potentially affected by the measures that were promised.

#### *IFC Agreements with the United Nations and UN Entities*

Furthermore the refusal to release documents is not only something related to the past and to documents that some claim contains business or other confidential information. This is also happening with documents that are, according to IFC print and electronic statements, publicly available. It is an ongoing problem that has even affected our right to have access to IFC public documents and seek redress through this complaint process.

Since late 1995 (almost 7 years ago!) we have been trying to get a hold of the UN and UN entities agreements with the IFC, that according to IFC documents are publicly available (Annex XXVI). We have a recording made in October of 1995 in which Ron Anderson of the IFC, responding to a written request made earlier, indicated that the Un agreements were "in the mail".

In April of this year, during the preparation of this complaint I insisted on having access to these documents. Although I indicated that I urgently needed them, I got an amazing answer and have not had access to them to this day (Annex XXVII).

### REMEDY REQUESTED

#### *UN and UN Entities Agreements with IFC*

We believe these documents should be made immediately available to us and, if so deemed appropriate, be used to complement this claim and be part of the investigation.

### 5. INSTITUTIONAL AND ACCOUNTABILITY ISSUES.

It is crucial, both for those people affected by the Panguel/Ralco projects, but also for the credibility of the IFC and the avoidance of similar experiences in the future, that ENDESA and IFC management resolve outstanding issues and compensate for past violations. As we know that ENDESA prepaid their loan, the most important leverage that the WBG presently has with the company is to refuse to fund new projects sponsored by the company or the many ENDESA-SPAIN controlled companies throughout the world.

Such avenue follows the recommendations of the Hair Report. In that report the team suggested that (Annex XXVIII)

*"Environmental and social responsibility is being internalised and advocated by more and more private-sector business interests today, and it would be difficult,*

*in our opinion, for the World Bank Group, including IFC, to justify partnering with a company that disregards environmental and social responsibility....*

*Such an approach should include, among other things, a totally new process for "prequalifying" potential private-sector project sponsors to ascertain objectively, in advance, their capacity and their top management's willingness (both culturally and from a human/financial resources perspective) to comply with specific World Bank Group requirements. Where a potential partner lacks relevant capacity, IFC should either (a) decline to enter into an Investment Agreement with them until they have demonstrated an acceptable level of organizational capacity, or particularly for private companies from Level II countries, as part of the Investment Agreement, (b) include an "institutional development" component (with specific performance standards and goals that can be audited objectively) or, when appropriate, (c) require a project sponsor to post an "environmental/social performance bond" to ensure, in the event of default, that adequate financial revenues would be available for achieving compliance with World Bank Group requirements."*

#### REMEDIES REQUESTED

- Investigation of other ENDESA and related companies' applications for IFC and other WB financial assistance.

Considering the above, and the fact that this is one of the main leverages that the IFC could have on ENDESA we believe it is important to investigate what loans are in the pipeline for any or several of ENDESA controlled companies. We include a list with the mayor companies controlled by ENDESA Spain. This list is from a recent press article and does not necessarily include all companies that are controlled by the Pangu/Ralco owners. (Annex XIX)

Spain	Endesa España	
Chile	Enersis Endesa Chile Chilectra Rio Maipo Pehuenche Pangué San Isidro Transquillota CAM Diprel Synapsis	Ingendesa Inmobiliaria Manso de Velasco Autopista del Sol Autopista Los Libertadores Tunel El Melon Gas Atacama Gas Cuenca Noreste Electrogas Smartcom PCS Powerline
Argentina	Dock Sud Central Costanera Central Buenos Aires Yacilec Edesur El Chocon	
Colombia	Energia de Colombia Betania Emgesa Codensa	
Dominican Republic	CEPM	
Peru	Edegel	

	Edelnor
Brasil	CERJ Coelce Cachoeira Dorada Cien
Holland	Amsterdam Power Exchange
France	SNET Gardanne Hydroelectric Plant
Portugal	Tejo Energía Pegho
Morroco	Lydess
Italy	Elettrogen
Poland	Gield Energil
Central Europe	APX
Unknown country	Cien CTM Cemsa Celta Nopel

- Establishment of a Blacklist

Corporations, including their parents, sisters, and subsidiaries, that do not comply with its oral and written commitments to the IFC and to the public, that provide false, misleading, or inaccurate information, that pre-pay loans in the face of outstanding issues, that violate national or international law, or that violate the social and environmental covenants of loan agreements must be barred from entering into any kind of agreement with the IFC, in perpetuity. In this case, this means that IFC should refrain from conducting further business with ENDESA, her parents, sisters, and subsidiaries, until such time when outstanding issues are resolved. Given that the construction of Ralco is itself a violation by ENDESA of, *inter alia*, its representations before the IFC, international human rights standards, and of the Chilean indigenous peoples law, if Ralco is NOT suspended, this would preclude the IFC from ever again conducting business with ENDESA.