

Report

International Investigative Mission

CHILE

THE MAPUCHE PEOPLE: BETWEEN OBLIVION AND EXCLUSION

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I. INTRODUCTION AND PRESENTATION OF THE MISSION

The FIDH (International Federation for Human Rights) is an international non-governmental organization composed of 115 member organizations from 90 different countries, which has a comprehensive approach to human rights issues. It has carried out several observation missions related to indigenous peoples.

The FIDH carried out an observation mission in Chile in 1997, where it analyzed the Ralco hydroelectric plant's construction as well as its impact on the Mapuche - Pehuenche peoples. In 2003, there is still concern about the situation of human rights for the Mapuche people. This is partly due to the situation arising from forest exploitation in the VIII, IX and X Chilean regions, which is having a negative impact on the life and survival of the Mapuche peoples and communities that are settled there. Another cause for concern is the progress that is being made regarding the construction of the aforementioned hydroelectric plant.

Between 21 April and 1 May 2002, the FIDH conducted an international investigative mission in Chile. This mission was aimed at analyzing the human rights situation in the Mapuche communities as related to forest exploitation and the Ralco project, both of which are important sectors in the Chilean domestic economy. It bears emphasizing that, in this report, human rights have been analyzed from a comprehensive perspective, since there is a direct link between the necessary conditions for the enforcement of economic, social and cultural rights¹, individual human rights² and the organization and/or mobilization processes undertaken by the Mapuche communities.

The mission's team was composed of Nicole Du Roy, a French journalist, and Paulina Palacios, an Ecuadorean lawyer. They carried out field visits and interviews with representatives from warring Mapuche communities as well as Mapuche prisoners, communities, regional and national authorities from different States.

The mission began in Temuco, in the IX Region, where its team met with:

Ramiro Pizarro, Regional Governor,
Researchers from the Institute of Indigenous Studies at the Universidad de la Frontera,

Esmirna Vidal, District Attorney for the IX Region,
Leonardo de la Prida, District Attorney for Purén - IX Region,
José Quidel, Mapuche Autonomous Work Commission (*Comisión de Trabajo Autónoma Chilena*), COTAM,
Emilio Guerra, Chilean Wood Corporation (*Corporación Chilena de la Madera*), CORMA,
Sandra Jilmes and Jaime López, from the Mapuche Criminal Defense Team
Mapuche organizations and representatives from the LIWEN Center

Furthermore, the Institute of Indigenous Studies at the Universidad de la Frontera organized the seminar entitled, "Mapuche Megaprojects and Rights," (*Megaproyectos y Derechos Mapuche*) held in Temuco. Speakers: Rosamel Millaman, Pablo Mariman, José Ayllwin, Rodrigo Lillo, Jaime Madariaga, Jenive Cavieres, Christian Opasso, María Angélica Reuman and Alfredo Seguel

In Valdivia, Nicole Du Roy and Paulina Palacios met with:

Augusto Naulpam, Juan Hueque Francisco Huaichaman and Juan Caniulaf from the Council of Chiefs (*Consejo de Longkos*) for the Mapuche Huilliche People in Pikunwijimapu
Ana María Olivera, Spokesperson (*Werken*) for the Chiloén communities
Delegate from the Quellon community
Anselmo Paillamanque, Chief and Spokesperson (*Werken*) for the Osorno communities

In Santiago, Chile:

Jaime Andrade, National Coordinator of Indigenous Politics for the Chilean government and MIDEPLAN's Assistant Secretary
Mauricio Solines, Chilean Attorney General's Office
Patricio Aylwin, President for the Governmental Commission for Historical Truth and New Treatment (*Comisión de Verdad Histórica y Nuevo Trato*)

In Los Angeles:

Esteban Krause, Biobio Provincial Governor
Claudia Parada, responsible for indigenous affairs in Biobio
Gerardo Jires, Attorney for the Provincial government

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At the Traiguen municipal prison, they met with the following prisoners: Pascual Pichun, Chief (Longko) of the Antonio Ñerripil community, Alejandro Pichun, Rafael Pichun, and Aniceto Norin.

In the Antonio Ñerripil community, they met with: Juan Pichún, Pedro Naquel Millan, Machi María Ancamilla Nahuanpi, María Collonao and Flora Collonao

In Lumaco, they met with leaders from the Ñancuchew Association: Remigio Chureo, Alfonso Reiman, Galvarino Reiman and Dina del Carmen Cayuqueo.

In Tirua: Abraham Santi Calbullanco and Mayor Adolfo Millabur

In Cañete: Luis Llanquileo, Emilio Ushalao, Juan Segundo, Juan Cárialo, Delegate from the Los Maitenes Community, Delegate the Los Alamos Community, Eliana Cucos, Carmen Lautaro and Rodrigo Peñailillo, Provincial Governor of Arauco.

In Ralco: Hilda del Rosario Riquelme, Aurelia Mariuan Mora, Meulen Huencho and Juan Ricardo Gallina Rodríguez, Leader from the "Las Peñas" relocated community.

In the Ralco Lepoy community: Aurelia, Rosario, Chao Chao, Nicolasa, Berta, Mercedes Julia Huantiao.

In the Quepuka Ralco community: Rebels and leaders from the community.

In the Collipulli municipality: Ariel Tori, Antonio Quideron and Víctor Ancalaf.

The Coordinator for the Mapuche Warring Communities in Tanguipulli: Jaime Alegría Lefian, Palmeria Catriman Huilliman, Domitila Catriman Huilliman and Ciro Alegría.

Members from the Mapuche Arauco Malleco Coordinating Committee: José Llanquilef, Cecilia Salazar, Angélica Ñancupil and José Llanquileo.

They also held a meeting with an environmentalist group: Carlos Ruiz, Jenive Cavieres, Juan Pablo Orrego, Elías Paillán,

Malú Sierra, Leonel Lienlaf, Víctor Toledo, Roberto Col and Claudia Padilla, Public Health Ministry.

At the Universidad Arcis, they met with: Roberto Zeledón, Sergio Fuenzalida and José María Bulnes, advocates for the Pehuenche indigenous people from the Alto Biobio region.

Lastly, in Valparaíso, at the Chilean legislative headquarters, they met with: Enrique Zurita and Jaime Naranjo from the Senatorial Human Rights Commission and Deputy Alejandro Navarro.

The mission would like to thank all of them for the information they shared with its representatives and would like to give a special thanks to the Defense Committee for Peoples' Rights (Comité de Defensa de los Derechos del Pueblo) and the Institute of Indigenous Studies at the Universidad de la Frontera, for providing contacts, preparing the agenda and accompanying the FIDH mission team.

1. On 10 March 1972, Chile adopted the International Pact on Economic, Social and Cultural Rights, which was enacted on 28 April 1989 under Decree No. 326; Chile has not entered into the OAS Agreement regarding the same matter. Natale, Katrina Marie: Los Tratados Internacionales y el Estado chileno (International Treaties and the Chilean State), CODEPU, 1999.

2. On 24 October 1945, Chile endorsed the United Nations Charter, under Decree No. 838, enacted on 18 September 1945; the Universal Declaration of Human Rights, the International Pact of Civil and Political Rights under Decree No. 778, enacted on 30 November 1976; the Organization of American States Charter under Decree No. 314, enacted on 5 June 1953; the American Convention on Human Rights under Decree No. 873, enacted on 23 August 1990. Ibidem.

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II. CONTEXT

1. GENERAL FACTS ON THE CHILEAN INDIGENOUS POPULATION

population of 15 million, classified themselves as being of indigenous origin. As such, the indigenous population accounts for 4.4% of the Chilean population⁴.

According to data provided by the National Social and Economic Survey (CASEN)³, 666,319 people, out of a total

Indigenous population based on ethnic group, 2000:

Peoples	Population	%
Aymara	60,187	9.04
Rapa Nui	2,671	0.40
Quechua	15,210	2.28
Mapuche	570,116	85.59
Atacameño	8,171	1.23
Colla	5,325	0.80
Kawaskar	3,781	0.57
Yagan	667	0.10
Total	666,128	100

Source: MIDEPLAN, 2000 CASEN Survey.

However, Chilean indigenous organizations have calculated their own estimates for the same period of time, according to which 1.7 million people are of indigenous origin, thus accounting for 13.18 % of the population⁵.

INDIGENOUS POPULATION	
Estimates	
ETHNIC GROUP	POPULATION
Aymara	125,000
Atacameño	15,000
Colla	200
Rapa Nui	20,000
Mapuche	1,600,000
Kawasqar	101
Yamana	74
Estimated Total of the Indigenous Population	1,760,375
Total Chilean Population, 1992	13,348,401
Total % of the Indigenous Population	13.18%

The Mapuche people represent the ethnic majority in the Chilean indigenous population. Currently, the Mapuches live in southern Chile, south of the Biobio river, at the same latitude as

Concepción. Half of them live in urban settlements, and a large group is settled on the southern border of the Mapuche region.

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Indigenous Population by Region

Regions	Indigenous Population	%
I	58,893	8.84
II	11,768	1.77
III	1,811	0.27
IV	5,709	0.86
V	10,094	1.51
VI	5,111	0.77
VII	8,823	1.32
VIII	58,577	8.79
IX	217,362	32.62
X	113,380	17.02
XI	7,402	1.11
XII	9,337	1.40
Average Ratio	158,052	23.72
TOTAL	666,319	100

Source: MIDEPLAN, 2000 CASEN Survey.

In Chile, poverty levels are significantly higher among indigenous peoples than the rest of the population. The same CASEN survey indicates that there is a difference of 12 percentage points between the poverty levels of indigenous

and non-indigenous peoples. The indigenous population is twice as likely as the non-indigenous population to be living in destitution.

Poverty and Destitution Based on Ethnic Group:

Categories	IP	%	NIP	%
Destitution	72,647	10.95	776,522	5.44
Poverty	141,211	21.29	2,090,672	14.65
Not in poverty	449,391	67.76	11,403,110	79.91
Total	663,249	100.00	14,270,304	100.00

Source: MIDEPLAN, 2000 CASEN Survey.

Likewise, rural living conditions have deteriorated considerably, and it should be noted that Mapuche economies are based on subsistence or self-consumption farming, within a context of a general efficiency and market-oriented economic climate⁶.

According to Sánchez, almost one-third of the indigenous population lives in poverty and destitution (32.2%). However, the 1996 and 2000 CASEN surveys indicate that 2.6% of the indigenous population were lifted out of poverty between those years. Destitution levels remain virtually unchanged. According to the 2002 UNDP Human Development Report:

"Poverty is characteristic of both rural and urban communities. All social and health-related statistics show that areas with a high concentration of indigenous people have levels in excess of the national average. Poverty is the result of a combination of multiple factors; first of all, according to some, in the late 19th and early 20th centuries, the State took possession of part of the land that belonged to indigenous communities, and specifically to the Mapuche people. As a result, they became a potentially poor people. Secondly, resources were wasted, both as a consequence of the aforementioned land loss and natural resource degradation. Thirdly, rural indigenous poverty is linked to the

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traditional agriculture crisis, which has been caused by globalization and the opening of its markets. Both Mapuche and non-Mapuche farmers have witnessed a decline in the relative prices of all the goods they used to produce, such as wheat, potatoes, vegetables, meat, etc. Fourthly, the Mapuche communities, in particular, found themselves closed off due to forest growth in southern Chile. This led to a severe deterioration of the environment, since water sources disappeared; there were permanent soil droughts thus making it more difficult to farm.⁷

The Chilean Mapuche people are made up of several ethnic groups: the Lafkenches or coastal people, the Huilliches or southern people, the Araucanian Mapuches, and the Pehuenches or valley people. The latter have maintained a strong border identity and their lifestyle has remained unchanged, its main features being semi-nomadism and an agrarian economy centered on self-consumption, which is based on the "Andean lifestyle" (TOLEDO: 2002). The Pehuenche land is currently located in the Alto Biobio, from Trapa Trapa to the Icalma Lake, including those valleys bordering the rivers that flow into the Biobio.

2. THE RIGHTS OF INDIGENOUS PEOPLES IN CHILE

Chile has signed the International Covenant on Civil and Political Rights, as well as its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the OAS Charter, the American Convention on Human Rights Charter and the American Declaration of the Rights and Duties of Man. From the point of view of international treaties, the rights of the Mapuche population are widely protected.

With the advent of a democratic regime in Chile, the new government headed by the Christian Democrat Patricio Aylwin (1990-1994) undertook the task of preparing the draft for a National Indigenous Law under the New Imperial Agreement, signed during his administration. The draft was presented to the Legislature and became Law 19.253 on 5 October 1993. According to several scholars and members of the Special Commission for Indigenous Communities (CEPI)⁸, the draft presented to the Chilean Legislature was greatly limited and the final and approved wording of Law 19.253 was much different from the CEPI's initial proposal. In any case, this law laid the groundwork for the recognition of indigenous ethnical groups and the empowerment of indigenous communities in the country, established the State's duty to protect these cultures and their languages, set forth a system of indigenous

land law and created the Fund for Indigenous Development as well as the Lands and Waters Fund⁹. Despite the provisions of Law 19.253, there is a considerable gap between the legal protection of indigenous rights during this first democratic period in Chile and the actual development of public policies regarding indigenous issues by the Chilean government¹⁰.

Law 19.253 also founded the National Corporation for Indigenous Development (CONADI). The corporation is described as a decentralized public service, entitled with legal personality and patrimony, controlled by the Ministry of Planning and Cooperation, and based in the city of Temuco¹¹. The institution is composed of representatives elected by the indigenous peoples, representing the diverse ethnical groups in the country, as well as by government representatives directly nominated by the President. It is worth noting, however, that CONADI - the main governmental institution dealing with indigenous issues - is currently facing charges and is undergoing a representation crisis.

Ten years after the UN Decade for Indigenous Peoples (1992-2002), various Latin American countries have included in their legal systems the recognition of multi-ethnicity as well as guarantees for some collective rights for indigenous peoples. Moreover, many Latin American countries have also ratified the ILO Convention 169, concerning the situation of indigenous peoples in independent States¹².

At the same time, the Special Commission for Indigenous Peoples (CEPI) pushed the Chilean government to ratify ILO Convention 169 in the same spirit that it had proposed a constitutional reform, that is to say as a means of giving explicit recognition to the multi-ethnic and multi-cultural nature of Chile. Convention 169, however, has not been ratified by Chile as of today, which thereby constitutes an important obstacle to the development of indigenous peoples in the country.

Furthermore, the FIDH considers that Convention 169 is also an important reference document, for it reflects the development of concepts such as indigenous peoples, cultural and collective rights¹³. In the case of the Mapuche people, history illustrates how important it is for a community to develop within their own territory. According to Law 19.253, indigenous lands are protected by a special legal regime that regulates how these lands can be acquired and negotiated. In the same way, this law provides a framework for the institution of Indigenous Development Areas (ADI). In the system established under Law 19.253, land is considered an asset; in the case of indigenous peoples, the notion of protectivity

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has endured, characteristic of a legal perspective in which the integrity of the land should be maintained as familial or collective property. International norms on collective indigenous rights, however, have surpassed this rural or agrarian vision and even more so, the simple protectionist position of indigenous lands. These norms have adopted a perspective that greatly values territoriality as the base and foundation for living indigenous cultures.

A comparative study on international trends in constitutional law also points to the fact that collective rights in general, and the rights of indigenous peoples in particular, have been broadly recognized. Diverse constitutional texts normally include:

- 1) the category of indigenous people;¹⁴
- 2) the right to equal treatment in relation to other social players in the state;¹⁵
- 3) the right held by all indigenous peoples to be consulted and informed of all actions, decisions and norms taken by the State that may directly or indirectly affect them;¹⁶
- 4) the topic of territoriality, mainly the recurring issue of relocation or displacement of indigenous peoples.¹⁷

3. 2000 Survey. Quoted by Rubén Sánchez: *Caracterización Socioeconómica de Población Indígena* (Socioeconomic Description of the Indigenous Population).

4. Contrasts with information obtained through the Chilean census. It bears emphasizing that the same Indigenous Act specifies who is or may be considered indigenous. This has been the source of the question, both in the 1992 and 2002 censuses as well as in the 1996 CASEN Survey.

5. Quoted by Víctor Toledo, *Situación de Salud de los Pueblos Indígenas de Chile, Perfil Epidemiológico, OPS y Gobierno de Chile* (Health Situation of the Chilean Indigenous Peoples, Epidemiological Profile, PAHO and Chilean Government), 1997.

6. In the case of the Pehuenches - Mapuches in the Alto Biobío, who were negatively affected by ENDESA, it can be noted later in this very report, that the frames of reference used for land appraisal and relocation are approximately the same of an isolated subsistence economy .

7. 2002 Human Development in Chile. United Nations Development Program, 2002, quoted by Sánchez, *Ibidem*.

8. Created in 1990 by the Aylwin administration right after the end of Pinochet's military regime; the CEPI prepared a draft project for legal and constitutional reform concerning indigenous rights.

9. Under Law 19.253, four Regulatory Decrees were enforced: (i) Decree No. 392, on the criteria for granting indigenous status, for the building of indigenous communities and protecting the historical patrimony of indigenous cultures; (ii) Decree No. 150, on the organization and functioning of the Public Registry for Indigenous Lands; (iii) Decree No. 395, regulating the Lands and Waters Fund; and (iv) Decree No. 396, on the operation of the Fund for Indigenous Development.

10. Several of the individuals interviewed expressed the same view on this issue, among them, the governors of Biobío and Arauco and Mr. Andrade, of MIDEPLAN; such views were also expressed in reviewed documents, such as the Final Report of the Working Group on Indigenous Rights.

11. Law 19.253, Article 38.

12. The ILO adopted on 26 June 1957, in Geneva, an International Covenant on Indigenous Peoples: Convention 107. In 1989, due to new trends within the international community, ILO members modified and replaced this convention with Convention 169. The adoption of Convention 169 is a result of the so-called "indigenous emergency" (BENGOA: 2001), as well as a consequence of theoretical progress both in the field of human rights and in relation to historical awareness regarding the European "conquest" of America and Eurocentrism.

13. ILO's Convention 169, articles 13 and 14 (please refer to Annex 1 for the full text).

14. ILO's Convention 169, article 1 (please refer to Annex 1 for the full text).

15. ILO's Convention 169, articles 2 and 3 (please refer to Annex 1 for the full text).

16. ILO's Convention 169, articles 6 and 7 (please refer to Annex 1 for the full text).

17. ILO's Convention 169, article 13 (please refer to Annex 1 for the full text).

III. Forestry Exploitation: The Destruction of a People and Their Environment

1. HISTORICAL BACKGROUND AND ORIGIN OF THE CURRENT CONFLICT

History recognizes the Mapuche's ongoing resistance to the Spanish colonizers otherwise known as the "*salvajes araucanos*" who settled south of the Biobio river. Due to this struggle, the Spanish crown was forced to enter into diverse agreements with the Mapuche people which recognized their right to vast extensions of the territory claimed by them. Of particular interest in the study of Mapuche history is the 1598 rebellion, in which the indigenous people destroyed the colonizers' villages located south of the Biobio river. After the revolt, "Parlamentos de Paz" (Peace Parliaments) took place, in which both representatives from the different Mapuche settlements and the colonial authorities were present. During those meetings, the colonial authorities fixed rules and conditions for coexistence. In 1641, the Quillen agreement definitively recognized the Mapuche's territorial autonomy extending from Concepción to southern Chile. The political-administrative structure was characterized by the creation of territorial jurisdictions under the power of Lonkos or Caciques. In this way, the Mapuches maintained their sovereignty, their territorial independence and their cultural-political unity up until Chile's independence and organization as an independent Republic. It is important to note that for the Mapuche peoples, preserving the established limits of their territory - which includes La Araucania, Las Pampas and the Nor-Patagonia territories - during the colonial regime, is key to their current territorial demands¹⁸.

*** Settlement and Division of the Mapuche Communities:**

At the beginning of 1881, southern Chile started to be colonized through the so-called Araucanos' Pacification Campaign; this campaign corresponds to the Mapuche military's defeat at the hands of the Chilean military and the start of the violent dispossession of Mapuche lands. The settling of indigenous peoples through the granting of "mercy titles" began in 1883, once the Chilean military occupied the Mapuche territory. This process led to the confinement of the Mapuches in and around 3,000 communal lands (*reducciones*) comprising approximately 500 million hectares of land that was originally estimated at 10 million hectares.¹⁹

The land that was stripped from the indigenous peoples was

mainly sold to European colonizers or non-indigenous Chileans at a cheap price. Most of these lands were usurped by neighboring landowners (*latifundistas*) through the illegal expansion of their boundaries, trickery and legal manipulations of old mercedes and contracts. This is how large land ownerships (*latifundios*) were formed in southern Chile.

This settlement process confined the Mapuches to reduced areas - 6.18 hectares per person - where they were forced to modify their economy (previously based on cattle raising and agriculture) and their culture (through the introduction of schools and evangelization missions). As of 1920, the State further divided the Mapuche lands through the creation of subordinated small real States (*hijuelas individuales*) whose control was transferred over to non-indigenous individuals who were then able to cultivate them. Between 1931 and 1971, 832 *reducciones* or Mapuche communities out of the initial 3000 were redivided. It has been estimated that during that same period at least 100,000 hectares - one-fifth of all Mapuche lands - were granted to non-indigenous peasants.²⁰

***Popular Unity and Agrarian Reform:**

With the changing political and social context of the 1960's and early 1970's, an agrarian reform program²¹ was carried out under the administrations of Eduardo Frei (1964-1970) and Salvador Allende (1970- 1973). Although this was primarily directed towards agricultural lands, the program had important implications for the Mapuche peoples in southern Chile. The Popular Unity project, for example, was aimed at returning lands to the indigenous peoples through expropriation and putting a stop to the division of Mapuche lands. The reform, which promoted economic, social and integral cultural development for the indigenous population, also created the Institute for Indigenous Development.

Throughout this process, buildings that had been seized from the Mapuche communities (and to which the Mapuches had historical claim) were expropriated and restored to the Mapuches. This took place mainly in the Caatín and Malleco provinces and in part of the Valdivia province, today known as regions IX and X. Thus, due to pressure coming from the indigenous movement as well as from political sectors that supported the indigenous populations, the Allende

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administration returned, by means of agrarian reform, around 300 million hectares of land back to the Mapuche communities. This process was in response to their historical claims.

Through the Agrarian Reform Corporation (CORA), the State also supported the technification and productive development of the land restored to the Mapuches by encouraging traditional harvest programs, cattle raising and milk production, as well as pine tree reforestation programs, programs to recover eroded land as well as manage forest potential.²²

However, a large part of the land expropriated by Allende was not transferred to the names of the beneficiaries, but remained the property of CORA. Given this fact, the Mapuches worked lands to which they were not legally entitled²³.

*** Pinochet and The Agrarian Counter-Reform:**

Following the military coup of 1973, the Pinochet regime started a campaign for the regularization of land titles that constituted a true agrarian counter-reform. During this campaign, most of the land expropriated and returned to peasants or indigenous individuals during the Allende government was once again transferred to their previous *latifundistas* owners. Of the 10 million hectares expropriated during the Frei and Allende administrations (3.5 under Frei and 6.5 under Allende), 2.826 million were transferred to *latifundistas*, 3.150 million were appropriated by CORA, 622,000 were transferred to other governmental bodies such as the National Forestry Corporation (CONAF) and only 33% - 3.296 million - were granted to peasant farmers²⁴. It is important to highlight here that a considerable portion of the lands transferred to CORA and other governmental bodies were those lands that had been expropriated by Allende for the use of the Mapuches who cultivated them. However, they were still legally the property of CORA. That is why, for many, the current conflicts involving Mapuche rural workers (*comuneros*) are a direct result of this agrarian counter-reform²⁵.

During this period, Chile designed an outward model of development, a model that favored exports. Its focus was an economic development based on foreign markets and on the Chile's comparative advantage in the areas of natural resources and raw material extraction²⁶. This new economic program, combined with a national economic crisis and the depletion (high rates of erosion) of agricultural lands, caused

a shift in the agricultural and forestry economic activities within the country. Pinochet also applied his new economic model to forestry exploitation and privatized several companies operating in this economic sector, such as Celulosa Arauco and Celulosa Constitucion. Meanwhile, economically-managed reforestation projects were granted considerable incentives, a good example of which was Law 701 passed in 1974 that exempted these projects from administrative and territorial taxes. Another example of such policies was Decree-Law 600, which facilitated international investment. Foreign companies managed to buy large quantities of land in Chile and take advantage of the enormous benefits provided by the Pinochet government.

Most forestry companies acquired lands through bids and direct transfers from governmental institutions - those same institutions used by the dictatorship to end agrarian reform. Under the pretext that they were not fit for agricultural use, lands potentially suitable for forestry exploitation were auctioned and acquired from the government at low prices. Due to the economic crisis, many of the public funds were also put up for sale²⁷. Forestry expansion took place on lands that had originally belonged to the Mapuche communities and had been appropriated by the dictatorship. Today, over a million hectares of land have been planted with trees in Chile, 90% of which are in the hands of forestry companies, especially in the Araucania region. This situation partially explains the current conflicts occurring between the Mapuche communities and forestry companies within the Mapuche ancestral territory. Cases of land conflicts can be found as early as 1998, when the Mapuches went against the Forestal Mininco Company for 58.4 hectares included in the title granted to it by the government, but that had been earlier expropriated by the owner of the Santa Rosa de Colpi fund. The situation was not remedied and, as of 1998, the lands were returned to their former owners²⁸.

Another factor that contributed to the loss of Mapuche lands during the agrarian counter-reform was the adoption, in 1979, of a Decree-Law that divided the indigenous communities²⁹. Before this decree, land belonging to the Mapuche indigenous peoples was under a special legal provision which only allowed this land to be transferred to other members of the same ethnic group. Nevertheless, the land division policy prompted by Pinochet cancelled the special regime applicable to indigenous communities and their lands, integrating them into the ordinary land rights regime. In reaction to this dictatorial and discriminatory policy, in 1978, the first traditional Mapuche organization - Ad-Mapu - was founded; this organization demanded political and territorial autonomy

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for the Mapuche peoples, on the basis of the self-determination principle of all peoples.

Following the approval of the aforementioned 1979 Decree-Law and up until the end of the military regime in 1990, approximately 2,000 Mapuche communities were divided and out of these, nearly 72,000 individual *hijuelas* were distributed, totaling 463,000 hectares³⁰. The division of those communal lands gave birth to a new system of *minifundios*, that is, several small individual properties, that led to the impoverishment of the rural Mapuche population and hastened urban migration. Today, around 80% of the Mapuche population live in marginalized areas within urban regions, while only 20% (192,763 individuals) still reside in rural areas. The impoverishment of the Mapuche agrarian economy and the reduction of their territory have been a constant and ongoing reality in the lives of the Mapuches over the last few decades, if not the last century.

***Legal Measures and The Recovery of Mapuche Lands**

At the end of Pinochet's military regime, several Mapuche organizations had given rise to a number of claims aimed at protecting their threatened rights, such as land rights. They demanded a new relationship with the State and Chilean society, insisted upon the recognition of ethnic and cultural diversity, denied for so long in Chile, political and territorial autonomy for the Mapuche people, and the return of large areas of ancestral Mapuche land currently owned by forestry companies. The Mapuches also sought to recover their usurped lands in order to overcome the poverty being faced by their communities. During the Aylwin government (1990-1994), the Mapuche people started to make use of legal measures under distinct State bodies, making use of several different judicial processes and presenting themselves in front of appeal courts in order to recover their land. Such demands were based on the fact that those lands were part of the *longko* jurisdictional territories during the period prior to the use of the administrative structure of *reducciones*; or they were based on the fact that those lands were included in titles granted by the government to the Mapuche, which were later appropriated by individuals in accordance with the laws regulating the division of the Mapuche lands between the 1920's and the 1990's; finally, they were also based on the actual occupation and cultivation of the lands by Mapuche communities during the agrarian reform period which were later stripped from them during the agrarian counter-reform under Pinochet³¹.

In Valdivia, a dozen men and women described to the FIDH

mission the hostility imposed upon them by forestry companies in the region. These communities filed judicial claims to obtain the restitution of their lands, taken over mainly by private landowners during General Pinochet's dictatorship. Furthermore, the *Longkos* (community leaders) recall that Spanish settlers recognized the Mapuches' rights to some lands and mentioned the Chiloe case. In 1826, Chiloe was annexed by the Chilean Republic, which refused to recognize Mapuche property titles. Little by little, the Chilean settlers, the new colonists, sold their lands to large companies, many of which were not Chilean. The current indigenous law has not provided for the return of these lands to the indigenous people. Today, in Chiloe, roundtables bring together diverse groups for negotiations surrounding the recovery of these lands. "We did not defend our land, they say, so that it could be sold to other countries through multinationals."

Like the Mapuches from Valdivia, the Mapuches from Collipulli have tried to access the judicial system³². "We have documents that date back to the Spanish times recognizing the border of the high Biobio river. The Chilean State recognized this border. However, they sold our lands at the cost of our lives. This is why today we strongly claim our territory."

However, in the above described legal and/or judicial initiatives, the negotiations turned into endless bureaucratic problems; no definite solution was reached and the communities' aspirations turned into frustration. As a result, the Mapuche people feel betrayed by years of calling upon the justice system without any results. To bring this situation to the attention of the authorities and in order to take direct action regarding the matter, the Mapuches have decided to physically recover their former lands. Mapuche organizations have promoted peaceful yet firm measures to recover the lands and cease any activities regarding development in lands that they consider their own. These measures were first adopted in 1991 in the Arauco province and were led by one of the most influential Mapuche organizations, the Council of All Lands.

As a result of massive indigenous protests against the celebration of the 500 year anniversary of the so-called discovery of America and the demands already made by the Mapuches, the aforementioned Law 19.253 was passed in 1993. To silence the Mapuche claims, this law created a fund that would allow indigenous peoples to buy lands from forestry companies. According to the authorities involved, 75,000 hectares of land have been returned to the Mapuche communities thanks to the fund. In reality, however,

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interested companies have lobbied to limit the fund's budget. Therefore, the recovery of usurped Mapuche land, as of today, continues to be an unsolved problem. The indigenous legislation in force is ineffective and greatly weakens the recognition of more integral demands of Mapuches rights. In addition to this, the National Corporation for Indigenous Development (CONADI), an organization founded by that same law and responsible for promoting and executing State action in the area of indigenous policies, was unable to tackle the problem of usurped lands and found itself quickly superseded by the events.

During this period, communities often confronted forestry companies occupying their land in a direct but peaceful fashion, claiming their legitimate rights. However, the only response to these actions was violent repression on the part of authorities, who safeguarded the interests of major companies under the pretext of defending private property. The government has criticized Mapuche actions, accusing them of terrorism. In 1994, 144 Mapuches were found guilty of crimes of illicit association and usurpation of lands. The Chilean government considers that communities that take action are disturbing social tranquility and peace in the country. Moreover, the government has refused to engage in dialogue with the Mapuches stating that it will not converse under pressure, thereby denying, in fact, the issue surrounding the disputed lands. In 1996, the 144 Mapuche prisoners filed an appeal with the Interamerican Commission on Human Rights of the OAS, accusing the Chilean government of political and ethnical persecution as well as disrespect for the Mapuche's civil rights.

From these events on, mobilization on the part of Mapuche groups continued to increase. The Mapuches organized rallies, roadblocks, protests, hunger strikes, occupations of claimed properties and protests against forestry workers, and have criticized the authorities and governmental policies. On 13 October 1997, in the town of Lumako, within the province of Malleco, members of the Pichinloncoyan and Pilinmapu communities broke into the Pidenco property in order to stop the Arauco company's forestry activities. This is how they intended to recover the land they had once lived on. The Mapuches were evacuated with unnecessary force and a considerable number of individuals were wounded or taken into custody. This was the first of an ongoing number of confrontations between indigenous peoples demanding the return of their lands and the forestry companies currently owning the properties.

Confronted with political repression, the indigenous communities, grouped in several Mapuche coordinations, are

becoming more and more radical, breaking dialogue with the government and insisting on the complete recovery and permanent legitimation of their rights³³. Currently, Mapuche mobilizations are systematic and progressive; a significant number of communities spread throughout the XIII and IX regions have adopted a pro-active policy in the pursue of their rights and the situation in those areas has becoming increasingly controversial.

That said, it is clear that the conflict over land titles between Mapuche communities and Chilean forestry companies is a very complex issue. Some communities have been turning for years to the Chilean judicial system to solve the problem. However, the courts have refused to rule on the matter. Consequently, after waiting for almost a decade for a legal decision to be pronounced, these communities decided to occupy the lands they consider to be theirs. Although certain courts may consider these occupations illegal, the FIDH believes that in many cases they are in response to legitimate concerns. The government should assume responsibility for this problem and seek a fair and viable solution to the critical question of the land titles under debate so that a solution can be brought the Mapuche conflicts in that part of Chile.

2. REPRESSION OF THE MAPUCHE PEOPLE

Rather than trying to solve the conflicts with the Mapuches through dialogue, forestry companies and the Chilean government have opted for the repression and militarization of Mapuche lands.

Forestry companies officially employ private security guards to protect their facilities and to ensure their operation in the event of occupations or roadblocks. These armed militias, which operate outside the reach of any form of control, employ methods of intimidation and pressure in their contacts with Mapuche leaders. They also provoke and harass the Mapuche communities, burning their houses and persecuting members within their community in order to cause internal ruptures and violent reactions that will damage the Mapuche image before the general public. In April 1998, for example, the security personnel of local forestry companies destroyed a Mapuche camp within the Fren community, which had been set up on lands disputed between the Mapuche and Bosques Arauco. In May and June of the same year, private guards used vehicles to crush seeds belonging to the same community, and contaminated their water with chemicals. In March 2000, a truck belonging to Forestal Mininco ran over and killed the Mapuche Alarcón

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Peña.³⁴ It should be pointed out that most of these actions of abuse and violence have never been duly considered or investigated by the authorities concerned.

The forestry companies also make use of maneuvers to incriminate the Mapuches. Their security personnel set fire to small plantations belonging to the forestry companies or destroy their trucks with the intention of reporting these facts to the police in order to incriminate the communities. These staged events and acts of sabotage are intended to *"muddle and distort the legitimate demands of Mapuche communities claiming their territorial rights to resist the invasion of their forests, leading to unjust legal proceedings, constant sentencing, and major repression"*.³⁵

The FIDH is also extremely concerned about repression of the Mapuche people by police officers, especially those belonging to the uniformed police (carabineros). Officially, the role of the State is to be a third party to and a mediator in the conflict. In the Chilean case, however, the State is directly responsible for violence against Mapuche leaders and organizations. In effect, many communities have been suffering under police operations that involve acts of violence committed against their people and property. Many Mapuche organizations also denounce persecutions against Mapuche leaders and excessive use of violence by police officers. It is also disturbing that the State does not take any measures to guarantee the protection of the Mapuche people.

Some documents reviewed by the mission reveal the abuse of power and irregular actions by police forces against the Mapuche. Attacks by the police, often to remove Mapuche protesters occupying lands that belong to forestry companies, are remarkably violent. Many Mapuches have been injured as a result of police violence and some have been shot. In July 1998, for example, in the province of Los Alamos (Region VIII), armed police forces and private security guards attacked Mapuches who had occupied a farm that they claimed was theirs. A number of Mapuches suffered injuries and fractures as a result of that operation. On 13 November, 2001, in the province of Malleko, 100 policemen dressed in riot gear and armed with shotguns threw tear gas and fired shots to evacuate a disputed region belonging to Forestal Mininco and occupied by Mapuches. As a result, 14 Mapuches suffered gunshot wounds, and a number of children suffered severe breathing complications due to suffocation.³⁶

The FIDH mission then moved on to Cañete, in the commune of Tirua, where it had been invited to take part in a meeting with community members. The meeting was attended by the new

Governor, who had been appointed at the beginning of that year, and provided the opportunity for an exchange between the Mapuches and the Governor, who was informed about the serious events of 15 May 2001. That was the day of the monthly fair that brings together around 500,000 people, for two days, and attracts Mapuches from many different regions. It also provides an opportunity for State pensions to be distributed (80 per cent of the region's population receives State aid). Two Mapuches who had been accused of illegally occupying land and were being sought by the police went to the fair to claim their pensions. One of them was recognized by police officers who then tried to arrest them. Chaos followed, with the police beating the crowd and later shooting in their direction; two Mapuches were seriously wounded, a fact that was acknowledged by the Governor. Following these incidents, five policemen were found to have engaged in acts of brutality and were transferred. Governor Rodrigo Peñailillo told the FIDH's mission that less than 1 per cent of the violence in the region is attributable to Mapuche individuals, and later affirmed that he *"would not tolerate any abuse by one side or the other"*. Following this meeting between the Governor and members of the community, the Governor made a commitment to prevent acts of violence on the part of security forces.

In another incident, Abraham Santi Calbullanca was left wounded and blind after being shot by policemen in the Lleu Lleu community, on 26 January 2000. Mr. Calbullanca had to travel by himself to the nearest hospital where he received preliminary aid. He later traveled once more by himself to the city of Concepción in search of further assistance; when he arrived there, he was informed that he had lost an eye.

In 2002, violence against the Mapuche increased; a number of incidents that took place after the FIDH's mission stand as proof to this. On 12 November 2002, Mr. Lemun was shot in the head during clashes with the police after a Mapuche land recovery operation that had begun on 7 November 2002. Mr. Lemun had been occupying disputed land currently owned by the Mininco Company. Witnesses and the results of ballistic tests point out police responsibility. This is the most serious incident in the conflict between the Mapuche people and forestry companies in recent years. It has fueled and strengthened the claims of the Mapuche communities, who regard themselves as victims, and have symbolically elevated Alex Lemun to the status of martyr.

*** Public Portrayal of the Mapuche Conflict**

To understand the Mapuche conflict as a whole, one needs to take into account the positions of the various sectors of

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Chilean society in relation to it. In general, Mapuche conduct is regarded as harmful to the country's economic development and even classified as terrorism.

This view corresponds with the international community's perceptions of indigenous peoples, as well as with the perceptions of those national, regional, and provincial authorities consulted. Most people believe that the conflict involves two actors: the "violent" rebels, on the one hand, and forestry companies, on the other. Thus, the State is not regarded as having an active role in the conflict. However, the FIDH considers that the Chilean government should be held accountable for:

- Lack of decisions/solutions in the judicial processes filed;
- Failure to protect the Mapuches from physical harm caused by forestry companies through their private security guards;
- Disproportional use of force against protestors;
- Absence of effective acts in the search for a peaceful solution.

The forestry companies' view of the conflict receives widespread publicity. As an example of this, we could mention CORMA's (the official representative of timber executives) views on the matter:

The Mapuche conflict has produced a high level of uncertainty in the forestry sector in Region IX. For a considerable period of time, logging companies in this region have been subject to multiple acts of vandalism, which have affected physical resources, forests, and machinery, as well as the people involved³⁷. The Mapuche conflict is creating a climate of mistrust, leading to a significant decline in investment in Regions VIII and IX. Companies associated with our Corporation have shifted their investments to less troubled sectors, and in some cases, have even frozen all purchases of land or plantations. This is among the factors that partly explain the decline in the cultivation rate at the national level, which this year will be only some 50,000 hectares, compared with an annual average over the past decade of more than 80,000 hectares.³⁸

Among the many statements made by members of Chile's national and regional press with respect to the same region, we could mention the following:

In response to the persistent violence perpetrated by minority groups that use the demands and aspirations of Chileans of Mapuche origin for political purposes, the authorities must enforce respect for the law and guarantee public order. For

that reason, they have at their disposal a broad range of regulations. If, as the Bishop of Temuco recently indicated, certain acts may be deemed terrorist in nature, the Government must act accordingly and invoke the relevant legal provisions, demanding the courts to apply them³⁹. According to a secret document drawn up at the Conference of American Armies (CAA), which includes senior military commanders from throughout the region, the Mapuche conflict could become a matter of public security much more important than terrorist acts in Chile.⁴⁰

These statements are very surprising when one considers that the Mapuche people have no weapons whatsoever. However, in the Chilean press, the handling of information about the Mapuches is rather striking; indigenous peoples are mentioned solely in the event of conflicts and violent demonstrations. The struggles of the Mapuche are portrayed in the press as a struggle for autonomy, and is compared to the struggle of the ETA Basque separatist group or that of the Subcomandante Marcos in Chiapas.

According to Rosamel Millaman, anthropologist at the Catholic University of Temuco, *"Violence is present in every Mapuche. It has historical roots: the burning down of houses, the rape of women, the stealing of land. The clashes between the Mapuche and the armed guards of forestry companies are the sign of a deep-rooted protest. Governmental repression of indigenous peoples is severe. The government has made a clear distinction between the "good Mapuche", on the one hand, and the "bad Mapuche" on the other who protests and demands respect from the law. The Government believes that there is no possibility of engaging in dialogue with the Mapuche."*

Over recent years, some Mapuche groups have adopted a confrontational and violent approach toward farmers, logging companies, and even Chilean peasants of Mapuche origin. These groups are in the minority, but they claim to represent the Mapuche people, and seek to turn them into a subject of conflict polarization, thereby converting them into promoters and protagonists of an atmosphere of confrontation.

Various indigenous communities have spoken out against those who would exploit their aspirations for political purposes, in an effort to show that violent groups are not representative of the Mapuche people. These organizations include, in particular the Asociación Lautaro Ñy Ávila Rehue, whose president, Arnaldo Ñanculef, has called upon the Mapuche people not to let themselves be exploited by foreign elements that introduce ideas leading to confrontation and

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division. Similar statements have been made by Mapuche longkos as prestigious as Venancio Coñupán, Oscar Imihuala, Braulio Ancán, among others. It should be noted, however, that although differences do exist as to the means of confronting logging companies, all Mapuche organizations agree as to the content of their claims and the basis of their thinking in general.

However, the most serious aspect of the Mapuches' situation is not so much the general circumstances described above, although its effects are extremely severe, but the inability of the Concertación governments to provide an effective response, through concrete and sustainable solutions for rural peasants of Mapuche origin, who are without a doubt the poorest of the country's poor. As in other instances, the Government has demonstrated its inability to deal with crisis situations.

It is also of use to listen to the opinion of certain legislators, as expressed during the legislative Session entitled "Adoption of measures concerning the so-called 'Mapuche conflict': Blueprints for an Agreement". The representative of the *Renovación Nacional* party made the following statement:

In endeavoring to address the social aspects of native peoples' public demands, the Government has made every effort to provide benefits of every kind to the indigenous community. What a brilliant transformation of terrorist violence into racial conflict! I repeat: What a brilliant transformation of terrorist violence into racial conflict! People's basic rights must be respected and promoted, regardless of their color or ethnic origin. But we must ensure respect for the law. Chile is a single entity. Let us construct it together, without division, and in peace.⁴¹ If we seek social integration instead of violence, if we desire national unity instead of separatist rebellion, we must work hard, now and for all time, to achieve those goals. The integration of Chile into the international community cannot be achieved at the cost of national disintegration.⁴²

The members of the Mapuche Independent Working Commission (COTAM) expressed their concern about the portrayal of the Mapuches in the eyes of public opinion, mentioning images of poverty, exclusion, expropriation of land, and the motives behind actions undertaken by Mapuche groups. This focus was affirmed in a number of interviews with academics, Mapuche groups and even the President of the National Commission on Truth and Reconciliation⁴³, Chile's former President Patricio Aylwin:

The Mapuche problem requires the Chilean society to accept the reality that until now it has refused to accept. Our history classes teach students that the Chilean State has adopted laws to protect indigenous peoples, but that these people owe their inferior status to the fact that they are lazy and are an obstacle to the development of the region. The reality is that the "pacification" carried out by the State in the 19th Century was quite simply an occupation. This fact should provoke cultural outrage in Chilean society and produce a new perspective on the way in which indigenous peoples are treated. Many Chileans think that the Mapuche have disappeared; that these people are just poor Chileans, without roots. They have no idea about the cultural wealth of indigenous peoples.

Patricio Aylwin is optimistic and believes that the Commission's work will lead to concrete decisions: *I think the truth always prevails in the end. I have faith in the force of reason and justice. At my age, if I had not believed in this Commission, I would not have agreed to be its President.*

With respect to conflicts with the logging companies, all the leaders of the Mapuche communities who were present expressed their concerns about the future:

We have no constitutional guarantees. We request that the President of Chile take into account the autonomous territories that our ancestors have defended and where we live. We ask for the right to education, to work and to live. We claim what belongs to us: the land. Without the land, we cannot live. Without the land, our development is impossible. In a short while, we shall be a dead people. We are in permanent conflict with the police. We, the Mapuche, have no armed forces; we have the right neither to justice nor to education. During the time of Pinochet, we were subject to racist and political repression; we were considered an extreme leftist group. We are not a political party; we are struggling to recover our lands. And yet they apply the Anti-terrorism Act against us; they regard us as an illegal association...

3. JUDICIAL PERSECUTION OF MAPUCHE LEADERS AND MEMBERS OF MAPUCHE COMMUNITIES

At the judicial level, there has been a noticeable trend towards the criminalization of the Mapuche conflict. The Chilean government, under President Ricardo Lagos' administration, has taken on a policy of repression against the Mapuche and its organizations. Land-recovery actions and demands for

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rights have been met with a number of legal actions and complaints on the part of forestry companies, as a result of which many Mapuche rebels are now subject to trial and imprisonment.

To exemplify this situation, Annex 2 shows a list⁴⁴ of the relationship between the cases of land conflict and the number of Mapuches accused of crimes; it was compiled by an academic research group. The research shows that in August 2002, 91 Mapuches were accused on the grounds of their various activities and their participation in several operations carried out against forestry companies. They were indicted for the following crimes: illegal association (35 cases), threatening or showing disrespect for authority (14), second-degree kidnapping (11), theft (10), arson (9), misappropriation (5), causing disturbance (2), second-degree damage (1), and legal exaction (1). With respect to their legal status, 80% are not in custody, but subject to preventive measures, 18% are in preventive detention, and 2% subject to the preventive measure of house arrest.

The FIDH believes that there is a direct relationship between the demands for land, supportive State programs and actions, direct participation and consultation with the Mapuche, and the judicial actions taken against leaders, longkos, werkenes, or ordinary members of Mapuche organizations. Those especially subject to persecution are Mapuches who have in fact conceived their actions in relation to their territorial demands⁴⁵. It should be noted that communities in conflict claim political prisoner status for their imprisoned leaders. For example, Victor Ancalaf Llaupe,⁴⁶ was arrested in November 2002 for political activities defending Mapuche rights.

Similarly, lawyers acting for Mapuche prisoners are also threatened and even have their telephones tapped. Since our mission ended, there has been a notable case involving lawyer Pablo Ortega, who represents a very large proportion of the Mapuche prisoners and defendants. The tapping of Ortega's telephone is a violation of the Mapuche's rights to have a defense and to the confidentiality of the lawyer/client relationship; it also aims at intimidating the lawyer. In relation to those events, a case was brought before the Guarantee Tribunal on 24 December 2002.

It is striking that those currently being detained for allegedly committing offenses connected to the Mapuche conflict and forest exploitation are covered by a combination of different legal regimes: either the Anti-terrorist Act, Act No. 12.927 (also known as the "Domestic Security Act⁴⁷), or the general classification of several crimes against private property

provided for in the Chilean Criminal Code⁴⁸. For the FIDH mission, this fact seemed crucial: the Mapuches do not benefit from any legal guarantees, as there have been a number of cases in which the same offense is prosecuted more than once as different crimes under different laws⁴⁹.

Moreover, it was also brought to the attention of the FIDH mission by a number of concerned witnesses that the proposed criminal procedural reforms, being introduced gradually region by region in Chile⁵⁰ may prove to be an instrument for the repression of the Mapuche people.

The criminal procedural reform, which is currently being pursued in most Latin American countries, is part of an overall procedural and conceptual change taking place within that branch of the law. The reform aims at creating an efficient legal system, in which the individual under investigation would effectively enjoy the guarantees of due process, and the much-criticized judicial administration system would abide by parameters of equity and transparency, giving a new function to the investigation phase and separating it from those responsible for sentencing. Criminal procedural reform is being promoted by multilateral agencies in the form of economic support that makes it possible to implement the reform itself, conduct international seminars, and facilitate exchanges between members of State entities responsible for administering justice in the various countries concerned. Thus, it seeks to protect the rights of individuals and the businessmen who now claim ownership of the land claimed by the communities.

Some positive aspects of the aforementioned reform should be mentioned, such as the intent to develop an institution known as the Mapuche "Criminal Defense Office", to be staffed by lawyers and intercultural facilitators or interpreters.

This particular plan is very much so in its early stages. However, as a reform that is "favorable to the accused", it does offer a response to a number of fears expressed by Mapuche prisoners and their defenders. However, the reforms have also been criticized and denounced by the Mapuche as just another form of oppression.

To illustrate this theory, the mission looked at the cases of the four Mapuche "political detainees" imprisoned in Traiguén⁵¹. The cases are symbolic of the persecution of Mapuche leaders within the context of a system of criminal procedure that claims to respect basic legal guarantees. During the month of December 2001, the home of Juan Agustín Figueroa's farm manager was burned down. Those accused of

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this offense are Pascual Huentequero Pichun Paillalao, Longko of the Temulemu community, and Don Segundo Aniceto Norin Catriman, Longko of the Diádico community, and an employee of CONADI. Both are being detained at Traiguen. The sons of longko Pichun, Rafael, 21, and Alejandro, 18, were also imprisoned⁵². Both students at the Catholic University of Temuco, they were arrested on 12 April 2002, accused of having setting fire to a forestry company truck.

These trials are riddled with irregularities of form and substance. First, the Longkos were not given any sort of trial before being imprisoned. Secondly, although there are no precedents, the provisions of the Domestic Security Act and the Anti-terrorist Act have been applied. Their files also show a total lack of evidence concerning the facts of which they are accused. The prosecutor bringing the case tried to force them to sign a statement admitting their guilt. They refused to do so. The prosecutor then told the prisoners that they would be sentenced to 15 to 20 years in prison for refusing to sign the statement. The sons of Longko Pichun were imprisoned in the rapid investigations room. The police had not been at the scene of the fire, which broke out some kilometers from the house in which the two brothers were arrested. Also, the statements of the truck driver, main witness to the facts, are contradictory. He first stated that he had not seen who started the fire, but then declared that he was certain that he had spotted Rafael and Alejandro. The only "evidence" provided by the police was that the clothes worn by the two young men contained traces of oil when they were arrested.

After visiting the detainees, the mission also visited the community of Temulemu, and noted the profound impact of Chief Pichun's imprisonment on his community. The living conditions of his family⁵³ were extremely harsh. The older son also told us about acts of provocation and intimidation against the Mapuche within the companies where they work and the humiliations imposed by their managers. It should be pointed out that the four detainees began a hunger strike in August 2002 to denounce the injustices and irregularities of their trials. After their health began to deteriorate, they were transferred to the Traiguen hospital in September.

With respect to this and other similar cases, it should be noticed that they have been conducted under a regular criminal procedure. However, the whole spirit behind the reforms (which is to provide mechanisms to make effective the human rights of detainees) is violated when such provisions are applied within the Anti-terrorist Act. This Act was enacted as part of the repressive policies of a former dictatorial regime, and brought into question by the international community, for its disrespect

for human rights.

Chilean magistrates are required to observe the provisions of the Indigenous Act. However, in this case, the detainees and their defenders⁵⁴ testified that the fact that the two Mapuche longkos's were not native Spanish speakers was not taken into consideration. This is a violation of the basic principles of the rule of law and comprehensible defense, based upon freedom, consent, and the full understanding of the proceedings by those being investigated.⁵⁵ Under the Indigenous Act, protection is clearly provided for indigenous peoples, their cultures, families and communities. In the case in question, however, such protection was not provided.

Furthermore, it is now generally accepted that the Indigenous Act harms more than assists the indigenous population:

*In its eagerness to protect aboriginal peoples, the Indigenous Act treats them as legally incapable. This has the effect of perpetuating their misery and discontent. The Act regulates to such an extent that it ends up cancelling the people out.*⁵⁶

No law can survive without a minimum level of acceptance by the community, and this law has none in our Southern regions. There is a feeling of illegitimacy everywhere. It is well-known that the law is based on false premises, and rooted in historical myths and commonplaces. The final outcome is tragic: more and more poverty. Those who promoted this law, which is so harmful for Chile and our region of La Araucanía, were wrong to believe that all the many demands and aspirations of Chilean peasants of Mapuche origin could be resolved by fostering a collection of historical myths and repeating commonplaces.

As Eduardo Díaz Herrera said when the law was adopted:

The Mapuche cannot eat laws and they will not resolve their acute problems of agricultural crisis and poverty through the creation of agencies like Conadi, which are bureaucratic networks for swallowing up the money (called "cullín" in the Mapudungún language) that the law intends for the poor.

The Act treats indigenous peoples as people in a state of interdiction, incapable of deciding for themselves, and they are subject to a series of openly discriminatory prohibitions and restrictions that are not imposed on the rest of the Chilean population. Furthermore, the Mapuche have now been burdened with an absolutely useless bureaucratic organization, including CONADI, which, during its existence, has been more known for the irregularities that occur within its walls than for anything else. CONADI has ended up intercepting the money

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(cullín) that the law intends for the poor peasants. In terms of representing the Mapuche community, special mention should be made to CONADI. The development of the present conflict is evidence of its absolute impotency as a public agency. Incapable of coping, it is not acknowledged as a legitimate participant by any of the parties, and the only reason people refer to it at all is to gain access to the resources of the Land Fund.⁵⁷

According to Adolfo Millabur, Mayor of Tirua, who was interviewed by the FIDH mission, and who is one of a few Mapuche city counselors:

The Anti-terrorist Act, adopted under the Pinochet dictatorship, is antidemocratic. All it takes for the procedure to be applied is to express your disagreement with a certain aspect of policy. Luckily for me, I am protected by my Mayoral status. I am convinced that it was private armed security guards who set fire to the truck to incriminate the Pichun boys. Between the Mapuche and the forestry companies, there is permanent conflict. The police are spread on Mapuche land and the smallest dispute is brought before the courts. There is no possibility of finding a peaceful compromise. The country is not concerned about the indigenous problem. We need political will on the part of the government to search for a solution to the

Mapuche problem. Instead, the government cultivates hatred and the police are above the law, even though their abuses are proven. Today, the Chilean State is negotiating trade accords with the European Community in order to sell timber, the country's main source of wealth. At a time when we hear so much about fair trade, the Mapuche are simply claiming a small part of the vast lands owned by the forestry companies, lands which belonged to them in the pre-Colonial period.

4. OTHER CONSEQUENCES OF FORESTRY EXPLOITATION ON THE MAPUCHE PEOPLE

The FIDH mission observed a number of consequences of forestry exploitation on the Mapuche culture and their environment.

In regions that traditionally have the highest number of Mapuche communities, the amount of land used for exotic growth is very high, and this has a negative impact on native forests and traditional ways of life in such regions.

For example, in Chile's Region IX, the growth of exotic plants in comparison to native forests is:

FORESTS	SURFACE AREA (ha)
1. Native forest	907.521
Adult forest	284.648
Renewed	446.585
Adult-Renewed forest	93.722
Young forest	82.566
2. Growth of exotic forest species	359.677
3. Mixed forest	19.077
TOTAL FOREST AREA IN THE REGION	1,286,275

Source: CORMA

In Region IX, over 50% of the land is used for forestry exploitation or farming, and this inevitably leads to soil degradation.⁵⁸ The native forest covers 28.9% of the region versus the 10.55% used for exotic growth.⁵⁹

In Valdivia, thousands of hectares are currently exploited by logging companies whose only purpose is to exploit them. This relentless exploitation of the soil brings major consequences. Forestry companies have been planting pine and eucalyptus trees, which are not native to the region. The "native forests" - the natural native trees - have been destroyed and the land is burned in order to be rapidly fertilized for planting pine and eucalyptus. The result is environmental destruction: sterile soil and exhausted river banks; elimination of scrubland and

undergrowth of essential food for the local fauna (this destruction led to the disappearance of animals such as deer and pumas); and the gradual disappearance of wild plants and herbs used in the traditional medicine practiced in the region as far back as can be remembered.

However, according to Emilio Guerra, head of the Chilean Timber Corporation, his company's activities are helping to improve the environment: "Prior to 1970, 15% of the country's wood consumption came from replanted forests and 85% from original forests. Now, those figures are reversed. The new plantations respect ecology and allow for more effective exploitation." The Mapuche's concerns about the harmful impact of pine and eucalyptus plantations, drought, etc., are

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not grounded in facts, says Guerra: "On the contrary, the aquifers are regulated by these plantations".

According to the World Rainforest Movement :⁶⁰

The fragmentation of habitats resulting from human activities-including industrial tree plantations-provoke restrictions in the supply of resources and the spatial needs of animal and plant species, which can even lead to the extinction of entire ecosystems. Once the structure of the landscape has been altered, the survival of both plant and animal species is threatened. The central and Southern regions of Chile have been and are being extensively planted with fast-growing tree monocultures. In the temperate forests of this region, the highest diversity and endemism in the country can be found. These plantations' current extension is estimated to be some 2.5 million hectares, with Monterrey pine (Pinus radiata) accounting for 80% of the total. A study carried out by the governmental agency, CONAF, in 1997 already showed that the annual deforestation rate during the 1985-1994 period was 36,700 hectares and that almost 40% of this area was destroyed to clear land for industrial tree plantations.

In Collipuli, the mission met with five community leaders who were also in conflict with the forestry companies. They stressed the destruction of the environment and also the total absence of control over the activities of such companies which violated regulations with absolute impunity. For example, the plantations of pine and eucalyptus were required to keep a distance of 70 meters from riverbanks. That limit was not respected, however, and the trees were planted right down to the riverbanks. Moreover, the rights of way granted to the Mapuche to reach their lands were closed and prohibited to those who did not work for the logging companies. As a result, the Mapuche had to make major detours to reach their lands, which had been cut off by the logging companies' acquisitions.

*** Impoverishment and Cultural Assimilation:**

As we have seen, the impoverishment of the Mapuches is also due to the expropriation of their land and their confinement to reduced areas. This fact is extremely important to an understanding of the forestry conflict. Since 1976, there has been a notable decline in the agrarian economies of the Mapuches as a whole. Indigenous Mapuche communities now practice subsistence agrarian economies (Bengoa: 2001). These economies have no space in the regional or national market. Several studies, which have been analyzed

and interpreted by Bengoa, including the 1997 Agriculture Census, demonstrate the growing marginalization of rural economies.

*"The planting process is driving away indigenous people and causes major ecological problems because of the large quantities of water absorbed. All the communities' traditional rights of way are disappearing. This leads to significant impoverishment and provides very little employment to the Mapuche. A study carried out by the International Labor Organization (ILO) shows that the higher the plantation rate, the greater the poverty of the local communities, the greater the decline in population and school enrollments. This is an economic activity that brings no social benefit to the local communities. On the contrary, it increasingly impoverishes and excludes them, because it also employs workers from outside the communities."*⁶¹

Mapuche communities do not benefit from these forestry activities and are becoming increasingly poor. This in turn has a severe impact on their general way of life.

*"Poverty has numerous social, political and cultural consequences. First, it has the effect of closing the indigenous society in upon itself. Non-monetary ties between families strengthen, the environment becomes generally harsher, and ideologies linked to the aforementioned ethnic emergence are able to develop. The relationship with society as a whole becomes very tenuous, and the relationship with the central State even more so. As a result, almost the only ties that are strengthened are those based on patronage at the local level, since it is in those ties that reproduction capacity is based. These patronage-based relationships between communities and local authorities run alongside indigenous emergence and are not necessarily contradictory. In consequence, people may vote for local political leaders with whom a relationship of dependency exists because of subsistence, while supporting (sometimes violent) protest actions involving emerging organizations and communities."*⁶²

Emilio Guerra, who maintains that the forestry companies legally acquired the land in 1970, told the mission that the reason for the conflict was simply "the fact that the Mapuche were poorer than everybody else." He added: "Sure, forestry companies are not very fond of the peasants. Most of the workers are from elsewhere and they do not identify with indigenous peoples. There is no integration." Guerra believes that there should be dialogue with the Mapuche and their poverty should be tackled through social action. "It is the

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responsibility of the regional authorities to resolve the Mapuche issue. The answer does not lie in the use of armed force by private militias. There is only one solution to the Mapuche conflict and that is cultural assimilation."

According to the Mapuche, however:

It is an offense against our culture and beliefs for the land to be sold to individuals. It should be free. There is only YENCO, the spirit of the water.⁶³ The basis of reproduction for the Mapuche is harvesting, but now there are no more flora and fauna, which were the basis of our nutrition, and which also gave us work. As regards health, indigenous life itself is severely affected by ecological erosion, which has brought about the loss of traditional medicines used to protect and heal members of Mapuche communities. As for the women who had no remedies to heal a "Mapuche disease," they could not perform their rituals and healing practices, and all that awaits them is a physical and spiritual death. Efforts should be made to recover the sacred places of the Mapuche, where the machi doctors practiced their crafts.

*** A Different Concept of Development:**

In fact, the Mapuche's view of development is different from that of the forestry companies and the State in general; it insists on the decisive importance of cultural aspects in the life of indigenous peoples:

The concept of development established under the Western approach is essentially focused on its economic aspects, regarding Mapuche land merely as a source of material wealth, for production and accumulation. Most State-run programs focus on production and the exploitation of resources; they are not managed and our values and ways of looking at the world are not recognized. We do not see development as projects that promote individual initiative without taking into account the wider group. The splitting of the land into committees and small organizations that work for the other form of development has had a detrimental effect on our traditional organization, denying it, dividing it up, and paving the way for the disintegration of our Mapuche way of life.

For the Mapuche culture, development and land mean something else. They are part of the Ad Mapu. It is through the Ad Mapu that we relate to nature and it is this that enables us to recognize our identity. The Ad Mapu represents our life, and that of our ancestors constitutes the foundation upon which we seek to build well-being on our lands, for the

future, and for our children. But these concepts and ideas are not taken into account by the institutions that come and apply their solutions to our communities; for example, the great mega-projects intend not only to take our fields, rivers and seas, but also to wipe out our ideas and ways of life.

The Chilean authorities must respect our way of thinking and our sociopolitical structures as well as listen to our traditional leaders. We want to give shape to a Mapuche vision of development, which is expressed in the actions of organizations that can foster territorial identities, is effective at implementing organized, participatory actions that are in harmony with our environment and are representative of the real demands of our people, that includes the different concerns of our families in relation to Chilean society as a whole. We are not a violent people, but we do have our dignity.⁶⁴

During their visits to Chile's Mapuche leaders and communities, the members of the FIDH mission observed that the concept of the cultural significance of land for the Mapuche is a constant. The various statements gathered by the mission indicate that the cosmic vision, or cognitive patterns of the different Mapuche identities in Chile, include the conviction that the land is the basis of indigenous civilization, it created mankind, incorporates cosmic dimensions, and is an infinite resource: the setting for social integration, ritual performances, and the source of culture, survival, and medicine.

In conclusion, the key to the life of the Mapuches is the land, as well as its culture and forms of social and material reproduction. In line with that perspective, Mapuche communities today create and appoint their institutions on the basis of the distinction between territorial identities. This practice serves merely to confirm the importance of the role played by that distinction throughout their history.

? The FIDH mission believes that the conflicts between the Mapuche and forestry companies are rooted in the demand for ancestral Mapuche lands. Because of the lack of land and the cultural and environmental destruction within the ecosystem of Mapuche communities, many people are rebelling against forestry companies to recover their usurped land. And yet, the Chilean State, instead of seeking a viable solution to the conflict, represses all forms of Mapuche mobilization, through its courts and police forces.

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18. Based on opinions collected during interviews held with Mapuche leaders as well expressed during conferences at the Megaproject and Indigenous Rights Seminar at the UFRO; also found in Victor Toledo's document entitled "The Mapuche People: Rights and Territory" (Pueblo Mapuche, Derechos y Territorio).
 19. JOSÉ AYLWIN, TIERRA Y TERRITORIO MAPUCHE: UN ANÁLISIS DESDE UNA PERSPECTIVA HISTÓRICO JURÍDICA. May 2002 Mapu Territoriality Project, Institute of Indigenous Studies, Universidad de la Frontera, Temuco, Chile.
 20. Ibid.
 21. The legal basis for this can be found in Law No. 16.640, passed in 1966, which allowed for the expropriation of lands that were poorly exploited, abandoned or counted more than 80 hectares. For the first time, this reform, under Allende's government, referred to the whole of indigenous peoples in Chile.
 22. Several hectares of plantations used for forestry exploitation were planted over the years under Frei and Allende's governments. Between 1965 and 1973, the area of replanted lands rose from 21,000 to 30,000 hectares, mostly in the provinces of Arauco, Malleco and Cautín. During this reforestation period, the key players here were the Mapuches who planted and managed these aforementioned land areas which make up a large percentage of the expropriated lands.
 23. For example, by 1973, CORA held 710,816 hectares in región IX.
 24. JOSÉ AYLWIN O., TIERRA Y TERRITORIO MAPUCHE: UN ANÁLISIS DESDE UNA PERSPECTIVA HISTÓRICO JURÍDICA. May 2002 Mapu Territoriality Project, Institute of Indigenous Studies, Universidad de la Frontera, Temuco, Chile.
 25. Jacques Chonchol and Raúl Blanchet. La doble razón del reclamo mapuche, El Siglo - 25 March 1999. <http://www.fortunecity.es/felices/lahabana/260/articulo2.htm>
 26. FUNDECAM, "Background for the International Federation of Human Rights," application submitted to the mission members through this non-governmental organization.
 27. For example, in the Arauco, Malleco and Cautín provinces, CORA which held 415,053 hectares under its control, transferred these lands over to CONAF, which then auctioned off a large portion to forestry companies at negligible prices.
 28. MCFALL: 2001.
 29. Decree-Laws 2568 and 2750 passed in 1979.
 30. JOSÉ AYLWIN, TIERRA Y TERRITORIO MAPUCHE: UN ANÁLISIS DESDE UNA PERSPECTIVA HISTÓRICO JURÍDICA. May 2002 Mapu Territoriality Project, Institute of Indigenous Studies, Universidad de la Frontera, Temuco, Chile.
 31. Ibid.
 32. Mapuche lawyers are demanding that those titles unrecognized by the Chilean State be examined. These titles account for 32,000 hectares of land in Chileo.
 33. Coordinación de Comunidades Mapuche Willice Comuna de Panguipulli, Recapitulación y fundamentos de las recuperaciones de tierras ancestrales, internal work document, 2001.
 34. Alfredo Seguel, Invasión forestal y etnocidio Mapuche, 2001.
 35. Luis Llanquief Rerequeo, Informe de la situación de derechos humanos Mapuches en la Provincia de Arauco, Cañete 25 April 2002.
 36. Alfredo Seguel, Invasión forestal y etnocidio Mapuche, 2001.
 37. Corma, Consecuencias del conflicto indígena en la IX región, asociadas al sector forestal.
 38. Ibid.
 39. La Tercera, 28 March 2002, Plan Araucana, Eduardo Daz.
 40. La Nación, 14 May 2001, Conflicto mapuche: más importante que terrorismo en Chile.
 41. Statements by Francisco Bayo to the Special Session on the so-called Mapuche conflict.
 42. Eduardo Zafirio, Democracia Cristiana.
 43. The role of the National Commission on Truth and Reconciliation is to publish information about relations between Chilean society and the indigenous peoples since the beginning of their shared history, and also to make recommendations to encourage the State to conduct a genuine policy of dialogue, in order to initiate new relations between the two parties. The Commission, which is composed of 22 members, is not involved in the current problems.
 44. Annex 2: list of Mapuche accused due to land conflict.
 45. According to the leaders of the Arauco Malleco Mapuche Coordinating Office - Jos Llanquief, Cecilia Salazar, Anglica ancupil, and Jos Llanquileo - more than 100 of their members are currently subject to the provisional liberty regime.
 46. Current leader of the Collipulli land-conflict communities and ex-spokesperson for the Arauco Malleco Coordinating Office.
 47. Laws that date back, incidentally, to the Pinochet dictatorship, and encourage human rights violations. The previous paragraphs demonstrate that there has been public pressure for stricter application of the administration of justice.
 48. According to information received since the mission, some Mapuche have been tried by military courts.
 49. This was the case with Longkos Pichun and Norin.
 50. Criminal procedural reforms will be implemented under the following timetable, according to information provided by Mauricio Solines, of Chiles Attorney Generals Office, during an interview in Santiago.
- 2000 - Regions IV and IX

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2001 - Regions II, III and VII

2002 - Regions I, XI and XII

2003 - Regions V, VI, VIII and X

2004 - Metropolitan Region

51. Out of a total of 14 detainees, 10 were imprisoned for common-law offenses and four are regarded as political prisoners. The conditions of their detention are the following: there are 35 prisoners per cell with only one shower. The beds are simple iron frames, with no bedclothes. There are no activities or workshops, and visits are permitted three times per week. However, the prisoners we spoke with said that the prison guards were generally fair, and did not mistreat them.

52. Under the Mapuche concept of the family nucleus, both boys are regarded as "sons" by the entire community. This view is bound up within the place accorded to their family within the culture.

53. Pascual has 3 wives and 7 children.

54. FUNDECAM, Ibid.

55. Art. 54: (para. 3) *The Judge charged with ruling in an indigenous matter, at the request of the party concerned, and in the case of procedures or formalities requiring the personal presence of the indigenous person, shall permit the use of the mother tongue, with advice to be provided to that effect by a qualified interpreter, who shall be provided by the Council.*

It should be remembered that Act No. 19.253 was a precedent for the Chilean procedural reforms, in providing for interpreters in cases involving indigenous peoples.

56. Interview with Jos Ignacio Letamendi, President of Corma, Carolina Soza J.

57. Statement delivered at the same Session by Deputy Eduardo Daz.

58. Much of the soil in Region IX is in a state of deterioration, in regions such as Lumaco, Traiguén, Capitán Pastene, Imperial, Carahuea and other coastal regions, because of exploitation. SÁNCHEZ, Carlos; "Expansión Forestal: La visión Técnica", in McFall, Sara, ed., Territorio Mapuche y Expansión Forestal, Institute of Indigenous Studies, Seminar Series No. 5, Programa Mapu Territorialidad, Universidad de la Frontera, Chile, 2001.

59. At the beginning of the 20th Century, 580,000 hectares of native forest had already been deforested. By 1998, 4,300,000 hectares had been deforested in Regions IX and X..

60. WRM Bulletin, No. 45, April 2001.

61. In Ral Blanchet La doble razón del reclamo Mapuche El Siglo - 25 March 1999.
<http://www.fortunecity.es/felices/lahabana/260/articulo2.htm>

62. BENGUA, Jos; Políticas Públicas y comunidades Mapuche: del indigenismo a la autogestión.

63. FIDH Mission, Notes from FIDH Mission, Working Document, Word file.

64. Nuestra visión del desarrollo territorial, Collective Reflection on Lafkenche, Calafquenche, Nangche, Wenteché, Huilio, Makewe and Pewenche Identities, July 2002.

IV. THE RALCO PROJECT: THE ENDURANCE OF A PEOPLE

In 1997, the FIDH conducted its first international investigative mission on the Mapuche-Pehuenche communities that may foreseeably be affected by the construction of the Ralco hydroelectric dam. Since that time, ENDESA-España has made major strides in obtaining the required environmental authorizations from the Chilean government, as well as CONADI's (National Corporation of Indigenous Development) authorization to legalize the swapping of Mapuche-Pehuenche lands. Lastly, ENDESA-España also holds the concession for electricity production. Being that there was concern about the consequences of the Ralco Project for the Pehuenche-Mapuche people, the FIDH conducted a second mission on the Biobío region. The latter was aimed at investigating the development of the Ralco construction project and at determining how the dam construction would affect the rights of the Mapuche-Pehuenche communities. This chapter deals with the aforementioned issue, providing updated information, and briefly highlighting most of the events that occurred and legal actions that were taken prior to October 2002.

It maintains and emphasizes that the Ralco Project has a direct impact on the members of the Mapuche-Pehuenche communities of Ralco Lepoy and Quepuca Ralco. According to the hydroelectric project, all of the Ralco Lepoy lands and part of the Quepuca Ralco lands will be flooded by the Ralco dam. Before the Ralco project's implementation, there were 1,208 people in both communities. In 1996, 162 families lived in Ralco Lepoy, who occupied 237 lots within an area of 5,892 hectares. Currently, there are only 8 families left, which are comprised of about 30 people who have refused to move. The community of Quepuca Ralco used to cover 11,710 hectares, divided in 137 individual plots. Before the project was implemented, the plots were occupied by 88 families from the community. All the members of the Quepuca Ralco community have been relocated. There are also about 600 people whose homes will not be flooded as a consequence of the Ralco project, but who live next to the area that will be submerged by the dam. This population is considered to be "indirectly affected" in spite of the fact that the project will have a direct impact on their living conditions.

It is also important to stress that the indigenous inhabitants of the whole Alto Biobío Mapuche-Pehuenche area comprise

a cultural unity that has kinship ties with the Ralco Lepoy and Quepuca Ralco communities (including the inhabitants of the Callaqui, Pitril, Cauñicu, Malla Malla and Trapa Trapa communities). Consequently, although the project will not have a physical impact on the Alto Biobío Mapuche-Pehuenches, they will be culturally affected, since cemeteries and ceremonial areas will be flooded.

In the Mapuche Andean lifestyle, a large extension of lands is temporarily exploited according to regional seasons⁶⁵. The highlands are inhabited during summer, and they are named "*veranadas*" (the Spanish word for "summer" is *verano*). The lowlands or "*invernadas*" (from *invierno*, "winter" in Spanish), are the Pehuenche habitat during the winter. The Pehuenches are therefore permanently based in the lowlands, bordering the Biobío River, where traditional agriculture and cattle breeding are the main economic activities. In the winter, the lowlands are the alternative to the highlands, since the latter are covered with snow. *Piñoneo* (pine nuts), which are the fruits of the *Araucaria* (South American pine), are still picked in the *veranadas*. This activity has been vital to the Pehuenche culture for many generations.

The life of the Mapuche-Pehuenches as a group, their production methods, spirituality and understanding of the world are based on the Andean territory in which numerous generations have lived for several centuries. Their harmonious cohabitation with nature and climatic seasons must be taken into account when assessing the construction process and the impact that the hydroelectric project would have on the affected communities.

The relationship between the Mapuche-Pehuenches and the land is crucial for the development of their culture, spirituality, survival and political, legal and social traditions. The land is basically the territory or habitat where the Pehuenche communities live. But according to the indigenous understanding, land is more than that; the land is everything. The land possesses all cosmic dimensions and meanings; it creates life and, thus, identity. In the Pehuenche culture, CHAO NGENECHEN (the Creator God) creates the land, which is given to the Mapuches for their life and, also, to rest when they die.

1. BACKGROUND ON THE RALCO HYDROELECTRIC POWER PLANT

a) ENDESA's Mega Hydraulic Project: Technical and Financial Aspects

In the 1960's, the National Electricity Company (ENDESA) announced its plans to build a chain of hydroelectric power plants along the Biobio River (central and Southern Chile). At first, ENDESA was a State-owned company, which was the last one to be privatized under General Augusto Pinochet's dictatorial regime. Since mid-1999, its shares have been held by ENDESA-Spain and it is currently one of the most powerful Chilean private companies.

The hydraulic project managed by ENDESA will be located in the lower basin of the Biobio River, in the Andean foothills. Because of this megaproject, 22,000 hectares of land will be flooded, and seven power plants with their respective dams will be built for the generation of electricity.

The first phase of this project was the Pangué Hydroelectric Power Plant, which was already built and opened in April, 1997. Pangué is a 450 MW power plant, with a 113-meter tall and 450-meter wide dam. Its reservoir capacity is 175 million cubic meters and, in order to build it, 500 hectares of land were flooded. ENDESA obtained a World Bank loan, which was granted through the International Financial Corporation (IFC) to finance the project.

The following phase of the project started with the construction of the Ralco hydroelectric dam, which is located in the Alto Biobio River area, about 120 km to the southeast of Los Angeles, on the border between regions VII (Biobio) and IX (Araucanía).

The Ralco project plans for the construction of a 1.222 billion cubic meter water reservoir, that will cover 3,467 hectares, and a power plant on the same latitude as the Ralco narrows, in the higher basin of the Ralco River. The reservoir's wall, made of rolled concrete, will be 370 meters wide and 155 meters tall. It will hold water from the Biobio River, its tributary, the Lomin River, and other smaller tributaries. Through a 7-kilometer long tunnel, the water flow will be steered to the powerhouse, where there will be three power generation units. The Ralco power plant will generate an average of 3,380 GWH per year. The estimated cost of this project is 474 million dollars for the construction of the power plant, plus another 12 million to link it to the country's Central Interconnected Electric System.

For a better analysis of the impact of the project's second phase, it must be assessed in conjunction with the effects of the first phase, the Pangué power plant.

b) The Pangué Power Plant, the Pehuen Foundation and the Downing-Hair Reports

In October 1993, when the Pangué Power Plant's construction began, Chile did not have any environmental legislation and the Indigenous Act had not yet been passed. In order to mitigate the socioenvironmental impact of the power plant's construction on the indigenous population, the World Bank⁶⁶ and its branch organization, the IFC (International Finance Corporation), put forward the proposal that the company Pangué S.A. should create the Pehuen Foundation, to comply with the World Bank's environmental regulations. The Pehuen Foundation should become a financial and institutional mechanism aimed at alleviating the long-term negative effects of the Pangué Power Plant. The IFC rated the Pangué Power Plant an "A" or high-risk project, due to the serious impact it would have on the Biobio River's ecosystem.

The Pehuen Foundation underwent an "internal assessment" which was conducted by the anthropologist, Theodore Downing⁶⁷. His report was presented on 6 May 1996 and was a response to a request made by the World Bank, which had received numerous complaints as to how the Foundation was dealing with the Pehuenche communities affected by the Pangué Power Plant. The goal of the assessment was to analyze the Foundation's activities and the results of its mitigation action plan. In brief, the results of the report are as follows:

The Foundation was created without involving the communities that would suffer the impact of the power plant. Not even a preliminary study was conducted on the affected communities.

· The Foundation's actions were not conducted in accordance with the terms of the agreement between the IFC and the Pangué company. The focal point of that contractual arrangement was that the Foundation would mitigate likely negative impacts of the project, promote sustainable development and preserve and strengthen the Pehuenches' culture. The actions taken, however, were of an assistencialist, immediate nature.

· In quantifiable terms, the goal of fighting poverty in the Callaqui, Potril and Quepuca Ralco communities has not been achieved; one third of the population was still living below the poverty line.

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· In terms of economic development, no consideration was given to the cultural value of the Pehuenche's relationship with the environment. Moreover, the losses incurred by the indigenous economy were not compensated by the benefits that the Foundation brought to the communities nor were the immediate consequences of the power plant on the life of the Pehuenche people taken into account.

· According to the general conclusion of the assessment, the affected Pehuenche communities will have to rely more on the government for their future development. Depending on the outcome of the Foundation's activities, the Pehuenches are likely to end up sacrificing their culture, economy and resources for the expansion of Chile's hydroelectric potential.

· The Foundation's main link with the Ralco hydroelectric project is the activities that the former would start to implement in favor of the Ralco Lepoy community. Pangué's proposal stressed its independence from any other work to be carried out in the future and Pangué denied that its power plant was only part of a megaproject. However, the Foundation, which was created in order to mitigate socioenvironmental impacts, was also a "scouting party" for the communities that will indeed be affected by the Ralco Hydroelectric Power Plant at a later stage.

This first socioenvironmental mitigation actions by the Pehuen Foundation were followed by strong reactions caused by the conclusion of the Downing Report. In fact, some groups of the Chilean organized civil society requested that the World Bank conduct an independent observation mission in order to assess the actual terms under which Pangué was being built. According to the results of the mission, the project did not meet the environmental standards set by the World Bank itself, and did not comply with the Bank's environmental and social policies on indigenous peoples, involuntary resettlement, management of cultural property, preservation and management of virgin lands and project surveillance.

The World Bank inspection panel decided the matter did not fall under its jurisdiction, since the IFC was the agency that actually provided funding for the project. However, James D. Wolfensohn, the World Bank's President, assured that his organization would conduct "an internal and unbiased review" of the loan granted to Pangué. In 1996, the World Bank hired ecologist Jay Hair, President Emeritus of the National Wildlife Federation so that, in his capacity as a consultant, he would assess whether Endesa was in compliance with its agreement with the IFC.

The Hair Report, which was presented in April 1997, points out that 80% of the IFC's environmental and social internal policies were not upheld. The report was presented before the IFC's Board of Directors and a censored version was presented to the public. About one-third of the report was omitted, especially the parts related to social impacts and likely human rights violations. It is important to emphasize that the issues that were modified for publication had to do with involuntary relocation threats to members of Pehuenche communities, wide environmental damages and practices on the part of the Pehuen Foundation that were considered to be an attack on the Pehuenches' cultural habits and traditions.

The reason used to justify the delay in making public the Downing and Hair reports was the possible damage to Pangué's investors. Both reports were submitted at the same time as Pangué's environmental impact assessment report, conducted by the National Commission for the Environment (CONAMA). This latter document pointed out in similar terms the likely socioeconomic and environmental impact of the power plant.

In November 1996, despite the results of all the studies conducted, the Pangué Power Plant entered into operation.

In 1997, CONAMA's Board of Directors recommended that the second phase of the project (the Ralco dam) be rejected and the National Corporation for Indigenous Development (CONADI) pointed out that the whole Project was illegal, according to Indigenous Act 19.253. These represented further reasons for avoiding the publication of the Downing report and censoring the Hair report.

In April 1998, the President of the World Bank, James D. Wolfensohn, visited Chile and, in a press conference, admitted that his organization had made an erroneous assessment of the Pangué power plant. He recognized that the ethnic minorities "were forcibly relocated from their lands". He added that, should the project have been presented at that time, "things would have happened differently". He concluded by stating that "a mistake of that magnitude will never happen again."

As a consequence of all these irregularities, the IFC did not grant ENDESA any new loans, nor did other development agencies, such as BITS and NORA (the Swedish and Norwegian government development agencies respectively).

As a result of the Downing report, Downing himself lodged a complaint about the violation of the Pehuenches' human

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rights before the American Anthropology Association. The facts and grounds of the complaint were the following: the affected indigenous peoples' lack of knowledge about the project; secret negotiations about their future and the existence of a resettlement program that did not respect their rights and security. He condemned the Pehuen Foundation's role in relation to the connections between Pangué's construction and the plans for the Ralco Power Plant. Since it was not conceded that both were part of a macroproject, no detailed account of the cumulative effects was given. Furthermore, since no information was provided regarding the negative impact of the power plant's construction on the indigenous population, the World Bank's guidelines were not followed. Lastly, he condemned the Pehuen Foundation's Board of Directors for not providing the indigenous representatives with true and complete information. The Association studied Downing's complaint and made recommendations in order to achieve correction of and redress for the denounced situation; such measures should be based on a detailed analytical report on the Pangué-Ralco project.

It is also important to detail some of the impacts that the Biobio River project has had on the neighboring population after the beginning of its operation. It seems that after the gates of the Pangué Power Plant were opened, the floods were greater than expected and some towns by the river were flooded. A group of Pehuenches, together with residents from Hualqui and traditional fishermen from the Gulf of Arauco, presented their complaint before the World Bank's Ombudsman, requesting:

"...that the Ralco project be brought to an end, that the studies about control of the volume of water downstream and the impact of the dam that were promised ten years ago be released. We demand compensation for those who are suffering flooding in Hualqui, an emergency plan so that we know beforehand when the gates are going to be opened. We request to be told what will happen if there are big earthquakes and to have an investigation of potential structural damages to the power plant, among other issues."⁶⁸

State authorities, such as the Director of the National Emergency Office (ONEMI), have admitted that it is plausible that ENDESA is responsible for the floods that devastated the country's VIII region, Biobio. ONEMI's Director, Alberto Maturana, sparked controversy when he blamed the Colbún and Pangué hydroelectric power plants for the flooding of the Maule and Biobio rivers, respectively. This led to floods in vast

sectors of regions VII and VIII.⁶⁹

Chile has been granted several loans by the World Bank, including the financing from the IFC for the first stage of the Biobio megaproject. Bearing that in mind, as well as taking into consideration the content of the FIDH's first mission report to Biobio, it is clear that the World Bank must enforce guidelines to seek better protection for those indigenous peoples that are affected by projects that it funds. In light of the complaints filed before the World Bank's Ombudsman by Pehuenche residents and those living in neighboring areas, the whole Biobio River hydroelectric project must be reviewed in its totality.

2. IRREGULARITIES OF FORM AND SUBSTANCE IN THE RALCO CONCESSION

a) Environmental Authorization: The Agreement between ENDESA and CONAMA

On 1 September 1995, ENDESA and CONAMA⁷⁰ signed a "general agreement" to approve the Environmental Impact Assessment for the construction of the Ralco hydroelectric dam.

The Environmental Impact Assessment carried out by ENDESA S.A. was presented on 29 March 1996 and analyzed by 22 public agencies so as to evaluate environmental impacts. The majority of these public organizations as well as various consultants and civil society groups were opposed to the construction of the Ralco hydroelectric dam.

After its first and second visit, the FIDH's observation mission believes that CONADI's opposition to the assessment is particularly important. CONADI believes that the project would lead to inevitable destruction of the Pehuenche culture as well as the extinction, within a decade, of the Pehuenches as a people. This impact is unacceptable and can "only be considered ethnocide".

On 23 July 1996, CONAMA's Review Committee recommended in its "INFORME TÉCNICO DE CALIFICACIÓN DEL PROYECTO CENTRAL HIDROELÉCTRICO RALCO" (TECHNICAL REPORT ON THE ASSESSMENT OF THE RALCO HYDROELECTRIC PLANT) that the project be rejected. This report declares that the assessment has failed to describe basic elements of the impact of the Ralco power plant's construction, making it impossible for the authorities to request clarifications, amplifications or rectifications provided

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for in fundamental environmental law.

On 23 August 1996, CONAMA's Board of Directors allowed ENDESA to present an appendix for its Environmental Impact Assessment⁷¹. Despite CONADI's rejection of the appendix, it was presented on 7 February 1997. The governmental bodies involved in the approval of the environmental project were informed about the favorable decision concerning the project and its appendices through the document, *Calificación Ambiental del Proyecto Central Hidroeléctrica Ralco* (Environmental Assessment of the Ralco Hydroelectric Plant Project), or Exempt Resolution No. 10 of 1997. Mauricio Huenchulaf Cayuqueo, National Director of CONADI at the time, believed that the Ralco Project compromised the regulations and rights protected by the Indigenous Law, a stance that led to his resignation.

The aforementioned assessment proposed that CONADI should be responsible for approving issues regarding the permission to exchange indigenous lands and relocate indigenous communities. ENDESA filed a claim with CONAMA on 11 July 1997 regarding this matter. On 23 September 1997, a majority of CONAMA's Board of Directors, which is made up of 13 State ministers, decided to ratify the CONAMA resolution. It insisted on the need to obtain authorization for the land exchange and relocation from CONADI and all other interested parties.

The mission's investigation reveals serious irregularities in legal procedures regarding the CONAMA environmental authorization, which was obtained by ENDESA between 1996 and 1997. According to the mission, there were, indeed, irregularities of form and substance in the concession of the environmental authorization. Legal regulations are the foundation for social coexistence, and it is the State's responsibility to ensure that they are complied with. In the current situation, considering that the Ralco dam's construction will have serious consequences on the environment and an even greater impact on the future lives of the local people, it is unacceptable that irregularities have been committed in the environmental authorization.

b) The Exchange of Pehuenche Land and CONADI's Authorization

At the end of 1997, ENDESA presented land exchange applications signed by Pehuenche families living in Alto Biobio to the National Corporation of Indigenous Development (CONADI)⁷². According to Indigenous Law 19.253, CONADI is the only State organization with jurisdiction over the fate of

indigenous lands; therefore, it has to be consulted in case of exchanges, which are the only legal way to transfer those lands.

After ENDESA's application, CONADI initiated a detailed analysis of the letters of intent for exchange presented by ENDESA, especially regarding the free will of the Pehuenches that were approached about exchanging their land. These processes aimed at securing the Pehuenches interests, which is the Corporation's primary mission (NAMUNCURA:1999). CONADI carried out 64 interviews in 11 public hearings, between 13 November 1997 and 29 May 1998, before the public notary, Selim Parra Fuentealba, in the city of Santa Bárbara, which is adjacent to the Alto Biobio communities. All of these interviews were recorded and filmed by CONADI personnel.

The CONADI reports mention that:

The construction of the Ralco dam involves a before and after that totally break geophysical and biotypical conditions without the possibility of repair, affecting the entire Biobio basin... this rupture means the breakdown of the fragile ecosystem that supports the primitive existence of the Pehuenche Peoples who live by the seasonal transit between the "invernada" and the "veranada"... It means a necessary resettlement that will cause a change in their way of life, their subsistence economy, customs, traditions and cosmology. In addition, the resettlement, move or eradication, does not allow for any possibility of cultural or identity continuity because the earth-man (ecosystem-man) relationship is the bond that allows the Pehuenche People to exist... All in all, any compensatory measure is insufficient in face of the loss of an aboriginal culture; the damage cannot be mitigated when part of humanity's wealth is at risk (CONADI: First Report, 1997).

This abstract, as well as various other studies, analyses and reports carried out by CONADI in relation to the Ralco Project emphasized the impact that the construction of the Ralco power plant will have on the Mapuche-Pehuenche civilizational project.

In addition, in the October 1998 report by the Social Division of the Ministry of National Development and Planning (MIDEPLAN), entitled *Informe de Impacto Cultural para el Análisis de las Solicitudes de Permuta de las Comunidades Pehuenches de Quepuca Ralco y Ralco Lepoy* (Report on Cultural Impact for the Analysis of the Land Exchange Applications Presented by the Pehuenche Communities of

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Quepuca Ralco and Ralco Lepoy), it was foreseen that if the hydroelectric power plant was to be built, the possible impacts would be:

1. *Familial separation of tribes or lineages, a trend leading to the breakup of families.*
2. *Loss of ancestral territoriality. Loss of ceremonial sites and places as well as ordinary sites and places of daily life.*
3. *Tendency towards peasant farming. Incorporation of a way of life that the Pehuenche are not accustomed to.*
4. *Tendency towards the acceleration of a process of 'aculturalization', due to the vulnerability of cultural defense mechanisms (assimilation, rejection, integration, and cultural hybridization).⁷³ It is important to point out that it is the speed and extreme nature of the change that make it a negative one.*
5. *Difficulties with the assimilating modern elements into their productive reeducation.*
6. *Discrimination and marginalization of the indigenous people who are relocated, especially to the El Huachi Lands, due to the presence of non-indigenous peasants who are already concerned with the instability of the local market.*
7. *Less cultural contact with immediate family members and other relatives who live far away. Relocation affects, without exception, the community as a whole and the entire Pehuenche culture. The effects of this are manifested in the severing of familial, productive and ceremonial ties, and constitute an evident, irreversible impact which has already begun.*

CONADI's legal report points out the contradiction between the majority of the land exchange applications signed by the heads of Pehuenche families and the positions expressed when CONADI employees released large quantities of information about the significance of the transfer of proprietorship represented by the land exchange.

The conclusion of CONADI's legal report, signed in Temuco on 30 July 1998, states that:

Being that the exchange is an act of Private Law, we must pay special attention to the requirement of willingness, and this seems, in the majority of the personal interviews, to be contradictory to the contract of promise to exchange and to

what was expressed by the applicant. From the comparative analysis of what was declared in both documents, the following can be concluded:

i. Content of the Exchange Contract

a) *The exchange application is in line with the execution of the Ralco Hydroelectric Plant Project and not with the free and spontaneous will to exchange land.*

b) *There is an economic expectation apart from the exchange that seems to be unsatisfied... which implies that the exchange... does not correspond with what the indigenous owners estimate they should receive for their land.*

c) *The Ralco Project requirements, as expressed in the exchange contract, are obviously excessive...[because the land offered in exchange] is not indigenous land.*

d) *In addition, article 7 of the exchange guidelines defines what should be understood by commercial value... From the analyses of the appraisals presented by ENDESA, it can be concluded that the value of the land was determined solely and exclusively based on the forestial-agricultural potential and the existing improvements of the land, thereby getting around what was specifically established in the aforementioned article.*

e) *It can be concluded that the value [of indigenous land, which should be determined by the indigenous owner]... greatly exceeds the objective value of the land that they receive. It becomes evident in the personal interviews, in which almost every one... indicates as a condition of exchange, additional economic commitments that had been agreed upon with ENDESA and that as of today have not been fulfilled.*

ii. Effects of the Exchange.

1.- *These exchanges involve the relocation of a large number of indigenous families due to the effects of the Ralco Project, which substantially alter the living, cultural and environmental conditions of the people and communities in the area.*

2.- *Another element that must be analyzed is whether or not the land received in the exchange will be able to reproduce, in some way, the aforementioned living conditions...*

3.- *We can therefore conclude that the exchanges, in general,*

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lack material sufficiency, insofar as they cause the uprooting of the community, they do not guarantee the equivalence that the Indigenous Land exchange requires in order to compensate for the added cultural value that the Indigenous Land has, according to Article 1 of Law 19.253 and Article 4 of the Guidelines for the approval process for indigenous land exchange applications, provided for in Exempt Resolution No. 582 of 30 December 1997, passed by CONADI's National Council⁷⁴.

CONADI scheduled a session with its Board of Directors for 6 and 7 August 1998 to review ENDESA's application regarding its intentions to exchange Mapuche lands. The majority of the Board members publicly expressed a position against the approval for the exchanges, which is reaffirmed in CONADI's legal report.

On 27 July 1998, the President of the Republic, through a government employee, asked two of the CONADI Board members who had expressed their opposition to the exchanges to resign. On 5 August 1998, government employees asked the National Director of CONADI, Domingo Namuncura, to resign immediately⁷⁵.

On 6 August, after the resignation of Namuncura and the decision of CONADI's Board was made public, several indigenous sectors carried out demonstrations at various CONADI headquarters to protest the decisions made in the Ralco case. As a result, government authorities ordered the presence of military forces in order to avoid incidents and fenced in and changed the locks of the central offices in Santiago. In addition, the remaining Board members of CONADI were unable to convene on 7 August 1998.

According to testimonies from the members of the team of lawyers representing various Pehuenches, the records and documents that were included in the CONADI legal report are not located in the Temuco offices, but were rather moved to the Ministry of Development and Planning buildings.

In September 1998, a new executive director was appointed who took charge of a new technico-agricultural report. This report concludes that the exchanges serve the interests of the applicants. Between January and February of 1999, CONADI approved the majority of the intentions of exchange exclusively with the votes of government representatives and with the absence of various Indigenous National Council members⁷⁶ or by deciding against their votes. As a result, ENDESA proceeded forward with the construction of the Ralco Hydroelectric Project.

According to CONADI, there are four elements that support their decision to approve the exchange of Pehuenche lands. However, on the basis of conversations with the Pehuenches' defense lawyers,⁷⁷ analytical texts (NAMUNCURA, TOLEDO) and testimonies given by members of the Quepuca Ralco and Ralco Lepoy communities, the Indigenous Law has not been complied with.

1. *The similar value between the indigenous lands and the ones offered by ENDESA.* In order to arrive at this conclusion, the evaluation did not take into consideration the prices paid for other acquired properties belonging to non-Pehuenches. This is the case of the Vilicura property that was categorized as subject to a right of passage and occupation, to recent flooding, and received in the lowest evaluation in the three different assessments. Nonetheless, 3,000,000,000 Chilean pesos were paid for the 1,335 hectares, which represents an average of 2,247,191 Chilean pesos per hectare.⁷⁸ The Pehuenche properties were paid an average of 112,000 Chilean pesos per hectare, representing 20 times less than that was paid to the others. The main reason for that is that the hydraulic potential of the Pehuenches properties and *hijuelas* was not taken into consideration.

2. *The improvement of the socioeconomic situation for the Pehuenches after the exchange.* In reality, the families that were moved after the CONADI reports were relocated to lands that do not offer proper support for the familial structures and the cordillerano way of living based on annual seasons.

3. *The productive sustainability of the properties offered to the Pehuenches.* In fact, such sustainability ended up being insufficient. Ninety percent of the Fundo El Barco property surface, for example, is located 1,000 meters below sea level and falls 60% under the expected productivity rates according to the exchange agreement. In the cases of the Fundo El Huachi and Santa Laura, their productivity rate was 50% below what was necessary for the sustainability and progress of the families settled therewithin. Additionally, the MIDELPLAN report for September 1998, points out that those properties cannot be transformed into sustainable agricultural unities because they do not meet the minimum conditions for forestry and agricultural exploitation and cattle raising.

4. *The preservation and cultural development of the displaced Pehuenches.* ENDESA considered in its Environmental Impact Assessment that the displacement was "negative and highly significant,... a direct and permanent action, irreversible, but that could be compensated for." The impact would be compensated, among other things, through

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the integration of the Pehuenches "into the national macrosystem, at the price, for sure, of losing their traditional culture" (NAMUNCURA: 1999).

Additionally, among the most profound effects upon the communities, we could mention:

- The physical separation of members within the same family groups and communities.
- The modification of the production system by the impossibility to develop their cordillerano (seasonal) way of life, compromising all other activities and productive cycles as well.
- The interruption of ritual and religious celebrations.
- The emotional damages that are caused and the hasty assimilation once the territory is altered.
- Divisions among collective owners once the Pehuenches communities are created.
- The flooding of sacred areas.

The FIDH also questions the consent given by the Pehuenches for the exchange of their lands. On the one hand, the lack of knowledge observed among the indigenous population regarding an issue that in fact involves their open consent actually nullifies the whole action of agreeing to the exchange of lands. Regarding this matter, the disappearance of documental and videographic evidence prepared by CONADI on aspects of the interviews with the Pehuenches, in which they talked about what the "exchange" of lands really meant for them, is also striking. On the other hand, it is known that coercive mechanisms were used to obtain the consent of Pehuenche families, such as constructions and other measures that were part of a systematic policy of pressure by workers and employees linked to ENDESA.

c) The Illegal Electrical Concession to the Ralco Project

After getting CONADI's approval for its Environmental Impact Assessment, as well as a considerable number of intentions of exchange, ENDESA requested that the relevant electrical concession be granted by the Ministry of the Economy.

At the beginning of 1998, ENDESA requested that the Ministry of the Economy, Development and Reconstruction grant a definitive concession for the establishment of the Ralco Hydroelectric Plant, under the regulations of the General Law on Electrical Services⁷⁹. As provided by law, the request was published in the Official Gazette on 15 April 1998 and in the newspaper La Nación on 10 and 11 April 1998. The process

underwent further developments over the course of a year and a half under the Fuel and Electricity Secretary (SEC). During this time, notifications were sent to each of the affected Pehuenches concerning the special land regime to which their lands would be subject, oppositions to the concession were received and reports were requested from other governmental bodies.

Among the oppositions presented by indigenous landowners, the main one was the fact that the land where the plant would be built was classified as "indigenous land" and, therefore, was entitled to special protection under the Indigenous Law. On 25 October 1999, the Fuel and Electricity Secretary, Juan Pablo Lorenzini Paci, issued a report to the Ministry of the Economy with a draft of the concessional decree⁸⁰. In the report, he proposed the grant of a definite concession to ENDESA. In items 14, 16 and 17, however, he identifies some fundamental questions:

"14. The concession herein granted does not in any way exempt the grantee from any other legal obligations, such as full compliance with the applicable environmental legislation before the beginning of the construction work authorized by this concession and the norms on the protection, promotion and development of the indigenous peoples set forth by Law 19253.

16. Notwithstanding the above provisions, it is also important to highlight that Law 19300... and Decree 30 of 1997, ... established requirements regarding the development of hydroelectric plant projects and therefore, in order to be able to duly operate in the central region, ENDESA shall comply with the provisions of Exemption Resolutions 10, of 6 June 1997, 23 of 23 September 1997 and 24 of 2 March 1998, all issued by the National Environmental Commission...

17. Additionally, it is herein important to stress, as per Law 19253, that regulates the individualization of indigenous ethnicities, that both the society in general and the State in particular, have the duty to respect, protect and promote the development of the indigenous population, their cultures, families and communities; the aforementioned law sets forth specific norms of protection, promotion and development of the indigenous peoples and creates CONADI; this matter is explicitly regulated in an article of the Concession Decree proposed."

Although this draft resolution, issued by the relevant authority, recognized the criteria that guarantee the environmental and sociocultural protection of the Biobio

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highlands and the Pehuenche communities, when the definitive Concession Decree⁸¹ was issued a special land rights regime was imposed on 131 plots, 98⁸² of which belonged to Pehuenches or their successors (63 hijuelas in Ralco Lepoy and 35 in Quepuca Ralco). The provisions cited in the preceding section were purposely omitted from the definitive decree and replaced by the following wording:

"Subsection 2, Article 9: The rights granted by this decree are those herein described and that the legislation concerning electricity confers to the grantee and do not in any way exempt the grantee of the observance to any other relevant legal obligation."

This concession allows ENDESA to occupy any plots it requests, even against the will of the indigenous landowners and against Law 19,253, since the Decree fails to state that those Pehuenche lands are classified as "indigenous lands" and actually include those lands in the general category of "private property".⁸³

The FIDH considers the compliance with the provisions of Law 19,253 (Indigenous Law) to be fundamental; this Law specifically protects ethnical minorities, indigenous communities, indigenous lands and Indigenous Development Areas. This law, as well as CONADI - the governmental body in charge of protecting indigenous rights and their regulation, make up the special rule to be applied whenever the matter involves indigenous issues, trumping other ordinary legal provisions. The FIDH understands that one of the main questions in the Biobio conflict is that the legislation on electricity is trumping the indigenous legislation. Moreover, this case is evidence that the interests of a group, associated with a multinational company, prevail over the interests of the individual and collective rights of a people.

Legal Measures Taken Against the Concession

Pehuenches families and women still resistant to the project and the exchange of lands have taken several legal measures before different authorities. The FIDH mission was informed that an appeal was filed with the Santiago Appeals Court in reference to the legislation on electricity and indigenous legislation.

In the same way, sisters Nicolasa and Berta Quintreman Calpan, in collaboration with State representatives Alejandro Navarro Brian and Arturo Longton Guerrero, as well as others, filed a "protection appeal" with the Santiago Appeals Court on 31 March 2000 to guarantee articles 1, 8 and 24 of the

Chilean constitution. This appeal was reviewed by the Second Group of the Appeals Court on 21 November 2001, and declared inadmissible for it was considered that the impugned decrees could not be qualified as arbitrary acts.⁸⁴

A lawsuit alleging to "public law nullity" was also filed. This lawsuit was based on the fact that the defense of the Pehuenche lands and the lands belonging to Mapu Domuche Newen has been persistent under the Chilean law, not having found until now a decision that protects in a permanent and complete fashion the rights that were disregarded by the construction of Ralco.

In the face of the resistance presented by the women grouped in the *Mapu Domuche Newen*, ENDESA-Espana presented before the Ministry of the Economy further petitions to make the electric concession to which they were entitled effective. Paying heed to these petitions, on 5 April 2002, the Ministry created the "Good Men Commission", in compliance with the legislation regulating the electric sector, whose work was to evaluate the plots of the indigenous and non-indigenous landowners who were still pending an agreement with ENDESA for the sale of their properties. This commission is composed of Kenny Velásquez, lawyer, Dick Bartelsman, certificated agriculturist, and Humberto Sepulveda, civil engineer.

Prior to the final draft of this report, the members of the mission have been informed about resistance that has forbidden the entrance of the commission members onto the lands to be evaluated. Anyway, as a legal measure and a consequence of the actions taken by the Ministry of the Economy, the family representatives living in Biobio filed an appeal with the highest court in the country, the Supreme Court of Justice, arguing "denial of justice" by the Santiago Appeals Court. The appeal tried to stop the evaluation underway, but was denied by the Supreme Court in June 2002. Recently the beginning of the evaluator's work was definitely scheduled for 15 October. However, the women's resistance took place and prohibited the Commission's access⁸⁵.

The FIDH understands that the Commission with which ENDESA-Espana has been working lacks legitimacy and legal base. Besides that, the development of the hydroelectric project sets forth a negative precedent in terms of human rights. All phases of the evaluation by international and national institutions have been corrupted by several irregularities. This is true for both (i) the acts of the Pehuen

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Foundation on the impact of Panguel and as regards the lack of information concerning the Downing and Hair reports, and (ii) the CONAMA and CONADI authorizations, as well as the electrical concession. This situation has resulted in a complex relationship between the State and ENDESA-España. However, the Chilean State has the national obligation and responsibility to observe its own laws (Law 19.253), as well as the international duty to make sure that human rights in general and the rights of the indigenous peoples in particular are not violated under any circumstance, especially by its own officials and for the benefit of private interests.

This situation contradicts the Chilean State's standing within the international arena. In fact, the current Chilean government, as well as its predecessors of the so-called "democratic concertation",⁸⁶ have supported the draft Declaration of the Rights of Indigenous Peoples, currently being studied by the UN. The project sets forth in Article 10:

The indigenous peoples will not be forcibly displaced from their lands or territories. No move will take place without the direct consent and full understanding of the affected indigenous peoples and previous agreements on a fair and equal indemnification, and whenever possible, with the possibility of return.

Article 26: The indigenous peoples have the right to exercise their domain, develop, control and utilize their land, including the complete environment of the lands, air, waters, coastal shores, icebergs, flora and fauna and the other resources they have traditionally exercised domain over or occupied or utilized in any form. This includes the right to full recognition of their own laws, traditions and customs, land systems, tenure and institutions for the development and management of resources and the right to require from their States effective measures to prevent all interference, usurpation or invasion in relation to these rights.⁸⁷

The right of participation and consultation is fundamental within international legislation, as it is under the Chilean indigenous legislation, in which the investigative procedures to verify the free consent by the part of Pehuenches that agreed to exchange their lands was emphasized.

The FIDH mission recognizes that the general interests of the nation are one of the legal values that must be guaranteed by the Chilean State; however, there are alternative options⁸⁸, and it is fundamental to consider the consent as well as the political rights to participation and consultation to which all Chileans, and even more so, all indigenous peoples (Law

19,253) are entitled; the State must carry out projects that, besides the right to development of all Chileans, also encompass a sustainable and respectable position towards cultural and ethnical diversity.

The fact that Chile has signed international treaties concerning the rights of the indigenous peoples - such as OIT Convention 107, updated in Convention 169, concerning Indigenous and Tribal Peoples in Independent States - does not lessen the State's responsibility to guarantee those rights. The institution of human rights represents a step forward for humanity and their integral realization is an ethical demand. It is not acceptable that the rights of the Mapuches-Pehuenches be violated due to the absence of an explicit norm, even more so in a case such as this, which represents a matter of cultural survival.

Regarding this issue, the FIDH mission team was able to meet with five members of the Human Rights Commission for the higher Congressional Chamber in Valparaíso (Enrique Zurita, President of the Commission, member of the Supreme Court and Jaime Naranjo, Socialist Senator) with the objective of questioning them about the conflicts between forestry companies and the Mapuches and between ENDESA and the Pehuenches.

The official response was one of surprise and did not recognize the problem. In fact, according to the President of the Commission, there was little or no "indigenous problems" in Chile. "They are not a people that need to be protected; they have left their lands to go live in the city, since their lands would not give them anything. The land had low profitability and that is why the government bought it." Jaime Naranjo said that the conflict is not serious and that he wondered why such a mission would go to Chile, when there was nothing there to justify its presence.

Confronted with the concerns of the Commission members regarding the conflicts between the Mapuches and forestry companies and the conflicts with ENDESA, President Zurita replied that "the country has the privilege of having the cleanest and cheapest energy in the world. Unlike the Three Gorges dam in China, we do not destroy entire peoples or historical sites."

The mission then recalled that the World Bank had expressed its disagreement with the construction of the Three Gorges dam and that multinational companies were the ones to finance the project against the World Bank's opinion. The President replied that the Pehuenches survive only from the

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collection of piñones (Andean pine tree nuts) and that on the land that is being offered to them they can grow rice and corn and raise cattle for the consumption of meat. Given the irregularities of the process that has allowed ENDESA to build Pangue, the first plant in Biobio, and to initiate the second phase of the project, and the fact that the indigenous issue is not exclusive to Chile, but is also present in other countries, especially in Ecuador, the President replied, "*Do not compare those indigenous peoples with our own. Countries in Latin America do not have indigenous legislation, but we do.*"

Finally, after repeating that the presence of the mission surprised him, Senator Naranjo concluded that, "There is no State policy to persecute the Mapuches. If they want to present themselves at election time, they may do so. I do not have any need to go all the way to the area to know that the conflicts have been the same for the last forty years."

This position is the only one that could be obtained from the current Chilean authorities. In fact, the FIDH regrets that the meeting booked with the Ministry for Internal Affairs was cancelled, since it would have been important to know the government's position on the number of irregularities mentioned above.

3. EFFECTS OF THE RALCO CONSTRUCTION ON THE PEHUENCHES

From all the direct and documented observations made by the FIDH mission, it is important to stress that the development of the Ralco Plant project on the highlands of the Biobio River will permanently affect the Pehuenche-Mapuche peoples' way of life. As shown above, different studies demonstrate that the relocated families will not be able to reconstruct the regular habits that would guarantee the cultural continuity of their Pehuenche identity. In this light, the limitations on the funds set aside for the settlement of Pehuenche families become evident, as they do not provide for the rebuilding of their condillero way of life, and generally speaking, for the reproduction of their culture with regard to its spiritual, ritual and ceremonial aspects.

According to Domingo Namuncura, "*It is also the civil death, this type of inexorable disappearance that occurs when there is no more territorial space, when the ancestral values cannot not be enforced, when rights are not recognized and then, the person and the community become the object of doubtful negotiations, morally reproachable and socially unrepresentable.*"

In terms of the loss of the constitutive values of ethnical identity, we have also grounds to argue ethnocide.

The Quepuca Ralco and Ralco Lepoy families that were displaced were relocated according to the plan presented in the Environmental Impact Assessment. The EIA's observations that said that the displacement would represent an obstacle to the Pehuenche life were ratified⁸⁹. The seasonal activities are limited to the growth in the specific and poor conditions of the plots provided.⁹⁰ Even the expected free use of electricity promised by ENDESA during the first year did not materialize, since they pay for their electricity like any other Chilean.

During the visit, the mission met with one of the Pehuenches who accepted to exchange his lands. He was relocated two years ago to El Huachi. A total of forty families are currently settled in the region, ten of which work for ENDESA. The company agreed to assist the displaced families for ten years. Some of them admit today to having signed the documents that authorized ENDESA to expel them from their lands without actually knowing what that was about.

The mission was met with in Tirua by the Provincial Governor of Biobio, Esteban Krause. According to Krause, the Mapuches affected by the dam can be classified into three categories: those who benefited from its construction and are satisfied; those who benefited from its construction but are not satisfied; and those who refuse to abandon their lands.

"*The indigenous legislation,*" recalls the governor, "*does not permit the sale of lands, but it does allow for the exchange of other lands.*" *The governor seems to not understand the Pehuenches' refusal to leave their lands, since "considering the climate and the topography, the economic development of those lands is really difficult.*" In that sense, the Governor's role is to cooperate with ENDESA and the Mapuches: "*I must get information about the negotiations, which is not always easy.*"

According to the governor, "*the families that oppose themselves to Ralco are the minority, so the government has created development programs that benefit the communities of the Biobio highlands; educational, health and agricultural programs, construction of highways, etc. The members of the Quepuca Ralco community, who are forced to move (but whose lives will be completely transformed by Ralco), also have the possibility to present projects in those fields, that will be examined by the State and supported in the instance that they correspond to a real need... an office should probably be opened in the region soon offering a number of public*

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services, aimed at making the daily life of the Pehuenche in the region a little easier."

The mission has confirmed that the families that actually oppose ENDESA feel neglected by the government. The conflict between the Pehuenche families and Ralco is symbolic. It represents the power of multinational companies. Eduardo Frei, former President of the Chilean Republic, signed on the eve of the end of his term a decree that authorizes ENDESA to continue forward with the construction of the Biobio dam. It is worth mentioning that Frei is a shareholder of Provida, company that is part of ENDESA.

Having as a reference the international legislation, the topic of resettlements deserves a complete reevaluation, due to the colonial, neo-colonial and exclusion conditions to which the indigenous peoples have been subject all over the world. In the epistemological and ethical considerations that form the basis of Western legal systems, it is generally accepted that elements and relations given legal treatment are subject to a strict balance and may be granted or modified, but never diminished. Domingo Nakamura, a CONADI employee (and therefore a privileged witness at the time the Ralco authorization was granted) argues: "A handful of indigenous individuals cannot stop the progress of millions of Chileans. And why do not all Chileans pay for what represents the irreversible loss of the Ralco environmental reserve and the destruction of a whole ancestral culture, unique on the continent?" (NAMUNCURA: 2001)

a) Repression of the Affected Communities

The FIDH mission can confirm the repression to which members of the Quepuca Ralco community who were not relocated have been subject. This community's lands, that are located far from the Quintreman lands, will not be flooded. The community, notwithstanding, has been affected by the work being carried out in the region. After some negotiation, the community and ENDESA signed, in 1998, a protocol according to which ENDESA assumes the commitment to provide the community with some improvements: reforestation, the provision of electricity to the settlers' homes, construction of a school and the donation of an ambulance, etc. Four years later, however, the promised improvements have not even been started.

The settlers of Quepulca Ralco have expressed for months their dissatisfaction with ENDESA's lack of compliance regarding several points of the agreement. On 5 March 2002, a group of Quepulca Ralco settlers organized a protest

against this situation in order to gain the attention of the authorities. The protest took place at the road that connects that community with the Ralco Lepoy community, in which most of the traffic consists of ENDESA vehicles and its contractors. After some hours of protest, which had as its main demand negotiations to guarantee the Protocol's compliance, the military police (carabineros) arrested three women on the grounds that they were Argentinians.

Around 12pm, CONADI's lawyer, Lorna Arraigada, arrived at the protest and agreed to seek a solution before the authorities holding jurisdiction over the matter. At approximately 2pm, a large number of carabineros arrived in buses. The protest was still underway, aimed at solving the situation of the detained women, well-known Pehuenche neighbors. At 5:30pm, under the threat of 80 carabineros of the Special Forces that were being sent to deal with the protest, the women started to leave to their homes.

"At 6pm, police officers, by air and land, started to fire tear gas bombs and pellets at the protesters. All of this took place with the help of police force helicopters that were also opening fire against the people and homes in the area. After repression by the carabineros and when all Pehuenches had already left, a truck belonging to one of ENDESA's contractors was set on fire as could be seen from a distance, under the sole responsibility of the uniformed personnel. Even worse, the carabineros detained Nelson Jara, a Pehuenche who works for the CCA contractor as a driver, placed him in front of the burning truck and took pictures in order to accuse him of the fire in an artificial and false maneuver" (claim presented before the Military Prosecution of Chillán).

Indeed, ENDESA had sent the carabineros who accused the members of the community of using guns and being terrorists. The carabineros have destroyed the doors of several homes and stolen a number of objects.

According to testimonies collected by the mission in the evening of 26 April 2002, the impact of the carabineros' repression on 5 March was described as follows:

In the evening, instead of the authorities, 100 carabineros arrived to the site. From a helicopter, they were throwing bombs, both carabineros and people from ENDESA, Carlos Fuenzalida. Because the construction of the dam had advanced by way of threats and force, the government says that the Pehuenches oppose Chilean development; but such progress cannot be obtained at the cost of the people. They cannot be silent when facing repression, for they are the

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owners of those lands. They are killing an identity, a culture. They have a cemetery on those lands that will be flooded, something that cannot be given a value in economic terms; an appeal has been presented before the Appeals Court, but still no decision has been rendered. The government refuses to engage in dialogue with the Pehuenches. The authorities in the region do not listen. Fifty Pehuenches were detained, including some that were working on the dam. People were taken out of their homes and arrested. Nine are being prosecuted and do not know why; they want to apply the anti-terrorist legislation to them, because they have been denouncing the situation. In five days, the Prosecutor's Office indicted 45 Pehuenches from Chillán, 11 of which are women and the rest men. María Curiao, President of the community, was seriously injured by three pellets fired by the carabineros. Lucía Reinao Huenchecao was beaten with a stick and she has cuts on her head. The first night, they were taken to the Santa Bárbara Hospital. They took some tools with them to say that the women had attacked them with those tools, but they were only working instruments. The helicopters with carabineros surveyed the area for 3 to 4 hours, flying around, watching over and frightening the community. The elder Carlos Humberto Renao, who did not participate in the protest, was taken from his house, leaving his grandchildren aged around 3 uncared for. Another elder, approximately 73 years old, was beaten and hit by pellets. Hector Vicente Jara Sepúlveda, approximately 30 years old, figures among one of the 9 persons being prosecuted. He was bitten and kicked in front of witnesses. A complaint was filed against the carabineros in Chillan.

Among the persons interviewed by the mission, several presented medical records from the Santa Bárbara Hospital proving that they were injured on 5 March. Others presented X-rays of their fractures. The cases of Jorge Godoy and Lucía Rinal deserve special attention: he was bitten in the arm and she hit on the head with sticks. In the same way, nine Pehuenches were seriously injured that day.

"We are not terrorists, but owners of our lands," affirm the leaders of the community. "We do not want to be mistreated by the carabineros, we want to be listened to by the government. We cannot cross our arms and accept everything. ENDESA has told us that there cannot be progress in Chile without development, but this development cannot come at the cost of the Pehuenches. Today, ENDESA Chile is mainly controlled by ENDESA España; they are the new colonizers."

According to the complaint presented before the Military Prosecutor's Office in Chillan, exposing the events and the legal basis of the repression that took place on 5 March

2002, the following charges can be argued:

- i) illegal detentions under the false charge of aggressions against carabineros (Article 148 of the Criminal Code);
- ii) illegal confessions and unprecedented violence (Article 156 of the Criminal Procedure Code and Article 155 of the Criminal Code);
- iii) damages to private property, robbery and illegal seizures (Article 432 of the Criminal Code)
- iv) physical and non-physical violence (Article 330 of the Military Code of Justice), illegitimate warrants (Article 150A of the Criminal Code) and disproportionate abuse (Article 366 of the Criminal Code).

Additionally, the Indigenous Law, under Article 8, considers the "explicit and intentional discrimination of indigenous peoples based on their origin and culture" to be a contravention.

The massive repression of a community formed by settlers of all ages causes extreme concern. Of particular reproach is the kind of repression this group suffered on 5 March 2002 with the active participation of agents from the Chilean government. The FIDH regrets that instead of suggesting solutions for the non-compliances incurred by ENDESA⁹¹, the government contributed to violations of fundamental rights for members of the Quepulca Ralco community.

b) The Pehuenches Women's Resistance

"I am owner of the land... from the bottom of the world," Berta Quintreman

"I am a person of principles, here in the land are my roots, I will resist forever on my land," Nicolasa Quintreman

Over the course of a long period of time, a group of 87 families refused to consent to the flooding of their land, as well as to exchange these lands for others. This group was made up of approximately 30 people and was known as "ñañas", due to the courageous actions taken on by the elder Quintreman sisters while heading up the women's organization, Mapu Domuche Newen (Mujeres con Fuerza de la Tierra).

The Quintreman sisters, owners of small plots of land (hijuelas), refused from the very beginning to leave the lands they had inherited from their ancestors. They also initiated legal proceedings against the electric concession granted to ENDESA España, and due to their determination, they were able to organize a group of eight families that resisted the

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imposed concession over the fundamental rights that were provided for under the Indigenous Law or Law 19.253.

The mission met with the Quintreman sisters (Nicolasa, 63 years old and Berta, 81 years old) in the amazing landscape of the Biobio highlands which has been totally deformed by construction work. The mountain has been opened. The only peaceful places are those small properties where the families live with some animals: horses, sheeps, goats, chicken, turkeys, ducks, etc.

Dressed in traditional garments, slightly ornate, in honor of the visitors, the Quintreman sisters have a lot of energy. In a way, they are symbolic of the indigenous struggle and for that reason, they have been subject to a great deal of pressure coming from ecologists and the media. The first group wants to make them a symbol of Chilean nostalgia that opposes modernity.

"We will not go," affirmed the Quintreman sisters in the same voice. "They have promised us a fortune, but we do not want money. We have another vision of the world. We want to die here, where our fathers and our ancestors died before us. We find ourselves beset, we have to confine our animals so that they are not run over by ENDESA's trucks, but we prefer to die before abandoning our land. The dam has already destroyed our cemeteries. The workers move the land and destroy our worship places and our sacred stones. We love the mother land and the life here. The real life is ours, not the Ralco one. There is a time to sleep and a time to work. Here the laborers work day and night; is this the ENDESA quality of life?" Determined to express their anger, Nicolasa and Berta affirm: "Since the colonizers, everything passed, but we kept the land. The river, the mountain, our language, our culture, for all that, we are not leaving. Without us, the land will die. Those who left are interested in money. We are not. Our faith is in the land, not in the money. Those who left are not well today. Go and see them!"

The whole group argues that the Pehuenche culture, the wealth of their ancestors, is strictly tied to the territory of the Biobio highlands. The attachment to the traditional way of life, the quality of the lands they have occupied for generations, the migratory herding that is part of farming, the cattle raising, the collection of pehuen, the weaving, they have and still stand as a testament to a culture that, in harmony with nature, takes what it needs from it and respects it. The land is directly linked to the Mapuche-Pehuenche identity. MAPU means "land", and CHE means "man". In the Mapuche-Pehuenche understanding, the land is part of the cosmos.

The mission also had the opportunity to meet with other women

from this organized resistance group. They have expressed the single decision to keep living on their lands; these women have denounced the constant hostilities against the last families to live in the Ralco Lepoy highlands. The mission collected the following testimonies:

Aurelia

Aurelia's family is made up of four people: herself, her husband, and her two daughters. In order to avoid discrimination in school, the girls, like all other children in the region, have two names: a Mapuche or Pehuenche one and a Spanish one. Mirajay becomes Flor de Oro; Meulen becomes Sandra. Their house is made of wood and has a canvas roof. A large boiler warms the common room. There are two rooms, one for the parents and one for the girls. The place is not far from the Quintreman sister's house. A camping area was arranged several years ago. Before the construction of the dam, they used to welcome travelers who wanted to experience the region's wonders. The camping area used to be one of the economic sources for Aurelia and her husband.

"They have pressed us to leave," says Aurelia. "The machines work day and night, a terrible noise. During the night, trucks shake the house. If one of the animals is in their way, a chicken, a goat or a dog, they just run over it, no pity. We are continually threatened. They tell us, 'If you do not negotiate, you will be moved by way of force by the carabineros.' The governor does not support us. He has said that he cannot do anything against the company, and therefore, we are helpless. However, the Indigenous Law should protect us. The people that have accepted to leave and were moved to El Huachi have no water or electricity, contrary to what they had been promised. What can be done with unproductive land, with no trees or water? The ones who have gone to El Huachi have no property title to the land. Here, we do not have electricity, but we have never had it; we have enough water for ourselves and our animals. We survive from the collection of nuts (piñones); it is not much, but it is enough for us."

The mission could actually confirm the non-stop traffic of trucks. Other witnesses, like Julia, have confirmed the fact that domestic animals are regularly run over by the trucks that do not slow down when passing by the properties. With regard to the cemeteries, besides the ones that are already flooded, another one has just been destroyed by bulldozers. When the Pehuenches protested, ENDESA said that there was nothing on that site. An archeological commission coming from Santiago has found human remains on the site and confirmed the existence of the cemetery.

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Rosario

"With ENDESA, everything is really bad, including the birds and little animals that they mob. They are always pushing us. When the company arrived, they burned our house; apparently it was the foreman. We slept for six months under a tree. Who is going to pay me? They say that my new little house was given by ENDESA, but that is not truth. They have tried to kill me. I am willing to die, but I am not leaving this land. Do not build Ralco! It is the land of my grandparents; it is my culture. They have burned an ENDESA truck and accused Hilda and another Lamien of doing it.⁹² Four vans with carabineros came in January 2001, looking for Nicolasa's son. They have carried out investigations under the Anti-Terrorism Law and they want to accuse them of being accomplices. The carabineros have threatened us telling us to leave; they are here to kill us. The carabineros work, eat, lodge and walk around on ENDESA's trucks and this situation has been the same since the second burning of trucks in February."

Chao Chao

"The president was bribed by the company. The former one had paved the way. Now this Spaniard President is following down that path. A Chilean president should love and support us, those who first walked on this land: the Pehuenches. Ricardo Lagos offered us a different government, but it has not been like that. They accuse us of being terrorists. My faith, I put it in the chao chao⁹³ not in the money that ENDESA is 'offering' to us. How will the children go out with this fuss, this hydroelectricity? Before they did what they want; now, they are face to face with the women and we are not leaving."

Mercedes Julia Guantiao

"The dam's construction does not let us sleep. We are suffering because of ENDESA. It came to injure us. I will never leave the land where my children were born, my parents, my grandparents. I am 68 years old and I have been a widow for 20; I have 9 sons. In Ralco Lepoy, I live with 3 of them. I have 21 hectares of land here and 70 on the other side. With ENDESA here, it is not possible to work. We live with the noise and the worry. The animals are mobbed, be it goats, sheeps and dogs. We have always had an abundant supply of water. But now, the waters of the well are contaminated with grounded stones and look like milk."

Moreover, the mission had the opportunity to get to know and talk with other women of the Mapu Domuche Newen

Association⁹⁴, made up of settlers and families who live in the town of Santa Barbara and who have created a support group to assist the "ñañas" resistance. They have denounced this because they are constantly beset and on 4 March, Hilda del Rosario Hiquelque Hueuteao, had a strange mechanical problem with the new association's truck that nearly caused a fatal accident.⁹⁵

The "las ñañas"⁹⁶ women's resistance has obtained national and international coverage.

In the national field, the elected Socialist President Ricardo Lagos, before his inauguration, promised to support and defend the las ñañas' cause. However, the Central Ralco project is still underway and it was the Minister of the Economy for the current administration who called upon the previously mentioned Good Men Commission (Comisión de Hombres Buenos)⁹⁷ to evaluate the lands in question, according to the provisions of the electric concession.

The Commission was supposed to prepare a report describing its evaluation work and their methods of ascertaining rights;⁹⁸ the report should be sent to all interested and affected parties, after which, ENDESA would pay the amount fixed by the Commission, plus 20% to the owner of the property, through a judicial deposit (on a checking account of the regional court). Once the fixed amount is paid, the relevant judge would order the material occupation by ENDESA or what would represent, in this case, an eviction. The only other measure that could be taken in this phase of the procedure would be the filing of a claim questioning the fixed amount to be paid for the lands, within 30 days of the final report's presentation by the *Comisión de Hombres Buenos*.

Given the continual pressure of ENDESA-España and an imminent violent eviction, the "ñañas" were compelled to leave their ancestral lands, which means the imminent flooding of the lands and Ralco's completion.

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65. This temporality is expressed by migratory movements within the Biobio River Basin in the *veranada* and *invernada*, aimed at continuing activities such as breeding livestock and picking fruits from the *Araucaria* (NAMUNCURA: 1999).

66. The "INDIGENOUS PEOPLE OPERATIONAL DIRECTIVE" was published on 17 September 1991 in order to provide some guidelines for the World Bank's operational staff. It provides a definition of indigenous peoples:

- 3. The terms "indigenous peoples," "indigenous ethnic minorities," "tribal groups," and "scheduled tribes" describe social groups with a social and cultural identity distinct from the dominant society, which makes them vulnerable to being disadvantaged in the development process. For the purposes of this directive, "indigenous peoples" is the term that will be used to refer to these groups.

- 5. Because of the varied and changing contexts in which indigenous peoples are found, no single definition can capture their diversity. Indigenous people are commonly among the poorest segments of a population. They engage in economic activities that range from shifting agriculture in or near forests to wage labor or even small-scale market-oriented activities. Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:

(a) a close attachment to ancestral territories and to the natural resources in these areas;

(b) self-identification and identification by others as members of a distinct cultural group;

(c) an indigenous language, often different from the national language;

(d) presence of customary social and political institutions; and

(e) primarily subsistence-oriented production.

It bears pointing out those directives that set the goals to be achieved by projects dealing with indigenous populations in terms of adequate participation, consultation and mitigation plans.

-8. The Bank's policy is that the strategy for addressing the issues pertaining to indigenous peoples must be based on the informed participation of the indigenous people themselves. Thus, identifying local preferences through direct consultation, incorporation of indigenous knowledge into project approaches, and appropriate early use of experienced specialists are core activities for any project that affects indigenous peoples and their rights to natural and economic resources.

-9. Cases will occur, especially when dealing with the most isolated of groups, where adverse impacts are unavoidable and adequate mitigation plans have not been developed. In such situations, the Bank will not appraise projects until suitable plans are developed by the borrower and reviewed by the Bank. In other cases, indigenous people may wish to be and can be incorporated into the development process. In brief, a full range of positive actions by the borrower must ensure that indigenous people benefit from development investments.

67. Known as: "A Participatory Interim Evaluation of the Pehuen Foundation." Internal assessment of the Pehuen Foundation (NAMUNCURA: 1999).

In those directives, the aim is to safeguard the rights of indigenous peoples, their lands or territories as well as measure and mitigate negative impacts. It is clearly stated how relevant the directive is for different programs or projects, including those of hydroelectric power plants. Furthermore, there are two operational directives on involuntary relocations. All those documents show the organization's commitment to certain international protection rules, and above all, its recognition of the cultural diversity of indigenous peoples. In the Chilean case, all those rules must be and should have been taken into account for the construction of Pangue, especially in terms of the effects that this kind of "development" has on the Pehuenche-Mapuche people.

68. El Mercurio, 31 August.

69. El Mercurio, 30 August.

70. The National Commission for the Environment, CONAMA, was created on 9 March 1994 with the enactment of Environmental Law 19.300. CONAMA is the public agency in charge of the State's environmental policy, and is dependent on the Ministerial Secretary General to the President.

71. Authorization granted by the Secretary General to the President, according to the article, *La Política de regulación del Medioambiente. Desafíos Institucionales*, by Vivianne Blanlot, Executive Director of CONAMA at that time, which was included in the book by Oscar Muez et al., *El Estado y el Sector Privado. Construyendo una Nueva Economía*, FLACSO, Santiago, Chile, LOM, edition 2000. Ms. Blanlot is now Executive Secretary for the National Energy Commission and states regarding the recent inundations that "it is a little unfair to blame the dams, because it is Mother Nature who, in this case, made 2 billion cubic meters enter per second instead of the normal 400" (27 August 2002, El Mostrador).

72. This institution was created under the decrees that were unanimously adopted under Law No. 19.253 on 5 October 1993 by the Congress of the Republic. With the implementation of this law, CONADI was established and put into effect. CONADI is a legally recognized, decentralized public agency that has its own funding and is overseen by the Ministry of Planning and Cooperation. This council is made up of 17 members, of which 8 are representatives of ministerial authorities or are presidential appointees and 8 are representatives from the indigenous communities chosen by an election process in which, during the first election, 2,600 communities participated and 80,000 people voted.

73. Regarding the integration policies of the non-indigenous society of the Chilean Government, the head of the *Corporación de la Madera*, Emilio Guerra, said in a meeting with the members of the FIDH Mission, that what the Mapuches need is more Coca-Cola and McDonalds, in reference to the need for modernization and integration, in light of the forest conflict.

74. "For the present report, the following will be taken into account: the files given to this Corporation, the repeated visits to the land, and the 64 personal interviews which are all supported by audio and visual recordings, photographs, etc. This report is the result of joint work by the Corporation's lawyer, Mr. Carlos Vargas Tapia; lawyer and head of the Legal Unit of the Subdirección Nacional Sur [a department in the national government], Ms. Sandra Jévez Mella and; lawyer for the Regional Government of Cañete, Mr. Egon Matus de la Parra."

75. Government employees working closely with the President of the Republic manifested their disagreement with the CONADI legal report and with the foreseeable end to the institutional opposition to the exchanges. It was the Ministry of Planning, MIDEPLAN, that asked for the resignation of the Executive Director of CONADI when he insisted on the decision-making sessions on 6 and 7 August. (NAMUNCURA: 1999)

76. The right to be represented in whatever participatory forum that is recognized for other mediating groups (Decalog of Indigenous Rights). This right, which is granted to the indigenous people by the Chilean State, was abridged when the indigenous representatives were not included in the aforementioned decision, not to mention the irregularities that occurred when the authorization was granted.

77. We are referring, in particular, to the conversations and documents of the ARCIS University Team of Santiago, Chile, which carries out the Legal Assistance and Defense of the Indigenous People and Communities Program.

78. Aspect resolved by the corresponding judge in ENDESA Case No. 1673 with Sola Ruedi Mara regarding the Vilicura Fund.

79. D.F.L. No. 1, of 1982, from the Ministry of Mining.

80. Ordinary Report No. 06470 25/10/99.

81. Supreme Decree No. 31, from 18 January 2000, published 16 March 2000 in the Official Daily.

82. The appraisal of Mara Elena Sola Ruedi's plot, which, compared with the Pehuenche plots, was set at 20 to 1 per hectare was previously noted. Como noticia más reciente, que evidencia otra consecuencia de Ralco, el 13 de octubre de 2002, en el diario electrónico El Mostrador (www.elmostrador.cl), se conoce que en el proceso que sigue dicha particular contra la empresa para que le pague un saldo adeudado por las tierras afectadas, ha sido suspendido por cuanto en el proceso seguido en el Juzgado de Letras de Santa Barbara. An article published on 13 October 2002 in the daily on-line periodical El Mostrador (www.elmostrador.cl) shows another effect of Ralco: The legal measures taken by Ms. Sola Ruedi to get the company to pay the balance owed for the land in question have been suspended by the Santa Barbara Court. Endesa presentó una apelación en la Corte de Apelaciones de Concepción y al ser éste acogido, se emitió una orden de no innovar para suspender el embargo de las cuentas de la empresa. ENDESA presented an appeal to the Concepción Court of Appeals and, upon its receipt, an injunction was issued suspend the attachment of the company's accounts. Cabe recordar que la señora Sola Ruedi fue la única que optó por vender a Endesa su terreno, que representa un tercio de lo que la Central Ralco ocupara. Recall that Ms. Sola Ruedi was the only person who chose to sell her land, which constitutes a third of what the Ralco plant would occupy, to ENDESA.

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83. Art. 7: State bodies act validly after regular investiture of their parts, within their jurisdictions and in the manner prescribed by law. No magistracy, no person nor group of persons may assume, even under the pretext of extraordinary circumstances, authority or rights other than those expressly bestowed by virtue of the Constitution or laws. All action contrary to this article is null and void, and will be met with the responsibilities and sanctions prescribed by law and the Constitution of the Republic of Chile. Based on this constitutional precept, the FIDH questions the institutionality of Laws 19.253, 19.300, as well as the inter-institutional and inter-regulatory harmony that should be paramount in a resolution of great importance such as that dealing with indigenous ethnic groups and the environment.

84. This is because they were the result of lengthy proceeding, "*during which challenges and claims were made, and a wide variety of reports were received.*" Also, both decrees were reviewed by the Office of the Comptroller General of the Republic which found them to be in order and in accordance with the law. Nevertheless, the following declaration from the decision of the appeal's denial should be highlighted: "*Considering 21. to be the only circumstance not brought up by the Superintendancy of Electricity and Fuels, and that the concession does not exempt compliance with the indicated laws or the matters resolved by CONAMA, in no case may this mean that Decree No. 31 take precedence over the regulations that are obligatory for all of the administration's agents and concessionary powers. As such, noncompliance by any of these parties leaves open the pertinent judicial and administrative resources.*"

85. Article which appeared in <http://www.elsur.cl> on 16 October: *Quintermán Sisters Prevented Appraisal of their Land and Demanded Resignation of Commission of Good Men.* The Pehuenche families in Upper Biobio whose land will be flooded by the Central Ralco, and who have still not reached an agreement with Endesa, prevented the Commission of Good Men, charged with appraising the land, from entering their property. The commission which is made up of Lawyer Kenny Velásquez, Agronomic Engineer Dick Bartelsman, and Civil Engineer Humberto Sepúlveda, was intercepted by the Quintermán sisters who not only prevented them from entering, but also presented them with a letter requesting that they resign their posts. The Pehuenche families were accompanied by their lawyer, Mr. Robert Celedón, who stated that they were researching other way to prevent the families from having to abandon their land. Turning to the Inter-American Human Rights Commission, whose resolutions are obligatory for the Chilean State, is among the measures considered. <http://www.mapuexpress.net/noticias/noticias2.htm#15>

86. The name given to the political party coalition that achieved, with great efforts by Chilean society, the transition to democracy after the dictatorship of General Augusto Pinochet.

87. Draft Universal Declaration of Rights of Indigenous Peoples; Organization of United Nations, OUN, April, 1994, in América Indígena, Volume LVIII, Nos. 3 4, July - Dec. 1996, Instituto Indigenista Interamericana, Mexico.

88. A study carried out by *Risopatrn Consultores*, a private organization that specialized in appraising environmental impacts and economic matters objected to the economic justification for the project. There are no precedents that would allow one to think of the Ralco project as the best solution for providing electricity to the Chilean economy. An alternative would be for Chile to invest more in a thermoelectric alternative. (ARCIS, sf)

89. The Mission refers to the reports published by CONADI regarding the productive capacity of the El Huachi, Santa Laura, El Barco, and El Redil Funds, which correspond to the places to which the families were relocated.

90. In the land meetings held by the FIDH Mission with a large number of Quepuca Ralco members, did the notice the misfortunes that family, friends, and other members of the Puhuenche population must be experiencing due to the relocation?

91. This non-compliance became clear to the Mission, which could not observe any construction in favor of the population that would be "indirectly affected" by the Ralco construction, as it was agreed upon by the Community and ENDESA-Spain.

92. *Lamien*: friend, brother, in Mapudungun

93. *Chao Ngenechen* (The Great Spirit): God, the Creator in the Pehuenche - Mapuche world view

94. The Mission interviewed Hilda del Rosario Riquelme Hueuteao and Aurelia Marian Mora (whose Mapudungun name is Meulen Huencho).

95. In a press release dated 24 January 2002, uncovered after the creation of the FIDH Mission, the Biobio Task Force (GABB) and the Mapu Domuche Newen made formal complaints against: 1) Actions by Ralco police of requesting and investigating documentation and destination of those who go up to Upper Biobio, despite the fact that most of them are the original inhabitants whose families have been there for generations and that the Chilean Constitution established the right of passage as a fundamental right in Article 19, Number 7. The Mission members had to comply with the requirement to present papers and declare their intents; 2) That there have been cases in which unidentified people and vehicles have followed and frightened members of the signatory groups; 3) That they are intercepting electronic communications from people who support the resisting families.

96. *Ñañas*: Pehuenche dialect colloquialism used among women to refer to each other as sisters or friends.

97. Exempt Resolution No. 21, 5 April 2002, Ministry of the Economy

98. In addition, it is known that the valuation did not take into account the so-called future value, or hydraulic value, but only the agricultural value of the plots. It does not seem unfounded, given the real value offered to a non-Pehuenche land owner (Sola Ruedi), who would only have considered the latter and whose case was brought legally.

V. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The FIDH mission has confirmed the existence of major conflicts in Chile where private interests relating to the companies that exploit natural resources are in confrontation with the collective and individual rights of communities that belong to the Mapuche indigenous people.

The mission emphasizes that the confrontations between the Mapuche communities and the forestry companies and the conflicts between Mapuche-Pehuenche communities and the multinational company, ENDESA-España, constitute a historical challenge to the Chilean State, which should protect the indigenous peoples and guarantee their human rights.

Although it is true that the Chilean government has passed Law 19.253, which aims specifically to protect indigenous peoples, the Chilean constitution does not recognize the indigenous peoples as the original people of the land, nor does it recognize the multiethnic and multicultural quality of the State. The Chilean State has not ratified OIT Convention 169 on Indigenous and Tribal Peoples in Independent States.

Moreover, the mission is concerned to have confirm at that the government has not even complied with its duty to guarantee the regular application of national legislation concerning indigenous peoples. On the contrary, the State has adopted a neutral position in relation to the demands of the indigenous communities, while supporting private companies, including the use of force against the Mapuche communities.

1. FORESTRY CONFLICTS

The forestry conflict has its origins in the process of occupation of indigenous lands, which started at the end of the XIX century. This process was extended during the XX century and temporarily interrupted initiatives in favor of returning indigenous lands between 1964 and 1973; it then intensified under the military dictatorship of Augusto Pinochet, who implemented a "counter-agrarian reform", which was extremely harmful to the indigenous communities. Many consider the current conflict a direct consequence of the dictatorship's "counter agrarian reform".

The police division of indigenous lands fostered by Pinochet resulted in shocking poverty for the affected communities, which led to the creation in 1978 of the first Mapuche traditional organization and the beginning of the use of legal measures to recover the indigenous lands.

However, Chilean courts have not answered to the judicial claims of the Mapuche communities and the judicial proceedings have led to neverending bureaucratic problems with no definitive solution, causing frustration in the communities, which only wish to live in dignity on their ancestors' lands.

Given the fact that the Chilean government has not assumed its responsibility to solve the conflicts between the Mapuche communities and the forestry companies, which have formal property titles to the lands, the confrontations have intensified and several Mapuche organizations have promoted non-violent measures that consist of land occupations and the interruption of forestry exploitation on lands they consider to be their own.

In order to protect their interests from the actions taken by the Mapuches, the forestry companies have contracted private (armed) militias, which have been denounced on many occasions for harassing and intimidating the communities. One of the objectives of the private groups is to cause clashes to lead to violent reactions on the part of the Mapuches in front of the media and influence public opinion.

Even more disturbing is the fact that the authorities have decided, through the direct use of force and severe repression of the communities, to safeguard the interests of large forestry companies by arguing the defense of private property. The FIDH deplores the organization of brutal and abusive police operations that have resulted in dozens of injuries since 1998, including the death of 2 Mapuche settlers in 2002. Moreover, the FIDH denounces the State's responsibility, be it through action or omission, for the disappearance of Jorge Arturo Saurez Marihuan during actions to recover lands that took place on 5 December 2002. His body was found six days later presenting clear signs of torture.

In this sense, the Mapuche actions, instead of fostering the review of judicial land claims, have resulted in a repressive

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judicial policy directed against the Mapuches and the criminalization of their actions, through the use of anti-terrorism and national security legislation. This policy, as well as corruption and maneuvers by forestry companies, have resulted in criminal prosecutions and sentences based on proceedings subject to procedural and material irregularities.

Of particular concern is the State's persecution of defenders of the Mapuches' environmental, social and collective human rights. Indeed, the Mapuches who have taken actions to protect their lands are not the only ones to be facing threats and hostilities; the lawyers defending the accused Mapuches are confronted with the same situation.

This situation has caused serious environmental damages and the impoverishment and cultural assimilation of the communities, as well as internal divisions as to what is the best defense strategy, as well as a "radicalization" of some groups within the Mapuche communities in conflict.

2. RALCO PROJECT

The hydroelectric project located at the Biobio river, the ancestral habitat of the Pehuenche culture, is a megaproject that includes the Pangué plant and the projected Ralco plant, among others. Therefore, only a broad perspective that considers the whole group of projects can duly evaluate the social, environmental and cultural costs of the megaproject.

As a result of the Pangué plant's construction - the first phase of the "megaproject" - the Pehuenches communities have become more dependent on the Chilean government. The mission has verified that not only their economy and resources, but also their culture have been directly affected by this first phase of the project. The floods in regions VIII and IX in August 2002 are also a consequence of the filling of the Central Pangué dam. Due to the negative impacts of the project, the World Bank, which had partially financed Central Pangué, has decided not to finance Central Ralco.

Regarding Central Ralco, the mission has observed procedural and material irregularities in the concession process and the authorizations granted. This is a legitimate fact that refers both to the authorizations requested from the National Environmental Commission (CONAMA) and the National Corporation for Indigenous Development (CONADI), as well as the electrical concession.

The irregularities surrounding authorization's made by CONADI - governmental body created by the Indigenous Law

and in charge of protecting the rights of the vulnerable communities - are particularly perturbing. There is an evident contradiction between the first reports issued by CONADI regarding the exchange of lands for the construction of Ralco and the final authorization granted after direct interference from the President of the Republic's cabinet. These irregularities have compromised CONADI's legitimacy, a fact that has been denounced by its own former personnel, respected academicians, human rights organizations and indigenous associations, among others.

These irregularities have allowed, in practice, for the violation of Chilean legislation, particularly the Indigenous Law. In fact, the Chilean legislation protects private property and sets forth specific norms for domain transfers. In the case of the indigenous lands, the Indigenous Law regulates their protection and defends their inalienable and unseizable nature. Therefore, the only ways to transfer those lands are through exchanges between indigenous individuals of the same ethnicity, under CONADI's authorization, in case the exchanged lands lose their "indigenous" quality.

Because of these irregularities, the communities of Ralco Lepoy and Quepulca Ralco are in danger. This is true for the several settlers who were relocated, the population directly affected by the implantation of the Biobio hydroelectric megaproject and the families who resist relocation.

Even more worrisome, the project puts at risk the very survival of the communities, because it affects the whole of ancestral, parental, symbolic, social, political and production relationships within the Mapuche community, which are essential for the maintenance and development of their lives and culture as a people in the Biobio highlands.

For all these reasons, it can be concluded that the construction of Central Ralco not only violates the individual and collective rights of the Pehuenche people according to international human rights laws concerning indigenous rights, but also causes the imminent cultural devastation of this people, which can be considered cultural genocide.

The pressure exerted by ENDESA-España against the settlers in order to achieve their relocation must be severely condemned. The means used by the company's personnel to get the settlers to sign the agreements, without disclosing the real content of the contracts, could be considered criminal, for it has resulted in the abandonment of lands by settlers who never agreed to their conditions. Besides that, the promises and commitments made by ENDESA have not been

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honored, both in the territories to which the settlers were relocated and in the territory of the Quepuca Ralco community, which will be indirectly affected by Central Ralco and which signed a protocol with ENDESA in 1998.

The FIDH is particularly concerned about the repression suffered by the 8 families that are still at Ralco Lepoy, as well as the repression suffered by the Quepuca Ralco settlers who were beaten on 5 March 2002. The participation of public forces in this violent repression that resulted in several injuries, illegal detentions, illegitimate confessions, damages to property, etc., is unacceptable.

RECOMMENDATIONS

General

First of all, the FIDH is calling on the Chilean Legislature to initiate discussion processes so as to arrive at a constitutional reform that will include the recognition of the multiethnic and multicultural nature of the Chilean people and incorporate the collective rights of indigenous peoples.

On a more urgent note, it is necessary that the Chilean government immediately take all necessary measures to effectively enforce and ensure compliance with the full content of Law 19.253, which protects the indigenous peoples. Indeed, the Chilean State should elaborate and put into practice a clear policy in relation to the indigenous peoples, in order to protect the Mapuche communities. In this sense, the creation of a new entity similar to CONADI should be considered, an entity that would be given a sufficient amount of legitimacy and independence, that cannot be manipulated by the government. The Chilean State should also organize a participatory review of its plans and programs directed at the indigenous population. Throughout this process, the participation of the indigenous communities should be guaranteed.

In particular, the FIDH urges the Chilean government to modernize and improve the Mapuche Criminal Defender's Office, by increasing the number of professionals on its permanent staff and by promoting their specialization in the defense of some criminal, social and cultural aspects. The Mapuche Criminal Defender's Office should also be expanded through the inauguration of branches in other communities within the region, besides the regional capital.

In the international sphere, the FIDH is calling upon the Chilean government to ratify as soon as possible ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries.

Finally, we suggest to the Chilean State that it send delegates to the UN to work on the drafting of the declaration on indigenous peoples and defend a position that is defined in collaboration with indigenous peoples' organizations.

Regarding the Mapuche communities and national and multinational companies:

The FIDH urges the Chilean government to comply with its obligations to initiate a full and impartial investigation of the

violence used by some police officers and private groups against the Mapuche communities, followed by the sanctioning of perpetrators responsible for deaths and dozens of injuries, in accordance with Chilean legislation. The sentences should also guarantee compensation for the victims.

The FIDH also calls for the revision of criminal procedures against the Mapuches and, in particular, those initiated against their leaders and human rights defenders. It is counting on the moral and political support of the Chilean State and institutions. The FIDH calls for the full respect and implementation of the UN Declaration on Human Rights Defenders, adopted on 9 December 1998.

In the same way, the Chilean State should initiate the revision of all land claims filed by indigenous peoples and suggest specific and satisfactory solutions to the land conflicts.

Given the poor situation of the eight families who are still resisting Ralco's construction - and the current threat that they will be violently evicted following the decision of the Good Men Commission - the FIDH proposes that permanent international observers be present.

At the same time, the FIDH calls for the creation of an independent commission, with international participation, to review the irregularities pointed out in the land exchange authorizations and the adoption of a definitive position on the legitimacy and legality of the resistance led by the eight families and the construction of Central Ralco. The same commission should decide on how the damages suffered by the Mapuche communities of Ralco Lepoy and Quepuca Ralco will be compensated.

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VI. APPENDIX

LIST OF MAPUCHES CHARGED IN TERRITORIAL CONFLICTS⁹⁹

	PERSON CHARGED	CASE N°	CRIME	COMMUNE	COMMUNITY OR SECTOR	CURRENT SITUATION
1	Aniceto Norin Catriman	83503-6	Arson	Traiguen	Lorenzo Norin, Didaico	Preventive detention
2	Pascual Pichun Paillalao	83503-6	Arson	Traiguen	Temulemu	Preventive detention
3	Pascual Pichun Collonao	45508-6	Arson	Traiguen	Temulemu	Preventive detention
4	Rafael Pichun Collonao	45508-6	Arson	Traiguen	Temulemu	Preventive detention
5	Gaston Ailla Ailla	0100015456-k	Usurpation	Collipulli	Ailla Varela	Released with precautionary measures
6	Juan Luis Llanca Llanca	4731-k	Arson	Victoria	Domingo Trangol	Preventive detention
7	Francisco Huenchunao Coilla	0200023078-5	Arson	Nva Iperial	Repocura- Malalche	Preventive detention
8	Julio Huenchunao Coilla	0200023078-5	Arson	Nva Iperial	Repocura- Malalche	Preventive detention
9	Juan Puel Tralma	0200023078-5	Arson	Nva Iperial	Repocura- Malalche	Preventive detention
10	Willem Nahuelpi Millabur	0100082305-4	Theft	Traiguen	Didaico	Released with precautionary measures (house arrest)
11	Lorenzo Puel Mariqueo	0200023078-5	Arson	Nva Iperial	Repocura- Malalche	Released with precautionary measures
12	Julio Huentecura	0100038817-k	Damage to property	Nva Iperial	Repocura- Malalche	Released with precautionary measures
13	Jorge Huaiquin Antinao	0100038817-k	Robbery with force in an uninhabited location	Nva Iperial	Agustin Chiguaicura	Released with precautionary measures
14	Walter Javier Reyes Huaiquil	0100090527-1	Violent kidnapping and robbery	Collipulli	Pancho Curamil	Released with precautionary measures
15	Jose Raimundo Queipul Caño	0100090527-1	Violent kidnapping and robbery	Collipulli	Temucuicui	Released with precautionary measures
16	Luis Esteban Meliman Millanao	0100090527-1	Violent kidnapping and robbery	Collipulli	Colliko	Released with precautionary measures
17	Jorge Heraldo Millanao Railao	0100090527-1	Violent kidnapping and robbery	Collipulli	Chakaiko	Released with precautionary measures
18	Luis Roberto Millanao Caño	0100090527-1	Violent kidnapping and robbery	Collipulli	Temucuicui	Released with precautionary measures
19	Luis Alberto Catrio Curinao	0100090527-1	Violent kidnapping and robbery	Collipulli	Colliko	Released with precautionary measures
20	Segundo Samuel Mardones Chihuai	0100090527-1	Violent kidnapping and robbery	Collipulli	Butako	Released with precautionary measures

99. Instituto de Estudio Indígenas (Institute of Indigenous Studies), Report On The Situation Of Mapuche Rights, University of La Frontera, <http://ww.derechosindigenas.cl>

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21	Juan Francisco Manquel Queipul	0100090527-1	Violent kidnapping and robbery	Collipulli	Colliko	Released with precautionary measures
22	Luis Anselmo Manquel Linko	0100090527-1	Violent kidnapping and robbery	Collipulli	Colliko	Released with precautionary measures
23	JuanHuechucura Pichun	48835-2	Violent robbery	Galvarino	Triftrifko	Released with precautionary measures
24	Sergio Andres Santander Pichun	48835-2	Violent robbery	Galvarino	Triftrifko	Released with precautionary measures
25	Orlando Huechucura Pichun	48835-2	Violent robbery	Galvarino	Triftrifko	Released with precautionary measures
26	Enriquez Morales Ñanculeo	48835-2	Violent robbery	Galvarino	Triftrifko	Released with precautionary measures
27	Fernando Jose Pichun Solis	48835-2	Violent robbery	Galvarino	Triftrifko	Released with precautionary measures
28	Juan Segundo Pichun Marileo	48835-2	Violent robbery	Galvarino	Triftrifko	Released with precautionary measures
29	José segundo Morales Apeleo	48835-2	Violent robbery	Galvarino	Triftrifko	Released with precautionary measures
30	Juan Edo Pichuñan Morales	48835-2	Violent robbery	Galvarino	Triftrifko	Released with precautionary measures
31	Hector Rafael Morales Quiñaleo	48835-2	Violent robbery	Galvarino	Triftrifko	Released with precautionary measures
32	Cayunao Millapan Roberto Antonio	0200023559-0	Usurpation, damage and arson	Galvarino	Triftrifko	Released with precautionary measures
33	Ana Orfelina Calfiqueo Huaiquiman	0200023559-0	Usurpation, damage and arson	Galvarino	Triftrifko	Released with precautionary measures
34	Joel Augusto Burgos Lillo	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuco	Released with precautionary measures
35	José Alejandro Cayunao Millanao	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuco	Released with precautionary measures
36	Gervasio Segundo Aníñir Huincahual	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuco	Released with precautionary measures
37	Ignacio Marcial Millalen Paillal	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuco	Released with precautionary measures
38	Segundo Jose Millalen Paillal	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuco	Released with precautionary measures
39	Camilo Enrique Lizama Marileo	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuco	Released with precautionary measures
40	Alfredo Millan Ñiripil	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuco	Released with precautionary measures
41	Segundo Mateo Cayunao Millanao	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuco	Released with precautionary measures
42	José Audilio Tropa Marilaf	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuco	Released with precautionary measures
43	German Segundo Huenteleo Pichihuinka	0200048067-6	Illegal Association	Freire	Mahuidache	Released with precautionary measures
44	Francisco Caripan Llancañir	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
45	Avelino Collinao Loncon	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
46	Pedro Saavedra Lincoñir	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures

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47	Mario Currin Paichan	0200048067-6	Illegal association	Freire	Trapilhue	Released with precautionary measures
48	Vicente Meliman Huenupi	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
49	Juan Carlos Huentemil Huenupi	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
50	Pedro Galvarino Paillan Painevil	0200048067-6	Illegal association	Freire	Huilquilco	Released with precautionary measures
51	Juan Pedro Meliman Huenupi	0200048067-6	Illegal association	Freire	Trapilhue	Released with precautionary measures
52	Hernan Patricio Meriman Huilipan	0200048067-6	Illegal association	Freire	Trapilhue	Released with precautionary measures
53	Oscar Ruben Curin Huilipan	0200048067-6	Illegal association	Freire	Trapilhue	Released with precautionary measures
54	Juan Antonio Curin Huaiquimil	0200048067-6	Illegal association	Freire	Trapilhue	Released with precautionary measures
55	Pedro Galvarino Currin Paillan	0200048067-6	Illegal association	Freire	Trapilhue	Released with precautionary measures
56	Luis Emilio Caripan Lanquñir	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
57	Juan Carlos Vasquez Mariman	0200048067-6	Illegal association	Freire	Trapilhue	Released with precautionary measures
58	Hugo Cayuman Malleo	0200048067-6	Illegal association	Freire	Trapilhue	Released with precautionary measures
59	Pedro Marin Huechuñir	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
60	Juan Paineipi Lefin	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
61	Fredy Marcelo Millapi Teran	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
62	Belisario Saavedra Aniñir	0200048067-6	Illegal association	Freire	Huilquilco	Released with precautionary measures
63	Juan Carlos Curin Crin	0200048067-6	Illegal association	Freire	Trapilwe	Released with precautionary measures
64	Antonio Meliman Huenupi	0200048067-6	Illegal association	Freire	Trapilwe	Released with precautionary measures
65	Eleuterio Neculman Manqueñir	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
66	Rosario Meliman Pinchulaf	0200048067-6	Illegal association	Freire	Trapilwe	Released with precautionary measures
67	Juan Fco Meliman Pinchulaf	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
68	José Santiago Meliman Huenupi	0200048067-6	Illegal association	Freire	Trapilwe	Released with precautionary measures

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69	German Hueche Quintrinao	0200048067-6	Illegal association	Freire	Huilquilkó	Released with precautionary measures
70	Santiago Meliman Currin	0200048067-6	Illegal association	Freire	Trapilwe	Released with precautionary measures
71	Moises Meliman Currin	0200048067-6	Illegal association	Freire	Trapilwe	Released with precautionary measures
72	Florencio Esteban Lemuñir	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
73	Cristina Aurelia Teran Hueche	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
74	Graciela Loncon Barrera	0200048067-6	Illegal association	Freire	Mahuidache	Released with precautionary measures
75	Francisca Huentemil Huerquepi	0200048067-6	Illegal association	Freire	Trapilwe	Released with precautionary measures
76	Eugenia Ancavil Queupumil	0200048067-6	Illegal association	Freire	Trapilwe	Released with precautionary measures
77	Cristian Rodolfo Calfunao Mena	0200048067-6	Illegal association	Freire	Trapilwe	Released with precautionary measures
78	Eric Octavio Nahuelpi Millanao	0100090527-1	Violent kidnapping and robbery	Collipulli	Temukuikui	Released with precautionary measures
79	Luis Orlando Lican Queipul	0100090527-1	Violent kidnapping and robbery	Collipulli	Temukuikui	Released with precautionary measures
80	Francisco Llanca Killapan	0100015456-k	Usurpation	Collipulli	Ailla Varela	
81	Gaston Ailla Ailla	0100015456-k	Usurpation	Collipulli	Ailla Varela	
82	Pedro Lican Melinao	010002182-9, 1069-3, 17304-1, 23820-8	Theft, usurpation, illegal association, illegal carrying of weapons, kidnapping.	Collipulli	Ailla Varela	Released with precautionary measures
83	Vicencio Bayotoro Cayul	010002182-9, 1069-3, 17304-1, 23820-8	Theft, usurpation, illegal association, illegal carrying of weapons, kidnapping	Collipulli	Ailla Varela	Released with precautionary measures
84	Manuel Santander Solis	0100037260-5	Rioting, disturbing the peace. Grievous bodily harm.	Traiguén	Temuko	Released with precautionary measures
85	Jose Nain Nain	0100037260-5	Rioting, disturbing the peace.	Traiguén	Temuko	Released with precautionary measures
86	Domingo Ernesto Ñancupil Millanao	0200044697-4	Contempt for authority and assault on authority	Galvarino	Minas de Huimpil	Released with precautionary measures
87	Robustiano Nelson Lepiqueo Morales	0200044697-4	Contempt for authority and assault on authority	Galvarino	Mañiuko Chico	Released with precautionary measures
88	Luis Alberto Cayunao Millapan	0200044697-4	Contempt for authority and assault on authority	Galvarino	Huilcaleo	Released with precautionary measures
89	Jorge Lorenzo Lepin Lepin	0200044697-4	Contempt for authority and assault on authority	Galvarino	Lepun	Released with precautionary measures
90	Francisco Jose Curinao Lepin	0200044697-4	Contempt for authority and assault on authority	Galvarino	Lepun	Released with precautionary measures
91	Juan Carlos Maril Martinez	11143-7	Illegal exaction	Angol-Puren	Lof Juan Maril, el rincón, Tranakepe	

Source: Prepared by Mara del Rosario Salamanca based on records from the *Defensora Penal Pública Mapuche* (the Mapuche Public Criminal Defence Body), Temuco, August 2002.

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17, passage de la Main d'Or - 75011 - Paris - France
CCP Paris : 76 76 Z

Tel : (33-1) 43 55 25 18 / Fax : (33-1) 43 55 18 80

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