

Dialogue and Deception

The communities of Cotzal entered into dialogue with Enel and laid out their central demands. There was hope that while the communities did not want a hydroelectric plant to be constructed, and had never been consulted, at least the dialogue would be a form of reparative justice. In hindsight, it turned out that Enel would use the dialogue to stall and buy time to complete construction of Palo Viejo, which would become operational in 2012. Moreover, Enel would eventually abandon dialogue and use certain talking points to undermine the communities and enter into a secret agreement with a newly elected municipal mayor. Thereafter, Enel would criminalize the ancestral authorities and the struggle that the communities of Cotzal had engaged in since 2008.

Between May and December 2011, there were a total of nine dialogue meetings between the communities of Cotzal and Enel. All of the meetings with the exception of the last one were held in either the town center of Cotzal or San Felipe Chenlá. The last meeting was held in Guatemala City on December 26. The participants involved in the dialogue were nine *voceros* who were selected by the communities of Cotzal to represent them at the meetings. These included Concepción Santay Gómez (San Felipe Chenlá), Baltazar de la Cruz Rodríguez (San Felipe Chenlá), Maximiliano Poma Sambrano (Cotzal), Miguel de León Ceto (Pulay, Nebaj), and Antonio Pérez Martínez (Santa Avelina). The communities of Cotzal were accompanied by the lawyers Moisés Rosales Barrientos and Marly Vásquez. The representative of Enel was Oswaldo René Smith González, and the lawyer for the Finca San Francisco was Jorge Sactic Estrada. An academic also sat with Enel and was perceived to be allied with the company. According to one of the *voceros*, this academic was “hired by Enel to be able to direct and mediate the

dialogue that they had initiated. . . . They were practically serving the company [and] defended Enel.” The *testigos de honor* were also present for these meetings. During the fifth meeting, Vinicio López Maldonado, assistant to Ramazzini, was named as the moderator, and Enel selected a secretary to take notes. In addition, there were delegates from twenty-eight communities who attended the meetings. International observers attended one or more meetings; the ambassador of Norway for example, was present during the fourth meeting. Other international and national observers included lawyers, academics, and NGOs.

This chapter begins by detailing the nine dialogue meetings between the communities of Cotzal and Enel, including the ways in which Enel, while maintaining a discourse of acting in “good faith,” hindered and diverted discussion. The chapter then recounts how Enel abandoned the dialogue, despite efforts by the communities of Cotzal to maintain communication. Last, I examine seven of Enel’s talking points to illustrate the ways they seemingly evaded accountability and responsibility for the harm committed against the communities of Cotzal, such as violating FPIC, labeling the ancestral authorities as “illegitimate,” and causing environmental degradation.

DIALOGUE MEETINGS

As mentioned, the first meeting of the dialogue was on May 2, 2011. During the second meeting, on May 7, 2011, the communities of Cotzal and Enel formally adopted, signed and sealed the guidelines and terms for dialogue (figure 13). These were:

1. During the dialogue process, coercive measures will not be used by any of the actors. No means of pressure or threats will be used, such as criminal complaints or complaints of any other nature, arrest warrants, raids, disinformation, or attempts of any kind to divide communities.
2. The dialogue process will be in good faith, ensuring that the communication between the parties is respectful, courteous, and frank and that both parties make the corresponding consultations, so that the dialogue is participatory and the resolutions that are adopted are firm and lasting, seeking the common good of the communities.
3. Enel recognizes and respects the ancestral authorities as legitimate representatives of the Indigenous communities involved and as interlocutors of the company in the dialogue process. The communities recognize that Enel Guatemala is a company legally established in the country.
4. The rights associated with public, private, and community property guaranteed by the Political Constitution of the Republic of Guatemala are recognized, as well as the rights that the state of Guatemala and ILO Convention 169 grant to Indigenous communities, particularly on territories

1. Durante el proceso de diálogo no se utilizarán medidas de coerción por ninguno de los actores. No se utilizarán medios de presión o amenazas tales como denuncias penales, ni de cualquier otra naturaleza, órdenes de captura, allanamientos, desinformación ni intentos de cualquier tipo para dividir a las comunidades.
2. El proceso de diálogo será de buena fe, procurando que la comunicación entre las partes sea con respeto, cortesía y franqueza, y haciendo ambas partes las consultas que correspondan, de manera que el diálogo sea participativo y que las resoluciones que se adopten sean firmes y duraderas, procurando el bien común de las comunidades.
3. ENEL reconoce y respeta a las autoridades ancestrales como representantes legítimos de las comunidades indígenas involucradas y como interlocutores de la empresa en el proceso de diálogo. Las comunidades reconocen que ENEL Guatemala es una sociedad legalmente establecida en el país.
4. Se reconocen los derechos asociados a la propiedad pública, privada y comunitaria garantizados por la Constitución Política de la República de Guatemala, así como los derechos que el Estado de Guatemala y el Convenio 169 de la OIT otorgan a las comunidades indígenas particularmente sobre los territorios que tradicionalmente han ocupado y utilizado como medios de vida de las comunidades indígenas.
5. Las propuestas de acuerdo se someterán a consulta y aprobación de las comunidades involucradas en el diálogo y de las más altas autoridades de ENEL.
6. Los acuerdos finales se harán constar en escritura pública y de forma judicial ante el órgano competente.

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Testigos de honor

Vocero de las comunidades

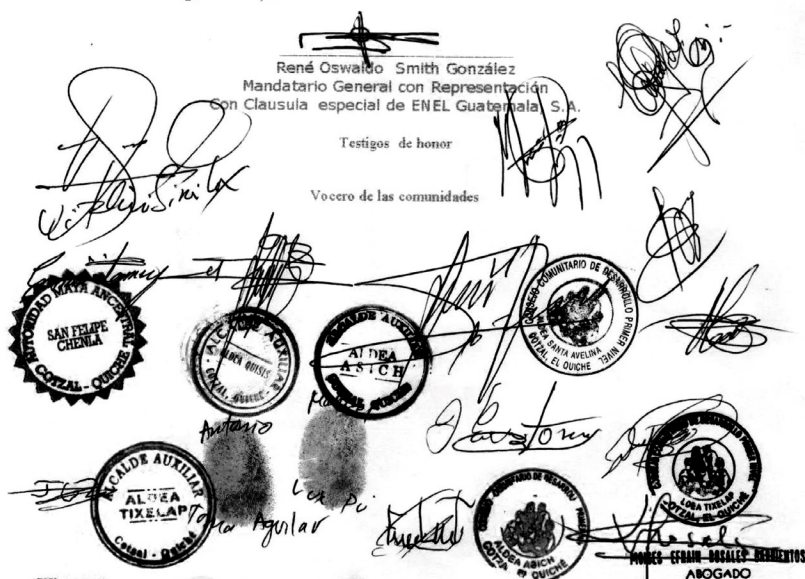


FIGURE 13. Terms for the dialogue process between Enel and the communities of Cotzal, May 2011. Courtesy of Bo'q'ol Q'esal Tenam K'usal / Alcaldía Indígena de Cotzal.

that Indigenous communities have traditionally occupied and used for their livelihoods.

5. The proposed agreements will be submitted for consultation and approval by the communities involved in the dialogue and by the highest authorities of Enel.
6. The final agreements will be recorded in a *escritura pública* [public deed] and judicially before the competent body. (“Bases para el proceso” 2011)

These guidelines were based on mutual respect and recognition of the ancestral authorities as the legitimate representatives of the communities of Cotzal. These discussions were also to be free of coercion and threats such as legal prosecution. The need for dialogue was viewed as an important step in having mutual discussions between the communities of Cotzal and Enel, something that the communities had been requesting for years. At the start of the dialogue the municipal mayor Pérez Chen was in hiding for the death of the police officer in 2009, and the municipality played little role during the meetings. The central demands of the communities of Cotzal throughout the dialogue were for (1) 20 percent of the energy produced by Palo Viejo to be administered by the communities of Cotzal; (2) paving of the main road between the town center of Cotzal and the community of Pinal, a length of approximately sixteen kilometers; (3) Q8 million every year for the next twenty years that Palo Viejo would operate, to be used for local development; and (4) creation of a commission to inspect and repair damages caused by the hydroelectric plant. Table 6 provides a summary of the nine meetings between the communities of Cotzal and Enel.

The third dialogue meeting would begin a longer discussion on Enel’s “good faith” gesture of distributing *laminas* (tin sheets of zinc) for roofing to community members and the question of who should benefit from Enel’s proposed projects. Enel offered to give sixteen *laminas* per family in twenty communities, for a total of 43,104 *laminas* for 2,694 families. At this point, the *voceros* pointed out that sixteen sheets did not constitute the minimum housing standards for *laminas* needed to cover a roof. For example, an average household of five needs at least twenty-four *laminas*. In addition, ridge caps are required with the *laminas* to prevent water leaks, pests, and rodents from entering through the roof. The *voceros* argued that all the communities and families of Cotzal should receive *laminas*, not just the twenty communities identified by Enel as being within their “sphere of influence,” especially since they considered that all communities contributed toward protecting and maintaining the river used by Palo Viejo. Moreover, giving *laminas* to only some communities was a form of exclusion that threatened to further divide communities and bring about conflict.

The rooms used for the meetings were filled, and audio speakers were installed outside so people could hear discussions. But Enel began to suggest dialogue in a private setting, a move that threatened transparency and public accountability

TABLE 6 Nine dialogue meetings in 2011

Dialogue no./date	Location	Topics discussed
1: May 2	San Felipe Chenlá	Enel agreed to drop charges, and the communities of Cotzal ended their blockade as conditions to begin dialogue. <i>Testigos de honor</i> were selected.
2: May 7	San Felipe Chenlá	Terms of dialogue were reached. Enel recognized ancestral authorities as legitimate representatives of Cotzal.
3: May 15	San Felipe Chenlá	Enel offered sixteen <i>laminas</i> (tin sheets) to every family in twenty communities as a gesture of good faith. <i>Voceros</i> requested that all of the communities be given <i>laminas</i> .
4: May 24	San Felipe Chenlá	Discussion regarding <i>laminas</i> .
5: June 10	Cotzal (town center)	Discussion regarding <i>laminas</i> and the sphere of influence continued.
6: June 30	San Felipe Chenlá	Discussion regarding <i>laminas</i> and the sphere of influence continued. The <i>voceros</i> reiterated their central demands, including 20 percent of Palo Viejo's electricity, which Enel rejected verbally. Enel's representatives agreed to take the communities' proposal to Rome, Italy, to be discussed during their shareholders' meeting. Enel offered a set of programs surrounding education, microcredits, and technical training.
7: August 5	Cotzal (town center)	Enel formally rejected the communities' central demands in a written document and offered the same projects that it had offered in the previous meetings.
8: September 2	San Felipe Chenlá	Smith González questioned the format of the dialogue meetings. Enel presented the same projects, which the communities of Cotzal rejected. Enel again rejected the central demands of the communities of Cotzal and called for restructuring the <i>mesa de dialogo</i> .
9: December 26	Guatemala City	Enel again rejected the demand for 20 percent of Palo Viejo's energy and again called for the restructuring of the <i>mesa de dialogo</i> .

to the communities of Cotzal. Community leaders claimed that Enel offered to provide detailed information on investments and profits from Palo Viejo, but only on the condition that dialogue be conducted behind closed doors with just the nine *voceros* present and “without the presence of the delegates of the twenty-eight communities,” advisers, observers, or lawyers, and that this meeting take place outside Cotzal (Curruchich Cúmez and Vecchi 2011, 70).

Despite committing to open discussions with the communities of Cotzal, Enel from the start of dialogue attempted to divide them through various tactics such as the use of proxies to promote their interests. In the community of Chisis, don Juan, who was the *alcalde auxiliar* in 2011, told me that Enel had hired someone from a neighboring community to try to convince the community to support the

company: "What they did, they searched for the authorities, they searched for the people in each community; the company had their workers. . . . There was one in [the neighboring community], he was working with the company . . . [and he came] to convince people that the company was good [and would] give us projects. . . . The COCODEs were convinced, and I was not." Don Juan says that the second *alcalde auxiliar* joined the COCODEs but that he himself refused to sign a document from Enel requesting local support. He warned other community members that their signatures and documents could be used for other purposes. Don Juan remembers telling the COCODEs that the *laminas* were not worth their signatures and trust, and remembers saying to them: "You are going to receive things, you are going to trust them for little things, but the territory [and water are] going to be harmed. . . . *Laminas* will last a few years, but the company will be there for fifty years." On May 17, 2011, a group of about fifteen people came to don Juan's house so that he could give them his seal and sign Enel's document. Don Juan was away from the community, and his wife and son refused to hand over the seal, but the group took it by force. They stole don Juan's *vara* and seal, and left at approximately 11 p.m. In an open letter on May 18, 2011, the Alcaldía Indígena of Cotzal denounced these actions in Chisis and reported that workers of Enel had tried to do something similar in Chichel and Vichivalá. In Santa Avelina, one of Enel's workers tried to get authority from the *alcalde auxiliar* to distribute *laminas* since they accused the *vocero* of risking their chance of receiving *laminas*; the *alcalde auxiliar* denied this request. In short, promises of *laminas* and promises of projects were used to divide communities.

At the fourth dialogue meeting, the *voceros* stated that Enel should not create division, and the conversation focused on *laminas*. The fifth meeting again saw discussion regarding the number of *laminas* that would be distributed. In a protest letter, the ancestral authorities denounced Enel's attempts to divide the communities and provided the examples of the events mentioned above in Chisis, Vichivalá, and Chichel. Moreover, they reported that on June 2, 2011, during a meeting in Cajixay, Enel workers said the dialogue was a waste of time right when they were distributing pastries and beverages. They requested that Enel control its workers and respect the dialogue process.

At the sixth meeting held on June 30, 2011, discussion began regarding the distribution of *laminas*, and the *voceros* eventually reiterated their central demands and submitted a written proposal. Enel rejected these demands and counteroffered with their own proposed projects, which would be outlined in a document entitled *Sumando voluntades: Plan de responsabilidad social corporativa renovables de Guatemala, S.A.-Proyecto Hidroeléctrico Palo Viejo* (Enel Green Power 2011). Their plan had four main goals:

- Increase the technical knowledge, skills, and capabilities of young people and adults to increase the income of households, focusing on the potential of the municipality.

- Prepare the conditions for carrying out a phase to promote the development of entrepreneurial initiatives in the municipality.
- Create environmental education programs at the primary and basic level with the objective of creating awareness among children and youth of the importance of the use, management, and care of natural resources as a basis for the integral development of the municipality.
- Support the execution of programs for the use, recovery, preservation, and sustainability of resources focused on the management of forested areas and the municipality's water resources. (5)

To achieve these goals, proposed projects included creating a "training and technical education center," providing *pelibueyes* (a type of domestic sheep), extending microcredits, and establishing community seed banks (5–6).

While these programs may seem progressive and attractive on paper to an outside observer, the communities of Cotzal rejected them mainly because they were imposed and did not fit with local visions of development and *tiichajil*. For example, with regard to the proposal of a nursery that would bring in imported seeds, don Concepción told me: "We have native seeds from our grandparents and ancestors, and that is what we have. We do not accept [their offer] because that would be taking away the value of our seeds that our ancestors have obtained over hundreds of years." Microcredits were also viewed as a capitalistic tool that has been used to displace Indigenous Peoples from their lands. Don Concepción echoed these sentiments: "[They say,] 'We are only going to give a loan,' and over time [if] we cannot pay back that money, they take us off our land, let's say they give you [the loan] now, if you no longer pay, you have to abandon the houses or the land, and *they invade us little by little, so we do not allow this because we have already seen how the invaders were before*" (emphasis mine). After the *voceros* refused these proposed projects, Enel's representatives claimed that they would take the communities' proposals to Rome, Italy, where there was a scheduled stakeholders' meeting at their corporate headquarters at the end of July to discuss the situation in Cotzal. According to Baltazar, "They received our demands and said, 'Well then, let us analyze it, we are going to present it to our highest leaders, our highest bosses, so that they can give their respectful response.' 'It's okay,' the communities said. Enel was given time to consult. . . . [He said] he would present it in Rome, and the answer would be given as soon as possible." Once Enel's representatives came back from Rome, community leaders say their attitude changed and they became even more demanding. During the seventh meeting, Enel verbally rejected the communities of Cotzal's proposals.¹ Instead, the company counteroffered to provide projects that again involved microcredits, scholarships, and a technical school in the town center. The communities in turn rejected these offers.

Another demand from the communities was to receive data and figures regarding investments and profits from Palo Viejo. Enel agreed to this but would reveal this information only to the nine *voceros* and the *testigos de honor*. The

communities believed that if they were to have a clear and transparent conversation with Enel this information needed to be public and was vital for their discussions. But Enel refused to provide any information regarding profits and their finances. In a press release issued August 19, 2011, the communities said they were worried about Enel's intention to continue meeting, and said that "the dialogue would only help ENEL to finish building the Palo Viejo hydroelectric plant" (Comunidades Indígenas 2011).

Eighth Dialogue Meeting

The eighth meeting held on September 2, 2011, would be the last dialogue held in Cotzal after Enel arrived with a written proposal that reiterated the same proposed projects presented in the previous meeting. The meeting had two agenda items: (1) Enel would provide a written response to the communities' demands, and (2) the communities would explain their perspectives and plans for development. The meeting would prove to be tense.

Before the agenda items could be discussed, the moderator read the "Bases para el proceso de diálogo" after Enel called for a reformatting of the rules and procedures of the meetings. Afterwards, Smith González began to question that document and said that the only people who should be present at the dialogue table were Enel and the communities of Cotzal, their lawyers, and the *testigos de honor*, and that there was no need to have observers, advisers, or any other entities present. Ramazzini then countered that the "Bases para el proceso de diálogo" needed to be respected. Baltazar then intervened, asking, "What damage do observers do in the dialogue? . . . We the communities are not [like the] governments that lock themselves [behind closed doors] with companies and negotiate under the table." Another *vocero* added that the representatives for Enel had privileges not shared by community members: "There is no problem for you, you're on the clock, I don't know how much you get paid to come here, [but] there is no problem, that is paid by Enel. For us who are here, not one penny, no one pays us to come here, we have lost eight days, apart from the consultations we have made, and what results do we have? . . . There are no results." Moreover, he asked, what was the harm of having advisers and observers at the dialogue, especially if there was nothing to hide? The *voceros* questioned whether Enel was discussing the format of the meetings and the presence of observers and advisers merely as a strategy to waste time and prevent any real progress on their demands from taking place.

At the meeting, Smith González then began to read Enel's written proposal about the projects they were offering with simultaneous translation by an Ixil who seemed to have difficulty translating some portions, words, and concepts. After the reading, Smith González handed out copies to the *voceros*. The proposals were nearly identical to those provided in previous meetings. So don Concepción asked if this was the same proposal from August. He noted that Enel had added only a few other points and that it had not responded to or addressed their demands, and

he pointedly asked if Smith González had brought another document or offer to present. In response, Smith González said:

No, Concepción, I didn't bring another document. In the penultimate paragraph it is mentioned that we are in the best disposition to listen to what you propose and it says, I am going to read it to you: "Enel Guatemala hopes to know and discuss as part of the dialogue process any reasonable proposal that the communities may present, ruling out the possibility of discussing the approach of considering [that the community receive] 20 percent of the electrical energy to be generated." I think that's an answer. "Or [that the community receive] more than 8 million quetzals per year for the first twenty years . . . Additionally [the company] cannot be held in any way responsible for psychological and cultural damage that it never produced, simply because we have not been an actor in any armed conflict." So here [we understand] that we are giving an answer.

Afterwards, don Concepción asked why Enel had rejected their demands. As Smith González explained the company's position: "Really, I think what is happening, don Concepción, is that the model you propose does not adhere to the company's cooperation model, it isn't the amount that's the issue, but the form. . . . The form is not a form that the company can accept as a way to collaborate, or to cooperate, or to work together or to participate in the development of the communities." He continued by saying that Enel was looking for "creative" proposals that were mutually beneficial.

Baltazar in his role as *vocero* addressed Smith González, recalling the origins of the dialogue and the double standard that existed

Since we started the dialogue, you as a company, you have given the orders, how things have to happen. . . . From the beginning of your show of will, you ruled out sixteen communities in [receiving *laminas*]. . . . They continue to be ruled out today. . . . The company always does what it wants, but we, the communities, have never been listened to, clearly, and it is evident, we have not been paid attention.

Baltazar then mentioned the pressure that had been exerted on the communities to accept dialogue in May, recalling that the police and military that were in Nebaj had been ready to enter Cotzal if they did not come to an agreement with Enel. He stated: "The communities are always seen as inferior, they see us as if we were mongrels, house dogs to accept the piece of tortilla that can be offered. . . . We feel we are treated this way because we have the natural resources that belong to the communities, and at no time did we want to negotiate for Mother Nature, because we did not buy this, this is a good for everyone." Baltazar added that there had yet to be any real discussion of their demands and that Enel's proposals were not compatible with the Ixil vision of development or *tiichajil*.

We have held three meetings since the reconsideration of our demands, twice they have presented us the same thing today. . . . I see that you bring a development model,

but we do not have this form of development in mind. Last time we were clear in saying that we as communities have our own vision of community development, not like the government, which has imposed itself on us and come and said what we have to do. We are clear in saying, the rivers that are here in Cotzal belong to the communities. It is not only for ten [or] twenty. . . . It is for the entire municipality, and therefore, as communities present in the dialogue, we have the right to part of the profits and the energy that the company will produce. . . . We repeat several times, if the rivers were not here, the company would not be interested in coming here; if this were a desert, I imagine that a mining company would have come.

Baltazar questioned the company's perspective regarding the role that communities had in shaping their corporate social responsibility programs: "What we are analyzing is that they are once again rejecting the proposal that we made on June 30. So where are the communities going? What role are we playing? We are following the model that [has been imposed, and] we are always forced to accept . . . , we are always [expected to abide by what [we are told]." He adds that the communities have their own local forms of development that they can draw from. After Baltazar spoke, the room erupted in applause demonstrating support for his words. Another concern that the communities had was how the Q37 million that Enel reported having given Cotzal had been used. *Voceros* said that there were thirty-six communities, so each community should have received at least Q1 million, but if one visited them, they had not received any projects from Enel. Furthermore, in San Felipe Chenlá, the materials for the school built by Enel were of inferior quality.

In response to Enel's proposal, *vocero* don Miguel de León Ceto described the company's relationship to the people of Cotzal as a colonialist and its attitudes as paternalistic. He addressed Smith González's use of the words *reasonable* and *creative* in proposing development projects:

You want to be our dad, you want to be our mom, you want to do things the way you want, when you talk about reasoning, what is the reasoning, what is reasonable for you ? . . . You keep 80 percent and we get 20 percent, do you think this is reasonable? . . . You talk about creativity, what is your creativity? . . . Because if you presented us with this same proposal that you brought on [August] 5, it seems to me that it is not creativity. Why do you demand creativity from us if you keep bringing us the same proposal?

Vocero don Antonio Pérez Martínez also claimed that Enel did not have the desire to negotiate. He told all in attendance, "They discriminate against us as Indigenous people, as campesinos, they totally discriminate against us." For the *voceros* and communities, Enel's insistence on reorganizing the format and structure of the *mesa de dialogo* was a strategy to buy time and prevent serious discussion regarding their demands, and a way to end dialogue. The inequality between Enel's representatives and the *voceros* was also pointed out by don Miguel, who said, "We

are willing to talk . . . but it seems to us that you have come to finish the dialogue, tire us, tire our witnesses. For you there is not much of a problem, you arrive in your planes, your helicopters.” The meeting ended without further discussion of the agenda, and the future of the dialogue was uncertain.

On November 2, 2011, Smith González sent a letter to the *testigos de honor* that again called for the restructuring of the *mesa de dialogo* and accused the *voceros* of violating the *bases de diálogo* through their press releases regarding it (Smith González 2011a). Enel proposed that the *testigos de honor* and the moderator implement a Mechanism of Dialogue that would include (1) naming a moderator; (2) naming a secretary; (3) naming a *vocero*; (4) finding a neutral site; (5) defining an agenda; (6) defining participants of the process; (7) accrediting all participants involved; and (8) institutionalizing the dialogue process to ensure long-term compliance (Smith González 2011a). The communities would issue a statement on December 9, 2011, in which the communities of Cotzal and Uspantán denounced the misinformation that Enel was spreading and protested the contamination of the rivers due to the construction of Palo Viejo.

Ninth Dialogue Meeting

The ninth and final dialogue meeting would see representatives of Cotzal travel to Guatemala City to meet with Enel on December 26, 2011. There Enel again rejected their proposal of providing 20 percent of their electricity to Cotzal and reaffirmed their position and counteroffer. One of the leaders in attendance said that they had tried to find ways to work with Enel on the 20 percent proposal and had even suggested that the communities become stakeholders, but the company would not budge from their position and still insisted on changing the guidelines and terms of the meetings. This time, Enel proposed having only six *voceros* instead of nine and having meetings in Guatemala City. The people of Cotzal said they could not do this: the guidelines for dialogue were already signed, and they could not accept Enel's proposal of restructuring the *mesa de dialogo*. So they left without any resolution. One of the leaders who went to the meeting said he was devastated by the outcome:

It hurts me because I went to the capital [on December 26, 2011], and nothing was achieved at that time, that date they were going to respond. What destruction, *me dio pena* [I felt sorrow], and all the people *le dio pena* [felt sorrow]. [Enel's representative] looked like a professional, but in his manner he was not a professional. These are people who have no conscience about Cotzal's communities. . . . I felt pain, I hardly ate [afterwards].”

In Guatemala, people with a university education such as *licenciados* are viewed as respectable, but in this case, this leader viewed Enel's representatives as people without any ethical concern for the people of Cotzal. We can also observe the emotional and physical impact of Enel's actions, as this leader was unable to eat. Other leaders described feeling similar emotions and frustrations. These communities

and their leaders had risked their lives and risked imprisonment and were still open to dialogue, but Enel never budged from its position, and worse, disrupted the dialogue process.

During the dialogue meetings, Enel kept pushing for meetings to be held outside Cotzal and in private, but the communities objected on the basis that the meetings needed to be made public in order to maintain transparency. Community leaders who attended meetings provided summaries from the meetings to their communities in general assemblies. In Santa Avelina, I was present the day after the fourth dialogue meeting and saw the *voceros* provide updates, address concerns, answer questions, and receive suggestions and input for over two hours with approximately five hundred people in attendance. The *voceros* were accountable to the communities of Cotzal, but Enel was not.

ENEL ABANDONS DIALOGUE

After months of meetings, Enel would eventually end communication with the communities of Cotzal and abandon the dialogue. The communities of Cotzal made various attempts to continue dialogue with the aid of the *testigos de honor*. But Enel would not stop attempts to restructure dialogue and would resend a proposal to restructure the *mesa de dialogo* on January 17, 2012 (Smith González 2012a). The ancestral authorities responded a few days later and the two sides were unable to reach an agreement.

In April and May 2012, don Concepción and *testigo de honor* Ramazzini traveled to Rome, Italy, to visit Enel's corporate headquarters. There they met with an Enel executive to express their wish to restart dialogue. In June, Enel, through the *testigo de honor* Gustavo Porras, provided a proposal to renew dialogue under certain conditions such as the dialogue being "neither public nor open," and Cotzal's participants consisting of "a representative of the central government, the municipal mayor of Cotzal, and a representative of the Cotzal ancestral authorities" (Santay Gómez 2012a). This proposal was again rejected since it did not respect the *bases de dialogo*.

The Alcaldía Indígena of Cotzal sent a letter on August 6, 2012, requesting that Enel start dialogue again and continue to discuss their central demands (Santay Gómez 2012a). Three months had passed without a response from Enel, which led don Concepción to write another letter in November, seeking to know their position on the dialogue:

By virtue of your long silence, we request your response within five business days from the date of receipt of this letter, under notice that if you do not make a statement within the indicated period, the dialogue table will be considered broken and definitively terminated, along with the dialogue itself, [and that will be considered Enel's responsibility and not the responsibility] of the Ixil Maya communities of San Juan Cotzal or of their ancestral authorities. . . . For a dialogue with results that benefit our daughters and sons and our communities. (Santay Gómez 2012b)

Ramazzini also sent Enel a letter dated November 8, 2012, where he claimed that days prior he had spoken to Oswaldo Smith González on behalf of the ancestral authorities to ask if the dialogue was still in place and that Smith González had responded by saying that the company was still open to dialogue, but in another form, and that the dialogue could not continue in its current “format,” under which he could not see how they could reach an agreement (Ramazzini 2012). Ramazzini added that Smith González had promised to write down his verbal explanation in a memorandum and send it to him via email but that he had not received it yet. Smith González eventually responded in a letter addressed to Vitalino Similox and copied to Porras and Ramazzini on November 13, 2012. Here he reaffirmed commitment to dialogue and wrote: “Allow me to reiterate the will of Enel Green Power Guatemala to maintain a fruitful, friendly, and good faith dialogue, with the goal of joining efforts in favor of the economic and social development of the Municipality of San Juan Cotzal” (Smith González 2012b). Moreover, he added that the dialogue should include “a wide space for participation” and, with the aid of the *testigos de honor*, should allow for “the exchange of ideas, the identification of proposals, and the construction of consensus through a frank and respectful discussion between the state, civil society, and the company” (Smith González 2012b). Smith González ended his letter by adding that in accordance with the commitments based on the principles of social corporate responsibility, he ratified their wish to continue dialogue that would be “strengthened” by the election of the municipal mayor and his council. Unbeknownst to the communities of Cotzal at this time, by early November 2012 Enel was secretly beginning to negotiate with the municipality and the newly elected municipal mayor.² Smith González’s letter was deceptive in that he committed Enel to dialogue based on good faith and “a frank and respectful discussion,” but at no point in his letter mentioned that Enel was already in dialogue or planning to dialogue exclusively with the municipality of Cotzal (Smith González 2012b). Furthermore, there was no mention of reformatting dialogue with the ancestral authorities, as they had done in the past, which could also suggest that Enel had no intention of resuming talks.

In March 2013, it was publicly announced that Enel had arrived at a new agreement with the recently elected and new municipal mayor Baltazar Cruz Torres (2012–20). This was done without the knowledge of the ancestral authorities or the communities, and their meetings were held in private. According to Enel in a report published a year after the agreement was signed, “The new Municipal Mayor asked Enel Green Power for a reasonable period of time to consolidate his position and then hold a constructive dialogue that would result in solutions. Dialogue with the new authorities began in November 2012, when the first meeting was held by what was called the ‘*Technical Table*,’ comprised of representatives of the Municipal Council of San Juan Cotzal and representatives of Enel Green Power Guatemala” (emphasis in original, Enel Green Power 2014a, 8). As noted by Enel, dialogue between Enel and the municipality began in November 2012. The first meeting established the method that would be used in dialogue. A “Working

Table” was established, and “The negotiation process was conducted on December 21, 2012, date of the change of era or Baktún, as per the Mayan calendar. It is considered as a time of change and a good omen for cultures descending from the Mayan civilization” (8).³ After months of discussion, on March 11, 2013, at “a public ceremony held” in the town center, the municipal mayor presented the agreement to the *alcaldes auxiliares* and presidents of the COCODEs, who subsequently supported it, according to Enel (9). Though the report claimed that the agreement was made public through a ceremony, many people did not hear anything about it before or on that date. The news was a surprise.

The new agreement was signed at the presidential house with the participation of President Otto Pérez Molina, who had been the military commander of the Ixil Region at the height of the violence between 1982 and 1983 and was known by his wartime pseudonym of Tito Arias (*Prensa Libre* 2013). Under the new agreement, Enel’s annual contributions to the municipality increased from 800,000 to Q2.3 million (\$294,871.79) or “85% of the income of the municipality” (Enel Green Power 2014a, 10). Enel stated that the municipality would receive approximately \$8.21 million over the next twenty years (10).⁴ In a 2012 Sustainability Report, Enel would provide a “memorandum of understanding with the municipality of San Juan Cotzal,” which reads:

On March 13, 2013 in Ciudad de Guatemala a memorandum of understanding was signed, in the presence of the President of the Republic Otto Pérez Molina, which aims to promote economic, social, environmental and cultural development to improve the living conditions of the inhabitants of San Juan Cotzal. With the financial support of Enel Green Power, projects and initiatives will be realized locally regarding education, health, and water management, culture and to enhance the municipal administration itself, with the allocation of economic benefits which will favor associations or organized groups of women. Before the signing the contents of the agreement were agreed by the Mayor and the Municipal Council with all the leaders of the local communities and were approved by them. The Mayor of San Juan Cotzal, Baltazar Cruz, stressed that “this agreement is the result of an understanding among all the parties involved and was designed with the aim of promoting development that is shared among all the communities belonging to the local area and it promotes cooperation, dialogue, and reconciliation, also in order to resolve any differences or disagreements which may arise in the future.” (Enel 2013, 75)

President Pérez Molina, Smith González, and the municipal mayor hailed the agreement as a great achievement since it would allow Palo Viejo to operate without any conflicts.

Since the agreement was made in private between the municipality and Enel, and without the participation of those who had been in the dialogue with Enel, the news came as a complete surprise. Coincidentally, members of the Alcaldía Indígena of the Ixil Region were in a meeting in Guatemala City. After learning of the agreement, they went to the presidential house, where they

confronted the municipal mayor. The moment was captured by Guatevision, a news channel, whose report stated that the municipality and Enel “put an end to the conflict over the operation of the Palo Viejo hydroelectric plant in exchange for [Q] 2.3 million in royalties, with the signing of an agreement that, according to the municipal authority, had previously been accepted by the COCODEs and the community mayors” (Guatevision 2013). The reporters captured the tense moment between the municipal mayor Cruz Torres and the *alcalde indígena* of Cotzal don Concepción Santay Gómez standing face to face, surrounded by news outlets, members of the Municipal Council, and ancestral authorities. Don Concepción asked municipal mayor Cruz Torres why he had not been invited to the meeting two days earlier regarding the agreement. A reporter then asked don Concepción how many were not content with the agreement, to which he answered that during the dialogue twenty-eight communities had been represented. The municipal mayor was then asked by the same reporter if those twenty-eight communities had been included in the process. Cruz Torres responded, “The problem is that they form a group that is parallel to the municipality of San Juan Cotzal, to the representatives of the municipality. . . . They excluded the Municipal Council at the time, and now they feel excluded” (Guatevision 2013). Don Concepción then told a reporter that the actual result of the agreement was “just a crumb, really this is a crumb that the company leaves for the people of San Juan Cotzal.”

Don Concepción traveled again to Italy in May 2013 to publicly denounce Enel. Italian activists with the human rights group Stop Enel organized a protest in front of Enel’s corporate offices to highlight the struggles being undertaken by various communities in multiple countries against the company (Recommon 2013). Don Concepción spoke at an event along with other activists from Colombia, Romania, and Chile to denounce Enel’s lack of consultation (Recommon 2013). The organizers of Stop Enel visited Cotzal on multiple occasions during dialogue and afterwards as a form of international solidarity.

After Enel abandoned dialogue, there were credible fears and serious concerns that the government would declare a state of siege in Cotzal. These concerns increased when the newly elected municipal mayor requested that the Ministry of National Defense install a military detachment in Cotzal, which happened on April 20, 2012. The official reason was to provide additional security to combat crime. At a national level, Pérez Molina had declared a state of siege in Santa Cruz Barillas, Huehuetenango, in May 2012 to arrest those who opposed a hydroelectric dam (Hernández 2012). On October 4, 2012, the army would commit the first state-sponsored massacre since the end of the war in 1996 after opening fire on people from Totonicapán who were peacefully protesting on the highway about high electricity prices and constitutional reforms, among other issues, killing six and injuring at least thirty-three (Falla 2012).

After the request to install an army garrison was made to the minister of national defense, the municipal mayor sent a letter to the communities of Cotzal

on May 3, 2012. According to leaders, he asked them to sign a letter drafted by the municipality that supported the request and called for combating delinquency through the use of the military. In addition, the letter stated that the mayor was democratically elected and that signees agreed to the following statement:

We categorically reject the actions of some people who call themselves Indigenous authorities, who are people who named themselves a short time ago and who just want to form a parallel authority to the existing community authorities such as the auxiliary mayors. Therefore we ask the municipal authorities that these people be ignored, because all they do is hinder the development of the municipality. This organization is nothing more than an offense to the people of San Juan Cotzal, because we as community authorities and the municipal authorities are people of Indigenous origin and popularly elected. (emphasis mine, unsigned letter 2012)

On May 7, 2012, the community leaders of San Felipe Chenlá responded to the municipality with a letter that read:

We received your document sent to members of our community authorities dated May 3 . . . when a meeting was held in the municipal seat of Cotzal, in relation to the installation of a military detachment. . . . As community authorities we want to inform you that we have reached consensus that the decision is not [in the interest of our] community. This is due to the fact that last year in 2011 . . . the army once again sowed terror in our community, recalling the '80s when the internal armed conflict took place. The army broke into our community on more than three occasions and helicopters flew over our community. From this we saw a [community] reaction of repudiation of the army. (Autoridades de la Comunidad San Felipe Chenlá 2012)

The community letter then proposed an alternative to the military in terms of security and encouraged the municipal mayor to look for community and municipal strategies to confront delinquency. They argued that the best path was to find ways to reintegrate youth into society. In addition, the community of San Felipe Chenlá reaffirmed their recognition of the ancestral authorities and their work in defending the communities' rights. The conflation of the call for the military's return and the rejection of ancestral authorities by the municipality created concern. For community leaders, the return of the military was a strategy meant to control and intimidate social movements. Despite these efforts from San Felipe Chenlá and other communities, their calls were ignored.

The army garrison came to Cotzal without warning. I was returning from Chichel with two friends when we got the call of the military's return and drove to the town center. During the ceremony for their return on June 12, 2012, hundreds of people were gathered in the plaza. Some were standing on the church steps, other standing directly behind the over twenty-five armed military members who were lined up in three rows facing the plaza platform where municipal and military

officials were giving speeches. The platoon was to consist of between twenty and thirty soldiers (no more and no less than that) and was to be based within the municipal hall next to the main road that leads to the Finca San Francisco.

During the speeches, municipal officials mentioned the war and the violence as being in the past but recognized the history of the military in the Ixil Region. One municipal official stated:

This combined force comes to bring peace, they are our friends. As the [municipal] mayor said, what happened, already happened, if something happened in history and in the past, well, if it was serious then, there was a reason . . . but now we are living a different life. Something important [is] to instill respect for the authorities in our children, because the members of the army, the police, are our authorities. Therefore, they deserve respect, because if we insult them, the same law says that it is a mistake, that it is a crime to insult or mistreat our authorities.

Colonel Rudy Ortiz Ruiz of the Fifth Infantry Brigade in Huehuetenango, who came to San Felipe Chenlá during the blockade, said that the soldiers were in Cotzal for the people's security and well-being. He stated that this was the Fifteenth Detachment in the brigade and that more than 150 requests had been made throughout Guatemala to get a detachment for their locality, so residents should be grateful for the army's presence. These speeches capture authoritarian sentiments of gratitude for the military, particularly after a municipal official recognized the military as their authorities and made it clear who was in control. This took place after the municipal mayor sent a letter to communities asking them to reject the ancestral authorities. The presence of the military was again viewed as the government's support for Enel.

The increase of military garrisons in Guatemala during this time was criticized by the Organization of American States in reports regarding human rights and extractivist industries, noting the role that militarization plays in repressing Indigenous Peoples. In 2015, the Inter-American Commission on Human Rights (IACHR) stated that in Guatemala it "verified that, in clear contradiction of the Peace Agreements, military garrisons were set up on ancestral lands and territories of indigenous communities and municipalities, particularly in areas where there were strong protests in defense of indigenous rights, purportedly as a strategy to allow projects to go ahead, in addition to which, Army personnel were said to be engaging in illegal acts" (IACHR 2015a, 84). Describing the ways in which "Civilian Police and Army operations [were] designed to intimidate and silence social protests and force the implementation of extractive industry projects," the IACHR cited the case of Cotzal and the movement against Enel (133). In another report, the IACHR made special mention of the Ixil Region as an area where militarization was concerning because of recent protests against megaprojects:

The alleged increase in the military presence in the Ixil Region, one of the most affected by the armed conflict, is particularly troubling. In this region the number of military personnel has purportedly increased in the Chajul Military Base and the Nebaj military detachment. Also, a detachment was installed in Cotzal, and it is alleged that there is constant patrolling by the military personnel based in the military base of Ixcán to Chajul and Izpatán, locations in the Northern Area. In the view of the leaders, shared with the IACHR, “[The military] comes to control the peoples instead of the companies that want to come in, if the members protest they control the demonstrations [and] intimidate the population, especially those who are victims or survivors of the conflict. The wounds have not healed and they are open again.” (IACHR 2015b, 159)

The military detachment would remain in Cotzal and was a reminder of the Guatemalan state’s willingness to use the armed forces to repress protesters. In addition, in other communities that are resisting megaprojects, such as Santa Cruz Barillas and El Estor, the Guatemalan state has increasingly militarized and abused the use of states of siege to suspend civil liberties. These types of repressive measures have criminalized, persecuted, and arbitrarily arrested activists, Indigenous leaders, journalists, and environmentalists (Batz 2021).

ENEL’S TALKING POINTS

Corporations often avoid taking responsibility for damage committed in communities. In discussing the Palo Viejo conflict, Enel had issued press releases, open letters, and public reports. Within these, I have identified at least seven of Enel’s main talking points: (1) consultation was carried out before the construction of Palo Viejo (CDM 2010); (2) the ancestral authorities are illegitimate (Enel Green Power 2014a); (3) protests were controlled by outsiders and/or the “radical” few (Enel Green Power n.d.); (4) private property supersedes ancestral and collective rights (Enel 2013, 75); (5) Palo Viejo is environmentally friendly (Enel Green Power 2014a); (6) Enel was not present during the civil war and should not be accused of causing psychological harm to local residents (Smith González 2011b); and (7) the hydroelectric plant brings jobs and development, and the company goes beyond the call of duty with its corporate social responsibility (CSR) programs (Enel Green Power 2014a).

Talking Point 1: Consultation Was Carried Out before the Construction of Palo Viejo

As mentioned in chapter 4, consultation is a contentious issue, and there are various interpretations as to how it should be carried out. Enel details out its perspective on its consultation process in a Clean Development Mechanism (CDM) report submitted to the United Nations Framework Convention on Climate Change. Section E of the report, entitled “Stakeholders’ Comments,” is divided into three

subsections where Enel lays out its consultation process for Palo Viejo. Enel presents copies of newspaper clippings, two in Spanish and another in Ixil, without identifying which periodical they were published in (CDM 2010, 38). They state that the purpose of these advertisements in three unnamed Guatemalan newspapers was “to inform the general public about the existence of the EIA Study of the Project, allowing: 1) public consultation during a period of 20 working days, starting in Spanish on December 22nd, 2005 and in Ixil on March 4th, 2006; and 2) allowing the reception of comments, consultation or even opposition manifestations, properly substantiated in every case” (CDM 2010, 38). By translating the content of the newspaper clippings presented in the report, which were published in relatively small print, one can see the discrepancies between the Ixil and Spanish version, as well as the affected communities’ lack of accessibility to information. The translated Spanish version reads:

PUBLIC NOTICE

Through this medium it is made known to the public that the Environmental Impact Assessment Study of the Palo Viejo Hydroelectric Project in the department of Quiché will be available for consultation and comments for twenty business days (from 9:30 a.m. to 5:30 p.m.) at the headquarters of the Ministry of Environment and Natural Resources, 20 Street 28–58, Zone 10, Guatemala. (CDM 2010, 38)⁵

One can observe that the notice mentions the Environmental Impact Assessment (EIA) study for Palo Viejo but does not specify that Palo Viejo is in Cotzal or on the Finca San Francisco. In addition, the ad states that if one wants to consult the study or present opposing comments, one must visit the Ministry of Environment and Natural Resources in Zone 10 of Guatemala City. This would require considerable time and expense for people of Cotzal to travel to the city. Moreover, government officials and workers at ministries have historically discriminated against Indigenous Peoples and do not attend to them properly; even if someone made it to the ministry, they might find the space inhospitable. The translated Ixil version of the Public Notice reads:

INFORMATION TO THE PEOPLE

We are informing the people that the study on the protection of forests has already been carried out. They can consult it and/or visit. It will be announced for twenty days, and whoever wants can comment. Some information about the study will be given from 9:00 a.m. to 5:00 p.m. at the facilities of the offices of the Ministry of Environment and Natural Resources at the following address . . . 20 Street 28–58, Zone 10, Guatemala. (CDM 2010, 38)⁶

While the Spanish version mentions that the EIA for Palo Viejo was completed, the version in Ixil makes no mention of a hydroelectric plant or its location. More importantly, the Ixil version was written in Ixil using the variant from Nebaj and not Cotzal. A community member from Cotzal who reads Ixil told me that the

version from Nebaj may not be accessible or clear to people from Cotzal, and the announcement assumes that there is only one variant of Ixil and that speakers can read it. The Ixil version may have been a bad translation, but despite this, there is no mention of Palo Viejo or San Francisco. An announcement that does not mention the project or its location cannot be considered a form of informed consultation.

Enel also notes in its CDM report that there was a “public hearing held on May 2nd, 2006, in the presence of all of the presidents of the COCODE from San Juan Cotzal,” where the presidents “showed disagreement for the project construction and remarked that Cotzal communities should be consulted to obtain their opinion regarding the project development” (CDM 2010, 40). Enel states that as a result, “in accordance to that request, after consulting the stakeholders” they received comments and support from the municipal mayors from Santa Cruz del Quiché, Nebaj, and Chajul (all outside Cotzal), who said that the hydroelectric plant would “benefit many communities that despite being connected to the grid have no electric current” (CDM 2010, 40). Enel would label their conversations with the municipal mayors of Santa Cruz, Nebaj, and Chajul as “consultation” and as a result would move to submit the EIA to MARN, “fulfilling all requirements according to the Decree No. 22-2003” (CDM 2010, 40).

Enel states that they were also able to obtain “11 letters of support to the project addressed to the Mayor of San Juan Cotzal and signed by leaders of the COCODE’s . . . where they attest to know and approve project construction’s plan (signed from September 2006 to March 2007)” (CDM 2010, 41). In Cotzal, these communities were Buenos Aires, Xeputul I, Xeputul II, Sajubal, Villa Hortensia Antigua, Tzibanay, Las Guacamayas, El Pinal and Pamaxan, and San Pedro La Esperanza and Los Regadíos in Uspantán.⁷ In addition, they presented in their report a letter signed by the governor of the department of El Quiché on November 23, 2006, and another letter from seventeen communities that “unanimously agree to provide support to the construction of the project activity,” signed on July 8, 2008 (CDM 2010, 42). While Enel claims to have carried out consultation, its process was unclear, especially since they have not clarified what they did to gain these communities’ support after many were against the project initially (as Enel confirms). In some cases, community leaders say that Enel obtained these letters and support through deceit and by making false promises and commitments. There are also claims that the municipal mayor through his political allies and pressure forced communities to sign these letters; in other words, FPIC was not respected.⁸

Enel has argued in various publications that Palo Viejo has legitimacy since they made deals with elected officials, going back on their signed 2011 document where they agreed to start a dialogue with the ancestral authorities of Cotzal and recognized them as legitimate representatives. For example, in a 2013 Sustainability Report, Enel claims with regard to the 2013 agreement with the municipality that “before being signed, the contents of the agreement were agreed by the mayor

and the town council with all the leaders of the local communities and were approved by them” (Enel 2014, 92). The Guatevision news story mentioned above regarding don Concepción’s public confrontation with the municipal mayor after the mayor signed the new 2013 agreement demonstrates how Enel and the municipality attempted to publicly represent themselves as consulting the communities of Cotzal and providing benefits. If it had not been for this confrontation, there would have been no mention of the dialogue in the news story. In addition, the municipal mayor stated that the protesters had excluded the municipality from the dialogue, but there was no mention of how the municipality at the time was repressing community leaders and opponents of Palo Viejo, or that municipal mayor Pérez Chen, an ally of Enel, was a fugitive at the time.

Talking Point 2: The Ancestral Authorities Are Illegitimate

Enel claimed that the ancestral authorities of Cotzal were illegitimate and blamed them for the breakdown of dialogue. According to Enel, “Dialogue did not progress due to illegitimacy, illegality, and the rigid position of ancestral authorities” (Enel Green Power 2014a, 8). These declarations contradicted their earlier signed agreement to initiate dialogue, in which they recognized “the ancestral authorities as legitimate representatives of the indigenous communities,” and the accusation constitutes a form of defamation on a national and international level (“Bases para el proceso” 2011). In an official response provided to me directly via email by the external relations representative for Enel Green Power, the company’s position on the conflict in Cotzal was the following:

The conflict originated when the *self-named group of ancestral Indigenous mayors* wanted to be part of the dialogue process that the company was already holding with the local authorities and with the leaders of the Community Development Councils—COCODES—entities that, in accordance with the current Municipal Code, are the only ones that the law recognizes to represent the local population. The conflict became polarized when the municipal mayor of San Juan Cotzal found himself involved in a police-judicial matter. *The situation was taken advantage of by local politicians who took the hydroelectric project as a discourse for their electoral repositioning.* (emphasis mine, personal communication, December 10, 2014)

Again, we see Enel claiming that the ancestral authorities were illegitimate because they were “self-named” and that they were protesting only for personal gain, while not acknowledging the collective aspect of the communities organizing and their central demands. Moreover, regarding dialogue, Enel via its external relations representative states:

The judicial process against the mayor [Pérez Chen] created a vacuum of authority in San Juan Cotzal. The local politicians and the self-named ancestral Indigenous mayors claimed representation of the population and sought to negotiate with the

company. The company spoke with them in order to learn their positions and requests. However, it did not reach any agreement since *these groups lacked representativeness and legitimacy*. ENEL GREEN POWER GUATEMALA sat down at the dialogue table with the municipal authorities elected in September 2011, in a process that had the participation of 87 percent of the voters of San Juan Cotzal. (emphasis mine, personal communication, December 10, 2014)

Enel's response reaffirms their position that the authorities lacked legitimacy and makes no mention of the agreement on the terms of dialogue. Enel claims to have signed a deal with the municipal mayor and points to his legitimacy given the participation of 87 percent of the electorate in his election, but some question his legitimacy on the basis that out of these 87 percent, only 36 percent of the 13,114 possible voters voted for him (Tribunal Supremo Electoral 2011, 528). These criticisms also note Guatemala's weak and corrupt democratic system, in which the municipal mayor can win with a simple majority and there are no run-off elections. It demonstrates how the electoral system and political parties divide communities.

*Talking Point 3: Protests Were Controlled by Outsiders
and/or the "Radical" Few*

In various reports and press releases Enel portrays itself as a socially responsible company, but it has criminalized community leaders and claimed that they have been manipulated by external organizations. For example, in their version of the conflict, Enel writes: "The community of San Felipe Chenlá, one of the 36 communities of the Municipality of San Juan, began a road block, alleging that the supply of funds for the construction of a school in this community had been delayed. The protest was led by a few NGOs (CONAVIGUA, MOJOMAYA, FUNDAMAYA). The most *radical leaders* monopolized the protest, unsuccessfully trying to extend it to other communities and rejecting several mediation attempts" (emphasis mine, Enel Green Power n.d.). This version of history denies the autonomy, agency, and self-determination of the local people and the various communities involved in mobilizing, since it places the blame on external actors in the form of NGOs. It ignores the participation of multiple communities and claims that only the community of San Felipe Chenlá was involved in the blockade. While the NGOs that Enel mentions were present during the conflict, they were there as observers and accompaniers, and they were not heading or inciting the movement. Furthermore, Enel never mentions the march in Pulay, the blockade in Santa Avelina, the warrants for arrests of community leaders from various communities (Santa Avelina, Vichivalá, Cotzal, and San Felipe Chenlá), or the arrival of the military, among other events.

I have spoken to leaders from all over Cotzal, and it is clear that the people of Cotzal have not been manipulated or forced to protest Palo Viejo by outsiders

or a “radical” few. I have spoken with people from all walks of life, ex-guerrillas, ex-patrolmen, ex-military, evangelicals, Catholics, spiritual guides, youth, elders, women, and men, all of whom joined to oppose Palo Viejo. The strategy of accusing non-Indigenous outsiders of manipulating Indigenous Peoples is used by dominant groups and is based on a racist mentality and trope that views Indigenous Peoples as incapable of thinking for themselves or practicing self-determination. The same strategy was used to discredit the guerrilla movement during the war, when the Ixil were accused of being manipulated by outsiders. Denying the Ixil their agency, creativity, and potential is a colonial strategy, one that Enel employs to avoid accountability.

*Talking Point 4: Private Property Supersedes Ancestral
and Collective Rights*

In a 2012 Sustainability Report, Enel stated that Palo Viejo “was fiercely opposed by a group of activists . . . on the grounds of alleged ancestral rights to possession of the land affected by the project (land which, in any event, was wholly owned by one individual)” (75). With regard to the claim that Palo Viejo operates on private property, the communities of Cotzal contend that (a) the Finca San Francisco was founded by displacing Ixil (as described in chapter 2), and (b) ancestral and collective rights supersede private and individual property rights. There is a lack of clarity about many of the boundaries of fincas located in the Ixil Region, partly because of errors in the original mappings due to poorly trained, corrupt, or incompetent surveyors (McCreery 1994, 59). In Cotzal, proving where the boundaries of the finca are has also caused controversy because the ejido map went missing sometime after 2004. The Alcaldía Indígena launched an investigation and met with all the living municipal mayors and other previous municipal officials to determine what happened to the ejido map. Many claimed that the map had been stolen or lost during the 2004–8 administration of Baltazar Toma Sambrano, and they specifically blamed the administrator of the Finca San Francisco who served as *sindico* in the administration. Speculation that the ejido map had been stolen increased with the realization that during this time the Finca San Francisco and Enel had agreed to build Palo Viejo, and some stated that they were not sure if Palo Viejo was fully within the territorial limits of the finca in Cotzal. Thus some claimed that without the ejido map, the verification of the Finca San Francisco’s territorial limits made Palo Viejo’s validity and location uncertain. The lack of information also speaks to the finca’s and Enel’s unwillingness to provide informed consultation.

The communities of Cotzal argue that Palo Viejo is located on ancestral territories. The finca has been in existence for only a little over a hundred years, while the Ixil have lived in Cotzal for thousands of years. Moreover, the Finca

San Francisco is the location of archaeological and sacred sites, and being barred from accessing these spaces is a direct threat to Ixil cultural rights, identity, and spirituality.

Talking Point 5: Palo Viejo Is Environmentally Friendly

The construction of the hydroelectric plant led to unforeseen environmental consequences such as contamination of the river and dynamiting of hills that caused bats with rabies to infect livestock and create public health concerns. While Enel states that Palo Viejo is a run-of-the river hydroelectric plant that did not require the relocation or displacement of people, the construction of its four diversion dams (Presa Cotzal, Presa Chimal, Presa El Desengaño, and Presa El Regadío) has caused problems. The diversion dam Presa Cotzal near Santa Avelina has damaged crops, altered the landscape and the course of the river, and cut off the ancestral path of animals such as deer, which are sacred within Maya cosmovision. Within an Ixil worldview, these changes can also be a violation of *tiichajil* or *txaa*, and the diversion of rivers into concrete and metal canals and dams is seen as a kidnapping.

Talking Point 6: Enel Was Not Present during the Civil War and Should Not Be Accused of Causing Psychological Harm to Local Residents

In a letter that Enel's representative read at the dialogue meeting to the communities of Cotzal in September 2011, he declared that "in no way can [Enel] be held responsible for psychological and cultural damage, which it never caused, simply because it was never an actor in the internal armed conflict that unfortunately occurred in Guatemala" (Smith González 2011b, 2). While Enel denies that they had a role in creating psychological stress and cultural conflict in the communities of Cotzal, they omit various points. First, it is true that Enel was not present during the civil war, but they became business partners with the Finca San Francisco and the Brol family, who supported the military during the armed conflict. Second, the issuing of arrest warrants against the nine community leaders resembled the persecution that community leaders suffered during the war, especially since the nine leaders had been victims of the earlier violence. For example, the father and uncle of don Concepción, *alcalde indígena* of Cotzal, were leaders who were kidnapped and disappeared by the military. Third, the arrival of members of the armed forces in San Felipe Chenlá on March 18, 2011, caused psychological harm, not just among the direct victims of the conflict, but among the youth present, since many of them were scared and some cried. Today, many members of the community remember this as a traumatic day. Government officials working closely with Enel such as Pérez Molina and Pérez Chen have been implicated in repression and human rights violations, and one can see why residents would be scared. Guatemala is a violent place for environmentalists, human rights activists, and Indigenous Peoples protesting megaprojects. A global company like Enel cannot claim ignorance or deny their role in re-creating and benefiting from an

environment marked by violence, armed conflict, terror, fear, and persecution. Ignoring the historical-social context of the Cotzal communities and the Ixil's worldview is irresponsible and is not in accordance with Enel's discourses as outlined in their CSR programs and their claim to green energy.

*Talking Point 7: Palo Viejo Brings Jobs and Development,
and Enel Goes beyond the Call of Duty with Its CSR Programs*

One of Enel's biggest claims is that they bring about development through their CSR programs. During my field research living in and visiting most communities in Cotzal, Enel's CSR program was not present in daily life in the ways portrayed in their reports and press releases. J.P. Laplante and Catherine Nolin (2014) describe what they call a "CSR gap" between communities affected by megaprojects and the projects' beneficiaries, where "firms are unable to engage all the communities affected by their investments" (242). They state that "this 'gap' reflects many factors—limited engagement with communities who are not on the firms' radar, as well as a limited understanding of capital markets in rural Guatemala. Clearly, promises of corporate social responsibility mean less in a country like Guatemala, where the government is either unable or unwilling to protect the basic human rights of its citizens" (242). In a similar manner, while Enel has implemented various CSR programs, these remain superficial in nature. They seem more for photo ops than for creating a more friendly, equitable, and just relationship between local communities and the company (the alleged purpose of CSR).

Palo Viejo is one of the largest hydroelectric plants in Guatemala and has the capacity to produce 85 MW of electricity. Yet during fieldwork only approximately 37 percent of the population of Cotzal had access to electricity, and there were disparities between the discourses of development and local realities. Moreover, the available electricity was unreliable and inadequate, since energy dropped at nights and there were blackouts that came without warning and lasted from a couple of hours up to full days. Between October 10, 2014, and January 15, 2015, there were an average of six blackouts per month, lasting between two to twenty-four hours. For example, in Cotzal a blackout began on October 14, 2014, at approximately 11:00 p.m. and ended on October 16 at approximately 11:00 p.m. On November 14, 2014, the power went off at 11:48 p.m. and did not return until the next day (November 15) at 1:00 p.m. While living in Cotzal, I witnessed the consequences of the lack of reliable energy and electricity. On various occasions I observed children using flashlights to complete their homework even while the house lights were on, because those lights were too dim to be adequate. Computers, televisions, and cell-phones would not charge after six at night. In some cases, an electrical surge could damage or destroy cellphones, refrigerators (for the very few families that owned them, and store owners), and other electrical appliances, which could have economic impacts. For example, during the month of November 2014, a freezer at an ice cream store in the town center was destroyed because of an electrical surge and

was not replaced for two weeks. This had a negative economic impact on the business, since its products (ice cream and refrigerated products) were destroyed. In April 2015, the Alcaldía Indígena of Nebaj had to resolve a conflict involving four men who were detained by the national police during a blockade against the construction of Xacbal Delta. Ironically, the meeting was held using candles because the entire region was experiencing a blackout that was already three days long. In 2019, “The electricity distributor Energuate (a subsidiary of I Squared Capital, an investment fund based in the United States) cut off electricity” in Cotzal, to “pressure the town to eliminate more than 2,000 informal connections to the flow of energy” (Brown 2020). Because of this, the town of Cotzal “was without electricity for 11 days,” including important services such as those provided at the health center, where women gave “births with candles” (Brown 2020).

During a February 2014 visit by Pérez Molina to the Finca San Francisco he received an update from the 2013 agreement signed between Enel and the municipality of Cotzal. A representative from the community of Pamaxán was designated to be the representative of all of the COCODEs of Cotzal. During his speech, he complained directly to the president, saying that although he lived four kilometers from the hydroelectric plant, his community did not have electricity. In the community of Cajixay, power poles were installed in 2001 to bring electricity to the community, but despite these initial efforts, there is still no electricity. Instead, these nonfunctioning poles are covered with political propaganda from previous elections, including posters for extinct political parties like the Frente Republicano Guatemalteco (FRG).

Information on Enel’s profits from Palo Viejo is scarce, but some estimates put this figure at or over \$30 million a year. The Project Design Document (PDD) appendices to the above-mentioned CDM report provide a 2012 Internal Rate of Return (IRR) worksheet with projected estimates of the value of revenues, costs, and operating expenses for the Palo Viejo project for the years 2009 to 2060 (CDM 2012). According to the IRR sheet, the average annual estimated profit, after taxes, for the period from 2012 to 2021 (the first ten years of full operation) was \$30,948,658 (Q239,179,492) (see table 7) (CDM 2012). Again, Enel’s annual contribution to the municipality is \$294,871.79 (Q2.3 million) (Enel Green Power 2014a, 10). In other words, on the basis of these figures and projections, Enel contributes less than 1 percent (approximately 0.95 percent) of its average earnings to the municipality of Cotzal. Between 2011 and 2060, or the fifty years covered by the license during which the hydroelectric plant is expected to operate, it is estimated that Enel’s project will generate \$2.44 billion (Q18.89 billion) in profits after taxes (CDM 2012).⁹

Other estimates regarding the profits from Palo Viejo are in accordance with these figures. According to an investigation by Oswaldo Hernández of Plaza Pública, Enel earned approximately Q296 million per year (Hernández 2013a). In

TABLE 7 Estimate of income and profits of Palo Viejo in USD for 2012–21

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total income	\$38,872,412	\$37,089,161	\$35,879,871	\$36,120,984	\$37,905,463	\$38,944,350	\$39,425,061	\$40,846,861	\$42,839,266	\$44,946,575
Profit after tax	\$32,153,190	\$30,405,488	\$29,178,900	\$29,275,227	\$30,779,383	\$31,596,821	\$31,898,868	\$33,057,187	\$34,732,619	\$26,408,896

SOURCE: CDM (2012).

December 2014, the municipal mayor of Cotzal during a meeting with a youth organization claimed that Enel earned between \$30 and \$40 million annually.

Tobias Roberts, an observer of the dialogue, reports that during Enel's stakeholders' meeting in April 2012, it was revealed that Enel had signed an agreement with Pedro Brol Cortinas, in which the company paid him \$3.36 million for the use of his properties and an annual royalty of 8.5 percent from the revenues from the sale of energy produced by Palo Viejo (Roberts 2012b). Enel had said that the demand of the communities of Cotzal for the profits from 20 percent of the energy from Palo Viejo was impossible and that the communities should instead accept Enel's counteroffer of *pelibueyes* and microcredit. Roberts also notes that during the dialogue, Smith González claimed that Enel could not fulfill Cotzal's demands because Enel didn't approve of profit sharing in the form of paying a percentage of earnings. Yet

although Oswaldo Smith affirms that ENEL does not agree with "the form" of sharing a percentage of the profits with the communities of Cotzal, since 2008, three years before the dialogue began, they had been in a similar agreement with Mr. Pedro Brol. So ENEL does not agree to negotiate a percentage of the profits with the twenty-five thousand inhabitants of Cotzal, but it can negotiate a percentage with an individual. It is worth imagining: What would Mr. Brol have said if ENEL had offered him a few *pelibueyes* instead of 8.5 percent of profits yearly? (Roberts 2012b)

Enel's business dealings with the Brol family deserve scrutiny, since these same landowners have historically displaced and exploited the Ixil and local communities.

Many people I spoke to did not know how the funds Enel paid to the municipality are utilized. It is important to note that before Palo Viejo was constructed, a 2010 report written by the Municipal Council of Development of Cotzal (COMUDE del Municipio de San Juan Cotzal) recognized that there are "large companies who have intentions for the exploitation or construction of hydroelectric plants, without contemplating direct benefits for the population" (2010, 35). The text then references an image in the report that shows a map of Cotzal where they identify Palo Viejo in the Finca San Francisco as the site for the construction of a hydroelectric plant (36). In addition, the report notes that "despite the wealth of water and the very strategic locations of the communities, there have been no initiatives to promote community hydroelectric plants in the municipality, *although private projects are being developed within the territory that do not intend to benefit the municipality*" (emphasis mine, 30).

Public schools in Guatemala are underfunded and many teachers are underpaid. Development projects and corporations like Enel take advantage of structural problems and provide support by building schools and infrastructure. While these funds are direly needed, part of the problem is that they are proposed and allocated by the company without consideration of local perspectives and input. Hence, there is a sense of a paternalistic imposition by a European foreign company on Indigenous communities. During the dialogue meeting Ramazzini reminded

participants that funding and projects in infrastructure and the area of education are the responsibility of the state, not corporations.

During the construction of Palo Viejo, Enel provided funds to build schools in San Felipe Chenlá and in Los Ángeles. That funding for these projects began and then stopped was one of the reasons for the 2011 blockade, since communities considered that Enel had made a false promise and had not honored its agreement. According to Enel, the company also distributed 3,927 backpacks to twenty schools in Cotzal and seven schools in Uspantán (Enel Green Power 2014a, 17). While I was living in Cotzal, I saw many children and parents using these backpacks. When I asked people in Cotzal about them in 2015, many stated that while they were grateful for the gift, it was a one-time affair. Many said that these backpacks had ripped or had a broken zipper after some use. One community leader stated that the backpacks lasted for fifteen days but Enel would be in Cotzal for fifty years, and that this was unjust.

Another major initiative advertised by Enel in their report a year after the 2013 agreement with the municipality involved sending two women from Tzibanay to Barefoot College, located in India, where they were trained in installing solar panels (Enel Green Power 2014a, 18). According to Enel, the company partnered with the Asociación para el Desarrollo Rijatz'ul Q'ij (Semilla de Sol) and the Indian NGO Barefoot College, and “began searching in Guatemala for grandmothers who would travel to India for training” (19). The program recruited participants who were “mostly grandmothers between 35 and 50 years old and with low education levels” (18). Enel stated that they were able to find two women from Cotzal in September 2012 and that these two women were *abuelas* (grandmothers). There is no mention in their report about how they approached the community. Enel further explained that “the model focuses on grandmothers because they provide local roots and have fewer responsibilities compared to young mothers” (19). The idea behind this initiative was that these women would return to their community and “train other women and replicate the model in nearby communities” (18). Enel described how the solar panels would work in terms of installation and maintenance: The head of each household “pays a monthly fee for the installation, maintenance, and repair of home solar-panel systems and for the service provided by the BSEs [Barefoot Solar Panel Engineers]” (19). According to Enel, beneficiaries included eighty families in the three communities of Xeputul I, which received thirty-eight solar panels; Xeputul II, which received twenty-seven solar panels; and Tzibanay, which received fifteen (19).

In a near-seven-minute 2014 video created by Enel showcasing the installation of the solar panels, the company highlights the two women who oversee installing the panels. According to Enel's video, Enel, the Indian Embassy, Barefoot College, and Semilla de Sol were responsible for bringing the solar panels to Xeputul II (Enel Green Power 2014b). Orlando Lopez, the general manager of Enel Green Power Guatemala, states that the solar panels will bring development. According to a community leader, “Solar energy has arrived in the community, and many

years ago, well, we had nothing, we suffered, but today is the day that we have our light.” The video states that a year before the inauguration, two “grandmothers” were sent to Barefoot College to learn how to install solar panels. We can see the women cutting and connecting wires, and toward the end of the video they are said to be responsible for supervising the solar panel equipment. Since then, at least two other women from Cotzal have been sent to India to attend Barefoot College. Yet when I spoke to community leaders from Xeputul II and one of the women mentioned by Enel who had traveled to India, residents provided a different perspective from what Enel projected in its report and video.

When I visited Xeputul II, the rain was pouring down on the tin sheet roof of the community building where leaders were gathered to talk about Enel and the solar panels installed two years earlier. From my conversation with community leaders, there was an observable CSR gap between Enel and community leaders from Xeputul II. One of the community leaders began to detail how Enel had first arrived in their community through deception. He said that the community had welcomed the proposal of installing solar panels, as well as the plan for the two women from Tzibanay to travel to India. But community leaders claimed that the people who came to propose the solar panel projects said they were from the NGO *Semilla de Sol*, which works in the areas of sustainable development; they had not been made aware, notified, consulted, or informed of Enel’s role in this project. One community leader stated that while *Semilla de Sol* had come to the community initially, Enel somehow began to support the project without people’s knowledge. Residents claimed they did not become aware of Enel’s role in supporting the project until the day of the inauguration and installment of solar panels. When I asked these leaders if the solar panels worked, they responded by saying that they did not work that well: the equipment was fragile and malfunctioned easily, there were no spare parts to fix them, and they did not provide reliable or strong energy. They added that sometimes the sun panels did not work at all. There was also confusion about the monthly maintenance fee; some did not know why they had to pay, and some even thought it was because the two women were stealing the money, placing them in a bad situation. The confusion may have resulted from the outside organizations’ failure to consult community leaders and residents.

In speaking to one of the two women sent to India, I found that she was unaware that the financial support was being provided by Enel and that her image and name were being used in Enel’s reports as part of their social corporate responsibility program results.¹⁰ She stated that she had been working in a finca in Escuintla when she received a call from her community, offering her the opportunity to participate in the solar panel project in India, to which she agreed. But she claimed that “it was not the company [Enel] that sent us, but [*Semilla de Sol*],” and she was unaware of Enel’s role until the day of the inauguration in Xeputul II. At Barefoot College she learned how to weld, install, uninstall, and connect solar panels, and

gained knowledge surrounding solar energy. Once she returned, she and the other woman installed the solar panels, and after their inauguration they never heard from Enel again.

While the solar panels were initially well received, the woman noted that they sometimes worked only in the daytime and often had only enough energy to charge cellphones and lightbulbs. Moreover, she stated that the model that the company had set up to manage and repair the solar panels did not work: people started out paying Q30 monthly, but this was reduced to Q15 a month by the community since people could not afford to pay these fees in full. Little by little, people stopped paying, and now each family was responsible for repairs and maintenance; in other words, the model imposed by outside entities was not sustainable or successful. In a community like Xeputul II, where economic opportunities are slim and where most people migrate to the coast to earn quetzals, a model that requires monthly payments does not work, especially if the solar panels were donated. The woman reaffirmed that with regard to the solar panels, “It was not Enel that gave us solar energy, but Semilla de Sol. . . . It was not directly an Enel project.”

During the interview, I showed her Enel’s report in Spanish that featured her image during the inauguration. I read to her that they referred to her as a grandmother, which led her to laugh out loud and shake her head. As it turned out, she did not become a grandmother until after Enel’s report and video were produced, and not during her time during the solar panel project. She went on to state that she had not consented to her image being used by Enel: “Since it is clear that it was not Enel that gave us the opportunity but someone else . . . and they are using these images, I do not agree.” About Palo Viejo and Enel, she said they had made false promises of bringing electricity to Cotzal, and added: “It’s not development. . . . All the people there [in Cotzal] disagree [with Enel]. . . . Although the hydroelectric plant is working down there [at the Finca San Francisco], it is not justly benefiting the population. The people are against it because we don’t have energy, and even though it [is generated] nearby, where there is power, we are using solar panels, and it is not fair.” She did not agree with the claims of development made by Enel in their report.

In a 2019 article published by the BBC entitled “Xeputul 2: La aldea de Guatemala que decidió volver a vivir sin luz,” the authors share a similar story regarding residents’ frustration with the solar panels and the monthly maintenance fee model (Cabria and Villagrán 2019). The article states: “This community [Xeputul II] chose to stop paying for their electricity because it seemed like a contradiction to have to pay money that they did not have for a service that came as a product of aid. A donation is a donation, they told us.” In addition, the goal of having the two women train other women as promoted by Enel never came to fruition. The authors of the article talked to one of the women who went to India and found that “the goal was for her to become a leader in her community so that she could teach other women

the trade. She laughs. She believes that her two daughters have learned something from her from seeing her with the panels but says that only she takes care of them. Nobody has asked her to teach [community members], and she is not going to do it because she is not paid.” They report that Enel paid for the importation of the solar panels to Guatemala from India, which was part of their CSR program. The reporters note a general sense of apathy among residents of Xeputul II in relation to the solar panels, with one of the women who had traveled to India declaring it was no longer her responsibility “if Xeputul II returns to darkness.”

These three perspectives, of the community leaders, the woman who went to India, and the reporters, present a situation in which (a) Enel was not involved in the solar energy project in its entirety, as suggested in their report, and merely paid for the panels; (b) they employed deception by not consulting the communities or the women about using their images and story in their report and not telling the communities that the solar panel project was part of Enel’s CSR programs; (c) they have not supported the development of the community of Xeputul II beyond buying the panels, which has caused problems and tensions at the local level; and (d) they have misrepresented their CSR program as bringing energy and development to Xeputul II.

Enel has held competitions under its “PlayEnergy” initiative, where students and youth compete in promoting and designing environmentally friendly projects to combat climate change. A select few then may take trips abroad to present their ideas. The director of one of the schools in San Felipe Chenlá and other youth recall having the opportunity to travel to Costa Rica and participate in a meeting with other youth whose communities are also being affected by Enel’s projects. Youth who participated in these trips recall going to meetings but also having the opportunity to play paintball, stay in hotels, and travel. One community leader in Cotzal claimed that these trips were strategic and were meant to gain support among young people and fill their heads with false ideas. At least one of the participants who benefited from Enel’s trip was the younger brother of one of the nine leaders who was being persecuted and had an arrest warrant issued against him in 2011. The leader said that his younger brother, through this trip with Enel, was “sitting at the dinner table of the enemy.” His brother’s acceptance of the opportunity led to tensions and divisions within the family, and he believed that his brother was selected precisely for that reason.

2015 CONSTITUTIONAL COURT RULING

In 2012, the Alcaldía Indígena of Cotzal, represented by lawyers Moisés Rosales Barrientos and Marly Vásquez, placed an *amparo* against the Ministry of Energy and Mines (MEM) for violating their right to consultation regarding the construction of electrical towers by Transmisora de Energía Renovable, S.A. (Transnova). The Transnova towers are part of an electrical network built to transport the energy

produced by Palo Viejo. Transnova is a subsidiary of Enel Guatemala (CC 2015a, 43). Three years later, the CC ruled in favor of the communities of Cotzal and the Alcaldía Indígena of Cotzal, requiring that “the necessary measures” be taken by the government so that consultation would be practiced “in accordance with the applicable international standards” (78). The CC designated the Cabinet of Indigenous Peoples within the Executive Branch of the Guatemalan State as having the responsibility to carry out this consultation process (78). Rosales Barrientos and Vásquez represented the communities of Cotzal throughout these years and for these cases. Lawyer José Santos Sapón Tax would later join these legal efforts during the discussion on the consultation process.

The resolution has many legal aspects that recognize the rights of Indigenous Peoples. Among them is the recognition of the Alcaldía Indígena as legitimate representatives of their communities, in contrast to companies such as Enel and Transnova, as well as the municipal mayor, who claim that the municipality is the only legal and legitimate representative of Cotzal (25–26). In addition, the CC resolution views consultation as a fundamental right. Although the MEM and its officials along with companies like Transnova argue that consultation does not exist within the General Electricity Law (1996) or the Mining Law (1998), this is a right guaranteed by the Guatemalan state because of its signing and ratification of international instruments and conventions (37). The resolution states that notification of projects in the *Diario de Centro América* and other periodicals of high circulation is not a form of consultation, as companies have claimed. In addition, these announcements are published only in Spanish and not in the local languages where projects will operate. The ads are also very small print, and the newspapers in which they publish are sometimes found only in very limited places in Guatemala City (53). As we saw with Enel’s use of ads in newspapers as a form of consultation, this method of disseminating information and informing the Ixil was not adequate.

Last, the resolution recognizes the concept of territory from an Indigenous perspective, one that does not view territory as individual, or as a commodity or private property. While the Alcaldía Indígena and their claims to ancestral lands would exist without this state recognition, the Court’s recognition is important given the debate that occurred between Cotzal and Enel regarding private property and ancestral rights (40).

There are other cases in the Ixil Region involving hydroelectric projects and electrical towers. In 2015, the CC ruled in favor of the communities of Nebaj on cases regarding the hydroelectric plants La Vega I and La Vega II (CC 2015b, 2015c). The CC also ruled against Nebaj on a case involving the company Transportadora de Energía de Centroamérica, S.A. (TRECSA), a subsidiary of the Colombian corporation Grupo Energía de Bogotá, which built electrical towers. In 2016, the Corte Suprema de Justicia (CSJ) ruled in favor of the Alcalde Indígena of Nebaj and against the MEM for their failure to provide consultation for the hydroelectric

plant of Las Brisas (CSJ 2016). These *amparos* take years to be resolved, and as is the case with Transnova in Cotzal, companies may have already begun and finished construction, which makes consultation an afterthought and places the implementation of the ruling in an awkward position or makes it challenging to carry out. For the three cases in Nebaj involving hydroelectric facilities, these projects had not begun construction at the time of the *amparo*.

The communities of Cotzal began dialogue a year later in June 2016 with representatives from the Cabinet of Indigenous Peoples and municipal officials to determine what the consultation process should look like. Since the electrical towers were already built, this was a complex situation. Nevertheless, the process of dialogue to work out the conditions for consultation was viewed as a reparative form of justice and provided hope that companies considering building megaprojects in Guatemala would respect free, prior and informed consent (FPIC). But after two years and seven months of periodic meetings, on February 8, 2019, government representatives informed the communities of Cotzal that in January President Jimmy Morales had repealed Government Agreement 117-2014, which created the Cabinet of Indigenous Peoples. This undermined the legal authority that these government representatives held in discussing the process of consultation with the people of Cotzal. Hence, the meetings regarding consultation proceedings ordered by the 2015 CC ruling were for naught, and community leaders were alarmed by Morales's decision. The ancestral authorities of Cotzal expressed their concerns in an open letter dated February 8, 2019, where they stated: "With the repeal of the government agreement that gives legal life to the Cabinet of Indigenous Peoples, Mr. Jimmy Morales Cabrera and his cabinet break the consultation process with the Maya Ixil Indigenous people of San Juan Cotzal, initiated on June 22, 2016, disobeying openly and flagrantly the ruling of the Constitutional Court that orders the Guatemalan state to comply with its obligation to consult the Maya Ixil people of San Juan Cotzal, through said cabinet, on the execution of the aforementioned project" (B'oq'ol Q'ésal Tenam K'usal 2019; Batz 2019). For the Ixil, the sudden end of the consultation process was also a form of keeping the Ixil from accessing their rights guaranteed by the CC. They add: "This racist, discriminatory, and irresponsible act of the government, contained in Government Agreement Number 11-2019, published in the *Diario de Centro América* on January 15 of this year, which repeals Government Agreement Number 117-2014, adds to the constant refusal of Mr. Jimmy Morales Cabrera and his government to comply with the judgments of the Constitutional Court, in a clear breach of the institutional framework and the rule of law" (B'oq'ol Q'ésal Tenam K'usal 2019; Batz 2019). At a press conference in February of that year, the ancestral authorities of Cotzal reaffirmed their discontent with Morales's decision to end the consultation process (Toro 2019).

The outcomes of these court resolutions are still pending. The court rulings represent and form a historic effort by the Ixil to access and use state structures as a form of resistance. The 2015 CC resolution was a historic victory, and its full

implementation is crucial for building a more just Guatemala. But the government's increasing militarization of the country is creating a social and political environment where defenders of Indigenous territory and rights are being criminalized. Furthermore, because of structural inequalities, many find themselves forced to migrate abroad, primarily to the US.

In various reports, documents, and press releases, Enel, like other companies, highlights the initiatives of its CSR programs. Megaprojects appeal to the Western savior mentality that has called for green energy, fair trade, and CSR without seriously contesting the ill effects of capitalism and neoliberalism, which fuel global warming. Companies like Enel have been successful in portraying themselves as environmentally friendly and as supporting educational programs, without serious evaluation of the impacts of Palo Viejo or these programs. While many of these programs may be well meaning and may sound good on paper, they serve to mask the local problems and daily realities that communities face.

As community leaders and residents shared, they were deceived by Enel, from how they entered and settled in Cotzal, to their tactics during dialogue that encouraged governmental officials and community members to side with them against opponents of Palo Viejo, to their tactics after dialogue, when Enel began to criticize the ancestral authorities whom they had initially recognized as legitimate leaders, and to claim that they were illegitimate. The new agreement with the municipal mayor in 2013 completely undermined any good faith that Enel claimed to have had with the communities of Cotzal. That the vast majority of Cotzal has no electricity, while the hydroelectric plant exports energy out of the municipality and generates millions of dollars in profits for a foreign company that relied on the armed forces to complete its project, is symbolic of the neocolonial realities of Guatemala.