

**Case Study on the OPIC Office of Accountability:
Bias, Cultural Insensitivity and Lack of Transparency within the Mechanism**

Accountability Counsel is supporting communities in Oaxaca, Mexico, who filed a complaint with the Overseas Private Investment Corporation's ("OPIC") Office of Accountability ("OA") in relation to the OPIC-funded Cerro de Oro Hydroelectric Project (the "Project"). Our experience assisting the communities in the OA-convened dialogue process and in their request for a compliance audit has revealed problems of bias, communication failures, lack of transparency and unreasonable delays within the mechanism.

Case History

Our experience with the OPIC OA began in November 2010, when Accountability Counsel supported communities in Oaxaca in filing a complaint with the OA about the Cerro de Oro Hydroelectric Project.¹ The complaint requested both a problem-solving dialogue process and a compliance review.

The dialogue process, which involved numerous meetings between the communities, Project sponsors, and other interested stakeholders, ran from March through November 2011. The communities and the Project sponsors reached an agreement in March 2011, which halted Project construction and placed the future of an alternate design for the Project into the hands of the communities. The agreement enabled the communities to decide whether to choose the original Project, and alternative project, or no project at all. The agreement stated that the company would respect the final decision of the communities. In November 2011, the communities rejected the Project sponsors' alternative project design. Their decision was based primarily on ongoing safety concerns regarding the impact of a hydroelectric project on the existing and poorly maintained Cerro de Oro Dam. As of today, the Project remains stopped. OPIC's Office of Accountability then initiated the compliance review process.

Problem-Solving Dialogue: Bias and Failure to Communicate Appropriately with the Communities

Dr. Keith Kozloff, the Director of the OA, convened the dialogue process and was present at the meetings between the communities and the Project sponsors. Several examples from the final months of the dialogue process demonstrate Dr. Kozloff's abandonment of his neutral role, apparent bias against the communities, failure to consult with the communities regarding key decisions affecting the dialogue process and cultural insensitivity.

At the final meeting on November 14, 2011, Dr. Kozloff began by admonishing the communities for their mistrust of the Project sponsor and accused them of not respecting the previous agreements and the integrity of the dialogue process.² When community members replied that

¹ Request for Compliance Review and Problem-Solving Related to Cerro de Oro Hydroelectric Project, *found at* <http://tinyurl.com/7ncuuxk>.

² See notes on file with Accountability Counsel. These statements were also witnessed by representatives of the Mexican government, the communities, Project Sponsors, and representatives from Accountability Counsel's partner organizations in Mexico.

the Project sponsors had not respected agreements, Dr. Kozloff did not reply. When several community members voiced strong opposition to the Project and serious concerns regarding dam safety, Dr. Kozloff responded by stating that he was formally ending the participation of the OA in the dialogue process because of the level of community mistrust, although he advocated for a continuing dialogue convened by the Oaxacan State Government. Throughout the meeting, Dr. Kozloff abandoned his proper role as a neutral facilitator and convener of a dialogue process by lecturing the communities about it being a mistake to have not agreed to the Project.

Midway through the final meeting, Dr. Kozloff turned the process over to the Governor of Oaxaca's office. This action followed correspondence and meetings between Dr. Kozloff and the Governor's office in September and October of 2011.³ While the communities were made aware of Dr. Kozloff's intent to end the OA's involvement in the dialogue process and transfer the process over to the Governor of Oaxaca, they were never consulted in this decision. Instead, a representative from the Governor's office simply appeared at the final meetings in November and began pressuring the communities to continue the dialogue process and not reject the Project.

In December 2011, Dr. Kozloff sent a draft version of the OA's Problem-Solving Report to the communities for review via Accountability Counsel, their chosen representative. Dr. Kozloff sent the draft in English, asking for comments on any factual errors within two days. When we requested a Spanish translation to distribute to the communities, who speak only Spanish, Dr. Kozloff refused, suggesting that Accountability Counsel should send its own comments. We responded that our own comments were irrelevant because the communities were the participants in the process and should be given an opportunity to comment. At the direct request of a community member in Spanish, Dr. Kozloff responded with a Google Translate version of part of the Report.⁴ When the community member told Dr. Kozloff that the document did not make sense and that a complete translation was needed, Dr. Kozloff did not respond.

The draft Problem-Solving Report itself contained instances of bias, as well as several factual inaccuracies. Accountability Counsel sent Dr. Kozloff comments on the draft report, highlighting each of these problems and a letter, copying OPIC President Littlefield, requesting that he not publish a biased report.⁵ Both Dr. Kozloff and President Littlefield ignored our letter and the Final Problem-Solving Report was published without correcting the bias, although the factual inaccuracies were corrected.⁶

³ See Letter from Keith Kozloff, Director of the OPIC Office of Accountability, to the Office of the Governor of Oaxaca, September 6, 2011, on file with Accountability Counsel; see also article regarding Dr. Kozloff's meeting with the Governor's Office: *Reconoce corporación de EU a Oaxaca como un territorio estratégico para invertir*, 11 October 2011, Oaxaca Entrelineas.com, <http://tinyurl.com/754bwgf>.

⁴ See email correspondence between Natalie Bridgeman Fields, Executive Director of Accountability Counsel and Keith Kozloff, Director of the OPIC Office of Accountability, December 14, 2011, on file with Accountability Counsel.

⁵ Response to Draft Final Report on Problem-Solving Phase of Cerro de Oro Case, December 19, 2011, found at <http://tinyurl.com/6w3kgef>.

⁶ Final OA Report on Problem-Solving Phase of Cerro de Oro Case, issued by the OPIC Office of Accountability, found at <http://tinyurl.com/7qzm548>.

Compliance Review: Lack of Transparency and Unreasonable Delay

Dr. Kozloff has been largely unresponsive to the communities' requests for a compliance audit. Although the communities requested an audit in the November 2010 complaint, and despite repeated requests for information about the compliance review process, in September 2011, Dr. Kozloff indicated he was "not prepared to discuss" when a compliance review would begin or what the process would entail.⁷ On November 14, 2011, at the final dialogue meeting, representatives of the communities delivered a joint letter to the OA reiterating their request for a compliance audit. At the meeting, Dr. Kozloff indicated that he was still unprepared to discuss the compliance review process because dialogue could continue under the auspices of the Oaxacan Government.⁸

On November 22, 2011, Dr. Kozloff sent the first indication of the steps he intended to follow in conducting a compliance audit.⁹ According to the letter, he would first perform an appraisal to determine whether conducting a full compliance audit is appropriate, weighing "whether the potential benefits to the requestors, OPIC, and the client from conducting an audit are worth the resources invested in doing so."¹⁰ Dr. Kozloff appears to have granted himself complete discretion to determine whether an audit should be performed. No additional information has been communicated to Accountability Counsel or the communities regarding the compliance audit. There is still no information on the OPIC OA website, nor any public information of which we are aware, regarding the compliance review process.

Conclusion

The OA's actions throughout this case show bias, cultural insensitivity and a failure to communicate about important aspects of the functioning of OPIC's Office of Accountability. Dr. Kozloff's judgmental remarks about our clients at the final dialogue meeting and his refusal to translate documents into Spanish demonstrate that he lacks the neutrality and cultural sensitivity that should be essential qualifications for the OA Director, while his delay and lack of transparency regarding the compliance review process reveal deficiencies in the operational procedures of his office.

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⁷ See notes from September 30, 2011 phone meeting between Keith Kozloff, Director of the OPIC Office of Accountability, and Natalie Bridgeman Fields, Executive Director of Accountability Counsel, on file with Accountability Counsel.

⁸ See notes on file with Accountability Counsel.

⁹ Letter from Keith Kozloff, Director of the OPIC Office of Accountability, to community representatives, dated November 22, 2011, on file with Accountability Counsel.

¹⁰ *Id.*