



# Mexico: The Cerro de Oro Project

## Historic Agreement Respecting Rights Reached Through Mediated Dialogue

accountability  
counsel



## Dialogue Process Suspends Hydroelectric Project

In response to a complaint, a U.S. agency set up a dialogue process in which indigenous communities successfully demanded their right to have a voice in development decisions.

Accountability Counsel’s work in Mexico provided the platform for a historic dialogue process. This is the first time, to our knowledge, that a community’s ultimate demand was fully respected through engagement with an independent accountability mechanism’s dispute resolution process.

In November 2010, indigenous communities in Oaxaca, Mexico, filed a complaint regarding threats to their physical safety, drinking water, fishing areas, livelihoods and culture from a hydroelectric project funded by a U.S. government agency, the Overseas Private Investment Corporation (OPIC). Chief among their concerns was the impact of construction on the integrity of the existing Cerro de Oro dam that, if breached, would destroy their communities.

The communities, with the help of Accountability Counsel, filed the complaint with OPIC’s Office of Accountability (OA). In response, the OA set up a voluntary dialogue process between the four directly affected communities and the company in charge of implementing the project.

With the support of Accountability Counsel and Mexican civil society organizations, the communities reached a historic agreement with the company, witnessed by local and regional government officials, to suspend construction of the hydroelectric project and develop an alternative project that took into account key community concerns. Importantly, the company also agreed to put the decision regarding whether any version of the project would go forward into the hands of the communities.

In November 2011, after reviewing the alternative project design and hearing from experts regarding dam safety issues, three of the four communities rejected both the original and alternative projects, instead opting for no project at all. As of August 2014, the project remains suspended, and the company continues to honor its agreement to respect the communities’ decision to reject the project.

## What are Accountability Mechanisms?

Many international financial institutions (such as the World Bank) and national export promotion agencies (such as OPIC) have complaint offices called accountability mechanisms. These complaint offices were established to receive community complaints about harm resulting from projects supported by these institutions. These complaint offices can be tools for redressing human rights and environmental abuses.

Accountability mechanisms provide communities the chance to have their concerns independently reviewed and addressed. Most mechanisms provide one or both of the following:

- **Dispute Resolution:** This often involves establishing a dialogue process between affected people and the company implementing the project in order to find a mutually agreeable solution. The process is voluntary, and the company may refuse to participate.
- **Compliance Review:** This is an investigation into an institution’s compliance with its own social and environmental policies and may result in a report by the accountability mechanism. The institution may then take action to address problems identified in the report.



## Why We Partner with Accountability Counsel

“The lawyers from Accountability Counsel supported us to defend the rights of our community. Every step of the way, they worked tirelessly and with patience to make sure our voices were heard. We stopped a project from destroying our freshwater creek, a treasured resource, and the people and environment in our region have Accountability Counsel to thank.” – *Gabino Vicente, Santa Úrsula, Oaxaca, Mexico*





## Stakeholders' Roles in the Process

**Community Members:** Community members unified around key issues and voiced concerns, using all of the tools available to them. These tools included requesting the help of Accountability Counsel and other NGOs, filing a complaint to the OPIC OA, attending trainings, petitioning their local, regional and national government and actively participating in the dialogue process.

**Supporting Organizations:** Several Mexican and international organizations partnered to advocate for the rights of the communities by assisting in filing the complaint, conducting trainings and supporting communities during the dialogue process. The groups include Mexico-based Fundar, EDUCA, and HIC-AL, and the U.S.-based Berkeley Law International Human Rights Law Clinic, Environmental Defender Law Center, and Accountability Counsel.

**The Company:** Company representatives actively participated in the dialogue process, developed an alternative project, and honored their agreement to respect the communities' decision.

**OPIC's Office of Accountability (OA):** After receiving the complaint and conducting site visits to appraise the potential for dispute resolution, the OPIC OA initiated a dialogue process, which was led by an OA-hired mediator.

**Local, State, and Federal Government:** Community members strategically engaged relevant local, state, and federal government officials to support the communities, act as witnesses to the agreements reached, and provide their expertise on key issues.

## The Right to Free, Prior, and Informed Consent

Under international law, indigenous peoples have the right to free, prior, and informed consent (FPIC). Before a project begins, project sponsors must receive the free, prior, and informed consent of all communities that may potentially be impacted by the project.

- **"Free"** means that consent is given voluntarily, without the influence of coercion or intimidation.
- **"Prior"** means that community members' consent is sought before a project begins and that community members are given sufficient time to make their decision.
- **"Informed"** means that clear, accurate, and accessible information, detailing all aspects of a project, is provided to help inform their decision.

In this case, the company did not initially respect the communities' right to FPIC. However, through the dialogue process, the communities were able to win back the right to make their own decision about the project. The communities also used the dialogue process to secure more information about project plans, impacts, and alternatives.



**2006**  
OPIC provides \$60 million to U.S.-based investor Conduit Capital Partners, LLC, for the Cerro de Oro Hydroelectric Project and other projects.

**October 2010**  
At the request of community leaders, Accountability Counsel visits the affected communities to gather information and conduct a training on the OPIC OA.

**January 5-12, 2011**  
The OA makes site visits to appraise the potential for a dialogue process, speaking with the company, municipal authorities, and community members.

**February 17, 2011**  
At the urging of communities, the Oaxacan Congress unanimously votes to tour the site and demands suspension of the project.

**May 5, 2011**  
The communities and the company reach a second agreement, selecting the expert for the dam safety study.

**November 14, 2011**  
At the final dialogue table, three of the four communities reject both the original and alternative projects, choosing instead to have no project at all.

**June 2010**  
Project construction begins. Community groups and NGOs voice concerns and petition the government, but have no success altering the project.

**November 30, 2010**  
Accountability Counsel supports the communities of Paso Canoa and Santa Úrsula to file a complaint, requesting a dialogue process and compliance review.

**January 17, 2011**  
Accountability Counsel files an addendum to add a third community, Cerro de Oro, to the original complaint.

**March 11, 2011**  
Through a mediated dialogue, the parties agree to suspend the project, commission an expert study of safety risks, and to allow the company to prepare an alternative project plan.

**July 20, 2011**  
The dam safety expert presents his study, which the communities reject as incomplete. The parties agree to an additional study by the Mexican agency in charge of maintaining the dam.

**August 2014**  
The project remains suspended, with the company honoring its agreement to respect the communities' decision.



## Success Factors

### Community Organizing & Information Dissemination:

Community members lacked information about project impacts, benefits, and funding sources, but united and organized around community-wide interests in dam safety and access to water. The communities' ability to organize and inform their members about the project enabled them to successfully articulate their concerns and demands during the dialogue process.

### Popular & Political Support:

The communities were strategic about using local media and calling on their representatives within local and regional governments to support and document their concerns. These techniques raised public awareness of the actual and expected environmental and social harm from the hydroelectric project.

### Corporate Actors:

Corporate decision makers, and the direct recipients of OPIC's funding, participated in the dialogue process. They were senior enough to make agreements with the communities and expressed interest in ensuring their projects obtained a social license to operate from affected communities.

## Significance of the Cerro de Oro Case

At the heart of this case was the violation of the communities' right to free, prior and informed consent and lack of a social license to operate. Our goal was to raise the communities' voices and level the playing field so that the communities could enter into a dispute resolution process with the OPIC-funded company. Through this process, community members were able to gain important project information, evaluate an alternative project plan, and come to an informed decision about what they ultimately wanted for their communities.

This is the only case, to our knowledge, where the communities' demand for the complete cessation of a project was fully respected through an accountability office dialogue process. With Accountability Counsel's support, the communities were able to effectively use dispute resolution to achieve justice.

## About Accountability Counsel

Accountability Counsel is a U.S.-based non-profit legal organization that defends the environmental and human rights of marginalized communities around the world. As lawyers for people harmed by internationally financed development projects, we focus on innovative ways to provide access to justice. We specialize in the use of complaint offices like the OPIC OA.

In Mexico, Accountability Counsel conducted trainings in each community, assisted with research, drafting, and filing of the complaints, helped to prepare the communities for the dialogue process, and supported the communities through each stage of the dialogue process.

Accountability Counsel's assistance to communities begins with a request for support from the community itself or a local NGO. Our approach pays particular attention to women, girls, and other marginalized groups.



## Social License to Operate

A company has a social license to operate if local communities support or do not actively disagree with its activities. This case is a prime example of how corporations that do not work to earn a social license to operate may face entrenched mistrust of project operators, long delays, added costs, and even suspension of projects.





230 California Street, Suite 304  
San Francisco, CA 94111  
[info@accountabilitycounsel.org](mailto:info@accountabilitycounsel.org)  
[www.accountabilitycounsel.org](http://www.accountabilitycounsel.org)

**accountability**  
 **counsel**