



Fiscal Year 2011

Annual Report



Office of Accountability
Overseas Private Investment Corporation
Fiscal Year 2011

NOTE FROM THE DIRECTOR

I am pleased to report on the Office of Accountability's activities in FY2011. Since taking over in January, 2011, from the first OA Director, Dr. Jean Aden, I have been impressed by the strong legacy that she left as well as the challenges facing not only the OA but independent accountability mechanisms in general. I am thus grateful for the support that the OA continues to receive from OPIC's senior management, its Board, and staff, as well as from sister accountability mechanisms and other external stakeholders.

The OA cleared an important milestone this fiscal year by processing its first request in which both parties agreed to participate in problem-solving, which involved a hydroelectric project in Mexico. All cases seen by the accountability mechanisms pose their own unique challenges to making a difference for project-affected communities, and this one was no different. Fortunately, the OA had secured the services of an excellent independent mediator from the region to lead the dialogue tables. Through the three agreements reached, several concrete actions were taken that significantly reduced project impacts and risks facing the communities. At the same time, the case demonstrated the limits of voluntary mediation and the ability of the OA to transition to another approach when the path to resolution appears blocked.

In the year that I have been OA Director, I have also become aware of aspects of the OA's operations that warrant re-examination. For example, in processing the Mexico case, I became aware that some of the OA's operational procedures would benefit from being updated for consistency with relevant practices at counterpart accountability mechanisms. I am also sensitive to the fact that many communities surrounding OPIC projects are unaware that OPIC has financed the projects, let alone that communities could avail themselves of the services offered by the OA. Finally, I observed that all parties would benefit when tensions between communities and companies are effectively and appropriately addressed before they escalate into overt conflicts.

Looking ahead, I thus hope to use my term as Director to strengthen the OA's procedures in delivering quality services, to forge new relationships with external organizational networks to help make the OA's services better known to project-affected communities and OPIC clients, and to activate the OA's advisory services to strengthen the capacity of OPIC and its clients to address *ex ante* the conditions that can lead to conflict.

The OA's services constitute an important component of OPIC's overall efforts to promote environmentally and socially sustainable development. In the coming year, I look forward to advancing this goal.



Dr. Keith Kozloff
Director, Office of Accountability

SUMMARY OF SERVICES

The OA's goal is to strengthen the sustainability of development outcomes of OPIC's transactions by addressing environmental or social concerns and conflicts that emerge around OPIC-supported projects. The OA provides a mechanism by which parties can raise such concerns and access its services. To resolve disputes, the OA makes use of one or both of its primary instruments, problem-solving and compliance review.

Problem-solving services seek to provide the conditions in which the parties to a conflict can arrive at a fair and mutually-acceptable resolution. Typical problem-solving initiatives may include independent fact-finding, dialogue facilitation, and mediation. Both parties (affected communities and the project sponsor) must voluntarily agree to the process and meet certain eligibility criteria, but once these conditions are met, OA provides its services at no cost to either party, and takes no position on the validity of allegations in the complaint. Although affected communities are more likely to request problem-solving, OPIC clients may also do so.

Compliance-review examines whether OPIC's environmental, labor rights, and human rights policies were appropriately applied to OPIC-supported projects. When a compliance review is requested, the OA conducts an investigation that examines whether the appropriate policies were applied and whether they were implemented correctly. A typical compliance review might result in recommendations on how OPIC could more effectively implement its applicable policies and procedures with respect to both the project in question and future projects. Compliance reviews may be requested by affected communities, OPIC's CEO, or OPIC's Board.

FY2011 REQUESTS RECEIVED AND DISPOSITIONS

Country or Region in Which OPIC Project is Located	Service Requested	Date on Which OA Received Request	Eligibility Determination	OA Action Taken
Liberia	Compliance review	March 15, 2010	Ineligible because requestor wished to remain anonymous	No action taken
Mexico	Problem solving and compliance review	November 30, 2010 and January 17, 2011	Eligible	OA initiated problem-solving process
Mexico	Compliance review	November 30, 2010	Ineligible because requestors wished to remain anonymous	No action taken
Pakistan	Compliance review	May 5, 2011	Ineligible because allegations in request are outside OA's mandate	OA forwarded request to OPIC General Counsel
Africa	Compliance review	May 27, 2011	Ineligible because allegations in request are outside of the OA's mandate	OA forwarded request to OPIC General Counsel
Uganda	Compliance review	June 6, 2011	Ineligible because allegations in request are outside of the OA's mandate	OA forwarded request to OPIC General Counsel

CERRO DE ORO HYDROELECTRIC PROJECT

THE CASE

The Cerro de Oro Hydroelectric Project was planned to be a 15 MW hydroelectric power facility located in Tuxtepec Municipality in the State of Oaxaca, Mexico. The Project, co-owned by Comexhidro and the Latin Power III Fun, to whom OPIC had provided financing, was located adjacent to the existing Cerro do Oro Dam, which had been originally constructed for flood control in the 1970s and 1980s and had required the relocation of thousands of people. The project's design included the construction of a tunnel through the rock wall adjacent to the dam curtain in order to direct water from the reservoir to power turbines. According to the project's original design, an existing creek would have been modified and used to return the water to the Santa Domingo River about two kilometers downstream of the dam.

The OA received a complaint from two local communities about the Cerro de Oro project in November, 2010. The complaint alleged that the hydroelectric project had caused or would cause social and environmental harm to local communities. The complainants argued that the project was adversely affecting their access to clean water and income-generating fishing areas, that it was eroding land used for agriculture and livestock, and that it disrupted local infrastructure, housing and cultural resources.

OPIC's clients maintained that they had followed all the procedures required by Mexican law and by OPIC, and that the dispute had more to do with levels of compensation.

THE PROBLEM-SOLVING PROCESS

All parties agreed to problem-solving, and ultimately four communities participated. On behalf of the OA, an independent mediator led the parties through a series of dialogue tables that resulted in three written agreements. The mediator sought to build sufficient trust in the process and between the parties such that they would be able to arrive at a mutually acceptable agreement. As part of this process, the OA presented the parties with a slate of four independent experts to conduct a dam safety study; a candidate was selected; he performed the study; and he reported his results to the parties.



Top of Cerro de Oro Dam

In addition, the OA solicited the participation of Mexican water, energy, and environmental authorities in the dialogue tables. On several occasions, the OA had to remind the parties of their agreement not to initiate external legal actions or media contacts while the dialogue process was underway.

RESULTS

The three agreements reached between the parties resulted in several concrete actions being taken to reduce risks associated with the project and to build trust:

- OPIC's client suspended all construction activities for the duration of the dialogue and ceded the decision about the project's future to the four communities.
- The client developed an alternative project design that would minimize its impact on existing water resources.
- The company also delivered copies of project documents, including permits, licenses, and studies to each of the communities involved in the dispute.
- The dam safety expert concluded that the dam construction was safe and that approved project construction procedures would not pose a risk.
- These findings were corroborated by the Mexican water ministry, which made a public commitment to taking steps to ensure the dam's future integrity.

CONCLUSIONS

Despite its achievements, the OA-convened dialogue was not successful in sufficiently reducing the prevailing atmosphere of distrust in order for the parties to reach an agreement. For example, the findings of the dam safety expert were not trusted by the communities. In the end, the divergent interests among the four communities outweighed their common interests, with the most impacted community wanting the project to move forward and the other three wanting it to remain suspended. At that point, the OA announced that it was ending its dialogue process and it turned the case over to Oaxaca state authorities, who held their own community consultations to determine next steps. The OA then turned to the compliance phase whose results will be reported in the FY2012 annual report.



Consultation with Government Officials in Oaxaca

OUTREACH

Outreach is a necessary complement to the OA's primary services in order to make internal and external stakeholders familiar with and accepting of these services. In FY11, the OA conducted the following outreach activities: The OA Director:

- Periodically updated OPIC's Executive Committee on the Cerro de Oro case;
- Held individual meetings with all of OPIC's departments to re-introduce the OA to them;
- Made a presentation to OPIC's Board in June;
- Held informal meetings with NGOs, counterpart accountability mechanisms, and other external stakeholders in Washington DC; and
- Participated in the annual meeting of the Independent Accountability Mechanisms (IAMs) network, held in 2011 at the offices of the Inter-American Development Bank

RESOURCES

For FY11, the Office of Accountability had one full time staff member, its Director. The Director is authorized to hire consultants, and incur other expenses as needed for both case-specific and other functions. Besides the Director's salary and benefits, the OA incurred out of pocket expenses of \$144,328.03 in FY2011, virtually all of which supported the problem-solving phase of the Mexico case.