Multi-Stakeholder Dispute Resolution: Building Social Capital Through Access to Justice at the Community Level

Shahla F. Ali, *University of Hong Kong*
William E. Davis
Joanna Lee, *University of Hong Kong*
The development of systems of multi-stakeholder dispute resolution is increasingly recognized as an objective of good governance by international organizations such as the United Nations Development Program (UNDP). Such objectives arise out of insights based on the dynamics of social capital that community based initiatives cannot succeed where trust is absent and mechanisms for collective decision making do not exist. Yet localized decision making can take many forms – whether distributional, competitive or collaborative. This paper will examine, in particular the impact of collaborative systems of decision making on building social capital through access to justice in local communities. It will do this through examining participant feedback, meeting minutes, and post-consultation reports of a community multi-stakeholder dialogue process in Cajamarca, Peru. The creation of dispute resolution forums where community members can actively participate in the generation of shared objectives, collect and access information, and take action on issues of collective concern represents an important foundation for the development of social capital.  

1 Assistant Professor and Deputy Director, LLM in Arbitration and Dispute Resolution, Faculty of Law, University of Hong Kong. B.A., Stanford University; M.A., Landegg International University, Switzerland; J.D./Ph.D, University of California at Berkeley.  
2 Director, DPK Consulting, a Division of ARD Inc. William Davis has worked in the administration of justice internationally, nationally and at the state level in the United States for more than 35 years. He has served as the Chief Administrative Officer for the largest circuit in the federal courts, the Ninth Circuit, and as the Administrative Director of the Courts for the states of California and Kentucky. In 1992 Mr. Davis began to work exclusively on reforms in the justice sectors on an international basis.  
3 Graduate Student, LLM in Arbitration and Dispute Resolution, University of Hong Kong.  
INTRODUCTION

Multi-stakeholder decision making is increasingly regarded as a key component of good governance processes and a means by which social capital within communities may be developed.\(^5\) Such processes of localized decision making correspond with prevailing conceptions of governance understood as a “system of values, policies and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector. It is the way a society organizes itself to make and implement decisions – achieving mutual understanding, agreement and action.”\(^6\) Such localized governance processes, comprise the mechanisms and processes for citizens and groups to articulate their interests, mediate their differences and exercise their legal rights and obligations.\(^7\) Such processes have a positive effect on social capital which will be explored in greater detail below.

The Concept of Social Capital

Social capital is a broad term that encompasses the ‘norms and networks facilitating collective actions for mutual benefit’.\(^8\) Depending on the particular area of application\(^9\) and theoretical tradition\(^10\), the concept of social capital may be viewed through multiple lenses. In reviewing the extensive literature on social capital, observers have noted that its definitions are diverse, numerous, and reveal various important aspects

\(^5\) UNDP Strategy Note on Governance for Human Development, 2004
\(^6\) Id.
\(^7\) Id.
\(^9\) http://www.socialcapitalresearch.com/
of the concept. Whereas no conception of social capital seems to be generally accepted, most definitions contain references to norms, values, relationships, connections, networks and trust embodied in specific structural forms (e.g. cooperative, networks associations, groups etc.). 11 Below, various applications of the concept of social capital will be examined in greater detail.

Social Capital as an Economic Idea

From one perspective, social capital may be regarded as an economic idea. According to Valentinov (2004), “social capital is explicitly regarded as a productive resource just as much as financial, physical, or human capital.” 12 Capital is a factor of production which is used to help in producing other goods or services. 13 In recent years, capital has increasingly come to be used to include intangible items, such as skills or talents. 14 Just as a tractor (physical capital) or university education (human capital) can increase productivity (both individual and collective), social cohesion also enhances the productivity of individuals and groups. 15

Social capital, as an economic idea, refers to the connectedness between individuals and groups. Such connectedness ‘generates returns in the form of better

---

13 Social capital can also produce negative effects, however. For example, if a social network is used for manipulative purposes such as fixing market prices, it will affect the economy negatively. Cohesive networks can also lead to mutual dependency and conservatism, resulting in resistance to necessary change and hampering growth.
15 Ibid.
access to information, better communication and coordination and the reduction of opportunistic behavior’.\textsuperscript{16}

**Social Capital as a Socio-Political Idea**

Apart from economic benefits, social capital can also bring about social cohesion in communities. McDowell(2001) considers social capital as ‘one of a number of related terms used to describe the extent to which members of a community view themselves as members of a coherent group, and to which they work toward the common good.’\textsuperscript{17} Putnam, speaking in a meeting to OECD Education Ministers in 2004, reported robust correlations in various countries between vibrant social networks and important social outcomes like lower crime rates, improved child welfare, better public health, more effective government administration, reduced political corruption and tax evasion, improved market performance, and so on.’\textsuperscript{18} In this sense, the value of social capital is not confined to economic benefits alone. It facilitates co-ordination and co-operation for mutual benefit and contributes to social cohesion and stability.\textsuperscript{19}

In brief, social capital here refers to the social networks, connections and norms shared by individuals and groups, or to the resources arising from them.

\textsuperscript{17} http://www.courseweb.uottawa.ca/pop8910/Notes/Social_Capital.htm
\textsuperscript{18} Ibid.
\textsuperscript{19} Forrest, R., & Kearns, A., “Joined-up places?: social cohesion and neighbourhood regeneration” (1999) London: Joseph Rowntree Foundation
Social Capital and Social Cohesion

Relating to the concepts of social cohesion and community, Brehm & Rahn (1997) define social capital as ‘the web of cooperative relationships between citizens that facilitate resolution of collective action problems’. Fukuyama (2000) observed that ‘social capital can be defined simply as the existence of informal values or norms shared among members of a group that permit cooperation among them’. Putnam also defines social capital as ‘features of social organisation such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit’. It includes, according to Thomas (1996), “those voluntary means and processes developed within civil society which promote development for the collective whole.”

Social cohesion refers to the level of connectedness and solidarity among groups in society. In socially cohesive societies, strong social bonds evinced by high levels of trust and norms of reciprocity (features of social capital), efficient institutions of conflict resolution and ample organizations that bridge social divisions should be present.

In this sense social capital can be seen as a subset of social cohesion. A cohesive society is one that has abundant social capital, while social capital includes those features which act as resources for individuals and facilitate collective action.

---

23 See http://www.socialcapitalresearch.com/
24 See http://www.coursesweb.ouottawa.ca/pop8910/Notes/Social_Capital.htm
Social Capital and Trust

The concept of social capital is also directly linked with the presence of trust within a given community. Historians such as Francis Fukuyama have defined social capital as “the crucible of trust.” He explains that trust “is critical to the health of an economy, [and] rests on cultural roots” 27 and “a key by-product of the cooperative social norms that constitute social capital.” 28 When trust is present, communities comply with shares norms, avoid taking advantage of each other and readily form groups to achieve common purposes. The energy that is consumed by second guessing is replaced by a commitment to take action on social problems. Without trust, the transaction costs at every level of human interaction, from everyday interaction between neighbors to business associates, are high. 29

From one perspective, Putnam suggests that the development of social capital such as trust requires long periods of development. 30 Other research shows that “the design of institutions delivering local public goods can influence levels of social capital” relatively early on. 31

26 One can see that most authors in their literature stress the positive aspects of social capital, such as trust and mutual reliance leading to development, harmony and stability. Few take the negative aspects of social capital, e.g., exclusionism, inward looking, and resistance to change, into account.

30 Id.
This paper submits that development strategies in environments characterized by high levels of distrust might consider integrating consultative decision making processes, preferably initiated at the outset of a development program, to catalyze the long term development and the maintenance of trust within a community and strengthen local administrative institutions. To the extent that individuals are trained to resolve conflict on their own and are given access to forums that facilitate such resolution, societal capacity for self-reliance, self-determination and the ability to find appropriate solutions to collective problems is greatly strengthened.

This paper will proceed as follows. Following an examination of the concept of social capital, section two will explore the impact of varying approaches to governance decision making including collaborative and competitive negotiation on building social capital within communities. It will also consider the relationship between collaborative decision making and achieving collective aims of social justice. Finally, the last section will examine a case study of how social capital can be built through participation in community decision making process regarding resource use.
PART II: Decision Making to Unlock Individual and Group Capacity and Enhance Social Capital

Insights based on the dynamics of social capital indicate that community based initiatives cannot succeed where trust is absent and mechanisms for collective decision making do not exist. Yet governance decision making can take many forms – whether distributional, competitive or collaborative. This section will examine, in particular the impact of collaborative systems of decision making on building social capital in communities.

In general, this section finds that the creation of consultative community based programs serves to build trust and social capital. The creation of dispute resolution centers where neighbors can become familiar with each other and build bridges of understanding that cross cultural, political and economic barriers represent an important foundation for the development of social capital. Effective exercise of the capacity for collective decision making and collective action contribute to the development of “institutions… [that] are devoid of corruption and… engender public trust.”

Negotiated Decision Making at the Community Level

A key component of a community decision making forum is the process of coming to decisions about issues facing a community. As defined by Korobkin (2002), negotiated decision making is an interactive communication process by which two or more parties who lack identical interests attempt to find a way to coordinate their activities.

---

33 Ibid.
behavior or allocate scarce resources in a way that will make them better off than they
could be if they were to act alone.\textsuperscript{34} Such processes may be carried out within the context
of a collaborative or competitive framework with differing effects on the building of
social capital. In what follows, two primary types of group decision making will be
examined. They are competitive negotiation and collaborative negotiation. Their
respective impact on the building of social capital will be discussed.

Competitive negotiation is sometimes called “positional”, “distributive” or
“distributional bargaining”, whereas the collaborative approach is sometimes referred to
as “integrative” bargaining or “problem-solving negotiation”. Lax and Sebenius (2006)
view these two bargaining processes as being distinguished by “value claimers” and “value creators”. While competitive negotiators focus on claiming value, collaborative
negotiators focus on creating value. Competitive negotiation is likely to have negative
impact on social capital as it undermines trust and the tendency to cooperate within a
community. Collaborative negotiation, on the other hand, tends to have a positive impact
on building social capital. The process of collaborative negotiation often facilitates social
cohesion and cooperation through information sharing and exploring solutions.

\textit{Competitive Decision Making Processes}

Competitive negotiation is a form of contest in which there generally is a
“winner” and a “loser.” According to the competitive framework, the negotiator needs to
be tough, powerful and skilful in maximizing his or his principal’s self-interest.\textsuperscript{36}

\textsuperscript{35} Lax, D.A., and Sebenius, J.K., “3-D Negotiation: Powerful tools to change the game in your most
Competitive negotiation is also called distributive bargaining because it is “distributive” of the limited resources considered to be available for distribution. As Raiffa (1987) puts it, in distributive bargaining, one single issue is under contention and the parties have almost strictly opposing interest on the issue. Thus, the more you get, the less the other party is left with. In other words, the interest pie is seen as fixed. Thus, hard bargaining tactics are often employed to maximize individual profits irrespective of the overall effect on others, or even at the other’s expense. These strategies give rise to a hostile and confrontational approach and response, focusing on manipulation and threats rather than on trying to understand the issues sufficiently to find a mutually acceptable solution. Deception and bluffs may also be employed by competitive negotiators.

Competitive negotiation is likely to have a negative impact on social capital. As the negotiator see the interest pie as fixed, he believes that the outcome will be a win/lose situation. This means that joint gains cannot be identified and innovative solutions will not be created. Moreover, as analyzed by Murray, Rau and Sherman, communications in competitive negotiation is often distorted and tension, mistrust, anger and frustration may result. Brinkmanship inherent in the competitive approach often results in deadlock and a breakdown of negotiations, with consequent delays, stress and additional costs. Such outcomes have a negative impact on social capital because they increase mistrust between individuals within a community. Lewicki, Saunders & Minton (1999) notes that misrepresentation or lying is a lot more common in distributive bargaining than in

37 Ibid.
integrative bargaining. This causes hostility and hampers social cohesion, which in turn has a negative impact on social capital.

**Collaborative Decision Making**

In collaborative problem-solving decision making, the paradigm shifts from battling over the division of the pie to the means of expanding it by uncovering and reconciling underlying interest. In collaborative negotiation, negotiators avoid being positional but rather concentrate on parties’ respective needs and interests. Looking beyond stated aspirations and trying to assess underlying needs or preferences is a recurring theme of problem-solving negotiation.

Collaborative decision making contributes to the building of social capital in various ways. In collaborative negotiations, rather than focusing on the form in which an aspiration is expressed, parties examine one another’s underlying needs, particularly where differences exist. By recognizing the differences in underlying needs and priorities, it is possible to create value since the existence of differences allows more scope for constructing a settlement which accommodates those differences. It also provides many opportunities for arriving at creative solutions. Through collaborative negotiation, differences between individuals and groups do not lead to conflict or trigger hostility which restrains cooperation and weakens social cohesion. In contrast, differences are taken as opportunities to create value and solutions. Cooperation between

---

groups is encouraged because mutual benefits are generated through collaborative negotiation. This helps build social capital.

The process of collaborative negotiation which often includes a space for dialogue and resolution is also conductive to building social capital. In the dialogue stage, active listening is encouraged. Through focused listening, the needs and feelings of each party are identified. This helps individuals to “walk in the other’s shoes”, which, described by Wilson (1997), is one of the “collaborative process skills that is the key to building social capital”. It is suggested that walking in the other’s shoes is conducive to both binding and bridging social capital.

Another important element in the process of collaborative negotiation is informing. The purpose of informing is to make one’s own positions, needs and feelings known to the other party. During the process, information unknown to the other party will be shared. As Wilson notes, communicative actions which increase parties’ access to information and dialogue, builds consensus, fosters understanding and encourages interdependent projects between companies and institutions, in turn promotes social cohesion and contributes to the building of social capital between groups.

---

45 Wilson, P.A., “Building Social Capital: A learning agenda for the twenty-first century” (1997) *Urban studies* 34, 745-760. In his research, he quoted an experience of the Grameen Bank – a bank known for its successful micro-enterprise group lending to the landless poor of Bangladesh. The bank developed an intense six-month training programme which requires its head office professionals to live in a village and work at the local Bank branch. It is reported that by walking in the other’s shoes, those who completed the training had a higher level of commitment to its company and its partner, contributing to the building of social capital.

46 Through transactional collaborative negotiation, ideas and norms are shared between the parties, facilitating coordination and cooperation for mutual benefit. This, as Putnam defines, is the very feature of social capital; See Putnam, R.D., “Bowling Alone: America’s declining social capital” (1995) 6 *Journal of Democracy* 1.

In collaborative negotiation, parties work together to identify joint solutions on which they mutually agree. It is rare that a party in negotiation will be satisfied if he is the only one who pays or contributes to the joint solution. In other words, parties in negotiation contribute toward a common goal, creating a positive impact on social capital.

**Collaborative Decision Making and Social Justice**

Collaborative negotiation, while providing numerous benefits to individuals and societies must not be indifferent to the possibility of masking procedural or distributional inequalities.

One means by which collaborative negotiation can address such challenges is through the selection of collective operational rules and principles, pooling common facts, training in decision making skills and careful and close evaluation of processes. The ability to pursue legal rights and protections is an additional mechanism by which structural inequalities may be addressed. On the one hand, the goals of social justice are not fully realizable without a foundation of social cohesion and trust. At the same time trust is maintained through the realization of objectives of social justice as will be examined further below.

---

48 Id.


52 See: UNDP Strategy Note on Governance for Human Development, 2004
Community Decision Making and Social Capital

The task of building capacity for community decision making in environments characterized by weak relational capital requires an initial demonstration of how coordinated behavior can benefit both individuals and the community as a whole; second an agreement on the structures and norms that support the required behavior and third, and most important an institutionalization of these structures and norms in such a way that the desired form of behavior becomes institutionalized or customary.

Classification Scheme of Social Capital\(^{53}\)

<table>
<thead>
<tr>
<th>Institutional Capital</th>
<th>Relational Capital</th>
<th>Task</th>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strong</td>
<td>Strong</td>
<td>High Social Capital</td>
<td>Strong organization</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Task: Extend scope of activities</td>
<td>Task: Legislation, institutionalization</td>
</tr>
<tr>
<td>Weak</td>
<td>Traditional/Associative</td>
<td>Task: Introduce rules, procedures and skills</td>
<td>Anomic, atomistic</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Task: Assist in development of structure and norms</td>
<td></td>
</tr>
</tbody>
</table>

As noted above, research in collaborative group decision making demonstrate the positive gains to be made by cooperative action.\(^{54}\) The Institute for Studies in Global Prosperity observes that, “the realization of justice is dependent upon universal


\(^{54}\) This research is also supported by findings in cooperation theory, law and economics as well as iterative game theory which all demonstrate the practical gains to be made by cooperative action.
participation and action among all members and agencies of society.”\textsuperscript{55} It adds that once such a culture begins to evolve, “practical issues such as training in the administration and enforcement of justice, equitable distribution of community resources, and the upliftment of persons and groups historically excluded from the benefits and opportunities offered by society can be effectively addressed.”\textsuperscript{56}

Joint analysis of the conditions that directly impact the life of a community can serve as the first focal point for developing an intervention strategy designed to build trust. Convening community members to seek consensus through the broadest possible participation contributes to the creation of a setting where the parties to conflict can learn to bring their issues in a non-conflictual environment. With regard to the nature of that participation, it must be, “substantive and creative; it must allow the people themselves access to knowledge and encourage them to apply it.”\textsuperscript{57} The Institute for Studies in Global Prosperity has identified a number of capabilities needed for effective participation. Among these include:

- the capacities to take initiative in a creative and disciplined manner;
- to think systematically in understanding problems and searching for solutions;
- to use methods of decision-making that are non-adversarial and inclusive;
- to contribute to the effective design and management of community projects;

\textsuperscript{56} Ibid.
and to manifest rectitude in private and public administration.\textsuperscript{58}

This kind of intervention requires an important time commitment from all participants. Changing old habits of debate, conflict, and violence and establishing new principles of initiative, rectitude and collaboration requires patience and a long-term commitment. When viewed in this manner, the project design phase becomes a part of project implementation.

Conclusion

Being intangible, social capital is inherently difficult to measure. Yet, from the discussion above, it is clear that collective decision making does play an important role in the construction of social capital. While competitive negotiation has a negative impact on the building of social capital, collaborative group negotiation has a positive impact on helping to forge constructive bonds at the community level.

\textsuperscript{58} Ibid.
Part III: Multi-stakeholder Dispute Resolution in Cajamarca, Peru

Among the variety of avenues for the resolution of conflicts is the development of access to justice at the community level through the use of a multistakeholder dispute resolution processes. Such dispute resolution forums have both short term and long term benefits. In the short term, such forums allow for the creative resolution of present concerns and the development of decision making and management capacity. In the long run, opportunities for the development of group cohesion and social trust (“relational capital”) developed by this process serves to build a foundation for achieving collective aims and preventing future conflict. The realization such social justice objectives, in turn, reinforces social cohesion and fosters the trust necessary to resolve ongoing issues.

The following case outlines insights gained from a multi-stakeholder dispute resolution process in Cajamarca, Peru. This process was implemented under the auspices of the International Finance Corporation following a mercury spill by a national mining corporation. Following a discussion of the background of the case, the section will outline the development of the community multi-stakeholder dialogue forum named by the participants, the “Mesa de Dialogo”, and finally examine and evaluate its process in relation to the creation of social capital.

**Background**

In June 2000, a contractor to the Minera Yanacocha Gold Mine in Cajamarca, Peru spilled 151 kg of elemental mercury along a 41 km stretch of road between a local
mine site and the town of Choropampa. The mercury spill sparked a massive public outcry regarding the activities of the mine in the region. Since the mining activities began, the area, populated primarily by agricultural and dairy farmers who farm small plots of land on the hillsides of the Andes, had been affected by an influx of people from outside the region, streets filled with very large trucks creating a risk to local pedestrians. As a result of the population growth, each year the hillside plots are reported to grow smaller, making the farming less economically sustainable.

Following the mining spill in Choropampa, a number of local farmers were exposed to the mercury and suffered adverse health effects. Immediately following the spill, local authorities intervened to attempt to manage the situation. The Ministry of Health sent the minister to the region who subsequently promised aid to those affected by the spill. However, no attention was forthcoming. The International Finance Corporation, a minority shareholder in the mine, through its Compliance Advisory Office (CAO) received a complaint from community members through the Federation of Rondas

---

62 From the Office of the Compliance Advisor Ombudsman <http://www.cao-ombudsman.org/cases/case_detail.aspx?id=110>; Despite mine projections conceiving of a 10 year operational life span, tremendous exploratory success witnessed the significant continuation of operations. The company is a consortium of three shareholders- Newmont Mining Corporation, Compania de Minas Buenaventura S.A. and IFC. A group of individuals affected by the spill also filed suit against Newmont Mining in U.S. and Peruvian courts and deliberation continues in both jurisdictions.

64 Davis, W (2001, September), Minutes of Cajamarca Mediation Process (on file with the author).
Campesinas regarding the adverse social and environmental impacts as a result of mining activities.\textsuperscript{65}

As a general matter, the mining industry in Peru has become an arena of intense conflict.\textsuperscript{66} The mining industry has transformed the regional economy, taxed the local housing market, social service agencies, and sparked an unwelcome growth in nightclubs and brothels to entertain newcomers. At the same time, the mining industry has stimulated employment and the development of social services through job creation and tax revenue.\textsuperscript{67} Increasingly, there is a recognition of the need to develop new social and political consensus regarding the role and management of the mining industry within affected local communities.

In mid 2001, community-mine conflicts intensified and local communities expressed concerns such as the lack of consultation with affected individuals and failure to distribute mining benefits in an equitable fashion.\textsuperscript{68} In response to the widespread, local demand for a comprehensive approach to addressing the conflict, the CAO supported the creation of a multi-stakeholder dialogue roundtable in September 2001.\textsuperscript{69}

In July 2001, the CAO sent a team to investigate the feasibility of utilizing a facilitation or mediation-based approach to address the concerns raised in the complaint.\textsuperscript{70} After visiting the region, the team became aware of the complex lines of


\textsuperscript{67} According to the Yanacocha mining company’s sustainability report for 2003, 7443 workers were employed by the mine, over 44% of the permanent employees came from Cajamarca. The mine contributed 140 million in taxes.

\textsuperscript{68} Ibid.

\textsuperscript{69} Evaluation of the Mesa de Dialogo y Consenso CAO-Cajamarca, Evaluation Report, May 2005.

\textsuperscript{70} The team consisted of: Mr. Bill Davis of DPK Consulting, Mrs. Susan Wildau of (CDR) and a representative of the CAO’s Office.
hostility and resentment in the area. The team found that this resentment, hostility and a lack of trust within the community impeded collective decision making. It agreed that its task was to create favorable conditions for a process to be initiated that would enable the participants to begin to work together over the long term.

For four and a half years, the Mesa de Dialogo y Consenso (Mesa) sought to create an open forum for dialogue to help prevent and resolve conflict between the communities and Yanacocha. With the participation of over 50 public and private institutions, the Mesa facilitated conflict meditation training, undertook capacity building workshops for community members and mine staff, oversaw an independent participatory water impact study and subsequently led a participatory water monitoring program. These efforts aimed to promote dialogue and transparency.

**Development of Multi-stakeholder Dialogue**

The development of the Mesa and its identification of collective objectives took place through a sequence of three phases of training and development. These three phases included an exploratory phase, a period of development and a “consolidation” phase which will be described below.

---


Phase 1: Exploratory Phase

At the outset of the development of the Mesa, the CAO sent a team to meet with a wide variety of stakeholders. During this first phase, which took place between July – September 2001, the team met with community members to identify issues facing the community and determine the willingness of individuals and groups to engage in a process of dialogue and discussion aimed at identifying options for resolution. After determining that there was a desire and an opportunity to engage in a process of dialogue, the team then met again with stakeholders to convene three meetings to: 1) facilitate discussion about the scope of issues identified, 2) explore the principles and alternative approaches for building consensus and resolving disputes, and 3) examine options for moving forward.

At the first meeting, the team of collaborators reviewed the findings regarding the situation in Cajamarca and asked the participants to identify their primary concerns. Approximately 50 individuals from a cross section of the community participated. Representatives of the Mine were also present in order to listen to the complaints. This emotionally charged session reflected the extensive pent up anger that the participants felt toward the mine. Some remained silent and key nongovernmental organizations did not attend the session due to a boycott.

---

76 Id.
77 Id.
79 Id.
The members of the Mesa identified the following “Work Plan Goals” which included the following: training members in dialogue skills and natural resource management; promoting actions to improve the environmental conservation of water, air, soil, and human health quality with participation of the Mine; promoting social and economic development through strengthening small enterprises; achieving the integration of new public private and civil society organizations to strengthen the representation of the Mesa in order to complete its mission; work on conflicts within a framework of good faith, respect, cooperation and tolerance, and seek solutions through consensus to satisfy the interests and needs of all parties; promoting and publicizing conflict resolution mechanisms through training, dialogue and active participation of the member institutions of the Mesa with the purpose of promoting good relations; supporting and promoting actions that improve and preserve the environment and that respect individual and group differences; contribute to and promote participation in diverse public and private institutions through representatives with decision making capacity in order to promote sustainable development in Cajamarca; promote institutional strengthening of the administration of the Mesa; improve the quality of the environment in the valleys adjacent to the Mine and provide optimal quality and quantity of air and water for diverse local users and provide a technical reference for social environmental conflicts in Cajamarca.\(^{81}\)

In the second public workshop, the parties discussed possible consensus-building models (such as Mesa de Dialogo) and their feasibility, advantages and disadvantages.\(^{82}\)

\(^{82}\) Id.
This enabled the team and participants to determine which model would be most effective in the local environment.\(^\text{83}\)

With a view to balancing the negotiating position of all participants, facilitation efforts focused on cultivating capabilities of group decision making.\(^\text{84}\) The Mesa selected 50 representatives to attend a consultative skills training sessions. The training activities provided an environment in which the participants from all groups, including the mine, could engage one another. Individuals from the rural areas recounted that this was the first time in their lives that they were able to participate as equals with people from the city.\(^\text{85}\) The highly interactive style of training assisted all the participants to engage on subjects relevant to their lives.\(^\text{86}\) This form of engagement served to assist participants as they gradually adopted broader goals based on interests.

The dialogue skills training focused on the development of skills emphasizing fact finding, selection of relevant principles for decision making, listing of all possible solutions, selection of appropriate solutions and collective implementation. Individuals were trained to facilitate group processes and re-convene on-going meetings.\(^\text{87}\) Significantly, such training processes “also underscore[ed] the importance of structured

---


\(^\text{85}\) Davis, W (2001, September), Minutes of Cajamarca Mediation Process (on file with the author).


\(^\text{87}\) Id.
learning in generating and sustaining an integrated set of social and economic
activities.”

The training sequence, which included a segment for training future trainers, aimed to ensure that community based decision making capacity could be sustained in the long run. Eventually a training of trainers was offered. The participants selected members to attend the training sessions in order to ensure that there was wide representation. Special attention was focused on encouraging the participation of women in the process.

Finally, in the third workshop, three working groups, focusing on water, development and other community natural resource issues were formed and participants chose which group to be involved in based on their area of interest. Each working group was responsible for coming up with a proposed plan of action (rather than a solution to the problem itself). Each group had to formulate its own goals as well as decide which specific issues it wanted to focus on. The groups also had to come up with a design for their collaborative process; considering questions such as how to make decisions, how to establish a pool of credible information, how to coordinate with other working groups and how to ensure discussions are balanced, credible and representative. Finally, each group had to consider the relevant time frame required and

88 Ibid.
92 Id.
93 Id.
how to proceed forward. After each working group had finished discussions, it presented its model to all the participants who could ask questions, make comments and assess the feasibility of moving forward.\textsuperscript{94} The participants also came up with a mechanism to ensure co-ordination among all working groups.

The three trainings included in this first stage of the development of the Mesa de Dialogo were oriented to the creation of a consultative environment, the creation of shared identity, and the initiation of a group process through which “relational capital” could be built. Through joint identification of issues of common concern and participation in joint dialogue training, the group began to form a group identity, and find agreement around common issues of shared concern.\textsuperscript{95}

**Phase 2 Development Period**

During the second phase of development which occurred between October 2001 and March 2002, the Mesa established a coordinating committee, continued training programs, and launched its technical work.\textsuperscript{96} Additional capacity building workshops were held on dispute resolution and methods for creating consensus in public meetings.\textsuperscript{97} Terms of reference were established for the water study including the concept of using “Veedores” (community monitors) to verify the activities and methods of the hydrology team.\textsuperscript{98} Ostrom’s references to the shared knowledge, understandings, norms, rules, and expectations that groups of individuals bring to a recurrent activity are consistent with the

---

\textsuperscript{94} Id.

\textsuperscript{95} The formation of group identification as opposed to constituency identification further enabled participants to build on a foundation of trust and thus enhance the prospects of achieving a viable solution.


\textsuperscript{97} Id.

\textsuperscript{98} Id.
aims and operational mode of the Mesa community dispute resolution forum at this stage.\textsuperscript{99}

**Phase 3 Consolidation of the Mesa**

During this third phase of consolidating the activities of the Mesa which occurred between March 2002 and January 2003, the meetings included regular progress reports on the water study.\textsuperscript{100} At this time a full time coordinator was hired.\textsuperscript{101}

The members of the Mesa engaged in the following activities in order to work toward its Work Plan goals: Mesa training workshops; annual planning sessions; referral of complaints (i.e. contractor payments); water study and oversight of data collection through community monitors (veedores); and an aquatic life study.\textsuperscript{102} In an effort to localize the Mesa and establish it as a fully Cajamarcan entity, the CAO concluded its active oversight in March 2006.\textsuperscript{103}

**Results: Impact of Mesa Activities on the Development of Access to Justice and Social Capital Development**

During its four year existence, the Mesa de Dialogo y Consenso CAO-Cajamarca worked to “address and resolve conflicts between Minera anacocha and the Community


\textsuperscript{100} See Evaluation of the Mesa de Dialogo y Consenso CAO-Cajamarca, Evaluation Report, May 2005.

\textsuperscript{101} Id.

\textsuperscript{102} Id.

\textsuperscript{103} From the Office of the Compliance Advisor Ombudsman http://www.cao-ombudsman.org/cases/case_detail.aspx?id=110
of Cajamarca with the participation of public and private institutions in a transparent, open, independent and participatory manner."104

Determining whether the Mesa was successful in addressing its aims of fostering access to justice and contributing to the building of social capital requires an assessment of its achievements in relation to its stated aims which included: 1) achieving broad representation of the community; 2) facilitating a participatory, open, transparent and independent governance process; and 3) establishing an effective mechanisms to prevent and resolve conflicts between the community of Cajamarca and Minera Yanacocha.105

---

104 Mesa Annual Operating Plan 2005
Results

1. Representation of the Community

The aim of the Mesa to be fully representative of the community corresponds with insights into good governance practice which aim for management of resource decisions “through interactions within and among the state, civil society and private sector.”106

At the outset, members of the Mesa recognized that “the lack of trust and social fragmentation existing in Cajamarca could not be overcome without a broadly representative and participatory body.”107 As a result the “policies and actions of the Mesa have deliberately sought to embrace a broad spectrum of the community as possible.”108 In reviewing participant feedback, one participant noted that “at the moment there is good representa[tion]: men and women are representing their towns and institutions.”109 While a significant effort was made to ensure that all major “governmental actors, and rural and urban civic organizations and interest groups would participate,” nevertheless observers noted that “there are still some significant actors absent from its meetings.”110 The Mesa’s 52 plus organizations represented a broad spectrum of the community111, yet at the same time, the Mesa lacked the participation of regional and local government and civil society NGOs.112

106 Id.
108 Id.
109 Id.
111 Represented entities included, among others, the following: representatives of the Ronda’s Campesinas, representatives of those valleys affected by the operation of the mine, a representative of the Mayor of Cajamarca, mayors of small villages, representatives of the Chamber of Commerce, the Water Company (CEDECAJ), representatives of the two principal Universities in Cajamarca, non governmental organizations, the Ministry of Mines and Gems, The Ministry of Health, representatives of the Catholic Church, and representatives of the Minera Yanacocha.
2. Participatory, Open, Transparent and Independent Governance Process

Among the recognized values associated with good governance decision making at the grassroots include participatory, open, transparent and independent governance processes. Such decision making processes have an impact on fostering the establishment of trust in communities so that collective challenges can be effectively addressed.

In working to foster participation, the Mesa organized a series of training sessions in group decision making. The on-going development of skills has enabled participants to gain skills in group decision making and seek practical solutions. According to one participant:

“the training is a process where we need the willingness to learn and also practice the skills. I am discovering a whole new facet of concepts and strategies that are important for me, especially the need to be well informed in elements of communication and to solve problems…”\textsuperscript{113}

Another participant noted that through the training they learned to “not see the conflict as unsolvable”\textsuperscript{114} while another participant noted that she learned to dialogue and not to judge.”\textsuperscript{115}

\textsuperscript{113} Davis, W (2001, September), Minutes of Cajamarca Mediation Process (on file with the author).
\textsuperscript{114} Id.
\textsuperscript{115} Id.
From the outset, the Mesa meetings were made open to the public and press.\textsuperscript{116} The Mesa technical work has also been directly monitored by the public and the Mesa has actively sought to disseminate and explain the results of its technical studies to affected members of the public.\textsuperscript{117} Observers noted that in order for the Mesa to improve its level of openness and independence and address concerns that the Mesa is not independent, “a set of rules regarding conflict of interest and public disclosure of a member’s interests in the Mine” would be useful.\textsuperscript{118} According to one evaluation, “in the current context of Cajamarca... no institution, person or initiative is immune from the pervasive atmosphere of suspicion and distrust affecting the relations between Minera Yanacocha and the community.”\textsuperscript{119}

Finally, the ability to independently investigate the socio-economic conditions of a community and search for common solutions requires an effective process of joint fact-finding and investigation. Achieving this objective requires that “mechanisms be established and avenues be opened for community members to participate meaningfully in the conceptualization, design, implementation and evaluation of the policies and programs that affect them”.\textsuperscript{120} Research has found that, “Resolving a complex public policy dispute requires that interested parties share understanding of the technical dimensions of the problem they face…the very best scientific information must be collected and used.”\textsuperscript{121}

\begin{flushleft}
\textsuperscript{116} See Evaluation of the Mesa de Dialogo y Consenso CAO-Cajamarca, Evaluation Report, May 2005. \\
\textsuperscript{117} From the Office of the Compliance Advisor Ombudsman http://www.cao-ombudsman.org/cases/case_detail.aspx?id=110 \\
\textsuperscript{118} See Evaluation of the Mesa de Dialogo y Consenso CAO-Cajamarca, Evaluation Report, May 2005. \\
\textsuperscript{119} Id. \\
\textsuperscript{120} BIC, 1998 \\
\textsuperscript{121} Scott T. McCreary, John K. Gamman, and Bennett Brooks in the Summer 2001 publication of Mediation Quarterly
\end{flushleft}
In pursuing the aim of collecting reliable, independent technical information regarding the impact of the mine’s activity on the community, the Mesa oversaw a technical study on water quality and quantity carried out by Stratus Consulting. The Water Study “reflects a strategy for dispute resolution that focuses on providing an open and transparent process for developing and disseminating technical information about issues in dispute.” This view rests on the proposition that “as effective dispute resolution process requires that all parties share credible, independent, scientifically sound information regarding the issues to be addressed.”

3. Facilitate Mechanisms to Prevent and Resolve Conflicts

At the outset of its development, community members voiced the desire that the Mesa become an effective organization capable of addressing community concerns. In examining its impact, observers noted that on the one hand, the Mesa provided a safe place to address critical and challenging issues regarding the operation of the Mine and oversee the collection of important information necessary for the community to reach joint consensus and action. At the same time, its efficacy was hindered by ongoing questions as to the existence and operation of the Mine.

With regard to its efficacy, the Mesa met regularly for three years, developed annual work plans and oversaw the implementation of fact finding, assessment, and community development activities derived from those plans. In addition, participation in

---

123 Id.
the Mesa was constant and regular. "The Assembly… met over 20 times since its inception, and membership participation has seldom dropped below 60." Several observers noted that, the Mesa “has become a valuable forum for the mayors of smaller rural villages and other rural organizations to air issues and inform themselves about the activities of the Mine and the work being done under the auspices of the Mesa.”

The Mesa evolved into a “mixture of a forum for civil society dialogue and a mechanism for providing objective technical information on issues surrounding the relationship between Yanacocha and Cajamarca.” Over a period of four years, the Mesa participants have identified work plans and activities designed to achieve the objectives of: 1) developing an open and transparent process for developing accurate, objective and authoritative factual information about the issues in dispute which can be made available to all parties and to provide an environmental oversight role, based on technical information gleaned from independent monitoring 2) providing education on effective methods for resolving disputes and 3) establishing an administrative system for conflict resolution between the community and the mine that people recognize as credible, independent and accessible.

From a wider perspective, the Mesa “Mesa has become a broad forum for Civil Society Dialogue, an instrument for Technical Dispute Resolution and in the minds of some of its members, a fledgling mechanism for targeted – issue dispute resolution. The study of water quality in the region established an objective, scientific basis for

---

124 Id.
125 Id.
126 Id.
127 Id.
understanding the scope of the problems facing the community. On this basis, the
dialogue group was able to achieve a number of significant environmental, social and
economic achievements. These included: the development of an environmental
management plan, a new mechanism to transport dangerous materials, an emergency
response manual, increased employment of rural residents in the work of the mine, a plan
for the promotion of health in the region and the delivery of health services, the initiation
of a public works project in the three affected towns; and the development of potable
water, sewage drainage, health centers and schools.\textsuperscript{129}

At the same time, addressing concerns regarding the existence of the mine, some
observers have recommended that early intervention, community consultation and input
regarding the existence, scope and duration of mining activities would go far to prevent
future conflict.\textsuperscript{130} In reaching the Mesa’s objective of establishing a formal dispute
resolution system, observers noted that several steps would need to be taken to enhance
its capacity to effectively resolve community disputes. These steps would include the
drafting of: a set of documents describing the objectives, methodology and staffing of the
dispute resolution body, set of policies and procedures to receive and handle complaints
and the identification of a team of mediators/conflict resolution specialists as resource
people.\textsuperscript{131}

\textsuperscript{129} Davis, W, Minutes of Cajamarca Mediation Process (on file with the author).
\textsuperscript{130} See Brant McGee, “The Community Referendum: Participatory Democracy and the Right to Free, Prior
Conclusion

In virtually every development activity the primary focus must be the early engagement and participation of community members in formulating community consensus, trust and social cohesion surrounding the nature and scope of activities within a community. Recent experience has found that development project design directly benefits from early development of mechanisms to manage and resolve conflicts as they arise, and from training participants and community members in practical skills of collective decision making. Through this approach, the ability to prevent conflictive situations will be enhanced and local partnership, trust and social cohesion will be strengthened.

The development of new capacities to manage and resolve conflict is as a key element in the strategy to build social capital. The informal sector offers many opportunities to develop unique and distinctive approaches to decision making. Individuals acquire new skills and new relationships as they develop these dispute resolution capacities.

Development designs that incorporate forums for multistakeholder dispute resolution have the possibility of defying the conclusion that the creation of social capital is an unapproachable ideal requiring the passage of centuries. Rather, given the opportunity to build decision making capacity, individuals are enabled to effectively exercise their will for change, strengthen social cohesion, expand access to justice, and thereby contribute to the progress and development of their communities.