



PROGRESS REPORT

Complaint regarding the Allain Duhangan Hydropower Project

Himachal Pradesh, India



August 28, 2006

Office of the Compliance Advisor/Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency

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Overview

From July 20-25, 2006 a CAO ombudsman team visited the Allain-Duhangan Hydropower Project site in response to requests from villagers of the Jagat Sukh community. The CAO's objective was to understand if it could assist in building capacity of both existing village bodies and the company to resolve outstanding concerns. The CAO ombudsman operates under strict guidelines and principles to promote dispute resolution.

The CAO found that the relationship between the community and Bhilwara Company has improved over the past 6 months due to an increase in project-related jobs and contracts that directly benefit Jagat Sukh. However, many stakeholders still have concerns about the relationship between the company and community and the capacity of both to resolve disputes. The CAO heard that the parties shared an interest in:

- i) Strengthening the capacity of community leadership institutions – such as the Panchayat – to represent the sometimes diverse interests of many different voices in the village in a coherent and accountable way;
- ii) Strengthening the capacity of both the company and community to more systematically work together to identify shared concerns, prioritise them and act to resolve them.

The CAO has the agreement of all primary stakeholders to assist both the company and village leadership to improve their capacity for joint problem-solving and negotiation. We are proposing a series of capacity-building workshops to address these issues over the coming months.

This report includes 1) a brief project background; 2) description of the CAO field visit methodology; 3) a summary of core findings; and 4) analysis and recommendations for next steps.

Background

The Office of Compliance Advisor/Ombudsman (CAO)

The CAO is an independent office within the World Bank Group that is charged with responding to complaints raised by people who believe they may be negatively affected by IFC or MIGA-supported projects. The CAO reports directly to the President of the World Bank; its Ombudsman function seeks to assist the parties to find a jointly agreed settlement to the complaint that has been raised.

In the context of the Allain-Duhangan project, the CAO will work with existing village-based institutions to strengthen their capacity to be accountable, participatory, and to promote good governance. CAO does not seek to divide communities or to create alternative leaders, but we will challenge all parties (company and community and local government) to ensure that processes are fair, equitable and principled. CAO will not promote agreements that do not meet the interests of all the parties in a negotiation, or that cause harm to people or the environment in violation of IFC or MIGA policies. The CAO does not provide funds for community development projects, but works within the framework of IFC and MIGA policies to ensure that sponsor companies meet their responsibilities and commitment to promote sustainable development.

The Project

The Allain Duhangan project is a planned 192 MW run-of-river hydroelectric power plant, with an associated transmission line, to be built on the Allain and Duhangan tributaries of the Beas River near Manali, Kullu District in the northern state of Himachal Pradesh, India. The plant is being built on the Allain River, but will be powered by the combined flows of the Allain and the diverted Duhangan River.¹

The project company, Allain Duhangan Hydro Power Limited, was formed to construct, operate and maintain the power plant. The project sponsor is Malana Power Company Limited, which is fully owned by LNJ Bhilwara (LNJ) Group. IFC is financing the Allain Duhangan hydroelectric dam and has 10 percent equity in the project. The project sponsors – LNJ Group and Statkraft Norfund Power Invest AS (SNP) of Norway – hold 90 percent equity.

In October 2004, villagers in the Himachal Pradesh region filed a complaint stating that water supplies would dry up due to the project's diversion of the Duhangan River, with negative consequence on agriculture, tourism, and overall quality of life. Complainants also stated that the Environmental and Social Impact Assessment (ESIA) documents prepared by the sponsor neither adequately considered the legitimate concerns of the villagers nor provided a sufficient basis for informed consultation on key project impacts.

As part of the CAO assessment process, Senior Ombudsman Specialist Amar Inamdar met with the IFC project team and with complainants and sponsors during an initial site visit. The assessment report was finalized and made public on the CAO website (www.cao-ombudsman.org) in March 2005. During a follow-up CAO visit in April 2005 and a mediated session, the complainants and company agreed to specific next steps to resolve outstanding issues². These steps included:

- Explanation by the company regarding how current and future demand for drinking and agricultural water would be calculated and monitored;
- Preparation of detailed contingency plans for the protection of water supplies to the village in the event that damage to the existing supplies is caused by the project;
- Preparation by the company, together with representatives from the Jagatsukh community, of a schedule for implementation of key commitments made in the ESIA and participation of affected people in monitoring commitments;
- Creation of an appropriate community development program; and
- Improvement of the credibility and function of the project grievance and appeals processes.

¹ A map of the project region is included in CAO's first assessment report; available at http://www.cao-ombudsman.org/html-english/complaint_duhangan.htm

² The company claims it has implemented these steps except those blocked by the court case and Jagatsukh village.

The complainants and company committed themselves to regular constructive and positive dialogue to continue to resolve current and emerging issues, and made assurances that participation at these meetings would be fully representative of community issues and concerns. The outcomes of these discussions were to be shared widely both within the village and the company.

Despite these agreements, considerable community apprehension and general unwillingness to support the project persists. The company did not undertake further groundwork in the village of Jagatsuk until the beginning of May 2005, nor has formal dialogue taken place since that time. In early 2006 some villagers decided to seek an injunction through the Indian High Court to prevent the company from moving forward with the project. The High court decided the case in favor of the company in June 2006; it prohibited interference with project construction and encouraged the community and company to “work together to resolve their outstanding issues and concerns in an amicable manner”. The court also asked the Deputy Commissioner to assist in the creation of a Village Development Committee that could co-ordinate relations between the company and local people. In addition, the court mandated further study of project impacts on irrigation water³.

Approach

The CAO team⁴ returned to the Allain-Duhangan Project site July 20-25, 2006 to determine if it could be of further assistance in building capacity of the company, community leaders, and local government (e.g. Panchayat⁵) to address and resolve outstanding issues and concerns. CAO also sought to promote the social and environmental performance of the company in accordance with agreements defined in the project ESIA and other established commitments as noted above. In light of the High Court’s ruling urging collaboration, CAO saw opportunity to promote a more systematic approach to resolving concerns between the company and community. CAO held in-person meetings with a wide range of stakeholders⁶, including the lead complainants; other villagers of Jagat Sukh; elected Panchayat leaders; the Kullu District Commissioner; and Bhilwara Company representatives.

³ The results of the study will be completed in September 2006.

⁴ The CAO team consisted of Senior Ombudsman Specialist Amar Inamdar and CAO Ombudsman Meg Taylor. They were accompanied by consultant Merrick Hoben of the Consensus Building Institute, a global dispute resolution organization (www.cbuilding.org).

⁵ The Panchayat is a 7-member local representative village council elected every five years. The Jagat Sukh Panchayat represents 4 villages consisting of approximately 2700 persons.

⁶ The term stakeholder is broadly defined as those that are affected by corporate activities as well as those that are able to influence corporate activities. These groups can include local communities, government agents, NGOs and opposition groups.

Specific meetings between the CAO team and key stakeholders included:

- 7/20 Mr. Ashok Joshi, Bilhwara Company - meeting #1
- 7/21 Complainants, Jagat Sukh village
- 7/21 Mr. Ashok Joshi and Bilhwara Community Management Team - meeting #2
- 7/22 Complainants, Jagat Sukh village
- 7/22 Villagers of Jagat Sukh - Group meeting
- 7/22 Jagat Sukh Panchayat leadership (President and Vice President)
- 7/23 Panchayat Membership at-large (4 of 7 members)
- 7/23 Road construction site tour and discussion of impacts with villagers
- 7/23 Mr. Ashok Joshi, Bilhwara Company - meeting #3
- 7/24 Mr. Chamel Singh, Kullu Deputy Commissioner

The CAO team sought to 1) listen to understand the current situation; 2) ensure that all community members have a shared understanding of why the CAO was visiting the project; and 3) clarify how CAO could assist the community with building dispute resolution capacity.

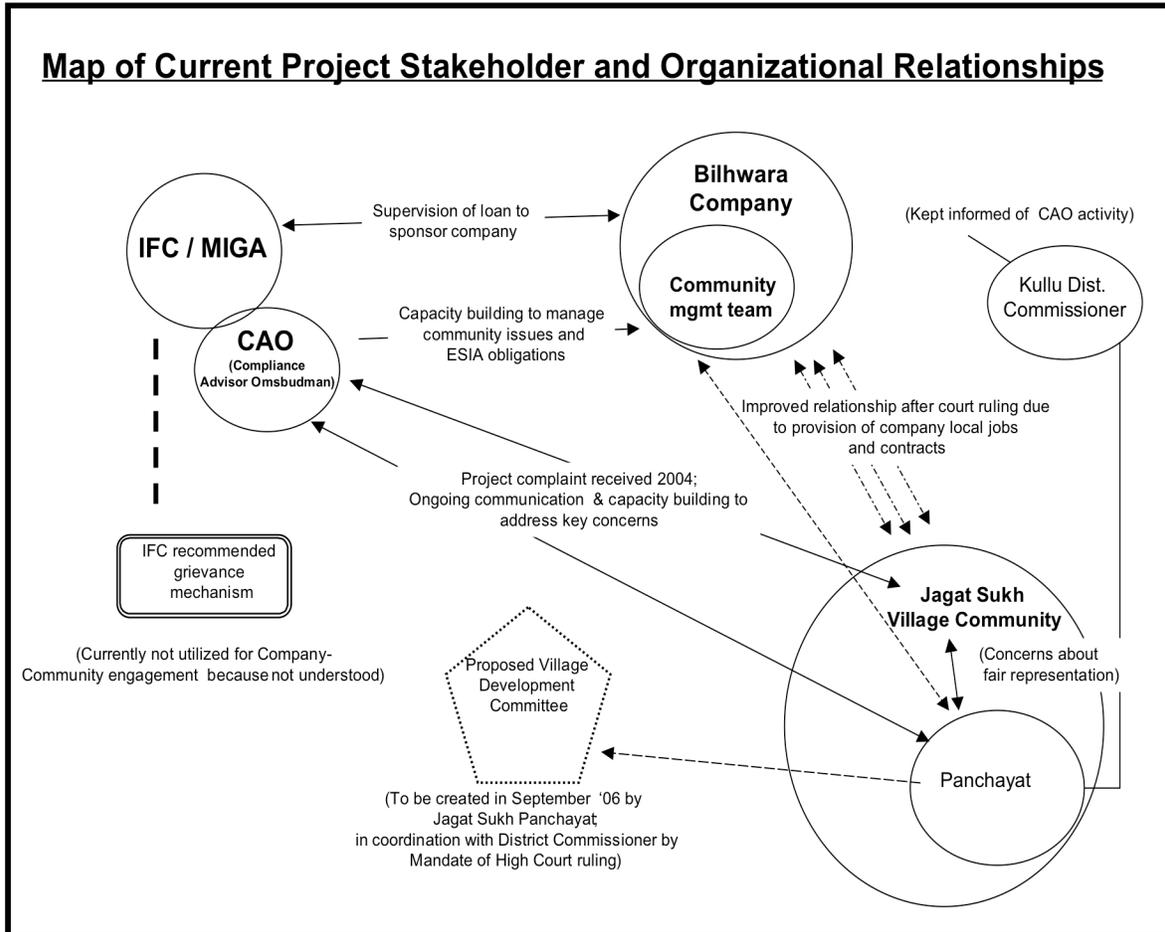
Specific issues discussed with stakeholders included:

- The current status of community-company relations
- Identification of outstanding community issues and concerns, and how they are currently being addressed by the company; and
- Whether and how the CAO can be of further assistance to both the community and company in helping to improve communication and dispute resolution mechanisms

Findings

Figure 1 characterizes the principal project stakeholders and their relationships based on CAO's understanding of the interviews and analysis of the current situation.

Figure 1



Improved Community and Company Relations

Relations between the Jagat Sukh community and the Bhilwara Company have improved over the last six months. While some villagers are still disappointed with the High Court's ruling, most commented that the relationship with the company and general public has become better with provision of jobs and contracts and establishment of a local company office in Jagat Sukh. As one stakeholder noted, "[the company] has provided significant work and has held to their promises". As of July, the company reported that over 240 contracts have been issued involving direct benefits for over 50 Jagat Sukh families.

Ongoing Frustrations

At the same time, both community and company frustrations persist. Villagers believe they have low levels of knowledge about project operations and plans, lack clarity about how long project work will continue, and how their key concerns — including sufficient water quality and quantity — will be resolved. Others voiced strong concern that the community's immediate focus on jobs and contracts has drawn attention away from environmental and social issues of equal importance. As a result, the voices of the poorer and less powerful interests in the community are being overlooked in the rush for economic opportunity. From the company's perspective, the community is a constant source of different demands for benefits and financial support without a clear set of priorities. Overall, many stakeholders share the belief that that trust and communication could be enhanced through better information regarding project decisions that affect the community.

Informal Communication and Dispute Resolution

Both the company and community continue to rely on informal communications and dispute resolution to address ongoing community issues and concerns. Community issues are typically dealt with over the phone and/or in-person by company leadership and/or the community engagement team⁷. While these methods have been largely rapid and effective in addressing villagers' concerns, much of the Jagat Sukh community is still unclear about with whom the company is speaking, what decisions are being made, and whether or not those decisions represent the broader interests of the community.

The project's formal grievance mechanism does not appear to have been utilized, and the concept is neither well understood nor seen as necessary. This observation appears to be shared by members of both the company and the community. Company leadership believes its personal, one-on-one communication approach is the only effective option currently available because (a) it keeps channels of communication open, (b) it allows for rapid response, and (c) the community is not organized to represent its views in a predictable way and speaks with multiple voices.

As a result, there is a broad sense among Jagat Sukh stakeholders that, while recent community project benefits are positive, the way they are distributed is neither transparent nor equitable. Some villagers went further with claims that community leadership is negotiating project contracts for families and friends, while ignoring the interests of minority groups, such as lower castes and women. The consequences have included some loss of confidence in the ability of local leaders to represent broader interests, resentment, and divisions within the community.

Management of ESIA Social and Environmental Issues

Jagat Sukh villagers noted environmental and social issues that continue to be of concern. Those heard by the CAO team include:

⁷ This team of 4 people has been working together for 4 months and is still establishing its protocol.

- Ongoing uncertainty regarding the quality and quantity of village drinking and irrigation water;
- Concerns about worker safety near the Duhangan river road construction site;
- Assurance of women's and children's safety, particularly on way to school or to grazing areas;
- Excessive dust from project activity and trucks;
- Disposal of construction waste in the Duhangan river;
- Blocked access to the Duhangan cremation area near the Duhangan bridge
- Proper use of explosives at the project site
- Introduction of HIV/AIDS induced by migrant laborers

The company reports that many of the larger issues identified in the ESIA are currently being managed or have already been resolved. They also point out that the Public Works Department has implemented some work on roads which have been inadvertently been blamed on the project. However, there is concern that the company still has no formal means of communicating its progress to villagers nor has it developed a specific timetable for implementing social and environmental commitments as stated in the ESIA. Complainants believe that ESIA issues have been largely ignored since construction restarted and community attention shifted to provision of jobs and contracts. The company states that it has met or exceeded its legal requirements to address water quantity and worker safety issues.

Community Development Activity

Stakeholders clarified that sustainable community development is a priority. The High Court ruling calls for the Kullu District Commissioner to work with the Jagat Sukh Panchayat to create a Village Development Committee (VDC) that is representative of broad community interests. All interviewees remarked this step is a positive development in terms of sharing project benefits as well as formalizing community-company relations. In meetings with the CAO team, the Panchayat expressed clear commitment to helping establish the VDC in early September 2006. The Kullu District Commissioner and Panchayat also stated that community development initiatives should originate from existing institutions, such as the Panchayat, and not be imposed. Stakeholders also expressed interest in working with CAO to improve their decision-making and communication mechanisms in joint development efforts that involve the community and the company.

Analysis

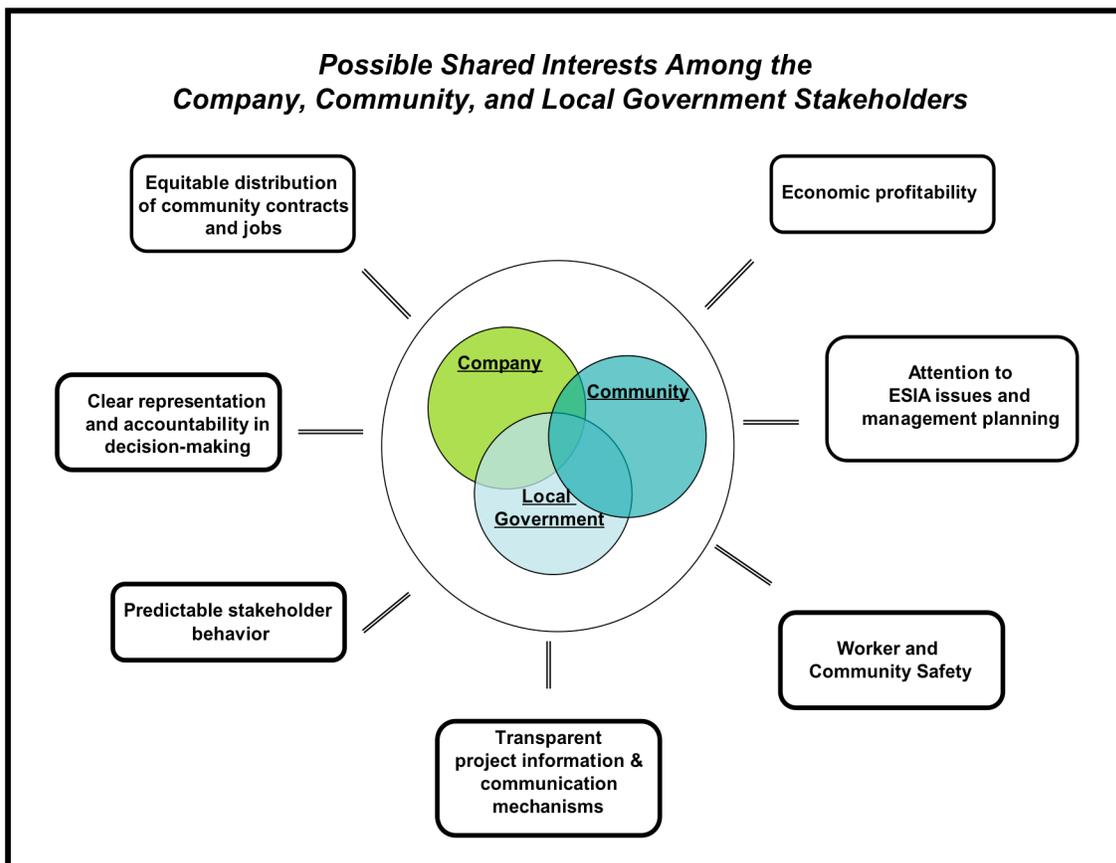
Interviews with company, community and local government members reveal some differences, but also considerable shared interests between the parties. These are summarized in Figure 2 below.

The improving relationship between the Jagat Sukh community and company presents an opportunity to move towards a more systematic and effective means of joint-problem solving and dispute resolution which is characterized by:

- Shared prioritization of both community and company concerns;
- Regular, structured dialogue and communication that genuinely reflects the interests AND responsibilities of both community and company;
- Improved representation and accountability in decision-making;
- Transparent project information shared and understood widely within the community.

Reliance on informal mechanisms of communication and dispute resolution appears to have fueled suspicion about equitable distribution of project benefits. While informal and rapid consultation between company staff and individual villagers appears to be an effective and convenient means of dispute resolution in the short-term, it also seems to have increased community distrust and uncertainty about project relations. If the community were able to speak in a more collective voice about its interests, the company likely would be more willing to engage in dialogue and consultation with representative leadership of the community as a whole.

Figure 2



Observations

The current situation represents an opportunity for creating more robust stakeholder-engagement mechanisms that move beyond daily operational interactions. The CAO team recommends consideration of the following areas:

Making mutual expectations explicit. Both the company and the Jagat Sukh community have implicit expectations of each other. For example, the company seeks clearer direction on community needs and concerns, while the community seeks project predictability and transparency. Making expectations explicit allows the stakeholders to discuss and negotiate mutually acceptable expectations, and to hold each other accountable for meeting agreed expectations.

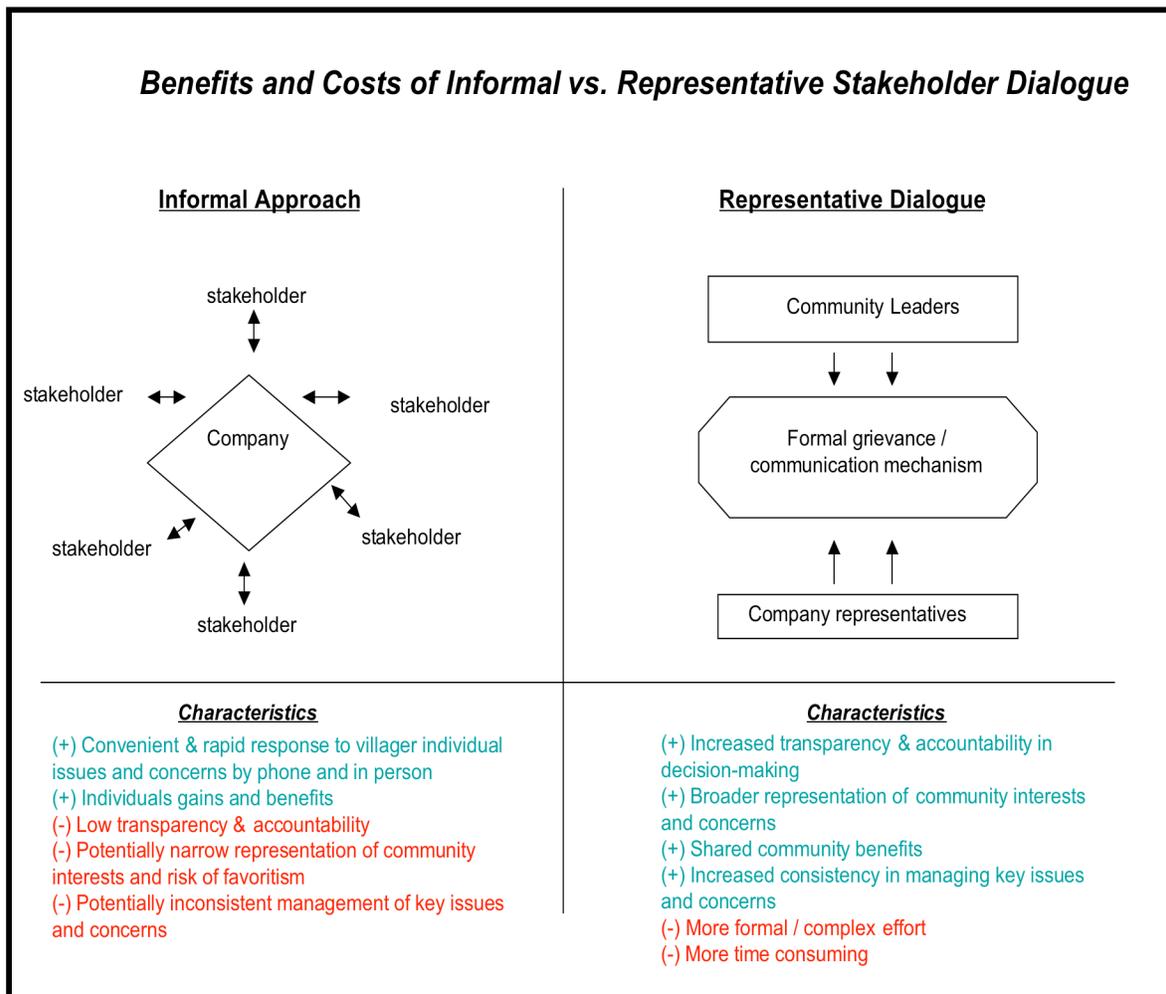
Transparency about policies, progress, and the future. The more information the Jagat Sukh community has about how company operations are designed and implemented, the more they can participate in the process of determining their own future. Transparency about company policies, decisions and schedules that are relevant to the community shows a willingness to collaborate and work together. This approach can also dispel misperceptions and rumors and can help identify issues before they become grievances. In turn, company transparency can diminish the community's need to make demands that grow from uncertainty or fear.

Follow-through on commitments. Predictability on the part of the company, local government, and the Jagat Sukh community enhances the sense of trust among all parties. The company has kept its recent commitments regarding hiring and contracts. Likewise, commitments must be kept to address and document the management of issues and concerns identified in the ESIA. Though the community's attention to these issues has not been a priority in the wake of contracts and employment, the company has committed to putting formal management plans and timelines in place to address them as soon as possible.

Establishing mechanisms for both formal and informal interaction. The company has worked hard to establish informal interaction with the Jagat Sukh community. At the same time, CAO recommends establishing more formal mechanisms for representation and documentation of community concerns and grievances, and of company responses to them. As the foundation of all other aspects of social performance, company stakeholder engagement should be handled in a systematic and professional manner — with a clear understanding of *why* it is being done, *who* is represented, and *how* it will affect the community and the project. If not, stakeholder consultation becomes an expensive, time consuming, and unwieldy process divorced from core business activity that more often creates public expectations that the project cannot deliver.

Figure 3 below compares the benefits and costs of the company's current informal communication approach to addressing community concerns (left) with a potentially more structured dialogue space (right).

Figure 3



Investment in capacity building. Finally, there is a growing shared interest among community, company, and local government in the success of this project. Capacity building in all three major stakeholder groups to represent interests, establish forums and procedures for dialogue and negotiation; and jointly review and support implementation of agreements helps ensure mutual benefits and success.

Recommendations

The CAO recommends tailored training workshops be offered in the coming months to interested community members, the company and Panchayat leadership. Such workshops would provide guidance on how to structure fair, transparent, representative and durable mechanisms to resolve conflicts and concerns between the company and community that can supplement ongoing communication. CAO would coordinate with the Deputy Commissioner and Panchayat to ensure this training supports, complements and does not disrupt creation of the Village Development Committee. CAO would also listen to local input about the kind of training and support that would be most useful. Outcomes of the workshop may include clear agreements or Memoranda of

Understanding between all parties regarding how they will work together constructively. Such agreements, when done thoroughly and effectively, are the building blocks of trust.

CAO offers to convene training and capacity building workshops beginning September / October 2006.

Next Steps

The CAO will contact the key stakeholders for their feedback on this report during September. The feedback will be considered and incorporated before any next steps are taken regarding CAO's future engagement.