



Bringing community perspectives to investor-state arbitration: the *Pac Rim* case

Marcos A. Orellana, Saúl Baños and Thierry Berger



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International Institute for Environment and Development
80-86 Gray's Inn Road
London WC1X 8NH
United Kingdom

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About the authors:

Marcos A. Orellana is Senior Attorney and the Director of the Human Rights and Environment Programme at the Center for International Environmental Law (CIEL) in Washington DC. Marcos advises civil society, governments and international organisations on international legal issues, and has extensive experience preparing civil society submissions in investment disputes. CIEL works to strengthen and use international law to protect the environment, promote human health, and ensure a just and sustainable society.

Saúl Baños is a lawyer, notary and University Professor. He has worked for Fundación de Estudios para la Aplicación del Derecho (FESPAD) for nearly two decades. He is currently Coordinator for Economic, Social and Cultural Rights. FESPAD is a social, legal, and political action centre based in El Salvador dedicated to protecting human rights and using the law as an instrument to help the neediest in society and acting as a forum for civil society participation.

Thierry Berger is a qualified solicitor and legal tools consultant at IIED focusing on law and sustainable development. Among other things, Thierry has assisted IIED with preparing submissions on the TTIP to the European Commission and to a national parliament and with the organisation of a series of IIED legal tools webinars. Prior to beginning his collaboration with IIED, Thierry worked for global law firms for 10 years specialising in international arbitration.

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Abbreviations and acronyms

ADES	Asociación de Desarrollo Económico y Social (Association for Economic and Social Development)
ARPAS	Association of Community Radios and Programmes in El Salvador
CAFTA	Dominican Republic-Central America Free Trade Agreement
CIEL	Environment Programme at the Center for International Environmental Law
CSOs	Civil society organisations
EIA	Environmental impact assessment
FESPAD	Fundación de Estudios para la Aplicación del Derecho
ICSID	International Centre for Settlement of Investment Disputes
La Mesa	El Salvador National Roundtable on Metals Mining
NGOs	Non-governmental organisations

Abstract

With over 3,000 investment treaties worldwide and a growing number of investor-state arbitrations, the need and opportunities for bringing community perspectives in investment disputes can only be expected to rise in the coming years. Civil society organisations can play an important role in carrying and strengthening community voices in arbitration processes, by making submissions to arbitral tribunals. This publication distils lessons from the experience of La Mesa, a coalition of community organisations, research institutes and environmental, human rights and faith-based non-profit organisations advocating on metals mining in El Salvador. Through its submissions in the *Pac Rim* arbitration, La Mesa provided different perspectives on the case from those presented by the disputing parties, bringing to the arbitral tribunal's attention the ongoing democratic debate in El Salvador in relation to metals mining and sustainable development.

1. Background

Since the civil war ended in El Salvador, relative stability and the rise of gold prices led to the influx of several companies that began exploring El Salvador's natural resources. In the early 2000s, as exploration activities got underway, communities and civil society organisations (CSOs) started mobilising. In 2003, local communities began to raise concerns in relation to a gold mining project led by Pac Rim Cayman LLC, the subsidiary of a Canadian company now controlled by an Australian firm. The communities raised concerns about the potential social and environmental impacts of gold mining in El Salvador, including water pollution and health.

Since El Salvador is a small densely populated country that is highly dependent on limited water resources, community mobilisation against mining rose from the local to the national level. In 2005, community members set up the *Comité Ambiental de Cabañas* (Environmental Committee of Cabañas). Together with national CSOs such as the *Fundación de Estudios para la Aplicación del Derecho* (FESPAD), the Committee formed *La Mesa Nacional Frente a la Minería Metálica de El Salvador* (the El Salvador National Roundtable on Metals Mining) ("La Mesa"). La Mesa is a national coalition of community organisations, research institutes, and environmental, human rights, and faith-based non-profit organisations. Its objective is to secure a ban on metals mining in El Salvador, in order to safeguard the right to water and the right to live in a healthy environment. Through interventions at both the local level (e.g., protests) and the national level (e.g., engaging with government representatives), La Mesa raised awareness about the impacts of metals mining in El Salvador, placing mining at the centre of the country's political debate.

In 2007, La Mesa began extending its outreach to the international level, and by 2011, a coalition of international non-governmental organisations (NGOs) based in the United States, Canada and Australia set up the International Allies Against Mining in El Salvador. The International Allies worked in coordination with La Mesa and communities directly affected by mining projects in El Salvador. The US-based Center for International Environmental Law (CIEL) is a founding member of the International Allies.

After its exploration activities resulted in certain discoveries of gold deposits, Pac Rim Cayman applied for a mining concession and related environmental permit. In 2004-2005, Pac Rim arranged for an environmental impact assessment (EIA) to be undertaken. But La Mesa members felt that the EIA was defective and did not adequately address their concerns. A CSO member of La Mesa instructed an independent expert to produce a report on the EIA (Moran, 2005)¹.

The expert's report found that the EIA "would not be acceptable to regulatory agencies in most developed countries" (Moran, 2005, p. 15). According to the expert's report, this was due to, among other things, the incomplete water quantity

1. The report was commissioned by Asociación de Desarrollo Económico Social, Santa Marta (ADES), with support from DIAKONIA, Swedish Ecumenical Action, Oxfam America and the Anglican Church.

and inadequate water quality baseline data in the EIA, the lack of transparency in the public consultation process and the failure to consider the realistic costs the company would pay for water as a commodity (Moran, 2005, pp. 3, 4, 6, 8, 10, 14 and 15). While the company criticised the conclusions of the report², CSOs felt that their concerns about the quality of the EIA had been vindicated.

Years of community mobilisation and national advocacy arguably led to a shift in public opinion on mining in El Salvador, causing the government to review its policy on mining. There is now a de facto moratorium on metals mining in the country. In 2011, the government undertook a Strategic Environmental Assessment, and the following year it prepared a draft law on metals mining to suspend all administrative procedures relating to existing exploration and exploitation projects in the country. However, the draft law is still being debated and has yet to be adopted by the Parliament.

In 2007, the government refused to approve Pac Rim's EIA and to grant the environmental permit and mining exploitation concession necessary for the company to operate the project. The government argued that Pac Rim's project did not comply with applicable Salvadoran law and thus the company was not entitled to a mining concession.³ When its attempts to have the law reformed or reinterpreted failed⁴, the company decided to seek financial compensation from the government of El Salvador. To this end, in 2009 it initiated an investor-state arbitration against El Salvador under the Dominican Republic-Central American Free Trade Agreement (CAFTA) and under El Salvador's Investment Law.⁵

CAFTA is a free trade agreement signed in 2004 between the United States, five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic. It contains a chapter on investment that protects foreign investors and their investments. Similarly to many other international investment treaties and trade treaties containing investment provisions, CAFTA's investment chapter sets out a number of standards to protect investors, such as guarantees of compensation in case of expropriation or the duty to provide "fair and equitable treatment" as an element of the minimum standard of treatment in international law.

When an investor considers that such standards have been breached, it can take the matter to investor-state arbitration, i.e. the mechanism to settle a dispute between an investor and the host state by an international arbitral tribunal. Investment arbitration is based on the consent of both the investor and the state. The consent of the state can be derived from treaties such as CAFTA or from the national Investment Law. There are rules regulating what should happen during the arbitration process, including the rules of the International Centre for Settlement of Investment Disputes (ICSID).

2. *Pac Rim Cayman LLC v. The Republic of El Salvador*, Claimant's Memorial on the Merits and Quantum (2013), paragraph 271. www.italaw.com/cases/783.

3. *Pac Rim Cayman LLC v. The Republic of El Salvador*, Respondent's Counter-Memorial on the Merits (2014), sections II and III. www.italaw.com/cases/783.

4. See *Pacific Rim Mining Corp.*, 2006 and 2007 and *Pac Rim Cayman LLC v. The Republic of El Salvador*, Respondent's Counter-Memorial on the Merits (2014), paragraphs 112 and 113.

5. *Pac Rim Cayman LLC v. The Republic of El Salvador*, Notice of Arbitration (2009). www.italaw.com/cases/783.

The company claimed that El Salvador violated both CAFTA and the Investment Law. It claimed damages in the amount of US\$284 million plus its legal costs. To date, El Salvador's government has incurred legal costs in excess of US\$12 million to defend itself against the company's claims.

The outcome of the arbitration could have important repercussions for mining activities by other companies, which are currently suspended. CSOs felt that, if the company were to win this arbitration, the prospect of additional costly arbitration claims may make it more difficult for El Salvador to adopt a law banning metals mining, or even to secure compliance with all requirements established in its mining and environmental laws. In other words, from a CSO perspective, the arbitration could have not only significant financial implications for El Salvador in relation to the specific case before the arbitral tribunal, but it could also have wider reverberations for public policy relating to the mining sector, environmental protection and public health.

2. The tool: bringing community perspectives to the arbitration

Some arbitration rules, including those applicable under ICSID and CAFTA, allow third parties, including CSOs, to make submissions in investor-state arbitration under certain circumstances. These submissions are referred to as *amicus curiae* (literally, “friend of the court”) submissions. The arbitral tribunal has discretion to allow a CSO to make submissions, which in practice means that the CSO must make an application to the arbitral tribunal requesting permission to file the submission.

While specific rules vary under different arbitration systems, three conditions generally need to be met before parties are granted leave to make the submissions: i) the CSO must demonstrate that the dispute is suitable for public interest intervention (e.g. are human rights and/or environmental issues at stake?); ii) the CSO must be suitable to represent the public interest aspects to the arbitral tribunal (relevant criteria include how the CSO is funded and its expertise); and iii) the arbitral tribunal will also consider the desirability to allow the CSO to intervene in the dispute (e.g. will the participation disrupt the arbitration?).

CSO submissions are important in that they allow the CSO applicant to draw the arbitral tribunal’s attention to issues such as the environment and human rights, or to bring community perspectives on the dispute, in the hope that the arbitral tribunal will take account of these issues in deciding the case. By presenting the arbitral tribunal with analysis, perspectives or information relevant to the public interest, CSOs have a tool at their disposal that may influence the outcome of the process.

After the arbitral tribunal disposed of certain Preliminary Objections raised by El Salvador,⁶ El Salvador took steps to challenge the jurisdiction of the arbitral tribunal. In other words, the government argued that the necessary pre-requisites for the arbitral tribunal to hear the case were missing, and that the arbitral tribunal should therefore dismiss the case.

At the jurisdictional stage, the arbitral tribunal published a notice on the ICSID website (<https://icsid.worldbank.org>) as a “news release”. The notice invited any person that was not a party in the case to make a written application to the arbitral tribunal for permission to file a CSO submission, including (as an appendix to the application) a copy of the submission to be filed in the arbitration, should permission be granted.

La Mesa, CIEL and FESPAD began working together in connection with the arbitration. Investor-state arbitration is a technical process, and CIEL had already developed considerable expertise in this area, given its involvement in a number of previous arbitrations. The case also required expert legal knowledge of domestic

6. Decision on the Respondent's Preliminary Objections (2010). <http://www.italaw.com/cases/783>.

El Salvador law, for instance in relation to legislation regulating mining and environment protection. Hence the partnership with FESPAD.

CIEL and FESPAD provided technical support to La Mesa: CIEL focusing on the international law and arbitration aspects of the case, and FESPAD acting as experts on the El Salvador law dimension. Given the significant implications that the arbitration could have on El Salvador, CIEL and FESPAD advised La Mesa about the opportunity provided by *amicus curiae* as a means to bring issues to the attention of the arbitral tribunal.

Working with CIEL and FESPAD, La Mesa prepared at that jurisdictional stage two main documents: i) the application for permission to make a CSO submission and ii) the CSO submission itself. La Mesa also asked for permission to make an oral presentation at the jurisdictional hearing (i.e. the session during which the arbitral tribunal hears the parties to decide whether or not it has jurisdiction to rule on the case). Preparing the CSO submission was part of the broader mobilisation strategy to oppose the mining project, as noted above.

In preparing these documents, CIEL and FESPAD used the information and evidence gathered by members of La Mesa at the local and national levels. The CSO members of La Mesa work on a daily basis with people affected by mining, and have a deep understanding of the public interest issues. This aspect was key to demonstrating that the dispute was suitable for public interest intervention, for instance by highlighting the environmental and social effects of mining in El Salvador.

CIEL and FESPAD were assisted by lawyers from firms specialising in, among other things, public interest litigation and environmental matters. They relied on information and documents such as the EIA but also fact-finding and reports from other NGOs as well as concerns raised by other civil society actors such as the Catholic church in El Salvador. Preparation of the documents also drew on additional research and support from national and international organisations such as Oxfam and El Salvador National Ombudsman for the Defense of Human Rights.

The arbitral tribunal allowed La Mesa's submission, although it asked La Mesa to edit the submission to focus on issues of jurisdiction (i.e. whether or not the arbitral tribunal should hear the case) and not on matters relevant to the merits (i.e. whether El Salvador violated relevant investment protection standards). The arbitral tribunal, however, did not allow La Mesa to make an oral presentation at the jurisdictional hearing.

At this stage of the process, organisations from La Mesa represented by CIEL made a submission to convince the arbitral tribunal that it did not have jurisdiction to hear the case. Given the technical nature of the process, the arguments in the CSO submission were framed in technical terms.

For example, there was an issue with Pac Rim relocating from the Cayman Islands (where it used to be based) to the State of Nevada in the United States. La Mesa argued that the main purpose for the move was to allow the company to rely on the

CAFTA investment protection provisions⁷ (El Salvador and the USA are party to CAFTA but not the Cayman Islands). La Mesa further argued that such relocation amounted to an abuse of process. In addition, La Mesa argued that Pac Rim should not enjoy the benefits of CAFTA because Pac Rim lacked substantial business activities in the United States and instead was a shell corporation established to attempt to attract jurisdiction.

In effect, La Mesa's submission on this point supported El Salvador's own arguments challenging the jurisdiction of the arbitral tribunal. However, it is important to stress that La Mesa did not receive any financial support from the government in connection with the preparation of the submission and its involvement in the case generally. The members of La Mesa and CIEL all used their own independent funding to prepare the submission.

In permitting the submission, the arbitral tribunal did not state reasons. But the following factors were probably important. First, neither Pac Rim nor El Salvador objected to La Mesa's application for permission, although Pac Rim requested that the submission focus on jurisdiction issues and objected to CIEL making an oral presentation at the jurisdictional hearing.

Second, several of La Mesa's members are run by and work with affected communities on a daily basis. This gives La Mesa a unique perspective and understanding of the issues at stake. It also means that La Mesa has a significant interest in the outcome of the arbitration.

Third, La Mesa could prove that it was independent of both Pac Rim and the government of El Salvador. When it published its news release, the arbitral tribunal specifically instructed applicants (i.e. people seeking permission to file a submission) to disclose whether they had received any financial or other support from Pac Rim or El Salvador. La Mesa confirmed that this was not the case. This factor is important, and we are aware of at least two linked cases where an arbitral tribunal did not give permission to CSOs to file a submission because of their alleged links with the host state.⁸

7. Decision on the Respondent's Jurisdictional Objections (2012), paragraph 2.03. www.italaw.com/cases/783.

8. The cases are *Bernhard von Pezold and Others v. Republic of Zimbabwe and Border Timbers Limited*, *Border Timbers International (Private) Limited*, and *Hangani Development Co. (Private) Limited v. Republic of Zimbabwe*.

3. Results so far and lessons learned

In 2012, the arbitral tribunal decided that it had no jurisdiction over a significant part of Pac Rim's case: it found that it did not have jurisdiction to hear claims made under CAFTA, but that claims made under El Salvador's Investment Law could proceed to the merits stage.⁹ The case has now advanced to the next stage, the merits, which is to determine whether or not El Salvador's measures breached the provisions of the Investment Law. In other words, while the case is going ahead, the merits phase of the arbitration has a narrower scope.

In its jurisdictional decision, the arbitral tribunal engaged with the submission from La Mesa: it referred to it and specifically responded to one of the points made in it (the abuse of process and denial of benefits allegations). Arguably, while El Salvador articulated jurisdictional objections, La Mesa's submission also contributed to the partial limitation of jurisdiction.

Through its submission, La Mesa provided a different perspective of the case from that presented by Pac Rim or El Salvador. La Mesa brought to the arbitral tribunal's attention the ongoing democratic debate in El Salvador in relation to metals mining and sustainable development, and also broader topics such as public participation, respect for human rights and representative democracy. Indeed, the facts giving rise to the arbitration claim are deeply intertwined with the political and social changes that have taken place in the country since the civil war ended in 1992, and in which La Mesa organisations have been directly involved over the years.

With the crucial merits phase pending, the case is not over. It is impossible to predict how the merits will be decided, and what the ultimate outcome of the dispute will be. In order to bring community perspectives to the merits stage of the arbitral proceedings, La Mesa requested permission and filed another submission in July 2014.¹⁰ The hearing on the merits took place in September 2014. The arbitral tribunal's decision is expected sometime in 2015.

While this arbitration is still ongoing, it is possible to distil some early lessons from the CSO submission process. These lessons could be of interest to other CSOs that might consider developing comparable strategies in other contexts and proceedings. An important set of lessons points to the centrality of alliance building in CSO engagement with arbitration processes, and to the close relationship that exists between the legal process and wider community mobilisation.

La Mesa was not familiar with the process to file CSO submissions, so it sought support from specialists with relevant legal expertise, including CIEL. But while filing a CSO submission involves feeding legal arguments into a legal process, the

9. Decision on the Respondent's Jurisdictional Objections (2012). www.italaw.com/cases/783.

10. Amicus Curiae Brief on the Merits by Member Organizations of the El Salvador National Roundtable on Mining (2014). www.italaw.com/cases/783.

submissions could not have happened without the creation of La Mesa – a local-to-national alliance of CSOs campaigning against metals mining. La Mesa provided a channel to link up advocacy at local and national levels, and to strengthen the links between affected communities. For instance, it allowed information to be more easily transmitted from affected communities to those leading advocacy efforts at national and international levels.

The International Allies have helped to increase awareness of the concerns raised by metals mining in El Salvador, and to improve coordination of campaign efforts against metals mining in the country. The wider campaigning work of the International Allies has also increased awareness of the risks that investor-state arbitration can create for democratic decision making and for the public interest, and of the need to address imbalances between the effective international protections accorded to foreign investment, and the weak safeguards for human rights. In addition, this international alliance building has also been important in facilitating the CSO submissions, as CIEL is one of the International Allies.

Investor-state arbitration is a technical and geographically remote process. Bringing community perspectives into this process requires close, regular communication with community groups. For La Mesa, this communication was a two-way process. On the one hand, La Mesa disseminated information with community groups and CSOs. Obtaining information about the arbitration was no easy task, as little information is in the public domain. But whatever information La Mesa managed to gather, it “translated” it into a non-technical language and disseminated it via newsletters, lectures, workshops and radio broadcasts (working with the Association of Community Radios and Programmes in El Salvador, ARPAS).

In addition to being avenues for information sharing, the workshops and lectures also allowed La Mesa’s grassroots members to express and disseminate their views. Some of these grassroots groups also became more directly involved with the arbitration process itself. For instance, La Mesa’s submission on the merits was filed at ICSID in Washington DC by a representative of Asociación de Desarrollo Económico y Social (Association for Economic and Social Development, ADES). ADES works with affected communities, and is a member of Environmental Committee of Cabañas and of La Mesa.

La Mesa has faced a number of challenges throughout its advocacy on metals mining issues. It was not easy to facilitate dialogue between national-level officials and communities at the grassroots. In its submissions, La Mesa argued that Pac Rim had engaged in a “divide and rule” strategy, including by lobbying government officials. This is disputed by Pac Rim. Ultimately, the government stood firm in the application of its mining law and refused to grant the environmental permit and mining concession. At the local level, Pac Rim promised jobs and provided funding to local initiatives, in what La Mesa considered to be an attempt to gain support for the mining project. To ensure that affected people were also aware of the risks and concerns associated with metals mining, Environmental Committee of Cabañas and La Mesa ran campaigns to raise awareness among affected people.

La Mesa members worked in an extremely challenging local context characterised by the polarisation between supporters and opponents of mining in El Salvador. Local polarisation was exacerbated by the interplay of local politics. This polarisation led to tensions that escalated into intimidations, threats, violence and the killing of four environmental activists and mining opponents, including members of Environmental Committee of Cabañas and La Mesa, in 2009 (Amnesty International, 2009 and 2010; Steiner, 2010 pp. 12 to 15).¹¹ Given the systematic pattern of attacks against environmental defenders, CIEL, in collaboration with FESPAD and other CSOs, organised a thematic hearing before the Inter-American Commission on Human Rights to denounce the violence suffered by environmental leaders fighting extractive industries in Central America and Mexico.

In its advocacy, La Mesa pursued both legal and political strategies. For instance, in addition to filing the CSO submission in the arbitration process, La Mesa, in collaboration with the International Allies, organised protests outside the World Bank offices in San Salvador and Washington DC during the recent hearing on the merits in September 2014 (ICSID is part of the World Bank Group). La Mesa also sent letters to the Canadian embassy in El Salvador, as the then home state of the then parent corporation of Pac Rim, and has developed an international campaign targeting the Australian company which now controls Pac Rim, Oceana Gold, to persuade it to abandon the arbitration claims against El Salvador.

This campaign is still ongoing. Among other things, the coalition has collected thousands of letters of protest against mining and delivered them to the company's headquarters. At the local level, La Mesa recently organised public consultations concerning metals mining in the cities of San José Las Flores and San Isidro Labrador in the Chalatenango district. The vast majority of the people consulted voted against metals mining.

11. See also Republic of Salvador Counter-Memorial on the Merits, paragraphs 241 and 242; Submission of Amicus Curiae Brief on the Merits of the Dispute by Member Organizations of The El Salvador National Roundtable on Mining (2014), pages 10 to 13. www.italaw.com/cases/783.

4. Conclusion

Given the significance of the case and its implications for wider policy debates on metals mining in El Salvador, La Mesa was keen to intervene in the *Pac Rim* arbitration. Yet La Mesa was not a party to the arbitration, even though its members represent communities directly affected by mining operations. So filing a CSO submission was the only way to bring the perspective of those communities in the arbitration proceedings.

With over 3,000 investment treaties worldwide and a growing number of investor-state arbitrations, the need and opportunities for bringing community perspectives in investment disputes can only be expected to rise in the coming years. CSOs can play an important role in carrying and strengthening community voices in arbitration processes.

It is important for CSOs working on natural resource investments worldwide to remain vigilant, and to be mindful of investor-state arbitration. One challenge is that, despite some recent advances, there is still little transparency in many aspects of investor-state arbitration. Under some arbitration rules, it is entirely possible for the public not to even know that an arbitration is ongoing. But there is also much that CSOs can do to find out about the existence of an arbitration, particularly through close scrutiny of natural resource investments.

When an investor brings an arbitration under ICSID rules, ICSID will normally publish information on its website¹². Also, an arbitral tribunal may openly invite third parties to apply for permission to make a submission, as happened in the *Pac Rim* case.

Given the technical nature of investment arbitration, it is a good idea to get in touch with organisations that have experience in dealing with such matters, such as CIEL in this case. These organisations can provide guidance on the proper course of action and assist with the preparation of a CSO submission if appropriate.

Also, whilst the issues of real concern for the communities were about the protection of the environment and human rights, the CSO submissions had to focus on technical legal issues e.g. of jurisdiction or the merits. This focus was important for La Mesa to be recognised as a “credible” player vis-à-vis the arbitral tribunal, the disputing parties to the arbitration and their legal advisers. Furthermore, it was essential for La Mesa to be able to “speak the language of the law” in the technical arbitral proceedings, in order to be in a position to convey persuasive arguments to the arbitral tribunal.

Crucially, CSOs should make sure that the communities they work with or represent drive the process. This involves securing a clear mandate for the CSO submissions,

12. Which can be accessed here:

<https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/AdvancedSearch.aspx>.

and regular, ongoing communication with grassroots organisations throughout the case. This communication is critical for a number of reasons, including the effective mobilisation of the legal, political and other strategies involved in a campaign. CSOs can overcome any “divide and rule” tactics by ensuring that they have the proper legitimacy to represent the communities, but also that the process is inclusive, interacting with all various groups within them.

Once an investor has started an arbitration, making a CSO submission is a tool to bring important issues to the arbitral tribunal’s attention. But CSO action need not wait until an arbitration is initiated. At a more systemic level, there are multiple other actions that CSOs can take to seek to change the way in which natural resource investments are made. For instance, CSOs can advocate for more transparency and public participation throughout the investment process. They can support communities in their negotiations with government and investors. Where indigenous peoples are involved, CSOs can monitor the situation and, where relevant, demand that their free, prior and informed consent is sought.

CSOs can help communities claim their rights through litigation before national courts and international bodies. They can make comments on EIAs and help communities to have their voices heard in EIA processes. CSOs can influence national policy on investment, mining, environmental protection and community rights, and they can scrutinise and advocate on investment treaties (or investment chapters included in wider trade deals) before these are signed.

For La Mesa, the *Pac Rim* case is the story of a community and the people of El Salvador that stood up against a mining company that used an international treaty to force the government to pay compensation for the denial of a permit to which the company had no right. More broadly, large mining projects highlight the imbalances that exist in the international legal order, where the protections afforded to the fundamental rights of communities are much weaker than the protections granted to foreign investors and their investments.

Ultimately, La Mesa’s submissions have given the arbitral tribunal a wider perspective on the democratic debate concerning sustainable development and environmental protection in the mining sector in El Salvador. This wider perspective is essential for an arbitral tribunal to properly contextualise and scrutinise the measures that public authorities adopted to deal with the risks posed by metals mining in a water-scarce and overpopulated country.

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Bringing community perspectives to investor-state arbitration: the *Pac Rim* case

With over 3,000 investment treaties worldwide and a growing number of investor-state arbitrations, the need and opportunities for bringing community perspectives in investment disputes can only be expected to rise in the coming years. Civil society organisations can play an important role in carrying and strengthening community voices in arbitration processes, by making submissions to arbitral tribunals.

This publication distils lessons from the experience of La Mesa, a coalition of community organisations, research institutes and environmental, human rights and faith-based non-profit organisations advocating on metals mining in El Salvador. Through its submissions in the *Pac Rim* arbitration, La Mesa provided different perspectives on the case from those presented by the disputing parties, bringing to the arbitral tribunal's attention the ongoing democratic debate in El Salvador in relation to metals mining and sustainable development.



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