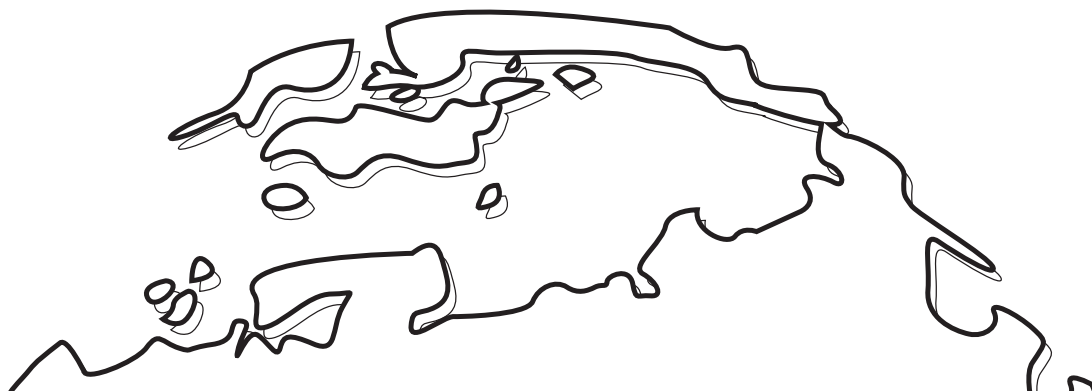
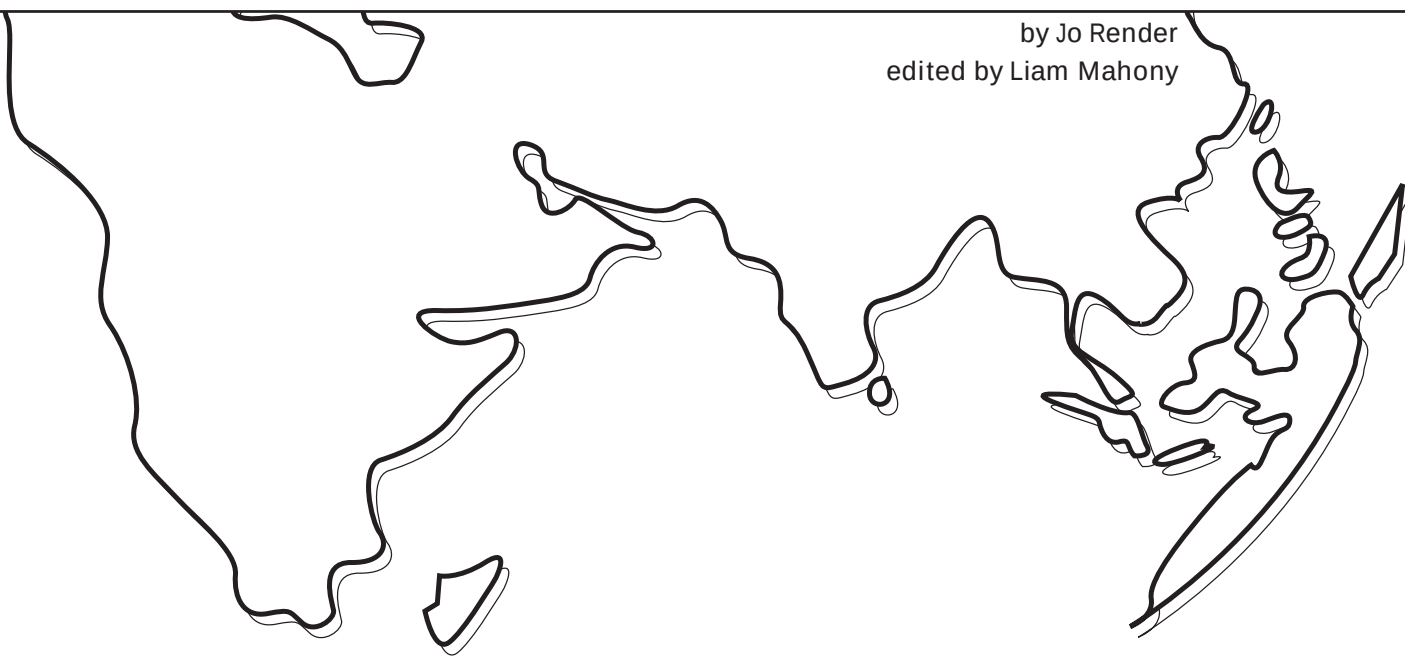




Recipe for Dialogue

Corporate training for building relationships with Indigenous communities

by Jo Render
edited by Liam Mahony



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Jo Render

Jo Render began her work in corporate responsibility as part of the founding staff of CIVICUS: World Alliance for Citizen Participation. She played the lead staff role in initiating CIVICUS's corporate engagement program area, participating in the early leadership team for the Business Partners for Development program in collaboration with the World Bank and the International Business Leaders Forum.

In 2000, she joined First Peoples Worldwide as the lead staff person for their corporate engagement strategy, engaging with and advising extractive companies on policy and practice to respect Indigenous peoples' rights, informing socially responsible investors on key issues and cases of concern to Indigenous communities and working with Indigenous organizations to devise strategies and develop skills to maximize community capacity for direct engagement with companies.

Jo left FPW at the end of 2003, and is now working as an independent contractor. She assists Indigenous communities and extractive companies in developing effective community development strategies. She is also actively involved with the Global Reporting Initiative to develop company performance indicators on Indigenous rights. She is a member of the Fund for Peace Business and Human Rights Roundtable and of the U.S. Social Investment Forum.

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Organizations

First Peoples Worldwide is the international program of First Nations Development Institute, a Native American-led organization based in Fredericksburg, Virginia, USA. Founded in 1980 to support economic development among Native American, Alaska Native and Native Hawaiian communities, the organization began providing assistance outside of the United States in 1997. First Peoples Worldwide works to raise global awareness of Indigenous issues and to provide assistance to Indigenous communities that is tailored to each group's unique culture and circumstance. It brings to the project its knowledge of community concerns and perspectives, community-driven development processes, international cases and legal frameworks. This tactic is one of several within FPW's Corporate Engagement Strategy, which also includes tactics designed to:

- ◆ increase the capacity of Indigenous communities to engage with private sector actors; and
- ◆ educate and awaken members of the socially responsible investment community to their role in protecting and promoting the rights of Indigenous peoples.

Founded in 1992, Business for Social Responsibility is a nonprofit organization working to advance the global adoption of business practices that achieve a more just society and a more sustainable economy. With offices in North America, Europe and Asia, BSR develops and disseminates practical information on corporate social responsibility; provides companies with advisory services and training programs to help them assess and implement responsible business practices; and convenes businesses and other stakeholders to address common challenges in corporate social responsibility through conferences, working groups and other forms of cross-sector collaboration. BSR has more than 1,000 member companies and brings to the tactic its own expertise in company training on community engagement techniques and human rights, as well as its access to a growing network of companies.

Together, the two organizations have complemented each other in developing this initiative. FPW brings a constant flow of information on legal and international trends and norms, as well as an understanding of how company activity influences a very diverse array of community concerns. BSR brings its experience in working directly with companies at levels of both policy and practice on a variety of issues, as well as a growing network of companies interested in taking on such a training effort. Depending on the issue being tackled and the capacity of the organization considering the development of such a training effort, a partnership may not be necessary. For one that has a very broad focus and set of objectives, covering large industrial sectors, it has been very helpful.



September 2004

Dear Friend,

Welcome to the New Tactics in Human Rights Tactical Notebook Series! In each notebook a human rights practitioner describes an innovative tactic used successfully in advancing human rights. The authors are part of the broad and diverse human rights movement, including nongovernment and government perspectives, educators, law enforcement personnel, truth and reconciliation processes and women's rights and mental health advocates. They have both adapted and pioneered tactics that have contributed to human rights in their home countries. In addition, they have used tactics that, when adapted, can be applied in other countries and situations to address a variety of issues.

Each notebook contains detailed information on *how* the author and his or her organization achieved what they did. We want to inspire other human rights practitioners to think *tactically*—and to broaden the realm of tactics considered to effectively advance human rights.

In this notebook, Jo Render describes a corporate training initiative that helps the private sector to build more effective, constructive relationships with Indigenous peoples. The process was developed through a collaboration between the NGO Business for Social Responsibility and First Peoples Worldwide, an Indigenous advocacy organization. The trainings, which are focused on extractive companies (mining, oil, gas and logging) are founded on respect for Indigenous peoples' rights, aspirations and effective participation in the development process.

The entire series of Tactical Notebooks is available online at www.newtactics.org. Additional notebooks will continue to be added over time. On our web site you will also find other tools, including a searchable database of tactics, a discussion forum for human rights practitioners and information about our workshops and symposium. To subscribe to the New Tactics newsletter, please send an e-mail to newtactics@cvt.org.

The New Tactics in Human Rights Project is an international initiative led by a diverse group of organizations and practitioners from around the world. The project is coordinated by the Center for Victims of Torture and grew out of our experiences as a creator of new tactics and as a treatment center that also advocates for the protection of human rights from a unique position—one of healing and reclaiming civic leadership.

We hope that you will find these notebooks informational and thought-provoking.

Sincerely,

A handwritten signature in cursive script that reads "Kate Kelsch".

Kate Kelsch
New Tactics Project Manager

Introduction

In December 2001, the United Nations Office of the High Commissioner for Human Rights convened a workshop on "Indigenous Peoples, Private Sector Natural Resource, Energy and Mining Companies and Human Rights." The physical format of this workshop was indicative of the general atmosphere surrounding the issue: Indigenous representatives were lined up on one side of the room, companies were lined up along the other, and nongovernmental organizations sat in the middle. Governments chose not to attend. Toward the end of two days of very tense discussions, a representative from Rio Tinto (a U.K.-based mining company) asked a question of the Indigenous and NGO participants: rather than spend more time repeating everything that companies do wrong, can we (the communities and NGOs) provide more explicit direction to companies on how to do things right?

This challenge was accepted by First Peoples Worldwide and Business for Social Responsibility, two U.S.-based NGOs working internationally on corporate responsibility. Together we developed a training initiative designed as one step in increasing the capacity of companies to build more effective, constructive relationships with Indigenous peoples. The training, which is focused on extractive companies (mining, oil, gas and logging), is founded on a respect for Indigenous peoples' rights, aspirations and effective participation in the decisions that affect them. Both Indigenous people and company personnel have been involved in the design and implementation of the curriculum.

At the core of the training is the concept of free, prior and informed consent (see box, right). While many governments refuse to acknowledge that Indigenous peoples have this right (the right to approve, or reject, a project in their territory), it has been recognized in international law, and national governments are slowly coming around. Laws are rarely specific enough, however, to tell a company what kinds of actions and decision-making processes will meet this expectation. They also neglect to provide an overview of everything at the community-operational level that can affect how communities and companies achieve consent.

Our training currently takes the form of a two-and-a-half-day workshop that pro-

vides broad, general guidance on the importance of developing good engagement practices with Indigenous peoples in order to achieve free, prior and informed consent. While we do not guarantee that effective engagement will result in consent, we emphasize that without it, consent cannot be achieved. Ideally, company participation in the training will include multiple voices representing the different company roles that affect, and are affected by, community relations, such as environmental management, land negotiations, government relations, executive offices, communications and investor relations.

The workshop content was tested in February 2003 and presented fully to a group of nine companies in

FREE, PRIOR & INFORMED CONSENT

In our training, we use the following definitions:

Free: Freedom from external manipulation, interference or coercion by either the government or the company.

Prior: Achieved before exploration or government permitting of the proposed activity.

Informed:

- ◆ Full disclosure of the intent and scope of the activity.
- ◆ Decisions made in a language and process understandable to the communities.
- ◆ Provision for training and education made to allow for full understanding of the potential impacts of the resource activity.

Consent:

- ◆ Consent determined according to the people's own customary laws, rights and practices.
- ◆ Customary institutions and representative organizations involved in all decisions.
- ◆ Respect by the company for the final decision of the Indigenous people.

[Ecuador's] 4.6 billion barrels of proven reserves are among the largest in Latin America. Oil already accounts for nearly half its exports. With the recent completion of a \$1.3 billion, 300-mile pipeline by a foreign consortium, the government deepened its commitment to eventually doubling production, to 850,000 barrels a day. If development in the jungle moves unhindered, the Ecuadorean Amazon could yield as much as 26 billion barrels in oil reserves, enough to rival Mexico and Nigeria, according to a hopeful 1999 study by the Ministry of Energy and Mines.

But for the companies, dealing with Indians has proved arduous. Some have tried to placate tribes with everything from chain saws to outboard motors. Others focus on building schools and clinics. Some employ experienced anthropologists to help make deals. "When we did our seismic testing, we suffered kidnappings, fires and robberies," said Ricardo Nicolás, general manager here of Cia. General de Combustibles, an Argentine company that has the contract to develop fields north of Pumpuentsa. "It's been seven years and we haven't been able to get started; seven years and \$10 million." Faced with growing opposition, the government of President Lucio Gutiérrez said it was prepared to provide military protection so oil companies could complete the needed seismic tests.

Excerpts from "Seeking balance: growth vs. culture in Amazon" by Juan Forero, New York Times, December 10, 2003.

March; a shorter version was tried in November. We were working to create interest in more in-depth training on community engagement techniques at the company site level, and, while we have received expressions of interest in this second step, specific programs have not yet been undertaken. Participants from the March workshop provided very positive feedback, but we do not yet know the level of our impact on the companies at the institutional level. As such, this paper is a description of a “tactic in progress.”

The global context

According to the United Nations, there are approximately 300 million Indigenous people in more than 70 countries around the world. Indigenous peoples comprise 5 percent of the world's population, but embody 80 percent of the world's cultural diversity. They occupy about 20 percent of the world's land surface, but nurture 80 percent of the world's biodiversity on ancestral lands and territories.

Indigenous peoples are also residents of territories that are on the leading edge of extractive frontiers with sizable natural resource wealth, and yet they remain the most economically, socially and politically marginalized communities within present-day nation-states. As commitments toward sustainable development objectives increase around the world, recent efforts to measure the impact of development on Indigenous peoples show increasing levels of poverty and more frequent conflicts between Indigenous peoples and state or private sector actors.

The complexity of the dynamics between Indigenous peoples and multinational companies, even when both parties are willing to work together, challenge even the best of both community and company leaders. Start with industries that historically had little regard for environmental quality, regardless of where they operated (many company representatives are not afraid of stating bluntly that enforceable regulatory frameworks have been the only impetus behind positive changes in environmental stewardship practices). Place these operations in communities that are physically, culturally, spiritually and economically tied to their territories and natural resources. Place these communities, in turn, in nation-states that for centuries have tried to assimilate or annihilate them, and are now economically dependent on revenues from natural resource extraction in these territories. Add to this mix very different perspectives on development, different levels of power, and centuries of prejudice and misinformation about Indigenous cultures, and you have a recipe for conflict.

As the global Indigenous peoples' movement gains strength, advocates press for recognition of a wide spectrum of human rights: civil, political, economic, social and cultural. Numerous legal cases and campaigns have focused on combating the

TRAINING OBJECTIVES

- ◆ Increasing company understanding of the “business case” for creating more effective engagement processes with Indigenous peoples, i.e., the positive benefits to the company of doing the right thing.
- ◆ Developing a deeper awareness of the myriad aspects of Indigenous community life and aspirations, and how these might affect discussions with the community.
- ◆ Providing a better understanding of how including these considerations in decision-making about proposed company projects can increase the effectiveness of a wide range of company concerns related to project design and implementation, including environmental assessments and monitoring, social impact assessments, community development planning, and investor and societal expectations.
- ◆ Giving practical examples of the fundamental components of an effective engagement process, including shared decision-making structures, information sharing and capacity building.
- ◆ Assessing company management structures and practices and their potential impact on engagement processes.

marginalization of Indigenous peoples and on trying to ensure that these peoples have the opportunity to enjoy the rights accessed by other populations, such as the right to participate in political processes, the right of free association, the right to a healthy environment and, most recently the right to development.

The Indigenous peoples' movement as a whole, however, is focused on rights claimed specifically by Indigenous or aboriginal peoples, the original inhabitants of a territory. International conventions on Indigenous and traditional peoples articulate different aspects of political, economic and social life (see examples, under Useful Resources, p. 16), but at the core of these conventions is the recognition of the right of a people or nation to live and govern itself according to its own customs and aspirations. There are a number of ways that Indigenous peoples refer to this concept of self-governance and, given current nation-state structures, different ways in which it has been put into practice. Some peoples fight for and gain complete independence, while others claim decision-making authority over certain aspects of community life and place responsibility for broader protections with the national government.

However it is articulated by a given people, the common thread in statements from Indigenous peoples is the opportunity for effective participation in decisions that affect the well-being of the people and its members, in ways that are determined by them. Indigenous peoples are calling for access to decision-making structures, including those involving extractive operations.

Why try corporate training?

The Indigenous movement and its allies have used a variety of tactics to influence company-community relationships, depending on their own immediate ob-





jectives. International campaigns have been launched against DeBeers mining in San territory in Botswana, Freeport McMoRan's Grasberg mine in Indonesia, BP drilling in the Arctic National Wildlife Refuge and so on. Other groups pressure investors as a route to affect company behavior, as in the shareholder resolution filed against Burlington Resources in 2003 regarding their petroleum exploration activity in Ecuador. As with the UN workshop mentioned earlier, international institutions have been sponsoring efforts to create positive change within specific industrial sectors. Research on bad practice has been published, and guides on international norms and lists of principles have been written. Where resources and time are available, cases are being taken to court to challenge directly the companies and national governments that support extractive enterprises against the wishes of local Indigenous peoples.

These tactics, however, are designed to bring companies to the point where they acknowledge that they need to change their behavior to avoid economic losses. Such tactics don't answer the question posed by the Rio Tinto representative at the UN workshop; they don't provide operational answers. To protect the rights of Indigenous peoples we have to move beyond naming the problem and construct practical solutions.

Corporate training, unlike campaigns or research products, is suited to this kind of practical advice. Participants have the time and space to talk through specific operational situations. Trainings fill a very real gap by targeting efforts to educate those actors who are on the ground, where their own operations have direct impact on the effective enjoyment of rights. If the way a company does business is the problem, let's show them a better way.

The private sector understands the idea of "corporate training." Continuing education of employees provides a competitive advantage to companies seeking the title of "industry leader."

This corporate training effort, however, along with those on human rights or additional social concerns, would not be possible without the pressure of the other tactics that bring companies to the training classroom. To a certain extent, FPW and BSR are taking advantage of many years of previous work to change the extractive industries and are bringing individual companies farther along the change process when they are ready. Others considering the use of such a tactic must realize that not all companies are ready for such an initiative. Efforts to engage the pharmaceutical industry regarding biodiversity protection and the intellectual property rights of Indigenous peoples, for example, have not moved forward. Companies have said they see no need to change.

Designing the training

GENERAL GUIDANCE

Whether you are developing a training program on human rights or cooking pies, you must know your target audience and the issues involved. To make the training useful to companies, we had to:

- ◆ Keep it brief—both the materials and the workshop. Company personnel generally find it very difficult to justify extended periods of time away from their regular work responsibilities.
- ◆ Keep it accessible to the level we wanted to attract. This affects not only the content of the training, but even location and timing. We wanted to attract executive-level staff. We first thought to place the workshops at an operational site, but this was quickly rejected by potential participants because mine or drilling sites are often remote. The workshops needed to be in an accessible location. If our training focus changes to site managers, it will be essential to travel to the site.
- ◆ Keep it practical. Present examples of tools you recommend. Develop tools that participants can use "back at the office on Monday morning." For us, this meant translating our recommendations on engagement practices and Indigenous peoples' rights into a Risk Assessment tool (see page 14) that managers can use to evaluate current or projected operations with respect to Indigenous peoples and their rights. It also meant providing concrete examples that managers could present to build support from senior management back at the office.
- ◆ Use tested training techniques in the instructional design. Different individuals respond to different kinds of teaching methods, and there are many methods to choose from. Some helpful resources on training and workshop methods are included in Useful Resources on p. 16.
- ◆ Believe in the benefits of positive interaction with companies, and act accordingly. While this may seem obvious, it can be a major stumbling point for some NGOs. Developing effective workshop content, recruiting participants and delivering successfully—all details that are reviewed in the rest of this paper—depend heavily on an organization's ability to engage in constructive, positive discussions with company personnel.

We believe the principal condition of consultation should be strengthening the autonomy of Indigenous Peoples to freely decide their future, enabling the revalorization of their own structures of traditional authority and fundamentally revitalizing the spiritual conception of interconnectedness/integrity that we have as Indigenous Peoples with our own practices.

From the Wayu Indigenous organizations' response during workshops related to the preparation of the report Possibilities and Perspectives of Indigenous Peoples with Regard to Consultations and Agreements within the Mining Sector in Latin America and the Caribbean. North-South Institute, Ottawa, 2002, p. 45.



Oil waste and gas flaring, northern Ecuador
(Photo: Jim Oldham/Las Lianas Resource Center).

Confidentiality is a critical feature of the workshop and any pre- or post-event conversations with companies, so that participants can be as candid as possible. For a campaign or advocacy organization, this may be hard to justify and may eventually lead to a decision not to attempt a corporate training effort. Throughout our workshops, we have used what are called “Chatham House Rules,” which are principles used by the Royal Institute for International Affairs in London (the RIIA is located in Chatham House). Both participants and facilitators (and any other people such as translators or outside presenters) agree that what is said in the workshop can only be discussed outside of the workshop if the specific comments are not attributed to individuals or organizations.

CONTENT SELECTION

Different NGOs approach the subject of Indigenous peoples’ rights in different ways. FPW takes a holistic approach, with a broad goal of “culturally appropriate community economic development.” This encompasses a fairly complex set of components, including:

- ◆ Land tenure and land rights
- ◆ Property rights, including intellectual property rights
- ◆ Political participation
- ◆ Asset control and development
- ◆ Organizational development and capacity
- ◆ Cultural integrity and vibrancy
- ◆ Leadership and personal efficacy
- ◆ Environmental health
- ◆ Human health
- ◆ Governance

These are only a few of the components that Indigenous people have identified as requirements for effective community-driven development, constituting a broad set of issues that companies and Indigenous communities tackle regularly. Each community may be different from the next in terms of the outcomes it hopes to achieve. The first challenge for FPW and BSR was to decide how to deal with such a range of issues and rights in a practical forum. We sought existing materials that focused on community participation in decisions, rather than on the outcomes of those decisions. This gave us our core content focus—actual guidance on engagement and shared decision-making processes, with examples from real life.

We then had to balance this primary focus with other concrete issues, to give the engagement process a context and a purpose. We used a combination of our existing knowledge and a needs assessment survey of company participants to help us narrow the focus to key issues and to determine how to approach each one. Certain issues are of continuous concern, but because the two sides are, quite often, talking past one another, the definitions of the concerns from either side are not necessarily the same. These concerns include the following.

Respecting and strengthening Indigenous community cultures, rather than trying to change or supplant them with nonIndigenous cultures from the companies. Our challenge was to translate community concerns about culture and development into practical lessons for the companies—on everything from water use, to sacred sites, to food sources and preparation, to labor in-migration, to technical training, to community trade patterns and governance structures and so on.

Respect for land rights. Most often, companies approach these subjects from a legal administration perspective, relying on government structures for permits and access. This has proven problematic, however, not only for companies, but for the nonIndigenous governments, as national governments have been brought to court for not respecting the land rights of Indigenous peoples. We had two challenges here:

- ◆ To provide evidence of how the typical reliance on only national governmental structures and permitting processes can lead to trouble, and of the increasing trend toward recognition of Indigenous rights to traditional lands.
- ◆ To provide a more sophisticated understanding of land rights, land use and Indigenous decision-making structures related to land access, as a context for a better engagement process and community-driven development planning.

Free, prior and informed consent. For a company, this is the key to successful engagement, as the new international norm or standard for business activity. But it has rarely been defined operationally, which left room for this training initiative to fill a critical need (see box on page 6). We also went one step further in emphasizing that consent must be maintained over the life of the project. For extractive industries, this may mean six months of exploration testing or 70 years of mining. It can be gained or lost at any point in the relationship. This places the emphasis on developing a relationship-building process, not simply on a signed piece of paper at the beginning. The training also touches on one of the most tense aspects of consent for a company, which is the potential for a community to say “no.”



Negotiation between Occidental Petroleum and the Secoya, Ecuador
(Photo: Jim Oldham/Las Lianas Resource Center).

Other factors affecting the success of an engagement process. Companies and communities interviewed in preparation for this training initiative emphasized the need for capacity-building for both sides of the engagement process.

IMPORTANCE OF DEVELOPING THE “BUSINESS CASE”

Throughout the workshop we emphasize the “business case”—a compilation of the motivating factors a company must consider as it assesses risk and opportunity. This case is usually the reason corporate representatives attend the training. Without a strong business case, corporate attendance may be weak.

For our initiative, this involved looking for:

- ◆ Investor concern and shareholder action regarding Indigenous peoples.
- ◆ Pressure from financial institutions to pay attention to Indigenous peoples as conditions for receiving financing. This includes private banks as well as international institutions such as the World Bank and the Inter-American Development Bank.
- ◆ Pressure from social movements. We collected stories about blockades or other events that caused work stoppages or negative press and estimates of the lost time and money they caused.
- ◆ Legal liability. We knew of successful cases where companies or governments were sued for infringing on Indigenous peoples’ rights and were also aware of current trends on national government recognition of these rights.
- ◆ Pressure from employees or potential employees. A combination of legal issues and negative press can cause companies to lose their best talent. This issue strikes a company at two different times. First, it has been shown that significant public attention to bad practice decreases a company’s chance of attracting top students from top business schools. Second, companies with significant bad press have greater problems keeping current employees, as the bad press lowers morale and employees’ pride in their work.

Along with our own knowledge and the needs assessment survey, we have been fortunate to have

access to a continuous flow of information and news regarding what is happening on the ground with various extractive projects around the world; this knowledge helps us reinforce our messages. A different human rights focus for corporate training may create a different list of motivating factors. If labor rights and working conditions are the focus, for example, it may be helpful to include studies on changes in productivity due to working conditions.

Presenting the business case for any human rights concern provides a foundation for the learning process in the workshop, reinforcing for participants the reasons why they have come. But this presentation of evidence is important for the overall learning process in another way—it gives participants an opportunity to take well-developed materials and arguments back to the office and share them. One of our earliest indicators of positive impact came during the first workshop, when a participant asked if he could distribute the guidebook to his regional and site managers. Since that time, other participants have requested the same opportunity.

The workshop

A successful training program has certain key components:

- ◆ Knowledge base and expertise.
- ◆ Motivated participants for whom the objective of the workshop has some relevance to their future activities.
- ◆ A range of activities which will enable the participants to understand new issues in practical ways that can affect their future business planning.
- ◆ Trained facilitators and experts who understand the concepts, the issues and the audience, and have the skills to put it all together.

Let’s take these one at a time.

BUILDING A KNOWLEDGE BASE ON COMPANY OPERATIONS

To meet our objective of improving operational practice on a wide scale, we needed to know what that meant on the ground. For example, how do company-designed community development plans fall short of meeting community aspirations? What are the typical negotiation platforms and behaviors that compa-

At the World Bank conference on finance, mining and sustainability in April 2002, a managing director of Barclay’s Capital stated that the choice for global mining companies was simple: If they didn’t address issues of corporate responsibility, they would not get the investment capital they needed to move their projects forward. *Sample “text box” used in the guidebook given to training participants.*

nies use; how do they work, or not work, to create effective long-term relationships? Who from a company is typically involved in engaging with the community? What do they do; how do they act? What does a long-term relationship look like, good or bad? What are the stages that the relationships pass through over time?

Press releases and campaign materials don't answer these questions. Our biggest challenge was the lack of detailed case studies or stories on company-community operational practice over time. The overwhelming amount of detail covered bad practice; it is rare to find documentation of a positive relationship. Part of this may be the limitations of coverage (good news is not "news"), and part the fact that parties to such relationships rarely take the time to document daily actions. In terms of this project, the partners also had little in the way of resources to conduct this kind of documentation and primary research up front.

We scrutinized public statements from both sides of the relationships, looking for case studies that explored relationships over different periods. We talked with community members and company personnel willing to offer candid comments. We spoke with other consultants and trainers working on specific local situations. And we used our own knowledge bases. This not only gave us content for the training, but also helped the facilitators understand company realities so they would not offer impractical solutions.

RECRUITING MOTIVATED PARTICIPANTS

Companies need some prior understanding of the "business case" in order to make the initial decision to participate. This kind of training is entirely voluntary. FPW and BSR are literally trying to capture the interest of companies in transition—those who recognize that they need operational guidance and are willing to sign up for a training course. For the success of the tactic, it needs to be operating in a context where there is

- ◆ Access to companies on a regular basis, in order to be there at the moment that they realize they need the training. A membership association such as BSR is useful in this regard, but it should also be combined with efforts to speak with, and listen to, companies in other forums.
- ◆ Other parallel efforts to help companies realize that change is necessary (raising their level of reputational risk). This includes advocacy campaigns, investor pressure, improvement of regulatory frameworks and community legal support.

A training can be more effective in creating change if more than one corporate representative is present from each company. Large companies are complex structures; change can be difficult. If several representatives attend from the same company, they can go back and work together as agents of change.

Much of our work to date has been in culturally less sensitive areas. But with the expansion of our exploration activities and the rising profile of Indigenous peoples' issues worldwide, we felt that we needed to be more proactively engaged. The issues are far-ranging and complex, and the workshop and resource materials did justice in dealing with them in such a way that there was ample space for discussion and interaction, as well as the all-important concrete guidelines to take back to the office on Monday morning. We are in the process of assimilating these resource materials into the way we do business. And we believe it is an ongoing process that we will have to continually revisit as we learn by doing. But what this work has done is provide a framework for discussion and action in our company.

Participant at the March 2003 Vancouver workshop

Even with these factors working to one's advantage, three primary challenges still exist. First, that of the political sensitivity of human rights issues. Many companies operate in countries whose national governments do not recognize or enforce many human rights. Because the companies are legally bound by national legal structures, many still fall back on the national government as a reason not to change business operations. Even where company participants are enthusiastic for change to occur, they may be operating in national environments where this kind of training is frowned upon. Building a solid business case is essential in meeting this challenge.

Second is the issue of legal liability. While legal cases prosecuting companies for human rights offenses help the cause, they can put a damper on open discussions. If your company participants are currently involved in a court case, they will most likely be unable to talk about it, even though the case may revolve around what are, from our perspective, the most pertinent issues for discussion. These cases may also put a damper on discussions with other companies, who are watching the proceedings very carefully. Confidentiality arrangements can help with this challenge.

And last, there is the problem of a lack of solid evidence to prove that a company's financial bottom line would improve if these techniques were used (or, in the opposite case, that not using these techniques would cost the company dearly). Most company personnel, especially those skeptical of the value of such an approach, still rely heavily on the numbers. Good interviews with company contacts, who know the financial situation better than NGOs or other groups, may provide you with evidence to help with the skeptics. We were able to find a few interesting nuggets, such as a quote from a timber company that figured it was losing \$1 million per day while its operations were being blockaded. We compared that with a company that spent \$300,000 a year to build and maintain a highly effective, integrated aboriginal relations department, and asked them to do the math.



WORKSHOP ACTIVITIES

Thus far, we have organized three workshops. The first, in February of 2003, was a two-day pilot test of our training at a U.S. mining company. The eight participants each came from the company but represented several different operational departments.

While this wasn't originally planned as a part of the project, we decided to ask a company that was considering participation at the "real" workshop in March to act as a test case. This allowed us to bring together facilitators who had not worked together as a group and to use new material. Because of the timing of this pilot, we were literally redesigning the format and activities the night before the test and editing the guidebook text as we went. While we risked making some mistakes in front of a company, we received very valuable experience for ourselves about our own strengths and weaknesses as facilitators and our team dynamics and received input from the company personnel on what worked well and what didn't.

In March of 2003 we conducted a full-scale workshop (two and a half days) with 24 company participants representing nine oil, gas and mining companies in five countries. The participants were self-selected—the result of a broad invitation process to extractive company contacts known by BSR or FPW.

Finally, in November of 2003 we held a one-day version of the workshop, formulated to fit into the BSR annual meeting, and held as one of the "pre-conference" special sessions. This workshop was attended by two company participants and three consultants who often work with companies at operational sites. While responses were positive, it seemed unanimous that the content of the training is simply too broad, and too important, to try and summarize in one day, and this version will probably not be tried again.

We chose our activities to fit each session's topic and objectives. It should be noted that the activities, along with the workshop's overall structure, have been shaped by the cultures of both the designers/facilitators and the company participants—most of whom, in our case, have been North American or West European. Different human rights issues, different objectives and different people may require the use of different activities.

The activities included in each workshop have also varied according to the time available, the comfort level of the participants for different kinds of activity, the number of facilitators, and the participants' level of experience. These activities include the following.

Facilitated discussion. More interactive than a lecture, this allows the facilitator to present informa-

The training was an excellent, practical and highly participative exploration of the issues which arise between companies and Indigenous peoples and of the tools which can help to create a constructive engagement and to resolve problems.

Edward Bickham, Executive Vice President, External Affairs, Anglo American PLC

I found it to be an extremely well-structured, professionally run training course that genuinely opens up the issues of engagement between Indigenous communities and resource developers. To the uninitiated, the learnings are extensive; to those already on the journey, the facilitated interaction with other participants provides access to far greater experience than you can hope to get on your own. I highly recommend it.

Bruce Harvey, Chief Advisor, Aboriginal and Community Relations, Rio Tinto Limited

Very professionally conducted with the process pulling the best experiences from participants. This gives a great learning experience for all participants.

Don W. Nisbet, Director Internal Development, Hudson Bay Mining and Smelting Co.

tion and to elicit information and knowledge from the participants. We used this, for example, in the discussion on prior informed consent. We asked the participants about their understanding of the term, compared it with our own and asked for examples of how they deal with it in the field. Time spent in this format should be judged by the facilitator, based on responses to the issues being discussed. There may be times in which the conversation moves quickly toward a conclusion and others where heated debate begins. If the debate centers on a critical part of the training, the facilitator should not cut it off too soon.

Structured debate/fishbowl. In one instance we had an issue—land rights—that we knew to be causing conflict between the parties involved and to be without clear legal interpretations. We felt, then, that we had an opportunity to let people of different perspectives talk for a bit and tried what has been called a "fishbowl" design, which places the speakers in chairs in the middle of the group. Only those in the middle of the group are allowed to speak. If others wish to add to the discussion, they must tap someone in the middle, who will then leave the inner circle and move to the outer group. If the group is smaller, say less than ten, this particular approach may not be useful. This also needs good facilitator control over the debate, with set time limits. While it is not always a part of a fishbowl exercise, we were particularly concerned that possible solutions and areas of agreement get raised, so we had one of the facilitators step into the inner circle at times to raise these if participants were focusing too much on areas of disagreement. We scheduled about an hour and a half for this kind of session and completed the session by having one of the facilitators summarize the key points and ideas raised.



Small group exercises. The issue of company impact on Indigenous cultures is broad, and we knew participants had different understandings of its scope and of ways of dealing with it in their operations. Because our objective was to achieve the most complete understanding possible of the issue, we split participants into small groups to have them explore the subject. We first asked for an understanding of Indigenous culture, then for ideas on both positive and negative company impacts. People returned to the large group and compared their work, with an eye not to choosing right or wrong answers, but to combining different perspectives to create a complete picture. The facilitator was given the task of pointing out anything that was still missing. Group members then compared their experiences in the field talking to a community and the methods that work best. Facilitators emphasized the importance of engaging the community directly in these exercises, because without this input key pieces of information about company impact would be missing.

Role-playing. These kinds of exercises are very useful when you are trying to help participants see either themselves or their counterparts (the community, in our case) from a different perspective. In talking about how the companies engage communities in discussions, we decided to try role-playing in an effort to literally turn the table on the company participants. They were asked to act as an Indigenous community preparing for negotiations and were given specific tasks, such as deciding what kind of information they wanted about a proposed project. Facilitators played company negotiators. To help in portraying a fairly realistic situation, facilitators were asked to include certain “worst company practices” in their portrayal of company negotiators. After the exercise participants were asked to reflect on the outcomes, at which point we were able to help them understand the levels of frustration they experienced as a community.

Stakeholder mapping. In both materials and training activities it is critical to provide examples of practical tools that can be used to reach the objectives. In a session on engagement processes, for example, participants are taken through a brief exercise on what is called “stakeholder mapping.” They are given examples of possible stakeholders—individuals, groups, or organizations that may be directly or indirectly affected by company activity—in an Indigenous community, such as the traditional healer, the hereditary chief, the elected chief, hunters and farmers, truck drivers and small business owners. With each of these general “roles,” there is an accompanying description of what this community member may consider important in relation to the proposed company activity. One may focus on how the company will create jobs for community members, while another may be concerned that the activity will harm plants and animals that the village depends on for food and medi-

cine. Sometimes one individual plays more than one role.

In small groups, participants are asked to place each stakeholder in a matrix:

	Positive (affected positively)	Negative (affected negatively)
Primary (directly affected by project)		
Secondary		

Once this is completed, participants are brought together to discuss their outcomes. Inevitably, there are differences in how the groups think about and define the different stakeholders and impacts. These differences are discussed, with an emphasis on helping company representatives understand the complexity of relationships and interests at the community level. Participants are then asked to devise solutions to meet the concerns of the community members. Regardless of the human rights issues being addressed, the inclusion of practical tools for company personnel is an important part of the effort.

We have not yet noticed a particular trend in terms of which exercises are best overall. We have spent a great deal of time trying to match the workshop exercises with our goals for each session and each topic. But according to responses from individual participants, success is dependent more on individual learning styles than on the kind of activity. Some individuals found the role-playing very helpful, while others felt very uncomfortable in this activity and preferred forms of discussion or the risk assessment tool.

**Methodological example:
The risk assessment tool**

While designing the materials and the workshop, we kept returning to the same piece of advice: Companies like checklists, give them a checklist. At first we approached this simply as something we needed to do, but as we began to develop what we finally named the “Risk Assessment” tool, we realized the power of such a tool in relation to our training.

A large challenge was to capture the diversity of the issues that companies should consider in their relationships with Indigenous peoples. And we knew from our conversations with companies that no one was effectively considering all of the issues we planned to cover. By taking a fairly lengthy document and pulling its key points into a cohesive list (12 pages long), we created a tool that reinforces the need for training, allows participants an opportunity to apply what



they have learned during the workshop while they are still in it, highlights a company's strengths and weaknesses and serves as the beginning of a measurement tool for that company's progress.

In the March workshop, at the end of the second day, we asked participants to go through the risk assessment checklist as "homework." In the morning, we asked for volunteers to share reflections from the assignment. One participant said that he was surprised, and somewhat disheartened, after completing the exercise. His company had a long history of commitment to engaging Indigenous communities directly in negotiations at early stages of project design and development. He was surprised, however, by the number of "no" answers he marked—and planned to take his concerns back to his staff the following week.

SAMPLE RISK-ASSESSMENT QUESTIONS RELATED TO INDIGENOUS PEOPLES' LAND RIGHTS

Does the company understand the difference between the community's "individual" and "collective" rights in relation to land?

Does the company have a good understanding of how the community makes decisions about land and natural resource use or transfer?

Does the company have a good understanding of how land rights are connected to the community's identity, language, kinship, spirituality, economic systems, decision-making structures and knowledge base?

If the answer was yes to any of the above questions, has the company verified this information with the Indigenous communities themselves?

Is the company aware of applicable national and international laws and court decisions on Indigenous land rights?

Does the company know whether the local communities are currently involved in legal battles over their title to the land?

Has the company assessed the capacity of the national government to act positively on land rights concerns?

Has the company researched whether the local community has access to legal expertise, mapping expertise and other resources? If so, is the company willing to invest in these processes to help the communities develop capacity in these areas?

FACILITATORS AND RESOURCE PEOPLE

The people involved in designing and implementing a corporate training program are critical to its success, but there is no simple formula for selecting them. The expertise needed will depend on the subject matter, the participants' learning culture and the initiative's overall objectives. There are very successful training programs that rely solely on lecture and facilitated discussion, and others that rely on highly interactive sessions.

For our initiative, we were fortunate to be able to include people with different strengths and talents, and to use them in the sessions where they would be most valuable. We also created teams of facilitators (those who would lead/direct each session or breakout) and "resource people"—Indigenous people who had some experience with the kinds of companies attending and familiarity with the ways that their communities would interact with these companies. We spent time together discussing each day's plans, rehearsing for sessions, going over areas where we anticipated some difficulty and, at the end of each day, reflecting on the day's events. This kind of team-building and planning work is important, and it becomes more important as your team grows.

If you have no choice of facilitators, designing workshop activities to suit the facilitator's strengths should be a guiding principle, unless you are able to provide training for him or her in different methodologies. If you are unsure about available activities, there are several good publications on group facilitation that can help; these can be found through a web search or by contacting a library. Other NGOs and local univer-

sities may also be good sources of information. That said, we offer some general points of advice.

Company participants will ask questions, and you should have someone present who is knowledgeable enough to answer. Regardless of the human rights topic being covered, the facilitator must know it well, and/or be accompanied by "resource people" who do. It is possible to use someone with general facilitation skills (who can lead discussions, help resolve conflict or debate and manage participants according to an agenda) and, when substantive questions are raised about the content, ensure that resource people are available to contribute their knowledge and expertise to the discussion.

This also means that if the training is specific to actual company practices, as ours was, facilitators and/or resource people must know company practices as well as human rights principles. During the structured debates in our workshops, facilitators must continuously lead participants toward examples of best practice and show that there are other companies that are doing things in better ways. For every instance in which participants say that their companies cannot do something, the facilitator must be able to prove them wrong. These kinds of examples catch the attention of participants. Without this knowledge, training efforts can tend to move toward very polite, very positive, but essentially unproductive sessions.

If the content of the workshop involves understanding others (Indigenous peoples, rural communities, women, children and so on) that are different from your participants and from yourselves, it is very help-

ful to include representatives from those groups to share their stories and experiences. Four Indigenous people assisted us in the March 2003 workshop, and company participants were able to ask how their communities might react to things being proposed for company operations. There were repeated questions, for example, on how decisions about large projects were made in the community, how sacred sites were protected and how community leaders or negotiators related to community members during negotiations. If it is not possible to do this, facilitators or other resource people must thoroughly understand these groups and be able to articulate their concerns with some level of credibility and respect.

Evaluation of impact

This is a very new initiative, so there has been little opportunity for workshops to have yielded measurable changes at the company level.

On an individual level, however, the impact can be seen almost immediately. In the February 2003 pilot workshop, one participant was the “land guy”—the person responsible for negotiating the best commercial deal possible for the company. A stereotypical approach to land negotiations is to rely on conventional tactics of confidentiality, with the assumption that the less the other side knows, the better the deal for the company. When we recommended that the company offer the community every conceivable piece of information about a proposed project, he said that our approach was counter-intuitive—that following our advice would put the company out of business. But after spending two days in our training workshop, along with his colleagues in the company's community relations department, he began to understand how a more open communications effort about the project could

- ◆ make the impact-assessment process more accurate by enhancing both company and community understanding, and provide a better knowledge base for designing mitigation measures and development plans;
- ◆ provide a basis for more effective negotiations, because the community side would be better prepared; and
- ◆ reduce the potential for conflict by lowering the level of mistrust over key points of information.

The negotiator said he could now see how open sharing of information between the company and community would result in a better project if an agreement was reached. He was going to take this lesson back to his supervisors and indicated that this lesson came not from a particular workshop activity or session, but from the entire package.

Measuring the results of such training will always be difficult. Participation is voluntary, so companies are not required to report on their implementation of the lessons learned. Because of confidentiality restric-

tions, most follow-up conversations must be held in confidence. And companies can take years debating policy changes, which is sometimes a prerequisite to behavioral change at an operational level. It would be interesting, however, to survey participants one year after the workshop and evaluate its impact

Conclusion:

Corporate training in other contexts

Almost everything about the process we have described here can be applied to human rights issues outside the context of Indigenous peoples. Corporate behavior has consequences that affect women's rights (e.g. workplace discrimination and participation issues); children's rights (child labor); economic, social and cultural rights of surrounding communities; and, of course, labor rights. These rights protect individuals, families, communities and nations. They protect men and women, factory workers and farmers, children and adults and the elderly. They include civil, political, economic, social and cultural rights. For each, there is an opportunity for you to take your knowledge of these human rights situations, use that knowledge to craft specific guidance and seek opportunities to provide that guidance in constructive ways. It is especially important to educate those, such as companies, who have the potential of both tremendous positive and negative impact on these rights.

Around any right, there will be a need to move from criticizing companies for their behavior to encouraging them to seek practical solutions for improvement. Our experience has shown us that demonizing companies is an oversimplification. Often there are people in these companies who want their organizations to have a dignified reputation. And there is a case to be made that companies can be more successful and competitive if they develop more sensitive approaches to human rights issues. But business schools are just beginning to include human rights in their curricula, so it is reasonable to expect that many business people have had no formal training or experience with these concerns. Many companies have no idea how they might organize their work differently to change their social impact.

For change processes to take hold and have long-lasting impact, bridges must be built between companies and the sectors of society they affect. Human rights advocates can play an important role in furthering these efforts. One of the most critical difficulties we now face is how to attract other advocates to help educate the private sector on a broad range of human rights concerns. Many worry about losing their credibility and legitimacy if they are seen to be “collaborating” with business. Others worry about trying to find the financial resources to build such initiatives if their funders traditionally focus on supporting anti-business approaches. Hopefully, as initiatives like this begin to show positive impact and multiply, these concerns can be put to rest.



USEFUL RESOURCES

International conventions (examples)

United Nations Draft Declaration on the Rights of Indigenous Peoples, E/CN.4/Sub.2/1994/2/Add.1 (1994). <http://www1.umn.edu/humanrts/instree/declra.htm>.

Proposed American Declaration on the Rights of Indigenous Peoples (1997). <http://www.cidh.oas.org/Indigenous.htm>.

International Labour Organization Convention 169: Concerning Indigenous and Tribal Peoples in Independent Countries (1991). <http://www.unhchr.ch/html/menu3/b/62.htm>.

Indigenous peoples' rights and extractive industries

Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities. Environmental Law Institute, Washington, D.C., 2004. <http://www.eli.org>

Extracting Promises: Indigenous Peoples, Extractive Industries and the World Bank. Forest Peoples Programme, Moreton-in-Marsh, UK, 2003. <http://www.forestpeoples.org>

Through Indigenous Eyes: Toward Appropriate Decision-Making Processes Regarding Mining On or Near Ancestral Lands. The North-South Institute, Ottawa, 2003. <http://www.nsi-ins.ca/ensi/pdf/SynEnfinal.pdf>

Sloan, P., Hill, R. *Corporate Aboriginal Relations: Best Practice Case Studies*. Hill Sloan Associates Inc., Toronto, 1995.

Business and human rights

Business and Human Rights Resource Centre. 361 Lauderdale Tower, Barbican, London EC2Y 8NA, United Kingdom. Telephone/fax: (+44) (20) 7628-0312. E-mail: contact@business-humanrights.org. <http://www.business-humanrights.org/Home>

Human Rights: Is It Any of Your Business? International Business Leaders Forum and Amnesty International, London, 2000.

Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). <http://www1.umn.edu/humanrts/links/norms-Aug2003.html>

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