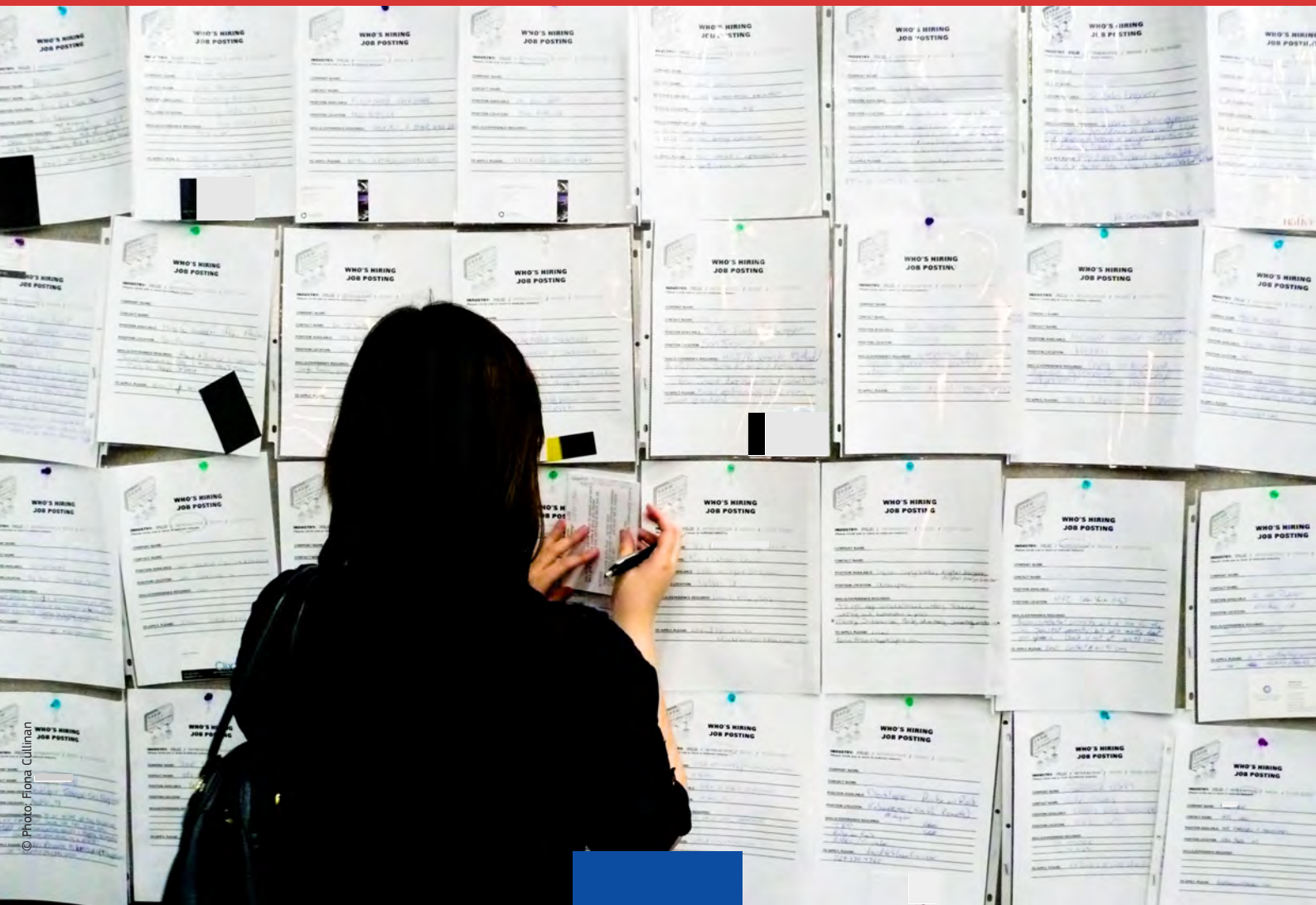


European  
Commission

# Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights



# Background and acknowledgements

*This Guide was written by Shift and the Institute for Human Rights and Business (IHRB).*

In December 2011, IHRB and Shift were selected by the European Commission (Directorate-General for Enterprise and Industry) to develop sector-specific guidance on the corporate responsibility to respect human rights, as set out in the UN Guiding Principles on Business and Human Rights. The development of sector-specific human rights guidance is one of the deliverables of the European Commission's [policy on corporate social responsibility](#), adopted in October 2011.

Further to a public consultation, and on the basis of objective criteria, the services of the European Commission decided that guidance would be developed for **employment and recruitment agencies, information and communications technologies ("ICT") companies, and oil and gas companies.**

The development of this Guide involved extensive research and multi-stakeholder consultation. The process involved over 75 multi-stakeholder interviews per sector with individual experts, two periods of web-based public consultation, field-based research, and two multi-stakeholder roundtable discussions hosted by the European Commission. The European Commission, Shift and IHRB are very grateful to all the business, government, trade unions and civil society representatives, academics and other experts, whose input helped to shape the final document. (The full list of participants in the project can be found on the websites listed below.) In particular, they would like to thank:

- ▶ **The members of the Employment and Recruitment Agencies Sector Advisory Group:** Beate Andrees supported by Houtan Hodayounpour (International Labour Organization), David Arkless (ArkLight Consulting, formerly ManpowerGroup), Lakshmi Bhatia (formerly Fair Labor Association), David Camp (Association of Labour Providers), William Gois supported by Chowdhury Abrar (Migrant Forum in Asia, representing Migrant Rights International), Christy Hoffman (UNI Global Union), Denis Pannel (Eurociett), and Adil Rehman (Next).
- ▶ **The members of the Expert Advisory Committee, established to help provide advice across all three sectors:** Jim Baker (Global Trade Unions), Alexandra Guáqueta (UN Working Group on Business and Human Rights), Tom Koenen (Econsense), Viraf Metha (Centre for Responsible Business), Geneviève Paul and Elin Wrzoncki (Fédération Internationale des Droits de l'Homme), and Brent Wilton (International Organisation of Employers). In addition, the following people contributed to the work of the Expert Advisory Committee: Michael Addo and Margaret Jungk (UN Working Group on Business and Human Rights), Jana Heinze (Econsense), and Matthias Thorns (International Organisation of Employers).

The above-mentioned people provided advice in a personal capacity. Their participation does not necessarily imply that they or the organisations they work for endorse the contents of this document.

Further information about the process by which this guidance was developed can be found on the websites of:

- ▶ The Institute for Human Rights and Business at [www.ihrb.org/project/eu-sector-guidance/index.html](http://www.ihrb.org/project/eu-sector-guidance/index.html) and
- ▶ Shift at [www.shiftproject.org/project/ec-sectoral-guides-corporateresponsibility-respect-human-rights](http://www.shiftproject.org/project/ec-sectoral-guides-corporateresponsibility-respect-human-rights).

**Disclaimer:** The content of this document does not necessarily reflect the official view of the European Commission.

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# FOREWORD

The European Union is a strong believer in globalisation's potential for positive change. By harnessing the creative power of people and enterprises across the world, globalisation can improve living conditions for all. The ultimate purpose of our economy is to contribute to human development.

We also believe that globalisation needs to take place within a system of international norms in order to ensure its contribution to social and economic development, in full respect for human rights and fundamental freedoms. Indeed, we see these two goals as mutually reinforcing.

The United Nations Guiding Principles on Business and Human Rights are an important new step in the development of international norms that will help to realise the full potential of globalisation. Their implementation is integral to the European Union's human rights strategy and to the European Commission's policy on corporate social responsibility. Similarly, European Union Member States have committed to develop their own national plans for implementing the UN Guiding Principles.

We are pleased to present this practical guide for employment and recruitment agencies on how to ensure respect for human rights. The guide, which is not a legally binding document, translates the expectations of the UN Guiding Principles into the particular context of employment and recruitment agencies. It is the fruit of intensive consultations with business people, trade union representatives, representatives of human rights organisations and other experts. We are very grateful to them all.

The European Union offers this guidance as a contribution towards global efforts to implement the UN Guiding Principles on Business and Human Rights. We welcome the prospect of further engagement with governments, enterprises, civil society, and other actors from all regions of the world. And we appreciate the need for close dialogue and partnership with international organisations, including the United Nations, the International Labour Organisation and the Organisation for Economic Cooperation and Development.

Not so long ago environmental management was something that concerned only a small number of companies. For many companies it has today become a natural part of doing business, considered vital for long-term success. We have a similar vision for the future of business and human rights: where respecting human rights is understood as being an intrinsic part of business excellence.



A handwritten signature in black ink that reads "Antonio Tajani".

**Antonio Tajani**  
Vice-President of the European Commission  
Enterprise and Industry



A handwritten signature in black ink that reads "Stavros Lambrinidis".

**Stavros Lambrinidis**  
EU Special Representative on Human Rights



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Part 1

# About This Guide

# About This Guide

## Objectives of the Guide

This Guide applies the [UN Guiding Principles on Business and Human Rights](#) (“Guiding Principles”) to the specific context of employment and recruitment (“E&R”) agencies. Recognising that each company is different, it is intended to help E&R agencies “translate” respect for human rights into their own systems and company cultures. It summarises what the Guiding Principles expect, offers a range of ideas and examples for how to put them into practice, and links the user to additional resources that can support their work. It does not propose a set management system but rather leaves companies the flexibility they need to implement the Guiding Principles in their own particular circumstances. The Guide’s various sections can be referred to as and when needed during the on-going process of implementation. The Guide is not intended to be legally binding.

The Guiding Principles were unanimously endorsed by the UN Human Rights Council in 2011 and are now the authoritative global reference point on business and human rights. They are based on the three pillars of the [UN “Protect, Respect and Remedy” Framework](#), which recognise the complementary but distinct roles of states and business in protecting and respecting human rights. The three pillars are:

- ▶ The **state duty to protect** against human rights abuses by third parties, including businesses, through effective policies, legislation, regulations and adjudication;
- ▶ The **corporate responsibility to respect** human rights, meaning that companies should avoid infringing on the rights of others and address negative impacts with which they are involved; and
- ▶ The need for **greater access to effective remedy** for victims of business-related human rights abuses, through both judicial and non-judicial means.

Since this Guide is intended for companies, it focuses on implementation of the corporate responsibility to respect human rights. It builds on the [Interpretive Guide](#) developed by the Office of the UN High Commissioner for Human Rights with the support of Professor Ruggie, the author of the Guiding Principles. It takes the reader through the key steps expected of companies, from setting out their commitment to respect human rights, to identifying and addressing their human rights risks, to providing remedy where actual harms occur.

The Guide also takes into account, wherever possible, the role of states in ensuring the rule of law and meeting their duty to protect human rights through effective laws and policies and by investigating, punishing and redressing any abuses that occur. States’ obligations and companies’ responsibilities are independent of each other. However, the Guide recognises that where governments are unwilling or unable to meet their own human rights obligations, this makes it more challenging for E&R agencies to avoid being involved in harm to individuals’ human rights.

“No one size fits all” when it comes to putting respect for human rights into practice. Most E&R agencies will not start with a “blank slate” – they are likely to have a range of existing policies and processes that are relevant to respecting human rights, as well as an established corporate culture or set of values that guide the company’s actions. Operating environments differ widely and it is important that E&R agencies develop locally appropriate solutions that are consistent with human rights when responding to local impacts.

Finally, the Guide recognises that implementing respect for human rights across a company’s activities and business relationships is not simple. It takes commitment, resources and time to embed respect for human rights in the ways that a workforce thinks and acts. Moreover, companies rarely control all the circumstances in which

## Background to the UN Guiding Principles

The Guiding Principles and UN Framework were developed by the former [Special Representative of the UN Secretary-General for Business and Human Rights](#), Harvard Professor John Ruggie, over the six years of his mandate from 2005 – 2011. Based on extensive research and consultations with representatives from government, business, and civil society (including trade unions, NGOs and legal and academic experts) across all continents, they gained broad acceptance and support. A new expert [UN Working Group](#) is now the UN body responsible for promoting implementation of the Guiding Principles and UN Framework.

There are several important international standards that draw directly on the Guiding Principles including: the revised OECD Guidelines for Multinational Enterprises, the IFC Performance Standards, and the ISO 26000 Social Responsibility Guidance. What does this mean for business? A convergence of international standards around the Guiding Principles should lead to fewer conflicting standards and consistent expectations.

they operate; those contexts may change rapidly, and serious human rights dilemmas may arise. Implementation of the Guiding Principles is therefore a process of continuous improvement, and this Guide itself reflects learning that will continue to evolve.

## Scope of the Guide

- ▶ **Both recruitment and employment services:** This Guide covers the operations of companies involved in the recruitment of “direct hire employees” for client companies and/or the supply of “agency workers” to user enterprises, whether private or public sector employers, for a fee. (See [below](#) in this section for definitions of key terms used in the Guide.) Wherever relevant, the Guide distinguishes between issues regarding the recruitment of direct employees and those regarding the supply of agency workers.
- ▶ **Human rights content:** The Guide covers respect for all internationally recognised human rights, including the human rights of workers – direct hire employees, agency workers and the internal staff of E&R agencies – and the rights of individuals or groups in a position of heightened [vulnerability or marginalisation](#) (such as women, children and racial or ethnic minorities).
- ▶ **Companies’ activities and business relationships:** The Guide applies to E&R agencies’ own activities and to their business relationships with third parties. This includes their direct relationships with client companies and user enterprises, as well as with suppliers and contractors, including those that are one or more steps removed in the value chain.
- ▶ **Companies of all sizes:** The Guide should be useful to all sizes of E&R agencies, with varying types of ownership and structure. Wherever possible, attention is given to approaches that may be more appropriate for smaller E&R agencies.
- ▶ **Global applicability:** The Guide takes particular account of the experience of EU companies, but aims to be as globally applicable as possible. It is relevant to EU companies operating inside and outside the EU, recognising that some non-EU contexts can raise the greatest challenges. It should also be useful to companies whose headquarters are outside the EU.

## Audience of the Guide

This Guide is for those practitioners in E&R agencies who have the lead responsibility for human rights issues, whatever function or department they sit in, at the corporate, country/market, or branch level. It offers a range of approaches that they can take and tailor to the needs of different departments, functions and individuals within their companies in ways that make sense within their own systems and cultures. This Guide should assist E&R agencies that have not yet identified a lead individual on these issues in thinking through where such responsibility may be most appropriately located.

This Guide should also be of use to those who are interested in promoting respect for human rights in the E&RA sector, including trade unions, NGOs, representatives of affected workers and communities, industry associations, multi-stakeholder initiatives, governments, and consumer organisations.

It should be of particular use also to those companies that rely on E&R agencies’ services for the recruitment of direct hire employees or the supply of agency workers, whatever sector they are in, as they seek to meet their own responsibility to respect human rights. The [Key Resources](#) section at the back of this Guide provides a non-exhaustive list of existing guidance relevant to such companies.

## Structure of the Guide

The Guide is divided into the following parts:

- ▶ Part 1: About this Guide
- ▶ Part 2: Human Rights and Employment & Recruitment Agencies
- ▶ Part 3: Putting Respect for Human Rights into Practice – which explores implementation of each of the [six core elements](#) of the corporate responsibility to respect. For each element, the Guide addresses the same key points:
  - “What do the Guiding Principles Expect?”

- “Why is this Important?”
  - “What are the Steps Involved?”, with each step supported by “Key Points for Implementation”, and a range of “Possible Approaches” that draw on good practice
  - “Where to Start” guidance for companies that are just beginning to engage with these issues
  - “Questions to Ask” to test consistency of a company’s approaches with the Guiding Principles
- ▶ Annexes: [Key Resources](#) and [Key Concepts](#)

## Terms Used in the Guide

For the purposes of this Guide, the following general terms are used (see also a longer list in Annex 2 of [Key Concepts](#) used throughout the Guide):

Term	Meaning in this Guide
Agency worker	An individual placed with a user enterprise, but employed by an E&R agency (see Figure 1 below).
Candidate	An individual that an E&R agency comes into contact with as a potential recruit. A candidate may be recruited for placement as an agency worker or as an employee to be directly hired by a client company.
Client company	A company (which may be a private or public employer) that contracts with an E&R agency to recruit individuals as direct hire employees (see <a href="#">Figure 2</a> below).
Direct hire employee	An individual recruited by an E&R agency, but directly hired by a client company (see <a href="#">Figure 2</a> below).
Domestic worker	Individuals who perform work in an employment relationship in or for a private household or households.
Employment services	The recruitment and placement of agency workers in a third party entity (“user enterprise”) for a fee. The fee is usually, but not always, paid by the user enterprise to the agency as a mark-up on the per hour pay rate to workers. The agency is the formal employer and responsible for payroll and other employment-related services (which it may perform itself or outsource). In some instances, the agency may also be responsible for on-site performance management, but typically, the user enterprise is responsible for the supervision of work tasks. This is often referred to as a “triangular employment relationship”. Placements are sometimes long-term and on an on-going basis, or they may be short term and ad hoc, for instance to help user enterprises with peaks in production. (See <a href="#">Figure 1</a> below.)

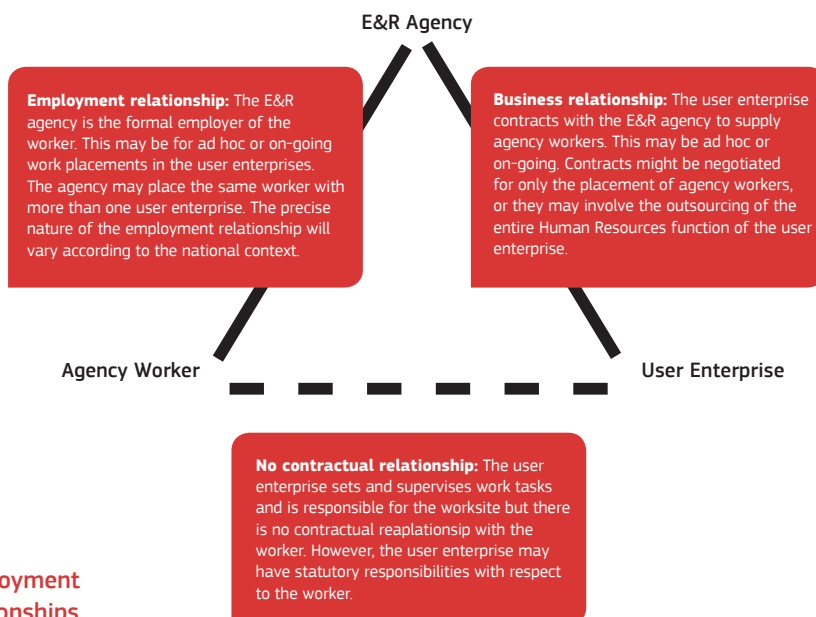


Figure 1: Employment Services Relationships

Term	Meaning in this Guide
Internal staff	An E&R agency's employees involved in running its operations, including recruitment consultants, sales staff, and back office staff.
Migrant worker	An individual who is, will be or has been engaged in a remunerated activity in a state of which he or she is not a national. In some cases, "internal" migrant workers who are recruited within a country may face similar risks as those who cross national borders. Where the Guide is referring to internal migrant workers, it makes this explicit.
Recruitment services	The recruitment of agency workers as well as workers who are recruited for positions with client companies where the employment relationship will be directly with the client company ("direct hire employees"). This means that rather than a triangular employment relationship, the client company employs the worker directly either on an open-ended or fixed term contract. In this model, the agency only acts as a "recruiter" and not as an "employer". (See Figure 2 below.)
User enterprise	A third party entity in which an E&R agency places agency workers. It may be a private or public sector entity.

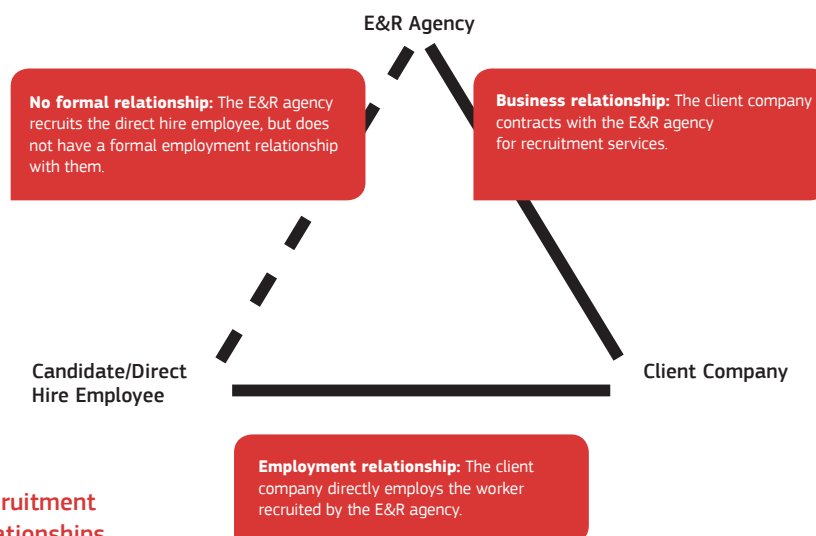


Figure 2: Recruitment Services Relationships



Part 2

# Human Rights and Employment & Recruitment Agencies

# Human Rights and Employment & Recruitment Agencies

## Human Rights Impacts related to Employment & Recruitment Agencies

People are the core business of E&R agencies. This means that human rights are not just important to the industry because respecting them is the “right thing” to do but because human rights are material to the very functioning of E&R agencies. Companies that are determined to provide “the right person for the right job” need to care about the impacts on all those concerned - in particular, on the human rights of the workers at the centre of these business relationships.

Human rights are basic standards aimed at securing dignity and equality for all. Every human being is entitled to enjoy them without discrimination. They include the rights contained in the “International Bill of Human Rights” – meaning the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Those documents set out a range of rights and freedoms such as the rights to life, to freedom of expression, to privacy, to education, and to favourable conditions of work, to name a few. Internationally-recognised human rights also include the principles concerning fundamental rights set out in the International Labour Organisation’s (ILO) Declaration on Fundamental Principles and Rights at Work, which addresses freedom of association and collective bargaining, forced labour, child labour and non-discrimination. In addition, some potentially vulnerable or marginalised individuals and groups are the subject of international human rights instruments that help provide clarity on how human rights apply to them (for more on this, see [Section II-A](#)). (See [Annex 1](#) for a list of relevant instruments.)

Responsible E&R agencies have become increasingly active in recent years in understanding and addressing the range of human rights issues linked to their services. They recognise that they can both positively and negatively impact their internal staff, the direct hire employees they recruit and the agency workers they place – as well as those individuals’ families. Where they are involved in international recruitment or employment services, they may also need to consider impacts on local communities in the migrant worker’s origin state.

Those E&R agencies that are able to understand and manage a relatively complex set of relationships with user enterprises and client companies, and with their supply chain and contractors, even with comparatively small resources, will be well-placed to build and maintain a high degree of stakeholder trust and accountability. On the other hand, those agencies that do not pay enough attention to human rights will run increasing risks of serious negative impacts resulting in worker dissatisfaction, possible lawsuits and reputational harm.

E&R agencies are engaged in the recruitment or employment of workers in virtually every sector of the economy, from IT and electronics manufacturing to the extractive industry, the food industry, hospitality, and domestic and clerical work. [ILO Convention 181](#) on Private Employment Agencies and, in the EU, the [Temporary Agency Work Directive EC/2008/104](#) recognise the potential positive impacts of E&R agencies in well-functioning labour markets in matching unemployed, or underemployed, individuals with available job opportunities. This in turn supports the realisation of the right to work, and may facilitate the realisation of other human rights that can depend in part on personal income for their enjoyment, including the right to an adequate standard of living, to housing and to food.

Some E&R agencies have come together in industry associations, in part with the aim of identifying and promoting good practices with regard to respect for human rights, as well as making it harder for fraudulent and unscrupulous operators to exist. Of particular relevance is the work of the International Confederation of Private Employment Agencies ([Ciett](#)) and the European Confederation ([Eurociett](#)). An increasing number of national associations are also seeking to foster good practices.

Individual user enterprises and client companies are also beginning to focus on the need for effective policies and processes to implement the responsibility to respect in their labour hiring practices, including by working together with other actors on these issues in multi-stakeholder initiatives. One example of this is in the UK, where the

“Supermarkets and Suppliers Protocol” of the Gangmasters Licensing Authority (GLA) aims to establish strong links between the regulatory body (the GLA), the retailers (supermarkets), suppliers (food processing plants and agriculture and horticulture suppliers) and E&R agencies. In other words, to link up all the actors within the food supply chain in order to strengthen respect for relevant standards at each step.

## Operating Contexts and the Relevance of the State Duty to Protect

The extent to which E&R agencies are involved with negative human rights impacts will be heavily influenced by both their operating context and the practices of their business partners – which includes client companies and user enterprises, as well as other E&R agencies that they may have a business relationship with. Both of these factors – context and business partners – will shape the policies, processes and practices an E&R agency needs in order to prevent and address negative impacts.

When states fail to meet their duty to protect, the responsibility of E&R agencies to respect human rights does not change; however, it can become all the more challenging for them to meet that responsibility in practice. Areas in which state action (or inaction) can cause particular challenges for E&R agencies include:

- ▶ **The absence of effective regulation of the services provided by E&R agencies.** This may be because the industry is completely unregulated, or because there is a lack of enforcement where regulation does exist. The typically low barriers to entry into the E&R business can compound a lack of effective regulation. This kind of situation allows unscrupulous companies to proliferate – ranging from companies that knowingly profit from poor labour practices to criminal organisations involved in human trafficking and other serious human rights abuses.
- ▶ **Permitting E&R agencies to charge workers fees for services.** Some states allow E&R agencies to charge recruitment fees to workers – a practice that can lead to significant human rights abuses such as forced labour arising from debt bondage. Others may fail to enforce relevant prohibitions on such fees.
- ▶ **A lack of robust protection of workers’ human rights, either in national law or practice.** Limits on, or a lack of protection of, the rights to freedom of association, particularly to form and join a trade union, and to collective bargaining, can leave workers without effective representation. Poor protections against discrimination in recruitment and employment on the basis of, e.g., race, ethnicity, age, gender or disability, can lead to client companies and user enterprises making discriminatory requests of E&R agencies without any fear of being sanctioned. Domestic workers are often at heightened risk of negative impacts, particularly in countries where domestic work is not even recognised as “work” under local labour laws.

Where E&R agencies are involved in the recruitment and employment of migrant workers, additional challenges include:

- ▶ **Major gaps in the regulation of the international recruitment of migrant workers.** Despite the existence of ILO Convention No 181 (Article 8) and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, many “origin” and “destination” states lack bilateral agreements on protections for migrant workers, or do not enforce their provisions in practice.

### Resources: ILO standards regarding E&R agencies

ILO Convention No 181 and its accompanying Recommendation No 188 were adopted by the International Labour Conference of the ILO in 1997. They represent a consensus among the ILO’s tripartite constituents. At the time of writing, 26 countries had ratified Convention No 181.

Convention No 181 covers the recruitment and placement in employment of workers by E&R agencies of all categories of workers and areas of economic activity, except the recruitment of seafarers (which is the subject of a separate Convention). Convention 181 sets out standards on:

- ▶ Freedom of association and collective bargaining;
- ▶ Non-discrimination;
- ▶ Privacy and protection of personal information;
- ▶ Child labour;
- ▶ Prohibition on charging of fees to workers;
- ▶ Protection of migrant workers;
- ▶ State-to-state bilateral agreements on protection of migrant workers;
- ▶ Access to remedy, in conjunction with trade unions and workers’ representatives.

In the context of migrant workers, ILO Convention No 97 (and Recommendation No 86) and Convention No 143 (and Recommendation No 151) are also relevant.

ILO Convention No 111 and its associated Recommendation address non-discrimination in recruitment and employment in detail. The recent ILO Convention No 189 addresses decent work for domestic workers.

- ▶ **The potential vulnerability of workers where immigration regulations tie immigration status to a particular employer.** Some states link an immigration or employment visa to one particular employer who acts as a sponsor. In effect, this means that the migrant worker is “tied” to that employer if she wants to remain in the country. If the worker experiences abuse or exploitation and tries to seek redress, this may lead to her losing not only her job but also her immigration status. She may fall into an undocumented or irregular situation through no fault of her own, leaving her with no rights, and at risk of further human rights abuses and/or deportation. A significant number of migrant workers fall into an irregular status having entered the country legally, for example, through unlawful retention of their documents or arbitrary termination of their employment. This can be a particular risk in countries where employment sponsorship power is vested in individual sponsors, rather than in an independent state agency.

There are clear differences between EU and some non-EU country contexts in these areas. With regard to the recruitment and supply of agency workers, E&R agencies inside the EU operate within the regulatory framework established by the [Temporary Agency Work Directive](#). This establishes the important principle of equal treatment as part of a protective framework for agency workers, meaning that the basic working and employment conditions applicable to agency workers should be at least the same as those which would have applied had they been directly hired by the user enterprise to occupy the same job. This includes conditions relating to pay, working hours, overtime and holidays. EU Member States are allowed to derogate from the terms of the Directive with the agreement of the other social dialogue partners.

The EU [Posted Workers Directive EC/96/71](#) concerns the free movement of workers within the EU, and therefore has implications for agency workers. It provides that the basic working and employment conditions in force in a destination state have to be applied to both national and “posted” workers if the latter are employees of a business established in another state (e.g., agency workers employed by an E&R agency).

EU-based E&R agencies participate in social dialogue processes through the European trade organisation, Eurociett. Eurociett and the trade union UNI-Europa are the formal social dialogue partners for the European Commission’s [Sectoral Social Dialogue for Agency Work](#), launched in 2000. In addition, most EU Member States operate their own similar social dialogue arrangements. A number also have high rates of unionisation among agency workers.

Wherever states fail to meet their duty to protect, merely obeying domestic laws is unlikely to be sufficient to demonstrate respect for human rights. E&R agencies will typically need to do further, enhanced [human rights due diligence](#) to meet the increased challenges, as will be discussed in [Part 3](#) of the Guide.

## Business Relationships

Organisationally, the types of businesses involved in the sector range from one-person companies to multinational firms.

When recruiting and placing agency workers an E&R agency will have a direct business relationship with the user enterprise where the agency workers are placed. When recruiting direct hire employees, the business relationship will be with the client company. Typically, the former will be an on-going relationship and the latter will often be a one-off agreement, although this is not always the case. The same E&R agency may offer both types of service – recruitment and employment – and will therefore have a range of types of business relationship simultaneously.

Larger E&R agencies often provide additional services. These may include training for job-specific skills, payroll and tax services, or services associated with the international migration process (such as arranging transportation, accommodation, or immigration visas). Very often, services associated with the international migration process are provided by other individuals or companies, such as travel agents, or loan companies, which are sub-contracted by the E&R agency.

E&R agencies may also engage in business relationships with each other. There are two main situations in which this may occur. First, where there is a large contract for the placement of agency workers (as is common in the food industry), and smaller, local E&R agencies need to collaborate in order to supply enough agency workers. Second, collaboration is common in the recruitment and placement of migrant workers because of the additional challenges raised by cross-border movement of workers. While large E&R agencies with global operations can easily recruit a migrant worker from one state and place him in employment in another state, for smaller E&R agencies this requires partnering with other actors. This means that sub-contracting often occurs between E&R agencies involved in the supply of international migrant labour – this may be directly between the agency that conducts recruitment in the migrant worker’s origin state and the agency that arranges the migrant worker’s

placement in the destination state, or there may be several agencies involved in the process, sometimes operating without clear written contracts.

All businesses – including smaller E&R agencies that are providing services to other E&R agencies, as well as client companies and user enterprises – have their own responsibility to respect human rights. However, in some cases, they may lack the awareness or capacity to meet the responsibility in practice. This poses risks to the E&R agencies that are relying on them, or providing them with services, as will be discussed in [Part 3](#) of the Guide.

## Understanding Potential Negative Impacts

While this Guide acknowledges the range of positive impacts that the E&RA sector can have on human rights, respecting rights – that is, the avoidance of harm to human rights – is the baseline expectation of all companies. The Guide therefore focuses on the prevention, mitigation and remediation of negative human rights impacts.

The following matrix provides examples of the kinds of negative impacts that E&R agencies may have. It is not intended to imply that every company will have these impacts, nor does it represent the full range of potential impacts of an activity. Rather, it is illustrative of the kinds of impacts that may arise and the rights that may be involved.

The matrix is structured in the following way:

- ▶ On the vertical axis, it lists a number of typical activities of E&R agencies;
- ▶ On the horizontal axis, it lists some of the key stakeholder groups that different E&RA activities may impact upon;
- ▶ In each box it gives an example of an impact that the particular activity may sometimes have on the stakeholder group, and the human rights that can be affected.

The matrix aims to show that:

- ▶ Different types of activities (including recruitment and employment services) can have quite distinct impacts on different human rights;
- ▶ Negative impacts can happen at all stages of the recruitment and employment process;
- ▶ Different kinds of negative impacts can fall on different groups, and even on individuals within certain groups. Impacts can be more severe where individuals are vulnerable or marginalised.

## Analytical Framework for Assessing Potential Impacts of Company Activities on Stakeholder Groups

	Internal Staff	Agency Workers in User Enterprises	Candidates for/Direct Hire Employees in Client Companies	Potentially Vulnerable or Marginalised Groups (whether agency workers or direct hire employees)		Other Relevant Groups... (e.g., existing employees of user enterprises)
				Migrant workers	Other Groups	
Recruitment	E.g., Internal staff are required to work excessive hours under conditions of high stress to meet seasonal demand for placing agency workers – <i>Right to Highest Attainable Standard of Health, Right to Just and Favourable Conditions of Work</i>	E.g., Fees are charged to agency workers for recruitment services, leading to debt bondage – <i>Freedom from all forms of Forced or Compulsory Labour, Right to Just and Favourable Conditions of Work, Right to Work</i>	E.g., Discriminatory recruitment request from a client company for direct hire employees with certain characteristics is complied with by an E&R agency – <i>Non-discrimination</i>	E.g., Identity documents are retained, restricting the ability of the migrant worker to leave the employment – <i>Freedom of Movement, Freedom from all forms of Forced or Compulsory Labour, Right to Work, Migrant workers' rights</i>	E.g., Female candidates are required to undergo pregnancy testing as a condition of recruitment – <i>Non-discrimination, Right to Privacy, Women's rights</i>	
Employment	E.g., Local management practices in a particular market inhibit voluntary good faith collective bargaining about conditions of employment – <i>Right to Collective Bargaining, Right to Just and Favourable Conditions of Work</i>	E.g., Agency workers lack the opportunity to join a legitimate trade union or interim measures such as a worker representative body – <i>Right to Form and Join a Trade Union, Right to Collective Bargaining</i>	E.g., Direct hire employees are required to work in a hazardous workplace which does not comply with health and safety standards – <i>Right to Highest Attainable Standard of Health, Rights to Life, Liberty and Security of the Person</i>	E.g., Migrant workers are not afforded equal conditions with nationals with respect to pay, overtime, holidays and health and safety standards – <i>Right to Just and Favourable Conditions of Work, Migrant workers' rights</i>	E.g., Workers with disabilities are discriminated against and humiliated in the workplace through a failure to make reasonable adjustments to accommodate them – <i>Non-discrimination, Rights of persons with disabilities, potentially Prohibition Against Torture, Cruel, Inhuman or Degrading Treatment</i>	
Logistics services (e.g., provision of accommodation, transport)	E.g., Internal staff are pressured to abstain from taking holidays, including religious holidays, to meet demand for provision of transport services – <i>Right to Just and Favourable Conditions of Work, Freedom of Religion</i>	E.g., Agency workers housed in poor quality accommodation that is potentially harmful to health, such as barns on farms lacking adequate sanitation facilities – <i>Right to Highest Attainable Standard of Health, Right to Just and Favourable Conditions of Work, Right to an Adequate Standard of Living</i>	<i>Need to scan for emerging risks if such services are provided</i>	E.g., Excessive deductions are made from migrant workers' wages for provision of transport, without their agreement or being recorded in a written contract – <i>Right to Just and Favourable Conditions of Work, Migrant workers' rights</i>	E.g., Unaccompanied young workers are housed in accommodation without being separated from adults and given proper care and supervision – <i>Children's rights, Rights to Life, Liberty and Security of the Person</i>	
Other Relevant Activities... (e.g., training, payroll services)						



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Part 3

# Putting Respect for Human Rights into Practice

# Putting Respect for Human Rights into Practice

The following sections set out the six core elements of the corporate responsibility to respect human rights and apply them to the activities and business relationships of E&R agencies.

The core elements are:

- ▶ **A human rights policy commitment:** the company's over arching, public commitment to respect human rights, and the processes for **embedding** that commitment into the company's culture. (See Section I)
- ▶ **Human rights due diligence:** the set of on-going processes through which the company "knows and shows" that it is respecting human rights in practice.

This involves:

- **Assessing** actual and potential human rights impacts; (See Section II)
  - **Integrating** the findings **and acting** to prevent or mitigate the impacts; (See Section III)
  - **Tracking** how effectively impacts are addressed; (See Section IV)
  - **Communicating** how impacts are addressed. (See Section V)
- ▶ **Remediation:** the processes through which the company actively engages in the remediation of impacts it has caused or contributed to. (See Section VI)

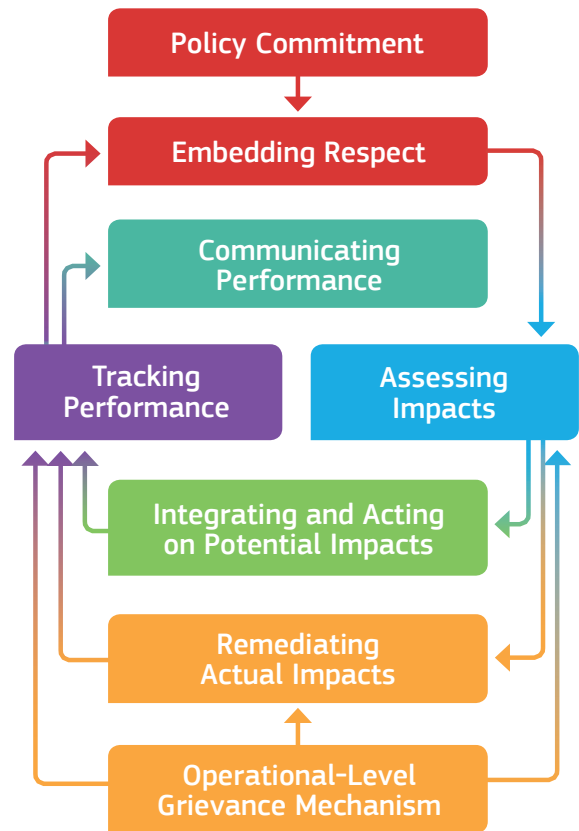


Figure 3: Key Elements of the Corporate Responsibility to Respect

Figure 3 illustrates the relationship between the six elements of the corporate responsibility to respect human rights.

## Understanding Human Rights Due Diligence

Before exploring each of the six elements of the responsibility to respect in detail in the rest of this Guide, there are some important points to note about the concept of human rights due diligence.

- **Why is human rights due diligence important?** Human rights due diligence helps a company understand how its human rights risks can change over time and how to respond. It provides processes for looking at both external and internal factors that may raise human rights risks, and at external and internal resources that can help address them.
- **When should human rights due diligence happen?** Human rights due diligence should start at the earliest stages of entry into a new country/market, and at the pre-contract stages of new business relationships and recruitment processes. It should continue throughout the course of the business relationships and recruitment and employment processes. It is about on-going processes, not one-off events such as a formal impact assessment upon entry into a new country context, or an annual report.
- **How does human rights due diligence relate to a company's existing due diligence systems?** E&R agencies are likely to have existing due diligence systems they can draw or build on to develop their human rights due diligence processes. Examples include candidate screening processes, client company/user enterprise screening processes, systems for handling discriminatory requests, and health and safety systems. It is up to E&R agencies to decide whether to have a stand-alone due diligence process for human rights, or to integrate human rights into their existing processes. Either way, respect for human rights needs to be driven into the company's systems and culture, as discussed in [Section I](#).

## How does the Responsibility to Respect Apply to Smaller Companies?

Smaller E&R agencies will typically have simpler management systems and need less complex human rights due diligence processes. Moreover, issues such as internal communication will usually be less challenging. However, those that operate in challenging contexts, such as where the state fails to meet its duty to protect, will still need systems that can manage the greater level of risks present. In any situation, smaller agencies will still need to include the same six elements of the responsibility to respect in their management systems.

The European Commission has published [guidance for small and medium-sized enterprises](#) on applying the UN Guiding Principles available in multiple languages and with accompanying case studies.

# I Developing a Policy Commitment and Embedding Respect for Human Rights

## What do the UN Guiding Principles Expect?

- ▶ A policy commitment is a statement approved at the highest levels of the business that shows it is committed to respecting human rights and communicates this internally and externally.
- ▶ The statement needs to be reflected in other company policies, procedures and practices in order to embed respect for human rights throughout the business.

## Why is this Important?

- A policy commitment sets the “tone at the top” that is needed to continually drive respect for human rights into the core values and culture of the business.
- It indicates that top management considers respect for human rights a minimum standard for conducting business with legitimacy; it sets out their expectations of how staff and business partners should act, as well as what others can expect of the company.
- It should trigger a range of other internal actions that are necessary to meet the commitment in practice.

## What are the Steps Involved?





## Defining the Content of a Policy Commitment

### Key Points for Implementation

- ▶ A policy commitment should be a general commitment to respect all “internationally recognised human rights” throughout the company’s operations.
- ▶ The commitment should clearly explain how it applies to the company’s internal staff, the workers it recruits or places with client companies or user enterprises, and the company’s expectations of business partners, including those one or more steps removed in the value chain.
- ▶ The commitment will need to be reviewed periodically to reflect any significant changes in the company’s human rights risks, for example due to new operating contexts or new business relationships.

### Possible Approaches

- **Stand-alone or integrated policies?** An E&R agency may integrate respect for human rights into an existing high-level policy that guides the business, such as a Code of Conduct, Code of Ethics, or Business Principles. Alternatively, E&R agencies may opt for a stand-alone human rights policy, which can be particularly appropriate given that the “business” of E&R agencies is people. Both approaches can be effective: the key is to take an approach that signals the importance of respecting human rights and helps embed respect into the corporate culture. The commitment may be framed in terms of “safe recruitment” or “decent work”, as long as it is consistent with respecting internationally-recognised human rights.

In determining the right “home” for the policy within the company, it will also be important to reflect on who (or in larger agencies, which function or department) should have ownership over the policy and help drive the embedding process.

- **Identifying leading human rights risks:** Because E&R agencies can have significant human rights risks, it can be helpful to identify leading risks in the policy commitment. Leading human rights issues for any E&R agency will include:
  - The four fundamental principles and rights at work (freedom of association and the right to collective bargaining, the elimination of forced labour and child labour, and the elimination of discrimination);
  - The right to just and favourable conditions of work (including relating to remuneration, health and safety, and working hours);
  - The right to privacy.

For many E&R agencies, the rights of potentially **vulnerable or marginalised individuals or groups** will also be relevant, including women workers, ethnic and national minorities, young workers and workers with disabilities. For E&R agencies involved in cross-border recruitment or employment services, the rights of migrant workers will be particularly important.

### Resources on “Internationally Recognised Human Rights”

The Guiding Principles define these rights as including, at a minimum:

- ▶ The **International Bill of Human Rights** (meaning the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and
- ▶ The principles concerning fundamental rights set out in the International Labour Organisation’s **Declaration on Fundamental Principles and Rights at Work**, which address:
  - freedom of association and collective bargaining,
  - forced labour,
  - child labour, and
  - non-discrimination.

A good “translation” of these rights is in **Human Rights Translated: A Business Reference Guide**.

Where businesses might have impacts on individuals belonging to potentially vulnerable or marginalised groups (e.g., women, children, racial or ethnic minorities), they will need to consider the additional international standards that apply to those individuals or groups (see **Annex 1** for a full list).



### Resources: Policy commitments on non-charging of fees and non-retention of documents

On non-charging of fees, see:

- ▶ ILO Convention No 181, Article 7(1)
- ▶ Temporary Agency Work Directive, Article 6.3
- ▶ Ciett Code of Conduct, Principle 4

On non-retention of documents, see:

- ▶ ILO Convention No 189, Article 9(c)
- ▶ UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 21

See also on both points: US Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, sections 2(1)(A)(ii) and (iii).

### Resources: Migrant Worker Policy Commitments

The Dhaka Principles for Migration with Dignity provide a road map for E&R agencies and client companies/user enterprises on the responsible recruitment and employment of migrant workers throughout the migration process. They are based on the Guiding Principles and internationally-recognised human rights, including ILO standards. They were developed through multi-stakeholder consultation with business, government, trade unions, international organisations (including the ILO) and NGOs.

See also:

- ▶ Verité, Fair Hiring Toolkit
- ▶ Verité and Manpower Group, An Ethical Framework for Cross-Border Labor Recruitment

- **Key elements of a policy:** The policy needs at a minimum to reflect the company's commitment to meet its responsibility to respect all internationally-recognised human rights, and to set out the company's expectations of internal staff, business partners (especially client companies/user enterprises and suppliers and contractors), and others in its value chain with regard to respect for human rights.

E&R agencies could also include other information of interest to stakeholders, such as:

- The leading human rights risks identified for the company and its approach to addressing them;
- A commitment to conduct on-going human rights due diligence, perhaps specifying key moments when risks will be assessed;
- Their commitment or approach to engaging and consulting with the candidates that they recruit and the agency workers they place with user enterprises;
- Their approach to communicating with other stakeholders and the wider public;
- Direct references to international principles or initiatives that are consistent with internationally recognised human rights and that the company is committed to implement. An explicit commitment to the UN Guiding Principles is a good starting point. ILO Convention No 181 and the Ciett Code of Conduct provide important benchmarks. (See especially Principles 3, 4, 5, 6, 7 and 8 of the Code.)

All E&R agencies should follow industry good practice and make explicit commitments:

- Not to charge fees to workers, directly or indirectly, in whole or in part, for any services relating to work placement (such as for concluding a contract of employment). All such fees should be paid by the client company/user enterprise; and
- Not to retain worker's identity documents.

For E&R agencies that recruit and place agency workers with user enterprises, additional commitments could include:

- A commitment not to place agency workers where the user enterprise intends to replace legally striking workers (see Ciett Code of Conduct, Principle 7) or to otherwise limit or undermine its own workers' freedom of association;
  - A commitment to pay agency workers an equivalent amount to workers directly employed by the user enterprise (in line with the Temporary Agency Work Directive - see Section II-C below for more on this).
- **Migrant workers:** E&R agencies risk being involved with severe negative impacts where they conduct, or rely on other E&R agencies to conduct, recruitment of migrant workers. In some cases, migrant workers may be subjected to forced labour and human trafficking, which are not only severe human rights abuses in themselves, but can also lead to other significant impacts on individual workers (e.g., impacts on their health and safety from physical harassment and violence, including sexual violence). They can also impact migrant workers' families in the origin state who may have to take on significant debt in order to help a worker escape from the situation.

Where an E&R agency recruits migrant workers or places such workers with user enterprises, it should consider adopting a stand-alone policy on respecting their rights. In addition to the specific commitments highlighted above, there are additional issues to consider that are specific to migrant workers such as safe return on contract completion or in exceptional situations (e.g., where their safety is at risk).

- **Human trafficking:** E&R agencies that operate, or have significant business relationships, in countries or sectors that are at high risk of forced labour and human trafficking should consider adopting a clear statement against such abuses, and explain their approaches to addressing the risks involved, including with particular attention to migrant workers. The global industry association Ciett has signed up to the [Athens Ethical Principles](#) and has a clear statement against trafficking; individual E&R agencies should consider following this approach.

## **I B** Developing the Policy Commitment

### Key Points for Implementation

- ▶ The company should draw on expert resources to ensure the policy is well-informed and complete. These may be individuals with knowledge of human rights and of the business and/or – particularly where resources are more limited – credible written sources.

### Possible Approaches

- **Involving different parts of the company:** In larger E&R agencies, there may be various departments or functions that have potential impacts on a range of different human rights. For example, human resources will mostly look at risks to the human rights of the company's internal staff; those involved with the recruitment and placement of agency workers, or the recruitment of direct hire employees for client companies, will focus on the risks to the candidates and workers involved; those in the purchasing function may look at risks to workers in the supply chain. In smaller E&R agencies, various roles will be concentrated among a few managers.

Where appropriate, it is a good idea to involve people from across relevant areas of responsibility in the development of the policy – what it should cover and how it should be implemented. This will help build understanding of the reasons for the policy and ownership of its implementation. Key functions to involve will include:

- Human Resources;
- Legal;
- Public Affairs;
- Logistics (where relevant);
- Those responsible for recruitment and employment services;
- Those responsible for engagement with client companies and user enterprises.

In addition, legitimate trade unions or worker representatives within the company may be a useful source of expertise regarding local labour laws, technical standards and specific conditions in the local labour market that may affect the human rights of workers, including internal staff.

- **Engaging external expertise:** Companies that do not have in-house expertise on human rights will need to use external sources as they develop their policy commitment. For smaller E&R agencies, written guidance from industry or employer associations, labour standards bodies, relevant multi-stakeholder or industry-led initiatives, trade unions or human rights NGOs that have worked with the industry can provide a good starting

### Example: Developing a Policy on Non-discrimination

An E&R agency was concerned by discriminatory requests from user enterprises in relation to the placement of agency workers. In response, the agency did two things. First, it sought engagement at the national level through existing social dialogue processes. Second, it engaged in a European Commission program that was exploring new ways to tackle discrimination and inequality in the field of employment. The program brought together multi-stakeholder groups on a geographical and sectoral basis to share experiences. The program helped the agency identify which stages of the recruitment and employment process posed the greatest risks and it developed a policy accordingly. The policy commitment is seen by the agency as differentiating its business from that of disreputable operators. All staff who are in direct contact with clients are trained in non-discrimination – from management through to those in sales. Finally, the agency also joined a European-wide network of organisations committed to combating racism.

### Example: Developing User Enterprise Policies on Migrant Workers

A number of leading brands in the apparel and footwear sectors have developed stand-alone migrant worker policies from the user enterprise perspective. One company, in response to negative publicity about the treatment of migrant workers in their supply chain, instituted a dialogue with a global union to develop a stand-alone policy. A global steering group was established to guide the work. A code was gradually developed with stakeholder input. The code includes clauses covering the entire international recruitment process and is publicly available. The company uses the code in negotiating with suppliers and includes it in their contracts. The company conducts assessments against the code and where necessary invests resources in helping suppliers meet the code's requirements.

point. The [ILO Helpdesk for Business on International Labour Standards](#) provides important assistance on understanding key ILO instruments. A list of other helpful resources is included in [Annex 1](#).

- **Engaging stakeholders:** The most important stakeholder group for E&R agencies is the workers they recruit as direct hire employees and place as agency workers at user enterprises. It will be important for an E&R agency to engage with them, including with candidates for such positions, in the policy development process. In the case of agency workers, this may occur through legitimate trade unions or worker representatives at the user enterprise.

E&R agencies with significant potential impacts will want to test a draft policy commitment with representatives of key stakeholder groups. They can help the company understand how the policy commitment is likely to be seen by these stakeholders.

Approaches can include:

- Identifying key sectors that the E&R agency provides services to and talking to trade unions or NGOs who can help the agency understand the types of risks involved. (E&R agencies that work with user enterprises/clients from the oil and gas or information and communications technologies sectors can review the parallel Guides on the corporate responsibility to respect developed for those sectors.);
- Identifying key country contexts that pose significant human rights risks and speaking to local trade unions and NGOs in those contexts (larger international NGOs can often help identify reputable local civil society actors);
- Talking to civil society, or international organisations that focus on specific risks involved in employment (e.g., sexual discrimination) or international recruitment and labour supply (such as human trafficking);
- For larger E&R agencies, establishing a formal advisory group to seek feedback, possibly including representatives of a national human rights institution, NGOs, trade unions, and other relevant experts. This kind of advisory group might also play a longer-term role providing feedback on the company's on-going efforts to meet its responsibility to respect.



## Communicating the Policy Commitment

### Key Points for Implementation

- ▶ The policy commitment should be publicly available.
- ▶ It needs to be approved at the highest levels of the company and communicated internally to all workers in order to signal its importance and help embed it throughout the business.
- ▶ It also needs to be communicated externally to business partners and others in the company's value chain, as well as to people who may be affected by the company's operations.

### Possible Approaches

- **Demonstrating top-level commitment to the policy:** Clear and consistent messages over time from the CEO and senior management set the “tone at the top” of an E&R agency. They can help draw attention to the policy commitment and embed it into the corporate culture. Approaches can include:
  - Regular references to human rights issues and due diligence in top management speeches inside and outside the company;
  - Regular questions about human rights risks or performance from top management in meetings about core business issues, such as entry into new operating contexts;
  - Including a letter from the CEO on the company's website where it sets out its human rights commitments;
  - Publicising internally examples where there has been accountability for human rights performance – whether rewards or sanctions (examples can be anonymised as necessary).
- **Choosing appropriate methods:** It will be important for E&R agencies to consider how the candidates they are recruiting for direct hire employment with client companies or the agency workers they are placing with user enterprises access information. For example, E&R agencies should consider whether written means need to be supported by visual communication; whether the use of technology may be helpful; and whether the commitment needs to be translated into particular languages. This will help the company decide how best to communicate the policy commitment to those groups.
- **Choosing appropriate “language”:** Language can be a sensitive issue. Human rights terminology may be unfamiliar and using it may be challenging at first – both within the company and with its business partners. For example, there may be cultural considerations that make the use of human rights language difficult with client companies or user enterprises in certain country contexts. In some cases, there may be a good reason to avoid human rights terminology in the short-term or in a particular situation. It will then be important that at least those who lead on the issue, and any others who routinely engage with stakeholders, have an understanding of internationally-recognised human rights and their central relevance to the business of E&R agencies. In time, it should be possible to reintroduce the language of human rights to strengthen that understanding.



## Aligning Internally with the Policy Commitment

### Key Points for Implementation

- ▶ For the policy commitment to be effective in practice, other policies and processes across the company need to be consistent with it.
- ▶ Implementation of the commitment needs adequate support and resources, including through leadership, accountability, incentives, and training. These factors can directly affect staff assumptions and attitudes about the relevance of the commitment to their work and help embed it into the company's values and culture.

### Possible Approaches

- **Alignment with existing policies:** E&R agencies are likely to have various existing internal policies and processes that incorporate aspects of human rights, even if they are not expressed in human rights language. This can be helpful in showing that human rights is not a new issue for the company. For example, many E&R agencies have clear anti-discrimination policies. Anti-corruption policies are also relevant: where corruption and bribery are accepted, human rights are rarely respected.

Other relevant policies and processes may include those in the areas of:

- Human Resources;
- Legal;
- Communications/Public Affairs;
- Procurement;
- Corporate Responsibility/CSR;
- Logistics (where relevant).

It is also important to check that these other policies and processes are consistent with the human rights policy commitment: meaning that they reinforce rather than work against or contradict it.

E&R agency branches are often small and staff frequently need to play a role in both "front office" (i.e., conducting recruitment, screening and placement processes) and "back office" functions (i.e., engaging with client companies and user enterprises). E&R agencies will want to pay attention to whether these front and back office functions at the branch level operate consistently with the company's policy commitment.

- **Establishing accountability:** Internal accountability for implementation of the policy commitment will be important in making sure human rights is seen as part of "everyone's job". Approaches can include:
  - Giving responsibility for overseeing human rights issues to an individual or committee of the Board or of senior management;
  - Requiring regular reporting to the Board on human rights risks, and annual reviews of such risks by the Board;
  - Tying internal staff assessments and reward systems to implementation of the policy commitment; and doing so across all functions or departments in larger E&R agencies, not just those with lead responsibility for human rights;

Larger E&R agencies will need to consider how to encourage aligning operations in different geographic regions. Branch staff will need an effective channel of communication with regional or corporate/head offices, which can help them access support and advice on emerging issues as well as provide a pathway for appropriate escalation when problems occur.

- **Training and awareness-raising:** Internal staff will be more likely to take human rights into account in their work if they understand what they are about, their relevance to the E&R agency's business, their significance to their own responsibilities, and the steps they need to take. There are various ways that E&R agencies can “demystify” human rights in this way, including:
  - Providing induction training for staff, including requiring them to sign the company Code of Conduct or similar document and testing their understanding of the commitments contained in it through practical scenarios (e.g., what are the appropriate steps to take if a client company or user enterprise makes a discriminatory request?);
  - Where the E&R agency operates in multiple markets, taking advantage of regular management or regional meetings to discuss evolving expectations around respect for human rights;
  - Using “e-learning” modules, supported by in-person training components, to build knowledge and skills, including about significant risks where those are relevant like human trafficking (see, eg the online training resources provided by the [UN Global Initiative to Fight Human Trafficking](#) and by [End Human Trafficking Now](#));
  - Establishing focal points to support staff to answer their questions and work through dilemmas;
  - Preparing handbooks and other material to clearly explain “why human rights matter” to the business and how sales staff can engage with client companies and user enterprises on these issues;
  - Where an E&R agency places agency workers with user enterprises, engaging legitimate trade unions or worker representatives within those enterprises to support efforts to raise awareness among workers of the policy commitment.

E&R agencies should prioritise awareness-raising in contexts where the risks of human rights impacts are greatest.

## **I E** Applying the Commitment to Business Relationships

### Key Points for Implementation

- ▶ The human rights policy commitment needs to be embedded in how an E&R agency conducts its business relationships from their earliest stages, including in the terms of contracts. This makes it clear that these expectations are not “negotiable extras”.
- ▶ Embedding the policy commitment into the terms of contracts and other agreements increases the company's **leverage** – that is, its ability to influence behaviour – in those relationships. It can lay the foundations for regular engagement to discuss or review the management of human rights risks.

### Example: Training on Compliance and Corporate Culture

One E&R agency provides tailored training to staff in its country offices. An “e-learning” course includes dilemma situations in which new staff are tested on their knowledge of the agency's Code of Ethics and other relevant policies and processes, as well as their understanding of the ethical culture of the business. The goal is to train people in the company's philosophy: it is as much about the organisation's expectations of how staff should talk to candidates as it is about legal compliance.

### Example: A Model Service Level Agreement Between an E&R Agency and User Enterprise

One national E&R industry association has produced a Model Service Level Agreement for the supply of agency workers by its members. It establishes a partnership framework to help ensure that agency workers are treated fairly, ethically and legally. Key points addressed include:

- ▶ Confirmation of the licensing of the E&R agency and dates of past labour inspections
- ▶ Processes for labour forecasting (numbers of workers needed), booking (where responsibility for this lies within the user enterprise) and recording (timesheet to be used)
- ▶ Types of jobs to be filled by workers
- ▶ A commitment to non-discrimination in recruitment processes
- ▶ A commitment to fair terms and conditions compliant with all laws
- ▶ Confirmation of recruitment processes (non-discriminatory, skills tests required, recording of applications, health assessment and medical tests)
- ▶ A commitment not to charge fees to the worker for job placement
- ▶ Processes for obtaining workers' written agreement to any appropriate deductions from wages (e.g. for housing rental)
- ▶ Processes for protecting personal information
- ▶ Provision of appropriate written information to workers, including an overview of working conditions, grievance mechanisms and other processes.

## Possible Approaches

- **Getting it right from the start:** The vast majority of an E&R agency's business relationships will be with client companies and/or user enterprises. They may also include other E&R agencies where there is collaboration on the recruitment and placement of workers, as well as suppliers of other goods or services (e.g., travel, accommodation and visa services providers).

An E&R agency's business partners have their own responsibility to respect human rights throughout their operations. However, the company needs to know to what extent its partners are meeting their responsibility to respect in order to be confident – and to be able to show – that it is meeting its own responsibility. So E&R agencies will want to look for evidence up-front that their business partners have the will and capacity to respect human rights.

Many of an E&R agency's human rights risks – and its capacity to mitigate them – are established in the terms of its contracts with business partners. It is therefore important that internal staff with responsibility for negotiating and concluding contracts and other agreements with business partners have clear guidance, including on:

- The importance of specifying in the agreement which party has responsibility for addressing particular human rights risks in the relationship;
- What resources (e.g., financial, training) will be required to ensure respect for human rights and where those resources will come from;
- How implementation of respect for human rights will be monitored and discussed with business partners.

It is important to recognise that an E&R agency's ability to influence its business partners to take action about particular human rights risks (i.e., its leverage) will vary depending on the particular circumstances involved. This issue is discussed in depth in [Section III-D](#) below.

## Where to Start

For companies that are just starting to develop a human rights policy commitment, the following are some preliminary steps to consider:

Read *Human Rights Translated* and look at the [Business and Human Rights Resource Centre website \(www.business-humanrights.org\)](http://www.business-humanrights.org) to begin building an understanding of human rights issues for the E&RA sector.

Review your existing policies and processes to see where they already cover human rights (eg, candidate screening processes, handling discriminatory requests) and where there may be gaps.

Talk with internal colleagues, workers and external experts about what they see as the company's leading human rights risks.

Consider how you could start to embed respect for human rights in company policies and processes (eg, a senior point of accountability; staff training; a network of focal points).

Consider how you could start to embed respect for human rights in company policies and processes (eg, a senior point of accountability; staff training; a network of focal points).

## Questions to Ask

The following questions correspond to sub-sections A, B, C, D and E above. They should help test the extent to which a company's policy commitment, and its efforts to embed it across the business, are consistent with the Guiding Principles:

<b>I-A</b>	<b>Defining the Content of a Policy Commitment</b> <ul style="list-style-type: none"><li>▶ If we include our leading human rights risks in our policy commitment, how did we identify the risks?</li><li>▶ How will our policy commitment cope with major changes in our business, like entry into new markets?</li></ul>
<b>I-B</b>	<b>Developing the Policy Commitment</b> <ul style="list-style-type: none"><li>▶ What internal and external expertise have we drawn on in developing the commitment?</li><li>▶ Has the commitment been tested with workers that we recruit for client companies or place with user enterprises?</li><li>▶ Has it been tested with representatives of other stakeholder groups, including relevant trade unions?</li><li>▶ If not, are we confident that it will be understood and supported by those groups?</li></ul>
<b>I-C</b>	<b>Communicating the Policy Commitment</b> <ul style="list-style-type: none"><li>▶ Has the commitment been approved at the most senior levels of the company?</li><li>▶ How is top leadership commitment to the policy communicated internally? How is it communicated publicly?</li><li>▶ What appropriate means have we found to communicate our commitment to the workers that we recruit as direct hire employees of client companies and agency workers we place with user enterprises?</li></ul>
<b>I-D</b>	<b>Aligning Internally with the Policy Commitment</b> <ul style="list-style-type: none"><li>▶ What steps have we taken to review whether our existing policies and processes are consistent with the policy commitment?</li><li>▶ How have we sought to integrate consideration of human rights into the front and back office functions of our branches?</li><li>▶ Do our training methods and materials take full account of the policy commitment? How do we know if they are effective?</li><li>▶ Where does accountability for implementation of the policy sit? Are there appropriate incentives and resources in place to meet the commitment in practice?</li></ul>
<b>I-E</b>	<b>Applying the Commitment to Business Relationships</b> <ul style="list-style-type: none"><li>▶ How is the policy commitment taken into account in our relationships with business partners, particularly with client companies and user enterprises as well as other E&amp;R agencies?</li><li>▶ Do internal staff have the guidance and support that they need to raise these issues at the earliest stages of those relationships?</li></ul>



# Assessing Human Rights Impacts

## What do the UN Guiding Principles Expect?

- ▶ Companies need to identify and assess any negative impacts on human rights with which they may be involved. This includes:
  - Actual impacts (past or current) and potential impacts (those possible in the future);
  - Impacts from the company's own activities and from its business relationships – direct relationships and those one or more steps removed.
- ▶ The focus must be on risks to the human rights of people, as distinct from risks to the business itself, although the two are increasingly related.

## Why is this Important?

- Assessing is the process by which the company gathers the basic information it needs in order to know what its human rights risks are so it can remove or reduce them.
- It is the starting point for a company to understand how to translate its human rights policy commitment into practice.
- Involving different parts of the company in the assessment process helps to build shared responsibility for addressing the potential impacts identified.

## What are the Steps Involved?



### Key Points for Implementation

- ▶ The assessment of human rights risks needs to be an on-going process, repeated whenever risks to human rights may substantially change, and not just a one-off process conducted for entry into a new country context, or when required by law.
- ▶ Formal impact assessments play an important role; but there may be other important sources of information on impacts, such as news or expert reports, issues raised by NGOs or trade unions, and operational-level grievance mechanisms.

### Possible Approaches

- **Stand-alone or integrated assessment processes?** Companies may choose to have stand-alone processes for assessing their human rights impacts, or to integrate human rights into existing assessment processes. Given the centrality of people to the business of E&R agencies, it will make sense for an E&R agency to build on systems it already has in place for conducting due diligence on:

- Candidates who are being assessed for direct hire employment by client companies or for placement with user enterprises, and
- Client companies and user enterprises themselves, as well as other E&R agencies that it partners with (discussed in [Section II-C](#) below).

A range of other existing processes may provide valuable information about human rights risks, including those involving:

- Legal Due Diligence;
- Privacy;
- Ethics and Compliance;
- Government Affairs;
- Social Dialogue Processes;
- Reviews of Satisfaction Surveys;
- Whistle-blower Systems.

- **On-going assessment:** Since human rights due diligence needs to be an on-going process, E&R agencies will want to assess their potential impacts at key moments. These are likely to include:

- The start of a new activity (like the development of a new service);
- The start of a new business relationship (e.g., with a client company or user enterprise);
- Major new decisions or changes in the business (such as entry into a new market or new target sector);
- Changes in the operating environment (such as legislative changes or rising social tensions in a particular market).

- **Forward-looking process:** The focus of the assessment process is forward-looking to identify potential human rights impacts. Past or current impacts are one important indicator of future risks (and where identified, will also need to be remediated – see [Section VI](#)). However, they are not the only relevant indicator. Assessment processes will also need to review other indicators of potential impacts, looking across the range of human rights, such as:

- The experience of other E&R agencies in the same or similar markets;
  - Concerns being raised by trade unions and civil society organisations, including through reports and campaigns;
  - Political instability or latent conflict;
  - Changes in general labour market conditions that could impact on workers;
  - Social practices and attitudes (e.g., towards women) which may impact the potential for discriminatory requests;
  - Internal staff behaviour and attitudes.
- **What makes assessing human rights impacts unique:** Whatever methods an E&R agency uses to assess impacts, the following factors will help make sure they reflect the particular demands of human rights:
    - **Who? Potentially affected stakeholders.** It is important to focus on the rights and perspectives of those stakeholders who may be affected in order to understand fully the company's impacts. For example, a female worker may not speak up about sexual harassment in the workplace out of fear that she will lose her job.
    - **What? All internationally-recognised human rights.** Any process of assessing human rights impacts needs to take as its framework internationally recognised human rights, including standards applying to relevant individuals or groups that may be particularly vulnerable or marginalised. This suggests that the assessment should:
      - > Be broad in its scope;
      - > Identify where national law provides less human rights protections to some groups (such as racial or ethnic minorities) than others;
      - > Identify pre-existing, endemic human rights challenges within society (such as severe gender or racial discrimination);
      - > Take account of any other factors that can heighten individual workers' vulnerability to negative human rights impacts.
    - **How? Meaningful consultation.** It is through meaningful consultation with potentially affected stakeholders – particularly the workers that an E&R agency recruits or places in employment – that the assessment process can take account of their perspectives. This means taking the time to listen and understand their views. [Section II-E](#) discusses meaningful consultation in more detail.
    - **Where? Across business relationships as well as company activities.** Human rights due diligence requires E&R agencies to consider what impacts may arise as a result of their business relationships. This includes impacts on workers recruited by the E&R agency arising as a result of the actions of client companies as well as user enterprises. Where an E&R agency is involved in international recruitment, it includes impacts arising as a result of the actions of other actors involved in the process, such as other E&R agencies or travel companies, whether or not the E&R agency has a direct contractual relationship with them. See [Section II-C](#) for more on business relationships.
  - **Assessing risks of heightened vulnerability or marginalisation:** Vulnerability can stem from an individual's status or characteristics (e.g., race, colour, sex, language, religion, national or ethnic origin, property, disability, birth, age, sexual orientation, nationality, immigration or other status) or from their circumstances (e.g., poverty or economic disadvantage, illiteracy, ill health). Those vulnerabilities may be reinforced through norms, societal practices, or legal barriers. Vulnerable or marginalised individuals typically experience negative impacts more severely than others.

A number of international human rights conventions are specifically addressed to vulnerable or marginalised individuals or groups and give guidance on key measures of disadvantage and addressing these disadvantages (see the Box on this page or [Annex 1](#) for the full list of instruments).

Migrant workers are a recognised vulnerable group under international human rights law. E&R agencies need to be aware that many of the protections provided to them under international human rights law continue even if they fall into an undocumented or irregular situation. Individuals may be members of more than one vulnerable group at a time (e.g., women migrant workers).

In some contexts, agency workers placed with user enterprises may have heightened vulnerability to negative human rights impacts. This vulnerability can occur where:

- There are lower, or no, legal protections for agency workers under national law;
- They lack awareness of their rights;
- They cannot join a trade union at the user enterprise, and lack equivalent representation and collective bargaining ability in their relationship with the E&R agency. There may also be constraints on what collective bargaining through an agency-linked union will allow if wages have been pre-negotiated with the user enterprise.

These factors may lead to agency workers sometimes receiving lower wages and benefits than workers hired directly for the same jobs, non-payment of benefits, discrimination or the effective denial of freedom of association and collective bargaining rights. E&R agencies will want to pay particular attention to the potential for such impacts on young workers, women, racial or ethnic minorities, workers with disabilities, migrant or other workers who may be at heightened risk.

Such risks may be lower in the EU where the [Temporary Agency Work Directive](#) applies; they are likely to increase outside the EU.

E&R agencies supplying agency workers will also need to be aware of the potential risks to workers already employed by user enterprises, particularly with regard to their rights to freedom of association and collective bargaining.

- **The relevance of candidate screening processes:** E&R agencies' ability to screen candidates is a fundamental part of the services they offer. Whether recruiting candidates for direct hire employment with client companies or placing agency workers with user enterprises, E&R agencies need to have robust screening processes in place.

E&R agencies may attract candidates for job positions through posting adverts online, in office windows, in specialist publications, through actively recruiting in the community, or candidates may simply walk through the door looking for work. Screening processes for individual candidates typically include:

- Resume checks (for skills, qualifications, references);
- Age/identity checks;
- Checks on their legal ability to work (nationality/immigration status).

Sensitive jobs or jobs requiring particular skills (such as in the medical, education, or social care fields) require greater due diligence, which may include police checks and in-person interviews. There may be additional checks for migrant workers regarding their language and other relevant skills. Where recruitment processes are conducted over the Internet, such checks can be more challenging and E&R agencies will want to pay particular attention to verifying information they obtain that could help them

### Resources: Vulnerable or marginalised groups

Some potentially vulnerable or marginalised individuals and groups are the subject of international human rights instruments that help provide clarity on how human rights apply to them. These are:

- ▶ **Racial/ethnic groups:** The Convention on the Elimination of All Forms of Racial Discrimination
- ▶ **Women:** The Convention on the Elimination of All Forms of Discrimination Against Women
- ▶ **Children:** The Convention on the Rights of the Child
- ▶ **Persons with disabilities:** The Convention on the Rights of Persons with Disabilities
- ▶ **Migrant workers:** The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- ▶ **Indigenous peoples:** The Declaration on the Rights of Indigenous Peoples
- ▶ **Minorities:** The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

For the full text of these instruments, see: [www.ohchr.org/EN/Professional Interest/Pages/CoreInstruments.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx)

### Resources: Young Workers

Young workers (i.e., those over the minimum legal age for work, typically 15 or 14, but under 18 years old) can only be engaged in non-hazardous forms of labour. For more on particular considerations applying to young workers see:

- ▶ ILO, *Safe Work for Youth*
- ▶ UNICEF, *UN Global Compact and Save the Children, Children's Rights and Business Principles*
- ▶ UNICEF, *Children Are Everyone's Business, Chapter 2*
- ▶ US Department of Labour, *Reducing Child Labour and Forced Labour: A Toolkit for Responsible Business*

understand whether or not the candidate is in a position of heightened vulnerability or marginalisation, for example, through in-person discussions at the worksite.

The focus of these systems is generally on risk to the client company or user enterprise, or to the E&R agency itself, from recruiting or employing a particular individual. But it is important to ensure that such processes also take full account of human rights risks to the individual candidate. Responsible E&R agencies understand that finding “the right person for the right job” means integrating human rights considerations into candidate screening processes – e.g., is this person subject to debt bondage, are they under the legal minimum working age (see the Resources box in this section)?

E&R agencies also need to take care that all such processes are conducted with appropriate protections for individuals' personal information and their privacy (see, for example, the definition of [personal data](#) in [Council of Europe Convention No 108](#)). In particular, this means that agencies should limit their collection of personal information to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information (see [ILO Convention No 181](#), Article 6). See further [Section III-A](#) below.

- **Branch-level and corporate/head office-level roles:** For larger E&R agencies, or those with operations in multiple markets, impact assessments will need to take place at the local or branch level where impacts can occur. They may be led by internal staff at each location, with support from the corporate/head office level. Information collected through such assessments will need to be aggregated: a review of human rights risks that recur across locations can help an agency identify the leading human rights risks for the company as a whole, which could then be reflected in the agency's human rights policy commitment.

## II B Understanding your Operating Context

### Key Points for Implementation

- ▶ States have their own obligations to respect, protect and fulfil human rights under international human rights law. Where they fail to do so, this creates additional challenges for companies trying to meet their responsibility to respect human rights.
- ▶ Companies need to understand these contextual risks so they can take steps to avoid contributing to human rights abuses.
- ▶ Where national laws to protect human rights are absent, weak or unenforced, companies should respect internationally-recognised human rights.
- ▶ Where national laws conflict with human rights, companies should honour the principles of human rights as best they can in the circumstances, and be able to demonstrate their efforts to do so.

## Possible Approaches

- **Assessing contextual risks:** A range of factors can affect the risks of operating in a certain country context or market for an E&R agency, including:
  - Socio-economic factors such as poverty and the marginalisation of groups within society (e.g., through significant wage inequalities);
  - Political instability that carries risks to democracy, rule of law, and/or peace and security;
  - Corruption within parts of society;
  - Systematic state disregard for human rights in practice, or for the human rights of members of certain groups (as demonstrated by, e.g., a refusal to recognise women’s rights, or state-sanctioned harassment of those with a particular nationality);
  - The lack of established social dialogue structures;
  - Immigration regulations that tie immigration status to a particular employer (especially where that employer is not a state agency);
  - Lack of access to effective remedy through the judicial system, either generally or for particular groups;
  - Active or latent conflict – ranging from physical confrontation to armed violence – which can affect the safety of all workers, as well as migrant workers’ ability to return home.

When considering the implications of national laws for human rights, E&R agencies will need to distinguish between:

- National law that provides less human rights protection than internationally-recognised human rights;
- National law that reflects internationally-recognised human rights but is not enforced due to weak legal or administrative procedures;
- National law that actively conflicts with internationally-recognised human rights.

Each of these situations has different implications for the action(s) that a company can take in response. These are discussed further in [Section III-E](#) below.

As the Guiding Principles make clear, companies should respect the standards of international humanitarian law in situations of armed conflict. (For more on this, see ICRC, [Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law](#).)

- **Operating in high-risk contexts:** Examples of high-risk contexts include those characterised by systematic disregard for certain human rights (including the rights of certain groups) in law or practice, current or latent conflict, or pervasive corruption. Companies’ responsibility to respect human rights does not change when they work in these environments, and nor do the elements of human rights due diligence. However, respecting human rights in high-risk contexts usually requires greater attention, effort and resources at every step of the process.

### Resources on Country-level Risk:

There are various sources E&R agencies can look to for information on human rights risks related to the markets in which they are operating. Besides commercially-available sources, companies might review:

- ▶ Amnesty International, Country Reports
- ▶ Danish Institute for Human Right Country Risk Assessment Portal (*forthcoming*)
- ▶ Human Rights Resource Centre, ASEAN baseline Rule of Law report
- ▶ Human Rights Watch World Reports
- ▶ ILO country information
- ▶ Transparency International, Corruptions Perception Index
- ▶ UN Development Programme, Human Development Index
- ▶ US State Department Annual Human Rights Reports
- ▶ Verité, Forced Labour Commodity Atlas
- ▶ World Bank, Worldwide Governance Indicators

### Example: Entering a New Market

When entering new markets, one E&R agency develops a framework of action based on the existence and enforcement of labour rights legislation, actual working conditions, and the extent/acceptability of rogue operators in the market. The company looks for government channels through which to advocate for effective regulation, including ratification and implementation of ILO Convention No 181. As well as it being in line with its values, the company sees a business case for investing the time in encouraging governments to develop appropriate policy and legislative frameworks in terms of its long-term presence and expansion in the region.

E&R agencies will want to consider a range of approaches, including:

- Identifying sources of relevant expertise, such as trade unions or civil society organisations who may have engaged with other companies in the same or similar markets or around similar challenges;
- Committing particular efforts and resources to consultation with potentially affected stakeholders as part of the risk assessment process (see Section II-E below);
- Conducting a stand-alone human rights impact assessment about the risks of entry into or operating in a particular market, and engaging senior-level decision-makers in discussions on the results to ensure the issues are given proper attention;
- Where an E&R agency is operating in a foreign country, consulting with its home state embassy on the ground, or with appropriate government representatives back in its home state, to seek relevant information and support. This might include information on the operating context, the state's human rights record, information about local laws and reputable local law firms who can provide further advice;
- Consulting other general sources of information on human rights in specific country contexts, such as that state's [National Human Rights Institution](#).

## II C Reviewing Business Relationships

### Key Points for Implementation

- ▶ A company's responsibilities to respect human rights extend to its business relationships. In particular, the company will need to assess the risks of:
  - Contributing to human rights impacts – by facilitating, encouraging or incentivising them;
  - Being directly linked to human rights impacts through a business relationship – where the actions of a business partner cause an impact in connection with the company's own operations, products or services.
- ▶ Relevant business relationships are not limited to those where the company has a direct contract or agreement; they include relationships one or more steps removed, including where multiple actors are involved in the recruitment and employment process.

### Possible Approaches

- **Prioritising relationships for assessment:** An E&R agency needs to assess the risk of negative impacts on the candidates it recruits for direct hire employment and the agency workers it places with user enterprises as a result of the business partner's own actions and decisions. Large E&R agencies can have thousands of client company and/or user enterprise relationships. It

may therefore not be possible, within the resources available, to assess the risk of impacts across all first tier relationships. In such circumstances, agencies will need to prioritise which relationships to assess for human rights risks.

Traditionally E&R agencies have prioritised due diligence with those business partners who hold the biggest contracts or are most important to the business. However, under the Guiding Principles a company should prioritise those relationships where the **severity** and likelihood of potential human rights impacts is greatest. This prioritisation might highlight business partners that:

- Are based in locations where there are known human rights risks, such as a lack of freedom of association for workers or persistent discrimination against women;
  - Have a track record of poor performance on human rights;
  - Operate in sectors that pose particular risks to human rights (discussed further below);
  - Are local, smaller or new companies who may lack awareness of human rights issues or the capacity to address them.
- **Assessing sectoral risks:** E&R agencies recruit workers for a number of sectors, ranging from those involving primarily high paid/high skill jobs through to low paid/low skill jobs. Some human rights risks will arise regardless of the sector – for example, the risk of discrimination.

However, in some sectors the risks of negative human rights impacts may be greater than in others. Such risks may arise from the type of work that is being carried out – for example, if it is physically demanding and carries a danger of injury like the operation of heavy machinery in factories or on construction sites, or if the work is conducted outside in extreme weather conditions and/or is repetitive and very physical such as with agriculture and horticulture. Other potential risks can arise from work that is more personal in nature, such as in social care or domestic work (see [Section III-A](#) for more on this).

- **Client company and user enterprise screening processes:** Typically, opportunities to conduct human rights due diligence will be more limited in relation to client companies, particularly where such relationships are one-off transactions. However, in all cases, E&R agencies need to consider whether their screening processes are as robust as they could be.

Elements of a robust approach to screening client companies and user enterprises include:

- Reviewing the client company or user enterprise’s Code of Conduct or other policies and processes that address human rights – particularly the rights to freedom of association, collective bargaining and non-discrimination, as well as workplace conditions in relation to health and safety, overtime, and access to effective grievance mechanisms;
- Ensuring that the wage that will be paid to the worker is at least in line with any applicable collective bargaining agreements and with local “living wage” norms, and certainly is not below the legal minimum wage. Whatever method is used, work being done mainly by women should not be undervalued when compared with work of equal value done by men. See the Resources box on this page for more on these issues;

### Resources on Equal Remuneration and “Living Wage” Norms:

The International Covenant on Economic, Social and Cultural Rights provides that wages must be “fair” and sufficient to provide workers with a decent living for themselves and their families. The Covenant also provides for equal remuneration for work of equal value. ILO standards provide guidance on how to understand these norms, in light of a country’s level of social and economic development. Companies will need to be aware that in some sectors traditionally dominated by women, wage scales, however determined, may not reflect the principle of equal pay for work of equal value, as women’s skills and the responsibilities they undertake are often undervalued.

In the EU, the principle of equal treatment of agency workers, including in relation to pay, is established by the Temporary Agency Work Directive. Outside the EU, there are on-going discussions about equal pay for agency workers that E&R agencies will want to pay close attention to.

For more on these issues, see:

- ▶ ILO, Q&As on Business, Wages and Benefits
- ▶ ILO, Database of Conditions of Work and Employment Laws
- ▶ ILO, Giving Globalization a Human Face
- ▶ ILO, Gender Equality: A Guide to Collective Bargaining
- ▶ Regarding the general principle of equal treatment between migrant workers (and their families) lawfully in the country and nationals, including in relation to pay, see ILO Convention No 97 and Part II of Convention No 143, and UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

### Example: Due Diligence on Health and Safety in User Enterprise Relationships

One large E&R agency has developed processes for assessing working conditions in user enterprises, including health and safety risks. Before placing an agency worker, sales staff will review relevant policies and processes, supplemented by a site visit, to assess the workplace against a checklist. If the potential client does not meet the assessment criteria, the agency has a clear process staff are required to follow. First, the member of staff informs their manager. That individual (or another senior staff member) will then step in to discuss the relevant points with the client. If the client does not satisfactorily address them, the agency then refuses to work with that client. While there are national and regional differences in the specific assessment criteria, the company uses the same assessment process wherever it operates. The initial check is supplemented by on-going due diligence about workplace conditions.

- Conducting sufficient financial due diligence to confirm that the company has the ability to pay the worker's wages (whether directly or via the E&R agency);
- Triggering appropriate internal escalation procedures where "red flags" arise, including:
  - > discriminatory requests for workers;
  - > evidence of a consistent denial of freedom of association in the workplace;
  - > inadequate health and safety procedures.

And, in the case of user enterprises:

- Seeking to conduct an on-site visit and/or speaking wherever possible with legitimate trade union or worker representatives about actual practices;
- Checking whether there is evidence that the company intends to replace legally striking workers or to otherwise limit or undermine its own workers' freedom of association.

E&R agencies will also of course need to meet the provisions of the EU [Temporary Agency Work Directive](#), wherever they apply.

Where an E&R agency is recruiting for a client company or placing workers with a user enterprise that is based in another country, the agency should seek to implement the same due diligence processes that apply when the client company or user enterprise is based in the same country. Wherever possible, someone from the agency should visit the worksite and meet company representatives in person. Evolving good practice indicates that an individual from the client company or user enterprise – preferably someone from the Human Resources function – should take part in the final stages of the candidate screening process, jointly attending interviews.

- **Working with other E&R agencies on recruitment of migrant workers:** Where an E&R agency works with partner agencies, assessing the risks arising from their human rights performance is critical. This typically occurs in the context of large contracts for the placement of agency workers, where smaller agencies need to collaborate, and in the case of international recruitment of migrant workers.

The risks of negative impacts arising from the international recruitment process are heightened in situations where:

- Individuals are more likely to accept poor working conditions as a result of endemic poverty, discrimination (e.g., where the worker is from a vulnerable or marginalised group), or a lack of information about their rights (which may also make them more susceptible to deceptive practices);
- The payment of fees for work placement services is legal, or is illegal but widely practiced;
- Loan agencies are in long-term relationships with local E&R agencies.

Smaller E&R agencies that recruit migrant workers in origin states or place them in employment in destination states typically will collaborate and subcontract part of the process to one or more agencies either in the origin or the destination state. This can heighten the risks of negative impacts because it is not clear where accountability for the overall process lies. To

effectively manage these risks, responsible E&R agencies are increasingly seeking to manage the entire international recruitment process themselves, or work with a limited number of highly trusted partner agencies to do so.

Assessing potential risks arising from such collaborations can be challenging, especially for smaller E&R agencies, where there are language barriers, cultural or other differences in how “business gets done”, as well as geographic distance which may prevent the in-person meetings that would usually be part of due diligence processes. This can also make it hard to build trust in the partner agency.

Even when an E&R agency’s assessment processes need to take place by telephone or by email with a potential partner agency, they should still include:

- Examining the partner agency’s Code of Conduct and other relevant policies – these may be available on the agency’s website or via email – in particular to check whether the agency has made explicit commitments not to charge fees to workers and not to retain worker’s identity documents;
- Asking the partner agency to explain their processes for recruiting migrant workers or placing them with a user enterprise, as relevant;
- Checking if the partner agency is licensed or registered with the government (where such a system exists) and checking their reputation with the national labour inspectorate or other appropriate authorities; and
- Seeking testimonials from other agencies, or workers wherever possible, that have worked with the agency on international recruitment processes.

“Red flags” for an E&R agency should include:

- Charging of fees to workers;
- Retention of identity documents of workers;
- Unwillingness to provide testimonials or details about their processes;
- Unresolved/negative cases against the partner agency with the labour inspectorate.

- **Key questions in the international recruitment process:** The following outline is intended to help E&R agencies consider the potential risks that can arise at all stages of the international recruitment process, including the arrangement and provision of accommodation and transportation. Agencies need to identify key questions to ask at the points in the process where they are directly involved, as well as the kinds of issues that may arise at other points in order to avoid negative impacts being linked to their own services through their business relationships (see [Sections III-C](#) and [D](#) below for more on this).

▶ **At the point of screening candidates:**

- Does the worker have the right skills and experience for the job?
- Has any other E&R agency or individual been involved in the process to date?
- If so, has the worker been charged any fees for recruitment services? Has the worker retained his or her own identity documents?
- Have any loan agencies been involved?
- Does the worker know where he or she is going and does he or she understand the language?

### **Example: Working with User Enterprises on International Recruitment of Migrant Workers**

An E&R agency had set up an office in an origin state from which many migrant workers are drawn in order to recruit into the agency’s own state. The agency developed an ethical recruitment policy to address the risks involved. A key component of the policy was a requirement that the user enterprise take part in the final worker interview and skills assessment process with the agency. This commitment was incorporated into the E&R agency’s due diligence on the user enterprise at the contract negotiation stage. If a potential user enterprise was unwilling to send a representative from the company to the origin state to meet with and assess potential candidates this raised a red flag in the agency’s assessment process. This suggested that the user enterprise was not sufficiently committed to the migrant workers’ welfare, leading to a conclusion that the agency would be facing heightened human rights risks if it worked with that user enterprise.

### Resources: Assessing and Addressing Risks in International Recruitment Processes

- ▶ Verité, Fair Hiring Toolkit
- ▶ Verité and Manpower Group, An Ethical Framework for Cross-Border Labor Recruitment
- ▶ End Human Trafficking Now, with a series of case studies that includes two E&R agencies
- ▶ BSR, Migrant Worker Management Toolkit: A Global Framework – Managing Workers and Protecting Rights
- ▶ Global Business Coalition Against Trafficking
- ▶ UN Global Initiative to Fight Human Trafficking

Resources from international organisations include:

- ▶ ILO, Migration and Child Labour and Trafficking in Children
- ▶ International Organization for Migration
- ▶ OHCHR, Migration and Human Rights
- ▶ UN High Commissioner for Refugees, Trafficking webpage

#### Note on pre-departure orientation:

Pre-departure orientation programs offer a critical opportunity to inform migrant workers of their rights and provide them with essential information. E&R agencies can speak to relevant government agencies (such as a National Human Rights Institution) and international organisations that support such programs, in order to ensure that they are as effective as possible, and genuinely voluntary in nature. The International Organization for Migration provides guidance as well as training in a number of countries.

- Does the worker have any vulnerabilities that need to be taken into consideration?
- Will the client company/user enterprise ultimately pay any involved E&R agencies for actual recruitment costs?

#### ▶ At the point of departure:

- Has the worker signed – and understood – an employment contract? Does it accurately reflect any promises that have been made to them by the E&R agency that recruited them?
- Has the worker been provided with appropriate pre-departure orientation including information about the destination state, their rights and how to access remedy?
- Has the worker been charged any fees for recruitment services by any other E&R agencies involved in the process?
- Has the worker retained his or her own identity documents?
- Have other companies or individuals been involved in arranging transportation for the worker?
- If so, have any transportation fees been charged? Were they proportionate, properly agreed with the worker and written into the contract if they are to be deducted from his or her salary?

#### ▶ At the point of arrival:

- Has the worker signed – and understood – an employment contract? Does it accurately reflect the contract promised at departure and any further promises that have been made to them by the E&R agency that recruited them?
- Has the worker been charged any fees for recruitment services by any E&R agencies in the origin state?
- Has the worker retained his or her own identity documents?
- Does the worker understand their rights and how to access remedy in the destination state?
- Have other companies or individuals been involved in arranging transportation for the worker?
- If so, have any transportation fees been charged? Were they proportionate, properly agreed with the worker and written into the contract if they are to be deducted from his or her salary?

#### ▶ At the point of accommodation:

- Is the worker obliged to stay in employer-provided accommodation or are there appropriate alternatives that the worker has been made aware of?
- Is the worker's accommodation adequate?
- Have other companies or individuals been involved in arranging accommodation for the worker?
- If so, have any accommodation fees been charged? Were they proportionate, properly agreed with the worker and written into the contract if they are to be deducted from his or her salary?

▶ **At the point of employment:**

- Has the worker signed – and understood – an employment contract? Does it accurately reflect any promises that have been made to them by the E&R agency that recruited them?
- Will the user enterprise/client pay any involved E&R agencies for actual recruitment costs?
- Are rights to freedom of association and collective bargaining protected in the workplace?
- Is the workplace safe?
- Is it free from discrimination and harassment?
- What are the supervision arrangements? Have these been communicated to the worker?
- Is the proposed salary of the worker in line with appropriate standards? (See Resources box on equal remuneration and “living wage” norms earlier in this Section.)
- Does the worker have access to an effective grievance mechanism? (For more on this, and the particular barriers that migrant workers may face, see [Section VI](#).)

User enterprises and client companies who are relying on migrant workers have their own responsibilities to understand and assess the risks inherent in the parts of the international recruitment process that they are not directly involved in. Some useful resources for such companies are listed in [Annex 1](#).

II D

## Drawing on Expertise

### Key Points for Implementation

- ▶ Companies will need to draw on relevant expertise to help them ensure that their assessment processes are as well informed as possible.
- ▶ These sources of expertise may be internal to the company or external, and may include written documents and guidance or individuals with relevant knowledge and experience.

### Possible Approaches

- **Engaging internal staff:** The process of assessing impacts is an opportunity for an E&R agency to engage a cross-section of individuals (in larger companies, they can be from different functions and departments) in a conversation about possible impacts. This can build understanding of how certain actions and decisions can lead to negative impacts. Doing so helps create internal buy-in to the need for preventative measures. It can also support the internal collaboration that will be needed to address any impacts that occur.

### Example: Addressing Migrant Worker Risks in Cross-border Recruitment within Europe

An EU-based E&R agency became concerned about the potential vulnerabilities of the migrant workers it was sending to construction jobs in one European country and to domestic care work in another. Their vulnerability arose mostly from their lack of education and language skills; in addition, the domestic care workers were facing heightened risk as a result of their work environment in private homes, away from public scrutiny. The agency began an education program, including providing basic language skills, information about the destination state and the potential risks of working outside their origin state. Realising it did not have sufficient expertise, the E&R agency sought to collaborate with an experienced anti-trafficking NGO to develop educational materials for workers going abroad. The NGO also helped the agency develop an appropriate policy focused on workers’ human rights and specifically the rights of women (who were the main recruits for the domestic care jobs). The partners are now collaborating to promote awareness of the issues, including jointly attending relevant workshops to give presentations.

### Resources: Matrix to Stimulate Internal Discussion of Potential Impacts

The [Matrix](#) in Part 2 maps some of the typical human rights impacts that can occur in relation to the operations of E&R agencies. This kind of matrix can provide a tool for internal company discussions of potential impacts. It reflects a range of typical (but not exhaustive) activities of E&R agencies, and the groups of affected stakeholders that are usually relevant. Using the table as a model, and expanding or adjusting it as necessary, a company can work through its typical operations to map its own table that can help guide its next steps on what to do about the human rights impacts identified.

There are different ways to generate this internal conversation:

- Where it is helpful to begin with human rights, the focus can be on where and how those rights might be impacted.
- In other circumstances – particularly where human rights language is unfamiliar or challenging within the company – it may be more helpful to start by discussing how each of the company's main activities could impact potentially affected stakeholders: whether internal staff, direct hire employees recruited for client companies, agency workers placed with user enterprises, local communities in migrant worker-origin states, or particular vulnerable or marginalised individuals or groups.
- **Engaging workers:** Legitimate trade unions or worker representatives can be an additional, valuable source of internal company expertise on potential human rights impacts – both in relation to an E&R agency's internal staff and the workers it recruits for client companies and places with user enterprises.
- **Engaging external expertise:** E&R agencies can also draw on external expertise in assessing their potential human rights impacts. Possible sources include:
  - Expert written sources, including reports from credible organisations, whether civil society, government, business associations or multi-stakeholder initiatives that can provide insights into current and emerging human rights issues in particular markets and examples of impacts that E&R agencies have been involved with;
  - Talking to national industry associations that are associated with Ciett, as well as the national employers' organisations in relevant countries;
  - Talking to relevant government ministries or other national authorities (taking into account any credible reports of corruption when doing so);
  - Local civil society actors, such as trade unions, NGOs and others who can provide insights into potential impacts. Seeking their input can also increase transparency and may help dispel any concerns they have.



## Consulting Affected Stakeholders

### Key Points for Implementation

- ▶ “Affected stakeholders” in the Guiding Principles are those individuals whose human rights may be impacted by the company's operations, products or services. They are a subset of “rights holders”, which includes all individuals. And they are distinct from those stakeholders in civil society, business or government who may have an interest in the company or be able to affect its operations, but will not themselves be impacted.
- ▶ Meaningful consultation with affected stakeholders helps E&R agencies understand their views about how certain impacts could affect them.
- ▶ By demonstrating that it takes the concerns of affected stakeholders seriously, a company can help build their trust. This may make it possible to work together to identify potential impacts and find sustainable ways to address them.

## Possible Approaches

- **Distinguishing meaningful consultation from broader stakeholder engagement:** Stakeholder engagement is designed to build relationships and mutual understanding between a company and its stakeholders. It includes multiple approaches – from one-way communication (see Section V-B) to working partnerships.

Meaningful consultation with affected stakeholders is a particular type of stakeholder engagement. It is intended to gather specific views or advice from affected stakeholders (or their representatives) that are then taken into account in the company's implementation processes. It requires two-way dialogue and often involves the company in: actively soliciting affected stakeholders' perspectives, listening and responding to their concerns, integrating that information into internal decision-making processes, and then re-engaging with stakeholders about how their concerns were taken into account.

- **Mapping affected stakeholders:** Stakeholder consultation first requires a process to identify who a company's stakeholders are and any sub-groups within them, such as youth, women, racial and ethnic minorities, and so on.

An E&R agency's internal staff and the workers that the agency recruits or places will be key affected stakeholder groups. Other considerations, highlighted in the *IFC's Good Practice Handbook on Stakeholder Engagement*, which can be important for E&R agencies in mapping affected stakeholders, include:

- Considering all potentially affected stakeholders, including those who may be affected by the actions of others in the company's value chain (e.g., the family of a direct hire employee that an E&R agency recruits for a client company or a migrant worker's local community in the worker's origin state);
  - Identifying potential "cumulative impacts" on affected stakeholders that may not be immediately evident (e.g., where multiple actors in the international recruitment process contribute to negative impacts on migrant workers);
  - Considering from the earliest stages who are the most vulnerable or marginalised individuals or groups among those potentially impacted, and whether special engagement efforts will be needed to involve them (e.g., women employed in domestic worker contexts);
  - Paying attention when identifying representatives of stakeholder groups that they are indeed true advocates of the views of their constituents, and can be relied upon to faithfully communicate the results of engagement with the company back to their constituents.
- **Crafting appropriate consultation processes with potentially affected stakeholders:** Just as important as mapping affected stakeholders is developing the kinds of internal approaches, skills and attitudes that value and support building trust-based relationships with stakeholders.

Conducting consultations with affected stakeholders requires specific skills. It also requires sensitivity to potential barriers (linguistic, gender, cultural) and to perceived power imbalances – both between the company and affected stakeholders, and among stakeholders themselves. E&R agencies will want to ensure that internal staff who engage directly with affected stakeholders have the skills and experience necessary.

### Resources on Stakeholder Engagement:

- ▶ AccountAbility, UNEP, Stakeholder Researcher Associates, *From Words to Action: Stakeholder Engagement Manual Volume 1 and Volume 2* (Vol 2 is also available in Spanish, Italian and Japanese).
- ▶ IFC, *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*.
- ▶ [UN Global Compact page on Stakeholder Engagement](#) (contains a number of resources and tools)

### Resources: Joint Efforts to Address Impacts on Domestic Workers

In one country, a national association of domestic workers worked together with a domestic employers association committed to improving working conditions in a national campaign that led to a domestic worker's Bill of Rights being signed into state law to ensure basic labour protections for such workers. One of the members of the domestic workers association launched an interactive hotline to inform domestic workers and their employers about the landmark legislation in two languages. It provides information on topics ranging from minimum and overtime wages, to vacation time, paying taxes, and trafficking, as well as different social services.

For example, in carrying out consultations with workers, E&R agencies may uncover information that suggests serious human rights impacts (such as sexual violence against a female worker, or evidence of trafficking). It is essential that internal staff are equipped to handle such situations appropriately, including by, for example: assisting the worker in accessing an external organisation that can provide specialised support (practical, legal, emotional); informing state authorities (see further [Section VI-B](#)); taking any internal disciplinary steps where needed; and discussing the issue with any relevant business partner, while respecting the worker's privacy. In such situations, E&R agencies will want to turn to expert resources with experience in addressing such impacts.

- **Consulting with workers:** Where they exist, legitimate trade unions should be important partners for consultation regarding potential impacts on workers that an E&R agency recruits or places. Where an E&R agency is conducting interviews with individual workers or their representatives, it will want to consider how to do so in ways and locations that enable workers to speak freely, without being coached or intimidated, and with due attention to the possible additional constraints on members of potentially vulnerable or marginalised groups that may prevent them from speaking up about concerns.
- **Understanding risks related to international recruitment:** For E&R agencies that are involved in the recruitment or supply of migrant workers, it can be important to engage with local NGOs in seeking to understand impacts on such workers, as they are often not represented in trade unions. Relevant [international NGO networks](#) can assist E&R agencies in identifying appropriate local organisations.

E&R agencies will also want to consider consulting with migrant workers families, or representatives from the local communities from which such workers are typically drawn, where there are risks of negative human rights impacts on those communities themselves. Where this is not possible, including for smaller E&R agencies, it will be important to rely on credible sources of information about such risks in the relevant origin state.

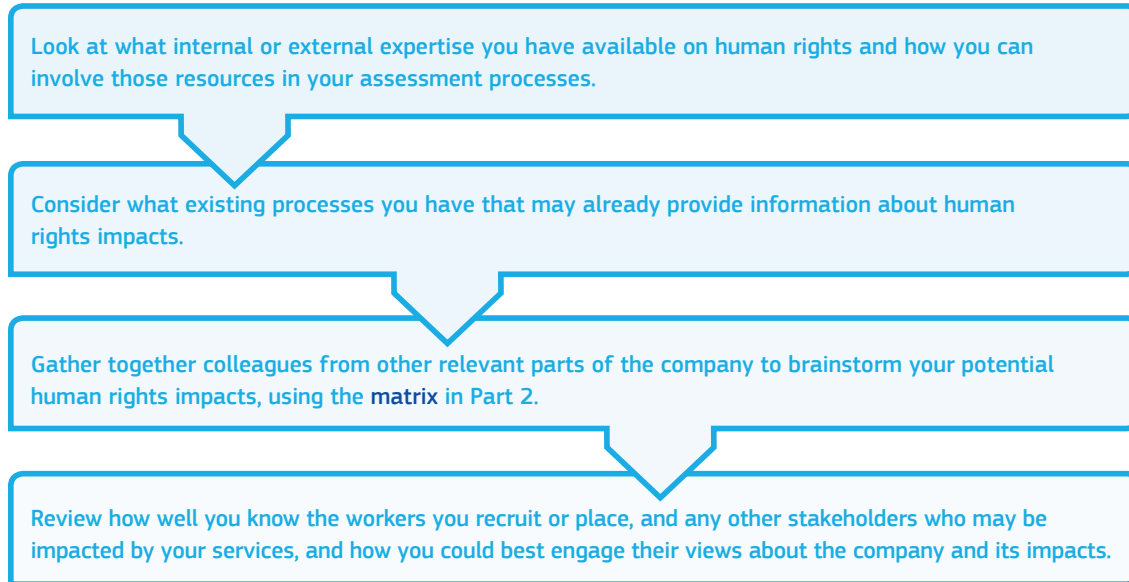
- **Understanding risks to domestic workers:** "Domestic worker" generally refers to a person who performs work within an employment relationship in or for a private household or households. Women and girls make up the overwhelming majority of such workers. Domestic workers are at heightened risk of negative human rights impacts, with migrant domestic workers being especially vulnerable. This is due to a range of factors including:
  - Isolation and dependence on the employer;
  - Factors related to migrant worker status (unfamiliarity with language, culture, legal system, potential migration-related debt);
  - The potential for employers to restrict a worker's freedom to leave the employment where that is tied to immigration status;
  - The potential for employers to restrict the worker's freedom of movement and ability to communicate with others outside the workplace (which may also be where the worker is housed);
  - Additional risks for women domestic workers related to their gender, including sexual violence;
  - Additional risks for migrant domestic workers who are in an undocumented or irregular situation.

According to the ILO, domestic work is consistently undervalued with domestic workers typically earning less than half the average wage. Domestic workers may lack other forms of protection under domestic laws – and in some cases, domestic work may not even be recognised as "work" under national labour laws. (See generally: ILO, [Working Conditions of Domestic Workers](#).)

Where E&R agencies are involved in the recruitment or supply of domestic workers, it will be important that they pay attention to the undervaluing of such work due to gender stereotypes, and take into account potential vulnerabilities arising from the factors identified above. There have been some joint efforts between associations of domestic workers and employers to work together on these challenges (see Resources Box in this section).

## Where to Start

For companies that are just starting to focus on assessing human rights risks and impacts, the following are some preliminary steps to consider:



## Questions to Ask

The following questions correspond to sub-sections A, B, C, D and E above. They should help test the extent to which a company's assessment processes are consistent with the Guiding Principles:

<p><b>II-A</b></p>	<p><b>Building a Systematic Approach to Assessment</b></p> <ul style="list-style-type: none"> <li>▶ What triggers do we have to launch or renew impact assessments?</li> <li>▶ When we assess risk, do we look at risks to people and their human rights, not just risk to the company?</li> <li>▶ Do our assessments take account of the perspectives of potentially affected stakeholders themselves, especially workers, and not just what we think they key issues are?</li> <li>▶ How do we take account in our impact assessments of the heightened vulnerability or marginalisation of some workers?</li> <li>▶ Do our assessments look at all indicators of potential human rights impacts, not just past or familiar impacts, or a narrow set of human rights?</li> <li>▶ How do we take account of human rights in our candidate screening processes?</li> </ul>
<p><b>II-B</b></p>	<p><b>Understanding your Operating Context</b></p> <ul style="list-style-type: none"> <li>▶ How do we assess what the implications of our broader operating contexts are for respecting human rights?</li> <li>▶ How do we consider risks arising from gaps in the regulatory framework or from conflicts between national laws and internationally recognised human rights?</li> </ul>
<p><b>II-C</b></p>	<p><b>Reviewing Business Relationships</b></p> <ul style="list-style-type: none"> <li>▶ Do our assessment processes include potential impacts arising through our business relationships with client companies and user enterprises?</li> <li>▶ Do our assessment processes include potential impacts arising through partnerships with other E&amp;R agencies, particularly in the context of international recruitment processes?</li> <li>▶ How do we take account of potential risks that can arise at other stages of the international recruitment process where we are only involved in part of it?</li> <li>▶ Are our assessments of potential impacts from relationships conducted early enough to manage risks effectively, including when entering into new markets?</li> </ul>
<p><b>II-D</b></p>	<p><b>Drawing on Expertise</b></p> <ul style="list-style-type: none"> <li>▶ How have we engaged key internal staff in our assessment processes, to benefit from existing expertise and build understanding of human rights impacts?</li> <li>▶ How have we engaged the workers we recruit or place in our assessment processes?</li> <li>▶ What external resources exist that could inform our assessments, and how could we best draw on them to support and/or test our assessments?</li> </ul>
<p><b>II-E</b></p>	<p><b>Consulting Affected Stakeholders</b></p> <ul style="list-style-type: none"> <li>▶ How do we know whether we have identified all stakeholder groups who could be affected by our operations?</li> <li>▶ How do we identify those who may be vulnerable or marginalised?</li> <li>▶ Who is responsible for consulting affected stakeholders, when and how? Do they have the necessary skills, resources and support?</li> </ul>



# Integrating and Acting

## What do the UN Guiding Principles Expect?

To address negative human rights impacts, businesses should:

- ▶ integrate the findings from their impact assessments across relevant internal functions and processes;
- ▶ act to prevent and mitigate the impacts identified; and
- ▶ have the internal decision-making, budget allocation and oversight processes in place to enable effective responses.

## Why is this Important?

- Through the process of “integration” a company can take the findings from its assessment of impacts, identify who in the company needs to be involved in addressing them, and work with them to decide on an effective response.
- It is through the actions it takes to prevent or mitigate impacts that the company actually reduces its impacts on people: this is central to achieving respect for human rights.

## What are the Steps Involved?





## Building a Systematic Approach to Integrating and Acting

### Key Points for Implementation

- ▶ If a company has strong systems in place to respond to potential human rights impacts, it is more likely to manage these risks effectively and reduce its actual impacts on people.
- ▶ If these processes are weak, action is more likely to be ad hoc, to miss some risks altogether and to fail to contribute to sustainable improvements over time.

### Possible Approaches

- **Integrating key staff into decisions on how to address impacts:** The internal staff who are closest to an E&R agency's potential impacts need to be involved in identifying and implementing solutions; otherwise they may not be sustainable. This will typically mean the staff responsible for engaging with candidates and workers that the agency recruits or places, as well as those responsible for relationships with client companies, user enterprises and any partner E&R agencies.

In smaller E&R agencies, day-to-day communication may be enough to achieve this integration. In larger companies, it can require a more systematised approach. This may include:

- Developing structured cross-functional decision-making groups;
- Including staff from relevant functions or departments in discussions with external experts on specific challenges;
- Having clear internal reporting requirements on the implementation of decisions;
- In the case of high-risk contexts or severe impacts, involving senior management in decision-making and oversight.

- **Roles for corporate/head office-level:** For E&RA companies that operate in multiple markets, the corporate or head office-level can play an important role in helping share experiences within the company about how to address certain kinds of impacts. In this way, options that have been successful in one context can be considered in others. It may be useful periodically to bring together the staff working on these issues at the local level to share their experiences directly. This can support the spreading of good practices. It may also point to common challenges that suggest a need for new or amended guidance from the corporate level.
- **Systems for protecting personal information:** All E&R agencies need to handle sensitive personal information whether it relates to internal staff or workers that they recruit or place. How effectively they manage this can directly impact on those individuals' right to privacy.

Companies should consider a range of approaches to make sure that their systems adequately protect individuals' personal information, including:

- How the company informs individuals about how their personal information will or may be used;
- Whether the information that is collected is necessary to the intended use(s);
- Where information is stored;
- Whether retention periods are appropriate to the anticipated use(s) of that information;
- What the options are for deleting, aggregating or "de-identifying" information when the period expires, and any potential human rights implications of such approaches;

- Whether security measures for the retention and transfer of personal information (where that is necessary, such as to/from client companies or user enterprises) are appropriate to the sensitive nature of the information.

## III B Prioritising Impacts for Action

### Key Points for Implementation

- ▶ In some instances, resource constraints will mean that a company needs to prioritise which impacts it will address first.
- ▶ Prioritisation should depend first and foremost on the severity of the impacts on human rights. An assessment of **severity** should take into account the perspectives of those who may be impacted.

### Possible Approaches

- **Focusing on the risk to human rights:** Traditional prioritisation or “heat mapping” of risks rates the severity (or “consequence”) of impacts in terms of the risk they pose to the company. For human rights due diligence, severity is about the risk posed to human rights.
- **Understanding severity:** In some cases, it will be clear which impacts are potentially severe based on their:
  - **Scale:** How grave the impact is – for example, forced labour by migrant workers placed in positions of debt bondage;
  - **Scope:** How many people are or will be affected – for example, impacts on the freedom of association of a whole workforce, or discrimination against all members of a minority group;
  - **Irremediable nature:** Whether it will be difficult or impossible to restore the people impacted to a situation that is equivalent to their situation before the impact – for example, grave or life-threatening health impacts on individual workers.

In other cases, it will be important to engage with affected stakeholders or their representatives to understand fully how severe impacts might be in practice.

- **Mapping severity and likelihood to identify priorities:** The other relevant factor for prioritising action is the likelihood of an impact. The likelihood of an impact may be increased by:
  - (a) The local operating context(s) where the particular impacts may occur, as well as
  - (b) Specific business relationships that may be involved.

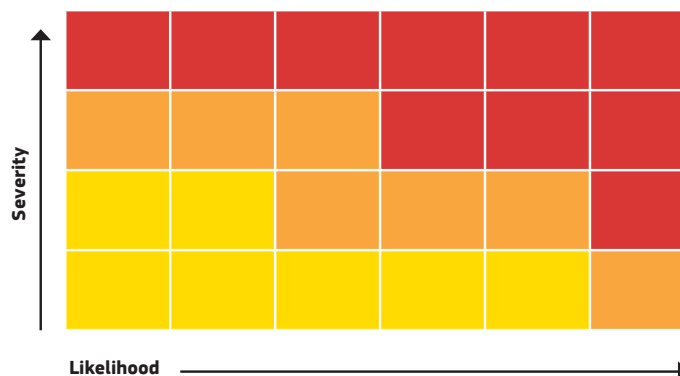


Figure 4: Human Rights Risk Map for Prioritising Action

In traditional risk prioritisation, a risk that is low severity but high likelihood would have a similar priority to a risk that is high severity but low likelihood. However, in the case of human rights risks, a “high severity-low likelihood impact” takes clear priority.

In addition, while it may seem simplest to prioritise action on those impacts where the company has greatest leverage, in the context of human rights, it is the severity of impacts that should set priorities; leverage becomes relevant only in then considering what can be done to address them.

Prioritisation is a relative concept. This means that once the most severe potential impacts have been prevented or mitigated, the next most severe impacts need to be dealt with, and so on through all the impacts identified. Of course, different individuals or functions/departments within the company may be able to address different risks in parallel.

- **Addressing different levels of risk:** E&R agencies may still need to know which risks to address first within each level of severity, starting with those in the most severe category. The logical starting point will be with those impacts that are most likely. E&R agencies may also wish to take account of where they are most able to achieve change. Where these judgements are particularly difficult, it may be helpful to discuss or test proposed approaches with appropriate experts.



## Identifying Options to Prevent or Mitigate Potential Impacts

### Key Points for Implementation

To identify the best ways to address potential impacts, a company first needs to understand the nature of its involvement:

- ▶ Where the company is at risk of **causing** an impact, it should take the necessary steps to prevent the impact from occurring.
- ▶ Where the company is at risk of **contributing** to an impact, it should first take steps to avoid this contribution. Where it does not control those who may contribute to the impact, it should use its leverage with them to mitigate the remaining risk.
- ▶ Where a negative impact may be **directly linked to the company’s operations, products or services through a business relationship**, even without a contribution by the company itself, it should use whatever leverage it has to mitigate the risk that the impact occurs.

### Possible Approaches

- **Addressing impacts the company may cause or contribute to:** E&R agencies may find themselves facing difficult decisions on how to address some human rights risks. For example:
  - An action to reduce the risk of human rights impacts on some stakeholders may create risks for others. For example, combating trafficking is vital to protecting migrant workers’ human rights; however, in some cases, women who have been victims of violent (often domestic) crimes use smugglers to escape their abusive situation. This requires a case-by-case analysis to avoid unintentionally preventing such women from reaching safety through broader anti-trafficking efforts.
  - An action to reduce the risk to one human right may increase the perceived risk to another. For example, identifying workers with serious diseases and helping them access treatment can impact on their right to privacy.

Addressing such risks requires a full understanding of the issues and an ability to work with this complexity. It is not an option simply to assume that an increase in respect for one right cancels out reduced respect for

another right. Instead, efforts must be made to address all the impacts, while recognising that perfect solution may not exist.

In some cases there will be examples of how to manage these tensions successfully. Where examples are not available, it can be particularly beneficial to involve experts in discussions on how to respond (such as in the example of women fleeing domestic abuse above). Depending on the issues, it may be possible to involve representatives of affected stakeholder groups in seeking a collaborative solution that also reflects their ideas and preferences.

- **Addressing impacts that are linked to the company's operations, but without any contribution on its part:** Negative impacts can be directly link to an E&R agency's operations even when it has not caused or contributed to them. For example, if a client company tolerates sexual harassment against women in its facilities, or an E&R agency involved at a much earlier step of the international recruitment and employment process charges fees to migrant workers, putting them in a position of debt bondage.

In this situation, the Guiding Principles make clear that the E&R agency should take reasonable steps to prevent or reduce the risk of these impacts recurring. The main means of doing so is through the company's leverage over those who caused the abuse, which can vary widely in different situations. Approaches to creating and using leverage are discussed in [Section III-D](#) below.

## III D Creating and Using Leverage in Business Relationships

### Key Points for Implementation

- ▶ The Guiding Principles define “leverage” as the ability of a company “to effect change in the wrongful practices of an entity that causes harm”; in short, its ability to influence the behaviour of others.
- ▶ Leverage does not determine whether a company has responsibility for an impact: responsibility results solely from the company's involvement with the impact through cause, contribution or “linkage”.
- ▶ Leverage is relevant for identifying ways to address those impacts identified. Companies should use their leverage to try to change the behaviour of any business partners involved. If a company lacks leverage there may be ways to increase it.
- ▶ If it proves impossible over time to achieve change through their leverage, companies should consider ending the relationship in question, taking into account:
  - Credible assessments of any negative impacts from doing so;
  - That the more severe the abuse, the more quickly the business will need to see change before it decides whether to end the relationship.
- ▶ If a company stays in a business relationship with risks of severe impacts – for instance where it concludes no reasonable alternative exists – it will need to:
  - Be able to show how it is trying to mitigate the risks;
  - Be prepared to accept any consequences of the continued relationship (whether legal, reputational, financial).

### Example: Auditing the Performance of other E&R Agencies

One smaller E&R agency that specialises in international recruitment processes offers an audit service to clients where they are experiencing problems on existing projects as a result of corruption or unethical practices by other recruitment service providers. Senior staff from the E&R agency conduct a thorough audit and recommend how the client should address the problem. This may include the replacement of corrupt and incompetent managers and unsuitable personnel with 'fit for purpose' workers recruited through the E&R agency's ethical processes, and/or the redeployment of existing personnel who are qualified, once they have severed their ties with the unethical recruitment agency. The outcome in all audits provided to date has been that the client terminated their contract with the unethical recruitment agencies and adopted the E&R agency's approach that seeks to respect the rights of individual workers.

### Resources: Referencing Principles or Codes for User Enterprises

Principles and codes addressed to user enterprises are increasingly including provisions on agency workers. For example, the Fair Labour Association's [Workplace Code of Conduct](#) includes commitments not to use "contract/contingent/ temporary workers" in certain circumstances, including where there is excessive use of fixed-term contracts with no real intent to impart skills or provide regular employment.

IFC [Performance Standard 2](#) requires companies who receive IFC funding to establish systems for managing and monitoring the performance of E&R agencies supplying "contract workers", including with regard to freedom of association, non-discrimination, health and safety, prohibition of forced labour and grievance mechanisms. IFC clients must use commercially reasonable efforts to incorporate these requirements in contractual agreements with E&R agencies.

## Possible Approaches

An E&R agency's business partners have their own responsibility to respect human rights throughout their operations. However, if they are unable or unwilling to meet that responsibility, any resulting human rights impacts may be directly linked to the E&R agency's operations. So it is important for E&R agencies to carefully think through the leverage they currently have, or can build, in their business relationships.

- **How is leverage generated?** Leverage is not limited to legal control and may reflect a range of other factors, such as:
  - the terms of any contract between the company and the third party;
  - the proportion of business the company represents for the third party;
  - the company's ability to incentivise the third party to improve its human rights performance (for example through future business);
  - the reputational benefits for a business partner of working with the company;
  - the company's ability to work with peers, business associations or through multi-stakeholder initiatives to incentivise improved human rights performance;
- **Leverage with client companies and user enterprises:** An E&R agency's leverage will often be very different as between the client companies and user enterprises it works with. In the former case, the relationship is often a one-off transaction; once the candidate is employed by the client company he or she ceases to have any relationship with the agency and the client company may never contact the agency again. Where an E&R agency is placing agency workers with user enterprises, there will often be an on-going relationship between the agency and the user enterprise. This is especially so where the user enterprise engages in "Recruitment Process Outsourcing" (or RPO), in which an E&R agency is essentially embedded in, and operates as, the Human Resources function of that user enterprise.

Other factors that may affect an E&R agency's leverage include the:

- Proportion of the client/user enterprise's need for E&R agency services that the agency currently represents;
- Reputation of the E&R agency for identifying workers with the right skills who are properly prepared for the job;
- Degree of worker turnover/seasonal fluctuations in the sector;
- Level of competition between E&R agency services within the relevant sector;
- Existence of long sub-contracting chains in the international recruitment and employment process (versus situations where one agency manages the whole process);
- Agency's geographic proximity to the client/user enterprise (i.e., whether they are located in the same or a different market);
- Presence of active industry associations and/or effective government action on these issues in the relevant market.

Some of these factors an agency may be able to directly influence; others it is unlikely to be able to address on its own.

Much of an E&R agency's leverage with a user enterprise or client company will be established in the terms of its contract with that business. It is therefore important to consider critical human rights issues during the contract negotiation stage for inclusion in the final agreement. In all cases, these issues should include:

- Confirming that the wage that will be paid to the worker is at least in line with any applicable collective bargaining agreements and with local "living wage" norms, and certainly is not below the legal minimum wage. Whatever method is used, work being done mainly by women should not be undervalued when compared with work of equal value done by men (see [Section II-C](#)). In the case of agency workers, this means asking whether the user enterprise will pay a fee that will enable the E&R agency to pay them such a wage;
- Checking that workers will be provided with appropriate working conditions, including relevant health and safety equipment and training;
- Investigating whether workers' welfare will be appropriately addressed, including through access to effective grievance mechanisms (see [Section VI](#) below).

E&R agencies can consider referencing principles or codes developed by multi-stakeholder or international organisations and addressed to user enterprises (see the Resources Box in this section). Agencies will also want to consider appropriate escalation and contract termination provisions in the case of significant negative impacts on workers arising from the actions of the user enterprise or client company, including provisions on access to effective remedy for affected workers.

- **Developing systems for responding to discriminatory requests by client companies and user enterprises:** User enterprises and client companies can and do make discriminatory requests for workers. If an E&R agency complies with such requests, it risks directly contributing to discrimination in the recruitment process.

Discrimination involves an unjustifiable distinction or preference on the grounds of a person's particular characteristics or status, such as race, colour, national or ethnic origin, gender, age, or disability. In other words, there is no objective and reasonable basis for making the distinction.

International human rights law recognises that in some cases, states may need to take "special measures" to address the position of disadvantaged groups in society, based on their particular characteristics or status. Such measures must be appropriate to the situation to be remedied, proportionate and temporary, among other things. Where particular measures meet these criteria (for example, legislation seeking to address the historical legacy of the crime of apartheid), they are an important means of advancing non-discrimination. However, where distinctions are not made for such purposes, then they are highly unlikely to be justified under international human rights law.

Responsible E&R agencies are alert to the risks posed by discriminatory requests from client companies and user enterprises and have sought to put in place robust systems for dealing with them. Possible approaches to managing the risks arising from such requests include:

- Providing thorough guidance and training for internal staff on what to do when discriminatory requests are received;

### Example: Discussions with Business Partners

Some E&R agencies have begun tracking the linkages between unethically recruited workers, or poor treatment by client companies or user enterprises of workers who are recruited or supplied by E&R agencies, and lower levels of worker morale and productivity. In discussions with their business partners they are making the case that the benefits of ethical recruitment and employment processes – "delivering the right candidate at the right time at the right price" – include the following:

- ▶ Workers with high morale are more productive, leading to lower payroll and associated costs by avoiding fast turnover;
- ▶ High morale leads to greater continuity, both in terms of reduced sickness rates and greater time in the same job, which in turn reduces the costs of needing to re-train workers;
- ▶ Workers who are appropriately trained and skilled for the job are capable of producing higher quality outputs.

One E&R agency, working in partnership with a foundation, will conduct a pilot project in the construction sector in the Gulf region with the aim of demonstrating that a workforce that is ethically recruited, appropriately trained and professionally managed is more productive than a workforce that is recruited based on a vulnerability or willingness to enter into debt bondage.

### Resources: Non-discrimination and Diversity

- ▶ ILO, [Equality at Work: The Continuing Challenge](#)
- ▶ ILO, [Global Business and Disability Network](#)
- ▶ European Commission, [networks of experts on anti-discrimination](#)
- ▶ European Commission, [material on the business case for diversity](#)
- ▶ European Network Against Racism, [Equal@Work initiative for businesses](#)
- ▶ Business in the Community, [Opportunity Now on combating gender discrimination](#)
- ▶ The National Human Rights Institution in the relevant country
- ▶ UN Global Compact, [Women's Empowerment Principles](#)
- ▶ ILO Convention 181 on Private Employment Agencies and, in the EU, the Temporary Agency Work Directive

### Example: Joint Pledges with Government on Non-discrimination

A national association signed a pledge with that state's public employment agency committing both parties to work together to support improved practices on diversity within the sector. The pledge highlights the importance for employers of having a mixture of backgrounds, cultures, approaches and thinking in their workforce. It provides a model policy commitment that E&R agencies can sign up to and undertake to review all aspects of the recruitment and employment process, actively seek to identify and promote diverse candidate pools, and work with other actors to challenge discrimination wherever it occurs.

- Establishing escalation pathways so that requests are flagged by sales staff with someone more senior, so that there are at least “two pairs of eyes” on any decision to proceed to contract;
- Discussing the issue wherever possible with the user enterprise/client and sharing evidence of the benefits of non-discrimination and diversity with the company (for resources on this see the Box in [Section III-D](#));
- Pointing to relevant principles within the industry or requirements imposed by other user enterprises or government clients to support an argument that the agency has to adhere to them throughout its operations;
- Being willing to refuse contracts with particular user enterprises/clients where they insist on requests that are clearly discriminatory and put the E&R agency at risk of contributing to severe negative human rights impacts;
- Sharing anonymised information about repeat types of discriminatory requests or emerging issues (e.g., due to changes in national law or practice) with peer companies and discussing appropriate responses, including through national industry and employers' associations.

It is important that E&R agencies keep thorough records of such requests and the company's responses to them as part of their broader human rights due diligence tracking efforts. Some larger agencies have disclosed appropriately anonymised information about the requests they receive and their approaches to handling them. These issues are discussed further in [Sections IV](#) below.

- **Leverage with governments:** In some cases, E&R agencies will contract directly with state agencies for the recruitment or supply of workers (typically for clerical roles or guest-worker programs). These contracts should reflect the agency's responsibility to respect human rights.

Where an E&R agency seeks to use its leverage to lobby a government on policy or regulatory measures, it should ensure that this:

- Is consistent with the company's own responsibility to respect human rights;
- Would not, in practice, undermine the state's duty to protect human rights (meaning its obligations to protect individuals from business-related human rights harms through effective policies, legislation, regulations and adjudication).

Where governments are unwilling to include human rights provisions in regulatory schemes for migrant workers, and where other legal protections are weak, E&R agencies need to look for opportunities to continue to engage with the government on these issues. E&R agencies working in the same country may be able to engage the government collectively in discussions on relevant human rights risks, as companies in other sectors (such as oil and gas) have successfully done, including with the help of other stakeholders.

- **Leverage with other E&R agencies:** Approaches that can help an E&R agency generate leverage where it partners with another agency to provide recruitment and employment services can include:
  - Inserting language into contracts that requires compliance with the agency's own policy commitment, or other principles that align with internationally-recognised human rights;

- Committing to increased prices with the partner agency and/or sustained/increased future business in recognition of good human rights performance;
  - Helping the partner agency develop its own knowledge and systems to ensure respect for human rights, for example, where an E&R agency contracts out the recruitment process, by accompanying the partner agency through the process (as user enterprises are increasingly doing with E&R agencies);
  - Supporting the partner agency with metrics that can help them both recognise and enhance the correlation between improved human rights practices and other business benefits, such as increased productivity and quality, including in their own interactions with client companies and user enterprises;
  - Providing feedback and mentoring when problems are initially identified, rather than simply “black-listing” the relevant partner agency;
  - Making clear, if practices do not change, what the consequences may be, including termination of the relationship;
  - Where necessary, reducing the number of partner agencies so that the E&R agency has enhanced oversight of (and accountability for) the entire recruitment and employment services process.
- **Collaborative approaches to generating leverage:** Working together with others (e.g., peer companies, trade unions, industry and employers’ associations, government, and civil society and/or international organisations) can be an important means for E&R agencies of generating leverage to address some of the most endemic human rights challenges in the recruitment and employment process, such as denial of freedom of association and collective bargaining rights, pervasive discrimination, forced labour and trafficking (see Box in Section II-C).

Such approaches can include supporting the establishment of a local E&R agency industry association where one does not exist, or where that is not possible, building looser, local coalitions or networks with other E&R agencies that are also seeking to respect human rights in their operations.



## Acting in High-Risk Contexts

### Key Points for Implementation

- ▶ The responsibilities of companies with regard to human rights do not increase in high risk contexts, but the challenges of fully meeting those responsibilities often do.
- ▶ Home states have a particularly important role to play in supporting companies operating in situations of heightened risk to human rights, including by providing adequate assistance to their efforts to assess and address these heightened risks.
- ▶ Companies should pay particular attention to any risk of causing or contributing to gross human rights abuses, which may also have legal implications for the company.

### Possible Approaches

- **Operating where governments systematically fail to protect human rights:** Under the Guiding Principles, companies are expected, wherever possible, to respect internationally recognised human rights as well as comply with national law. Where national law is silent, or weak, there is no reason for companies not to operate to the higher standard. For example, if an E&R agency routinely prohibits the charging of any fees for the recruitment process to workers, but the law in one country allows this, the agency should continue nonetheless to implement its general approach.

Where national law and human rights conflict, E&R agencies should respect the principles of internationally recognised human rights to the greatest extent possible in the circumstances. They should also be prepared to explain their efforts to do so. Where there appears to be such a conflict, an E&R agency's assessment processes should identify this risk. The agency should then actively explore the extent of the conflict, for example by:

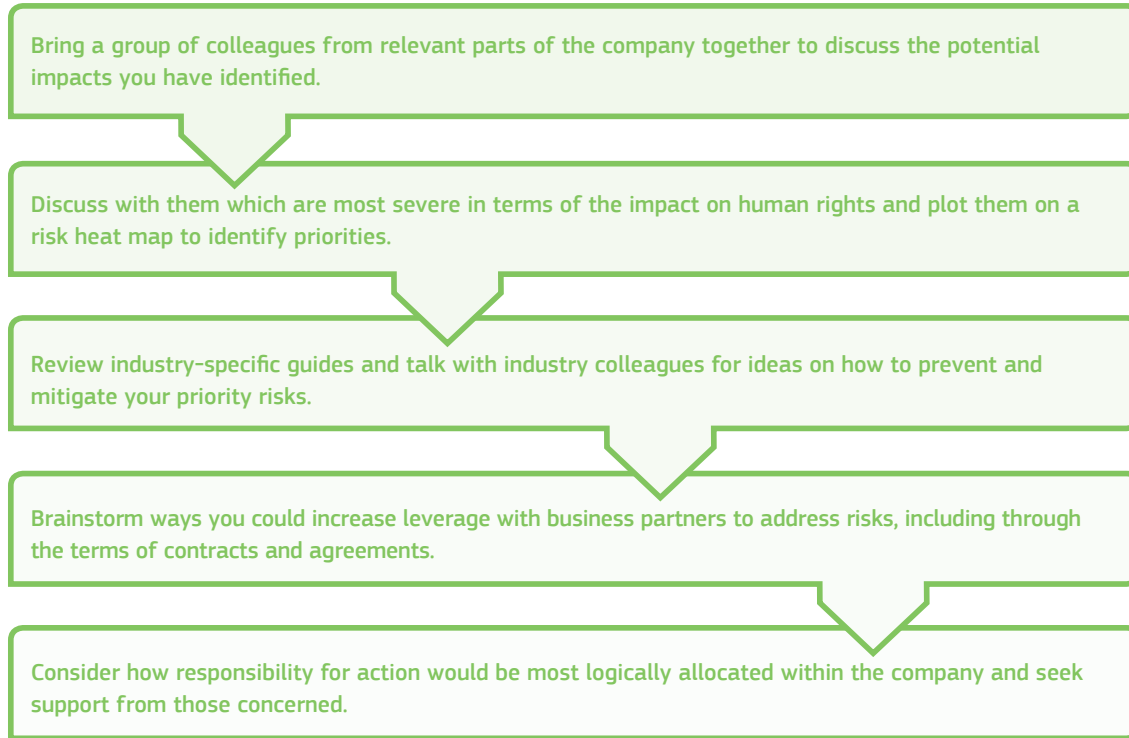
- Seeking clarification from the relevant government ministry or agency;
- Challenging the relevant provision where that is feasible, for example through an industry association;
- Learning from what peer companies have done.

As E&R agencies consider how they might best honour the principles underlying internationally-recognised human rights in such situations, it will often be helpful to discuss the challenges with external experts, and where possible with workers or their representatives, to gain their perspectives on any proposed approaches. E&R agencies should consider how transparent they can be with workers, business partners and others about the extent of the conflict, and the company's approaches to addressing the challenges it faces. For more on communicating, see [Section V](#) below.

- **Preparing for dilemma situations:** The more an E&R agency has prepared staff for dilemmas through training, scenarios, “lessons learned” exercises and similar approaches, the better prepared it will be to respond to challenging situations. It could:
  - Educate key branch staff about ways in which local laws may be used selectively – or not respected in practice – that could undermine respect for human rights;
  - Back this up with senior-level engagement when a particular dilemma situation arises, for example when discriminatory requests are made by client companies or user enterprises;
  - Establish good channels of communication with the agency's home state government (where that applies) and confirm the extent of any diplomatic support available if the situation deteriorates and workers may be put at risk;
  - Work collaboratively with other E&R agencies, industry associations and where relevant with trade unions to develop joint approaches.
- **Export Processing Zones (“EPZs”):** Experience shows that in EPZs there can often be a lack of enforcement of standards protecting workers' human rights and/or deliberate signalling by the government that lower standards will be tolerated. This can lead to pervasive company practices that fall short of minimum national, let alone international, standards on freedom of association and collective bargaining (among other human rights). This creates acute challenges for E&R agencies that provide services to client companies or user enterprises in EPZs. In such situations, collaborative efforts at the regional or national levels among E&R agencies and clients/user enterprises will be particularly important, including direct engagement with the government or local authorities to enhance both standards and/or their enforcement. (For one example, see the [Protocol on Freedom of Association in Indonesia](#).)

## Where to Start

For companies that are just starting to focus on integrating and acting, the following are some preliminary steps to consider:



## Questions to Ask

The following questions correspond to sub-sections A, B, C, D and E above. They should help test the extent to which the company's processes to integrate and act on the results of its assessments are consistent with the Guiding Principles:

<b>III-A</b>	<b>Building a Systematic Approach to Integrating and Acting</b> <ul style="list-style-type: none"><li>▶ How do we involve those internal staff whose work relates to our potential impacts in finding ways to address them?</li><li>▶ Are there ways in which we can help share learning about effective options for preventing and mitigating impacts within the company?</li></ul>
<b>III-B</b>	<b>Prioritising Impacts for Action</b> <ul style="list-style-type: none"><li>▶ Do our existing processes prioritise which human rights impacts we address first based on their severity? If not, how could we adjust them to do so?</li><li>▶ How do we take account of how the local operating context or specific business relationships may increase the severity or likelihood of a potential impact?</li></ul>
<b>III-C</b>	<b>Identifying Options to Prevent or Mitigate Potential Impacts</b> <ul style="list-style-type: none"><li>▶ How do we identify the most appropriate options for addressing impacts we may cause or contribute to?</li><li>▶ How do we take account of impacts that may be linked to our services, but without any contribution on our part, and identify ways to reduce these risks?</li></ul>
<b>III-D</b>	<b>Creating and Using Leverage in Business Relationships</b> <ul style="list-style-type: none"><li>▶ Have we thought through all our potential forms of leverage with business partners?</li><li>▶ What processes do we have for building leverage into our business relationships from the earliest stages?</li><li>▶ How do we know that our systems for responding to user enterprise and client company requests are robust?</li><li>▶ How do we build and use leverage in engaging with government?</li><li>▶ How do we build and use leverage when we partner with other E&amp;R agencies, particularly in international recruitment processes?</li><li>▶ Is there more we could do to generate leverage in order to reduce the risk of negative human rights impacts being linked to our services? How can we learn from peers and stakeholders about the options that may exist?</li></ul>
<b>III-E</b>	<b>Acting in High-Risk Contexts</b> <ul style="list-style-type: none"><li>▶ Do internal staff understand the need to try to honour the principles of internationally-recognised human rights even where they appear to conflict with national law? How do we manage this in practice?</li><li>▶ What additional steps do we take in contexts where governments systematically fail to protect human rights to address the increased risks of involvement with human rights impacts?</li><li>▶ How do we prepare internal staff for handling dilemma situations and internalise any learning?</li></ul>

# Tracking Performance

## What do the UN Guiding Principles Expect?

- ▶ Companies need to track their responses to actual and potential human rights impacts to evaluate how effectively they are being addressed.
- ▶ Tracking should be based on appropriate qualitative and quantitative indicators and draw on internal and external feedback, including from affected stakeholders.

## Why is this Important?

- Tracking how well the company is managing its human rights risks is the only way the company can really know it is respecting human rights in practice.
- Tracking is a crucial dimension of continuous improvement – it helps the company identify trends and patterns; it highlights recurring problems that may require more systemic changes to policies or processes, as well as good practices that can be shared across the company.
- Tracking is also essential for the company to be able to communicate accurately to all its stakeholders about what it is doing to meet its responsibility to respect human rights.

## What are the Steps Involved?



### Key Points for Implementation

- ▶ Processes for tracking can be designed just for human rights, or can be integrated into the company's processes and systems for tracking other issues.
- ▶ Tracking processes should draw on relevant internal and external sources in order to build as accurate a picture as possible; they should include both quantitative and qualitative indicators.

### Possible Approaches

- **Benefiting from the company's other tracking systems:** It may be helpful for E&R agencies to learn from or build upon any existing systems that they have for tracking performance in areas related to human rights. Examples include:
  - Health and safety systems for internal staff;
  - Systems to track requests from client companies and user enterprises;
  - Internal controls or audit processes (such as spot checks on branches),
  - Social dialogue processes;
  - Reviews of internal whistle-blowing systems.

Where an E&R agency is placing agency workers with a user enterprise, it will be in a position to directly control and monitor the payment of salaries and benefits to those workers. But the worker will be under the supervision of the user enterprise in all other respects, making tracking more challenging. Where the agency has recruited direct hire employees for a client company, tracking will require particular attention. Approaches to tracking impacts involved in the recruitment and placement of workers are discussed in [Section IV-D](#) below.

Some of these processes or systems will already track how the E&R agency manages certain human rights risks. Similarly, agencies may be tracking human rights issues as part of their compliance with regulations in their home state or operating contexts, with the requirements of stock exchanges, or with reporting standards they have chosen to follow (such as those of the Global Reporting Initiative, discussed below in [Section V-C](#)). The company could map the issues being tracked against its leading human rights risks to see whether and where there are gaps that need to be filled.

- **Designing systems to encourage company-wide engagement:** Tracking systems can be a tool that encourages other individuals or departments/functions to engage actively in responding to identified impacts. For example a tracking system might automatically require that an individual or department/function be given responsibility for investigating an impact, create automatic deadlines for a response or update, and elevate the issue to senior management if deadlines are missed. This can help stimulate active engagement from those concerned.

Systematising tracking in this way can help drive home the relevance of human rights issues for the whole company. It can encourage staff to think preventatively and not just in terms of responding when issues arise.

- **Tracking at branch and corporate/head office-levels:** Much of the information for tracking an E&R agency's human rights performance will be at the branch level. For larger agencies, information may also come through engagement at the corporate level with international NGOs or global or regional trade unions. E&R agencies will want to ensure that this information is brought together and evaluated in order to have an overview of how the company is responding to its human rights impacts.

- **Conducting root cause analysis:** Where a severe human rights impact has occurred, or lesser impacts occur repeatedly, E&R agencies should consider a deeper analysis of the underlying or “root causes” of the incident. Initial impressions may suggest that the company’s own actions or decisions had nothing to do with the impacts, but in some cases a deeper analysis might reveal that it did in fact play a role, and show how it could help prevent the same thing from recurring.
- **Linking human rights performance data to staff performance assessments:** Good human rights performance data can help drive continuous improvement within an E&R agency. In larger companies, this may be most effective where that data is factored into performance assessments for functions/departments as well as individual staff, across all the parts of the business that influence human rights risks. For example:
  - The company might require a country-level manager to sign-off on an annual review that includes human rights performance;
  - If an investigation shows that the actions of certain internal staff contributed to a severe human rights impact, this could lead to an appropriate sanction, whether financial or non-financial;
  - Where actions by internal staff help prevent a severe human rights impact, this could be the subject of a financial or non-financial reward, demonstrating that the company values attention to human rights issues.

## IV B Developing Indicators

### Key Points for Implementation

- ▶ Quantitative indicators offer precision and can often fit more easily with existing systems for tracking company performance.
- ▶ However, because respect for human rights is about impacts on people, qualitative indicators will also be important. This includes feedback from potentially affected stakeholders wherever possible.

### Possible Approaches

- **Sources of inspiration for indicators:** Indicators need to make sense in the local contexts where E&R agencies are operating. Useful sources can include:
  - Identifiable trends or patterns, such as repeat types of incidents. For larger E&R agencies, these might be in one market, suggesting local lessons, or across a number of markets, offering lessons for the company as a whole;
  - Feedback from local branch staff, who may see and hear things that management at the corporate/head office level cannot;
  - Feedback from affected stakeholders, particularly workers (including through legitimate trade unions or worker representatives), which can help the company understand how it is perceived;
  - The identification of differential impacts on women and men, for example with regard to the risks of gender-based harassment and sexual violence that women domestic workers face, or on vulnerable or marginalised individuals or groups.
- **Indicators for recruitment-related impacts:** A range of tracking tools exist in relation to recruitment practices targeted at user enterprises/clients. However, a number of the questions and indicators contained in them will be of direct relevance to E&R agencies providing recruitment services as well. In addition, efforts to develop indicators on forced labour, including identification of high-risk contexts (such as recruitment

### Resources on Indicators

To date there are no publicly-available indicators that fully reflect the UN Guiding Principles. Existing resources that may be of relevance to the sector include:

- ▶ [Global Reporting Initiative, G4 Sustainability Reporting Guidelines](#)
- ▶ [Fair Labor Association, Workplace Code of Conduct and Principles of Fair Labour and Responsible Sourcing](#)
- ▶ [Ethical Trading Initiative Base Code](#)

Resources that may be helpful for E&R agencies seeking to track impacts arising from international recruitment include:

- ▶ [Verité, Fair Hiring Toolkit, For Suppliers: Managing Labor Brokers and Monitoring for Ethical Recruitment and Hiring, Tool 2: Monitoring the Performance of Labor Brokers](#)
- ▶ [ILO, Hard to See, Harder to Count: Survey Guidelines to Estimate Forced Labour of Adults and Children](#)
- ▶ [Verité, Research On Indicators Of Forced Labour: Successes, Challenges and Reflections on Future Engagement](#)

of migrant workers in low-wage sectors, or from countries with known human trafficking risks), will also be relevant to E&R agencies' efforts to develop effective tracking systems. See further the Resources Box above.

- **Balancing quantitative and qualitative indicators:** Good quantitative indicators can be useful in conveying concisely how well a company is managing human rights risks. These might include information about productivity, worker retention, absenteeism and so on.

However, qualitative indicators will often be essential in helping an E&R agency interpret quantitative data on human rights performance. For example, a lack of trade unions at a user enterprise may be due to workers choosing not to unionise or it may be due to pervasive fear (especially among potentially vulnerable workers), negatively impacting on freedom of association. In the context of direct hire employees of client companies, it will be important to assess not only retention rates, but the satisfaction levels of both the worker and the client company with the situation.

- **Balancing outcome-focused and process-focused indicators:** Many indicators will look at incidents or impacts that have already occurred. These will certainly be relevant to tracking performance. However, process indicators are also important in interpreting data. For example, an indicator that shows worker satisfaction is better understood when reviewed against a process indicator that shows how worker consultation is conducted.
- **Indicators for training:** Many E&R agencies place an emphasis on training staff in human rights compliance, particularly in the area of non-discrimination. It may therefore be valuable to develop measures that test the effectiveness of training, beyond simply tracking the number of staff trained. This might focus on assessing how well participants understand what they learned and how far they put the learning into practice in their work. This could be assessed, for example, using baseline surveys pre and post-training, and at a follow-up point some months later. Some E&R agencies also use fake candidates or client company requests to test the effectiveness of their internal staff training on non-discrimination (see further [Section IV-D](#) below).

## IV C Incorporating Stakeholder Perspectives

### Key Points for Implementation

- ▶ External perspectives on the company's performance can provide important verification of its own evaluation, and may identify indicators it would otherwise miss.
- ▶ The perspectives of potentially affected stakeholders are particularly important for understanding how well the company is managing the risks of impacting their rights.

### Possible Approaches

- **Involving stakeholders:** There will always be subjective elements to evaluating how well a company is meeting its responsibility to respect human rights in practice. Involving stakeholders directly in tracking processes

can test the company's assumptions on how well it is doing, and lend credibility to the conclusions reached. E&R agencies should consider a number of possible approaches, including:

- Working with trade unions locally or at the global level, and with civil society organisations, to monitor respect for workers' human rights in user enterprises/client companies, especially in high-risk sectors;
- Where there is a history of distrust between the E&R agency and workers, identifying an individual or organisation that all parties will trust to provide accurate assessments of the company's efforts to address its impacts;
- For larger E&R agencies, forming a national or international advisory panel consisting of experts and civil society representatives to provide periodic, formal reviews of performance. These can also incorporate feedback from affected stakeholders.

Many E&R agencies rely on workplace satisfaction surveys for information about impacts on affected stakeholders. Such surveys need to cover all relevant human rights issues that workers may face if they are going to contribute to an agency's human rights due diligence tracking processes. Such surveys can be useful in identifying broad trends, but are less well-suited to picking up individual concerns unless they are carefully tailored. However, there are some promising approaches, such as the Resource Box on in this section.

- **The role of operational-level grievance mechanisms in tracking:** Grievance mechanisms provide an important channel for affected stakeholders to express any concerns about impacts and how they are being addressed. The company's human rights tracking processes will benefit from integrating this information, while respecting confidentiality and taking steps to prevent retaliation. As always, such mechanisms must not undermine the role of legitimate trade unions. [Section VI](#) discusses grievance mechanisms in detail.

## IV D Tracking through Business Relationships

### Key Points for Implementation

- ▶ When a company's business partners see that it follows up on their human rights performance, this makes clear that the terms of their contracts or codes are not just "lip service" but an important part of how the company does business.

### Possible Approaches

- **The role of contracts:** Contracts can play a critical role in putting in place a system to monitor how business partners are managing the risks of human rights impacts. Agreements with client companies and user enterprises can incorporate monitoring provisions on designated topics, including human rights. Contracts with partner E&R agencies can provide for auditing or assessments of their compliance with internationally-recognised human rights. Once the E&R agency has this information, it can use it to seek any necessary improvements with business partners.

### Resources: Worker Impacts Survey

While designed for one national context, [Survey 2020](#) may be of use to E&R agencies looking for useful models. The anonymous survey is intended to help E&R agencies in implementing ethical recruitment. It can be conducted online, by phone or on paper. The 26 questions are based on the Ethical Trading Initiative Base Code, and allow for cross-industry benchmarking. They include questions about discrimination, harassment, and workers' perceptions of whether they feel fairly treated. An additional module can be added which is aimed at uncovering mistreatment of migrant workers through questions exploring accommodation arrangements, charging of fees and retention of identity documents.

### Example: Testing the Robustness of Internal Systems for Handling Requests

Several E&R agencies deploy "mystery guests" or "shoppers" as a means of testing the robustness of their client engagement processes, and the effectiveness of internal training in this area. These individuals act as a client company representative and make requests of sales staff. Alternatively, they may act as candidates and send in fake CVs for individuals with similar relevant experience and qualifications for a particular job but with different names, gender, ethnicity or nationality. The individual will then report back to the agency about sales staff members' responses. This can help test whether agency staff are complying with company policy on non-discrimination and where extra training may need to be implemented. They are also a means of checking that company approaches are capable of responding to the realities of the particular market or sector.

- **Tracking client company and user enterprise requests:** Rigorous systems are needed to track such requests, and how they are addressed, in part because of the potential human rights risks involved in discriminatory requests, discussed in [Section IV-A](#) above.

Elements of a robust internal approach include:

- Tracking the number of requests received, the identity and location of the requesting company, and the nature of the request, including any “informal” elements of the request;
- Tracking action taken in response to requests, including where requests were refused and the reasons why;
- Using fake clients or candidates to test the robustness of internal systems for handling such requests;
- Taking a monthly sample of decisions and reviewing them;
- Seeking to identify relevant, observable trends over time in requests, particularly where they raise concerns about discriminatory practices.

Such systems provide the foundation for the company to communicate appropriately on its efforts to manage human rights risks arising from such requests, including through publishing appropriately anonymised information on a regular basis. Communicating raises additional legal and human rights concerns of its own and is discussed in more detail in [Section V-B](#) below.

- **Tracking impacts on workers placed with user enterprises and client companies:** Responsible E&R agencies already employ a range of methods of tracking impacts on agency workers placed with user enterprises. Possible approaches include:

- Periodic check-ins through phone calls, or structured interviews, with agency workers;
- Placing supervisors on-site or seeking participation in worker-management committees at the user enterprise;
- Requiring reporting by the user enterprise to the E&R agency on any health and safety incidents and grievance mechanism logs;
- Auditing key records (such as worker time-sheets);
- Periodically inspecting workplaces;
- Providing a hotline for agency workers with capacity to follow-up on issues raised;
- Implementing periodic health checks for workers in physically risky environments (e.g., construction or domestic work, especially in the case of female workers who may be exposed to heightened risk of sexual violence).

Tracking may be more challenging for an E&R agency in the case of workers recruited as direct hire employees for client companies, but it is just as important in understanding whether the agency is meeting its responsibility to respect. Some of the above approaches may be feasible, such as periodic phone calls with workers, or a minimum of one in-person interview after the worker has commenced employment, particularly if they are discussed up-front and incorporated into the terms of the contract with the client company.

Some E&R agencies commit to identifying replacement candidates for a client company where a direct hire employee relationship is terminated early (whether by the client company or the employee). This provides an important opportunity for the E&R agency to investigate the reasons for ending the relationship, whether there were any negative human rights impacts on the employee, and the extent to which the client company may have caused or contributed to them.

- **Tracking in relation to migrant workers:** E&R agencies that recruit migrant workers as direct hire employees for client companies or place them as agency workers with user enterprises will need to track various additional issues. These can include:

- Confirming that contractual conditions were agreed at the point of departure and that they correlate with those at the workplace;

- Checking that identity documents have not been retained by any third party (whether another E&R agency, a travel or accommodation provider, or the employer in the destination state);
- Confirming that no fees have been charged for recruitment or employment services by any third party;
- Confirming that if fees have been charged for transport or accommodation, these are proportionate, have been fully documented in a contract and agreed to and understood by the worker;
- Investigating whether any psychological or physical violence has been exerted on the worker.

See [Section II-C](#) for more on these issues.

- **Responding to user enterprise and client companies' tracking systems:** Systems for monitoring and auditing contractors and suppliers are common in many sectors. They can provide useful and necessary "snap-shot" data about performance. However, they are also seen to have a number of limitations, including having a poor record in generating sustainable improvements across a range of human rights over time. There has therefore been a move among brand and retail companies towards more "partnership-based" and collaborative approaches to their contractors and suppliers. These complement, and may in some instances even replace, audits.

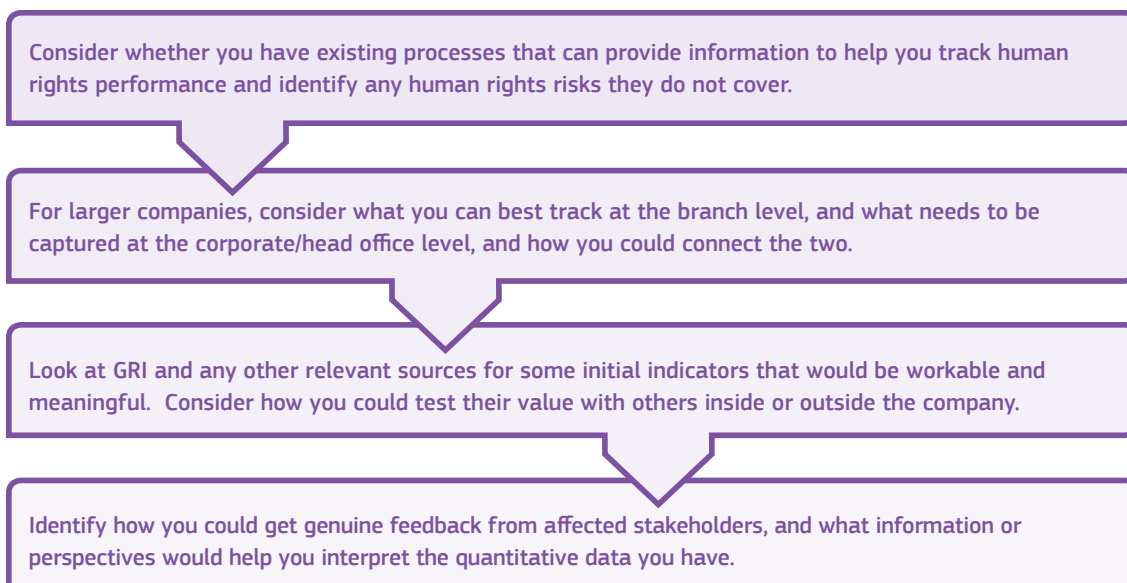
These developments will have increasing relevance for E&R agencies as client companies and user enterprises bring this approach to bear on the provision of recruitment and employment services. They will increasingly look to assess not only compliance with internationally-recognised human rights in terms of "outcomes", but also the quality of E&R agencies' management systems to identify and address their own human rights risks.

### Example: User Enterprise Tracking Systems

One apparel brand company has developed collaborative approaches that seek to incentivise and support its suppliers to meet the requirements of its Code of Practice, including in relation to ethical recruitment and employment. The brand company has an internal audit team that conducts audits in partnership with its suppliers, and where problems are found, invests resources in helping suppliers meet the requirements of the Code. Through these audits, the company aims to show suppliers that when they rely on E&R agencies that recruit individuals with appropriate skills, and then provide decent working conditions for them, there will be less unrest and frustration on the factory floor, as well as higher productivity rates. This can reduce worker turnover and therefore the suppliers' costs of recruitment and training. In one case, the brand company accompanied one of its suppliers to a migrant worker-origin country where, together with the relevant E&R agency, the parties conducted an ethical recruitment process in order to build the skills of all involved.

## Where to Start

For companies that are just starting to focus on tracking their human rights performance, the following are some preliminary steps to consider:



## Questions to Ask

The following questions correspond to sub-sections A, B, C and D above. They should help test the extent to which the company's tracking processes are consistent with the Guiding Principles:

### IV-A

#### Building a Systematic Approach to Tracking

- ▶ How do we ensure that our indicators of performance are adequate and complete and that we have a true picture of our performance on human rights over time?
- ▶ Do we involve key internal staff in tracking processes?
- ▶ How do we integrate lessons we learn from tracking our performance into our policies and processes as part of continuous improvement?

### IV-B

#### Developing Indicators

- ▶ What sources do we look to for indicators that will help build a true picture of our performance?
- ▶ How do we relate process-focused indicators to outcome-focused indicators, and qualitative indicators to quantitative indicators, to ensure we are interpreting data accurately?
- ▶ Do our indicators capture our responses to impacts on vulnerable or marginalised individuals or groups and, where possible, differential impacts on men and women?

### IV-C

#### Incorporating Stakeholder Perspectives

- ▶ How do we draw external perspectives, such as those of civil society organisations, into our evaluation and understanding of our human rights performance?
- ▶ How do we integrate workers' perspectives into our tracking processes?
- ▶ Where we have operational-level grievance mechanisms, how do we draw on the learning they offer as part of our wider efforts to track performance?

### IV-D

#### Tracking through Business Relationships

- ▶ To what extent are we able to build provisions for tracking into contracts with business partners?
- ▶ Are the systems we have in place to track requests from user enterprises and client companies effective?
- ▶ How do we address the particular challenges of tracking within client company relationships?
- ▶ Are we confident that our systems to capture impacts on workers we recruit or place are adequate?
- ▶ Are we prepared for the increasing demands of client companies and user enterprises' tracking systems with regard to our human rights performance?

# Communicating Performance

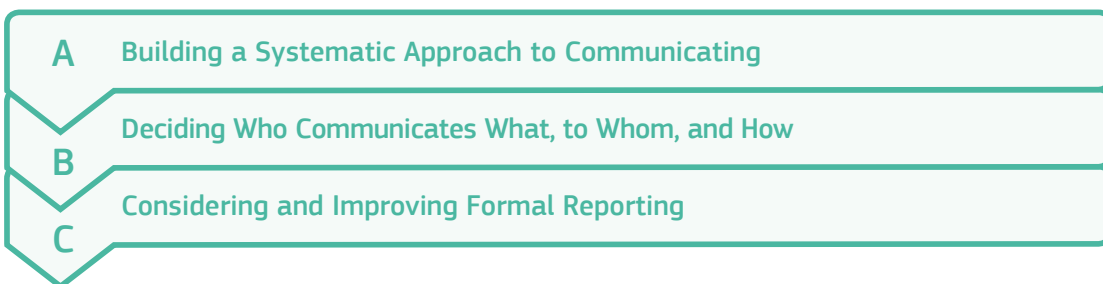
## What do the UN Guiding Principles Expect?

- ▶ Companies need to be prepared to communicate externally in order to account for how they address their impacts, particularly when concerns are raised by, or on behalf of, affected stakeholders.
- ▶ Companies that may have severe human rights impacts should report formally on how they address them.

## Why is this Important?

- It is by knowing and showing that they respect human rights in practice that E&R agencies build trust in their performance, demonstrate their reliability as partners, and gain a sustainable “social license to operate”. More widely, it is part of being accountable for how they do business, not least to those who may be impacted.
- Increasingly, shareholders and civil society stakeholders expect companies to provide information on their human rights performance; companies and governments pay attention to these issues when deciding who to do business with; and regulators and stock exchanges look for meaningful non-financial reporting.

## What are the Steps Involved?



## Building a Systematic Approach to Communicating

### Key Points for Implementation

- ▶ The purpose of communicating is to provide an appropriate level of transparency and accountability about how the company addresses its human rights impacts.
- ▶ To communicate effectively, a company needs to have the necessary information available – drawing on all the earlier phases of the due diligence process.

### Resources: Evolving Government Demands on User Enterprises/Clients

Various developments with relevance for E&RAs include:

- ▶ The California Transparency in Supply Chains Act of 2010 applies to all retailers and manufacturers with annual global revenues of more than USD\$100 million that do business in California. It requires these businesses to disclose – by publicly posting information on their websites – their efforts to eradicate slavery and human trafficking in their supply chains
- ▶ The Transparency in UK Company Supply Chains (Eradication of Slavery) Bill 2012-2013 in the UK has sought to introduce a similar requirement
- ▶ The 2012 US Presidential Executive Order – Strengthening Protections Against Trafficking in Persons in Federal Contracts prohibits US federal contractors and their sub-contractors from engaging in various unethical and fraudulent practices in recruitment and employment processes
- ▶ The creation in 2003 by the Brazilian Government of a “blacklist” or register of companies caught using slave labour bars those on the list from receiving public funds, and from concluding or having access to certain contracts for a 2 year period. It also creates the potential for private banks to refuse credit

## Possible Approaches

- **Adopting consistent approaches to communication:** Companies need to be prepared to respond to the concerns of affected stakeholders. It may be helpful for E&R agencies to define some general criteria for deciding what to communicate to whom, when and how. This can help establish a predictable and consistent approach and ensure that communication with key groups does not get forgotten in the midst of handling a particular issue.

It can also be useful to have clear criteria for any decision not to communicate in response to an allegation of a human rights impact. This can be a legitimate choice, but there remains the risk that a lack of communication will strengthen stakeholder views that the allegation is correct.

- **Balancing transparency and confidentiality:** It will generally be easier for E&R agencies to build trust in their efforts to address human rights impacts if they can be open about problems and show that they take responsibility when things go wrong. If a company makes broad assumptions about the need for confidentiality or the legal risks of disclosure, it may miss opportunities to disclose information that can further reinforce that trust. It may therefore be useful to set the default assumption in favour of disclosure, with a justification needed to withhold information, rather than the reverse.

A number of developments illustrate the growing movement towards more disclosure. For example:

- Some governments now require disclosure of the contracts between E&R agencies and agency workers (see ILO, [Guide to Private Employment Agencies](#)),
- Evolving regulatory disclosure requirements on user enterprises/clients with respect to human trafficking are likely to have implications for E&R agencies as well (as the Resources Box on this page indicates).
- Government procurement requirements are increasingly considering the risks of forced labour and human trafficking in their conditions for the award of contracts, including in jurisdictions like the US, Australia and Brazil.

These and other changes will have significant flow-on implications for E&R agencies as client companies and user enterprises seek to adapt to these requirements.

There may nevertheless be legitimate reasons for the non-disclosure of information by companies, notably:

- Potential risks to affected stakeholders or internal staff;
- The legitimate requirements of commercial confidentiality, which may include, for example:
  - > commercially-sensitive information during negotiations regarding a significant business transaction,
  - > information legally protected against disclosure to third parties,
  - > sensitive investigations and internal discussions regarding alleged involvement in human rights impacts (for example, in determining how to handle a discriminatory request).
- The confidentiality required by legitimate law enforcement operations.

There is often particular interest from stakeholders in a company's assessments of its human rights impacts. Equally, companies may be concerned about communicating the results of these assessments. This may be due to risks to individuals identified in the assessments; sensitive views expressed about other companies, governments or organisations; concerns about unknown future legal implications; or a combination of all three.

Where an E&R agency judges it difficult to share information from these assessments, there may be other ways it can provide stakeholders with some assurance. For example it might invite an independent third party to:

- Review the company's assessment processes and report publicly (or to a relevant multi-stakeholder initiative) on them;
- Do their own public assessment of the company's impacts, to which the company can respond.

## **V B** Deciding Who Communicates What, to Whom and How

### Key Points for Implementation

- ▶ Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholder and formal public reports.
- ▶ Communication needs to be appropriate to the company's impacts – in terms of its form, frequency, accessibility, and the adequacy of information provided.
- ▶ Formal reporting is necessary where risks of severe human rights impacts exist.

### Possible Approaches

- **Communicating general or specific information:** The focus of communicating is on explaining an E&R agency's approaches to addressing human rights impacts. This can include both its on-going responses to existing issues and its efforts to improve prevention. Different types of information are likely to be appropriate to different audiences, for example:
  - Communicating with affected stakeholders about a particular incident or risk and how the company is dealing with it. Timely and accurate information will be particularly important when an incident may have an immediate effect on workers or put them in danger (e.g, when conflict in a destination state makes it impossible for migrant workers to return home);
  - Communicating with broader stakeholder groups, such as international NGOs or trade unions as well as shareholders, about the company's response to a significant human rights issue;
  - Communicating with client companies and user enterprises wherever possible about the importance and nature of efforts to address negative impacts on workers, as well as any developments in regulatory requirements (see [Section III-D](#) above);
  - Communicating with shareholders and the wider public about the E&R agency's general policies and processes to respect human rights, illustrated by examples and relevant statistics and other indicators.
- **Communicating with workers:** Appropriate communication with workers will pose different challenges in different contexts, depending on the composition of the workforce (including any vulnerable or marginalised individuals or groups), the existence or not of legitimate trade unions, and the speed at which the workforce changes (worker turnover).

Social dialogue structures can provide an optimal means of communicating with a company's own workforce. It will be important for E&R agencies to support or build effective worker-management communication channels, through legitimate trade unions or worker representatives wherever possible.

In communicating with workers, E&R agencies need to take account of literacy, language and any cultural communication barriers (e.g., if verbal communication is seen as more respectful than written communication). Key information to share with workers highlighted in the [Ciett Code of Conduct](#) in Principles 3 and 5 includes:

- Details of working conditions;
- Nature of the work;
- Rates of pay and pay arrangements;
- Working hours;
- Any relevant health and safety risks.

It is important to confirm that workers understand the nature of work required and can perform it without injury to themselves or to others (see, e.g., American Staffing Association [Code of Ethics](#)).

- **Distinguishing between communication and consultation:** Communicating how a company addresses its human rights risks can be a one-way exercise, for example:
  - Providing an update on developments of interest to affected stakeholders;
  - Providing periodic statistics on the company's performance on health and safety;
  - Providing feedback on the outcomes achieved through an operational-level grievance mechanism.

This kind of communication is distinct from consultation with potentially affected stakeholders for the purposes of assessing or addressing impacts. Meaningful consultation requires two-way dialogue, with the company listening and responding to the concerns of potentially affected stakeholders, rather than just conveying information (see [Section II-E](#) above). It is also distinct from broader stakeholder engagement, designed to build relationships and mutual understanding, without any particular agenda for discussion.

- **Deciding who communicates:** The objectives of traditional public relations are different from the objectives of communicating how an E&R agency handles human rights risks. Communicating on human rights is first and foremost about accountability. It is often best to empower those who engage daily with workers or other affected stakeholders to take a role in communicating the company's efforts to address impacts. Controlling this information centrally can be damaging to these relationships. It can also lead to a perception that an E&R agency is inconsistent in its messages between different individuals or departments/functions, or between the branch and corporate/head office levels. This may undermine confidence in what the company is saying and its motives for saying it.
- **Fitting form to purpose:** The form of an E&R agency's communications should fit the purpose. For example:
  - If the purpose is to communicate with affected stakeholders, then an in-person meeting may be the most appropriate - or individualised communication where that is not feasible;
  - If the purpose is to explain to shareholders and others how the company is addressing a specific risk, or human rights risks generally, then communication via an annual general meeting, website updates or electronic mailing lists may all be relevant.



## Considering and Improving Formal Reporting

### Key Points for Implementation

- ▶ Formal reporting is likely to be appropriate for those E&R agencies where significant human rights risks can arise from their services and/or from their operating contexts.

### Possible Approaches

- **The case for formal reporting:** Formal reporting can provide a valuable opportunity to:
  - Engage various parts of the company in a review of its human rights performance;
  - Raise awareness of the need for clear data and analysis;
  - Present information in ways that gives both internal and external readers of the report a clear and meaningful picture.

In some countries, E&R agencies will be required to report on their non-financial performance either by law or by the terms of a stock exchange on which they are listed. The number of countries where this is the case is growing, and human rights are increasingly named as one of the areas that should be included in reports. Even where companies are not required to report formally on their non-financial performance, doing so can carry benefits, for example by enhancing investor confidence, strengthening relationships with key stakeholders and enhancing trust in the company's brand and in its services.

- **The form of formal reporting:** Formal reporting on human rights performance can be part of either a self-standing annual Sustainability/Corporate Responsibility Report or of an integrated report on financial and non-financial performance. Including financial and operating information in a non-financial report helps provide important business context for what is said about human rights. Including robust human rights metrics in a financial report can help demonstrate that respecting rights is seen as integral to the bottom line. Forms of formal reporting are evolving from traditional annual reports to include online updates and formats that allow readers to extract information of most interest to them.

Some E&R agencies use the [Global Reporting Initiative](#) (“GRI”) criteria and there is a range of reporting guidance related to temporary and migrant workers directed at user enterprises. However, there is a lack of well-developed sector-specific reporting guidance targeted at E&R agencies themselves, and significant room for improvement in the content, and number of companies engaged in, formal reporting in the sector.

- **Materiality in formal human rights reporting:** In the context of formal public reporting, the concept of “materiality” is used to identify issues that are significant enough to require disclosure. In financial reporting, “materiality” has traditionally been defined in terms of information that may affect the decisions of a “reasonable investor”. Definitions of materiality in the context of non-financial reporting – including the GRI's reporting

### Resources on Formal Reporting:

There is a lack of well-developed E&R agency-specific reporting guidance. A number of companies use the [Global Reporting Initiative](#) (GRI) criteria. GRI released the G4 version of its [Sustainability Reporting Guidelines](#) in 2013, which:

- ▶ Recognise the importance of due diligence and identify links to the UN Guiding Principles;
- ▶ Encompass impacts arising throughout a company's value chain;
- ▶ Encourage a focus on the materiality of information being reported.

Other resources that may be relevant include:

- ▶ [Verité, Fair Hiring Toolkit, For Brands: Reporting and Transparency](#)
- ▶ [Fair Labor Association, Workplace Code of Conduct and Principles of Fair Labour and Responsible Sourcing](#)
- ▶ [Ethical Trading Initiative Base Code](#)

### Example: Reporting on Discriminatory Requests

Over the course of one year, an E&R agency conducted a large-scale series of tests of the robustness of its internal systems for responding to discriminatory requests by client companies and user enterprises. The testing was carried out by an independent third party organisation using ILO-approved methodologies. Through this process, it identified weaknesses in its systems and options for strengthening them. The agency then publicly reported an appropriately anonymised version of the results of the testing process and the steps undertaken to improve its systems.

standards – incorporate the perspective of other stakeholders as well by requiring the disclosure of information that would substantively influence their decisions.

The Guiding Principles do not offer a particular definition of materiality in the context of human rights reporting. What matters is that it should be informed by both the [severity](#) of impacts (actual or potential) and the perspective of stakeholders, including potentially affected stakeholders.

- **Improving formal reporting:** There has been growing recognition of the need for better company reporting of non-financial risks. A report that tends to tell just “good news” is unlikely to be seen as credible. Stakeholders will welcome a more candid explanation that acknowledges the challenges involved and clearly explains the processes in place to address them. This might include reporting on issues of particular concern, or using case studies (anonymised if necessary to protect internal staff or other workers’ safety) to discuss company-wide or repeated challenges. Institutional investors increasingly seek such information in order to be able to meet their own responsibility to respect human rights.

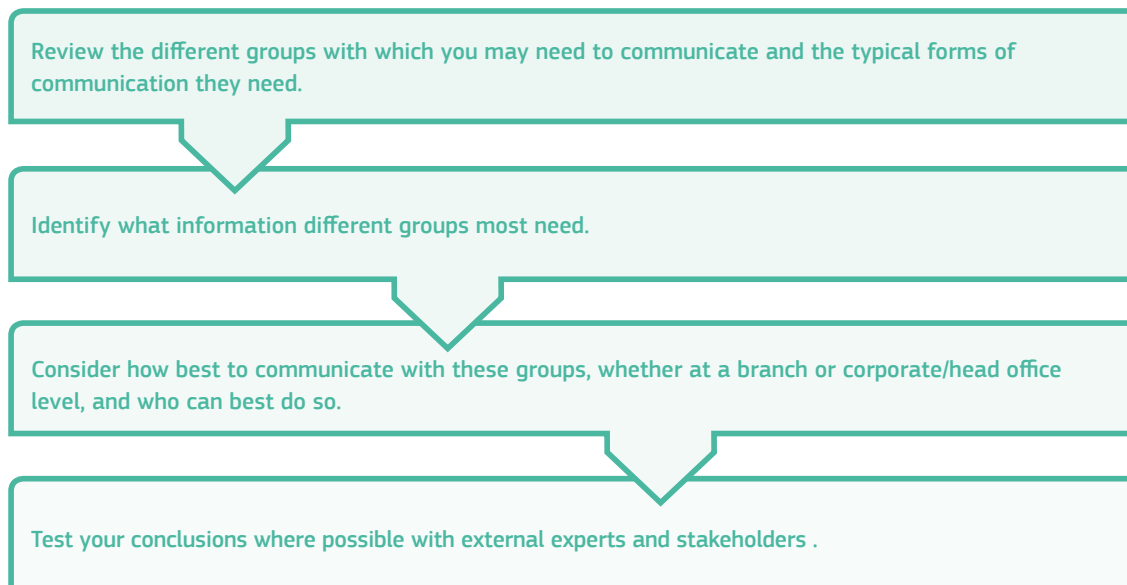
Reporting by companies on human rights often focuses largely on philanthropic or social investments. These investments can make valuable contributions to societies, however, they often relate to the promotion or fulfilment of human rights. They may not provide information about how the company is respecting human rights in its own activities and through its business relationships. Useful information in this respect might include:

- A description of the company’s key policies and processes for addressing human rights risks;
- Information on the agency’s different types of business relationship, and examples of how it reduces any risks that these lead to human rights impacts (for example, the kinds of situations in which an E&R agency would not engage with a user enterprise/client);
- A description of its grievance mechanisms and/or other remediation processes and statistics or appropriately anonymised examples of the outcomes they have achieved;
- Information on those risks the agency has identified as its leading human rights risks and specific information on policies or processes for addressing them;
- Information on severe impacts with which it has been involved, how they have been addressed and any lessons learned;
- Information on other issues identified as important by key stakeholders, whether affected stakeholders or broader civil society stakeholders and investors.

It will take time for any E&R agency to implement the Guiding Principles. Formal reporting should indicate both what has been achieved and any plans to improve or introduce new processes. An ability to compare the company’s reporting over time can also be useful (see [Section IV](#) for more on tracking). At the same time, reporting frameworks may need to evolve in response to new developments and approaches. Reporting against targets can help demonstrate a commitment to continuous improvement in respecting rights, while recognising that it can be a long-term process.

## Where to Start

For companies that are just starting to focus on communicating their human rights performance, the following are some preliminary steps to consider:



## Questions to Ask

The following questions correspond to sub-sections A, B and C above. They should help test the extent to which the company's communication processes are consistent with the Guiding Principles:

<p><b>V-A</b></p>	<p><b>Building a Systematic Approach to Communicating</b></p> <ul style="list-style-type: none"> <li>▶ How do we ensure a consistent approach to our communications with stakeholders – both affected stakeholders and others?</li> <li>▶ How do we decide where the boundaries of transparency and confidentiality should lie, and whether we can increase the amount and types of information we share?</li> <li>▶ Where confidentiality is necessary, what other means do we have of providing stakeholders with assurance about our processes and performance?</li> </ul>
<p><b>V-B</b></p>	<p><b>Deciding Who Communicates What, to Whom and How</b></p> <ul style="list-style-type: none"> <li>▶ How do we identify the appropriate ways to communicate with different stakeholder groups, and what factors do we take account of in doing so?</li> <li>▶ What information do we routinely communicate to workers? What are our processes for communicating with them on urgent issues?</li> <li>▶ How do we make sure that those who lead on communication with stakeholders have the right skill sets for doing so with the different groups concerned?</li> <li>▶ Do we test our approaches to communication with external stakeholders to ensure they are effective and appropriate? If not, how might we do so?</li> </ul>
<p><b>V-C</b></p>	<p><b>Considering and Improving Formal Reporting</b></p> <ul style="list-style-type: none"> <li>▶ What reasons might there be for considering some level of formal reporting on our human rights performance, in particular on our processes for addressing human rights risks?</li> <li>▶ If we report formally, how do we decide what information to include? Are there additional kinds of information that might be relevant and useful?</li> <li>▶ How can we build consistency and comparability in the information we report on over time?</li> </ul>

# Remediation and Operational-Level Grievance Mechanisms

## What do the UN Guiding Principles Expect?

- ▶ Where a company identifies that it has caused or contributed to negative human rights impacts, it should provide for or cooperate in their remediation through legitimate processes.
- ▶ Companies should establish or participate in effective operational-level grievance mechanisms for stakeholders who may be negatively impacted by their activities, in order that grievances may be addressed early and remediated directly.

## Why is this Important?

- Unless a company actively engages in the remediation of impacts it has caused or contributed to, it cannot fully meet its responsibility to respect human rights.
- Negative impacts may occur despite a company's best efforts, given the complexity of operations and business relationships involved.
- Companies need to be prepared for this situation so they can respond quickly and effectively. Strong remediation processes can help prevent impacts from increasing or conflicts from resulting.

## What are the Steps Involved?

**A** Building a Systematic Approach to Remediation

Mapping and Working with External Remediation Processes

**B**

Designing Effective Operational-Level Grievance Mechanisms

**C**

### Key Points for Implementation

- ▶ Having systems in place to enable remedy shows that the company is able to restore respect for human rights quickly and effectively, should impacts occur.
- ▶ One of the most systematic ways for a company to provide for the remediation of impacts is through an operational-level grievance mechanism.

### Possible Approaches

- **Defining “remediation” and “remedy”:** Remediation is the process of providing a remedy for a harm. Remedy can take a variety of different forms, including apologies, restitution, rehabilitation, financial and non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. While some forms of remedy are more likely in a judicial mechanism, many are possible through non-judicial processes as well.

For example, where a worker has been unfairly dismissed, an appropriate remedy may be reinstatement supported by appropriate compensation. In other cases, it may be harder to remediate negative impacts, for instance where physical or life-threatening harm is involved.

Companies should try to understand how those who have been impacted view different remedial options and which they consider to be most effective in their own circumstances. Whenever possible, it will be helpful to discuss this directly with complainants and explore available options. It can be important to ensure a complainant has her own sources of advice, to ensure she feels informed in reaching a view on remedy. In the case of workers, it is important that any such approaches do not undermine the role of legitimate trade unions.

Where no agreement can be found on an acceptable remedy, it will usually be most appropriate for a legitimate, independent mechanism to reach a final decision. This may be through the courts or an administrative proceeding or some other, mutually-agreed process.

- **The extent and limits of a company’s responsibility to remediate:** When an E&R agency has caused or contributed to a harm, it has a responsibility to cease its contribution and provide or contribute to a remedy. This can be through judicial processes or through non-judicial processes that are generally considered to be “legitimate”, including, for example, providing a fair and independent process, being accountable, and producing outcomes that are consistent with human rights. Remedy may also be provided through an “operational-level grievance mechanism” provided by the company, or which the company participates in (see [Section VI-C](#) below).

E&R agencies do not have to remediate:

- (a) Impacts they have neither caused nor contributed to: it is the responsibility of those who have contributed to the impacts to provide for or cooperate in their remediation. However, where the impacts are nevertheless linked to the agency’s operations, it has a responsibility to use its leverage to prevent or mitigate the risk of the impacts continuing or recurring (see [Section III-D](#) above);
- (b) Impacts they are alleged to have caused or contributed to, where the agency does not agree with that allegation. However, the company may need to investigate the issue to be sure of its position and should avoid obstructing legitimate processes to investigate and adjudicate the issue, through the courts or administrative proceedings.

This said, E&R agencies will want to pay careful attention to whether they might in some way have contributed to impacts by others in their value chain. This could include:

- Pressuring a partner E&R agency to identify candidates for recruitment on terms that incentivise inadequate due diligence or “short-cuts” by the partner agency;
- Agreeing to provide agency workers to a user enterprise that is intending to replace legally striking workers or to otherwise limit or undermine its own workers’ freedom of association.
- **The rationale for a systematic approach to remediation:** Much of an E&R agency’s efforts regarding human rights will focus on preventing negative impacts from happening. But even with the best policies and processes in place, things can go wrong, for instance because:
  - An individual makes a mistake;
  - Unforeseen issues arise for which the company is not prepared;
  - A client company or user enterprise abuses the human rights of workers that the E&R agency has recruited or placed in employment;
  - A partner E&R agency takes advantage of vulnerable or marginalised workers that it is recruiting;
  - Stakeholder expectations change and previously agreed approaches are challenged.

Past or current impacts may come to a company’s attention through its on-going assessment processes as part of its human rights due diligence (see [Section II](#)). They may also become apparent through other channels, such as:

- Stakeholder engagement processes;
- Observations of staff on the ground;
- Feedback from other groups or organisations working with affected stakeholders (eg NGOs, trade unions);
- Academic researchers;
- Media reports.

E&R agencies need to have clear processes in place to respond, often rapidly, to situations where human rights impacts occur or are alleged to have occurred. Otherwise, they may find themselves taking unconsidered, untested approaches to situations in which individuals’ safety may be at risk. This may result in negative human rights impacts being created or increased.

Remedies may be provided through various processes, including through negotiations with legitimate trade unions or other worker representatives; or through action plans to address problems found through review processes. Remedies may also be provided through operational-level grievance mechanisms.

- **The role of operational-level grievance mechanisms:** An operational-level grievance mechanism is a formalised means for affected stakeholders to raise concerns about any impact they believe a company has had on them in order to seek remedy. The mechanism should help to identify problems early, before they escalate, and provide solutions that include remedy for anyone impacted.

In the case of workers represented by trade unions, industrial relations processes involving management and those unions are themselves a form of operational-level grievance mechanism.

An effective operational-level grievance mechanism can support the due diligence process and help embed respect for human rights across the E&R agency, particularly by:

- Promoting internal discussions about impacts and how to address them – the process of designing the mechanism may already contribute to these discussions;
- Helping identify impacts and understand them from the perspective of workers or other affected stakeholders – this can directly contribute to the company’s impact assessment processes;
- Providing feedback on the perceived effectiveness of company responses to impacts – this can help the company track its performance;
- Demonstrating that the company takes the concerns of affected stakeholders seriously – this can help

build trust and reinforce relationships with affected stakeholders;

- Providing accountability for human rights impacts – this is critical to embedding the company’s commitment to respect human rights;
- Improving the quality of information available to management about impacts, grievances and client/user enterprise relationships – this can help secure management support for the mechanism;
- Illustrating where there may be weaknesses in company policies, procedures or practices – this can contribute to continuous improvement.

As always, companies should respect confidentiality and take steps to prevent retaliation against complainants.

## VI B Mapping and Working with External Remediation Processes

### Key Points for Implementation

- ▶ Remediation processes provided by the state or third-party institutions can provide alternative channels for affected stakeholders to raise complaints. Complainants should be free to choose which available channels they wish to use.
- ▶ Existing processes may also help shape an operational-level grievance mechanism. They may:
  - Illustrate local stakeholders’ preferred approaches to resolving grievances and defining remedy, which can inform the design of any operational-level mechanisms;
  - Offer a formal point of recourse if an operational-level mechanism cannot achieve an agreed outcome.

### Possible Approaches

- **Mapping the landscape of grievance mechanisms:** Operational-level grievance mechanisms are just one channel for addressing complaints that an E&R agency has caused or contributed to negative impacts on people. In most societies there is a range of other mechanisms available. These typically include administrative (such as labour inspectorates) and judicial mechanisms provided by the state. Additional mechanisms may be available where there is a:
  - National Ombudsman with a mandate that covers E&R agencies;
  - National hotline for registering complaints about the practices of E&R agencies;
  - Special body or bodies to address relevant human rights issues such as trafficking or child labour;
  - [National Human Rights Institution](#) that can handle complaints regarding alleged company impacts;
  - National Contact Point that deals with breaches of the [OECD Guidelines for Multinational Enterprises](#).

Where trade unions are not legitimate or do not or cannot represent the whole workforce, other channels may be available, for example through local labour offices or nationally-recognised labour dispute resolution organisations.

Mapping the landscape of grievance mechanisms includes understanding how effective those mechanisms are seen to be in practice (for example, if courts are generally viewed as corrupt). This helps a company understand how an operational-level grievance mechanism might be positioned to add value and avoid undermining existing state-based processes.

- **Interacting with state-based and other external grievance mechanisms:** Complainants may choose to seek remedy for an alleged impact through the court system or an administrative proceeding, rather than approaching the company directly. A company has the right to contest allegations it believes are unfounded or inaccurate. In contexts where the courts are seen as weak or even corrupt, it may be helpful for the company to try to demonstrate that it is not trying to influence the due legal process while defending its position.

E&R agencies may find it useful to build recourse to state-based grievance mechanisms into their own processes for handling grievances.

In some cases, an E&R agency may need to refer a complaint to the state authorities, in particular where it raises criminal issues or involves the state or its agents. However, care should be taken in how these complaints are reported, particularly where the rule of law is weak or corruption is strong, because of the risk that complainants may be exposed to retaliation.

- **Access to client company grievance mechanisms:** Where an E&R agency is involved in recruiting candidates as direct hire employees for a client company, the agency will want to confirm that the client company has an effective operational-level grievance mechanism in place, or provides access to such a mechanism for its workforce. The new direct hire employee should have access to the client company's grievance mechanism(s) once they commence employment, just like other members of its workforce. (This is distinct from the E&R agency's own responsibility to track impacts on such workers, discussed in [Section IV-D](#) above.)
- **Access to user enterprise grievance mechanisms:** Where E&R agencies are involved in placing agency workers with user enterprises, the employment relationship will be between the E&R agency and the worker, but the worker will typically be under the supervision of the user enterprise. The E&R agency needs to ensure that agency workers have access to an effective grievance mechanism through the agency itself. However, because the purpose of grievance mechanisms is to address problems as close to their source and as early as possible, E&R agencies will want to engage user enterprises about enabling access by agency workers to their own grievance mechanisms as well.

There may be structural barriers preventing an agency worker from accessing a user enterprise's grievance mechanism, for example because:

- It is only open to full-time or directly hired employees;
- The agency worker lacks awareness of available avenues for complaints (e.g., if they did not receive the same training as directly hired employees on the user enterprise's policies and processes);
- The worker may be concerned about being replaced if they are seen to "cause problems";
- There may be additional barriers for vulnerable or marginalised agency workers to do with language, culture, age and/or fear of jeopardising their immigration status in the case of migrant workers.

These barriers are likely to be compounded where legitimate trade unions or worker representatives are lacking.

Where access to the user enterprise's mechanism(s) does exist, it will be important for the E&R agency to establish a feedback loop about the kinds of complaints received by the user enterprise from the E&R agency's workers and how they are being addressed, in order to inform the E&R agency's own assessment of whether it is meeting its responsibility to respect human rights.

E&R agencies and user enterprises will need to agree between them on who has responsibility for informing agency workers about available grievance mechanisms, including those that are external to any company systems – such as industry mechanisms or mechanisms run by labour directorates or other relevant state agencies.

- **Grievance mechanisms in partner E&R agencies:** It can be productive for E&R agencies to encourage and even assist partner E&R agencies to develop their own grievance mechanisms for workers. This can help reduce the risks of human rights impacts in connection with an agency's own operations. Wherever possible, these mechanisms should involve legitimate trade unions or worker representatives. E&R agencies may still want to consider providing a "fall-back channel" for workers, in case issues are not adequately addressed by the partner agency (see [Section VI-C](#)).

- **Industry association mechanisms:** These can play an important role in supporting grievance mechanisms at the individual E&R agency level – and for smaller E&R agencies, they may be an appropriate channel for directly remedying grievances from the workers those agencies recruit or place.

Some mechanisms provide a complaints-handling function in relation to non-members as well as members. This may be run collaboratively by the association and a trade union or by a trade union alone. Such mechanisms can be a source of important information for relevant state agencies, by helping them understand where to best target their enforcement and other efforts.

Industry mechanisms can play a variety of other roles, for example by:

- Conducting active outreach to agency workers, and potentially to direct hire employees, to inform them about the availability of existing grievance mechanisms;
  - Reviewing the effectiveness of their E&R agency members’ operational-level grievance mechanisms as part of inspections, audits of or certification processes for members, and supporting members in improving such mechanisms;
  - Conducting investigations on their own initiative that may involve representatives from trade unions and relevant state agencies such as a labour inspectorate, a National Human Rights Institution or Ombudsman’s office;
  - Issuing penalties, ranging from written warnings to termination of membership, a request to the state to suspend the offending agency’s license, bringing a representative action (law suit) and/or providing remediation directly to the affected worker;
  - Broader awareness-raising with user enterprises and client companies about the importance of effective grievance mechanisms for workers.
- **Access to grievance mechanisms for migrant workers:** It is particularly important that origin and destination states provide effective grievance mechanisms that migrant workers can access, in line with their duty to protect. This should include appropriate protections for migrant workers who file complaints as well as encouraging migrant workers to use such mechanisms, given their fear that “complaining” may pose a threat to their employment and immigration status. Cooperation between E&R agencies, and between E&R agencies and relevant state authorities in the origin and destination states, will be important, particularly where serious abuses are alleged.

In destination states, relevant approaches can include:

- Nominating a state agency that is responsible for providing an accessible channel for migrant workers’ complaints (i.e., one that takes into account their hours of work, language, preferred means of communication and other relevant issues);
- Liaising with the embassies of migrant workers’ origin states and, for example, encouraging them to host “open houses” for migrant workers on a regular basis;
- Exploring ways of providing migrant workers (particularly those engaged in domestic work) with additional means of communication like mobile

### Resources: National Hotlines for Agency Workers

In one EU Member State, the industry association took a leading role in establishing a bipartite run foundation involving employers and trade unions. This foundation’s role includes supporting enforcement of the national sectoral collective bargaining agreement, providing information and reporting on implementation of the agreement. Advice and resources are available in a range of relevant languages online. The foundation takes action in response to complaints and can also conduct its own investigations. If the relevant E&R agency does not address the problem, the foundation will take legal action against the agency, including wage recovery proceedings where these have been withheld from workers. The foundation reports publicly on outcomes of court proceedings and investigations on its website.

phones, which can be pre-programmed to send an SMS message to the relevant state agency and/or a responsible NGO when problems arise;

- Engaging or supporting other organisations (e.g., cultural or religious groups) to conduct outreach to migrant worker communities;
- Working with origin states directly on bilateral arrangements regarding migrant workers, including on access to effective remedy by, for example, enforcing judgments in favour of migrant workers' rights in the origin state.

E&R agencies, along with client companies and user enterprises that rely on migrant workers, will want to proactively engage with relevant state actors to facilitate early and effective responses to migrant workers' concerns.

## VI C Designing Effective Operational-Level Grievance Mechanisms

### Key Points for Implementation

- ▶ The Guiding Principles state that operational-level grievance mechanisms should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on dialogue and engagement, and a source of continuous learning.
- ▶ While these criteria mostly relate to the quality of the processes they offer, they include an important requirement that outcomes should be consistent with internationally-recognised human rights.
- ▶ Operational-level grievance mechanisms should not preclude access to judicial or other state-based processes, or undermine the role of legitimate trade unions. They should always take steps to prevent retaliation against complainants.

### Possible Approaches

- **Building on existing company mechanisms:** An E&R agency may have separate grievance mechanisms for their internal staff and for agency workers they place in employment, or they may have a combined mechanism.

Whatever approach is adopted, grievance mechanisms need to fit an E&R agency's local operating context. It is therefore best to design them close to the level where they will operate wherever possible, and with input from the groups for whom they are intended.

Many E&R agencies will already have whistle-blower or anonymous hotline systems in place that may play an important role in providing avenues for individuals to raise human rights-related complaints. Some are more traditional in that they focus on receiving reports of breaches of the company's Code of Conduct, or of ethical misconduct; others are wider in scope, allowing for a range of complaints about workplace conditions.

- **Building internal support for an operational-level grievance mechanism:** It can be challenging to build internal understanding that complaints raised through an operational-level grievance mechanism should not be seen as a threat. It may be helpful to underline to internal staff the opportunities such mechanisms present for:
  - Receiving useful feedback on how the company is perceived;
  - Continuous improvement where complaints show there are weaknesses in policies, processes or practices;
  - Demonstrating that the company cares about the concerns of affected stakeholders and is committed to addressing them.

Where an E&R agency is designing a new mechanism, it can be useful to make this a collaborative exercise. Involving individuals from key branches or departments/functions across the company – including those whose actions may lead to complaints – can build support for the mechanism. Building in time for this internal engagement, as well as for engagement with affected stakeholders, can be important to the longer-term success of the mechanism.

Where an actual complaint arises, it is often appropriate to involve the branch or department/function whose actions are the subject of the complaint in its investigation, while ensuring that the overall process remains independent. Where it is possible to involve them also in identifying solutions, and “owning” their implementation, this may help contribute to future prevention. At other times, it may not be appropriate for the same individuals to be involved, for example where serious personal allegations are at issue, or where it may otherwise compromise a credible investigation of the complaint. They should nevertheless benefit from lessons learned, in order to prevent repetition.

- **Defining the scope of a mechanism:** It can be counterproductive to limit a grievance mechanism to complaints that name human rights issues or claim particular laws or standards have been breached. This risks missing impacts that could escalate over time into serious human rights risks or impacts. A grievance mechanism should be able to pick up a full range of concerns early enough to avoid their escalation and address underlying issues. For example, complaints about the poor quality of worker canteen food in a user enterprise factory may be a symptom of deeper worker concerns about poor treatment that are harder to articulate.

A mechanism should be able to exclude clearly vexatious complaints. However, it is risky to assume a complaint is vexatious without close attention and investigation. In some cases, complaints that appear vexatious may in fact reflect legitimate issues that the complainant was afraid or unable to raise directly.

Vulnerable or marginalised workers may find it particularly hard to raise complaints. It may be possible to identify specific ways in which they can raise concerns without increasing their vulnerability, including through legitimate trade unions or worker representatives speaking on their behalf. Wherever possible, it will be beneficial also to seek ways to gain their views directly.

- **Escalation of complaints:** An effective mechanism requires triggers for complaints to be escalated within the E&R agency, for example:
  - Where deadlines for responding to a complainant have not been met;
  - Where complaints raise potentially severe human rights impacts;
  - Where a complaint indicates possible criminal conduct;
  - Where a complaint implicates other companies or representatives of the state.

In the latter two instances, it will be important to report the matter to the relevant state authorities, taking into account the issues highlighted in [Section VI-B](#) above.

- **Designing an effective grievance mechanism for workers:** A poorly designed mechanism is often counter-productive: it can raise expectations among stakeholders without delivering on them, even increasing the sense

### Example: Grievance Mechanisms at Country and Corporate Levels

One E&R agency has established dedicated channels through which workers and other stakeholders can raise concerns, either through local reporting mechanisms in place at the country/subsidiary level or through the company’s central reporting procedure. The agency employs “Local Integrity Officers” in all country offices/subsidiaries. These may be internal staff members or an external party, as appropriate to the particular situation. The agency has a “Central Integrity Officer” who is appointed by the Board and is responsible for investigating allegations involving management at the country/subsidiary level. The Officer receives periodic reports from the Local Integrity Officers, and submits quarterly reports to the Board. All complaints are treated with appropriate confidentiality and with an assurance of non-retaliation against any employee filing a good faith complaint.

### Example: Grievance Mechanisms in Smaller E&R Agencies

All agency workers placed in user enterprises by one small E&R agency are regularly visited by the agency’s internal staff. Any worker who has a concern is encouraged to ask for a personal interview. All workers are advised at the point of recruitment – and consistently reminded through the course of their employment – that they can contact the agency head office directly with complaints and are supplied with email and phone contact details. All complaints are investigated and anonymity is respected in order to protect the worker.

### Criteria for Designing Effective Operational-Level Grievance Mechanisms

The Commentary to Guiding Principle 31 describes the key criteria for effective operational-level grievance mechanisms. They should be:

- (a) **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers;
- (c) **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) **Transparent:** keeping parties informed about progress, and providing sufficient information about the mechanism's performance to build confidence and meet any public interest at stake;
- (f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognised human rights;
- (g) **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- (h) **Based on engagement and dialogue:** consulting the stakeholder groups for whose use it is intended on its design and performance, and focusing on dialogue as the means to address and resolve grievances.

The UN OHCHR Interpretive Guide to the Corporate Responsibility to Respect Human Rights further explains these criteria. A report on four pilots conducted while the criteria were being developed illustrates their intent and implementation.

of grievance. It may also distort the company's assessments of how well it is managing human rights risk.

The most appropriate channels for addressing worker complaints are often through discussions between trade unions and the management of the E&R agency, or the client company or user enterprise concerned. Workers should not be discouraged from forming or joining trade unions for these and other purposes.

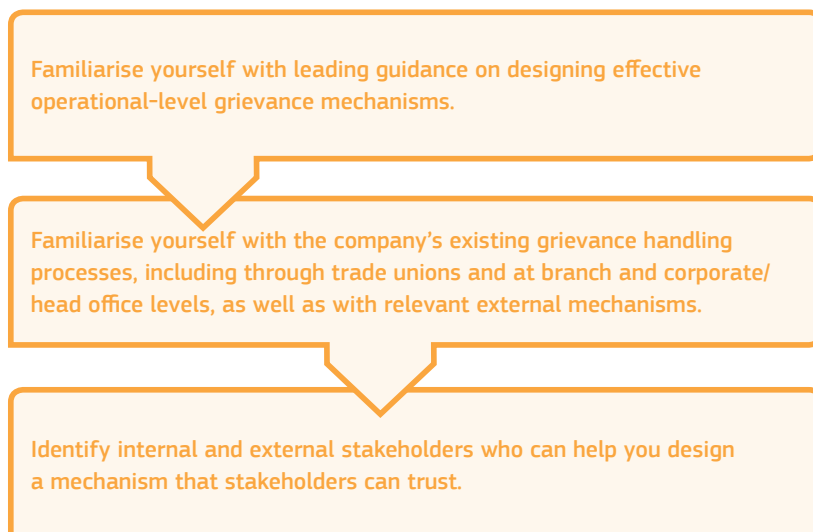
Relevant experience about implementing grievance mechanisms to address the concerns of workers includes:

- It can be beneficial to involve workers in the design, review or even joint oversight of the mechanism, particularly where trust in the company or the mechanism is low. This can help ensure that the individuals for whom the mechanism is intended are willing to use it.
- It is important to provide a range of access points, and to promote awareness of them. These may include anonymous complaints boxes or hotlines, email, trade union representatives, elected worker representatives, or a centralised counseling or ombudsman office within the E&R agency.
- It is just as important to ensure that there are effective processes for following up on complaints, not least when they come via hotlines or complaints boxes, including via face-to-face interviews where appropriate.
- Standardising procedures can contribute to a more rigorous and more manageable process, including by: acknowledging receipt of complaints, publicising criteria for accepting or rejecting complaints, providing indicative time frames and updates, and reporting externally on the mechanism.
- It can be helpful to engage internal and/or external experts in evaluating whether actual and potential outcomes are in line with internationally-recognised human rights in challenging cases.
- Training can help build the capacity of workers to use the mechanism, conducted wherever possible with trade unions and other local civil society actors.
- It is important to identify when complainants come from individuals or groups in a position of heightened vulnerability or marginalisation, and take this into account during the handling of their complaint and identifying appropriate remedies. For migrant workers, this means looking particularly at issues of language, culture, anonymity, and the fear of retaliation (e.g., as a result of being reported to the immigration authorities). For female migrant workers, it means considering not only these factors but additional sensitivities involved in handling complaints alleging sexual harassment or violence. Some companies have established migrant worker committees to help address these issues.
- Actively seeking feedback about the mechanism can support continuous learning, for example through satisfaction forms (reflecting views on both the outcome and the quality of the process), worker exit interviews or monthly meetings with management.
- Communicating about outcomes from a mechanism in an appropriate form (e.g., anonymised, aggregated data or case studies), can demonstrate the value of using it – both to workers and to management.

- **Grievances related to business partners:** Where an E&R agency has not contributed to a negative impact caused by one of its business partners, it may nevertheless play a range of roles in helping to seek remediation. For example, it could:
  - Raise the issue with the company concerned, request them to address it directly and confirm the outcome;
  - Support the company in its efforts to address the issue, helping build its capacity to do so where this is weak;
  - Pass the issue to appropriate authorities where it raises criminal concerns;
  - Check whether there are protections in place to prevent complainants from retaliation in each of these cases;
  - Help the company develop or improve its own grievance mechanism, including drawing on the lessons identified above in designing grievance mechanisms for workers.

## Where to Start

For companies that are just starting to focus on processes to remediate human rights impacts or to develop operational-level grievance mechanisms, the following are some preliminary steps to consider:



### Resources: Designing Operational-Level Grievance Mechanisms

For more about the UN Guiding Principles' effectiveness criteria, see:

- ▶ UN SRSG, Addendum to the UN Guiding Principles, [Piloting principles for effective company/stakeholder grievance mechanisms: A report of lessons learned](#), (undertaken by the CSR Initiative, Harvard Kennedy School)
- ▶ CSR Initiative, Harvard Kennedy School, [Rights-Compatible Grievance Mechanisms](#)
- ▶ CSR Europe, [Company Mechanisms for Addressing Human Rights Complaints \(draft version for consultation\)](#)

For general information about non-judicial dispute resolution, see: [ACCESS Facility](#)

## Questions to Ask

The following questions correspond to sub-sections A, B and C above. They should help test the extent to which the company's remediation processes, including operational-level grievance mechanisms, are consistent with the Guiding Principles:

### VI-A

#### Building a Systematic Approach to Remediation

- ▶ How do we build support across the company for operational-level grievance mechanisms?
- ▶ How do we track complaints and their outcomes to identify ways we can improve our policies and processes to prevent human rights impacts?
- ▶ How do we identify whether outcomes from remediation processes provide real "remedy" both in the eyes of the affected stakeholders and in line with internationally-recognised human rights?

### VI-B

#### Mapping and Working with External Remediation Mechanisms

- ▶ What is our understanding of the landscape of relevant external grievance mechanisms, both judicial and non-judicial, in the market(s) where we operate? Could we improve it?
- ▶ Do we engage constructively and appropriately with state-based grievance mechanisms, within our own rights to defend ourselves against allegations we consider inaccurate?
- ▶ Do we address access to effective operational-level grievance mechanisms at the earliest stages of our relationships with client companies?
- ▶ How do we ensure that agency workers we place with user enterprises have access to effective grievance mechanisms, and how do they relate to our own role in addressing complaints?

### VI-C

#### Designing Effective Operational-Level Grievance Mechanisms

- ▶ Are there existing mechanisms that we could build on in developing internal capacity to address human rights-related complaints from workers?
- ▶ How do we involve internal and any external stakeholders in the design or review of grievance mechanisms?
- ▶ How do we know our mechanisms are effective from the perspective of those for whose use they are intended? How do we test this with workers?
- ▶ How do we take into account the particular needs of potentially vulnerable workers?
- ▶ If grievances are not resolved through an operational-level mechanism, is it clear to all what the alternative channels are?

# Annexes

# Annex 1: Key Resources

*The resources below provide further information and approaches to addressing the issues covered in the Guide. The inclusion of guidance and tools in this Annex should not be taken to imply that they are necessarily fully consistent with the UN Guiding Principles.*

## Overarching Resources

### International and Regional Human Rights Standards and Instruments

#### Instruments Setting Out Internationally-Recognised Human Rights:

- ▶ UN, International Bill of Human Rights, comprised of:
  - The Universal Declaration on Human Rights: [www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx](http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx)
  - The International Covenant on Economic, Social and Cultural Rights: [www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx)
  - The International Covenant on Civil and Political Rights: [www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx)
- ▶ ILO, 1998 Declaration on Fundamental Principles and Rights at Work: [www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453911:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453911:NO)

#### International Labour Organization (ILO) Standards:

In addition to the Declaration on Fundamental Principles and Rights at Work above, these include:

- ▶ C029 – Forced Labour Convention, 1930 (No.29)
- ▶ C087 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- ▶ C097 – Migration for Employment Convention (Revised), 1949 (No. 97) and Recommendation No. 86
- ▶ C098 – Right to Organise and Collective Bargaining Convention, 1949 (No.98)
- ▶ C100 – Equal Remuneration Convention, 1951 (No.100)
- ▶ C105 – Abolition of Forced Labour Convention, 1957 (No.105)
- ▶ C111 – Discrimination (Employment and Occupation) Convention, 1958 (No.111)
- ▶ C138 – Minimum Age Convention, 1973 (No.138)
- ▶ C143 – Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Recommendation No. 151
- ▶ C181 – Private Employment Agencies Convention, 1997 (No. 181)
- ▶ C182 – Worst Forms of Child Labour Convention, 1999 (No.182)
- ▶ C189 – Domestic Workers Convention, 2011 (No. 189)
- ▶ Maritime Labour Convention (MLC), 2006

All are available at: [www.ilo.org/dyn/normlex/en/](http://www.ilo.org/dyn/normlex/en/)

#### Key International Human Rights Instruments Applying to Potentially Vulnerable or Marginalised Groups:

- ▶ The Convention on the Elimination of All Forms of Racial Discrimination
- ▶ The Convention on the Elimination of All Forms of Discrimination Against Women
- ▶ The Convention on the Rights of the Child
- ▶ The Convention on the Rights of Persons with Disabilities
- ▶ The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

All are available at: [www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx)

- ▶ The Declaration on the Rights of Indigenous Peoples: [www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx)
- ▶ The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/076/55/IMG/N9307655.pdf?OpenElement>

### Regional Human Rights Standards:

- ▶ African Charter on Human and Peoples' Rights: [www.achpr.org/instruments](http://www.achpr.org/instruments)
- ▶ American Convention on Human Rights: [www.cidh.oas.org/basicos/english/basic3.american%20convention.htm](http://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm)
- ▶ ASEAN Human Rights Declaration: [www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration](http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration)
- ▶ European Convention on Human Rights: [www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/](http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/)

## Other Relevant International and Regional Standards and Instruments

### Other Relevant International Standards:

- ▶ International Finance Corporation (IFC) Performance Standards, especially Performance Standard 2: [www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_handbook\\_pps](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps)
- ▶ ISO 26000 Guidance on Social Responsibility: [www.iso.org/iso/home/standards/iso26000.htm](http://www.iso.org/iso/home/standards/iso26000.htm)
- ▶ OECD Guidelines for Multinational Enterprises: [www.oecd.org/daf/inv/mne/2011update.htm](http://www.oecd.org/daf/inv/mne/2011update.htm)

### Other Relevant European Standards and Processes:

- ▶ Council of Europe Convention No 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data: <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>
- ▶ European Commission:
  - Sectoral Social Dialogue for Agency Work: <http://ec.europa.eu/social/main.jsp?catId=480&langId=en&intPageId=75>
  - Exchange Platform for organisations promoting or implementing Diversity Charters: [http://ec.europa.eu/justice/discrimination/diversity/diversity-charters/index\\_en.htm](http://ec.europa.eu/justice/discrimination/diversity/diversity-charters/index_en.htm)
- ▶ European Union (EU):
  - Charter of Fundamental Rights: [www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)
  - Employment Equality Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:NOT>
  - Posted Workers Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:EN:HTML>
  - Racial Equality Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:NOT>
  - Temporary Agency Work Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:327:0009:0014:EN:PDF>

## Key Resources on Business and Human Rights

### UN Guiding Principles and Implementation:

- ▶ United Nations (UN):
  - Protect, Respect and Remedy" Framework: [www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf](http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf)
  - Guiding Principles on Business and Human Rights: [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
  - Office of the High Commissioner for Human Rights (OHCHR), Interpretive Guide to the Corporate Responsibility to Respect Human Rights: [www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf](http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf)
  - Principles for Responsible Contracting: [www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf](http://www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf)
  - Working Group on Business and Human Rights: [www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx)
- ▶ European Commission, "Introductory guide to human rights for smaller businesses": [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm)

### Information Resources on Business and Human Rights

- ▶ Business and Human Rights Resource Centre: <http://business-humanrights.org>
- ▶ International Labour Organisation (ILO):

- Help Desk for business on international labour standards: [www.ilo.org/business](http://www.ilo.org/business)
- Normlex, for information on ILO standards, comments of the supervisory bodies and specific country profiles: [www.ilo.org/normlex](http://www.ilo.org/normlex)
- ▶ OHCHR, List of Business and Human Rights Tools: [www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx)

## Key Resources for Employment & Recruitment Agencies

### Relevant Associations and Initiatives for Employment & Recruitment Agencies:

- ▶ Ciett (International Confederation of Private Employment Agencies): [www.ciett.org](http://www.ciett.org)
- ▶ Commonwealth Teacher Recruitment Protocol: [www.thecommonwealth.org/shared\\_asp\\_files/GFSR.asp?NodeID=39311](http://www.thecommonwealth.org/shared_asp_files/GFSR.asp?NodeID=39311)
- ▶ Eurociett (European Confederation of Private Employment Agencies): [www.eurociett.eu](http://www.eurociett.eu)
- ▶ End Human Trafficking Now: [www.endhumantraffickingnow.com](http://www.endhumantraffickingnow.com)
- ▶ Global Business Coalition Against Trafficking: [www.gbcat.org](http://www.gbcat.org)
- ▶ UN Global Initiative to Fight Human Trafficking: [www.ungift.org](http://www.ungift.org)

### General Reports Relevant to Employment & Recruitment Agencies:

- ▶ Ciett, “The Agency Work Industry Around the World: Economic Report”: [www.ciett.org/fileadmin/templates/ciett/docs/Stats/Ciett\\_econ\\_report\\_2012\\_final.pdf](http://www.ciett.org/fileadmin/templates/ciett/docs/Stats/Ciett_econ_report_2012_final.pdf)
- ▶ Eurociett and UNI Global Union, “The Role of Temporary Agency Work and Labour Market Transitions in Europe”: [www.ciett.org/fileadmin/templates/eurociett/docs/Social\\_dialogue/Transitions\\_project/Report/2012.12.18\\_-\\_Executive\\_Summary.pdf](http://www.ciett.org/fileadmin/templates/eurociett/docs/Social_dialogue/Transitions_project/Report/2012.12.18_-_Executive_Summary.pdf)
- ▶ European Commission, Employment, Social Affairs & Inclusion, “Report of Expert Group: Transposition of Directive 2008/104/EC on Temporary Agency Work”: <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPagelId=207>
- ▶ European Foundation for the Improvement of Living and Working Conditions, “Temporary Agency Work and Collective Bargaining in the EU”: [www.ciett.org/fileadmin/templates/eurociett/docs/EIRO\\_Foundation\\_Report\\_on\\_TAW\\_Dec\\_08.pdf](http://www.ciett.org/fileadmin/templates/eurociett/docs/EIRO_Foundation_Report_on_TAW_Dec_08.pdf)
- ▶ ILO:
  - “Combating forced labour: A handbook for employers and business”: [www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS\\_101171/lang--en/index.htm](http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_101171/lang--en/index.htm)
  - “Decent Work for Domestic Workers: Convention 189 and Recommendation 201 at a Glance”: [www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_170438.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170438.pdf)
  - “Guide to Private Employment Agencies: Regulation, monitoring and enforcement”: [www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/instructionalmaterial/wcms\\_083275.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/instructionalmaterial/wcms_083275.pdf)
  - “Private Employment Agencies, temporary agency workers, and their contribution to the labour market: Issue paper for discussion at the Workshop to promote ratification of the Private Employment Agencies Convention, 1997 (No 181) (20-21 October 2009)”: [www.ilo.org/global/publications/books/WCMS\\_116580/lang--en/index.htm](http://www.ilo.org/global/publications/books/WCMS_116580/lang--en/index.htm)
  - “Report of the Discussion, Workshop to Promote Ratification of the Private Employment Agencies Convention, 1997 (No 181)”: [www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/meetingdocument/wcms\\_162743.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_162743.pdf)
- ▶ IndustriALL, “The Triangular Trap: unions take action against agency labour”: [www.industriall-union.org/sites/default/files/uploads/documents/Triangular\\_Trap/agency\\_work\\_final.pdf](http://www.industriall-union.org/sites/default/files/uploads/documents/Triangular_Trap/agency_work_final.pdf)

## Resources for Each Specific Section of the Guide

### I. Developing a Policy Commitment

- ▶ BLIHR, OHCHR, UN GC, “Policies” section in “A guide for integrating human rights into business management”: [www.integrating-humanrights.org/policies\\_home](http://www.integrating-humanrights.org/policies_home)
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### Legislative Developments

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- ▶ US Presidential Executive Order – Strengthening Protections Against Trafficking in Persons in Federal Contracts: [www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe](http://www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe)

## VI. Remedy and Operational Level Grievance Mechanisms

### Reports

- ▶ BSR, “International Labour Migration: A Responsible Role for Business”: [www.bsr.org/reports/BSR\\_LaborMigrationRoleforBusiness.pdf](http://www.bsr.org/reports/BSR_LaborMigrationRoleforBusiness.pdf)
- ▶ CSR Europe, Company mechanisms for addressing human rights complaints (draft): [www.csreurope.org/data/files/Publications/Company\\_Mechanisms\\_for\\_Addressing\\_Human\\_Rights\\_Complaints\\_CSR\\_Europe\\_Draft\\_report.pdf](http://www.csreurope.org/data/files/Publications/Company_Mechanisms_for_Addressing_Human_Rights_Complaints_CSR_Europe_Draft_report.pdf)
- ▶ CSR Initiative, Harvard Kennedy School, “Rights-Compatible Grievance Mechanisms”: [www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper\\_41\\_Rights-Compatible\\_Grievance\\_Mechanisms\\_May2008FNL.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible_Grievance_Mechanisms_May2008FNL.pdf)
- ▶ International Federation for Human Rights (FIDH), “Corporate Accountability for Human Rights Abuses”: [www.fidh.org/IMG/pdf/guide\\_entreprises\\_uk-intro.pdf](http://www.fidh.org/IMG/pdf/guide_entreprises_uk-intro.pdf)
- ▶ ILO, Labour inspection: [www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/labour-inspection/lang--en/index.htm](http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/labour-inspection/lang--en/index.htm)
- ▶ UN SRSG, Addendum to the UN Guiding Principles, “Piloting principles for effective company/stakeholder grievance mechanisms: A report of lessons learned” (May 2011, A/HRC/17/31/Add.1): [www.ohchr.org/Documents/Issues/Business/A-HRC-17-31-Add1.pdf](http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31-Add1.pdf), (undertaken by the the CSR Initiative, Harvard Kennedy School).

### Institutions/Organisations

- ▶ ACCESS: [www.accessfacility.org](http://www.accessfacility.org)
- ▶ National Human Rights Institutions: <http://nhri.ohchr.org/EN/Pages/default.aspx>
- ▶ Netherlands national hotline service (SNCU): [www.sncu.nl/nl](http://www.sncu.nl/nl)
- ▶ OECD, National Contact Points: [www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/nationalcontactpointsfortheoecdguidelinesformultinationalenterprises.htm](http://www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/nationalcontactpointsfortheoecdguidelinesformultinationalenterprises.htm)

# Annex 2: Key Concepts

Note: Many of the below key concepts have been drawn from the UN OHCHR [Interpretive Guide to the Corporate Responsibility to Respect Human Rights](#).

## Actual human rights impact

An “actual human rights impact” is a negative impact that has already occurred or is occurring.

## Agency worker

An individual placed with a user enterprise, but employed by an E&R agency.

## Assessing human rights impacts

The first of the four stages of Human Rights Due Diligence, undertaken in order to identify and assess any negative impacts on human rights with which a company may be involved. This includes both actual impacts (past or current) and potential impacts (those possible in the future), and impacts that occur through the company’s own activities and through its business relationships.

## Business relationships

Business relationships refer to those relationships a business enterprise has with business partners, entities in its value chain and any other non-state or state entity directly linked to its business operations, products or services. They include indirect business relationships in its value chain, beyond the first tier, and minority as well as majority shareholding positions in joint ventures.

## Candidate

An individual that an E&R agency comes into contact with as a potential recruit. Candidates may be recruited for placement in agency work or as employees to be directly hired by a client company.

## Client company

A company (which may be a private or public employer) that contracts with an E&R agency to recruit individuals as direct hire employees.

## Communicating human rights performance

In the context of the corporate responsibility to respect, communicating is the set of processes through which companies are able to account externally for how they address their actual and potential human rights impacts. This is particularly important when concerns are raised by or on behalf of affected stakeholders. Communication needs to be appropriate to the company’s impacts in terms of its form, frequency, accessibility, and the adequacy of information provided. Where companies have severe human rights risks or impacts they should publicly report formally on how they address them.

## Complicity

Complicity has both legal and non-legal meanings. As a legal matter, most national legislations prohibit complicity in the commission of a crime, and a number allow for the criminal liability of business enterprises in such cases. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is “knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime”. As a non-legal matter, companies may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.

The human rights due diligence process should uncover risks of non-legal (or perceived) as well as legal complicity and generate appropriate responses.

## The corporate responsibility to respect human rights

The corporate responsibility to respect human rights means that companies should avoid infringing on the rights of others and should address negative impacts with which they may be involved.

## Cross-border recruitment

Recruitment of workers from one country and their placement in employment in another.

### Debt Bondage

Debt bondage occurs when a person's labour is demanded as a means of repayment for a loan. The person is then trapped into working for very little or no pay, and is unable to leave the employment until the debt is repaid, which may never happen. This is also known as "bonded labour" and is a form of forced labour.

### Destination state

The country that is a destination for migrants to take up employment.

### Direct hire employee

An individual recruited by an E&R agency, but directly hired by a client company.

### Domestic work/worker

Domestic work means work performed in or for a household or households. Domestic worker means a person who performs work within an employment relationship in or for a private household or households.

### Effectiveness criteria for non-judicial grievance mechanisms

The Guiding Principles set out eight "effectiveness criteria" for non-judicial grievance mechanisms. They should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on dialogue and engagement, and a source of continuous learning. While these criteria mostly relate to the quality of processes, they include an important requirement that outcomes should be in line with internationally-recognised human rights. (See further Guiding Principle 31)

### Embedding

Embedding can be thought of as the macro-level process of ensuring that the company's responsibility to respect human rights is driven across the organisation, into its business values and culture. It requires that all personnel are aware of the enterprise's human rights policy commitment, understand its implications for how they conduct their work, are trained, empowered and incentivised to act in ways that support the commitment, and regard it as intrinsic to the core values of the workplace. Embedding is one continual process, generally driven from the top of the company. (See further "Human rights policy commitment" and "Integration")

### Employment services

This involves the recruitment and placement of agency workers in a third party entity ("user enterprise") for a fee. The fee is usually, but not always, paid by the user enterprise to the agency as a mark-up on the per hour pay rate to workers. The agency is responsible for payroll and other employment-related services (which it may perform itself or outsource). In some instances, the agency may also be responsible for on-site performance management (known as "vendor on premises"), but typically, the user enterprise is responsible for the supervision of work tasks. This is often referred to as a "triangular employment relationship". Placements are sometimes long-term and on an on-going basis, or they may be short term and ad hoc, for instance to help user enterprises with peaks in production.

### Gross human rights abuses

There is no uniform definition of gross human rights abuses in international law, but the following practices would generally be included: genocide, slavery and slavery-like practices, summary or arbitrary executions, torture, enforced disappearances, and arbitrary and prolonged detention. Other kinds of human rights abuses, including of economic, social and cultural rights, can also count as gross abuses if they are grave and systematic, for example abuses taking place on a large scale or targeted at particular population groups.

### Human rights due diligence

Human rights due diligence is an on-going risk management process that a reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its negative human rights impacts. It includes four key steps: assessing actual and potential human rights impacts, integrating and acting on the findings, tracking responses, and communicating how impacts are addressed.

### Human rights policy commitment

A statement approved at the highest levels of the business that shows it is committed to respecting human rights and is communicated internally and externally. (See further "Embedding" and "Integration")

## Human rights risks

A company's human rights risks are any risks that its operations may lead to one or more negative human rights impacts. They therefore relate to its potential human rights impacts. In traditional risk assessment, risk takes account of both the consequences of an event (its "severity") and its probability. In the context of human rights risk, severity is the predominant factor. Probability may be relevant in helping prioritise the order in which potential impacts are addressed in some circumstances (see "severe human rights impact" below). Importantly, a company's human rights risks are the risks that its operations pose to human rights. This is separate from any risks that involvement in human rights impacts may pose to the enterprise, although the two are increasingly related.

## Human trafficking

This includes the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

## Integration

Integration can be thought of as the micro-level process of taking the findings about a particular potential impact, identifying who in the enterprise needs to be involved in addressing it and securing effective action to prevent or mitigate the impacts. If the macro-level process of "embedding" the corporate responsibility to respect human rights in the company's culture has been effective, the company is more likely to be successful in its efforts at integrating and acting on individual impacts. (See further "Embedding" and "Human rights policy commitment")

## Internal staff

An E&R agency's employees involved in running its operations, including recruitment consultants, sales staff, and back office staff.

## Internationally recognised human rights

The Guiding Principles define these as the rights in the [International Bill of Human Rights](#) (meaning the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the principles concerning fundamental rights set out in the International Labour Organisation's [Declaration on Fundamental Principles and Rights at Work](#).

## Leading human rights risks

The leading human rights for a company are those that stand out as being most at risk. This will typically vary according to its sector and operating context. The Guiding Principles make clear that companies should not focus exclusively on the leading human rights issues and ignore others that might arise. But the leading human rights risks will logically be the ones on which it concentrates its primary efforts. (Also referred to as the most "salient" human rights risks in the UN OHCHR [Interpretive Guide to the Corporate Responsibility to Respect Human Rights](#))

## Legitimate trade unions

Organisations that exist to represent workers and are controlled by their members.

## Leverage

Leverage is an advantage that gives power to influence. In the context of the Guiding Principles, it refers to the ability of a company to effect change in the wrongful practices of another party that is causing or contributing to a negative human rights impact.

## Migrant worker

An individual who is, will be or has been engaged in a remunerated activity in a state of which he or she is not a national. In some cases, "internal" migrant workers who are recruited within a country may face similar risks as those who cross national borders. Where the Guide is referring to internal migrant workers, it makes this explicit.

## Mitigation

The mitigation of negative human rights impact refers to actions taken to reduce its extent, with any residual impact then requiring remediation. The mitigation of human rights risks refers to actions taken to reduce the likelihood of a certain negative impact occurring.

### Negative human rights impact

A negative human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

### Operational-level grievance mechanism

An operational-level grievance mechanism (OLGM) is a formalised means for affected stakeholders to raise concerns about any impact they believe a company has had on them in order to receive remedy. Companies should establish or participate in effective OLGMs for stakeholders who may be negatively impacted by their activities, in order that grievances may be addressed early and remediated directly. Such mechanisms should not preclude access to judicial or other state-based processes, or undermine the role of legitimate trade unions. The mechanism should help to identify problems early, before they escalate, and provide solutions that offer remedy to anyone impacted. (See further “Effectiveness criteria for non-judicial grievance mechanisms”)

### Origin state

The country from which a migrant worker originates.

### Personal data

As defined in Article 2(a) of the Council of Europe [Convention for the Protection of Individuals with regard to Automatic Processing of Data](#) “personal data” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one of more factors specific to his physical, physiological, mental, economic, cultural or social identity.

### Potential human rights impact

A “potential human rights impact” is a negative impact that may occur but has not yet done so.

### Pre-departure orientation training/programs

Pre-departure orientation is offered to many migrant workers before they leave their state of origin. The International Organisation for Migration, which provides pre-departure orientation for various countries, identifies three components that are common to most trainings or programs:

- ▶ Factual information about the destination state;
- ▶ Assistance to workers in developing the skills needed to succeed in their new environment (e.g., how to find accommodation, and how to access health care facilities);
- ▶ Information on the attitudes necessary for successful integration (e.g., flexibility, open-mindedness, initiative, and self-reliance).

### Prevention

The prevention of negative a human rights impact refers to actions taken to ensure such impact does not occur.

### Recruitment services

This involves the recruitment of agency workers as well as workers who are recruited for positions with client companies where the employment relationship will be direct (“direct hire employees”). This means that rather than a triangular employment relationship, the client company employs the worker directly either on an open-ended or fixed term contract. In this model, the agency only acts as a “recruiter” and not as an “employer”.

### Remediation/remedy

Remediation and remedy refer to both the processes of providing remedy for an negative human rights impact and the substantive outcomes that can counteract, or make good, the negative impact. These outcomes may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

### Right to privacy

The protections against arbitrary, unreasonable or unlawful interference with a person’s privacy, family, home or correspondence, as well as attacks on their honour or reputation, contained in Article 17 of the [International Covenant on Civil and Political Rights](#) and Article 12 of the [Universal Declaration of Human Rights](#).

### Severe human rights impact

The commentary to the Guiding Principles defines a severe human rights impact with reference to its scale, scope and irremediable character. This means that its gravity and the number of individuals that are or will be affected (for instance, from the delayed effects of environmental harm) will both be relevant considerations. Irremediability is the third relevant factor, used to mean any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the impact. For these purposes, financial compensation is relevant only to the extent that it can provide for such restoration.

### Social dialogue

The International Labour Organisation defines social dialogue as including all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers on issues of common interest relating to economic and social policy, and to terms and conditions of work and employment. It can exist as a tripartite process with the government as an official party to the dialogue, or it may consist of bipartite relations between trade unions and management (or trade union organisations and employers' organisations). Dialogue can be informal or institutionalised and often it is a combination of the two. It can take place at the global, regional, national, sectoral, enterprise or workplace level.

### Stakeholder/affected stakeholder

A stakeholder refers to any individual who may affect or be affected by an organisation's activities. An affected stakeholder refers here specifically to an individual whose human rights has been affected by a company's operations, products or services. A potentially affected stakeholder is an individual whose human rights may be affected by the company's operations, products or services

### Stakeholder engagement/consultation

Stakeholder engagement or consultation refers here to an on-going process of interaction and dialogue between a company and its potentially affected stakeholders that enables the company to hear, understand and respond to their interests and concerns, including through collaborative approaches.

### State duty to protect

The state duty to protect requires that states take appropriate steps to prevent, investigate, punish and redress any human rights abuse by companies within their territory and/or jurisdiction through effective policies, legislation, regulations and adjudication.

### Tracking human rights performance

Tracking is the process by which a company monitors and evaluates whether it has responded effectively to human rights risks and impacts.

### User enterprise

A third party entity in which an E&R agency places agency workers. It may be a private or public sector entity.

### Value chain

A business enterprise's value chain encompasses the activities that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either (a) supply products or services that contribute to the enterprise's own products or services, or (b) receive products or services from the enterprise.

### Vulnerability or marginalisation / Vulnerable or marginalised individuals or groups

Vulnerability can stem from an individual's status or characteristics (e.g., race, colour, sex, language, religion, national or social origin, property, disability, birth, age or other status) or from their circumstances (e.g., poverty or economic disadvantage, dependence on unique natural resources, illiteracy, ill health). Those vulnerabilities may be reinforced through norms, societal practices, or legal barriers. Vulnerable or marginalised individuals typically experience negative impacts more severely than others. These individuals, or groups they are part of, may require specific, and if necessary separate, consultation and mitigation measures to ensure that negative impacts do not fall disproportionately on them, and are appropriately avoided, mitigated or compensated.



