

DRAFT VERSION FOR PUBLIC CONSULTATION
20 December 2012 – 19 February 2013

**Guidance for the Employment & Recruitment Agencies
Sector on Implementing the UN Guiding Principles
on Business and Human Rights**

European Commission Human Rights Sector Guidance Project

Invitation to Comment on E&R Agencies Draft Sector Guidance

- The Project Team would welcome comments from all interested stakeholders on this draft. In making comments, **please be as specific as possible**, including identifying the relevant section or example being discussed. Please also **continue to monitor the website** for further updates.
- Please send comments to sectorguidance@ihrb.org by the **closing date of Tuesday 19 February 2013** with a **subject line of “E&R Agencies Draft Feedback”**.
- Unless expressly requested otherwise, **submission of written feedback will be posted** as received on the Project’s web portal (<http://www.ihrb.org/project/eu-sector-guidance/draft-guidance-consultation.html>) with each commentator’s submitted name and organisational affiliation.

Guidance Aim: It is the European Commission’s intention to produce **practical, useful guidance for businesses** on implementing the UN Guiding Principles, which is not intended to be legally binding. While the Guidance takes particular account of the situation and experiences of EU business, it aims to be as **globally relevant** as possible.

Methodology: The draft’s development has been informed by the views of a wide range of stakeholders, including representatives from business, civil society, trade unions, and government, as well as other experts. At the end of the process the project team will have conducted extensive research and interviews with a diverse range of stakeholders (75+ interviews per sector) and two multi-stakeholder expert roundtable convenings. Following the comment period, final versions of the sector guidance documents will be revised, completed and submitted to the European Commission in **April 2013**.

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A. Introduction

Put simply, people have a right to be treated with dignity. Human rights are inherent in all human beings and everyone is entitled to enjoy them without discrimination. States have the legal obligation to respect, protect and fulfill the human rights set out in the international human rights conventions they ratify. However, the actions of business, like those of other non-state actors, can affect the enjoyment of human rights by their employees, customers, workers in their supply chain, or communities around their operations, either positively or negatively. Experience shows that business can have an adverse impact,¹ directly or indirectly, on virtually the entire spectrum of human rights, as illustrated in the UN publication “[Human Rights Translated](#)”.² Where businesses do not pay sufficient attention to this risk and how to reduce it, they can and do infringe human rights.

In June 2011, the UN Human Rights Council unanimously endorsed the [UN Guiding Principles on Business and Human Rights](#) (“Guiding Principles”), establishing the first authoritative global reference point on the respective roles of business and governments in helping ensure that companies respect human rights in their own operations and through their business relationships. They spell out the implications of the three pillars of the earlier [UN “Protect, Respect and Remedy” Framework](#) on business and human rights (“UN Framework”), which are:

1. The **state duty to protect** against human rights abuses by third parties, including businesses, through appropriate policies, regulation and adjudication;
2. The **corporate responsibility to respect** human rights, meaning that businesses need to avoid infringing on the human rights of others and address adverse impacts with which they may be involved; and
3. The need for **greater access to effective remedy** for victims of business-related human rights abuses, through both judicial and non-judicial means.

The Guiding Principles and UN Framework were developed by the [Special Representative of the UN Secretary-General for Business and Human Rights](#), Harvard Professor John Ruggie, over the six years of his mandate. 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. The Guiding Principles are now being taken forwards in the UN context by an expert [Working Group](#).

In October 2011, the European Commission adopted a new [Communication on Corporate Social Responsibility](#) that defined corporate social responsibility as “the responsibility of enterprises for their impacts on society”. The Employment and Recruitment Agencies sector is one of three sectors chosen by the Commission for the development of sector-specific guidance on the corporate responsibility to respect human rights under the Guiding Principles.³

¹ The term “adverse impact”, in line with the definition used in the UN Guiding Principles, is used to mean an action that removes or reduces the ability of an individual to enjoy his or her human rights.

² Castan Centre for Human Rights Law, International Business Leaders Forum and Office of the UN High Commissioner for Human Rights, *Human Rights Translated: A Business Reference Guide*, 2008.

³ The definition of sectors drew on [NACE](#) classifications – the Statistical Office of the European Commission’s categorisation of all economic activity.

While the Guidance takes particular account of the situation and experiences of EU business, it aims to be as **globally relevant** as possible – informed by research and the views of a wide range of stakeholders, including expert representatives from business, trade unions, NGOs and government – in order to contribute to a consistent approach to the implementation of the Guiding Principles. The Guidance is for companies and therefore focused on the **corporate responsibility to respect** (including responsibilities in relation to access to remedy). However, it seeks wherever possible to take into account the various implications of the state’s role in enabling, supporting and incentivising business’ efforts to meet their responsibility to respect as part of the state duty to protect. Nothing in this Guidance is intended to detract from the **interconnected nature** of the three pillars of the UN Framework.

1. Purpose of Guidance for the Employment and Recruitment Agencies Sector

Responsible Employment and Recruitment (“E&R”) agencies are increasingly seeking to know and show that they respect human rights throughout their activities and business relationships by adopting **appropriate policies and processes** in line with the Guiding Principles. This Guidance is intended to support those efforts and encourage other companies in the sector to engage more deeply with their responsibility to respect. Like the Guiding Principles, the guidance is capable of application to E&R agencies of all sizes, with varying types of ownership and structure.

The focus of this guidance is on ensuring that businesses respect human rights. This in no way implies that they can have only negative impacts on human rights – [ILO Convention 181](#) on Private Employment Agencies⁴ and, in the EU, the [Temporary Agency Work Directive 2008/104](#) recognise the positive impacts that E&R agencies can play in well-functioning labour markets in matching unemployed, or underemployed, individuals with available job opportunities, including in relation to seasonal fluctuations. 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, such as the right to an adequate standard of living, including rights to housing and to food. However, respecting rights is the baseline expectation of all companies under the corporate responsibility to respect and accordingly the prevention, mitigation and remediation of adverse human rights impacts in the sector is the focus of this guidance.

Of course, while implementation of the responsibility to respect is important, **meeting it can be complex**; the reality is that it may take time for companies to be able to “know and show” they are meeting their responsibility. The key, however, is to start – and then to communicate on the plans in place and progress being made. Demonstrating that a company has serious processes under way to meet its responsibility to respect can help create the space it needs to develop the internal policies and processes to deliver on its public commitment. Various resources exist to support companies, including within the European Commission, among home state governments, and in peer companies, industry associations and collaborations with other stakeholders. This Guidance seeks to highlight as many relevant potential sources of support as possible.

⁴ The Convention was concluded in 1997; see also Recommendation No. 188. As at the time of writing, 25 countries had ratified Convention 181.

2. Sector-Specific Context

The primary business of E&R agencies is the **recruitment of workers for client companies and/or the supply of temporary agency workers to “user enterprises”** (which may be other private businesses or public sector employers)⁵ for a fee. Organisationally, the types of businesses involved in the sector range from one-person companies to multinational firms. Larger E&R agencies engage in a **variety of different types of services** meaning that they will provide employment and recruitment services as well as additional related services (such as training, arranging transport, accommodation or visas for workers).⁶

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 industries, the food industry, hospitality, and domestic and clerical work.⁷ It is clearly a growing business.⁸ Most of an E&R agency’s **business relationships** will be with user enterprises⁹ (or government employers) that contract with the agency to provide temporary workers.

Where an E&R agency is placing **temporary workers** with a user enterprise, the contractual employment relationship will be between the worker and the agency itself. The supervision of the worker’s tasks, however, is undertaken by the user enterprise.¹⁰ This is sometimes referred to as a “triangular” relationship. The agency may contract with other E&R agencies to conduct other parts of the process, such as recruitment. This is especially common in recruitment of migrant workers.

Where an E&R agency is providing **recruitment** services, there is a contractual relationship between the client company and the E&R agency to recruit workers but the employment relationship is a direct one between the client and the worker. If an E&R agency is involved in recruiting or employing **migrant workers**, it is likely to have a number of business relationships with accommodation providers, travel agents and others.

There are a number of aspects of the **state duty to protect human rights** that have particular implications for E&R agencies’ efforts to meet their responsibility to respect human rights. In particular these centre on:

- The **absence of effective regulation** of the sector (or lack of enforcement where regulation exists) in some states, allowing “rogue” companies to proliferate (including criminal organisations, involved for example in human trafficking). This

⁵ Sometimes the term “user undertakings” is employed to cover both types of entity.

⁶ Article 1 of ILO Convention 181 defines “Private Employment and Recruitment Agencies” as any natural or legal person, independent of the public authorities, which provides one or more of employment, recruitment, or other additional services related to job-seeking. “Employment” means services consisting of employing workers with a view to making them available to a third party that assigns tasks and supervises their execution. “Recruitment” means services for matching offers of and applicants for employment, without becoming a party to the employment relationship.

⁷ E&R agencies do not supply workers for cleaning services or private security. With respect to the latter, a recent [multistakeholder effort](#) developed a set of principles based on international human rights and humanitarian law and taking into account the UN Framework.

⁸ See Cieltt, [Economic Report](#), 2011.

⁹ These are often called “clients” if the E&R agency is simply providing recruitment services.

¹⁰ Globally, multiple names for this type of business arrangement are used, including ‘labour brokers’, ‘labour providers’, ‘employment agencies’, ‘placement agencies’, ‘labour dispatch firms’ and ‘labour hire firms’. An almost equally wide range of terms exist for the workers involved, including “temporary workers”, “temporary agency workers,” “contract workers” and “dispatch labour”.

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is compounded by what are often low barriers to entry into the E&R business, with single person companies quite common.

- A lack of robust **protection of labour rights** (particularly in relation to freedom of association and collective bargaining) either in national law or practice in a number of states.
- Major gaps in the regulation of **international recruitment of migrant workers**, with many states lacking bilateral agreements on the issue (or failing to enforce their provisions in practice) and/or allowing E&R agencies to charge fees to such workers. There is also an overall low rate of ratification of the relevant UN and ILO instruments.¹¹
- The implications for potentially vulnerable workers of **immigration regulations** in destination countries that tie immigration status to a particular employer,¹² particularly where power is vested in individual “sponsors” rather than in an independent state agency.

Wherever governments perform poorly, or provide poor protections, in these and other respects, it heightens the risk of human rights abuses occurring and becomes proportionately **more challenging** for E&R agencies to meet their own responsibility to respect human rights.

There are **clear differences between EU and some non-EU contexts** in this regard. Inside the EU, E&R agencies operate within a clear regulatory framework, namely the Temporary Agency Work Directive noted above. In addition, there are social dialogue processes in which E&R agencies participate through the European trade organisation (see Box 1 below). In addition, some countries within the EU operate their own similar social dialogue arrangements (eg, the Netherlands and Germany), or have significant rates of unionisation in the sector.¹³

Box 1: [Social Dialogue in the EU Context](#)

Eurociett and UNI-Europa are the formally recognised European Commission **social partners** for Sectoral Social Dialogue for Agency Work. Launched in 2000, the Dialogue was initially focused on the development of the then proposed Temporary Agency Work Directive. Now, in addition to monitoring the implementation of [Directive 2008/104](#), the objectives of the Dialogue are to work towards improving the employment and working conditions of temporary workers.

An increasing number of E&R agencies are aware of the challenges they face on human rights. Large companies have come together in industry associations with the aim of clarifying standards and supporting good practice with regard to respect for human rights, as well as making it harder for fraudulent and unscrupulous operators to exist in the sector.

¹¹ ILO Convention 181 and the [UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#).

¹² Many countries link immigration status to one particular employment sponsor. Upon arrival, individuals are in effect ‘tied’ to one employer in order to maintain their presence in that country. If an individual experiences abuse or exploitation, seeking redress may lead to the loss of employment and therefore loss of that immigration status. This can either mean falling into irregular (undocumented) status where individuals have no rights in the destination country, leading to vulnerability to human rights abuses and/or deportation.

¹³ For example, in Belgium, approximately 80% of agency workers are unionised: see Eurofound, [Temporary Agency Work and Collective Bargaining in the EU](#), 2009.

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Of particular relevance is the work of the International Confederation of Private Employment Agencies ([Ciett](#)) and the European Confederation ([Eurociett](#)).¹⁴ An increasing number of national associations are working on improving standards.

Individual user enterprises/clients, and user enterprises/clients in multistakeholder initiatives,¹⁵ are beginning to focus on the need for effective policies and processes to implement the responsibility to respect in their labour hiring practices. **User enterprises and client companies** may therefore also find this Guidance useful.

B. Key Concepts in the Guiding Principles

A key resource in understanding the Guiding Principles is the [Interpretive Guide](#) developed by the UN with the approval of Professor Ruggie.¹⁶ Box A sets out four central concepts within the Guiding Principles, further elaborated in the Interpretive Guide, that are particularly important in implementing the responsibility to respect, and which underpin much of the following Guidance.

Box A: Key Concepts in the Guiding Principles

a) Internationally recognised human rights

Under the Guiding Principles, the responsibility of businesses to respect human rights encompasses **all internationally recognised human rights** – understood, at a minimum, as those expressed in the [International Bill of Human Rights](#) (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](#). The commentary to Guiding Principle 12 makes clear that businesses may need to consider **additional international standards**, for example, where they may impact upon individuals belonging to groups at heightened risk of vulnerability or marginalisation. This can include women, children, indigenous peoples, ethnic and other minorities, people with disabilities, and migrant workers (see [Annex A](#)).

b) Severity

The Guiding Principles are focused on “human rights risk” – meaning risk to **affected stakeholders** (ie those whose human rights may be or have been affected by a company’s operations, products or services), including the heightened risk posed to the rights of potentially **vulnerable or marginalised groups**. Because the focus is on risk to people, not risk to the company, **severity** of the impact becomes the dominant factor in determining the appropriate scale and complexity of the processes a company needs to have in place to know and show that it is respecting rights. Severity is determined by the **scale** (gravity of the impact), **scope** (the number of people affected) and **irremediability** of an impact (meaning any limitations on the ability to restore those affected to a position the same as, or equivalent to, the one they were in before the impact occurred). Any assessment of severity thus needs to take full account of the perspective of potentially affected stakeholders.

¹⁴ Note the [MoU between UNI-Global Union and Ciett’s corporate members in 2008](#).

¹⁵ For example, the Fair Labor Association revised its [Code of Conduct](#) in 2011, adding a section on “Recruitment and Hiring/Employment Agency Recruitment Practices” (Section ER.5).

¹⁶ Office of the UN High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2011.

c) Own activities and business relationships

The responsibility to respect encompasses adverse human rights impacts that a company is involved with through its own **activities** or as a result of its **business relationships** with third parties. This includes impacts that it **causes** or **contributes** to, as well as those that are **directly linked to its operations, products or services by a business relationship**, even where it has neither caused nor contributed to the impact itself. Relevant business relationships include those that are direct and those at one or more steps removed that entail significant risk to human rights. When identifying how best to address impacts that involve its business relationships, the company's **leverage** will be a significant factor. Leverage refers to the ability of the company to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact. Using leverage may involve working with the entity most directly responsible for the impact and/or with others who can help (peers, local civil society actors, government). However, **impact, not leverage, determines the scope of a company's responsibility**; leverage only becomes relevant in determining what constitutes an appropriate response.

d) Meaningful stakeholder consultation

Respecting rights is about people, so the nature of the **relationships** between a company and those on whom it may have an impact are highly relevant. **Stakeholder engagement and consultation** is a cross-cutting theme within the Guiding Principles. It involves an ongoing process of interaction and dialogue between a company and potentially affected stakeholders that enables the company to **hear, understand and respond** to their interests and concerns, including through collaborative approaches.¹⁷ It is particularly relevant to assessing impacts, tracking and communicating about responses, as well as in the remediation of impacts. The Guiding Principles recognise that not all companies will be able to meaningfully consult directly with affected stakeholders, but that where this is not possible, **other avenues** should be sought to understand their likely perspectives and human rights concerns. For companies with **significant human rights risks** – whether due to the nature of their operations or their operating context – direct stakeholder engagement will be particularly important.

Engagement with stakeholders is distinct from **expert input** – both are important, but they should never be confused. It may be both reasonable and necessary for a company to engage external experts in carrying out aspects of human rights due diligence, but this should not undermine the process of embedding respect for rights in the company's core operations. Companies should consider carefully before “delegating” engagement with potentially affected stakeholders entirely to external experts. However, where there is a history of distrust, or where cultural considerations are at play, involving **neutral, local third parties** who can help support and assist such engagement may be helpful.

¹⁷ Ibid, Key Concepts.

C. Implementing the Responsibility to Respect: Policy Commitment and Embedding Respect

1. What the Guiding Principles Require

- A policy commitment is a statement approved at the **highest levels** of the business that demonstrates the business' commitment to meet its responsibility to respect human rights and **communicates** this internally and externally.
- The statement should **trigger internal implementation** through appropriate operational policies and procedures that are necessary to meet the commitment in practice and are essential for **embedding** respect for human rights throughout the business, including in its values.

2. Key Considerations

The overarching policy commitment may be expressed as a **general commitment** to respect all internationally recognised human rights, or it may also identify the human rights most salient to the company's operations, without making them its exclusive focus. The commitment may be stand-alone or integrated into an appropriate existing high-level policy. Where there is a significant pace of change in the contexts from or in which an E&R agency is recruiting or employing workers, its **general risk profile** may change often. If **salient risks** are reflected in the policy it will be important to review the policy periodically to determine whether it is adequately capturing any changes in the company's risk profile.

In developing the policy, a company will want to use **relevant sources** of expertise, both internal and external. For E&R agencies with significant human rights risks, it will be important to **engage with external stakeholders** who can reflect the likely concerns and priorities of potentially affected individuals or groups, so that the policy is informed by their perspectives, and is as credible as possible in the eyes of key stakeholder groups.

In order to **embed** the policy commitment, it needs to be **clearly communicated internally as well as externally**, to the agency's own staff, to temporary workers, business partners and other relevant state or non-state entities that may be directly linked to an E&R agency's products, services or technologies. The implications of the policy commitment need to be **reflected in relevant internal operational policies and procedures**. And its implementation needs to be adequately supported and resourced – including through senior management attention, the allocation of appropriate accountability, developing incentives and other performance metrics, and training.

3. Possible Approaches

a) What kinds of human rights issues might be included in a policy commitment?

A specific commitment to respect human rights is both important, and particularly appropriate, given that the "business" of E&R agencies is people. A few E&R agencies have developed **stand-alone human rights** policies. A growing number of agencies refer to human rights in their Code of Conduct, Code of Ethics, business principles or similar document. Some frame their commitment in terms of "decent work" or "safe recruitment".

Salient human rights issues that are highlighted by E&R agencies in their policy commitments include: the four fundamental principles and rights at work (the freedom of association, effective recognition of the right to collective bargaining and the corollary right to strike; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour and; the elimination of discrimination in respect of employment and occupation); the right to just and favourable conditions of work; the right to privacy; and the rights of potentially vulnerable groups, in particular, migrant workers.

If the company's main business, or a significant part of its business, is the **recruitment of migrant workers**, it will want to consider developing specific policy provisions, or even a stand-alone policy, on respecting their rights. A number of leading brands in the apparel and footwear sectors have developed stand-alone policies from the user enterprise perspective. Key issues to address include those identified in Box 2 below. Given the extreme variance in how national laws treat migrant workers, it will be particularly important for E&R agencies to consider explicitly addressing the challenges that can arise where national law is silent or directly conflicts with international standards and their approach in such situations (see further [below](#)).

Key Point: International standards and industry guidance clearly support the inclusion of a **commitment not to charge fees to workers** in an E&R agency's policy statement.¹⁸ This should make clear that this covers fees charged directly or indirectly, in whole or in part, for any services relating to work placement, including for concluding a contract of employment, whether temporary or permanent. All fees should be paid by user enterprises or other clients.

Similarly, E&R agencies that operate, or have significant business relationships, in countries or sectors that are at high risk of human trafficking will want to consider adopting a clear statement against **forced labour and trafficking** (see further Box 7 below).

Numerous E&R agencies directly cite or otherwise reference the [Ciett Code of Conduct](#) in their own policy statements.¹⁹ On the issue of trafficking, a number of companies reference the [Athens Ethical Principles](#).²⁰ Some large E&R agencies reference more general standards in the business and human rights area, such as the UN Global Compact. Whatever approach is taken, the overarching commitment should reflect respect for all internationally-recognised rights, and agencies must then pay attention to how they **embed** those standards across their business – in their strategy, culture and day-to-day operations.

Box 2: The [Dhaka Principles](#) for Migration with Dignity

The Dhaka Principles for Migration with Dignity were developed by the Institute for Human Rights and Business through a series of multistakeholder roundtables with business, government, trade unions and civil society. Based on the Guiding Principles and international labour and human rights standards, the Dhaka Principles provide a **road map**

¹⁸ See [ILO Convention 181](#), Article 7, [Temporary Agency Worker Directive](#), Article 6.3, [Ciett Code of Conduct](#), Principle 4.

¹⁹ Principle 1 of the Ciett Code of Conduct states: "Members shall observe the highest principles of ethics, integrity, professional conduct and fair practice in dealing with temporary agency workers as well as other relevant stakeholders and shall conduct their business in a manner designed to enhance the operation, image and reputation of the industry".

²⁰ See also the [Luxor Protocol](#) on implementation of the Principles.

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for employers, recruitment agencies and labour brokers on the responsible recruitment and employment of migrant workers throughout the migration process.

Starting at the point of a worker's departure from their home, and continuing through their employment and return home, the Dhaka Principles stress two core principles: first, that all workers be treated equally and without discrimination. And second that all migrant worker contracts provide appropriate legal protections.

At the **start of the migration process**, the relevant principles stress that:

- the worker should not be charged any fees for recruitment and the user enterprise should bear the full costs of recruitment;
- the worker's contract(s) needs to be made available in the worker's language, clearly explained and signed without coercion;
- user enterprise policies and procedures should include migrant workers in their scope;
- identity documents/passports should not be retained by the user enterprise or any E&R agency.

Once in the **recruited role**, the relevant principles provide that:

- workers' wages should be paid regularly, directly and on time, in line with local workers' wages and benefits;
- migrant workers have the same rights to freedom of association, to freely join a trade union, and to collective bargaining as local workers;
- working conditions must be decent and safe, and adequate health and safety procedures need to be in place with all relevant instructions, training and materials made available to migrant workers in their own languages;
- workers should have access to confidential, safe grievance mechanisms, without fear of reprimand.

Once **returned home**, the final principle in the recruitment cycle provides that:

- safe and timely return should be guaranteed in the worker's contract, with all wages and benefits paid in full (as well as allowing for mid-contract repatriation in the case of emergency).

b) What is the role of expertise and engagement in the policy development process?

Engaging **internal** experts and stakeholders within and across different functions in the **policy development process** will be important for E&R agencies. It can help ensure that the content and relevance of the policy commitment are broadly understood and accepted, that it fits with existing policies, and that it leads to the internal alignment necessary to embed it throughout the business. Key functions to involve will include human resources, legal, logistics (where relevant) and those responsible for recruitment/employment processes and also for engagement with user enterprises/clients.

In addition to internal staff of the E&R agency, it will be essential to engage with the temporary workers that the E&R agency employs, including through **trade unions**. E&R agencies that provide recruitment services will also want to engage with workers that they place with clients, and candidates for those positions.

Consulting with **external stakeholders** will be important for E&R agencies that may have significant impacts. Typically this will involve talking to NGOs and trade unions from key sectors that the E&R agency provides services to, in order to understand the types of risks

involved and possible preventative measures, including organisations focused on addressing specific risks such as trafficking or impacts on migrant workers. E&R agencies will also need to consider specific risks arising from the country contexts where they operate and to which they supply workers, and be confident that their policies are adequate also for any that pose significant human rights risks. Larger companies may want to consider establishing **stakeholder advisory groups** including representatives from NGOs, trade unions and other experts, that can also act as an ongoing source of advice in due diligence and remediation processes.

In terms of **additional external sources** of information and expertise, relevant approaches for E&R agencies include: benchmarking their own policies against those of their leading peers, using guidance from industry associations,²¹ or relevant labour rights or other initiatives,²² and reviewing compilations of broader information about perceptions of the industry's impacts on human rights.²³ E&R agencies that work with user enterprises/clients from particular sectors may want to review human rights guidance relevant to those sectors (see the parallel EU [guidance documents developed for the Oil and Gas and ICT sectors](#)).

c) What are relevant considerations in the internal alignment of policies and processes?

Embedding a human rights policy commitment, through alignment of internal policies and processes as well as in the attitudes and capacities of staff, is a challenging process; but it is essential to effective implementation. Without it, a policy commitment can risk being seen as a public relations exercise alone.

A human rights policy commitment is both distinct from and likely to be closely related to various **existing internal policies and processes** although these may not be expressed in human rights language. In checking whether existing policies are aligned with the commitment to respect human rights, an E&R agency will want to pay particular attention to areas such as human resources, legal, IT, and “front” and “back office” functions at the branch level.²⁴

Another important aspect of internal alignment in larger E&R agencies is **how the human rights function is organised**. Hosting the function **within a single department** is likely to increase accountability but may lead to challenges in creating the broad ownership required across the business, particularly given the flexibility required of E&R agency staff, who often have to play a range of roles within an individual branch. Larger E&R agencies will need to consider how to effectively encourage alignment between operations in **different geographic regions**.

Equally important as where the human rights function is located are the questions of **what role** the function will play and **how it will engage** and operate with different parts of the business – will it be focused on providing **oversight and accountability** and serving as an early warning system, or will it act more as a **knowledge centre, coach and resource** for

²¹ For example, in the UK see the [Recruitment and Employment Confederation](#) (“REC”); in Poland see the [Polish HR Forum](#).

²² Such as the Fair Labor Association’s revised [Code of Conduct](#), or the EU [“Framework Strategy for Non-discrimination and Equal Opportunities for All”](#).

²³ Such as the [Business and Human Rights Resource Centre](#).

²⁴ Given that E&R agency branches may often be small, staff frequently need to be flexible and to play a role in both “front office” (ie recruitment/employment) and “back office” functions (ie engaging with clients).

other departments, and for branch staff? Elements of both roles may be needed in large E&R agencies. It is essential that branch staff have an effective channel of communication that can help them access support and advice on emerging issues, as well as trigger appropriate escalation (and resources) when problems occur (for example, when a user enterprise/client makes a discriminatory request for temporary workers, see Box 9 below).

d) What are some key aspects of internal alignment of staff attitudes and approaches?

Commitment by senior leadership, including at the Board level, will be critical to any E&R agency's efforts to embed respect for human rights, particularly when turnover occurs within the agency's management. Approaches include having an individual Board member take responsibility for the issue, and holding (or taking advantage of) general management meetings 2-3 times per year, involving senior and local country managers in discussions of evolving expectations.

To generate **shared responsibility for implementing respect for human rights**, appropriate performance incentives will be needed that are tied, for example, not only to bringing in new user enterprise/client relationships, but to bringing in relationships that are aligned with the E&R agency's own commitments, and helping ensure that respect for human rights is reflected in the expectations and requirements that underpin the relationship.

Awareness-raising and training will be critical in communicating the agency's policy commitment internally, including to temporary workers, candidates for such positions, and internal staff, particularly those in branch offices. Approaches include: conducting "e-learning" courses; providing handbooks and other materials outlining company commitments; conducting training courses on challenging issues, like trafficking;²⁵ holding regional meetings of staff; and induction training, including requiring new internal staff to sign the company Code of Conduct (or similar document). It will be important to ensure that any training materials are regularly updated given the speed at which the sector is evolving.

e) What are the implications of the policy commitment for business relationships?

A policy commitment is critical to **communicating a company's expectations of its business partners externally** and should enable an E&R agency to better leverage respect for human rights in its relationships, should this be required, by making clear that these expectations are not simply "negotiable extras". Many of an E&R agency's human rights risks – and corresponding scope for their mitigation – are established in the **terms of its contracts and other agreements** with business partners, particularly user enterprises/clients, E&R agency contractors, and other suppliers (eg, travel agents and accommodation and visa providers). It is therefore particularly important to provide clear guidance on the implications of the policy commitment for those individuals within the E&R agency with responsibility for negotiating or concluding such agreements.

Key Point: It is essential to have human rights on the table at the **earliest stages** of business relationships to avoid arriving in a situation where impacts occur and the company lacks leverage to address them, due to weak contractual provisions it might otherwise have improved. To ensure that the economics of a transaction take full account of the need to address human rights risks, those with responsibility for negotiating agreements will need to consider **who** has responsibility for addressing the risks, **what** resources will be required, and **where** those resources will come from.

²⁵ The [UN Global Initiative to Fight Human Trafficking](#) provides online training resources.

When it comes to contracts with **E&R agency contractors and other suppliers**, an E&R agency can include specific language requiring compliance with labour rights codes or principles, in addition to national law. These may be company-generated codes, or may be based on the codes of industry or multistakeholder initiatives. However, they should always align with internationally-recognised human rights standards. It is important that a company **live up to the same human rights standards** that it expects of its business partners, and that it avoid relying on contractual clauses without some evidence that the business partner has the capacity and will to comply with them. It will also be important to clarify that the E&R agency expects business partners to “pass on” requirements to comply with human rights standards to their own supply chains, and to seek evidence that they do so wherever possible – particularly in the case of recruitment services given the risks of bonded labour created by long recruitment supply chains that require a payment from the worker at each step.

4. Questions to Ask

The following questions should help test the extent to which the company’s policy commitment, and its efforts to embed it across the organisation, are aligned with the Guiding Principles:

- Do we have a thorough understanding of our human rights risk profile, taking into account the nature of our activities, our country context(s) and business relationships, including the sectors we provide services to?
- Have we considered the appropriateness of a stand-alone policy to address key human rights risks (such as impacts on migrant workers)?
- Have we engaged with key departments/regions, and internal stakeholders (particularly temporary workers) in its development?
- Have we tested it with external stakeholders, including relevant experts?
- Has the policy been approved at the most senior levels of the company? Is senior leadership commitment to it clearly communicated across the company as well as externally?
- Have we found appropriate ways to communicate the policy to potentially affected stakeholders, particularly workers that we recruit or employ, taking into account language, culture, gender and other relevant considerations?
- Have we reviewed the implications of the policy for existing internal policies and processes and identified where these may need to be aligned?
- Are we working, through a range of appropriate means, to ensure that internal staff attitudes and behaviours reflect our policy?
- Have we discussed the implications of the policy commitment with key business partners, including user enterprises/clients in an appropriate manner? Have we sought to integrate it into our agreements with them?

D. Implementing the Responsibility to Respect: Human Rights Due Diligence

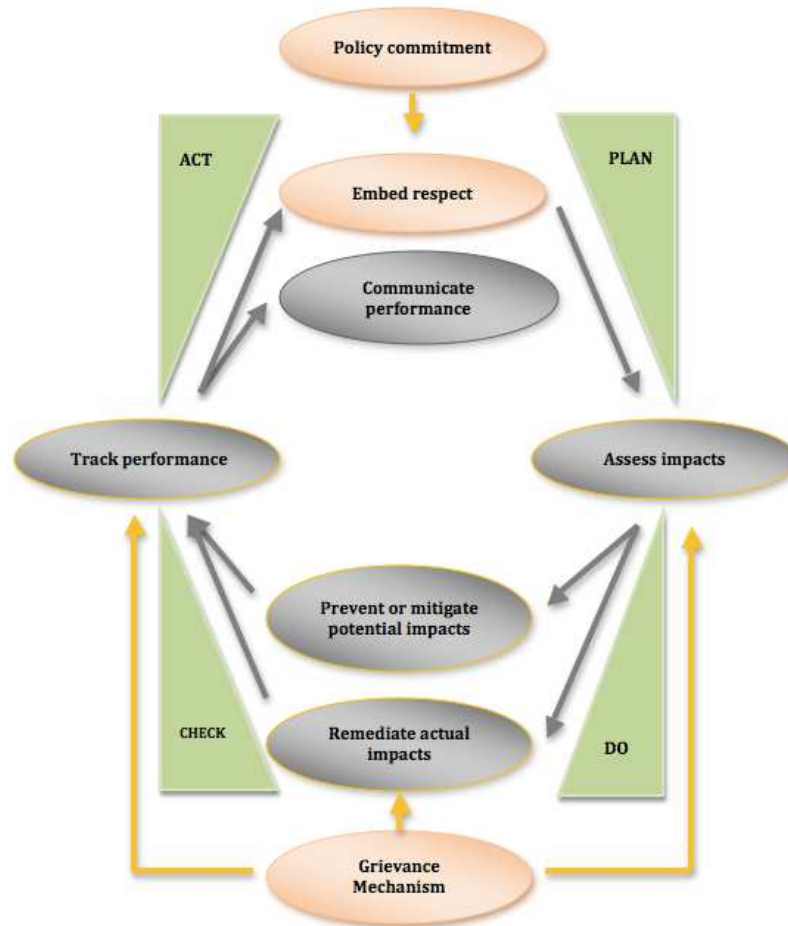
Box B: Human Rights Due Diligence

As the Guiding Principles make clear, the scale and complexity of **human rights due diligence processes** will vary according to the size of the company, as well as its operational context, ownership and structure. However, some overarching themes will be relevant to implementation by all companies:

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1. It is through human rights due diligence that a business identifies the **information** it needs to understand its specific human rights risks at a certain point in time and in a particular context, and the **corresponding actions** it needs to take to identify, prevent, mitigate and account for them. Taken together with a policy commitment and the remediation of actual impacts that a business causes or contributes to, human rights due diligence provides businesses with the framework they need to **know and show** that they are respecting rights.
2. Human rights due diligence is concerned with **on-going processes**, not one-off events (‘a’ report or ‘an’ impact assessment), in order to help a company understand how its risks can change over time and manage them effectively.
3. The Guiding Principles do not prescribe whether human rights due diligence processes should be **stand-alone or integrated** into existing systems – both have benefits and both have potential risks. For many companies, there will be existing due diligence systems (such as environmental, health and safety) that can be drawn or built on in relation to human rights due diligence. For many companies, “**Plan-Do-Check-Act**” frameworks, or equivalent, will also be relevant. There is significant (though not perfect) correlation between implementation of the corporate responsibility to respect as elaborated in the Guiding Principles and the components of a “PDCA” approach, as illustrated in Figure 1.

Figure 1: Human Rights Due Diligence and “PDCA” Framework



I. Human Rights Due Diligence: Assessing Impacts

1. What the Guiding Principles Require

- Businesses should identify and assess any **actual or potential** adverse human rights impacts with which they may be involved through their own activities or as a result of their business relationships.²⁶
- Businesses should not assume that only the most obvious stakeholder groups may be affected by their activities; their assessment processes should consider impacts both **inside and outside** the “fence” or “walls” of their operations.
- **Human rights risks to people** should be the focus, as distinct from risks to the business itself (although the two are increasingly related).

2. Key Considerations

According to the Guiding Principles, the assessment process typically includes:

- **assessing** the human rights context prior to a proposed business activity;
- **identifying** who may be affected;
- **cataloguing** the relevant human rights standards and issues; and
- **projecting** how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.

To take into account changing circumstances, businesses will need to **assess potential impacts on an ongoing basis**, including at key moments such as at the start of a new activity (like the launch of a new service) or new business relationship, prior to major decisions or changes in the business (such as entry into a new market), or in response to, or anticipation of, changes in the operating environment (such as legislative changes or rising social tension in a particular country). Other important **sources** that can feed into the ongoing process of assessing impacts include information from any operational-level grievance mechanism, news or expert reports, and issues raised by trade unions or NGOs.

Assessing impacts should involve **meaningful consultation with affected stakeholders**, as appropriate to the size of the business and the nature and context of its operations. Companies should pay particular attention to impacts on groups that may be vulnerable or marginalised, and wherever possible to differential impacts on men and women.

3. Possible Approaches

a) How does human rights impact assessment relate to other, existing impact assessment processes?

Many E&R agencies already have extensive systems in place for **conducting due diligence on candidates** (whether they are recruiting or employing them), and **on potential user enterprises/clients**.

²⁶ Actual impacts are a matter primarily for remediation, though they may also be an important indicator of potential impacts.

E&R agencies may attract candidates for job positions with user enterprises/clients through posting adverts online, in office windows, or in specialist publications, through actively recruiting in the community, or candidates may simply “walk through the door” looking for work. E&R agencies’ ability to screen candidates is a fundamental part of the service they offer to user enterprises/clients. **Screening processes for individual candidates** typically include: CV checks (for skills, qualifications, references); age/identity checks; and checks on their legal ability to work (nationality/immigration status). Sensitive jobs or jobs requiring particular skills (such as jobs in the medical, teaching, or social care fields) will require greater due diligence, including police checks and in person interviews.²⁷ There may be additional checks for migrant workers exploring their language and other relevant skills. These kinds of checks can be particularly challenging when recruitment is conducted over the Internet. (Due diligence in business relationships is discussed [below](#).)

While aspects of these due diligence processes seek to capture potential risks to the individual worker, much of the focus is on risk to the user enterprise/client or to the E&R agency from recruiting or employing a particular individual. The Guiding Principles emphasise that the assessment process should focus first on **risk to the affected stakeholder** – meaning here the candidate or worker – rather than risk to the company, notwithstanding that in various regards the two may coincide. Box 3 sets out some other key considerations in this regard.

The Guiding Principles do not express a preference between **stand-alone and integrated processes for assessing a company’s human rights impacts**. E&R agencies will need to consider the extent to which their existing processes capture sufficient information about potential impacts on the workers they recruit or employ and how any gaps should be addressed. Whichever approach E&RA companies choose, it will be helpful to clearly **communicate** to stakeholders what their standard processes for assessing their human rights impacts consist of, including who is typically consulted and when such assessments typically occur.

Box 3: The ‘Who, What, How and Where’ of Assessing Human Rights Impacts

A human rights impact assessment process requires attention to:

- **Who?** A focus on the rights and perspectives of potentially affected stakeholders;
- **What?** Internationally recognised human rights as the standard for assessment;
- **How?** Through meaningful consultation, relationship-building, and prioritisation according to severity of impact in the assessment process and in consequent action;
- **Where?** Extending to business relationships (based on linkage not leverage), including factors not under the company’s legal control.

Who?

A focus on the **rights and perspectives of those stakeholders who may be affected** is important to a full understanding of a company’s impacts (for example, a young worker from a rural community might be particularly reluctant to speak out about any abuses occurring at the workplace).

²⁷ For example, REC in the UK jointly runs the [Quality Mark](#) program with the UK Department for Education, setting minimum standards for E&R agencies and local authorities around recruitment, interview and performance management of teachers.

What?

Any process of assessing human rights impacts needs to take as its framework [internationally recognised human rights](#) standards, including [relevant standards](#) applying to potentially vulnerable groups. This can have implications for the **comprehensiveness** of the assessment process. E&R agencies will want to pay particular attention to any potential vulnerabilities if they are involved in recruiting or employing **youth,²⁸ women or migrant workers who may be exposed to discrimination or other disadvantages**. This will be particularly important in situations of heightened risk (see below) or where other companies (such as other E&R agencies, or transportation or accommodation providers) have been involved in the recruitment or work placement process.

E&R agencies will also want to check that their risk assessment processes take account of factors that can **heighten workers' vulnerability** to adverse human rights impacts (see Box 4 below).

How?

The assessment process needs to be informed by an understanding of the perspective of those who may be affected by an E&R agency's operations through **meaningful consultation with potentially affected stakeholders**, particularly the workers recruited or employed. By demonstrating that it takes their concerns seriously, a company can build trust and make it easier to find sustainable ways to address identified impacts. For **smaller E&R agencies**, where direct consultation is not possible with some stakeholders (like affected communities), this may involve gathering as much general information as possible about likely perceptions of its potential impacts, and consulting expert resources. Box 5 below addresses stakeholder engagement and consultation in more detail.

Where?

Human rights due diligence requires E&R agencies to consider what impacts may arise as a result of their **business activities or relationships** with regard to the entire recruitment and work placement process. This includes impacts arising as a result of the actions of the user enterprises/clients they work with – such as failing to address patterns of harassment of women workers or trade union members in the workplace. What E&R agencies then do to address those potential impacts – and how they prioritise prevention and mitigation approaches – is the next step in the due diligence process and is discussed [below](#).

b) What is the relevance of internal and external engagement to the impact assessment process?

The process of assessing impacts is an **opportunity to engage a cross-section of individuals from different departments or different locations/regions** in a conversation about possible impacts. The purpose of this is to build understanding of how certain actions and decisions by different parts of the business can lead to adverse impacts, which can help create buy-in to the need to take preventative measures. It can also support the internal collaboration that will be necessary if or when certain impacts occur.

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 through the E&R agency's services. In other circumstances, it may be more helpful to start

²⁸ See UNICEF, [Children Are Everyone's Business](#), 2012, Chapter 2.

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by discussing **how each of the main activities associated with the business could impact any of the key stakeholder groups**, including an E&R agency's internal staff, the workers it recruits or employs, affected communities in migrant workers' home or destination countries, and members of potentially vulnerable groups. This may be more helpful, for example, where understanding of, or openness to, the language of human rights across the company is low, or where the company has historically focused on a narrow set of rights and needs to assess whether it in practice has broader human rights risks.

[Annex B](#) takes this latter approach to impact assessment. It maps some of the **typical human rights impacts that can occur through E&R agencies' activities and business relationships**. It is intended to be **illustrative and by no means exhaustive**. Nor will all impacts be applicable in all contexts. In the impact assessment process, it is important to focus on potential impacts and not be limited by those that have occurred in the past or those that are deemed most likely. Prioritisation occurs at a later stage, and depends on more than likelihood alone (see [below](#)).

Box 4: Heightened Vulnerability and Equal Treatment Protections

In some contexts, workers in temporary employment positions can have **heightened vulnerability to adverse human rights impacts**, especially in the case of **migrant workers** who are recognised under international human rights law as a [vulnerable group](#). This vulnerability can occur where there are lower legal protections for such workers under national law, where they lack awareness of their rights and/or where they cannot join a trade union at their place of work, 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 temporary workers receiving lower wages and benefits than workers hired directly for the same jobs, non-payment of benefits, discrimination (eg, on the basis of race, age, gender, disability), and the effective denial of freedom of association and collective bargaining rights.

These risks can be particularly acute outside the EU in contexts where **national law is silent or actively conflicts** with international human rights standards. In the EU, the [Temporary Agency Work Directive](#) establishes the important principle of equal treatment as part of a protective framework for temporary workers, meaning that the **basic working and employment conditions** applicable to such workers should be at least the same as those which would have applied had they been recruited by the user enterprise directly to occupy the same job. This includes conditions relating to pay, working hours, overtime and holidays.

Beyond the internal engagement process, other expert input and engagement will also be important for an E&R agency in assessing its potential human rights impacts. In addition to expert sources, it is essential that an agency understand the likely concerns of those it may impact. Box 5 discusses this in more detail.

Box 5: Meaningful Stakeholder Engagement and Consultation by E&R agencies

Meaningful stakeholder engagement or consultation in the Guiding Principles refers to an on-going process of interaction and dialogue between a business and its potentially affected stakeholders that enables the business to hear, understand and respond to their

interests and concerns, including through collaborative approaches. Engagement with affected stakeholders – particularly temporary workers – can help build the kinds of **feedback loops** that support human rights risk assessment processes as well as enabling E&R agencies to better track their performance (see [below](#)).

- For E&R agencies with operations or supply chains in high-risk country contexts (such as states with known serious labour rights abuses), wherever there are **trade unions**, they will be crucial partners for consultation regarding potential impacts on workers. Where trade unions are lacking, then other trusted **third parties, such as a local NGO**, may have relevant information, while not substituting for direct engagement between management and workers. These third parties can help reduce **barriers** to engagement (linguistic, gender, cultural or other) as well as **perceived power imbalances** between the company and affected stakeholders.
- Engagement with **local civil society actors** can be particularly important in seeking to understand impacts on migrant workers, who are often not represented in trade unions.²⁹ In some cases, it may be important to engage with migrant workers' families, or representatives from the local communities from which such workers are typically drawn – particularly where there are risks of adverse impacts on those communities themselves.
- Audit processes, particularly in the case of contracts with other E&R agencies, should include **appropriate worker interviews** conducted 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 potentially vulnerable workers (see further [below](#)).

c) Extending impact assessment to key business relationships

As noted above, critical business relationships in the E&R agency sector include those with user enterprises/clients, other E&R agency contractors, and other companies in the supply chain. E&R agencies may have stable, long-term relationships with business partners, or they may have a myriad of relationships that are fast-changing, based on one-time transactions (or chains of transactions) about which the E&R agency may not even know, making it impossible to do human rights due diligence on them all. The rise of Internet-based recruitment and employment services significantly heightens this challenge.

Traditionally, companies have **prioritised relationships for due diligence** based primarily on those partners with which they have the greatest financial engagement or leverage. Under the Guiding Principles by contrast, an E&R agency should prioritise due diligence on those relationships where the **severity and likelihood** of potential impacts is greatest, as indicated by:

- (a) relevant **country context(s)**, and
- (b) **those services** the agency obtains or provides that may pose particular risks to human rights (such as recruitment from poor rural areas).

With regard to country context, there is a range of credible, publicly available country risk analysis tools (see [Annex C](#)). With regard to **services** they receive and provide, E&R

²⁹ For example, through <http://www.migrantwatch.org/index.html>.

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agencies will want to ask themselves whether there are known human rights risks associated with any of them, and how severe those risks are.

In assessing the risks arising from **recruitment services provided by E&R agency contractors**, an E&R agency will want to consider a range of approaches including:

- reviewing its contractors' **policies and practices** on critical issues including legal compliance, non-payment of fees, non-retention of personal and/or identity documents, non-discrimination, and no unauthorised deductions to wages;
- requiring **high risk contractors** to adhere to international standards or a company Code of Conduct, and to agree to appropriate assessments, audits and related capacity-building activities (see Box 11 below); and
- working only with licensed or government-registered E&R agencies, and testing their **reputation** through conversations with representatives from national labour inspectorates, or, where that is not feasible, using other reliable means of verification.

When it comes to relationships with user enterprises and clients, there is a range of approaches that E&R agencies should consider, summarised in Box 6 below, in order to understand the risks that workers may be exposed to.

Box 6: Assessing the Risk of Impacts on Workers Arising through Relationships with User Enterprises/Clients

While an E&R agency's relationships with user enterprises may be ongoing and its engagements with clients may be one-off transactions, this is not always the case. In any event, an agency needs to assess the risk of adverse impacts on the workers it recruits or employs as a result of its business partners' actions and decisions. Possible approaches include:

- Reviewing the enterprise's code of conduct and/or other relevant **policies and processes** for addressing relevant human rights issues, particularly respect for **freedom of association** and collective bargaining rights as well as **workplace conditions** in relation to health and safety, discrimination and harassment, overtime, and access to effective grievance mechanisms;
- Undertaking **on-site visits** and seeking to speak wherever possible with trade union representatives or other workers about actual practices;
- Ensuring that the **wage** that will be paid to the worker is in accordance with the legal minimum wage (where this exists and applies, or otherwise looking at relevant wage comparisons for the position/sector), and, regardless, testing the amount that the worker will actually receive for its relationship to local "living wage" norms with external stakeholders;³⁰
- Conducting **financial due diligence** to confirm that the enterprise has the ability to pay the worker's wages (either directly in the case of recruitment or via the fees paid to the E&R agency in the case of temporary workers);
- Triggering appropriate internal escalation procedures to review the decision to proceed with or renew the relationship in the case of any "**red flags**", which can

³⁰ In some countries, such as the Netherlands, a collective bargaining agreement between the industry association and trade unions can provide some clarity; elsewhere, E&R agencies will need to rely on other reliable sources of information. In some jurisdictions, user enterprises and E&R agencies are jointly responsible for ensuring compliance with relevant wage, benefit and associated legislation.

include: the company refusing to allow on-site visits, an intention by the company to replace striking workers with temporary workers or other indications of consistent denial of freedom of association, discriminatory requests for workers, or non-compliant health and safety procedures.

d) How do situations of heightened human rights risk affect impact assessment processes?

E&R agencies operate across the globe; as a result, they often operate, or have business relationships, in areas where **national law is silent** regarding international human rights standards, is **unenforced, or actively conflicts** with those standards. They may also operate, or have relationships, in areas where **conflict** (ranging from physical confrontation to armed violence) is present or latent, which can affect the safety of workers, particularly migrant workers and their ability to return home. When companies enter into, or have business relationships with entities in, areas of heightened risk, the responsibility to respect does not change, nor do the elements of human rights due diligence. Rather, they typically require **greater attention, effort and resources** at every step of the process in order to ensure they are fully implemented in practice.³¹

When operating in high-risk contexts abroad, an E&R agency should seek to consult with its **home state embassy** on the ground to alert them to the challenges it faces, rather than waiting for advice or engagement. The agency should be able to seek information on the operating environment, relevant legal obligations or policy advisories, and any other support or guidance that the state may be able to offer with regard to human rights risk. Specialist international bodies such as the [International Labour Organisation \(ILO\) helpdesk service](#) should be able to advise companies on current operating challenges. National industry associations, particularly those that are affiliated with Ciett, will also be important resources.

In such heightened risk situations, meaningful stakeholder consultation becomes an imperative. Possible actions to mitigate risk in such contexts are discussed [below](#).

Box 7: Assessing the Risks of Trafficking and Forced Labour in Recruitment and Employment Processes

Human trafficking and forced labour are **human rights abuses** in themselves. They can also lead to other severe human rights consequences for individual workers, relating to workplace health and safety, intimidation, harassment and violence (including sexual violence), as well as adversely impacting workers' families (who may have to take on significant debt in seeking to help the worker escape from a situation of bonded labour). Relationships in these situations are often characterised by deception (in terms of the promises made to workers), and abuses are typically the result of actions taken by a number of abusive actors at each stage of the work placement process.

Without effective policies and processes in place, E&R agencies risk being involved with forced labour or trafficking, including through the actions of **E&R agency contractors or other suppliers**. Risks may arise either at the point of recruitment or at the point of employment, but the highest risk is likely to be at the recruitment stage, whether or not this is something

³¹ See Institute for Human Rights and Business, [From Red Flags to Green Flags](#), 2011.

that the E&R agency itself does. The risk is **heightened** in situations where individuals are more likely to accept poor working conditions as a result of endemic poverty, or where the payment of fees for work placement services is legal or widely practiced (and where loan agencies are often in long-term relationships with local E&R agencies).

In assessing the risk of being involved with such impacts, an E&R agency will need to investigate a range of issues, including:

- **At the point of recruitment:** whether any other E&R agency or individual broker has been involved; whether any individual brokers were “trusted individuals” at the local/village level; whether any fees have been charged or documents retained; whether the worker knows where they are going, if they speak the language and if they have been informed of their rights in the destination country; whether any loan agencies have been involved or whether the worker has been asked to buy any equipment; whether they have received a contract and whether they understand it.
- **Prior to departure:** have there been appropriate “**pre-departure orientations**” in which the worker is fully informed of his or her rights and working conditions (see further Box 8 below).³²
- **At the point of travel between the origin and destination countries:** have other companies or individuals been involved in arranging transportation, and if so, have fees been charged; have such fees been properly agreed with the worker and written into the contract if they are to be deducted from the worker’s salary.
- **At the point of employment and accommodation:** confirming that the user enterprise will pay any involved E&R agencies for the recruitment costs (given the significant risks that exist for the worker if it does not);³³ confirming whether other companies have been involved in arranging accommodation and if so, whether any fees that have been charged were properly agreed with the worker and written into the contract if they are to be deducted from the worker’s salary.

Leading companies are increasingly seeking to address these risks through **collaborative efforts**, including with civil society actors, to address the root causes and illegal practices that can lead to such abuses.³⁴

4. Questions to Ask

The following questions should help test the extent to which the company’s processes to assess human rights impacts are aligned with the Guiding Principles:

- Are our existing assessment processes or methodologies adequately attuned to what is unique about human rights impact assessment?
- Do they take full account of the particular vulnerabilities of the individuals that we recruit or employ?
- If the relevant assessment process is led by one department, how are other functions engaged in the process so that they can contribute to it?

³² See BSR, [Migrant Worker Management Toolkit: A Global Framework – Managing Workers and Protecting Rights](#), 2010.

³³ Evidence shows that workers can end up paying significantly higher fees in such situations than the actual costs of the services involved.

³⁴ See Verité and Manpower Group, [An Ethical Framework for Cross-Border Labor Recruitment](#); see also the [Global Business Coalition Against Trafficking](#). The recent US Executive Order seeking to [eliminate trafficking in US government contracts overseas](#) will lend further urgency to similar efforts.

- How could we strengthen our stakeholder engagement processes, particularly with affected stakeholders, to better contribute to the impact assessment process?
- In particular, have we consulted adequately with trade unions about specific workplaces?
- Do our assessment processes capture potential impacts arising through our key business relationships – with user enterprises/clients, E&R agency contractors and other suppliers?
- Are our assessment processes appropriately responsive to situations of heightened risk, particularly risks involved in trafficking and forced labour?

II. Human Rights Due Diligence: Integrating and Acting

1. What the Guiding Principles Require

To address adverse human rights impacts, businesses should:

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

2. Key Considerations

The larger a business, the more likely it is that those who are responsible for assessing its human rights impacts sit apart from those staff **conducting the activities or managing the relationships** that may generate those impacts – yet these latter staff need to be closely integrated into the process of identifying and implementing solutions. For smaller E&R agencies, day-to-day communication may be sufficient for effective integration; in larger companies, it requires a more **systematised approach**, including structured **cross-functional collaboration**, clear internal reporting requirements, and regular interactions with external experts. In situations of **heightened risk**, the involvement of senior management and direct engagement with those affected (where feasible) will also be important.

Appropriate action will look quite different depending on the nature of the company's involvement with the impacts identified in the assessment process:

- Where the business **causes or may cause** an impact, it should take the necessary steps to cease or prevent the impact, and remediate where needed.
- Where the business **contributes or may contribute** to an impact (by encouraging, facilitating or otherwise incentivising it), it should similarly take action to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. It should also remediate where needed.
- Where the impact is **directly linked to its operations, products or services** through a **business relationship**, it should seek to prevent or mitigate the risk that the impact continues or recurs, taking into account factors including: its leverage, the severity of the abuse, how crucial the relationship is, and any adverse consequences of terminating it. Remediation is not required though many companies choose to engage in it.

Leverage refers to **the ability of a company to effect change in the wrongful practices of third parties**. Where the impact is directly linked to its services, but without contribution on its part, an E&R agency must seek to mitigate the risk of the impact continuing or recurring by **maximising and using** its leverage. If these efforts, given reasonable time, are still unsuccessful, it should consider **terminating** the relationship, taking into account credible assessments of adverse impacts from doing so.

Where the relationship is “**crucial**” (meaning that it provides a product or service that is essential to the business for which no reasonable alternative exists), ending it raises particular challenges. Here [severity](#) will be important: the more severe the abuse, the more quickly the business will need to see change before it takes a decision on whether to end the relationship. If it stays in the relationship, it will need to be able to **demonstrate its ongoing efforts** to mitigate the abuse and be prepared to accept any consequences (legal, reputational, financial) of the continuing connection.³⁵

Where it is necessary for a business to **prioritise which impacts it will address first**, the process should be driven by the [severity](#) of the impacts involved, taking full account of the perspective of potentially affected stakeholders.

3. Possible Approaches

a) What does integration and action look like where a company risks causing or contributing to an adverse impact?

Where an E&R agency risks causing or contributing to an adverse impact through its own activities, it will need to take steps to prevent, or where that is not possible to mitigate the risk of, the impact occurring.

Where the E&R agency is itself providing **recruitment services**, there is a range of steps it can take before the worker arrives at their workplace, particularly where the agency is recruiting migrant workers to make sure it does not cause or contribute to adverse impacts. Pre-departure orientation programs for migrant workers can be one important tool.

Box 8: Pre-Departure Orientation Programs for Migrant Workers³⁶

These programs aim to **inform migrant workers of their rights** and provide them with appropriate information about the destination country and about their specific job, in their **own language** or in a language with which they are familiar. In addition to providing factual information to workers, they are an opportunity to build skills that will help workers to be self-sufficient once they arrive in the destination country.

Sessions should be scheduled as close to departure as possible (for the maximum retention of information), should take into account **accessibility** considerations (in addition to language, this means considering the time and location of the training to ensure workers are able to attend), and should be **linked up** wherever possible to post-arrival support and training in the destination country. Workers should be given a **copy of their written**

³⁵ See note 16 above, pp 48-51.

³⁶ Further [guidance](#), and training, is provided by the [International Organisation for Migration](#) in a number of countries.

contract, which can then be checked against what they are given once they arrive at their workplace. For workers with low literacy, it will be important to ensure that they understand the contents of the document.

Discrimination can also be a particular challenge: an E&R agency risks directly **contributing** to discrimination if it accedes to inappropriate requests from user enterprises/clients. Box 9 below outlines some good practices in this regard, building on extensive industry experience.

Box 9: Mitigating the Risks of Discriminatory Requests by User Enterprises/Clients

Responsible E&R agencies are alert to the risk of being involved with discriminatory requests from user enterprises and clients. Many agencies have **significant expertise**, often to a greater degree than user enterprises/clients, in implementing appropriate and non-discriminatory recruitment processes and this creates a real opportunity to **engage** with user enterprises/clients on this issue.

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;
- Establishing **escalation pathways** so that requests are flagged by front office staff with someone more senior, so that there are always at least “two pairs of eyes” on the decision to contract;
- Seeking to **educate user enterprises/clients** wherever possible and build their capacity as part of the contract negotiation process;
- Being willing to **refuse contracts** with particular user enterprises/clients where they are resistant to such messages; and
- Where appropriate, **sharing information with peers** about user enterprises/clients that consistently make discriminatory requests.

In considering the risk of contributing to adverse impacts, it will be important for E&R agencies to look at their own **contracting practices**, particularly in relation to recruitment services. If an E&R agency strongly incentivises the provision of services by E&R agency contractors or other suppliers at cost, to the exclusion of other considerations, those companies are unlikely to pay adequate attention to human rights issues in their own work placement practices, and the company risks directly **contributing** to any harms that result.

b) What is the relevance of internal and external engagement to the process of developing prevention and mitigation measures?

In the development and implementation of appropriate prevention and mitigation plans, it is important that E&R agencies engage the internal staff necessary to address the issue (ie, those whose actions or decisions may generate the relevant impacts). In larger organisations, as noted above, **cross-functional collaboration, or collaboration between regions and the corporate level**, can play a critical role in this regard. Engaging with external stakeholders can assist understanding of the severity of impacts and in the development of appropriate responses, and will be particularly important in situations of **heightened risk** (see [below](#)).

c) How should a company prioritise identified impacts for action?

Where it is necessary to prioritise impacts for action, an E&R agency should do so according to the **severity and likelihood** of the impacts, taking full account of the perspective of affected stakeholders. This is distinct from the traditional risk or “heat mapping” approach that determines severity (or “consequence”) in terms of the risk posed to the company.

In some cases, it will be clear which impacts are potentially [severe](#) based on their scale, scope or irremediable nature, such as those involving forced labour by migrant workers placed in positions of debt bondage, or serious adverse impacts on the right to health of individual workers. In other cases, E&R agencies will need to engage with workers or their legitimate representatives to understand the potential impact fully.

Assessing likelihood means considering the extent to which the risk of an impact occurring is increased by:

- (a) the **country and local operating context(s)** where the particular impacts have occurred or may occur, as well as
- (b) **specific business relationships** that may be involved.

Prioritisation is a relative concept. This means that once the most severe potential impacts have been prevented or mitigated (starting with the most likely), the next tier of impacts need to be dealt with, and so on through all the impacts identified.

d) How can leverage be generated and used in business relationships?

As discussed above, leverage is not relevant to determining the scope of a business’ responsibility but is a critical concept when it comes to taking appropriate action.

Box C: Leverage in Many Forms³⁷

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 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; and
- the company’s ability to engage government in requiring improved performance.

E&R agencies will need to think particularly carefully about risks arising through their relationships with user enterprises/clients, given that workers are typically under the **supervision** of those businesses, even if in the case of temporary workers there is a contractual relationship with the agency. Much of an E&R agency’s leverage with a **user enterprise/client** will be established in the terms of its contract with that business. Hence it will be important to consider critical human rights issues during the **contract negotiation stage for inclusion in the final agreement**. Box 10 considers some points that user enterprises will want to take into account. In addition to these issues, E&R

³⁷ See note 16 above, p 49.

agencies will also want to consider appropriate escalation and contract termination provisions in the case of significant human rights abuses.

Box 10: Relevant Issues for User Enterprises to Consider in Contracting with E&R agencies

- Considering the need to enable the E&R agency to pay temporary workers a “living wage” and the implications of this for the **fee** to be paid to the agency;
- Ensuring that workers are provided with appropriate working conditions, including relevant **health and safety** equipment and training (and that this is not limited to physically risky sectors);
- Providing for **worker welfare** (in relation to issues such as overtime), including access to effective **grievance mechanisms**, and responsibility for such mechanisms as between the user enterprise and the E&R agency (see further [below](#)).

In mitigating risks arising through E&R agency contractor and other supply chain relationships, even where there is no direct relationship, an E&RA company needs to identify and address the risk of human rights abuses occurring in connection with its own services – just as its contractors and suppliers need to do in relation to their own supply chains.

As Box C above shows, **leverage does not only come from contractual relationships**. There is a range of emerging good practices on working with suppliers, including from other sectors, which is summarised in Box 11 below.³⁸

Box 11: Good Practices in Working with E&R Agency Contractors and Other Suppliers to Prevent and Mitigate Risks

Possible approaches include:

- Where E&R agencies contract out the recruitment of workers (usually migrants) to another E&R agency, entering into agreements to “**accompany**” the contractor through their hiring processes, as user enterprises are increasingly doing with E&R agencies;
- A focus on, and support for, the **development of contractors’/suppliers’ own management systems** to identify and address risks to labour and other human rights, in line with those businesses’ own responsibility to respect (including with regard to their own suppliers);
- Supporting the development of **effective supplier-level grievance mechanisms**, wherever possible with the central involvement of trade unions, as a channel for identifying and addressing worker grievances;
- Where necessary, **reducing the number of contractors/suppliers** so that the E&R agency itself has enhanced oversight of (and thus accountability for) the entire work placement process;
- **Partnering with others** (eg, peers, E&R agency contractors and other suppliers, trade unions, industry associations, government, international organisations, civil society organisations) to address the most endemic human rights challenges through collaborative approaches (such as the efforts in relation to trafficking described above in Box 7). This may include supporting the establishment of local E&R agency business associations where they do not exist.

³⁸ See also Shift, *Respecting Human Rights Through Global Supply Chains*, forthcoming.

e) Mitigation in situations of heightened human rights risk

Key Point: Where national law is silent, or falls short of international standards, the Guiding Principles make clear that companies should **operate to the higher standard**.³⁹ This can be particularly important for E&R agencies where national law does not support the right to form or join trade unions and/or does not provide for collective bargaining.

In many Export Processing Zones (“EPZs”), experience shows that a lack of government attention, or even deliberate signalling that lower standards will be tolerated, can lead to pervasive company practices that fall short of minimum national, let alone international, standards. This can create particularly acute challenges for E&R agencies that provide services to user enterprises/clients in EPZs. Collaborative efforts at the regional or national levels among brands, suppliers and trade unions, including direct engagement with the government or local authorities, can be particularly important in such situations.⁴⁰

Where, national law appears to **conflict** with international standards, an E&R agency’s assessment processes should pick up this risk. The agency should then **test the extent of the conflict**, for example, through seeking clarification from the government, challenging the relevant provision, or learning from what peers (or user enterprises/clients) have done to address it. Agencies will be well-advised in such cases to engage with stakeholders – including affected stakeholders wherever possible – for advice and to test any proposed approaches that would enable the agency to honour the principles underlying the relevant international standards. The more an E&R agency has prepared its own staff for dilemmas through training, scenarios, lessons learned and similar approaches, the better the position it will be in to respond to challenging situations.

4. Questions to Ask

The following questions should help test the extent to which the company’s processes for integrating and acting on assessment findings are aligned with the Guiding Principles:

- Do we have appropriate processes for developing prevention and mitigation approaches in situations where we might cause or contribute to an impact?
- Do our prioritisation approaches (risk matrices, heat maps etc) take full account of the severity of potential impacts, as judged from the perspective of potentially affected stakeholders?
- Have we integrated human rights into existing guidance for those tasked with the job of entering into contracts (with user enterprises/clients and E&R agency contractors in particular)?
- What steps are we taking with regard to known risks in our supply chain regarding recruitment practices? Could we take more of a partnership-based approach in our interactions with E&R agency contractors?
- Do our prevention and mitigation approaches take account of the risk of impacts on potentially vulnerable groups, particularly migrant workers? How?
- Have we prepared staff for situations of heightened risk (eg, where there is a history of trafficking, legal charging of fees, poverty) through scenarios, specific guidance and training? Have we identified local stakeholders that we could work with?

³⁹ Guiding Principle 23(a) and commentary.

⁴⁰ See the [Protocol on Freedom of Association in Indonesia](#) signed by suppliers, trade unions and global sporting good brands.

III. Human Rights Due Diligence: Tracking

1. What the Guiding Principles Require

- Companies need to track the **effectiveness of their responses** to adverse actual and potential human rights impacts to verify whether 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.

2. Key Considerations

Tracking human rights issues and responses is an essential part of ongoing management of a company's impacts:

- it can help identify **trends and patterns**, highlighting where there are repeat problems that may require systemic change;
- it can also identify **good practices** that can be shared more broadly within the business to continuously improve performance; and
- it is fundamental to the company's ability to **account both internally and externally** for its success in respecting human rights (external communication is discussed [below](#)).

Tracking systems need to be tailored to the company's situation – again, the Guiding Principles do not prescribe whether they should be **integrated into a company's existing systems or stand-alone**. Tracking should draw on **relevant internal and external sources** in order to derive as accurate a picture as possible, and should include both quantitative and qualitative feedback.

Quantitative indicators offer precision and can be more easily integrated into, or correlated with, existing systems. However, because respect for human rights is about impacts on people, **qualitative indicators** will always be important – including feedback from **potentially affected stakeholders** wherever possible. Stakeholder engagement processes and operational-level grievance mechanisms can perform important roles in this respect.

Where a significant human rights impact has occurred, companies should consider using **root cause analysis** or similar processes to identify how and why the impact occurred in order to help prevent, or mitigate the risk of, its recurrence.

3. Possible Approaches

a) How can the tracking process build on existing systems and indicators?

An E&R agency may have **existing systems** in place for gathering data that relates in broad terms, or quite specifically, to direct impacts and impacts arising through business relationships. These can include systems to track and understand patterns of hiring and placement of workers (including workers' gender, any disability, or other factors that may form the basis of discriminatory treatment), to monitor and audit E&R agency contractors' and suppliers' performance on labour rights, as well as systems to monitor workplace conditions at user enterprises. A review of these and other relevant systems to assess their

coverage of the salient human rights risks identified by the company can help **identify gaps** in current tracking efforts, from recruitment through work placement. For E&R agencies with multiple country operations, it will be particularly important to incorporate feedback from **local branches**.

Where an E&R agency is providing **employment** services, it will be in a position to directly control and monitor the payment of salaries and benefits to workers. However, as noted above, the worker will be under the supervision of the user enterprise in all other respects, making tracking more challenging. Approaches to tracking impacts involved in the placement of workers are discussed [below](#) in the context of business relationships.

With regard to **recruitment** services, a range of tracking tools exist although many are targeted at user enterprises seeking to ensure that they are using ethical recruitment practices. However, a number of the questions and indicators contained in such tools will be of direct relevance to E&R agencies providing recruitment services as well.⁴¹

Box 12: Key Issues for E&R Agencies in Developing Indicators

- It is particularly important to identify and analyse **trends or patterns** in data related to human rights impacts:
 - **repeat types of incident in one country context** might suggest endemic local challenges requiring a more systematic response by the agency, perhaps through collaboration with others;
 - **repeat types of incident across operating contexts** might suggest a broader policy, process or systems weakness at the corporate level;
- **Feedback from branch staff**, who may see and hear things that management cannot, should be actively solicited;
- **Qualitative indicators** will be central to the interpretation of quantitative data regarding impacts on workers. 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 such as migrants) adversely impacting on freedom of association;
- The E&R agency may be able to enhance its risk management by tracking the **differential impacts** it may have on women and men, for example with regard to the risks of gender-based harassment and sexual violence that women workers can face in, for example, hospitality and domestic work roles.

Given the emphasis that many E&R agencies place on training in human rights compliance (particularly in the area of non-discrimination), developing measures that test the **effectiveness of training** (ie, beyond simply tracking the number of internal staff trained) are likely to be important. This should focus on assessing the level of understanding of participants and the extent to which they put the learning into practice in their work (for example, using baseline surveys pre- and post-training, as well as at a set follow-up point).

Workplace satisfaction surveys are seen as a key tool in the industry; however, to be of use in tracking efforts to address human rights impacts, these need to be reviewed and revised to ensure that they cover all relevant human rights issues (regardless of whether

⁴¹ See, eg, Verité, Fair Hiring Toolkit, For Suppliers: Managing Labor Brokers and Monitoring for Ethical Recruitment and Hiring, [Tool 2: Monitoring the Performance of Labor Brokers – Introduction and Key Issues of Concern](#).

they are framed as such) that temporary workers may face. Such surveys can be useful in identifying broad trends, but are not intended to pick up individual concerns.

Key Point relating to User Enterprises: Tracking systems are essential to identify whether and how a **user enterprise's own contracting practices** may be contributing to the risks of human rights impacts among its suppliers, including E&R agencies. For example, data that shows correlations between increased demands on E&R agency suppliers (eg, short notice for requests for workers) and breaches by E&R agency suppliers of labour laws would suggest a need to analyse whether there is also a causal linkage. Gathering and assessing this data can create the basis for **internal conversations** about how to address the dilemmas this creates for E&R agencies, and engage all relevant user enterprise staff in shared ownership of the problem-solving process.

b) What is the role of operational-level grievance mechanisms in tracking?

Operational-level grievance mechanisms provide an essential channel for potentially affected stakeholders to raise concerns if or when they believe that they might be harmed by the company. As such, they also provide vital qualitative information for the purposes of an E&R agency's tracking systems on how well it is addressing its actual and potential human rights impacts and what kind of impacts workers are facing. It is important to note that such mechanisms should never undermine the role of trade unions.

For E&R agencies, it will be important that there are grievance mechanisms available to both internal staff as well as temporary workers. Such mechanisms should enable all workers to raise concerns regarding direct, or feared, impacts on their own welfare and rights, and when they see or hear evidence of weaknesses in how the company is responding to human rights impacts more generally. Grievance mechanisms are discussed in more detail [below](#).

c) What is the role of external engagement in tracking?

Involving external stakeholders directly in tracking processes can be an important means of generating credibility. There are a number of ways in which E&R agencies can do this, including:

- proactively engaging with independent experts, NGO representatives or trade unions **on the ground** at the earliest stage possible of new country operations or moves into new supplier markets;
- working with **trade unions** at the local or global level and other civil society actors to monitor respect for labour rights in user enterprises, especially in high-risk sectors;
- where there is a **history of distrust** with stakeholders in a particular context or over a particular issue, identifying an individual or organisation that all parties will trust to provide accurate assessments of the company's efforts to address its impacts.

d) What kinds of tracking systems are helpful in relation to impacts arising through business relationships?

Responsible E&R agencies already employ a range of methods of tracking impacts on temporary workers placed with user enterprises. A number of possible approaches are summarised in Box 13 below.

Box 13: Approaches to Tracking Impacts on Workers Placed with User Enterprises

- **Periodic check-ins** through phone calls, or structured interviews, with temporary 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 (discussed [below](#)), auditing key records (such as worker time-sheets), or periodically inspecting workplaces;
- Providing a **hotline** for temporary workers with capacity to follow-up on issues raised;
- Implementing periodic **health checks** for workers in high risk environments.

In tracking impacts arising in relation to **recruitment** services provided by E&R agency contractors, it will be important for E&RA agencies to:

- Confirm that contractual conditions agreed at the point of departure correlate with those at the point of arrival/workplace;
- Check that personal and/or identity documents have not been retained;
- Investigate whether any psychological or physical violence has been exerted;
- Confirm that no fees have been charged for recruitment or work placement services, and that where fees have been charged for transport/accommodation, these have been fully documented in a contract and agreed to by the worker with full understanding and without coercion; and
- If necessary, engage with local actors to monitor local recruitment conditions.

Audits of E&R agency contractors and other suppliers can provide useful and necessary “snap-shot” data about performance. However, consistent evidence from other sectors that have employed audits in their supply chains for some time suggests that they often miss issues due to their brief nature, suppliers’ manipulation of records and worker self-censorship in audit interviews.⁴² They also have a **poor record in generating sustainable improvements** in labour standards over time, hence the emergence of more “partnership-based” and collaborative approaches (see Box 11 above) that are complementing, or in some instances even replacing, audits. Moreover, experience shows that the focus of assessments and audits should be not just on a business partner’s compliance with national law and international standards, but also on reviewing their capacity to implement those standards. It will be important for E&R agencies to learn from these experiences, for example by working with business partners on **root cause analysis** methodologies in the case of significant impacts, to test the conclusions drawn from audits.

Grievance mechanisms within contractors and suppliers can be an important source of information about human rights impacts linked to an E&R agency’s operations, if these provide for some kind of periodic reporting on the substance of complaints and outcomes to the E&R agency. In addition to encouraging business partners to develop effective mechanisms, E&R agencies may also want to consider providing a **“fall-back” channel** if issues are not being addressed, or being part of an initiative that does so, in order to ensure

⁴² See Richard Locke, Matthew Amengual, Akshay Mangla, “Virtue Out of Necessity? Compliance, Commitment and the Improvement of Global Labour Supply Chains”, *Politics and Society*, 37(3), 2009, pp 319-351.

that the company is getting access to accurate information. One approach is a national hotline for registering complaints about the practices of E&RA companies, run by an independent third party organisation, which is then linked in to the national labour inspectorate.⁴³ Such approaches can also engage responsible E&R agencies in addressing the risks posed by rogue businesses in the sector. Grievance mechanisms in the user enterprise context are discussed [below](#).

Tracking performance in relation to **trafficking abuses** can be particularly challenging for E&R agencies, given the secretive nature of the relationships involved. Recent work to develop indicators on forced labour, including identification of high-risk contexts (such as recruitment of migrant workers in low-wage sectors, or from countries with known trafficking risks), will be relevant to efforts by E&R agencies to develop effective systems.⁴⁴

4. Questions to Ask

The following questions should help test the extent to which the company's tracking processes are aligned with the Guiding Principles:

- Have we reviewed existing tracking systems to see where human rights could be integrated and where there are gaps?
- Have we developed indicators that provide sufficient qualitative information to evaluate the quantitative data that we collect, particularly in relation to temporary workers?
- Do our indicators capture our responses to impacts on potentially vulnerable workers, especially migrant workers, and differential impacts on men and women wherever possible?
- Could engagement with external stakeholders strengthen our tracking systems?
- Have we engaged appropriately with the user enterprises we work with in developing effective approaches to tracking?
- Do our audit systems involve appropriate worker interviews conducted 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 potentially vulnerable workers?
- What can we do to supplement contractor/supplier audit systems to help build sustainable change in our supply chain?

IV. Human Rights Due Diligence: Communicating

1. What the Guiding Principles Require

- 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.
- Communication needs to be **appropriate to the business' impacts** – in terms of its form, frequency, accessibility, the management of relevant risks and the sufficiency

⁴³ See, eg, in the Netherlands, the hotline run by [SNCU](#).

⁴⁴ See, eg: ILO, [Hard to See, Harder to Count: Survey Guidelines to Estimate Forced Labour of Adults and Children](#), 2012 (while addressed to developing national surveys, it provides a useful discussion and set of indicators on forced labour that can be adapted for use by E&R agencies); Verité, [Research On Indicators Of Forced Labor: Successes, Challenges and Reflections on Future Engagement](#), 2012.

of information provided.

- Companies that may have severe human rights impacts should **report formally** on how they address them.

2. Key Considerations

To communicate effectively, a company needs to have the necessary information available – drawing on all the earlier phases of the due diligence process. The focus of this step is on communicating about the company’s **general approaches** to addressing human rights risks, especially those that are the most salient, though it may also include information on **specific responses** to particular impacts in some instances.

Decisions about the **timing, audience, form and content** of any communication will be driven in large part by the **purpose** of the communication and the **severity** of the relevant impacts. Communication will be required, without waiting for a request, if there is a risk to affected stakeholders’ **safety or welfare** so that they can take steps to protect themselves. **Formal reporting** will be required where there is a risk or occurrence of severe impacts.

3. Possible Approaches

a) How does communicating as part of human rights due diligence differ from more traditional approaches to communication?

It will be important for E&R agencies to understand the differences between the objectives of traditional public relations and those of communicating on the handling of human rights risks – which revolve around **accountability**. “Silo-ing” the task of communication within a single department is unlikely to be effective. Those who engage with workers on a daily basis, including front and back office staff in local branches, need to be **empowered to communicate** with them about the company’s efforts to address impacts that are of direct concern to those individuals. A failure to do so may harm those relationships.

b) What forms of communication are likely to be appropriate?

The **form** of an E&R agency’s communications should fit the **purpose**. If the purpose is to explain to shareholders and others, including civil society groups, how the company is addressing a specific risk (particularly risks of severe human rights impacts such as forced labour or trafficking), or human rights risks **generally**, then communication via an annual general meeting, website updates or electronic mailing lists may all be relevant.

If the purpose is to communicate with **affected stakeholders**, then individualised communication and in-person meetings will be important. Appropriate communication with **workers** will pose different challenges in different contexts, depending on the composition of the workforce (in terms of potentially vulnerable groups), the existence or not of trade unions, and the speed at which the workforce changes (worker turnover). It will be important for E&R agencies to support or build effective worker-management communication channels, through trade unions.

It will be particularly important to take account of literacy, language skills and any cultural **communication barriers** (eg, if verbal communication is seen as more respectful than written communication). **Key information** to share with workers includes details of

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working conditions, nature of the work, rates of pay, pay arrangements, and working hours, and of any relevant health and safety risks.⁴⁵ E&R agencies will want to confirm that workers understand the nature of work required and can perform it without injury to themselves or to others.⁴⁶

E&R agencies can also play an important role in **communicating with user enterprises** about the importance and nature of efforts to address adverse impacts on temporary workers, as well as any developments in regulatory requirements.

Formal reporting will be appropriate for E&R agencies that have significant human rights risks arising from their activities, business relationships or operating contexts. This can involve reporting on particular human rights risks or impacts as part of self-standing annual CSR or Sustainability Reports. Reporting may alternatively involve an integrated report on financial and non-financial performance. With appropriate metrics, **integrated reporting** can help demonstrate that respecting rights is seen as integral to the bottom line.

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.⁴⁷ 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.

E&R agencies should seek to reflect the **full range of business relationships** in their reporting by identifying who the relevant entities are and what steps the company takes to maximise its ability to meet its responsibility to respect in the context of those relationships. It can be helpful to use **anonymised examples** to convey situations where a decision was taken *not* to engage with a potential business partner, or to terminate a relationship, outlining the reasons for that decision. This can help communicate to the E&R agency’s business partners, as well as other stakeholders, that it is serious about its human rights commitments.

Stakeholders who are interested in a company’s efforts to respect human rights will welcome a **candid explanation** that acknowledges the challenges involved and clearly explains the processes in place to address them. Since it will take time for any company to implement the Guiding Principles, reporting by E&R agencies should indicate both what has been achieved and any plans to implement outstanding parts of the process. **Comparability over time** in reporting will be important, and **targets** can help demonstrate a commitment to continuous improvement in respecting rights, while recognising that it can be a long-term process.

Box 14: Understanding Materiality in Human Rights Reporting

There has been an emerging recognition of the need for better reporting of non-financial risks and their integration into financial reporting, in part because those risks can directly harm a company’s bottom line. Evolving definitions of materiality focus not just on the perspective of the “reasonable investor”, but also on the perspective of potentially affected

⁴⁵ See Ciett Code of Conduct.

⁴⁶ See American Staffing Association [Code of Ethics](#).

⁴⁷ See, eg, Verité, Fair Hiring Toolkit, [For Brands: Reporting and Transparency](#).

stakeholders and on topics and indicators that would “**substantively influence the assessments and decisions of stakeholders**”.⁴⁸ The Guiding Principles do not offer a particular definition of materiality with regard to how a company communicates on its efforts to address its human rights impacts – what matters is that it be informed first and foremost by the **severity** of those impacts, taking full account of the **perspective of potentially affected stakeholders**.

c) What about confidentiality and transparency?

The Guiding Principles recognise that there may be **legitimate reasons** for the non-disclosure of information – namely, where there are potential risks to affected stakeholders (including to workers’ right to privacy) or due to the legitimate requirements of commercial confidentiality – meaning, for example, information that is crucial to negotiations regarding a significant business transaction for the duration of those negotiations, or information legally protected against disclosure to third parties.⁴⁹ However, E&R agencies should take care that **blanket assumptions** about confidentiality or legal risks arising from disclosure do not become an easy justification to avoid disclosing information that can legitimately be made public – or to avoid asking the necessary tough questions internally. Box 15 provides some observations in this regard.

Box 15: Transparency and Confidentiality

Building trust in a company’s efforts to address its human rights impacts entails being **candid and open** about problems and **taking responsibility** when things go wrong. E&R agencies are being challenged by evolving **expectations about disclosure**. Transparency may be lacking in relation to: any fees charged to workers by E&R agencies for recruitment, work placement or additional services (such as transportation); the terms of the contracts between user enterprises and E&R agencies; and the terms and conditions applying to permanent workers in equivalent jobs. However, some governments require disclosure of contracts between E&R agencies and temporary workers,⁵⁰ and regulatory requirements on disclosure by user enterprises are likely to have implications for E&R agencies as well.⁵¹

Under the Guiding Principles, companies retain the **legally protected confidential space** that they need to investigate difficult problems, evaluate them, and communicate internally to address them.⁵² Given the potential legal risks of failing to respect human rights,⁵³ it is **highly prudent** for companies to investigate the underlying facts wherever allegations of company involvement in human rights abuses occur. (Guiding Principle 23, which states that companies should treat the risk of involvement in **gross human rights abuses**, such as forced labour, as a matter of legal compliance compels such an approach in cases that suggest this may be the case.)

Where a company decides **not to communicate** in response to an allegation, it should do so on the basis of knowledge of the situation and clear criteria. There remains the risk that a lack of communication about a specific allegation can compound views that the allegation is

⁴⁸ GRI, [G3.1 Sustainability Reporting Guidelines](#), definition of materiality.

⁴⁹ Note 16 above, p 61.

⁵⁰ See ILO, [Guide to Private Employment Agencies](#), p 29.

⁵¹ Such as the [California Transparency in Supply Chains Act](#) (2010).

⁵² John Sherman, “[Are There Risks in Knowing and Showing?](#)”, Speech delivered October 22, 2012.

⁵³ See, eg, International Alert and Fafo, [Red Flags: Liability Risks for Companies Operating in High-Risk Zones](#), 2008.

correct. Companies that have **pushed the boundaries of transparency** to discuss human rights challenges they face are generally seen as more credible in their claims of respecting human rights.

4. Questions to Ask

The following questions should help test the extent to which the company's communication processes are aligned with the Guiding Principles:

- Do our existing forms of communication take into account the different purposes behind them?
- Does our communication adequately take account of how relevant groups access information (particularly in relation to temporary workers)?
- Do we provide sufficient information on how we address human rights risks arising in the context of business relationships for stakeholders to assess the effectiveness of our responses?
- Do we formally report on our efforts to address our human rights impacts? If so, how do we take full account of the perspective of affected stakeholders in determining which issues are material?
- What processes do we have in place to make credible decisions about what and when to communicate publicly and any risks associated with that?
- Is our reporting on these issues consistent and comparable over time?

E. Remediation and Operational-Level Grievance Mechanisms

1. What the Guiding Principles Require

- Where a company identifies that it has **caused or contributed** to adverse 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 adversely 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 **trade unions**.

2. Key Considerations

Where it recognises that it has played a role in **causing or contributing** to adverse impacts, a company needs to be **involved in remediating** them.⁵⁴ In some cases, it will be most appropriate for remediation to be provided by an entity other than the company (for example, where crimes are alleged); the company should **cooperate** in any such legitimate processes. In all cases, it is important to understand the perspective of those directly affected regarding what would be an **"effective"** remedy. This may take a **range of substantive forms** the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy can include apologies, restitution,

⁵⁴ Where a company contests a claim that it has caused or contributed to an adverse impact, it is entitled to maintain that position but should not obstruct access to independent state-based mechanisms that could adjudicate any such dispute.

rehabilitation, financial or non-financial compensation, punitive sanctions (by state-based mechanisms) as well as the prevention of future harm through, for example, guarantees of non-repetition.

To avoid delays in responding to adverse impacts, companies should have in place agreed processes for remediating impacts arising in any area or stage of operations. An **operational-level grievance mechanism** is a formalised means through which affected stakeholders can raise concerns about the impact the company has on them and can seek remedy. It is **distinct from traditional whistle-blower systems**; rather, it is a channel specifically intended for individuals or their legitimate representatives to raise concerns about impacts **without having to show a breach of any standard**, including human rights.

The mechanism should help to **identify and address problems early** before they escalate. To do this, it needs to be known and trusted by those stakeholders for whose use it is intended. The Guiding Principles establish a set of interrelated “**effectiveness criteria**” for such mechanisms contained in Box D below. Wherever possible, there should be clarity on the **points of recourse** that exist beyond the mechanism, so that the complainant understands the range of options, including if agreement cannot be reached.

An effective grievance mechanism can **support the due diligence process**, particularly in identifying impacts and tracking the effectiveness of responses to impacts raised through the mechanism. By demonstrating that the company takes their concerns seriously, such a mechanism can also **help build trust** and reinforce relationships with affected stakeholders, although it is **not a substitute** for broader stakeholder engagement processes.

Box D: Guiding Principle 31 – Effectiveness Criteria Applied to Operational-Level Grievance Mechanisms

In order to ensure their effectiveness, operational-level grievance mechanisms 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 to access;
- (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 to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness 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 they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

3. Possible Approaches

a) What are some of the key challenges in ensuring temporary workers have access to effective grievance mechanisms?

As noted above, in situations where E&R agencies are involved in placing temporary workers with user enterprises, the employment relationship will be between the agency and the worker, but the worker will be under the supervision of the enterprise. There may be **structural barriers** preventing a temporary worker from accessing the user enterprise's grievance mechanism, for example: because it is only open to full-time or directly hired staff; they may lack awareness of available avenues for complaints (for instance, if they did not receive the same training as directly hired staff on the user enterprise's policies and processes); or they may be concerned about being replaced if they are seen to "cause problems". For migrant workers, there may be **additional barriers** to do with language, culture and/or fear of jeopardising their immigration status where that is tied to a single employer. These barriers are likely to be compounded where workers lack access to representation by trade unions.

E&R agencies need to be alert to these potential barriers and ensure that temporary workers have access to an effective grievance mechanism through the agency. As noted above, operational-level grievance mechanisms should help address problems as close to their source, and as early, as possible. So E&R agencies will want to **engage user enterprises** about the need for them to establish, or enable access for temporary workers to, effective grievance mechanisms in their own workplace as well. Where that access exists, it will be important for the E&R agency to establish a **feedback loop** about the kinds of complaints received by the user enterprise's mechanism from temporary workers and how they are being addressed, to inform the E&R agency's assessment of whether it is meeting its own responsibility to respect human rights.

E&R agencies and user enterprises will need to clarify who has **responsibility for informing** temporary workers about available grievance mechanisms, including those outside/beyond the relevant company system(s) – such as industry mechanisms or mechanisms run by state labour directorates.

b) What issues should a grievance mechanism be capable of addressing?

Many E&R agencies already have whistleblower or anonymous hotline systems in place for internal staff that are also open to temporary workers. Some are more traditional in that they focus on receiving reports of breaches of the company's Code of Conduct, or about ethical misconduct; others are wider in scope, allowing for a range of complaints about workplace conditions. In line with the Guiding Principles, a grievance mechanism **should not be limited** to addressing complaints that are framed as a breach of relevant standards. This risks missing a range of impacts, which, if left unaddressed, could **escalate** into serious human rights abuses. 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 grievance mechanism should be capable of picking up these kinds of issues early enough to avoid escalation and address underlying issues.

An effective mechanism requires triggers for **escalation within the company**, depending on the gravity of the complaint, including guidance on situations in which it might be

necessary to involve state authorities. In the case of migrant workers, cooperation between E&R agencies, and between agencies and state authorities, in the sending and destination states may be needed, including where serious abuses are involved.

A grievance mechanism should be able to exclude clearly vexatious complaints, but only after the application of established criteria and an effort to determine whether there is a legitimate issue underneath the (apparently vexatious) surface.

c) How can a grievance mechanism support internal embedding and integration processes in an E&R agency to better prevent and mitigate adverse impacts?

A systematised approach to addressing complaints (for example, about the terms of contracts, or freedom of association) can have significant benefits both for integration (taking action on specific impacts) and for broader change within an E&R agency as part of the embedding process – in addition to its role in providing remedy to affected individuals. The process of developing a grievance mechanism (or reviewing existing mechanisms) has the potential to act as a catalyst for a **wider internal discussion** about relevant impacts and how to prevent and mitigate them.

In terms of relevant systems and processes, a grievance mechanism requires **senior-level oversight** to ensure that an appropriate response occurs once a grievance is lodged. It is important to involve the function or individual responsible for any decision or action underlying a complaint to take **ownership of the response** as this can help embed an understanding of human rights risks within the company and contribute to future prevention. Where it is not appropriate for the relevant function or individual to take the lead in addressing the complaint (perhaps due to conflicts of interest where a serious allegation is concerned), then it/they certainly need to be involved in the process of **learning lessons** in order to prevent repetition. For E&R agencies with global operations, coordination across regions and/or with the corporate level may be needed to address systemic challenges.

d) What are some early lessons about designing E&R agency grievance mechanisms?

A poorly designed grievance mechanism is dangerous as it can distort internal assessments of how well human rights risks are being managed, and raise expectations among stakeholders without delivering on them, potentially compounding their sense of grievance. As E&R agencies seek to implement the Guiding Principles’ “effectiveness criteria”, there is some **emerging learning about what works** and where caution needs to be exercised when it comes to designing appropriate operational-level grievance mechanisms, summarised in Box 16 below.⁵⁵

Box 16: Emerging Learning on Design of Grievance Mechanisms in the E&RA Sector

- Wherever **trade unions** exist, they should provide a crucial channel of communication, including for relaying grievances, between workers and management.

⁵⁵ On mechanisms for temporary and migrant workers see generally: Verité, *Fair Hiring Toolkit: For Suppliers, Tool 2 – Evaluating the Effectiveness of Grievance Mechanisms*; Verité and Manpower Group, note 32 above; *Dhaka Principles*, Principle 8; BSR, *Good Practice Guide: Global Migration*, 2010. On the Guiding Principles criteria, see Caroline Rees, *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned*, CSR Initiative, Harvard Kennedy School, 2011.

- Involving workers in **joint oversight** or at a minimum, design, consultation on a draft design or evaluation, especially where trust in the company or the mechanism is low, will be important in ensuring that those for whom the mechanism is intended are willing to use it.
- In addition to enabling a **range of access points** (for example, anonymous boxes or “hotlines”, email/mail, via trade union representatives, via elected worker representatives, or a centralised counseling or ombudsman office), it is vital to promote **awareness** about them and ensure that there is appropriate **follow up** (particularly in the case of hotlines), which may include face to face interviews where appropriate.
- Standardising procedures can contribute to a more **rigorous process**. Approaches include: acknowledging receipt of complaints, publicising criteria for accepting or rejecting complaints, providing indicative timeframes and updates, and reporting externally on the mechanism.
- Engaging **internal and/or external expertise** in evaluating actual and potential outcomes will be needed in order to test whether the mechanism is rights-compatible.
- It will be important to identify where complainants are members of **potentially vulnerable groups** and take this into account during the of handling of their complaint and in identifying appropriate remedies. For **migrant workers**, this means looking particularly at issues of language/translation, culture, anonymity, and the fear of retaliation (eg, through being reported to the immigration authorities). A migrant worker committee may be helpful in this regard.⁵⁶ For **female** migrant workers, it means considering not only these factors but additional sensitivities involved in handling complaints of sexual harassment or violence.
- Actively **seeking feedback** about the mechanism’s effectiveness, for example through worker exit interviews or monthly meetings with management, can help support continuous learning.
- E&R agencies may want to consider opportunities for participating in **collaborative approaches to grievance handling** (see Box 17 below).

e) What approach should companies take to grievances in the context of business relationships?

When adverse impacts are **directly linked** to an E&RA company’s operations by a business relationship, the company is not required under the Guiding Principles to remediate them (though many companies choose to do so). However, the company does have a **forward-looking responsibility** to seek to prevent and mitigate their recurrence.

Box 17: Industry-Level Mechanisms for Addressing Impacts on Temporary Workers

Industry associations can play an important role in supporting access to grievance mechanisms in the E&R agency sector, for example by:

- **Active outreach** to the temporary worker community to inform them about the availability of relevant grievance mechanisms;
- **Reviewing** the effectiveness of grievance mechanisms in their inspections/audits of members and supporting members in their development;
- Providing a **complaints handling function** in relation to members – and potentially non-members as well. This may be run collaboratively by the industry and a relevant trade union or by a trade union alone. Such mechanisms can also be a source of

⁵⁶ See BSR, [Good Practice Guide: Global Migration](#), 2010, p 10.

important information for state agencies with responsibility for overseeing the industry, helping them understand where to target their efforts;

- Conducting **investigations** that involve trade union and labour inspectorate representatives as needed or other institutions such as National Human Rights Institutions, Ombudsmans offices; and
- Issuing **penalties**, ranging from written warnings, termination of membership, a request to the state to suspend the offending company's license, bringing a representative action (law suit) and/or providing remediation directly to the affected worker.

Box 18: The Importance of Effective Grievance Mechanisms for and Outreach to Migrant Workers in Destination States

It is particularly important that **sending and destination states** provide effective grievance mechanisms that are available to and accessible by migrant workers, as part of meeting their own duty to protect, including regarding appropriate protections for workers who file such complaints.

For **destination states**, this may include:

- Nominating a relevant **state agency** that will be responsible for the treatment of migrant workers in that country, including by providing an accessible channel for complaints (ie, that takes into account their hours of work, means of communication and other relevant issues), potentially an Ombudsman's office;
- Liaising with the **embassies** of migrant workers' sending countries;
- Engaging or supporting other organisations (eg, cultural or religious groups) to conduct **outreach** to migrant worker communities; and
- Working with **sending states** directly on bilateral arrangements for access to effective remedy for migrant workers.

E&R agencies and user enterprises should be able to take advantage of **proactive** engagement with these and other actors to facilitate early and effective responses to migrant workers' concerns.⁵⁷

4. Questions to Ask

The following questions should help test the extent to which the company's processes for handling grievances and providing remedies are aligned with the Guiding Principles:

- Do we take the perspective of affected stakeholders fully into account in identifying effective remedies where we cause or contribute to adverse impacts?
- Do we have an effective mechanism in place to capture and respond to temporary workers' concerns, including about impacts on their human rights?
- Do/does our grievance mechanism(s) meet the effectiveness criteria set out in the Guiding Principles? Have we tested our assumptions in this regard with the stakeholders for whose use they are intended?
- Do the temporary workers that we place with user enterprises have access to an effective grievance mechanism in the user enterprise context? Have we established effective feedback loops with the user enterprises we work with regarding temporary worker grievances?

⁵⁷ See BSR, [International Labor Migration: A Responsible Role for Business](#), 2008, pp 49-50 for discussion of dispute resolution in a case study of the Philippines.

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- Have we taken particular account of the rights and needs of vulnerable groups, such as migrant workers, in our mechanism(s), in terms of both processes and outcomes?
- Are we confident that our mechanism(s) do not preclude access to judicial or other state-based processes, nor undermine the role of trade unions?
- In the event that grievances are not resolved through our mechanism(s), is it clear to all involved what alternative points of recourse exist?
- Do we track the results from our grievance mechanism(s) to inform our due diligence processes, as well as to identify patterns and trends that suggest lessons for continuous improvement?
- Are there relevant industry-level grievance mechanisms that we could support and make our own workers aware of?

ANNEX A: United Nations Human Rights Instruments Elaborating on the Rights Of Persons Belonging to Particular Groups or Populations

- 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
- The Declaration on the Rights of Indigenous Peoples
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

In most instances, the rights in these instruments relate to the *individuals* in the groups they address. The Declaration on the Rights of Indigenous Peoples addresses both the human rights of indigenous individuals and the collective rights of indigenous peoples.

Source: Office of the UN High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2011, p 12.

For the full text of these instruments, please refer to the OHCHR [website](#).

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ANNEX B: Activity-Stakeholder Matrix

The table maps some of the typical human rights impacts that can occur at different stages in the Employment & Recruitment Agencies sector. These individual examples are for illustrative purposes only. They are not applicable in all contexts or intended to be linked.

	Internal Staff	Temporary Workers	Affected Communities	Potentially Vulnerable Groups	Other Relevant Groups...
Recruitment	Eg, Local management practices inhibit voluntary good faith collective bargaining about conditions of employment – <i>Rights to Collective Bargaining</i>	Eg, Fees are charged to workers for recruitment services – <i>Freedom from all forms of Forced or Compulsory Labour, Right to Just and Favourable Conditions of Work</i>	Eg, Psychological or physical violence is used in rural villages to recruit migrant worker candidates – <i>Rights to Life, Liberty and Security of the Person</i>	Eg, Female candidates are required to undergo pregnancy testing as a condition of recruitment – <i>Right to Non-discrimination, Right to Privacy</i>	
Employment	Eg, Staff are required to work excessive hours under conditions of high stress – <i>Right to Highest Attainable Standard of Health, Right to Just and Favourable Conditions of Work</i>	E.g. Temporary workers lack opportunity to join legitimate trade union or (if there are no legitimate unions) other interim measures such as a worker representative body – <i>Freedom of Association, Rights to Collective Bargaining</i>	Eg, Hiring of large numbers of temporary workers who are not from the local community with the aim of avoiding hiring members of a particular ethnic group – <i>Right to Non-discrimination, Right to an Adequate Standard of Living</i>	Eg, Migrant workers are not given basic working and employment conditions comparable to nationals of the country – <i>Right to equality before the law and equal protection of the law, Right to Non-discrimination</i>	
Provision of Additional Services (eg, accommodation, transport)	Eg, Staff are pressured to abstain from taking holidays (including religious holidays) to meet demand for provision of transport services for seasonal migrant workers – <i>Right to Just and Favourable Conditions of Work, Freedom of Religion</i>	Eg, High deductions made from wages for accommodation or transport leads to debt bondage – <i>Freedom from all forms of Forced or Compulsory Labour, Right to an Adequate Standard of Living</i>	Eg, Workers are housed in areas where there are existing or potential inter-communal tensions, resulting in community unrest and an increase in violent protests and attacks – <i>Rights to Life, Liberty and Security of the Person</i>	Eg, Poor quality accommodation, with inadequate security measures to protect against sexual harassment and violence, results in attacks on female workers – <i>Rights to Life, Liberty and Security of the Person, Right to Non-discrimination, Right to the Highest Attainable Standard of Health</i>	
Other Relevant Activities...					

ANNEX C: Additional Resources List

This is an initial list of additional relevant publicly available resources, *beyond those mentioned in the Guidance above*, which may be helpful to E&R agencies seeking to implement the responsibility to respect in line with the UN Guiding Principles.

NOTE: This is an early list only. The Project Team would welcome feedback from all stakeholders on other relevant publicly available resources that could be included here. Please specify the extent to which those resources are aligned with the UN Guiding Principles.

1. Human Rights Due Diligence:

International Business Leaders Forum, IFC and UN Global Compact, [Guide to Human Rights Impact Assessment and Management](#)

OECD, [Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#)

UN Global Compact Network Netherlands, [How to do Business with Respect for Human Rights](#)

2. Country Risk Analysis:

Amnesty International, [Country Reports](#)

Danish Institute for Human Right [Country Risk Assessment Portal](#), forthcoming

Human Rights Resource Center, [ASEAN baseline Rule of Law report](#)

Human Rights Watch [World Reports](#)

US State Department [Annual Human Rights Reports](#)

World Bank, [Worldwide Governance Indicators](#)

3. Stakeholder Engagement:

IFC, [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#), 2007

UN Global Compact page on [Stakeholder Engagement](#) (contains a number of resources and tools)