

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

## What do the UN Guiding Principles Expect?

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

## Why is this Important?

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

## What are the Steps Involved?





## Defining the Content of a Policy Commitment

### Key Points for Implementation

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

### Possible Approaches

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

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

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

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

### Resources on “Internationally Recognised Human Rights”

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

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

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

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



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

On non-charging of fees, see:

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

On non-retention of documents, see:

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

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

### Resources: Migrant Worker Policy Commitments

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

See also:

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

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

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

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

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

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

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

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

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

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

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

### Key Points for Implementation

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

### Possible Approaches

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

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

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

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

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

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

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

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

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

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

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

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

Approaches can include:

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



## Communicating the Policy Commitment

### Key Points for Implementation

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

### Possible Approaches

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



## Aligning Internally with the Policy Commitment

### Key Points for Implementation

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

### Possible Approaches

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

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

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

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

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

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

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

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

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

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

### Key Points for Implementation

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

### Example: Training on Compliance and Corporate Culture

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

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

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

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

## Possible Approaches

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

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

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

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

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

## Where to Start

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



## Questions to Ask

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

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