



Assessing Human Rights Impacts

What do the UN Guiding Principles Expect?

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

Why is this Important?

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

What are the Steps Involved?



Key Points for Implementation

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

Possible Approaches

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Resources: Vulnerable or marginalised groups

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

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

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

Resources: Young Workers

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

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

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

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

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

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

II B Understanding your Operating Context

Key Points for Implementation

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

Possible Approaches

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

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

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

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

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

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

Resources on Country-level Risk:

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

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

Example: Entering a New Market

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

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

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

II C Reviewing Business Relationships

Key Points for Implementation

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

Possible Approaches

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

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

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

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

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

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

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

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

Resources on Equal Remuneration and “Living Wage” Norms:

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

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

For more on these issues, see:

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

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

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

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

And, in the case of user enterprises:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Resources: Assessing and Addressing Risks in International Recruitment Processes

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

Resources from international organisations include:

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

Note on pre-departure orientation:

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

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

▶ At the point of departure:

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

▶ At the point of arrival:

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

▶ At the point of accommodation:

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

▶ **At the point of employment:**

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

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

II D

Drawing on Expertise

Key Points for Implementation

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

Possible Approaches

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

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

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

Resources: Matrix to Stimulate Internal Discussion of Potential Impacts

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

There are different ways to generate this internal conversation:

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



Consulting Affected Stakeholders

Key Points for Implementation

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

Possible Approaches

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

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

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

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

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

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

Resources on Stakeholder Engagement:

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

Resources: Joint Efforts to Address Impacts on Domestic Workers

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

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

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

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

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

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

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

Where to Start

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



Questions to Ask

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

II-A

Building a Systematic Approach to Assessment

- ▶ What triggers do we have to launch or renew impact assessments?
- ▶ When we assess risk, do we look at risks to people and their human rights, not just risk to the company?
- ▶ Do our assessments take account of the perspectives of potentially affected stakeholders themselves, especially workers, and not just what we think they key issues are?
- ▶ How do we take account in our impact assessments of the heightened vulnerability or marginalisation of some workers?
- ▶ Do our assessments look at all indicators of potential human rights impacts, not just past or familiar impacts, or a narrow set of human rights?
- ▶ How do we take account of human rights in our candidate screening processes?

II-B

Understanding your Operating Context

- ▶ How do we assess what the implications of our broader operating contexts are for respecting human rights?
- ▶ How do we consider risks arising from gaps in the regulatory framework or from conflicts between national laws and internationally recognised human rights?

II-C

Reviewing Business Relationships

- ▶ Do our assessment processes include potential impacts arising through our business relationships with client companies and user enterprises?
- ▶ Do our assessment processes include potential impacts arising through partnerships with other E&R agencies, particularly in the context of international recruitment processes?
- ▶ How do we take account of potential risks that can arise at other stages of the international recruitment process where we are only involved in part of it?
- ▶ Are our assessments of potential impacts from relationships conducted early enough to manage risks effectively, including when entering into new markets?

II-D

Drawing on Expertise

- ▶ How have we engaged key internal staff in our assessment processes, to benefit from existing expertise and build understanding of human rights impacts?
- ▶ How have we engaged the workers we recruit or place in our assessment processes?
- ▶ What external resources exist that could inform our assessments, and how could we best draw on them to support and/or test our assessments?

II-E

Consulting Affected Stakeholders

- ▶ How do we know whether we have identified all stakeholder groups who could be affected by our operations?
- ▶ How do we identify those who may be vulnerable or marginalised?
- ▶ Who is responsible for consulting affected stakeholders, when and how? Do they have the necessary skills, resources and support?