

# Tracking Performance

## What do the UN Guiding Principles Expect?

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

## Why is this Important?

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

## What are the Steps Involved?



### Key Points for Implementation

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

### Possible Approaches

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

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

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

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

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

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

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

## IV B Developing Indicators

### Key Points for Implementation

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

### Possible Approaches

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

### Resources on Indicators

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

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

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

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

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

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

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

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

## IV C Incorporating Stakeholder Perspectives

### Key Points for Implementation

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

### Possible Approaches

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

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

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

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

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

## IV D Tracking through Business Relationships

### Key Points for Implementation

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

### Possible Approaches

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

### Resources: Worker Impacts Survey

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

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

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

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

Elements of a robust internal approach include:

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

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

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

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

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

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

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

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

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

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

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

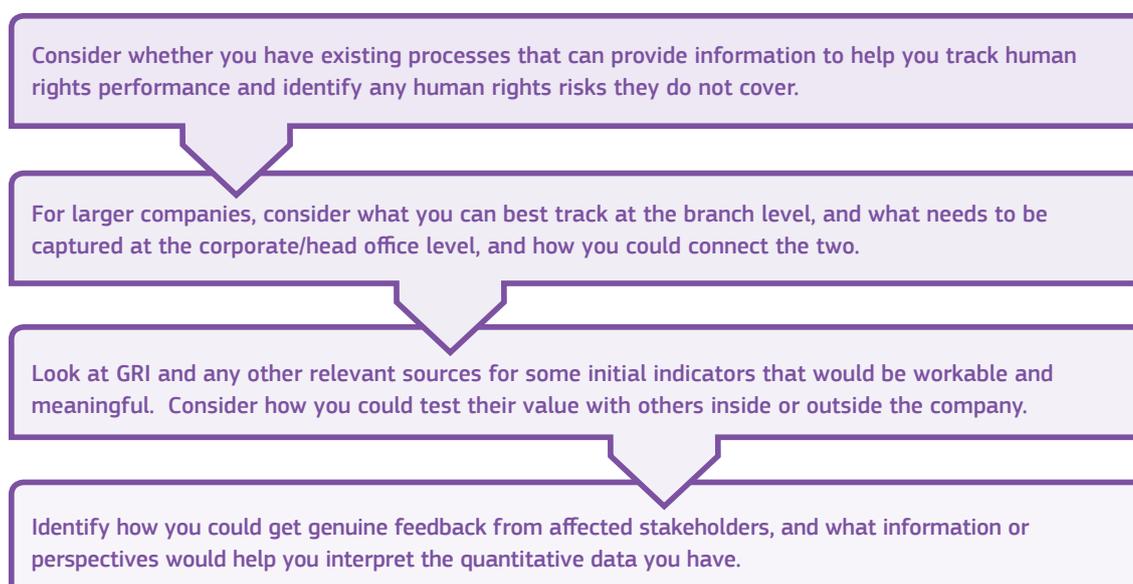
These developments will have increasing relevance for E&R agencies as client companies and user enterprises bring this approach to bear on the provision of recruitment and employment services. They will increasingly look to assess not only compliance with internationally-recognised human rights in terms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

### Example: User Enterprise Tracking Systems

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

## Where to Start

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



## Questions to Ask

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

### IV-A

#### Building a Systematic Approach to Tracking

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

### IV-B

#### Developing Indicators

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

### IV-C

#### Incorporating Stakeholder Perspectives

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

### IV-D

#### Tracking through Business Relationships

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