

Communicating Performance

What do the UN Guiding Principles Expect?

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

Why is this Important?

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

What are the Steps Involved?



Building a Systematic Approach to Communicating

Key Points for Implementation

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

Resources: Evolving Government Demands on User Enterprises/Clients

Various developments with relevance for E&RAs include:

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

Possible Approaches

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

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

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

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

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

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

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

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

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

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

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

V B Deciding Who Communicates What, to Whom and How

Key Points for Implementation

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

Possible Approaches

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

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

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

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

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

- **Distinguishing between communication and consultation:** Communicating how a company addresses its human rights risks can be a one-way exercise, for example:

- Providing an update on developments of interest to affected stakeholders;
- Providing periodic statistics on the company's performance on health and safety;
- Providing feedback on the outcomes achieved through an operational-level grievance mechanism.

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

- **Deciding who communicates:** The objectives of traditional public relations are different from the objectives of communicating how an E&R agency handles human rights risks. Communicating on human rights is first and foremost about accountability. It is often best to empower those who engage daily with workers or other affected stakeholders to take a role in communicating the company's efforts to address impacts. Controlling this information centrally can be damaging to these relationships. It can also lead to a perception that an E&R agency is inconsistent in its messages between different individuals or departments/functions, or between the branch and corporate/head office levels. This may undermine confidence in what the company is saying and its motives for saying it.

- **Fitting form to purpose:** The form of an E&R agency's communications should fit the purpose. For example:

- If the purpose is to communicate with affected stakeholders, then an in-person meeting may be the most appropriate - or individualised communication where that is not feasible;
- If the purpose is to explain to shareholders and others how the company is addressing a specific risk, or human rights risks generally, then communication via an annual general meeting, website updates or electronic mailing lists may all be relevant.



Considering and Improving Formal Reporting

Key Points for Implementation

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

Possible Approaches

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

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

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

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

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

Resources on Formal Reporting:

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

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

Other resources that may be relevant include:

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

Example: Reporting on Discriminatory Requests

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

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

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

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

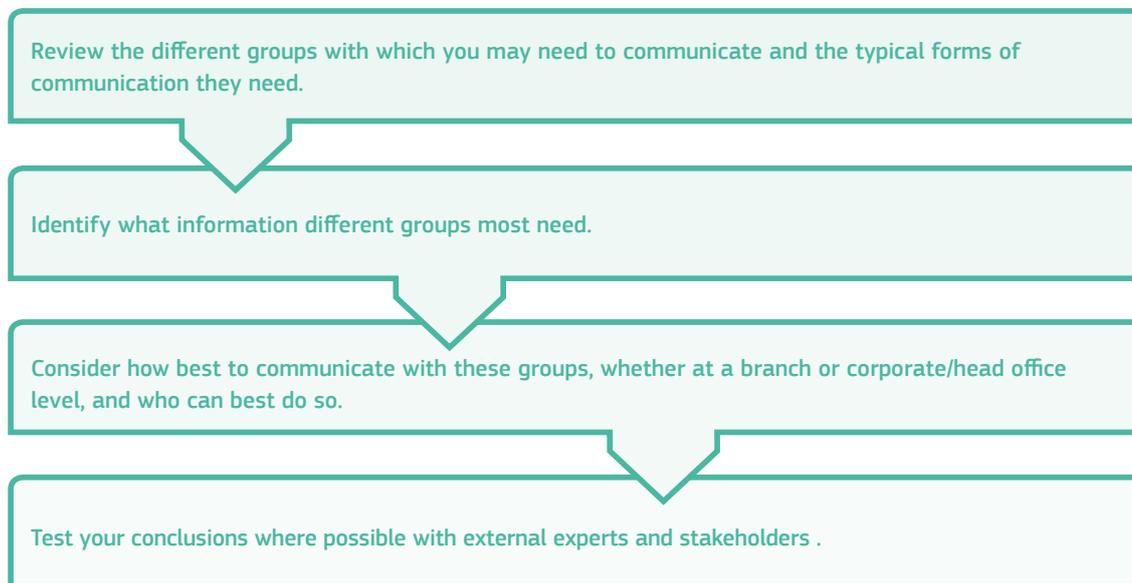
Reporting by companies on human rights often focuses largely on philanthropic or social investments. These investments can make valuable contributions to societies, however, they often relate to the promotion or fulfilment of human rights. They may not provide information about how the company is respecting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

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

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

Where to Start

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



Questions to Ask

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

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