ETHICAL RECRUITMENT DUE DILIGENCE TOOLKIT FOR PHILIPPINE RECRUITMENT AGENCIES

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Foreword

Business enterprises worldwide are increasingly expected to undertake human rights due diligence to manage the adverse human rights impacts of their business activities across their operations and supply chains. The expectation for business enterprises to carry out human rights due diligence has been translated in government policy frameworks and legislation in several countries including the United Kingdom, Australia, France, Germany, and Norway.[1] The European Union (EU) is set to take this trend to the next level with a proposed new EU-level legislation that will introduce far-reaching human rights and environmental due diligence obligations for businesses.[2] The emerging wave of national human rights due diligence legislation continues as progress is being made on similar national legislation in Austria, Belgium, and Switzerland, among others.[3] In the 30 national action plans on business and human rights that have been published to date, governments have reaffirmed their expectation toward business enterprises that operate in their jurisdiction to exercise human rights due diligence.[4]

Among business enterprises, a growing number of large corporations in different sectors have established policies expressing their commitment to respect human rights, recognizing ongoing human rights due diligence as a core requirement in fulfilling this commitment. These policies mostly apply all throughout their operations and business relationships, including the supply chain actors that provide them with goods and services.

The Philippines remains among the top source countries for migrant labour and Philippine Recruitment Agencies (PRAs) continue to play an important role in global supply chains.[5] As business enterprises pay greater attention to the human rights risks in their supply chains, supply chain actors such as PRAs must be equipped to demonstrate their own commitment to address human rights risks in their operations, communicate their challenges, and engage their business partners in meaningful dialogues to address the identified challenges.

This Ethical Recruitment Due Diligence Toolkit was developed to support PRAs in establishing a comprehensive and structured ethical recruitment due diligence process that aligns with internationally recognized standards and frameworks. It serves as a reference for PRAs to understand the expectations of employer clients and markets with regard to managing their human rights impacts.

This Toolkit primarily aims to provide PRAs with a means to ensure that the human rights risks, including risks of forced labour, trafficking, and exploitation, to Overseas Filipino Workers (OFWs) are identified and addressed. The human rights consequences of the COVID-19 pandemic have demonstrated the dire need for better safeguards, especially for vulnerable workers such as migrant workers. Having a robust ethical recruitment due diligence process in place shall likewise help PRAs be in a better position to avoid or minimize harm to OFWs in the current context.

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1 OECD (2021), Building more resilient and sustainable global value chains through responsible business conduct https://mneguidelines.oecd.org/rbc-and-trade.htm
2 https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf
3 ITUC (2021). Towards Mandatory Due Diligence in Global Supply Chains. Retrieved from:
https://www.ituc-csi.org/IMG/pdf/duediligence_global_supplychains_en.pdf
4 List of countries that have published a national action plan on business and human rights: https://globalnaps.org/country
5 Top 20 countries of origin of international migrants: https://publications.iom.int/books/world-migration-report-2022

Scope of the Toolkit

This Toolkit is relevant for all PRAs that deploy land based OFWs to private enterprises overseas. It is non-industry specific and non-migration corridor specific. However, it should be noted that due diligence measures should be responsive to actual and potential risks, and at the same time, appropriate to a specific PRA's circumstance and context. The Toolkit may then be modified depending on the actual requirements and goals of the PRAs.

This Toolkit focuses on the recruitment and deployment phases of the labour migration process but also touches upon some issues that typically occur during employment and return that nevertheless may be linked to recruitment practices.

The due diligence requirements covered in this Toolkit are based primarily on the UN Guiding Principles on Business and Human Rights (UNGPs). It also builds on the OECD Due Diligence Guidance for Responsible Business Conduct, and the relevant management system requirements in the International Recruitment Integrity System (IRIS) Standard.

The ethical recruitment requirements are based on legal requirements in the Philippines, specific countries of destination for OFWs, as well as the common labour and human rights policies of business enterprises and industry-based alliances that adhere to the international standards on ethical recruitment.

Standards and Frameworks Used in the Toolkit

Ethical Recruitment

Ethical recruitment means hiring workers lawfully (i.e., in compliance with laws in the country of origin, transit, and destination), and in a fair and transparent manner that respects their dignity and human rights.[6]

The IRIS Standard articulates what ethical recruitment means in practice and how recruitment agencies can demonstrate compliance. It consists of two overarching principles and five specific principles:
   A.   Respect for Laws, Fundamental Principles and Rights at Work
   B.   Respect for Ethical and Professional Conduct
   1.   Prohibition of Recruitment Fees to Jobseekers
   2.   Respect for Freedom of Movement
   3.   Respect for Transparency of Terms and Conditions of Employment
   4.   Respect for Confidentiality and Data Protection
   5.   Respect for Access to Remedy

Complying with Philippine laws is the first obligation of PRAs. However, where the local laws conflict with the IRIS principles, PRAs are recommended to seek ways to adhere to the IRIS principles to the fullest extent which does not place them in violation of local laws.

Due Diligence

All business enterprises, including PRAs, have a baseline responsibility to respect human rights. Due diligence is the ongoing risk management process which business enterprises need to undertake to ensure that any adverse human rights impacts that they may be involved in are identified and addressed to meet their responsibility to respect human rights.

Under the UNGPs, due diligence comprises the following activities:
   1.   Identification and assessment of actual and potential human rights impacts
   2.   Integrating findings from human rights impact assessments across all functions and processes and taking appropriate actions to prevent and mitigate impacts
   3.   Tracking the effectiveness of responses to human rights impacts and risks
   4.   Communicating information on progress in relation to human rights risk management

According to the OECD Guidelines, an effective due diligence must be supported with the following:
   1.   Policies and management systems
   2.   Mechanisms that enable access to remediation

Due diligence is an ongoing exercise, recognizing that risks may change over time as the enterprise's operations and context evolve.

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6 Adopted from IOM IRIS statement on "ethical recruitment". Available at: https://iris.iom.int/sites/g/files/tmzbdl201/files/documents/Factsheet1-Overview-of-IRIS_2020.pdf.

Structure of the Toolkit

This Toolkit is structured following the OECD Due Diligence Guidance for Responsible Business Conduct. Chapters 2 to 4 describe the key steps in developing and implementing ethical recruitment due diligence, while chapters 1 and 6 provide detailed recommendations regarding the supporting measures that need to be put in place to ensure effective due diligence implementation.
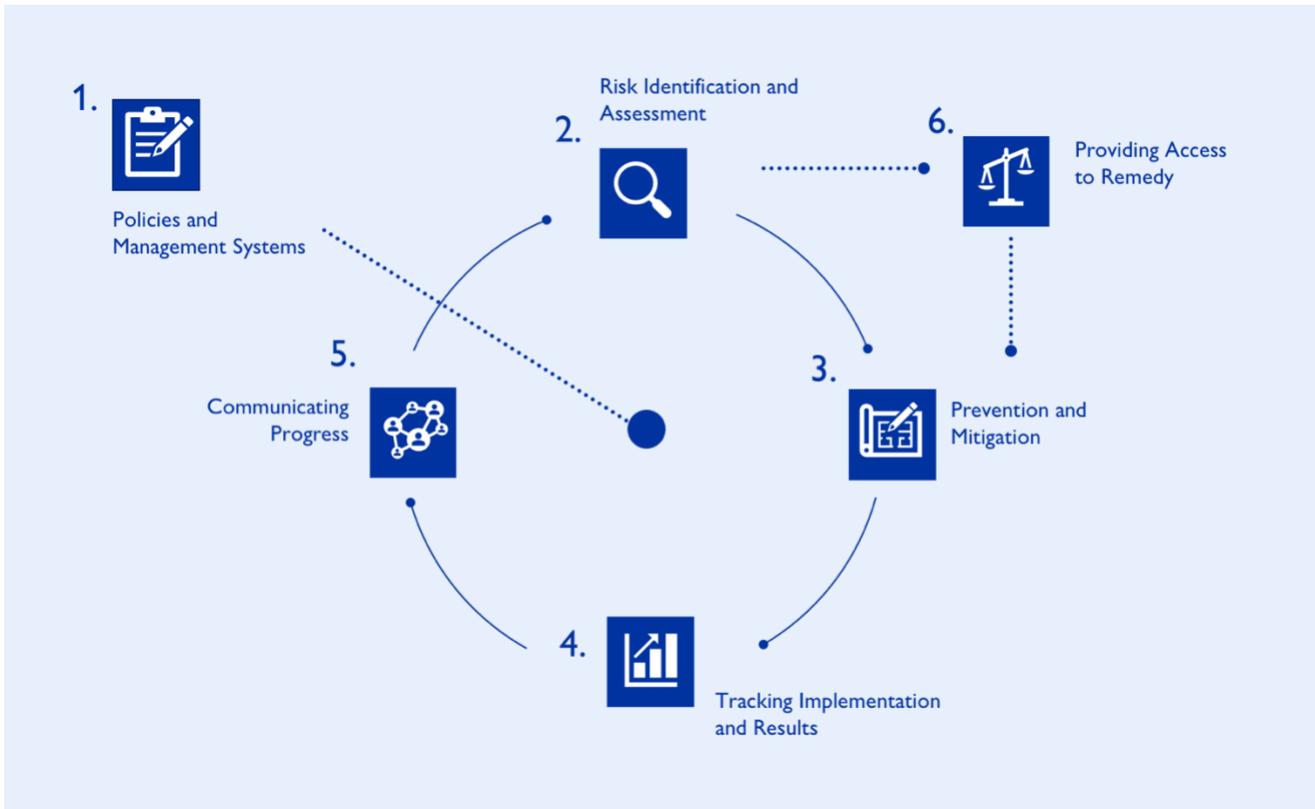
Each chapter includes a checklist that contains the key components in each due diligence process or supporting measure. PRAs may use these checklists to assess their own practices and identify the gaps or areas that they have to improve on. The corrective action plan template in the Annex may then be used as a tool to address the identified areas for improvement in a systematic manner.

Due diligence should be ongoing, proactive and reactive, and exercised with flexibility. The detailed steps and recommendations provided are not meant to represent an exhaustive "tick box" list for an effective due diligence as not each one will be appropriate for every situation. This means that some situations may call for additional measures not currently covered in the Toolkit. PRAs are encouraged to record and incorporate any other emerging best practices into their own checklists as they see fit.

CHAPTER 1

Policies and Management Systems

PRAs must be able to clearly articulate their commitment to ethical recruitment and how they plan to implement it. Having a written policy statement shall help PRAs demonstrate that they understand their responsibility to practice ethical recruitment, publicly affirm their company values, and clearly set out their expectations toward their employees, business partners, and other parties directly linked to their operations.

The involvement of the PRA's top management is critical in developing a policy on ethical recruitment to secure sign off and proper resource allocation for its implementation.

It is recommended for PRAs with multiple employer clients that are located in different countries to use existing and widely recognized standards on ethical recruitment as their bases in developing a policy to prevent conflicting expectations.

The development of an ethical recruitment policy must be informed by stakeholder consultations. Where in-house expertise in ethical recruitment is lacking, PRAs should refer to credible online resources or consult with recognized experts, e.g., migrant workers associations, civil society organizations (CSOs), and intergovernmental organizations.

The policy should be made publicly available and disseminated to all employees and business partners to raise awareness and establish systems of accountability. It should be coupled with training when necessary to ensure that it is understood and properly implemented.

Ethical recruitment policies should be integrated into internal management systems to ensure effective compliance, consistent implementation, and continuous improvement over time.

POLICY STATEMENT CHECKLIST

☐ Approved by the PRA's top management

☐ Expresses explicit commitment to practice ethical recruitment

☐ Expresses explicit commitment to comply with applicable laws and adhere to the international standards on human rights

☐ Informed by stakeholder consultations and relevant internal and/or external expertise

☐ Stipulates the PRA's expectations toward its employees, business partners, and other parties directly linked to its operations

☐ Explains how the policy will be implemented (i.e., planned approach for due diligence, stakeholder engagement, and remediation)

☐ Publicly available and communicated internally and externally

☐ Embedded in the PRA's operational policies and procedures

☐ Regularly reviewed and updated

CHAPTER 2

Risk Identification and Assessment

PRAs must have a good understanding of how their operating context, business relationships, and specific recruitment practices may impact the rights of the OFWs that they recruit and deploy.

To help define the scope of risk assessment exercises, it is important for PRAs to first map their general operations including the services that they provide, the arrangements that they have with their business partners, and the profile of OFWs that they recruit and deploy. It is also important to map the industries where OFWs are deployed, their countries of destination, and their employers.

To support the mapping process, PRAs may consider developing a comprehensive recruitment process flow chart for each Country of Destination where they deploy OFWs. The flowchart may include specific legal, industry, and employer-level requirements and safeguards for each process.

The mapping exercises shall make it easier for PRAs to identify the different risks for OFWs due to gaps in legal protection, risks related to the nature of their occupation, and employer-specific risks associated with poor history of conduct in relation to respecting human rights and non-compliances with legal requirements. Some country and industry-specific risks are well known or easily understood from information that is readily available (see the Toolbox in the Annex for links to country and industry-specific risk reports that PRAs can refer to for this process. Where gaps in information exist, PRAs are encouraged to consult with experts and relevant stakeholders. For example, to identify employer risks, some PRAs consult with POLOs industry contacts, and OFWs who are currently employed by the employer being assessed.

Because human rights situations are dynamic, risk assessments should be undertaken at regular intervals. Risk assessments should be updated with new information whenever PRAs make significant

RISK ASSESSMENT CHECKLIST

☐ There is a system to identify the human rights risks for OFWs in their Countries of Destination. This may include information on whether the country allows migrant workers to be charged with recruitment fees and related costs, a sponsorship system similar to the Kafala system is being practiced in the country, a contract verification system is in place, and a POLO is accessible to OFWs.

☐ There is a system to identify the human rights risks that are prevalent in specific industries. This may take into account the minimum age and skill level requirements for OFWs.

☐ There is a system to identify the potential risks in engaging with employer clients. This may include inspection results by POLOs, review of past criminal proceedings, and availability of policies expressing the employer's commitment to ethical recruitment and respect for human rights.

☐ There is a system in place to assess which among the risks identified are the most significant to determine the order of priority in performing more in-depth self-assessments.

changes in their operations (e.g., establish or update management systems), deploy workers to new industries or countries, provide new services, or engage in new or new forms of business relationships. It must also be updated whenever there are significant changes in legal requirements in the Philippines and in the countries of destination, or new applicable international standards and best practices.

Once PRAs have identified the risks related to their operating context and business relationships, PRAs should conduct an in-depth self-assessment to identify the specific practices and management system gaps that may cause or contribute to the adverse human rights impacts to OFWs. The checklist in this chapter identifies the key components that PRAs should take into account in conducting a self-assessment, but PRAs are encouraged to use IRIS SAFER to help them perform a more thorough assessment. The results of the self-assessment shall determine the appropriate corrective and preventative actions that PRAs must take and identify where they should direct their risk management focus.

For some PRAs, it may not be possible to conduct more in-depth assessments across its operations and business relationships. PRAs may prioritize operations or business relationships where risks of adverse impacts are most significant. Once the most high-risk operations and business relationships are assessed in detail and the risks are addressed, PRAs should then move on to address the lower risk operations and business relationships.

In the same manner as the risk assessments, the self-assessment should be updated at regular intervals.

SELF-ASSESSMENT CHECKLIST

☐ A policy commitment on ethical recruitment is in place

☐ Policies and procedures to ensure adherence to each IRIS principle are in place

☐ There is a service agreement with terms and conditions relevant to ethical recruitment with all employer clients, foreign placement agencies, and other business partners

☐ There is a system to identify customer and legal requirements in the Philippines and OFWs' Countries of Destination

☐ The PRA conducts regular risk assessments and in-depth self-assessments of its recruitment practices and business relationships

☐ There is a system in place that ensures that the risks identified from assessments are effectively addressed

☐ Implementation of policies of policies and procedures on ethical recruitment is supported with training and awareness programmes for OFWs and PRA employees

☐ There is a system to track status of corrective action plans and overall due diligence implementation

☐ Due diligence measures are recorded and reported to relevant stakeholders

☐ Mechanisms that provide and facilitate access to remedy are in place

CHAPTER 3

Prevention and Mitigation

After completing an in-depth self-assessment, PRAs should take the necessary steps to cease any activities causing immediate and critical danger to OFWs until the danger is addressed, and provide or cooperate in remediation when necessary. PRAs should then develop and implement a corrective action plan to prevent or mitigate future adverse impacts. PRAs may use the template which is available in the Annex of this Toolkit in developing their corrective action plan.

Establishing a corrective action plan provides a systematic approach for PRAs to identify the measures that shall be taken to address the identified risks.

The corrective action plan should clearly identify the risks that are being addressed and describe why these are considered as risks. Where necessary, the most significant risks to OFWs based on severity and likelihood should be prioritized.

PRAs may then perform a root cause analysis which will serve as the basis for the actual corrective action plan. The outcomes of the root cause analysis shall help PRAs determine realistic and sustainable action plans. Corrective actions generally include development or updates in policies and procedures, enhancements in due diligence scope and processes, training and awareness programmes to build the relevant stakeholders' capacity to fulfill their respective roles, and establishing remediation plans. Where there is lack of leverage to address the identified risks, PRAs are encouraged to collaborate with other PRAs or participate in industry-level initiatives to increase their leverage collectively.

PRAs should then set clear timelines for the implementation of corrective actions.

CORRECTIVE ACTION PLAN CHECKLIST

☐ Risks to be addressed are clearly identified

☐ There is a system in place to determine priorities based on severity and likelihood of adverse impact to OFWs

☐ Relevant stakeholders, including OFWs, are engaged during the development of the corrective action plan

☐ Corrective actions are based on a root cause analysis and should lead to long term outcomes

☐ Corrective actions are built on or adopted from recommendations from international standards or best available solutions that have been tested

☐ Corrective actions are able to adequately prevent or mitigate adverse impacts to OFWs, which means that multiple interventions may be necessary, e.g., development of policies and procedures, complemented with training and awareness programmes

☐ The responsibility to implement corrective actions are assigned to employees with the necessary competence, knowledge, and experience

☐ Clear timelines for implementation and follow-ups are set based on the determined priorities

CHAPTER 4

Tracking Implementation and Results

PRAs should establish a monitoring system to help them keep track of their performance and gauge the effectiveness of their responses to the risks identified. PRAs must note that the main goal of having a monitoring system is to understand whether the risks that they have identified are being addressed over time and whether the actions that they have committed to are leading to their desired outcomes.

PRAs must first set the objectives and scope of their monitoring system to help them set their key performance indicators and targets, plan the timelines and modality for the monitoring activities, and identify the different stakeholders who will be involved in the activities. Monitoring systems will vary for PRAs based on the context in which they operate, their size, and the risks that they face through their own activities and business relationships.

The timelines and frequency of monitoring activities should align with the prioritization decisions made in the context of risk prevention and mitigation. Monitoring activities for ethical recruitment due diligence may also be integrated into relevant existing internal monitoring and reporting processes.

PRAs should set a clear methodology to verify and validate their due diligence progress and determine whether actions taken are indeed effective. Verification may include reviews of established policies, procedures, and other relevant documentation, while validation of effective actions may include interviews with OFWs and assessments of issues raised through grievance mechanisms.

Where PRAs found that specific actions are not effective, they should seek to understand why this is the case through internal consultation or external guidance, and may consider updating their corrective action plan.

MONITORING SYSTEM CHECKLIST

- [ ] Clear objectives and scope for the monitoring checklist are set

- [ ] Measurable indicators to track progress and goals are assigned, e.g., number of corrective actions that were completed within the agreed-upon deadline

- [ ] Clear timelines and frequency of monitoring activities are set and communicated to relevant stakeholders. The timelines and frequency of monitoring activities correspond to the severity and nature of the risk.

- [ ] There is a clear methodology to verify progress against the set targets and validate the effectiveness of actions taken

- [ ] Feedback from stakeholders, especially the OFWs, and issues raised through grievance mechanisms are taken into account in ongoing monitoring

- [ ] A plan is in place to examine and address risks that have not been effectively prevented and mitigated

- [ ] Lessons learned are taken into account in planning further actions for continuous improvement of risk management approaches

CHAPTER 5

Communicating Progress

PRAs should communicate information about their due diligence results and progress with affected stakeholders and to the public, with due regard for commercial confidentiality and other competitive concerns.

Communication can take a variety of forms. For affected stakeholders such as OFWs, worker representatives, PRA employees, and business partners it could be through in-person and online meetings, focused group discussions, and regular updates or reports. PRAs must seek to understand what type and level of information is relevant to their stakeholders.

Since recruitment is considered as a high-risk business activity, It is recommended for PRAs to develop public disclosure reports to demonstrate their commitment to ethical recruitment and how they manage the relevant risks. PRAs may seek independent verification of their public report to strengthen its content and credibility.

In both informal and formal reporting, Information should be maintained and communicated in a way that is clear, accurate, timely, and relevant to the intended audience. Information shared must be sufficient to evaluate the adequacy of the PRA's response to particular human rights impacts.

DISCLOSURE REPORT CHECKLIST

PRAs may develop a disclosure report to anticipate future requests from employer clients and business partners. It is important to include the following information for such reports:

- [ ] Policy statement on ethical recruitment, its applicability, and date of adoption

- [ ] Company profile including the number of OFWs deployed, scale of operations, and business relationships

- [ ] Information about the PRA's due diligence, management systems, and remediation process, including its justification for the prioritization process

- [ ] Overview of risk assessment results. the key challenges that the PRA faces in relation to its operating context, and plans to prevent and mitigate the risks presented

- [ ] Data collected from periodic monitoring that demonstrate the PRA's progress against key indicators, with an analysis and explanation of trends over time

CHAPTER 6

Providing Access to Remedy

Grievance and remediation processes support due diligence by providing channels through which business enterprises can become aware of issues that may not have received sufficient attention in due diligence exercises.

PRAs should have processes in place to enable remediation in relation to their human rights impacts. PRA-level grievance mechanisms that meet the UNGP effectiveness criteria can be an effective means in providing such processes.

In addition to educating OFWs about the employer-based and state-based grievance mechanisms that are available to them. It is recommended for PRAs to establish grievance channels that are accessible to OFWs throughout the recruitment process and during their employment.

PRAs are expected to provide for or cooperate in the remediation of adverse impacts to OFWs where they have caused or contributed to that adverse impact. To facilitate this process, PRAs should have procedures in place to investigate lodged grievances and establish remediation plans when necessary. These procedures and possible outcomes should be clear to OFWs.

Grievances should be resolved through dialogues between the PRA and the affected OFW. The PRA must keep the affected OFW informed at each stage of the process.

Remedies can take a variety of forms and it is important to understand what the affected OFW would view as effective remedy, in addition to the PRA's own view. OFWs must be able to appeal to higher authority for unsatisfactory resolution of grievances. Each case must be evaluated before it is closed and lessons learned should be reviewed fed back into the PRA's due diligence and management systems.

GRIEVANCE AND REMEDIATION MANAGEMENT CHECKLIST

- ☐ Multiple channels to access grievance mechanisms are available to OFWs at any point of the recruitment and employment phases

- ☐ Grievance mechanisms are clear on the types of process, indicative timeframe, and possible outcomes that are in accordance with international standards

- ☐ There are mechanisms to guarantee confidentiality and non-retaliation throughout the grievance and remediation process

- ☐ OFWs are trained on how to access and use the grievance mechanisms that available to them; PRA employees have sufficient training for screening and handling of grievances

- ☐ There are procedures in place to investigate lodged grievances and establish remediation plans in close consultation with the affected OFW

- ☐ There is a system to assess the level of satisfaction of the OFW that reported his/her grievance, and there are mechanisms to appeal to higher authority for unsatisfactory resolution of grievances

- ☐ Grievance cases are reviewed annually to identify areas for improvement in the PRA's due diligence and management systems

Afterword

Using the checklists in this Toolkit should not lead to a "tick the box" approach. Due diligence should be applied with flexibility and should be tailored by PRAs according to the specific nature of their operations and business relationships, as well as their experiences and challenges in carrying out their own ethical recruitment due diligence. PRAs are encouraged to gather feedback from their internal and external stakeholders in further tailoring this Toolkit.

Annex

PRAs may use this template in establishing a corrective action plan after conducting an in-depth self-assessment. The instructions and key components that are necessary in developing a corrective action plan are available in chapter 3 of the Toolkit.

Corrective Action Plan Template

Risk Area	Risk Identified	Risk Level	Root Cause Analysis	Corrective Action Plan	Person Responsible	Deadline	Status	Notes

Ethical Recruitment Due Diligence Toolbox

Legal Requirements

- [Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers of 2016](#)
- [Republic Act No. 8042 - Migrant Workers and Overseas Filipinos Act of 1995](#)
- [Republic Act No. 10022 - An Act Amending Republic Act No. 8042](#)

Ethical Recruitment Standards

- [IOM International Recruitment Integrity System (IRIS) Standard](#)
- [ILO General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs](#)

Due Diligence and Risk Assessment Guidelines

- [UN Guiding Principles on Business and Human Rights](#)
- [OECD Due Diligence Guidance for Responsible Business Conduct](#)
- [OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector](#)
- [European Commission Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#)

Country Risk Reports and Indices

- Global Slavery Index
- Amnesty International: Country Reports
- Human Rights Watch: World Reports
- US State Department: Country Reports on Human Rights
- US Statement Department: Trafficking in Persons Report
- Transparency International: Corruption Perceptions Index
- UNDP: Human Development Index
- World Justice Project: Rule of Law Index
- Freedom House: Countries and Territories
- World Bank: COVID-19 Statistics