International Learning Lab
on Public Procurement and Human Rights

Public Procurement and Human Rights: A Survey of Twenty Jurisdictions

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ABOUT THE

INTERNATIONAL LEARNING LAB ON PUBLIC PROCUREMENT AND HUMAN RIGHTS

The International Learning Lab on Public Procurement and Human Rights (Learning Lab) is a network of non-governmental organisations, national human rights institutions, academics, representatives of central and local government procurement agencies, government purchasing officers, representatives of other relevant government bodies, and procurement professional associations. The Learning Lab's objective is to encourage and assist governments and other public procurers to increase the incorporation of human rights considerations into public procurement. To accomplish this goal, the Learning Lab supports five parallel work streams:

- Mapping public procurement law and practice;
- Developing effective practice reports;
- Convening decision-makers;
- Developing on-line tools and guidance; and
- Disseminating and advocating through

Additional information and resources can be found on the Learning Lab's website, at www.hrprocurementlab.org

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EXECUTIVE SUMMARY

Public procurement is the purchase by the public sector of the goods and services it needs to carry out its functions. Such purchasing represents a significant share of the total economy: globally, public procurement has a value of €1000 billion per year, while across OECD countries it accounts for 12% of GDP, on average. Public procurement thus represents an enormous opportunity for governments to drive the transition to sustainable production and consumption. Yet, like other consumers, governments currently procure goods and services via supply chains in which serious human rights abuses are widespread, and in recent years the implication of public buyers in such abuses has been frequently documented.

The United Nations Guiding Principles on Business and Human Rights (UNGPs) affirm the duty of States to protect against human rights abuses by businesses; the responsibility of businesses, in turn, to respect human rights, including through the performance of human rights due diligence; and the right of victims to a remedy for any business-related human rights abuses. Unanimously endorsed by the UN Human Rights Council in 2011, the UNGPs have subsequently won support from the European Union, the Organisation for Economic Cooperation and Development, and the International Standards Organisation, as well as numerous businesses, civil society organisations, and government actors. Under the UNGPs the "State duty to protect" extends to situations where a commercial "nexus" exists between public actors and businesses, such as when government bodies purchase goods and services through public procurement, and in connection with "contracting-out" and privatisation.

Although the UNGPs thus highlight the need for States to take active steps to avoid involvement in human rights abuses through their purchasing practices, based on a survey of twenty jurisdictions, this study's findings suggest that at this time central governments and other public bodies are not fulfilling this duty.

1) Lack of Clear Legal Requirements and Policies

Besides the UNGPs, both international and national laws make it clear that public authorities and businesses shall respect human rights. These requirements also apply to public procurement. However, existing international and regional laws and policy frameworks on public procurement, as well as those of surveyed national jurisdictions, do not explicitly refer or otherwise give adequate effect to the State duty to protect human rights in the context of procurement. While some new human rights policies, in particular National Action Plans on Business and Human Rights (NAPs), mention public procurement, most NAPs published to date do not contain either concrete or adequate measures to operationalise this duty. This represents a failure of States to implement their general duty to protect against human rights abuses by third parties. At the same time, governments increasingly call on businesses to address human rights abuses in their global supply chains. Such a contradiction in relation to public buyers fundamentally threatens the credibility of business and human rights standards, including the UNGPs.

2) Limited Scope of Human Rights Protection

In the minority of surveyed jurisdictions where public procurement laws or policies do explicitly address human rights, their scope is limited to specific human rights issues (such as human trafficking or child labour), to specific human rights instruments (such as ILO core labour standards), or to specific economic operators (such as suppliers within the domestic jurisdiction, primary contractors,

or principal sub-contractors). This piecemeal approach to protection is inconsistent with governments' human rights obligations, as well as with the UNGPs, which emphasise their application to all internationally recognised human rights, throughout the supply chain. In practice, moreover, it often fails to address the spectrum of actual human rights risks that affect goods and services purchased under public contracts.

3) Lack of Guidance and Training

Across surveyed jurisdictions, guidance for public buyers on techniques and tools that they can lawfully deploy to avoid or reduce the incidence of human rights abuses in government supply chains is generally lacking. In instances where such guidance can be identified, sufficient resources to train and enable procurement officers to put it to effective use are absent. Given the risk of litigation by tenderers to challenge a procurement process, which can trigger delays in the fulfilment of government orders as well as expensive legal proceedings, procurement officers are in practice unlikely to take human rights into consideration without clear guidance on permissible measures to integrate human rights into government purchasing, and the capacity to use such tools with confidence.

4) Absence of Performance Monitoring

Systematic and comprehensive monitoring of the performance of public contracts with regard to respect for human rights amongst government suppliers was not identified in any surveyed jurisdiction. On the contrary, most respondents reported either that the performance of government contracts was not evaluated for consistency with human rights by or on behalf of procurement authorities, or that no information on this issue was in the public domain. Even in the small number of cases where individual public bodies do include "social clauses" in contracts, monitoring of the observance of such clauses was reported to be a rare occurrence.

5) Lack of Access to Remedy for Victims of Procurement-related Human Rights Abuses

No dedicated remedy mechanism for victims of human rights abuses in government supply chains was identified in any surveyed jurisdiction. At the same time, victims usually lack formal standing to challenge such abuses via regular judicial or State-based non-judicial mechanisms, given that their immediate perpetrators are corporations which, as non-State actors, are generally not liable for breaches of human rights before domestic courts or international tribunals, and which often lie beyond the mandate of State-based mechanisms such as ombudsmen and national human rights institutions. This entails the existence of a significant gap in government accountability for human rights abuses connected to public procurement and contracted-out public services, and contradicts the right to an effective remedy recognised in the third pillar of the UNGPs.

6) Building on Existing Initiatives

This survey has identified a range of initiatives, networks, and tools that are dedicated to promoting sustainable, green, ethical, or social public procurement. Though most of these do not currently reflect human rights standards or requirements, they nevertheless have the potential to serve as important vehicles and multipliers for human rights capacity building, tools, and methods. Careful analysis is therefore needed, in dialogue with stakeholders, before planning new interventions on public procurement and human rights, to ensure these exploit existing sustainable procurement initiatives and resources wherever possible. Such an integrated approach, in addition, is more likely to succeed in helping public buyers resolve any apparent dilemma between human rights responsibilities and other policy goals to which procurement may be linked, such as promoting the accessibility of public contracts to local and small and medium-sized enterprises (SMEs).

7) Human Rights, Sustainable Development, and Public Procurement: An Urgent Need for Policy Coherence

At least three current trajectories in international policy identify public procurement as a critical lever with power to influence conditions in global supply chains in support of sustainable development. Firstly, as described above, the UNGPs explicitly affirm that States have a duty to protect human rights against business-related abuses that extends to government purchasing, "contracting-out," and privatisation.

Secondly, the new *2030 Agenda for Sustainable Development* includes targets on public procurement, as part of the drive towards sustainable production and consumption, decent work, and more inclusive economies: Sustainable Development Goal 12.7 calls on all countries to implement sustainable public procurement policies and action plans.

Thirdly, recent policy initiatives on "responsible global value chains" by actors such as the G7 and EU, while they typically emphasise more targeted interventions, such as support for multi-stakeholder sectoral initiatives to address sector human rights risks at the country level, also acknowledge the "joint responsibility of governments and business to foster sustainable supply chains."

Yet, to date, there has been no substantial effort by governments to assess the extent to which existing procurement laws and policy frameworks, or actual government purchasing practices, are aligned with and support the UNGPs, the 2030 Sustainable Development Agenda, or new goals and initiatives on "responsible value chains."

On the contrary, responses to this survey suggest that while a few public buyers are innovating to integrate human rights considerations into the purchasing process, procurement laws and practices in general appear to be undermining or restricting such alignment (for instance, by restricting the extent to which the award of public contracts can be linked to human rights due diligence, supply chain transparency, or non-financial reporting) rather than promoting it.

Given the scale of government spending within the overall economy, noted above, this situation represents a significant obstacle to the achievement of the Sustainable Development Goals. It also undermines responsible business conduct, both directly, via contract terms for government purchases that fail to safeguard human rights of workers, service users, and communities, and indirectly, by denying a competitive advantage to those companies that do seek to operate on a socially and environmentally sustainable basis. Finally, it represents a significant source of inefficiency in public expenditure, with regard to resources allocated via aid budgets to programmes that support sustainable agricultural or industrial production in developing countries.

To eliminate such contradictions, and realise policy coherence, a new dialogue is needed on public procurement and its role in supporting respect for human rights, responsible value chains, and the 2030 Agenda – a dialogue which governments, relevant international and professional bodies, busness, and civil society organisations should now foster and support.

I. INTRODUCTION

Public procurement represents an enormous opportunity for governments to promote responsible and sustainable practices in the private sector. However, like other consumers, governments procure goods and services via global supply chains in which serious human rights abuses are now known to be widespread. In recent years, the implication of public buyers in such abuses has been documented with increasing frequency. The United Nations Guiding Principles on Business and Human Rights, which draw their authority from pre-existing human rights laws, explicitly affirm that the "State duty to protect" against adverse human rights impacts by third parties extends to situations where a commercial "nexus" exists between public actors and businesses, such as when government bodies purchase goods and services through public procurement. Across major world economies,[1] central governments and other public bodies are not meeting this responsibility to take active steps to avoid implication in human rights abuses through their purchasing practices.

This report provides an introduction to public procurement law and policy frameworks, and the interface between public procurement and human rights in practice. It documents existing approaches, and gaps, in incorporating human rights considerations into public procurement, across 20 jurisdictions. Following the Introduction, **Section II** defines public procurement and introduces the main legal regimes applicable to public procurement, including relevant EU Directives, the WTO Government Procurement Agreement, and the U.S. Federal Acquisition Regulation (FAR). It then briefly touches on the concept of "sustainable" public procurement and its relationship to human rights. **Section III** describes some of the ways in which public procurement may be associated with human rights abuses, and describes how national and international human rights norms, such as the UNGPs, relate to public procurement. **Section IV** maps current initiatives led by governments or other stakeholders whose goals intersect with or are otherwise somehow relevant to the aim of integrating respect for human rights into public procurement, dividing these into those that focus on "sustainable procurement" in general, and those with a sector-specific focus on health, apparel, electronics, security, and infrastructure.

Section V then presents the results of a questionnaire–based survey on public procurement and human rights of 20 jurisdictions undertaken by DIHR and ICAR in coordination with participants in the International Learning Lab on Public Procurement and Human Rights (Learning Lab) and other stakeholders. This section synthesises data provided by questionnaire respondents relating to: i) the legal frameworks applicable to public procurement and human rights in each jurisdiction, and the interface between these; ii) relevant public policies and guidance, including National Action Plans on business and human rights, and the extent to which, if at all, these address procurement and human rights; and iii) specific approaches adopted by public purchasers to safeguard human rights in the delivery of government contracts, for instance, via incentives and penalties, requirements on suppliers to undertake human rights due diligence, or supply chain disclosure and transparency measures. It also summarises reported developments on public procurement and human rights in courts, legislatures, and civil society. Closing, **Section VI** draws on the foregoing information to identify preliminary issues and challenges, in terms of securing effective respect for human rights in the procurement context, to be addressed subsequently through the Learning Lab.

II. PUBLIC PROCUREMENT

A. WHAT IS PUBLIC PROCUREMENT?

Public procurement is the public sector's purchasing of the goods and services it needs to carry out its functions.[2] It comprises three main phases: procurement planning, the procurement process, and contract management. During the planning phase, the government body decides which services and goods to buy and when. In the second phase, the government body establishes and executes a tender procedure with the aim of concluding a contract. Here a contractor is selected and terms and conditions are drafted for the contract. The third phase is a process of contract administration or management with the objective of securing effective performance.[3] Procurement rules generally focus on the second phase which, depending on the monetary value and subject matter, may be regulated by national, supranational, or international procurement regimes.

The subject matter of procurement is commonly divided into three categories: i) goods (supply of products); ii) services; and iii) works (construction). The scope of goods and services bought by public authorities ranges widely, from multi-bilion infrastructure and urban development projects, to the acquisition of complex items such as weapon systems, to comissioning of essential public services in the health and social care sector, to buying common goods such as stationery, furniture, and foodstuffs.

Public procurement globally accounts for €1000 billion per year, and 12% of GDP, on average across OECD countries.[4] Within specific sectors, the scale of public procurement can create or define a market.[5]

B. LEGAL AND POLICY FRAMEWORKS FOR PUBLIC PROCUREMENT

In general, government contracts are subject to the ordinary private law of the State concerned.[6] However, multiple levels of specific regulation typically apply to public procurement, including: national (state and federal) regulations; supranational (European Union); and international (such as the WTO Agreement on Governmental Procurement and the regulation of procurement under international finance instruments).[7] Public authorities should also comply with their obligations under domestic law and other legal regimes and agreements during public contracting, for instance, in the areas of environment and anti-corruption.

However, when engaging in procurement, public bodies are often not only concerned with legal compliance but also with achieving policy aims. Many procurement systems share policy objectives such as:

- Achieving value for money (or "efficiency") in public purchasing;
- Sustainability;
- Non-discrimination, equality and integration of marginalised or disadvantaged groups; and
- Open competition.[8]

The following section presents the most significant regulatory frameworks currently applicable to public procurement, briefly highlighting, where relevant, provisions that address human rights or broader sustainability considerations.

i) European Union

One of the main aims of establishing the European Union (EU) was to achieve an integrated internal market. For this reason the EU's legal regime is based on "four freedoms": the free movement of goods, services, capital, and people within EU boundaries.[9] As a general rule, Member States' governments are obliged to ensure these freedoms, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality, and transparency. Accordingly, they may restrict cross-border flows in these four areas only if restrictions are imposed in pursuit of the public interest and meet certain other conditions.[10]

As a consequence, the award of public contracts by Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU) and the "four freedoms." Thus, for public contracts above a certain monetary value, Member States must establish procurement procedures in accordance with EU Public Procurement Directives, to ensure that those principles are given practical effect and public procurement is opened up to competition across EU Member States.[11] Until recently, EU Directive 2004/17/EC and EU Directive 2004/18/EC were the two central pieces of public procurement legislation. EU Directive 2004/17/EC covered the procurement procedures of public entities operating in the water, energy, transport, and postal services sectors above a certain threshold value,[12] and EU Directive 2004/18/EC covered public works, public supply, and public service contracts above a certain threshold value.[13] Both Directives remained in force until 18 April 2016, when they were superseded by the new EU procurement Directives discussed below.[14] In addition to these two Directives, there are specific Directives setting out requirements for effective review procedures.[15] In sum, the Directives describe how public authorities should purchase: i) "works," which extends to building and civil engineering contracts; ii) "supplies," which refers to contracts for the purchasing of goods and supplies; and iii) "services," which includes contracts for advertising, property management, cleaning, management consultancy, financial, and ICT related services.[16]

Under EU public procurement rules, public authorities may take multiple factors into account when awarding a contract, as long as they are relevant to the subject matter of the procurement. Such factors may now include sustainable development considerations. Incorporation of sustainable development considerations into procurement law began with the Court of Justice of the European Union's (CJEU) judgments in the *Beentjes*,[17] *Commission v French Republic* (Nord-Pas de Calais),[18] and *Concordia* cases.[19] These decisions confirmed that social and environmental criteria may be taken into consideration when awarding public contracts, subject to various provisos. The establishment of the Public Sector Directive 2004/18/EC further introduced permission to take 'secondary' environmental and social considerations into account during the procurement process into EU legislation.[20] Subsequently, the European Commission's Europe 2020 Strategy for smart, sustainable, and inclusive growth recognised that sustainable public procurement had a role to play in realising its aims,[21] while further case law developments in *Wienstrom*,[22] *Evropaïki Dynamiki v European Environment Agency,*[23] and the *Max Havellaar* case[24] considered the consistency with EU law of specifications referring to fair trade labels.

New EU rules on public procurement and concession[25] contracts were approved by the European Parliament on 15 January 2014.[26] The new Directives are intended to modernise public procurement by increasing the efficiency of public spending, facilitating the participation of small and medium-sized enterprises (SMEs) in public procurement, and enabling procurers to use procurement to further common societal goals[27]: Directive 2014/24/EU draws links directly to sustainable develop-

ment both in its recitals and provisions.[28] The Directives were also necessary to clarify certain concepts whose meaning had been uncertain and to incorporate new case law from the Court of Justice of the EU into the procurement regulations.[29] EU Member States were obliged to transpose the new Directives into national law by April 2016. So far, seven Member States (the United Kingdom, France, Denmark, Germany, Italy, Hungary, and Slovakia) have notified relevant measures for *all* of the Directives.[30] It is expected all EU Member States will do so in due course.

ii) United States

The rules for procurement by U.S. federal agencies are contained in the Federal Acquisition Regulation (FAR).[31] A long and complex regulation, the FAR consolidates public laws adopted by Congress, Executive Orders issued by the President, and treaties that have the force of law in the United States. It is managed by a "FAR Council," which is composed of three federal agencies—the General Services Administration (GSA), the Department of Defence (DOD), and the National Aeronautics and Space Administration (NASA). All agencies must comply with the FAR, but individual agencies may issue their own supplements. The most extensive supplement is the Defence Federal Acquisition Regulation Supplement (DFARS).[32]

The federal procurement framework in the United States does address some human rights issues. For example, the Walsh-Healey Act of 1936 applies to contracts of a value over $10,000 and prohibits federal agencies from purchasing sweatshop goods.[33] However, imported goods or services are exempt from its coverage.[34] Under the FAR, federal contractors that source their goods or services domestically are prohibited from discriminating on the basis of various categories such as race and national origin,[35] and contractors are required to pay all employees in the U.S. the prevailing wages and benefits for the locality in which the work is performed.[36] The FAR also prohibits the use of forced child labour and reliance on human trafficking in relation to U.S. federal contracts sourced abroad.[37] Finally, effective from 2016, the FAR will include the final version of a proposed rule called "Fair Pay and Safe Workplaces" that agencies can use to determine that a contractor is not "responsible," and thus not eligible to bid on a contract, if the contractor has repeatedly violated certain domestic labour laws.[38] All of these regulations are subject to certain limitations and exemptions, which are discussed more in depth in section V.

iii) International Frameworks

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement (2011)[39]

The UNCITRAL *Model Law on Public Procurement* is intended to serve as an outline for national legislation to improve domestic regulatory regimes for public procurement.[40] It contains principles and procedures aimed at achieving value for money and avoiding abuses in the procurement process, for instance, corruption.[41] In its *Preamble*, the Model Law sets out six main objectives: economy and efficiency; international trade; competition; fair and equitable treatment; integrity, fairness, and public confidence in the procurement process; and transparency. A *Guide to Enactment* accompanying the *Model Law* suggests detailed procurement regulations as well as supporting guidance. There is no specific mention of human rights in the *Model Law*. Despite this, the *Model Law* does allow for the integration of social and economic criteria into procurement processes, such as promoting accessibility of procurement to small and medium sized enterprises (SMEs) or disadvantaged groups, environmental criteria, and ethical qualification requirements.[42] The *Guide to Enactment* further notes that human rights can feature as social aspects of sustainable procurement, and can be addressed

through socio-economic evaluation criteria.[43] It also provides that the Public Procurement Agency or a similar body can be tasked to review procurement proceedings to ensure that procuring entities have respected applicable law; though this provision was drafted with the intention of referring to procurement law, it might be given broader application so as to extend to human rights laws, especially where they are incorporated into domestic law or where human rights receive constitutional protection.[44]

The World Trade Organization (WTO) Agreement on Government Procurement[45]
The Agreement on Government Procurement (GPA) is a pluri-lateral agreement within the framework of the WTO. It has limited membership and applies only to those members of the WTO who have chosen to accede to it.[46] The fundamental objectives of the GPA are:

- Greater liberalisation and expansion of international trade
- Non-discrimination: measures prepared, adopted, or applied to public procurement must not afford more protection to domestic suppliers, goods, or services, or discriminate against foreign suppliers, goods, or services;
- Integrity and predictability, to ensure efficient and effective management of public resources; and
- Transparency, impartiality, avoidance of conflicts of interest and corruption.

A Revised GPA text adopted in 2012 seeks to encourage broader acceptance by introducing new exceptions for environmental and social policy linkages. First, the scope of the revised Agreement now excludes "procurement conducted for the specific purpose of providing international assistance, including development aid."[47] Second, the GPA includes a general exception in cases where derogation is "necessary to protect human, animal or plant life or health." Third, it explicitly provides for the possibility to address environmental considerations via technical specifications and award criteria: Article X (6) of the new text authorises technical specifications which "promote the conservation of natural resources or protect the environment," while the indicative list of evaluation criteria in Article X (9) now includes environmental characteristics. The possibility of addressing social characteristics by these means is not mentioned, but this does not mean this would be prohibited, provided such measures are in accordance with the other provisions of the Agreement.[48]

iv) Others

International Financial Institutions (IFIs)
International finance institutions such as the World Bank,[49] the European Bank for Reconstruction and Development (EBRD),[50] the African Development Bank,[51] and the Asian Development Bank have their own procurement rules, policies, and guidance.[52] These set out the principles that apply to borrowers' procurement of goods, services, and works financed in whole or in part by each bank respectively. Typically, such policies do not refer to human rights, though some include terms promoting green procurement.

ISO 20400 Sustainable Procurement Guidance
The International Organization for Standardization (ISO) is currently developing new sustainable procurement guidance, ISO 20400. The aims of this initiative are to address growing concerns about the credibility of environmental claims and standards, and to promote the ISO 26000 guidance on social responsibility throughout supply chains with actors such as contractors, suppliers,

buyers, and local authorities. Like ISO 26000, ISO 20400 will comprise guidance, rather than a certifiable standard. ISO mentions human rights in connection with ISO 20400 as one set of issues in supply chains, alongside environment and corruption, in line with the approach of ISO 26000, which was developed to align with the UN Guiding Principles on Business and Human Rights. However, it is not yet clear in what particular manner it will integrate human rights into its specifications.[53]

Organisation for Economic Co-operation and Development

The Organisation for Economic Co-operation and Development (OECD) states that it aims to support governments in reforming their public procurement systems to ensure long-term sustainable and inclusive growth. Its activities include developing international standards on public procurement, with a focus on value for money and integrity, and undertaking peer reviews to assess national procurement systems. It endeavours to build a procurement "community of practice," by convening policy dialogues on procurement in the framework of the G8 and G20, and collecting evidence on procurement behaviour and the influence of procurement on wider public policy objectives across OECD countries.[54]

C. SUSTAINABLE PUBLIC PROCUREMENT

Sustainable development refers to public authorities' application of socially and environmentally responsible practices when contracting to buy public works, services, or supplies.[55] Given the various global frameworks committing governments and other actors to sustainable development, such as the recently concluded Sustainable Development Goals, today there is an increasing focus on the need to achieve sustainable public procurement (SPP).[56] Specifically, regional and national sustainable development policies now more frequently refer to public procurement, and *vice versa*.

In the past, sustainable public procurement (SPP) typically concentrated on environmental impacts, through 'green' procurement policies and initiatives. With time, however, more emphasis has been put on achieving the appropriate balance between the three pillars of sustainable development - economic, social, and environmental - at all stages of the public procurement process. Socially responsible procurement objectives may refer *inter alia* to the creation of local employment opportunities, or promoting equal opportunities for groups that have been disadvantaged, such as women, persons with disabilities, or persons from specific ethnic or other minority groups, thus overlapping with historical "secondary" public policy objectives of government purchasing.[57] Such objectives may be achieved, for example, by including "social clauses" in public procurement contracts, discussed further in the following section.[58]

III. HUMAN RIGHTS IN THE CONTEXT OF PUBLIC PROCUREMENT

A. IMPACTS OF PUBLIC PROCUREMENT ON HUMAN RIGHTS

Public procurement has an essential role to play in facilitating States' fulfilment of their duties to protect, respect, and fulfil human rights. For example, only with infrastructure development, procurement of countless goods such as medical equipment and drugs, and services under contract can a State fulfil its duty to protect the human right to the highest attainable standard of health. Moreover, governments may use public purchasing to promote equal treatment rights, for instance by requiring firms competing for public contracts to demonstrate their compliance with specific legal duties concerning non-discrimination on grounds of gender, race, or disability. In addition, contracts for infrastructure development can be designed to support local businesses and provide training opportunities for youth or long-term unemployed persons, in line with the right to work and other socio-economic rights, and the right to development. Moreover, as "mega-consumers," governments potentially have the purchasing power to set standards that can shift markets towards more humane norms of practice and competition, and to exercise leverage over suppliers responsible for any transgressions.

However, like other consumers, governments purchase from supply chains with a high risk of human rights abuses and evidence of such abuses in the context of public procurement has grown.[59] Civil society organisations, media, and national human rights institutions have exposed weak controls leading to public purchasing practices associated with human rights abuses including, for example:[60]

- **Prohibition of child labour:** In a Bangladeshi factory that produced licensed apparel for U.S. military stores, a third of the workforce were children.[61] In the electronics sector, governments purchase commercial items from manufacturers that source from countries where child labour is prevalent in factories that produce electronics.[62] Child labour is also common in the extractive industries that supply raw materials required by the electronics sector: as many as 1.5 million children work in gold mines, for example.[63]
- **Prohibition of forced labour:** Plastic gloves procured by the public health-care sector in Denmark have been documented to contain rubber from plantations relying on forced labour.[64] A U.S. government contractor transported Nepali construction workers into a combat zone against their will.[65] *En route*, their unarmed convoy was attacked by insurgents, who executed some of the workers and posted video of their deaths on the Internet.[66] In a recent report, Danwatch exposed human rights violations and forced labour in IT supply chains, revealing systematic exploitation of Chinese students forced to work at electronics factories that produce servers for brands Danish universities most commonly use.[67]
- **Illegal wages and hours:** A contractor that made camouflage clothing for the U.S. government regularly failed to pay overtime wages at its factory in the Dominican Republic.[68] In Chinese factories that supply many governments, working conditions were so harsh that 17 workers tried to commit suicide over an eight-month period. One had worked 286 hours the month before he died, far beyond the legal limit of 36 overtime hours.[69]
- **Unsafe working conditions:** The licensed insignia for U.S. military services were found in the rubble of a factory fire that killed 112 workers in Bangladesh.[70] In Peru, workers who extract minerals for the electronics industry are exposed to mercury.[71] A large proportion of simple surgical instruments, such as scissors and forceps, used by healthcare providers in

Sweden and the U.K. are manufactured in Sialkot, Pakistan, where Swedwatch has exposed hazardous working conditions. For example, workers operating machinery without personal protective equipment.[72]

- **Freedom of association:** The Danish government has ordered military uniforms from a Bangladeshi factory within an Export Processing Zone where trade unions are prohibited.[73] Rather than recognize a union, a Mexican subcontractor in the supply chain for public employee uniforms shut down a factory and then blacklisted 400 workers who supported the union.[74] It is illegal to organize an independent union in China, where factories supply electronics to companies that in turn supply ICT to many governments.[75]

B. HUMAN RIGHTS NORMS AND PUBLIC PROCUREMENT

i) General Standards and Principles of Human Rights Law

In general, almost all governments now accept a duty to protect human rights such as those enumerated in the Universal Declaration of Human Rights, and international and regional conventions[76] as well as other instruments that expand upon their core commitments, and human rights protected under national constitutions. Such laws, and their interpretation by courts and parliaments, make clear that all public authorities must protect human rights, and that this duty to protect extends to taking reasonable steps to protect individuals from abuses of their rights by third parties, including business, as non-State actors.[77] At least in some jurisdictions, these "positive obligations" to protect human rights arising under human rights treaties have been found to extend to State action in the context of public purchasing.[78]

ii) UN Guiding Principles on Business and Human Rights

In 2011, the UN Human Rights Council unanimously endorsed the *Guiding Principles on Business and Human Rights* (UNGPs).[79] In line with the general position under human rights law indicated above, the UNGPs affirm that the "State duty to protect" human rights extends to business-related human rights abuses. The UNGPs also indicate that business actors themselves have a "responsibility to respect" human rights, and that victims of business-related human rights abuses have a right to access an effective remedy.[80]

In particular, Guiding Principle 1 provides that "States shall take appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulation and adjudication."[81] Guiding Principle 4 provides that States should require, where appropriate, State-owned or controlled enterprises to exercise human rights due diligence.[82] In addition, Guiding Principles 5 and 6 clarify that this duty extends to situations where governments enter into commercial relationships, including through public procurement.[83] Specifically, according to Guiding Principle 5, where States engage in privatization or "contracting out" of services that may impact on human rights, they must "exercise adequate oversight," including by ensuring that contracts or enabling legislation communicate the State's expectation that service providers will respect the human rights of service users. Further, Guiding Principle 6 notes that States should promote awareness of and respect for human rights by business, including through the terms of procurement contracts. Guiding Principle 8 provides that States must ensure 'policy coherence,' in other words, alignment with human rights obligations of standards and policies across all governmental departments, agencies, and other State-based institutions that shape business practices.[84]

The UNGPs have subsequently been affirmed by other UN human rights bodies,[85] numerous national governments,[86] a range of international and regional organisations (including the OECD and ISO, which aligned respectively their Guidelines for Multinational Enterprises, and ISO 26000 standard with the UNGPs), the EU and the Council of Europe, the International Finance Corporation and other IFIs, and investors.[87] Accordingly, while specific judicial decisions in this area remain sparse, it can be said that governments' obligations to protect human rights are now interpreted as extending to protecting human rights within their own supply chains.[88]

iii) National Action Plans on Business and Human Rights

The new phenomenon of national action plans on business and human rights (NAPs) provides further support for the emerging interpretation of the State duty to protect against business-related human rights abuses as encompassing procurement. In 2011, the European Commission invited EU Member States to develop NAPs to implement the UNGPs,[89] a call which was soon followed by the European Council,[90] Council of Europe,[91] and UN Human Rights Council.[92] To date, 8 countries have published NAPs, and another 30 NAPs or supporting studies are in development.[93]

The large majority of published NAPs refer to the need for measures to integrate human rights into public procurement practices.[94] For instance, the U.K. NAP commits "to review the degree to which the activities of U.K. State-owned, controlled or supported enterprises, and of State contracting and purchasing of goods and services are executed with respect for human rights, and make recommendations to ensure compliance with the UNGPs."[95] The Dutch government in its NAP asserts that Government suppliers should perform a risk analysis to show that they respect human rights in accordance with the UNGPs, and commits to undertake an evaluation of its sustainable procurement policy's social conditions for consistency with the OECD Guidelines for Multinational Enterprises and the UNGPs.[96] Denmark's NAP highlights that public authorities should assume social responsibility relating to human rights as well as environmental, social, and economic conditions.[97] It goes on to say the Government will invite Danish municipalities and regions to jointly prepare guidelines for public authorities on how to avoid adverse impacts as a result of purchasing.[98] In Finland, the NAP proposes a number of measures to integrate human rights into procurement, including updating the State procurement manual's "responsibility themes," and developing a report on "product groups that pose the highest risk for human rights violations."[99]

iv) Human Rights and Supply Chains

Beyond NAPs, governments are moving towards measures to expand and extend supply chain responsibility and disclosure obligations, including in relation to human rights. For example, in 2015, the G7 Leaders' Declaration called for tools to support public procurers in meeting social and environmental commitments.[100] In June 2016, the 105th session of the International Labour Conference (ILC), focused on how to promote decent working conditions in global supply chains, in response to which a number of organisations called for a new International Labour Organisation convention to regulate working conditions in global supply chains via an obligation on States in turn to enact measures at domestic level requiring companies to do human rights due diligence.[101] Under the U.K.'s Modern Slavery Act 2015, commercial organisations that conduct all or part of a business in the U.K. supplying goods or services, and with a turnover of £36m or more, are required to prepare and publish an annual 'slavery and human trafficking' statement.[102] Draft legislation in France, if passed, will require large companies to establish and maintain an effective "vigilance plan," including reasonable measures to identify and prevent risks of human rights abuses resulting from the company's activities and those of any companies it controls directly or indirectly, as well as from activities of their subcontractors or suppliers.[103]

In the U.S., Section 1502 of the U.S. Dodd-Frank Act applies to companies that are required to file with the Securities and Exchange Commission (SEC) and which use the minerals gold, tin, tungsten, or tantalum. Section 1502 requires that such companies take steps to find out if they are sourcing these minerals from the Democratic Republic of Congo (DRC) or an adjoining country.[104] If, based on this inquiry, the company knows or has reason to believe they are sourcing minerals from the DRC or adjoining countries and that the minerals are not coming from recycled or scrap materials, they must undertake due diligence on the source and chain of custody of the minerals and then file a Conflict Minerals Report with the SEC.[105] At the U.S. state level, the California Supply Chain Transparency Act applies to retail and manufacturing companies that are "doing business" in California.[106] It requires that such companies disclose, via their websites, information about their efforts, if any, to eradicate human trafficking and modern slavery from their supply chains.[107] A similar bill has been introduced in both the Senate and the House of Representatives at the U.S. federal level.[108]

Furthermore, in the context of modern day slavery and hazardous substances, UN special mandate holders have recognised the State duty to protect human rights in relation to business operations and supply chains in particular.[109] While the focus of such recent initiatives has generally been on corporations' procurement activities, it cannot be plausibly argued that governments and other public authorities have any lesser obligations than do businesses to address human rights abuses amongst their suppliers and contractors.

IV. EXISTING PROCUREMENT INITIATIVES RELEVANT TO HUMAN RIGHTS

For the purposes of this Mapping Report, a desktop survey was undertaken to identify initiatives, organisations, and networks engaged in issues and activities relevant to human rights and public procurement. The analysis extended to national, regional, and international initiatives, and resulted in a list of some 44 initiatives included at Appendix 1.[110]

Of the initiatives identified, 21 were found to have a general sustainable procurement focus, while 6 addressed the health sector, 3 the construction sector, 1 private security, 2 apparel, 3 electronics, and 2 food/agriculture/timber. The remaining 6 were classed as covering miscellaneous sectors.

A. SUBJECT MATTER OF EXISTING PROCUREMENT INITIATIVES

i) General Sustainable Procurement Initiatives

Most existing initiatives focus on promoting greater sustainability in procurement, encompassing innovation, green or environmentally-friendly solutions, ethical considerations, anti-corruption measures (IEH), and socially responsible practices. Examples of these initiatives include the Landmark Project EU, the CSR Sustainability Compass, and the UNEP 10 YFP Sustainable Procurement Programme.[111] Initiatives in this category have been established by a diverse group of stakeholders, including:

- Central governments (UN Marrakech Task Force on SPP);
- Banks and international organizations (G20 group);
- Associations of local governments;
- Regional centres of expertise and agencies (Procurement of Innovation Platform); and
- Businesses, NGOs, and public enterprises.

ii) Healthcare

The majority of existing health sector procurement initiatives do not focus on human rights as such, but rather on sustainability, social, or green standards. Health sector initiatives can also be distinguished between those focusing on goods and those on services. Examples of the former include Swedwatch's work on surgical instruments with the Swedish County Councils and Difi's work with Norwegian local government bodies, both of which focus on core labour standards.[112] The British Medical Association (BMA) has similarly campaigned for fair and ethical trade of goods (medical supplies including surgical instruments) since 2007. Its campaign encourages BMA members to engage on this issue in their own National Health Service (NHS) organisations, and provides advice and advocacy materials.[113] Regarding services, national human rights institutions, such as the U.K. Equality and Human Rights Commission and Scottish Human Rights Commission, have worked on the integration of human rights into processes of commissioning health and social care at local government level with an explicit focus on human rights.[114]

iii) Apparel

Human rights abuses occurring in the apparel sector include, *inter alia,* the use of child labour, dangerous working conditions, low wages, excessive hours, and violations of freedom of association.[115] The lethal risks to which apparel workers are exposed were demonstrated in 2013 by the collapse

of the Rana Plaza garment factory, which left 1,134 dead and thousands more injured.[116] A number of existing initiatives focus on the apparel sector. One such initiative is the Sweatfree Purchasing Consortium (SPC), which comprises 14 U.S. cities and 3 U.S. states that seek to ensure that the apparel products they buy are made without sweatshop labour.[117] SPC members adopt sweatfree codes of conduct: the municipal governments of Los Angeles and San Francisco, for example, require their apparel suppliers to comply with laws in the country of production as well as ILO core labour standards.[118] In addition, Los Angeles and San Francisco retain the Worker Rights Consortium (an independent labour rights monitoring organisation) to monitor their apparel supply chains and report on contractors' compliance with their codes.[119] Finally, the SPC has created an online database (Sweatfree LinkUp!) where information about apparel vendors, manufacturers, and factories in government supply chains is publically available.[120] The information is sourced from apparel vendors and manufacturers themselves, in and some cases government entities that require supply chain disclosures as part of the procurement process.[121]

The Clean Clothes Campaign (CCC) is an alliance of NGOs and trade unions across 16 European States.[122] The CCC works to improve workers' rights in apparel and shoe supply chains through multiple mechanisms, *inter alia*, by organising, mobilising consumers, and educating workers about their rights.[123] In 2002 the CCC launched the Clean Clothes Communities project, dedicated to pushing local and regional governments to include ethical considerations in their public purchasing.[124] This project, initially focused on municipalities in the Netherlands and Belgium, has since spread and generated procurement reforms in municipalities in Germany, France, and elsewhere.[125]

iv) Electronics

Information technology accounts for an increasingly significant portion of total government procurement expenditure: the value of European States' public procurement of ICT equipment, services, and software amounted to EURO 94 billion already in 2007.[126] Given intense competition that is often based on low labour costs, a range of human rights abuses are prevalent in the sector. As a result, various supply chain initiatives focusing on IT manufacturing have emerged. Some of these aim to improve working conditions in the electronics industry through contract clauses, monitoring, reporting, capacity building of local organisations, and workshops on socially responsible public procurement (Electronics Watch Monitoring and Reform Programmes; Business, Human Rights and the Environment Research Group, University of Greenwich). Others highlight abuses in the supply chains of individual government bodies: Danwatch, for instance, recently exposed forced labour and hazardous working conditions in the IT supply chains of the Danish State and municipalities, prompting public authorities to consider cancellation of relevant contracts.[127] Another coalition, GoodElectronics, includes trade unions, grass roots organisations, campaigning and research organisations, academia, and activists, with a mission to document government conduct, raise awareness, and convene stakeholders.[128] On the supplier side, the Electronics Industry Citizenship Council (EICC) is an industry initiative that has created a code-like standard on social, environmental, and ethical issues for companies in the electronics sector.[129] The Dutch social enterprise FairPhone produces socially responsible smart phones, through monitoring every stage of the production and recycling process and partnering with suppliers that adhere to specific environmental and social standards.[130]

v) Security

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation that aims to promote democratic security sector governance. In light of the increasingly significant role of private security within the security sector at large, DCAF seeks to support better oversight and accountability of the private security sector, most notably via the *Montreux document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict* and the *International Code of Conduct for Private Security Service Providers*. As an extension of this work, DCAF is currently undertaking research on government procurement practices and human rights in the area of private security services.[131]

vi) Infrastructure

To date, initiatives in the area of infrastructure procurement have focused largely on transparency and anti-corruption, on the one hand, and green and sustainability considerations on the other (PROBIS – Supporting Public Procurement of Building Innovative Solutions;[132] iNSPiRe;[133] Supply Chain Sustainability School[134]). An example of a transparency-focused initiative, the Construction Sector Transparency Initiative (CoST) seeks to encourage demand for disclosure around construction projects and contracts through multi-stakeholder dialogue and a new governance and accountability mechanism that builds on existing government institutions, regulations, and demand for better construction results.[135] It supports governments to establish systems that allow public access to reliable and detailed construction project information, and supports Multi-Stakeholder Groups to oversee the validation and interpretation of the information. Equipped with such information, stakeholders (citizens, media, parliament, oversight agencies) are better positioned to raise challenges over poor performance, perceived mismanagement, or corruption.[136] Another initiative, the Open Contracting Partnership, focuses on increasing the number of contracts that are publicly disclosed, improving the quality of publicly available information on contracting, and enhancing the accessibility of contracting data.[137] With a greater direct focus on human rights, Mega-Sporting Events (MSEs) encourages governments that host MSEs, sports governing bodies, local organisers, sponsors, and companies to establish safeguards concerning the human rights of workers, local residents, and others affected by the staging of an MSE.[138]

B. WORKING METHODS AND OUTPUTS OF EXISTING PROCUREMENT INITIATIVES

In terms of their outputs, existing sustainable procurement initiatives focus mainly on the following:

- Knowledge-sharing, executed for example through the creation of webpages, procurement forums, resource centres, centralized databases, guidance, and via live events;
- Networking and capacity-building, via discussions, sharing and connecting, and development and coordination of projects and conferences;
- Development of guidelines, reports, policies and provision of support services, toolkits, and legal advice and guidance on policy development; and
- Training and certification.

V. MULTI-JURISDICTION SURVEY OF PROCUREMENT AND HUMAN RIGHTS

For the purposes of this Report, a survey was conducted via a questionnaire distributed to organisations across 20 jurisdictions.[139] The aim of the questionnaire was to gather further information on the *status quo* of procurement and human rights in the context of existing law, policy, and practice at the level of each jurisdiction surveyed.[140] Section 1 of the survey addressed the general legal frameworks pertaining both to public procurement and to human rights applicable in the jurisdiction. Section 2 inquired into official government policies and guidance, and as to whether the interface between procurement and human rights has so far been addressed through these. Section 3 requested information about specific actions initiated by government or other actors addressing procurement and human rights issues. Section 4 sought information about developments in courts or legislatures, or steps taken by any other relevant actors addressing human rights issues arising in the context of public procurement. This section summarises information provided by the respondents to the survey.

A. LEGAL FRAMEWORK

General legal framework for government procurement
What is the general legal framework for public procurement in your country?
For example, in EU jurisdictions, the framework is provided by the EU Public Procurement Directives plus national implementing legislation.

For the 13 survey respondents representing EU Member States, the primary source of procurement law is the set of EU procurement Directives (summarised above in section II B). Besides the EU Directives, however, some respondents from EU Member States underlined the importance of other EU laws, such as Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles, and Directive 2009/52/EU providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.[141] Article 7b of the latter Directive provides for sanctions by exclusion from participation in public contracts.[142]

In addition, survey respondents highlighted that below the threshold values set by the EU Procurement Directives, EU Member States regulate procurement through national level instruments. These instruments include government decisions (**Czech Republic**),[143] guidelines, codes of practice and action plans (such as *Green Tenders – An Action Plan on Green Public Procurement* in **Ireland**),[144] resolutions of the Anti-Corruption National Authorities which set additional transparency and risk management requirements (**Italy**),[145] and sub-national regulation (in **Spain** the autonomous communities[146] have certain competences in the realm of public procurement, including on contracts below the EU threshold).[147] EU Member State respondents also highlighted the impact of a range of other national laws that bear on procurement, including competition, anti-corruption, and labour regulations.[148] In **Northern Ireland**, legislation was mentioned that specifically permits public authorities to take into account economic, social, and environmental well-being in connection with public services and contracts.[149]

While not an EU member, **Norway** aligns its legal framework on procurement to EU rules. Accordingly, the Government has circulated a proposal to amend Norwegian procurement law in line with

the revised EU Directives of 2014, which would require public entities to have adequate procedures to safeguard social considerations in public procurement.[150] Although the Swiss Confederation concluded an Agreement with the EU on some aspects of government procurement,[151] in general **Switzerland** refers to the WTO's GPA as the basis for its procurement laws.[152] The GPA is implemented through the Swiss Federal Act on Public Procurement (FAPP)[153] and the corresponding Ordinance on Public Procurement (OPP).[154] **Switzerland**'s 26 Cantons implement the GPA autonomously through 26 statutory regimes which are independent, albeit coordinated by an Inter-cantonal Agreement on Public Procurement, while Swiss Communes have their own procurement regulations, in addition.[155]

In **New Zealand**, a range of domestic statutes[156] are relevant to procurement activities, as well as the common law of contract, the *Principles of Government Procurement*[157] approved by the Cabinet, and a set of *Government Rules of Sourcing 2014* that support best practice in government procurement.[158] Certain types of procurement (for example, public transport, infrastructure, and property services) are subject to separate or additional requirements indicated in separate guides.[159] The Official Information Act 1982 is also identified as relevant as it may allow interested parties to access information about a specific public procurement process.[160]

In **Australia**, the Public Governance, Performance and Accountability Act 2013 (Cth) ('PGPA Act')[161] allows the Minister of Finance to administer the Commonwealth Procurement Rules (CPRs); non-corporate Commonwealth entities and prescribed corporate Commonwealth entities are required to comply with these Rules.[162] The CPRs require officials to use and manage public resources properly, by ensuring the use of public money is efficient, effective, economical, ethical, and not inconsistent with government policy.[163] Individual agencies are responsible for ensuring that procurement processes are carried out in accordance with the CPRs. At the state and territory level, there may be more prescriptive rules: each state or territory generally creates a central procurement body to determine procurement policies.

About two-thirds of procurement in the **United States** is sub-national (state and local), and about one-third is national (federal).[164] State procurement codes are largely autonomous, albeit with a number of exceptions; in the areas of transportation and school food, for example, because federal funding supports these. Federal procurement law derives from a large number of Acts of Congress, trade agreements, Executive Orders of the President, formal rule-making by agencies, and informal guidance published by agencies. These diverse sources are codified and interpreted in the 2,000-page Federal Acquisition Regulation (FAR), which applies to all agencies.[165] In addition, agencies may issue their own supplements, so long as they are consistent with the FAR.[166] The FAR is amended through a formal rulemaking process, which can be triggered by Acts of Congress, Executive Orders, or initiatives of the "FAR Council," a body that administers the regulation.[167]

In **South Africa**, the Constitution of the Republic of South Africa (1996 Constitution) is the principal legislation regulating public procurement. Section 217 of the Constitution requires that organs of State contract goods or services in accordance with a system which is fair, equitable, transparent, competitive, and cost-effective. These requirements are given further effect via:

- Section 51(1)(a) of the Public Finance Management Act (PFMA), implemented through the National Treasury Regulations and instructions issued in terms of the PFMA; and
- Section 112 of the Local Government Finance Management Act (MFMA), which is also implemented through regulations and guidelines issued in terms of the PFMA.

General legal framework for human rights protection

What is the general legal framework for human rights protection in your country, and do these human rights protections apply to government purchasing? Is this legal framework vested with the same or higher legal authority than Acts (laws) of Parliament?

For example, under the Constitution, via incorporation of human rights treaties, etc.

Legal sources for the protection of human rights in most countries surveyed include the following: international treaties to which the State is a party;[168] a Bill of Rights[169] or the Constitution,[170] and their judicial interpretation;[171] statute law[172] and statutory rules,[173] which may incorporate equal treatment or other obligations under EU law or international human rights treaties;[174] and the common law.[175] In general, the national Constitution represents the highest legal authority in a country. Accordingly, it has a higher legal status than legislative provisions such as those regulating public contracts. In the event that these conflict, constitutional norms safeguarding human rights would be expected to prevail. Thus, the Constitutions of the **Czech Republic**,[176] **Switzerland**,[177] and **South Africa**,[178] for example, are understood to apply to government purchasing and in principle to condition procurement rules, their interpretation, and application. However, in some countries, such as **Ireland**, constitutional human rights protections have not so far been explicitly extended to public procurement through court decisions or other legal acts.

In the **European Union**, respect for human rights is enshrined in Article 6 of the Treaty of the European Union (TEU). Article 6 (3) TEU establishes that fundamental rights, as guaranteed by the European Convention of Human Rights (ECHR) and as they result from the common constitutional traditions of Member States, shall constitute general principles of EU law. In addition, subsequent to the Treaty of Lisbon, Article 6 (1) TEU expressly states that the Charter of Fundamental Rights of the European Union (CFREU) shall have the same legal authority as the EU Treaties even if, strictly speaking, it is not part of the text of either the TEU or the Treaty on the Functioning of the European union (TFEU). This means that the CFREU has the legal authority of primary EU Law, and therefore legislative acts of the EU (secondary EU Law, such as the EU procurement Directives) must in principle be compatible with the CFREU.[179] Also of significance, Article 6 (2) TEU stipulates that the EU shall accede to the ECHR. Whereas the accession process is currently stalled[180] this does not alter the EU's obligation to become a party to the ECHR eventually, nor the obligation to ensure respect for and protection of human rights within the EU legal order in the interim.

In some countries, such as **Denmark**, international human rights obligations are intended to be implemented through national laws. As a consequence, companies and other private actors are in general indirectly obliged to comply with human rights standards, including in their capacity as suppliers to government.[181] Elsewhere, human rights may be protected via special parliamentary statutes. For example, in **New Zealand**, the Bill of Rights Act 1990 (BORA) and the Human Rights Act 1993 (HRA) are the principal legal instruments for the protection of human rights.[182] In addition, respondents across jurisdictions cited general statute law as supporting protection of human rights across a range of topics including, for example, in the case of **New Zealand**, privacy,[183] the right to a safe and healthy work environment,[184] freedom of association, non-discrimination in employment, equal pay,[185] other labour rights,[186] and criminal codes forbidding abuses such as torture, slavery, and human trafficking.[187] As elements of the general law, domestic suppliers to government would typically be expected to comply with such standards, subject to any relevant exclusions or qualifications.

Legal measures on human rights and procurement

Are there any legal measures in your country that explicitly address the human rights obligations of public authorities in the context of public purchasing?

For example, such measures could address procurement in general, specific sectors or services (such as apparel, electronics, medical or social services, etc.), specific groups of rights-holders (such as persons from historically disadvantaged groups, persons with disabilities), and specific human rights (such as labour rights). Please provide relevant links to legal authority, where applicable.

Most respondents reported that there are no dedicated legal measures that *explicitly* address the obligations of public authorities to respect human rights in the context of public purchasing *in general* (**Czech Republic** and **Poland**, for example). However, in a range of countries it has been legally recognised that Constitutional or other human rights protections extend to purchasing activities by implication. As an example, in **Spain**, Article 53 of the Constitution establishes that all public authorities are bound by the fundamental rights and freedoms recognised by the Constitution, even if there is no specific provision linking human rights to public procurement.[188] Similarly, in the **United Kingdom**, section 6 of the Human Rights Act 1998 makes it unlawful for any "public authority" to act incompatibly with human rights enshrined in the ECHR.[189] In principle, therefore, section 6 includes public procurement by central or local government, whether of goods or services, and also includes public services delivered by private providers in its scope.[190]

Elsewhere, procurement frameworks address some specific human rights issues, most typically labour rights. In **Norway,** public authorities are obliged to advance contract clauses on wages and decent working conditions when buying services (construction work, facility management, cleaning services, and so forth). Public authorities must also follow up with suppliers on the performance of such clauses, for instance by requiring the supplier to make a self-declaration. On the other hand, such measures are voluntary for the purchase of products, as opposed to services.[191] **Sweden's** public procurement legislation mentions that public authorities should consider using social criteria, but only when this is justified by the nature of the procurement in question.[192]

In **Switzerland**, at the federal level, according to Article 8(1) of the Federal Act on Public Procurement (FAPP), a contracting authority will only award a contract for services that will be performed in Switzerland to a tenderer who guarantees compliance (1) with Swiss health and safety regulations[193] and (2) with the terms and conditions of employment applicable at the place of performance. Additionally, the contracting authority will only award a contract to a tenderer who guarantees equal treatment of men and women providing services with regard to equal pay (Article 8(1)(c) FAPP).[194] The Swiss Federal Ordinance on Public Procurement (OPP) further defines the applicable terms and conditions of employment.[195] According to Article 7(1) OPP, these are stated in collective agreements, subsidiary cantonal employment regulations or, where these do not exist, the actual, usual working conditions for a particular profession and location.[196] If the services are provided abroad, the supplier is expected at least to comply with the ILO Core Conventions (Article 7(2) OPP).[197] The Ordinance further provides that if tenderers engage subcontractors, they are required to ensure these conditions in relevant contracts (Article 6(1)(b) OPP).

However, these provisions must be seen in the context of the broader Swiss federal legal framework for procurement. Article 1(c) and Article 21(1) of FAPP establish award criteria for the public procurement process. These relate chiefly to economic efficiency and quality, but also to environmental impact. Social considerations, by contrast, are viewed as lacking sufficient relevance to the object of procurement and therefore are not recognized as award criteria though they may be part of the award process.[198] In most cases, therefore, social aspects can only be taken into account in public tenders if they are seen to be consistent with the aforementioned award criteria, including economic efficiency and quality.[199] On the other hand, Swiss contracting authorities may, in their discretion, add other objectives such as the best price-performance ratio (i.e. balancing cost against effectiveness) during the award process and in the contract.[200] However, the application of secondary criteria needs to be specified in the notices and tender documentation and must be non-discriminatory in order to respect the GPA.[201] Moreover, the Swiss Federal Supreme Court permits their application during the award process only to a certain extent and under specific conditions, at least for services provided in Switzerland: in particular, any exclusion of a bid from the tendering process because of secondary objectives requires a legal basis.[202]

This scenario may change in future. According to the first draft revised FAPP and OPP, published in April 2015 and currently under consultation, draft Article 1(a) and Article 33(1) FAPP establish 'sustainability' as a criterion in the award process that must be balanced with other criteria – chiefly the economic efficiency criteria. Draft Article 3(c) OPP further clarifies that the term sustainability entails three equally important dimensions: economic, environmental, and social.[203] If adopted, the content of these three dimensions would need to be further operationalised through the practice of the Swiss Federal Procurement Conference.[204] Draft Article 14(1) FAPP reiterates the conditions mentioned above concerning compliance with ILO Core Conventions for services provided abroad explicitly in the act itself, and not only in the ordinance. Similarly, this draft article would enhance the legal standing of current measures protecting human rights in the public procurement process.[205]

In **Spain,** procurement legislation in place prior to the implementation of the 2014 Directive allowed the introduction of considerations "of a social nature" into a public contract, either as contract performance clauses or award criteria.[206] With regard to contract performance clauses, the Law of Contracts of the Public Sector Article 118 establishes that public authorities can include such social conditions in order to: promote employment of those with specific difficulties accessing the labour market; to eliminate discrimination between men and women; to combat unemployment; to favour training at work, amongst other employment measures; and in order to respect basic labour rights in the supply chain in compliance with the ILO Conventions.[207] Equally, the award criteria disposition allows for the consideration of elements connected to the satisfaction of the social needs of disadvantaged user or beneficiary groups, as long as they are linked to the subject matter of the contract and have been specified in the tender document.[208] By contrast, the pending bill on public procurement intended to implement the 2014 EU Procurement Directives into Spanish law would redefine the concept of 'value for money', in order to prioritise quality, innovation, and environmental and social considerations.[209] In fact, the proposed bill establishes not just the possibility, but also an obligation on contracting authorities to include social conditions, as long as they are linked to the subject matter of the contract.[210] With regard to social conditions, the proposed law would favour companies that can demonstrate that they comply with certain standards of equality between men and women and that they take measures to protect people with disabilities. The contracting authority may decide whether to include the social conditions in the award criteria or as a

contract performance clause.[211] In the case of two or more tenders being equivalent in other respects, contracting authorities should use social criteria, such as the following, to decide between them: a higher number of disabled employees; a lower number of non-permanent employees; a higher number of female employees; and, significantly, the number of corporate social responsibility initiatives in which the tendering company is involved.[212]

As regards contract performance, the contracting authority can similarly establish special conditions, as long as they are linked to the subject matter and are not directly or indirectly discriminatory. Such conditions may be environmental, social, or related to innovation. The social conditions which may be introduced include, amongst others: those relating to the protection of people with disabilities; integration into the labour market; discrimination between men and women; combating unemployment; or those which guarantee respect of basic labour rights along the supply chain by demanding compliance with the ILO Conventions, including those that aim to favour small producers in developing countries, with whom advantageous commercial relations are maintained.[213] Finally, the bill requires that contracting authorities adopt the necessary measures to ensure suppliers respect national environmental, social, and labour laws, as well as the international obligations of the State in those areas when they perform the contract.[214] Besides such national-level measures, **Spain**'s autonomous communities have been particularly proactive in using public procurement (in the context of contracts below the EU threshold) to advance social issues, including the promotion of the integration of disadvantaged groups and groups with special employment needs.[215]

Explicit human rights obligations are lacking in both the 2004 and 2014 **European Union** procurement Directives. However, some have concluded that scope to integrate respect for human rights into purchasing covered by the 2014 Directive has been strengthened under this revised legislation.[216] The 2014 Directives require Member States to adopt measures to ensure that, in the performance of public contracts, suppliers comply with applicable obligations in the fields of environmental, social, and labour law established by the EU, national law, collective agreements, or by the international environmental, social, and labour law provisions listed in Annex X of the Directive 2014/24/EU, which refers to ILO Core Conventions.[217] In addition, according to Article 57(1)(f) of EU Directive 2014/24, a supplier will be excluded from participation in a procurement procedure if it has been the subject of a conviction for child labour and other forms of trafficking of human beings.[218] Article 57(4)(a) allows contracting authorities lawfully to exclude an economic operator from participation if it can be demonstrated by appropriate means that a violation of applicable obligations referred to in Article 18(2) took place.[219] Further, under the 2014 Directives, social and fair trade criteria can in principle be included as part of the "award criteria," albeit subject to the conditions of proportionality, non-discrimination, and link to the subject matter of the contract, which have so far been closely and strictly reviewed by the courts.[220] Likewise, the Directives permit the use by public buyers of non-discriminatory performance clauses linked with social considerations (such as the involvement of the long term unemployed in delivery of purchased goods or services). [221]

In the **United States**, federal and state laws set standards to protect human rights, and the FAR requires procurement officers to cooperate with federal and state agencies that enforce labour laws. However, there is no explicit contractual obligation for federal contractors to comply with domestic laws (apart from procurement rules in the FAR), whether in the United States or another country of production. With some exceptions, in relation to issues such as forced child labour and bribing government officials, the general approach of the FAR is that government contracts, and compliance

with civil and criminal law, are separate. This is based on the assumption that there are prosecutors, enforcement agencies, and courts that can award damages for negligence if a contractor violates the law.

As an exception to this general position, however, the Walsh-Healey Act of 1936 prohibits federal agencies from purchasing sweatshop goods,[222] defined with respect to compliance in the country of production with applicable rules regarding minimum wages, maximum working hours, child and convict labour, and health and safety,[223] for contracts of a value greater than $10,000.[224] However, the Secretary of Labor has exempted imported goods or services, the result being that the Walsh-Healey Act only applies to goods produced or services provided in the United States, Puerto Rico, and the Virgin Islands.[225] Because of this the Walsh-Healey protections do not extend to all government supply chains.[226]

In relation to U.S. federal contracts sourced abroad, however, the FAR does prohibit use of forced child labour.[227] The prohibition on selling a product that is mined, produced, or manufactured with forced child labour applies to any contract that exceeds a "micro" purchase threshold, and U.S. law requires the U.S. Department of Labor (DOL) to prepare a "List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor."[228] Contractors must certify that they either (a) will not sell a product on the list, or (b) they have made a good-faith effort to determine whether forced child labour was used.[229] However, contractors from countries that are party to the GPA or that have free trade agreements with the United States with chapters on procurement are not required to certify their knowledge.[230]

The FAR also prohibits, in relation to federal contracts sourced abroad, human trafficking, which is defined to include, amongst other things, forced labour and fraudulent or coercive recruitment or employment practices.[231] Though this might appear to leave a wide gap in terms of other human rights, such as (unforced) child labour, discrimination, denial of freedom of association or right to organize, illegal wages or hours, and dangerous working conditions, in fact the definition of human trafficking could apply to any of these abuses to the extent that they are associated with fraud or coercion. The prohibition of trafficking applies to all contractors.[232] For work outside of the United States, contractors must also prepare a certification and compliance plan for contracts that exceed $500,000 (except for the purchase of commercially available off-the-shelf items (COTS)).[233] A certification and compliance plan must address a list of specific prohibited activities (e.g., fraudulent recruiting, confiscation of travel documents, failure to provide transportation, use of forced labour, etc.).[234] In addition, the U.S. Department of State has announced a policy that prohibits awarding a contract to any private security contractor that is not a member of the International Code of Conduct for Private Security Service Providers Association (ICoCA).[235]

By contrast, for U.S. federal contracts sourced from U.S. territory, while the exclusions of commercial goods and small contracts remain in place, the scope of protected rights is broader. The FAR prohibits all federal contractors who source their goods or services domestically from discriminating on the basis of race, colour, religion, sex, or national origin[236] and, in 2014, President Obama expanded the ambit of this rule to prohibit discrimination based on sexual orientation or gender identity.[237] The FAR also protects the wages of contractors' employees in the U.S.: for contracts over $2,500 (over $2,000 for construction), contractors must pay prevailing wages and benefits for the locality in which the work is performed.[238] The FAR has also recently been amended to set a minimum wage for contractors' employees at $10.10 per hour.[239]

In general under the FAR, a potential contractor must also establish that it is a "responsible" bidder, which requires a satisfactory record of integrity and business ethics, amongst others standards.[240] To date, "integrity" has been defined narrowly in terms of not defrauding the government, evading taxes, or committing felonies.[241] However, effective from 2016, the FAR will include the final version of a proposed rule called "Fair Pay and Safe Workplaces" that agencies can use to determine that a contractor is "not responsible," and thus not eligible to bid on a contract, if the contractor has repeatedly violated domestic labour laws.[242] The proposed rule lists specific labour laws, including, among others, those that protect the rights of workers in the U.S. with respect to freedom of association and the right to organize, and laws on child labour, wages and hours, and dangerous working conditions.[243] Pursuant to the proposed rule, contractors must disclose their labour-law violations, upon which the Department of Labor is to determine whether the violations "rise to the level of a lack of integrity or business ethics."[244] The proposed rule applies to contracts greater than $500,000, but excludes the purchase of commercially available goods, regardless of contract value.[245] Despite such developments, significant gaps remain, in relation to both contracts sourced inside and outside the U.S., in the scope of protected human rights, clauses requiring due diligence in contracts, monitoring capacity,[246] and at the state and local levels where most procurement laws have no explicit human rights provisions.

"Carve-outs" from general procurement rules intended to promote equality and labour market integration of disadvantaged groups can also be observed in the context of **Australia**'s Commonwealth Procurement Rules (CPRs). In this case, an exemption clause applies to the procurement of goods or services from a business that "primarily exists to provide the services of persons with a disability." This enables government departments purchasing under the CPRs to purchase from businesses such as Australian Disability Enterprises without first going to public tender, subject to various conditions.[247] Similar provisions pertain at the state level.[248] Likewise, to be considered for Australian Government procurement contracts at or above certain threshold values, relevant employers[249] must be able to demonstrate they comply with the Workplace Gender Equality Act 2012 and Workplace Gender Equality Procurement Principles by supplying a letter of compliance.[250]

Similarly, **South Africa's** Constitution allows organs of the State to implement a preferential procurement policy in the allocation of contracts for the protection and advancement of persons that were previously disadvantaged by unfair discrimination. Section 217(3) provides for legislation that will prescribe a framework within which the policy must be implemented. As a result, the Preferential Procurement Policy Framework Act (PPPFA) and the regulations published under it (PPPFA Regulations) establish requirements regarding black economic empowerment (BEE) and local production and content. Such requirements, it was reported, can indirectly impact on human rights by levelling the playing field regarding labour wages: for example, a 100% local content requirement for textiles, clothing, leather, and footwear in a country that has a highly regulated labour market, such as South Africa, prevents companies from winning tenders on the basis of exploited labour in poorer countries.

B. POLICIES AND GUIDANCE ADDRESSING HUMAN RIGHTS AND PUBLIC PROCUREMENT

Official policies and/or guidance
Has the government or any other relevant official body (e.g. national human rights institution, national equality body) issued dedicated guidance on human rights issues in the procurement context?

New Zealand's Human Rights Commission is currently working with the country's Ministry of Business, Innovation and Employment to develop guidance and training on human rights issues in the procurement context.[251] The majority of survey respondents, however, including those from the **Czech Republic, Ireland, Poland, Spain, and Finland**, indicated that there is no dedicated guidance on human rights and procurement in their jurisdictions.

This may be because guidance directed specifically at procurement bodies typically concerns "sustainable" procurement and refers only indirectly, if at all, to topics of relevance to human rights: this is the case, for instance, in **Norway,**[252] and with regard to guidance provided to **EU Member States** in the form of the European Commission's '*Buying Social*' handbook and "*Green Tenders, An Action Plan of Green Public Procurement.*"[253]

Further, respondents indicated that "social" considerations and human rights were typically conflated. Whereas "social" considerations may include or overlap with elements of human rights, such as ILO core labour standards, public and private sector compliance with social considerations is considered to be a discretionary public policy goal. By contrast, if the same issues are identified as requirements flowing from human rights standards, at least in some jurisdictions this would entail an obligation on public authorities to ensure such standards are met, as a matter of legal compliance, given protections under constitutional, statutory, or other laws, as described in the previous section.[254]

This scenario was highlighted in the case of **Northern Ireland**. While there is no dedicated guidance on human rights and procurement in Northern Ireland, *Get in on the Act*, a general guidance document for public authorities on their obligations under the Human Rights Act 1998 addresses public procurement, albeit to a limited extent.[255] Under the heading, "Guidance on Procurement and Contracting Out Services," this document states:

> "In many cases the requirement to meet [ECHR, or "Convention"] rights will carry forward to the appointed contractor. If the contractor fails to meet these standards, a public authority may find itself being held responsible for breaches of Convention rights by its contractor(…) This means that the [Human Rights Act 1998, HRA 1998] should be taken into account from the outset when a public authority is deciding if it wishes to run a procurement process…. Such consideration should follow through to the subsequent development of specifications… [S]pecifications and user requirements…should reflect human rights obligations, along with the test of need, affordability and effectiveness in the conditions of the contract."[256]

Yet, highlighting the greater reliance on the notion of social considerations in public procurement, the general Procurement Policy, amongst other objectives, seeks to maximise social benefits in public purchasing; to promote application of whole-life cost of procurement goods and services; and to promote sustainability, understood as including economic, social, and environmental benefits. It further sets out twelve guiding principles to govern the conduct of public procurement, including: equality, effectiveness (which is understood as meaning that public authorities should meet the commercial, regulatory, and socio-economic goals of government in a balanced manner), and fair dealing and integration. Besides the Procurement Policy, there is a Public Procurement Policy Handbook and range of Procurement Guidance Notes.[257] However, human rights are not mentioned explicitly anywhere in these documents. On the other hand, there are also a number of sector specific guidance documents that could arguably be said to address human rights issues indirectly: for instance, efforts to improve health and safety performance of government contractors and prevent workplace death and injury are supported by a Government Construction Clients Action Plan.[258]

Driven by the same clear domestic legal obligations on public authorities to respect human rights, in **Scotland** statutory procurement guidance contains some parts dedicated to human rights. For example, the Scottish Government has issued guidance entitled "Procurement of care and support services" that addresses human rights issues and obligations,[259] while other guidance on adhering to "fair work practices" makes clear that this means respecting not just the rights set out in the European Convention on Human Rights, but also the rights included in the ICESCR and other international documents.[260] Finally, the Scottish government issued a procurement notice in August 2014, "strongly discourage[ing]" trade and investment linked to illegal settlements in Palestine.[261] As a consequence, the Scottish councils of Midlothian, Stirling, West Dunbartonshire, and Clackmannanshire chose to boycott all Israeli goods in their procurement.[262] The Scottish Government has also developed resources to support public purchasers, for example "The Sustainable Public Procurement Prioritisation Tool," albeit this does not engage explicitly with human rights as a dimension of sustainability[263]

In **Switzerland**, there are numerous official and unofficial guidelines, model contracts, and terms and conditions for public procurement in general and for procurement in specific sectors.[264] None of these address human rights as such.[265] For example, the *Sustainable Procurement: Recommendations for federal procurement offices* offers guidance on how to address environmental and social aspects during a procurement process, while maintaining a focus on economic efficiency;[266] clarifies how a test of compliance with the ILO Core Conventions may be included in the procurement process; and examines whether social concerns can be taken into account, either as technical specifications, or as suitability and award criteria.[267] The Recommendations do not however address human rights *per se*.

Sweden's former Swedish Environmental Management Council (SEMCo) has issued guidance on "social criteria" relevant to the procurement of coffee, tea, and cocoa; fruits and vegetables; textiles; propellants; pharmaceuticals; and forestry. In September 2015, a new public authority, the National Agency for Public Procurement, was established,[268] which has stated that it will publish updated guidance documents on procurement addressing a new range of goods and services.[269]

In 2012, **Denmark**'s then Council for Social Responsibility (Rådet for Samfundsansvar)[270] issued guidance emphasizing that respect for human rights in public procurement is relevant to all Danish public authorities, at the State, regional, and municipal levels, and recommending the strengthening

of public actions to promote responsible procurement practices. It also stated that the government should take the lead, by requiring State-owned enterprises to incorporate due diligence in their business activities.[271] Subsequently, the Danish Competition and Consumer Authority published a guide highlighting opportunities to integrate social and environmental considerations across the various phases of the procurement process.[272] Other bodies have also published guidance on socially responsible procurement, though without any explicit human rights focus.[273] The CSR Council itself has also developed seven guidelines for responsible supplier management.[274]

Italy's Ministry of the Environment adopted guidance in 2008 more clearly linking human rights to public procurement as part of a broader plan for environmental sustainability of public consumption.[275] This guidance encourages awarding authorities to require a declaration from winning tenderers that the procurement will comply with ILO Core Labour Standards,[276] the UDHR, and the UNCRC (in particular, Art. 32 on child labour).[277]

The government of the **Netherlands** adopted a new policy effective since 2013 that aims to improve labour conditions and human rights in its supply chain.[278] Under the policy, all national government contracts that exceed the EU threshold values should include a set of "Social Conditions."[279] The Dutch government also plans to review the consistency of these Social Conditions with the OECD Guidelines for Multinational Enterprises, and has recently published a Sustainable Procurement Action Plan.[280] PIANOo, the government's tendering expertise centre, has published a step-by-step guide addressing how to meet the Social Conditions at each phase of the tender-procedure.[281] According to this guide, at signature, a supplier would indicate whether there are any risks attached to the contract.[282] The public purchaser would then initiate a conversation to solicit commitments from the supplier to reduce the risk of violations, and later assess the company's action plan to address risks identified.[283]

In the **United States,** the U.S. Department of Labor publishes an on-line Toolkit for Reducing Child Labour and Forced Labour.[284] While not specific to procurement, the toolkit includes a step-by-step guide to create a social compliance system that is broadly relevant to procurement and supply chain management. In addition, the U.S. Department of State has issued guidance on prevention of human trafficking and compliance with the law of a country in which services are performed (see FAR provisions above on the prohibition and prevention of trafficking).[285] The Department of Defense and U.S. Agency for International Development have issued similar guidance.[286]

In **Australia** a National Human Rights Action Plan to Combat Human Trafficking and Slavery 2015–19 addresses the role of ethical procurement,[287] and the Attorney General's department has released an Information Sheet for procurement officers on human trafficking and slavery and steps to combat labour exploitation.[288] At state level, the Australian Procurement and Construction Council (APPC), which is the peak council responsible for procurement, construction, and asset management policy for Australian state and territory governments, released the *Australian and New Zealand Government Framework for Sustainable Procurement*. This framework includes "support[ing] suppliers to government who are socially responsible and adopt ethical practices" as one of its principles.[289]

National Action Plan on business and human rights
Has the government prepared a National Action Plan on business and human rights (NAP) or other national strategy on business and human rights, Corporate Social Responsibility (CSR), or responsible business that addresses public procurement

Across surveyed jurisdictions, States were at different stages with regard to development of a National Action Plan on business and human rights (NAP) or other national strategy on business and human rights or Corporate Social Responsibility (CSR). While no mention was made of processes to develop such plans in **New Zealand** or **South Africa**, in countries where business and human rights NAPs had been produced, the vast majority included commitments in the area of procurement and human rights.

For example, the **United Kingdom**'s NAP, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, states that the U.K. government is "…committed to ensuring that in [its] procurement human rights related matters are reflected appropriately when purchasing goods, works and services."[290] The NAP further refers to provisions allowing contracting authorities to exclude tenderers "…where there is information showing grave misconduct by a company in the course of its business or profession… [which] …might arise in cases where there are breaches of human rights."[291] Also cited by the NAP, in this regard, is the requirement on U.K. public authorities "to have due regard for equality-related issues in their procurement activity."[292] Looking forward, the U.K. NAP commits to "[r]eview the degree to which the activities of U.K. State-owned, controlled or supported enterprises, and of State contracting and purchasing of goods and services are executed with respect for human rights, and [to] make recommendations to ensure compliance with the UNGPs."[293] In addition to the U.K. NAP on business and human rights, the U.K. released a NAP on sustainable procurement, entitled *Procuring the Future: Sustainable Procurement National Action Plan.*[294] This NAP, published in 2006, was created by the Sustainable Procurement Task Force which was composed of government, business, and NGO representatives.[295] The purpose of the NAP was to provide a path forward for the U.K. to become a leader in sustainable procurement.[296]

Denmark's *National Action Plan: Implementation of the UN Guiding Principles on Business and Human Rights*, which states the overall aim of ensuring policy coherence across governmental departments and agencies, indicates as one goal to include more voluntary social clauses in connection with public tenders.[297] The plan aims to promote responsibility in public procurement by drafting sector guidelines for responsible procurement and increasing the use of social clauses and labour clauses.[298] At the same time, the Danish *National Action Plan for Corporate Social Responsibility* commits the government to ensuring that joint government procurement systematically includes social responsibility and human rights, which it defines with reference to the international Conventions underlying the ten principles of the UN Global Compact.[299]

As a long-term ambition, the **Netherlands** *National Action Plan on Business and Human Rights* highlights that: "…companies supplying the government with goods and services are required to respect human rights" under the "social conditions" of the existing national sustainable procurement policy included in all central government EU contract award procedures since 1 January 2013.[300] It indicates that suppliers may work towards fulfilling this requirement, for example, by joining multi-stakeholder supply chain initiatives, involving quality marks or certification institutes.[301] Nevertheless, the NAP underlines that Dutch stakeholders did not view the government's sustainable pro-

curement as "effective" in implementing social and human rights criteria, with both companies and public purchasers remaining insufficiently aware of risks.[302]

Whereas an action plan on ethical public procurement published in 2006, as well as CSR white papers of 2009 and 2010 addressed the need to safeguard workers' rights in public procurement, **Norway**'s business and human rights NAP explicitly connects government procurement to the State duty to protect human rights and to promote respect for human rights by companies they transact with.[303] It notes that the UNGPs and OECD Guidelines for MNEs do not distinguish between public and private business practices, and affirms the importance of the State setting as high standards for itself as it does for private businesses in the area of supply chain standards, particularly because the Government is the economy's largest purchaser.[304]

It was reported that the government of **Switzerland** is currently preparing a business and human rights NAP.[305] Meanwhile, in April 2015, the Swiss Federal Council adopted a Position Paper on CSR and Action Plan for the period 2015-2019[306] which underlines that environmental and social criteria in public procurement processes can serve as an influential "model" for the private sector.[307] According to the Action Plan, the Government will assess its own CSR activities in 2015, including in the public procurement context. [308]

Finland's Ministry of Employment and the Economy published its NAP on business and human rights in 2014 in the form of a joint proposal to the Government by a working group representing various ministries.[309] The NAP includes, as one of three key aims, the application of social criteria in public procurement,[310] and proposes a range of measures to support this objective, such as updating the State procurement manual's "responsibility themes" and producing a report on high-risk product groups.[311]

Italy's recently adopted *National Plan on Corporate Social Responsibility* indicates that it aims to support undertakings which comply with CSR standards in line with the European Commission Strategy on corporate social responsibility 2011-2014, as part of a package of measures intended to develop a sustainable and responsible model of business for overcoming the economic crisis.[312] Another policy document preparatory to Italy's business and human rights NAP, *Le fondamenta del Piano di Azione Italiano sui "Principi Guida delle nazioni unite sulle imprese e i diritti umani*, 2014, refers to public procurement.[313] For example, it states that the national legislation transposing Directive 2004/18/EC is "certainly aimed, among other things, at promoting respect for human rights."[314]

Spain started the process of drafting its business and human rights NAP in early 2013. Several working drafts included references to the Government's commitment to incentivise the respect of human rights by companies with which it has commercial relations, including by inserting clauses requiring respect of human rights in its military and security services contracts.[315] A final version of the NAP has yet to be approved. The 2015 Spanish Government Strategy on Corporate Social Responsibility mentions the responsibility of public bodies to enhance social responsibility in procurement processes and aims to promote the insertion of social conditions in public contracts as 'medium level' priority.[316] It also highlights that public bodies should lead by example with regard to transparency, social cohesion, and good governance in their own value chains, including by giving recognition to corporate behaviours that advance such principles.[317]

The **U.S. government** announced its intention to publish a NAP by early 2016.[318] While civil society organisations have urged that the U.S. NAP should address public procurement, as yet the ultimate focus areas of the U.S. NAP are not known.[319] The U.S. government has also recently released a statement of its "human rights commitments and pledges," which reiterates the United States' commitment to the UNGPs and to publishing a NAP, and mentions recent relevant reform to the FAR.[320]

C. MEASURES TO PROTECT HUMAN RIGHTS DURING THE PUBLIC PURCHASING PROCESS

Incentives and penalties

Do public purchasers apply any measures to require or incentivise respect for human rights, or penalise failure to respect human rights, by businesses that they contract with?

Responses to this section of the survey suggested the onset of a gradual trend towards the application of measures by public purchasers to require or encourage businesses they contract with to respect human rights, or at least some specific human rights. Nevertheless, according to respondents, such measures were not yet in place in a majority of countries surveyed (for example, **Finland, Germany, Ireland, New Zealand**). In those countries where measures were reported, their uptake was observed to remain scant amongst public authorities, and their coverage was typically limited to sustainability or "social" considerations, as opposed to addressing human rights directly.

In **Italy,** it was reported that the Authority for the Supervision of Public Contracts has adopted a number of resolutions that should incentivise respect for human rights. One permits a supplier's exclusion following a final judgment relating to any offence amounting to grave professional misconduct; another allows authorities to insert requirements relating to technical and professional capacities (for example, certification to the Social Accountability Initiative's SA8000 standard).[321] In addition, in the area of social services, a resolution permits contract performance clauses which limit the turnover of social workers in order to preserve the relationship between them and social service users.[322]

Sweden's County Councils are responsible for the purchase of all goods and services needed to support the delivery of healthcare and public transportation.[323] In 2010, the County Councils launched a co-operation on social responsibility in purchasing, with a formalized structure and National Coordinator in place from 2012.[324] To date, based on a high risk of adverse human rights and environmental impacts, as well as high purchase volumes, the County Councils have prioritized seven categories of goods for the introduction of social criteria into their procurement: surgical instruments and stainless steel medical products; gloves; syringes and needles; first aid supplies; textiles; pharmaceuticals; and information technology.[325] Based on a Code of Conduct adopted by the County Councils, the integration of social criteria through contract performance clauses is now a required part of the purchase of these goods.[326]

In addition, Sweden's National Agency for Public Procurement recently launched a tender for mobile phones with award criteria focused on conflict minerals.[327] Suppliers who could report due diligence procedures in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas received points for this during evaluation of bids.[328] While ultimately, no suppliers bidding for the tender were able to report such due diligence procedures, the Agency considers that the incentive it has established will encourage

suppliers to work towards this goal with a view to future procurements.[329]
Similarly, it was reported that in **Norway** public sector bodies were gradually beginning to apply ethical qualifications based, for example, on ILO Core Conventions and other minimum labour standards as selection criteria for purchase categories identified as high-risk.[330] In **Switzerland**, a bidder's obligations to comply with minimum social standards and to transfer these contractual obligations to third parties are mainly protected via contractual penalty clauses.[331] Additionally, in the construction sector, joint and several liability has been introduced, with the possibility of disqualification or withdrawal of awards in certain cases for breaches of minimum social standards occurring.[332]

One example reported from the **Czech Republic** concerned the purchase of a service, namely, the training of authors of e-learning documents for the Judicial Academy.[333] Specifically, a requirement was introduced that the contractor and its employees respect human rights as well as the political, cultural, and religious customs of the Czech Republic.[334] In addition, it was indicated that there is a small but growing practice of giving preference to Fairtrade products in public procurement.[335] Currently nine Czech municipalities have become certified Fairtrade towns and two more are seeking certification, including Brno, the second largest Czech city, while the Fairtrade Foundation and Czech Fairtrade Association run a Fairtrade Town initiative.[336]

A review of public tenders for electronics (phones), clothing (workwear), coffee (for vending machines), and natural stone (for the renovation of streets or public squares) in the **Netherlands** was undertaken by SOMO, a Dutch NGO. [337] This study found that, in practice, public authorities rarely apply the Dutch national policies requiring sustainable procurement outlined in Section B above:[338] these standards were mentioned explicitly in only 3 out of the 25 cases studied.[339] Although in 15 of the 25 cases, respect for international labour standards was addressed in tender specifications, this was for the most part not done according to the rules and guidelines of the national policy for sustainable procurement.[340] Finally, the study found scarcely any evidence of the inclusion of practically significant incentives or penalties for tenderers concerning social dimensions.[341] Another evaluation undertaken on behalf of the Dutch government found, similarly, that sustainable purchasing policies were rarely given effect.[342] Even when applied formally, the study found, purchasers did not verify their observance in any meaningful way. [343] Lack of ownership at different administrative levels was identified as a principal obstacle in this context.[344]

Other respondents, from **New Zealand, Germany, Spain, and Ireland** reported either that public purchasers did not generally apply any measures to require or incentivise respect for human rights, that this happens very rarely, or simply that it was not known or officially reported whether procuring entities took such measures or not. At the same time, respondents from **Poland, Italy, and Northern Ireland** acknowledged the existence of possibilities, in principle, for incentivising social and human rights under EU public procurement laws.

Although contractors in the **United States** are prohibited from engaging in human trafficking or selling products produced with forced child labour, the bidding process does not establish any incentives for companies to develop their capacity to prevent abuses. In general under the FAR, for most goods that are sold commercially, a purchasing agency must use sealed contracts that only consider "price and the price-related factors included in the invitation."[345] However, for made-to-order goods or supply of services, agencies may use non-price criteria for awards and for negotiated contracts that are awarded based upon "best value").[346] On the other hand, for contracts relying on domestic production, a proposed new rule would put contractors that repeatedly violate domestic

labour laws at risk of being excluded from procurement competition on grounds that they are not "responsible" bidders.[347]

In **South Africa**, the legislative framework for public procurement incentivises businesses to participate in the BEE affirmative action policy. The Preferential Procurement Policy Framework Act (PPPFA) and its regulations prescribe requirements regarding BEE considerations for State tenders.[348] Under the PPPFA, when the State assesses contracts it must take into account the preferential points system which prescribes price and other specific goals that include contracting with persons or categories of persons that are historically disadvantaged by unfair discrimination on the basis of race, gender, or disability; and the implementation of reconstruction and development programmes.[349]

Notice of high-risk contracts
Do public purchasers notify potential contractors when a particular contract presents a significant risk of human rights abuses?

For example, because the product to be purchased is associated with high risks of human rights abuses in the supply chain or because of the character of the service to be delivered.

If yes, does such a notice trigger any specific disclosure and compliance obligations on the part of the contractor?

In general, statutory requirements on public procurers to notify potential contractors when a particular contract presents a significant risk of human rights abuses were lacking (**Czech Republic, Finland, Germany, Ireland, New Zealand, Northern Ireland, Poland, Scotland, European Union,** and **Australia**). However, in some countries, some public authorities have voluntarily introduced such requirements or are encouraged to do so.

SOMO's study mentioned above identified a few instances where public purchasers in the **Netherlands** notified contractors of risks.[350] **Sweden's** County Councils, as mentioned in Section B, have identified high-risk categories to which they apply social criteria.[351] Potential contractors are notified of the obligation to meet social requirements, and that they must complete a self-assessment questionnaire (SAQ) during the contract period.[352] The municipality of Stockholm likewise sets social criteria as contract performance clauses and requires contractors to complete a SAQ, although on the basis of a specific risk of adverse impacts in the production of goods and services purchased, rather than on the basis of pre-defined high-risk categories.[353]

Under **Switzerland**'s current policies, there are no obligations on public purchasers to notify s uppliers of risks or to include disclosure and compliance obligations in contracts. However, the Swiss FPC has recommended that public purchasers should conduct an external audit if a bidder or a key third party poses a risk of breaching minimum social standards.[354] In order for the public purchaser to identify such a risk, they can make use of a tool that facilitates country-specific risk assessments.[355]

Though not focused directly on human rights, **Italy**'s Ministry of Interior compels awarding authorities to take precautionary measures going beyond statutory minima, such as communication to subcontractors, in relation to works, services, and supplies with a high risk of mafia infiltration.[356]

Additionally, through contractual tools such as legality protocols and integrity pacts, awarding authorities may require suppliers to comply with general principles of public contracts, in order not to be excluded from the tender, or to avoid termination of already awarded contracts.[357] In principle, it was noted, such tools could also be used in contracts presenting a significant risk of human rights abuses.

Somewhat unusually, then, as compared with other jurisdictions surveyed, the **U.S. FAR** requires an agency to notify potential contractors if a good being solicited is on a list of goods produced with forced labour and child labour that is annually updated by the Department of Labor.[358] If so, the contractor must certify that it (a) will not source from countries listed as high risk, or (b) has made a good faith effort to determine whether the good was produced with forced or child labour. This certification is only applicable to the "end product" and not to its components, and unless there is contrary information, the FAR requires the procurement officer to rely on this certification.[359] Concerning broader human rights risks, in 2015, the U.S. Department of State funded the production of a report on sectors of U.S. government purchasing exposed to a high risk of human trafficking. The resulting list includes apparel/textiles, agriculture/food, construction materials, electronics, extractives, fishing/aquaculture, forestry, furniture, health care implements, hospitality/facilities operation, security, and transportation.[360] The contents of this study are now available in an online risk assessment tool.[361] Agencies are not required to give notice to suppliers in these high-risk sectors, but a recent guidance document from the U.S. General Services Administration and Dept. of Energy encourages this.[362] This guidance has also been incorporated into a procurement guidance website managed by the U.S. General Services Administration.[363] At the sub-national level, public buyers that are members of the Sweatfree Purchasing Consortium treat all apparel purchases as high risk and notify bidders that they must comply with the code of conduct of the relevant city or state for apparel suppliers.[364] As these codes vary from one jurisdiction to the next; the Consortium has published a Model Sweatfree Code to promote their harmonization.[365]
Under **Australia**'s Commonwealth Procurement Rules, relevant government buyers must establish processes for the identification, analysis, allocation, and treatment of "risks" when undertaking a purchase, and they should also[366] consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend, and the terms of the contract.[367] There is, however, currently no specific mention in this context of human rights abuses as a potential risk category.[368]

In **South Africa,** public procurement is required by law to be guided by human rights principles.[369] Arguably, these principles require public purchasers to highlight potential adverse human rights impacts, but in practice, it lies within the discretion of the public purchaser in question whether or not they flag certain risks relating to human rights or other matters.[370] This is due to the fact that detailed public procurement processes are not prescribed, and specific industry or goods-related regulations are lacking.[371]

Human rights due diligence

Do public purchasers require contractors to undertake due diligence in relation to human rights issues?

For example, contract clauses might require suppliers to assess the risk of human rights abuses; provide management systems to minimize the risk of abuses; or provide a remedy to workers or communities whose human rights are violated.

According to respondents, there is no legislation under which public procurers must require suppliers to implement human rights due diligence in **Australia, Czech Republic, Finland, Germany, Ireland, New Zealand, Spain, Scotland,** or **South Africa**. This is notwithstanding widespread recognition of the responsibilities for human rights on both public authorities and corporations under the UNGPs, or under domestic laws, as well as efforts by CSOs to highlight the inadequacy of existing frameworks.[372]

Where a need for due diligence measures is referred to in legal or policy frameworks, the focus is generally on social criteria rather than human rights as such. For example, in **Denmark,** all suppliers signing a contract with SKI (Denmark's central purchasing body) commit to follow SKI's Framework Agreement, which in principle provides a basis for requesting that suppliers do due diligence based on the OECD Guidelines for Multinational Enterprises.[373] Under the Framework Agreement, if wages and working conditions are not covered by a collective agreement in the district where the work is performed, they may not be less favourable than the prevailing conditions in the profession or industry in which the supplier has his business.[374]

According to the Social Criteria of the **Netherlands'** procurement policy, purchasers must ask the tendering company if there are risks, and if so, whether it will make "reasonable efforts" to analyse social impacts in the supply chain and take necessary measures to respond to these.[375] Initially, suppliers are supposed to focus on dealing with social risks internal to their own company, and then to focus on direct suppliers.[376] Thus, a supplier should, according to the Social Criteria, be asked to:

- Start by undertaking a risk analysis;
- Publish an annual report on the realisation of the Social Conditions within the framework of the tender during the course of the contract;
- Submit a timely plan of action (following e.g. a specific report);
- Adapt management policy where necessary; and
- Take appropriate measures to mitigate any actual violations of the standards.[377]

Public authorities in **Switzerland** may require a tenderer to comply with the minimum social requirements provided for in Article 8(1)(b-c) FAPP, and also contractually to oblige its subcontractors and suppliers to comply with these. On this basis, the Sustainable Procurement Recommendations for the Federal Procurement Offices address the question of compliance of subcontractors and suppliers with ILO Core Labour Conventions, and describe how an audit of compliance with ILO Core Conventions can be implemented in the procurement process.[378] According to the Recommendations, ensuring compliance with ILO Core Conventions should have five stages.[379] The second stage is particularly relevant to the question of human rights due diligence.[380] At stage two, a bidder is required to submit a self-assessment of compliance and any evidence that may exist of its or its key third parties' compliance with the minimum social standards (for example, a corre-

sponding certificate, such as SA8000), together with the tender. Such information should refer not only to the place at which the bidder performs its services but also to all the various elements of the contract's performance. Depending on whether third parties perform services in Switzerland or abroad, this may entail a requirement for compliance with various minimum social standards.[381] At stage two, the bidder is also informed that the procuring entity reserves the right to verify compliance with the minimum social standards by conducting social audits of the bidder or its key third parties.

In **Sweden**, the County Councils require that contractors have routine procedures in place to identify and mitigate risks of adverse impacts in the production of goods or services, i.e. a due diligence process, in relation to relevant categories.[382] Specifically, the contract performance clauses used by the County Councils require suppliers to implement procedures to ensure that the production of goods or services delivered during the term of the contract occur under conditions that are compatible with the Councils' Code of Conduct.[383] Relevant measures that are required in this context include:

- Establishing a clear allocation of responsibilities within the contractor regarding social conditions in the supply chain;
- Assessing subcontractors used for production, based on social criteria;
- Specifying the actual requirements demanded of sub-contractors in terms of social responsibility, corresponding to the demands of the County Councils;
- Creating and implementing procedures for monitoring and verification of compliance; and
- A process to address non-compliance.[384]

Suppliers who are awarded a contract are then required to account for how these requirements are met by answering a self-assessment questionnaire (SAQ), consisting of fifteen questions on processes to identify and mitigate risk relating to the Code of Conduct.[385] Several municipalities, such as Stockholm and Lund, have also adopted this approach.

Though it does not prescribe any general human rights due diligence requirements, the **U.S. FAR** does require due diligence in relation to human trafficking. Under the FAR, agencies must insert a clause in all solicitations and contracts that imposes obligations on suppliers to prevent human trafficking.[386] This clause states U.S. policies to prohibit severe forms of trafficking in persons, procurement of commercial sex acts, use of forced labour, confiscation of employee identity or immigration documents, and use of misleading or fraudulent recruitment or employment practices.[387] It then states the contractor's obligation to perform the following elements of due diligence:

- Notify employees of the U.S. federal government policy and explain the sanctions (including termination) that apply to its violation;
- Notify the agency of violations of the policy;
- Co-operate with audits and investigations;
- Terminate subcontractors or employees who engage in trafficking; and
- Protect employees who are harmed by trafficking or who witness trafficking.[388]

In addition, for contracts that are (a) performed outside the United States, and (b) exceed $500,000 in value, but (c) excluding contracts for the purchase of commercially available off-the-

shelf items (COTS), a contractor must prepare a compliance plan that includes an awareness programme; a process for reporting violations; recruitment and wage protections; a housing plan, if appropriate; and procedures to prevent agents and subcontractors from engaging in trafficking.[389] A contractor must annually certify implementation of the compliance plan and must include the substance of the plan in any sub-contracts and contracts with all of its agents.[390] With respect to wages on domestic construction projects, the FAR further requires contractors to ensure that sub-contractors comply with the wage and benefit requirements.[391]

Supply chain transparency and disclosure

Do public purchasers require potential contractors to certify that they know their subcontractors—including specific locations of production or supply—and that they have management systems to ensure compliance?

Upon awarding a contract, do government agencies require contractors to disclose the identity and location of their subcontractors and the specific location at which goods are produced or services are provided?

Respondents from the **Czech Republic, Denmark, Finland, Germany, New Zealand, Northern Ireland, Spain,** and **Scotland** indicated that there were no legal rules generally obliging public purchasers to impose requirements on suppliers relating to knowledge and disclosure of their subcontractors under applicable procurement laws.

European Union public procurement law, however, does permit public purchasers to ask the main contractor in a tender submission to provide evidence of any subcontractors' educational and professional qualifications and to specify the proportion of the contract that the contractor proposes to subcontract.[392] In addition, the 2014 Directives request that public buyers ensure subcontractors are compliant with environmental, social, or labour law obligations under EU or national rules, collective agreements, or international law, a provision which could open the way to broader due diligence obligations, at least in relation to sub-contractors.[393] The new Directives also require the main contractor to inform the awarding body of the names and addresses of any subcontractors it intends to use.

Returning to the national level, **Sweden's** County Councils and the municipality of Stockholm include in their SAQ for contract awardees a question regarding knowledge of their supply chain.[394] It should be noted, though, that proof of such knowledge is not a condition of awarding a contract in the first instance and contractors are not necessarily required to disclose specific locations and subcontractors, albeit such information might be revealed upon a follow-up audit, if one is conducted.[395] In 2015 the Swedish government commissioned an expert report to make recommendations as to how requirements that suppliers to government respect collective agreements could be integrated into the new legislation transposing the EU's 2014 Directives into Swedish law.[396] This report suggests that public purchasers should require their contractors to ensure in turn that all their suppliers adhere to ILO Core Conventions, unless the public purchaser can show that such criteria are not necessary due to the nature of the contract.[397] If adopted, this approach would seem to require at least knowledge of the identity of sub-contractors, if not their disclosure.

In **Switzerland**, according to the Recommendations for the Federal Procurement Offices, both the invitation to tender and tender documents should reiterate a requirement to comply with the minimum social standards.[398] Further, the procuring entity should inform bidders that all third parties, that is, subcontractors and suppliers, are also required to comply with the minimum social standards.[399] The bidder should then indicate in its tender who its key subcontractors and suppliers are, while the procuring entity may request information on other third parties at a later stage.[400]

The **U.S. FAR** includes several general clauses that provide agencies with discretionary tools, applicable to some types of contracts, to ensure transparency in supply chains with a high risk of human rights abuses. For example, purchasers may require contractors to seek prior approval of subcontractors[401]; to disclose the identity of subcontractors[402]; to disclose the location of production facilities, if different from the contractor's principal address[403]; to disclose relevant human rights policies;[404] and to disclose instances of fraud that might relate to human trafficking or other human rights abuses.[405]

In addition, the Federal Funding Accountability and Transparency Act (Transparency Act) requires the Executive Branch to disclose contractors, subcontractors (including vendors), and the "primary location of performance under the award, including the city, state, congressional district, and country."[406] This information is available to the public through the *USAspending.gov* website and database.[407] However, the Office of Management and Budget has limited the Act's transparency mandate to prime contractors and those sub-contracts that exist only to fulfil the procurement award.[408]

At the subnational level, the City of Madison, Wisconsin awarded an apparel contract in 2015 that required all bidders to disclose their subcontractors and all factory locations.[409] Several cities including Los Angeles[410] and San Francisco[411] require apparel contractors to disclose factory locations and retain the Worker Rights Consortium to produce monitoring reports on compliance with each city's code of conduct. The Sweatfree Purchasing Consortium of 17 cities and states is building a supply-chain database—Sweatfree Linkup!—that includes information about specific factories, locations, and monitoring reports.[412]

Finally, in **South Africa**, one issue under consideration in relation to a new draft bill on Public Procurement is whether to include a requirement for identification of the beneficial ownership and identity of all bidders in the public procurement process as a condition of participation in a tender.[413]

Performance monitoring

Do public purchasers monitor contract performance in relation to human rights issues?

Respondents from **Australia, the Czech Republic, Finland, Netherlands, New Zealand, Northern Ireland, Poland, Spain,** and **Scotland** all indicated that public purchasers were not known to monitor contract performance in relation to human rights issues.

Legislation in **Sweden** provides that public purchasers must be able to monitor the performance of all criteria contained in a contract.[414] However, this does not mean that, in practice, all contracts and all criteria are monitored. Indeed, contract monitoring in relation to human rights issues, it was re-

ported, took place infrequently due to lack of resources, knowledge, and capacity of public purchasers.[415] One Swedish initiative to address this gap by supporting monitoring of contract performance, *SKL Kommentus,* is a procurement hub that provides coordinated audit services: municipalities and other public authorities that have signed up and pay an annual fee can mandate a third-party audit by this mechanism. [416] Other measures, employed by the Swedish County Councils for contracts subject to their Code of Conduct, involve desk-based review of a contractor's implementation processes [417] or, less frequently, conducting factory-level audits of suppliers, and then sharing the audit results across the County Councils.[418]

Switzerland's legislative framework likewise entitles public authorities to verify contractors' compliance with health and safety regulations, the terms and conditions of employment, and equal treatment of men and women, and a tenderer must provide proof of compliance with relevant standards in such areas upon request.[419] For services provided in Switzerland, Article 6 of the Ordinance on Public Procurement (OPP) specifies which parties can be entitled by a contracting authority to verify a tenderer's compliance with the minimum social standards.[420] For services performed abroad, the FPC recommends that the procuring entity should commission independent external experts to perform an onsite audit in the absence of a certificate or positive audit, and where there is a risk of the bidder or one of its key third parties breaching the minimum social standards (including ILO Core Conventions).[421] According to the Recommendations for the Federal Procurement Offices, audits may be conducted either before the contract is awarded, in order to test compliance with the minimum social standards as a possible basis for exclusion; or after the contract has been signed, if there is any reason to suspect that the minimum social standards have been violated during contract performance.[422] Whereas a breach of the minimum social standards may occur with respect to the tenderer or its subcontractors and suppliers, the FPC recommends that contracting authorities, on grounds of feasibility, only attempt to verify the compliance of key third parties.[423]

As regards construction contracts, **Ireland**'s public authorities are responsible for performing random on-site checks, setting pre-established protocols for contract change orders, and for conducting financial and performance audits on a regular basis.[424] However, it was not known whether this provision was or could be used to address human rights issues. In the case of **Germany**, it was reported that contract performance monitoring is only undertaken with regard to existing labour and environmental laws and not to human rights as such.[425]

Virtually no contract performance monitoring in relation to human rights is undertaken by or on behalf of the **United States** federal government. Concerning human trafficking, in the FAR, there is no affirmative monitoring role or process to prevent or respond to trafficking, but rather a process for contract officers to refer "credible information" about trafficking to an agency Inspector General and discretionary authority for the Inspector General to investigate. If the Inspector General "provides support for the allegations," a violation of trafficking rules is forwarded to another official who is authorized to begin a formal procedure for suspension or disbarment of the contractor.[426] While the U.S. Agency for International Development (USAID) calls on procurement officers to monitor human rights performance of its contractors through site visits and employee interviews,[427] a report issued by the Government Accountability Office (GAO) states that, in many of USAID's contracts, compliance with anti-trafficking policies is not specifically monitored.[428]

In **South Africa**, the Preferential Procurement Policy Framework Act requires that any goals contemplated must be measurable, quantifiable, and monitored for compliance.[429] The system of

targeted procurement which establishes Key Performance Indicators relating to the participation of targeted enterprises and targeted labour also provides a basis for measuring, quantifying, and verifying outcomes.[430] However, monitoring of performance in relation to human rights in general is not in place.[431]

Remedies

Are there any remedies available to people whose human rights are harmed by contractors to public purchasers?

Across all surveyed jurisdictions, dedicated remedial mechanisms for persons whose rights are harmed by government contractors were lacking. Respondents from **Australia, the Czech Republic, Ireland, the Netherlands, Norway, Poland, Spain, Scotland,** and **Sweden** all indicated that their national procurement systems do not make any provision for the lodging of appeals by physical persons whose human rights are harmed by contractors to public purchasers, even if such persons may technically have the possibility to seek legal protection before courts on the basis of other relevant legal instruments, depending on the circumstances and jurisdiction.

Thus, it was observed in some jurisdictions (**New Zealand, Northern Ireland, Germany, and Switzerland**) that in principle remedies might be available to victims via national courts in cases of breaches of specific rights protected by domestic legislation that occur in the course of the delivery of a public contract. In **Denmark**, the Labour Court,[432] Tribunal for Equal Pay ,[433] industrial Arbitration Courts,[434] and Environmental Board of Appeal,[435] were cited as being available in principle to provide remedies for abuses by suppliers that could potentially arise during the course of performance of public contracts. However, it was also reported, in connection with a current case concerning working conditions in the supply chain of manufacturers of computers produced in China and purchased by Danish universities that Denmark's SKI was prepared to terminate contracts with suppliers found in breach of contractual requirements before cases reach the courts.[436]

At the level of the **European Union**, there are no specific remedies provided for human rights abuses in the area of procurement. Rather, EU law has so far concentrated on remediation of the rights of unsuccessful tenderers, with the Review Directive 2007/66/EC for instance aiming to improve the efficiency of redress procedures by imposing common national review procedures.[437] It was observed, however, that in relation to any human rights abuses by a contractor that were attributable to the authorities of a Member State, and occurred in the context of a procurement covered by the EU procurement Directives, the European Charter of Fundamental Rights would in principle apply, so that an effective remedy ought to be available.[438]

By contrast, it was reported that **Italy**'s legal framework on public contracts in principle permits anyone whose human rights are violated by contractors to public purchasers to file a claim before a civil judge.[439] In parallel, while they are performing administrative activities, contractors are bound to the same principles of impartiality, transparency, publicity, and economy as public authorities, and must meet the same standards as those required of public administrations.[440] Thus, unlawful discrimination by a public contractor could represent a breach of human rights actionable in Italian civil courts. Similarly, it was reported that in **Germany**, victims of human rights abuses by a contractor acting inside Germany should have access to a judicial remedy.

In the **United States**, agencies have a full range of contractual remedies against suppliers—ranging from withholding payments to suspension or debarment (excluding the contractor from doing business with the government for three years).[441] However, there is little in the way of requirements or guidance in relation to the provision of a remedy to rights-holders affected by the contract performance of suppliers to government.

As regards the specific case of workers who are victims of trafficking, regulations contain only a vague obligation to "[p]rotect all employees suspected of being victims of or witnesses to prohibited activities."[442] In addition, if a contractor is found to engage in any "substantiated allegation in an administrative proceeding" of prohibited human trafficking, agencies are required to maintain that information in a database called the Federal Awardee Performance and Integrity Information System (FAPIIS). FAPIIS also includes information about final court or agency convictions, dispositions, or findings of fault or liability related to a federal contract, past findings of non-responsibility, and instances of suspension or debarment.[443] Congress has also authorized the FAR Council to require that "other information" related to responsibility must be included in FAPIIS as well. It should be noted, however, that FAPIIS only contains information about contractors that have been awarded contracts with a value above $500,000.[444]

With regard to workers inside U.S. territory, the FAR provides a modest remedy if a contractor fails to pay overtime for construction or other service contracts, in the form of payment of the amount of overtime due plus liquidated damages of $10 per worker per day.[445] The Walsh-Healy Act provides for a similar remedy of payment of unpaid wages of all affected employees and $10 per day in liquidated damages for each convict or child labourer that worked on the contract.[446]

D. OTHER LEGAL AND TECHNICAL MATERIALS

Courts

Has there been any litigation regarding human rights issues in the context of public procurement in your jurisdiction?

No court decisions addressing human rights in the procurement context could be identified by respondents from **Australia, Czech Republic, Germany, Ireland, Italy, New Zealand, Norway, Poland, South Africa, Spain, or Sweden**.

Respondents from other jurisdictions were however able to cite some instances of relevant litigation. In the **United Kingdom**, it was held in the case of *YL v Birmingham City Council* that private care homes providing care and accommodation for an elderly person under a contract with a local authority were not exercising "functions of a public nature" within section 6(3)(b) of the Human Rights Act 1998, and accordingly did not have a statutory duty to act compatibly with ECHR rights.[447] This interpretation was later superseded, however, by new legislation enacted by the U.K. Parliament in 2008 with the specific aim of extending human rights protection to individual users of 'contracted-out' health and social care.[448] In **Ireland**, an action was brought to court concerning the non-payment of wages and other breaches of employment law by the Turkish company Gama, whose workers were required to work excessive hours and to reside in company "barracks" under conditions said to amount to forced labour.[449] The Court of Appeal upheld decisions that permitted 491 Turkish construction workers to sue their employers in Ireland for some €40.3 million in compensation for unpaid wages and benefits owed in relation to work they undertook in Ireland on State contracts.[450] Gama was found to have breached Ireland's minimum wage law. [451]

By contrast, the inclusion of references to the provision of vocational training, the conclusion of collective agreements, and the payment of specific wage levels in contract award criteria was challenged in a case in Switzerland.[452] In its decision, the Swiss Federal Supreme Court held that, while such award criteria do require a legal basis, their application was not excluded, even where there was no direct link between them and the procured services.[453] On the other hand, while basic vocational training for apprentices has been a permissible award criterion under Article 21(1) of the FAPP since 1 April 2015, leave to use award criteria referring to the conclusion of collective agreements and the payment of certain wage levels has not yet been explicitly granted.[454] Similarly, it was reported that in **Denmark** litigation to date has largely focused on the position of tenderers, in particular, alleged discrimination against companies competing for public contracts with regard to public authority evaluations of their offers in terms of quality and price.[455]

In the **United States,** courts have generally held that the Executive Branch has broad authority to achieve policy coherence by setting or amending rules for procurement, so long as there is no conflict with an Act of Congress.[456] Thus the Executive Branch arguably has power to enact measures to achieve respect for human rights that are protected by Acts of Congress and human rights conventions that Congress has ratified. In terms of litigation, in *Crosby v. National Foreign Trade Council* the U.S. Supreme Court struck down a Massachusetts state law that restricted the ability of the state government to procure goods or services from companies "doing business" with Burma (now Myanmar).[457] In a unanimous decision, the Court ruled that the law was pre-empted because Congress and the President had implemented a variety of sanctions on the government of Burma, which left no room for state governments to adopt a policy that might affect the overall balance of those sanctions.[458]

Legislature

Have any issues concerning human rights and public procurement arisen in legislative debates or other parliamentary proceedings or discussions?

Public procurement and its human rights dimensions have been the focus of parliamentary debates across a number of surveyed jurisdictions. In 2014, two Parliamentary questions were asked in the **Netherlands**, one concerning child labour connected to public purchasing of natural stone[459] and another on food certification systems.[460] In the **United Kingdom**, the case of *YL v. Birmingham City Council* (mentioned above), which held that private care homes for elderly persons under contract with a local authority have no statutory duty to comply with ECHR rights, was discussed in the Northern Ireland Assembly. Notably, the U.K. Parliament subsequently enacted new legislation to overturn this court decision in the form of section 145 of the Health and Social Care Act 2008.[461] This Act now provides that any private care home under contract with a local authority to provide care and accommodation is considered to be exercising "functions of a public nature" within section 6(3)(b) of the Human Rights Act 1998, and thus subject to the duty to act compatibly with ECHR rights.[462]

In **Switzerland**, a motion was submitted to the National Council about Procurements by Armasuisse (Federal Office for Defence Procurement) concerning compliance with the ILO Core Conventions,[463] which was discussed by the Swiss National Council in September 2013 and rejected.[464] Additionally, Swiss Textiles (the Swiss textile federation)[465] and Swiss Cleantech (a trade association promoting sustainable and liberal economic policies) were invited to give their opinions regarding the revision of the FAPP and the OPP.[466]

Scotland's Human Rights Commission responded to the government's formal consultation on the Procurement Reform (Scotland) Bill, urging the government to include a provision to ensure procurement activities comply with the U.K. Human Rights Act 1998 and the UN Guiding Principles on Business and Human Rights.[467]

During 2015, **Denmark**'s new Procurement Act had its first parliamentary hearing. When presenting the draft act, its human rights dimensions and opportunities to respect human rights were mentioned. The Minister of Business and Growth highlighted that the new law extended scope for municipalities to consider human rights standards in their purchasing process. Besides this, the Red-Green Alliance has been exploring options to establish a special investigation team to further investigate the government's international supply chain.[468]

By contrast, it was reported that in **Ireland**, there has been little debate on human rights and public procurement as such. Rather, discussion has focused on the use of procurement to achieve social outcomes, for instance, via employment clauses. Extensive parliamentary discussions took place around the *Social Clauses in Public Procurement Bill 2013* and the question of whether this legislation could realistically lead to the provision of new employment opportunities for unemployed persons.[469]

In the **United States**, the Senate Caucus to End Human Trafficking held a briefing in September 2015, entitled "Slavery in the Global Marketplace: Human Trafficking in Supply Chains and on the Outlaw Ocean."[470] This included a presentation on U.S. government procurement of seafood that may be linked to slavery and human trafficking and highlighted the lack of government supply chain transparency.[471]

No relevant legislative debates or other parliamentary proceedings or discussions were identified by respondents from **Czech Republic, Finland, New Zealand, Spain, or Poland**.

Academic and professional commentaries

Has the interface between your country's procurement laws and human rights been considered in any juridical writings, legal or technical procurement publications?

Based on survey responses, there has been little academic analysis to date of linkages between public procurement and its regulation and human rights as such, as opposed to social criteria or conditions, with only a few contributions addressing this topic reported from the **Netherlands**, **Italy**, **Scotland**, **Germany**, **Switzerland**, the **United Kingdom,** and at the **European Union** level.

Civil society and media

Have the impacts of public procurement for human rights been considered by any reports by NGOs, multi-stakeholder initiatives or media in your country?

By contrast, most respondents reported significant engagement with the interface of public procurement and human rights by civil society organisations. In **Italy**, several civil society initiatives address the impact of public procurement regulation on human rights safeguards. *Transparency International Italia*, for example, has published reports,[472] in particular on integrity pacts[473] and anti-cor-

ruption tools used within the healthcare sector.[474] *Signori Rossi – Corretti non corrotti,*[475] *Libera*[476] and *Riparte il future* have also undertaken initiatives concerning procurement and anti- corruption.[477]

In **Scotland** Amnesty International criticised the Scottish Government when the Procurement Reform (Scotland) Act failed to refer to the UNGPs, viewing this as a missed opportunity to strengthen the link between human rights and public procurement.[478] The award of a £350m public water services contract to a private company has also attracted public discussion. The company in question, Anglian Water, allegedly paid no corporation tax in 2014, while issuing its owners a dividend of £180m, sparking debate about how the public procurement process might be used to encourage tax compliance.[479] Additionally, Christian Aid has urged the Scottish Government to award government contracts to companies with good tax policies in place.[480] Finally, the award of a contract for conducting the Scottish census attracted controversy, following allegations that the parent company of the U.K. firm winning the contract was linked to the torture of prisoners at Iraq's Abu Ghraib prison.[481]

A recent report by **Denmark's** DanWatch highlighted that rubber used to manufacture hospital gloves purchased for use in Danish hospitals was sourced from plantations where workers suffer discrimination, low pay, and poor working conditions.[482] DanWatch has also reported on the use of imported Chinese granite produced under hazardous working conditions in the delivery of public works.[483] Further, it has reported that Chinese students producing computers for Danish universities work 10-12 hours per day under conditions which would be in breach of Danish legislation as well as international standards.[484] The Danish Clean Clothes Campaign campaigns on public procurement of apparel,[485] and the 92 Group, a Danish NGO network on sustainability, participated actively in debates around the development of Denmark's 2014 draft procurement act.[486]

Swedwatch, an NGO in **Sweden,** has released several reports demonstrating public procurement's impacts on human rights,[487] addressing products such as textiles, surgical instruments, meat, and coffee.[488] Government IT procurement has also been subjected to scrutiny. In February 2016, Electronics Watch published a case study highlighting human rights abuses in the supply chain of the Dell Computer Corporation[489] and describing the steps taken by the County Councils to address these, based on a code of conduct signed by Dell as part of the procurement process.[490]

Various bodies in **Ireland** have urged that human rights to be taken into consideration in procurement policies and practices. The Irish Centre for Human Rights, for instance, has recommended that the Irish Government address human rights in the context of procurement, and insist on human rights compliance by companies with which it contracts for products or services.[491] *Tr*ó*caire*, an Irish NGO, has similarly advocated that Irish government procurement processes should reward human rights reporting and due diligence through the use of appropriately weighted scoring systems, and should exclude any company which is complicit in human rights violations from tendering processes.[492] On the other hand, the Irish Small and Medium Enterprises Association has voiced opposition to the inclusion of human rights criteria in public tenders.[493]

Northern Ireland's national human rights institution, the Northern Ireland Human Rights Commission, published a report on public procurement and human rights in 2013, and subsequently established a Business and Human Rights Forum in 2015 as a platform for discussion of relevant issues.[494]

In **Switzerland,** *Brot für alle*, *Fastenopfer, EvB, HELVETAS Swiss Intercooperation, die Max Havelaar-Stiftung (Schweiz), Solidar Suisse* and Swiss Fair Trade work together as a NGO coalition on public procurement that promotes the implementation of social criteria in the FAPP.[495] The Berne Declaration, another NGO, wrote a public letter to the Swiss Parliament calling for implementation of social standards in public procurement.[496] *Kompass Nachhaltigkeit* together with *Brot für Alle und Fastenopfer* organized a workshop on public procurement of IT-Hardware in 2015.[497] In addition, the *Interessengemeinschaft Ökologische Beschaffung Schweiz* (Interest Group for Sustainable Procurement, IGÖB) is an association which promotes the implementation of social and ecological aspects in public procurement processes. IGÖB produces guidelines, brochures, and checklists for sustainable public procurement and generally functions as an information platform.[498] Swiss media have also carried a number of features on procurement and human rights, for instance, alleging that Swiss civil defence uniforms were produced in India under inhumane conditions.[499] *Das Schweizer Arbeitshilfswerk*, (Swiss Labour Assistance) has also published "Faire Beschaffung: Leitfaden für Gemeinden und Kantone (Fair Procurement: Guidelines for communities and cantons).[500]

Likewise civil society networks in **Germany**[501] and **the Netherlands**[502] have investigated or focused on public procurement and human rights. For example, the Dutch NGO *Stop Child Labour* made a toolkit on Child Labour Free Public Procurement.[503] In **Norway**, the Agency for Public Management and eGovernment (Difi) and the Ethical Trading Initiative Norway, a membership-based organisation, provide guidance and tools for public procurers on issues including human rights.[504] ETI also advises its members to notify potential contractors when a particular contract presents a significant risk of human rights abuses.

In the **United States,** media have run extensive coverage of U.S. government procurement with a focus on the apparel and seafood sectors.[505] Amongst NGOs, there has been extensive attention given particularly to the apparel sector, and increasing commentary on human rights in government supply chains.[506] By contrast, alleged human rights abuses by companies contracted by government to manage detention centres holding asylum seekers have come under scrutiny from NGOs and the media in **Australia**, resulting in some cases of divestment.[507]

VI. CONCLUSIONS

The information collected in this Mapping Report points to several observations, issues, and challenges, with regard to securing effective respect for human rights in the public procurement context.

1) Lack of Clear Legal Requirements and Policies

Besides the UNGPs, both international and national laws make it clear that public authorities and businesses shall respect human rights. These requirements also apply to public procurement.[508] However, existing international and regional laws and policy frameworks on public procurement, as well as those of surveyed national jurisdictions, do not explicitly refer or otherwise give adequate effect to the State duty to protect human rights in the context of procurement. While some new human rights policies, in particular National Action Plans on Business and Human Rights (NAPs), mention public procurement, most NAPs published to date do not contain either concrete or adequate measures to operationalise this duty. This represents a failure of States to implement their general duty to protect against human rights abuses by third parties. At the same time, governments increasingly call on businesses to address human rights abuses in their global supply chains. Such a contradiction in relation to public buyers fundamentally threatens the credibility of business and human rights standards, including the UNGPs.

2) Limited Scope of Human Rights Protection

In the minority of surveyed jurisdictions where public procurement laws or policies do explicitly address human rights, their scope is limited to specific human rights issues (such as human trafficking or child labour), to specific human rights instruments (such as ILO core labour standards), or to specific economic operators (such as suppliers within the domestic jurisdiction, primary contractors, or principal sub-contractors). This piecemeal approach to protection is inconsistent with governments' human rights obligations, as well as with the UNGPs, which emphasise their application to all internationally recognised human rights, throughout the supply chain. In practice, moreover, it often fails to address the spectrum of actual human rights risks that affect goods and services purchased under public contracts.

3) Lack of Guidance and Training

Across surveyed jurisdictions, guidance for public buyers on techniques and tools that they can lawfully deploy to avoid or reduce the incidence of human rights abuses in government supply chains is generally lacking. In instances where such guidance can be identified, sufficient resources to train and enable procurement officers to put it to effective use are absent. Given the risk of litigation by tenderers to challenge a procurement process, which can trigger delays in the fulfilment of government orders as well as expensive legal proceedings, procurement officers are in practice unlikely to take human rights into consideration without clear guidance on permissible measures to integrate human rights into government purchasing, and the capacity to use such tools with confidence.

4) Absence of Performance Monitoring

Systematic and comprehensive monitoring of the performance of public contracts with regard to respect for human rights amongst government suppliers was not identified in any surveyed jurisdiction. On the contrary, most respondents reported either that the performance of government contracts was not evaluated for consistency with human rights by or on behalf of procurement authorities, or that no information on this issue was in the public domain. Even in the small number of

cases where individual public bodies do include "social clauses" in contracts, monitoring of the observance of such clauses was reported to be a rare occurrence.[509]

5) Lack of Access to Remedy for Victims of Procurement-related Human Rights Abuses

No dedicated remedy mechanism for victims of human rights abuses in government supply chains was identified in any surveyed jurisdiction. At the same time, victims usually lack formal standing to challenge such abuses via regular judicial or State-based non-judicial mechanisms, given that their immediate perpetrators are corporations which, as non-State actors, are generally not liable for breaches of human rights before domestic courts or international tribunals, and which often lie beyond the mandate of State-based mechanisms such as ombudsmen and national human rights institutions. This entails the existence of a significant gap in government accountability for human rights abuses connected to public procurement and contracted-out public services, and contradicts the right to an effective remedy recognised in the third pillar of the UNGPs.

6) Building on Existing Initiatives

This survey has identified a range of initiatives, networks, and tools that are dedicated to promoting sustainable, green, ethical, or social public procurement. Though most of these do not currently reflect human rights standards or requirements, they nevertheless have the potential to serve as important vehicles and multipliers for human rights capacity building, tools, and methods. Careful analysis is therefore needed, in dialogue with stakeholders, before planning new interventions on public procurement and human rights, to ensure these exploit existing sustainable procurement initiatives and resources wherever possible. Such an integrated approach, in addition, is more likely to succeed in helping public buyers resolve any apparent dilemma between human rights responsibilities and other policy goals to which procurement may be linked, such as promoting the accessibility of public contracts to local and small and medium-sized enterprises (SMEs).

7) Human rights, Sustainable Development, and Public Procurement: An Urgent Need for Policy Coherence

At least three current trajectories in international policy identify public procurement as a critical lever with power to influence conditions in global supply chains in support of sustainable development. Firstly, as described above, the UNGPs explicitly affirm that States have a duty to protect human rights against business-related abuses that extends to government purchasing, "contracting-out," and privatisation.

Secondly, the new *2030 Agenda for Sustainable Development* includes targets on public procurement, as part of the drive towards sustainable production and consumption, decent work, and more inclusive economies: Sustainable Development Goal 12.7 calls on all countries to implement sustainable public procurement policies and action plans.[510]

Thirdly, recent policy initiatives on "responsible global value chains" by actors such as the G7 and EU, while they typically emphasise more targeted interventions, such as support for multi-stakeholder sectoral initiatives to address sector human rights risks at the country level, also acknowledge the "joint responsibility of governments and business to foster sustainable supply chains."[511]

Yet, to date, there has been no substantial effort by governments to assess the extent to which existing procurement laws and policy frameworks, or actual government purchasing practices, are aligned with and support the UNGPs, the 2030 Sustainable Development Agenda, or new goals and initiatives on "responsible value chains."

On the contrary, responses to this survey suggest that while a few public buyers are innovating to integrate human rights considerations into the purchasing process, procurement laws and practices in general appear to be undermining or restricting such alignment (for instance, by restricting the extent to which the award of public contracts can be linked to human rights due diligence, supply chain transparency, or non-financial reporting) rather than promoting it.

Given the scale of government spending within the overall economy, noted above, this situation represents a significant obstacle to the achievement of the Sustainable Development Goals. It also undermines responsible business conduct, both directly, via contract terms for government purchases that fail to safeguard human rights of workers, service users, and communities, and indirectly, by denying a competitive advantage to those companies that do seek to operate on a socially and environmentally sustainable basis. Finally, it represents a significant source of inefficiency in public expenditure, with regard to resources allocated via aid budgets to programmes that support sustainable agricultural or industrial production in developing countries.

To eliminate such contradictions, and realise policy coherence, a new dialogue is needed on public procurement and its role in supporting respect for human rights, responsible value chains, and the 2030 Agenda – a dialogue which governments, relevant international and professional bodies, business, and civil society organisations should now foster and support.

APPENDIX 1. EXISTING ACTORS AND INITIATIVES

General

Name	Procurement of Innovation Platform		
URL	http://www.innovation-procurement.org/about-ppi/		
Owner	Procurement of Innovation Platform	*Participants*	ICLEI – coordinator, PIANOo, The Regional Environmental Center for Central and Eastern Europe, Flemish Agency for Innovation by Science and Technology (IWT).
Focus	Providing an online hub that helps public authorities, procurers, policy makers, researchers, and other stakeholders harness the power of public procurement.		
Output	Website, Procurement Forum, and Resource Centre.		

Name	UN Marrakech Task Force on SPP		
URL	http://esa.un.org/marrakechprocess/tfsuspubproc.shtml		
Owner	Ghana; China; Philippines; Indonesia; Argentina; El Salvador; Sao Paulo; USA; U.K.; Norway; Czech Republic; Switzerland; Austria; UNDESA; UNEP; ICLEI; European Commission; ILO; OECD; WTO; World Bank.	*Participants*	Unknown
Focus	To promote and support the implementation of Sustainable Public Procurement, by developing tools and supporting capacity building in both developed and developing countries.		
Output	Clarification on the Legal Framework of SPP, a Toolkit, including needs assessment (NA), paper on "Accounting for the value of SPP," plan for implementing the toolkit in Pilot countries, joint work and support to other MTFs especially the MTF on Sustainable Products led by the U.K..		

Name	G20 procurement – high-level procurement principles		
URL	http://transparency.org.au/wp-content/uploads/2014/11/G20_anti_corruption_working_group_implementation_plan_2015_16.pdf		
Owner	G20 Leaders.	*Participants*	Anti-Corruption Working Group
Focus	Integrity in public procurement, building on previous Compendium of Good Practices in Public Procurement.		
Output	G20 High-Level Principles on Public Procurement, practical toolkit for G20 governments on integrity in public procurement, analytical work on procurement practices.		

Name	IISD SPP		
URL	www.iisd.org		
Owner	International Institute for Sustainable Development	*Participants*	Unknown
Focus	Green, clean, and responsible goods and services.		
Output	Multi-disciplinary technical assistance, policy advice, and research services on integrating environmental and social performance into public procurement.		

Name	The Landmark Project EU		
URL	http://www.landmark-project.eu/		
Owner	ICLEI; Senator for Finances of the Free Hanseatic City of Bremen; Instituto Marques de Valle Flor; Loures City Council; SETEM – Catalunya; World Economy, Ecology and Development.	*Participants*	Public authorities, campaigns and networks, initiatives and training institutes.
Focus	Addressing the purchasing practices of public authorities in Europe, particularly local governments, and channelling the buying power towards products and services produced under fair and just conditions.		
Output	Conferences, interview guide, report of success stories, report on good practice in socially responsible public procurement, practical and legal guide for public procurers.		

Name	European Working Group on Ethical Public Procurement		
URL	Unknown		
Owner	Ethical Trading Initiative Norway; Ethical Trading Initiative England; Danish Ethical Trading Initiative; Ministry of the Environment and the Protection of Territory and Sea (Italy); All Regional Health Authorities (Norway); All Swedish Country Councils/ Stockholm City Council; Swedish Environmental Management Council.	*Participants*	Loose network of participants from several European countries
Focus	Ethical requirements formulated as qualification requirements.		
Output	Comments to the EU Commission.		

Name	Ethical Trading Initiative Norway (IEH)	
URL	http://etiskhandel.no/English	
Owner	*Participants*	IEH members are businesses, organizations, and public enterprises.
Focus	Long-term impacts on ethical trade in respect to global supply chains.	
Output	Practical resources and tools, courses, and guidance for members of the Ethical Trading Initiative; reports filed by members documenting their ethical trade efforts.	

Name	Network for Sustainable Development in Public Procurement		
URL	https://sites.google.com/site/sdppnetwork/		
Owner	*Participants*	Social, environmental NGOs and trade union organisations (individual, confederal and EU federal).	
Focus	Achieve progress in sustainable development through enabling EU public procurement legislation and policies.		
Output	Legal advice, information, and ideas for how to influence EU legislative and policy developments.		

Name	OECD Public Procurement		
URL	http://www.oecd.org/gov/ethics/public-procurement.htm		
Owner	OECD countries.	*Participants*	Unknown.
Focus	Green procurement; Integrity in public procurement; anti-corruption.		
Output	Principles, knowledge sharing, and indicators.		

Name	UN Procurement Capacity Development Centre		
URL	http://www.unpcdc.org/		
Owner	UNDP; Danida.	*Participants*	Governments.
Focus	Achieve development results through efficient, transparent, and accountable procurement systems.		
Output	Practitioner-oriented procurement guide, advisory support, capacity assessments, planning and implementation support, online resources, tools, methodologies, and approaches relating to procurement capacity development.		

Name	UNEP 10 YFP Sustainable Procurement Programme		
URL	http://www.unep.org/10yfp/Default.aspx?tabid=106267		
Owner	UNEP.	*Participants*	84 partners in 42 different countries, including governments, international organizations, NGOs, consultancies, private sector representatives, and SPP experts.
Focus	Green procurement. 10 YFP has 6 programs, SPP is the first one launched. Build international SPP community, build case for SPP (improve knowledge), Support implementation on the ground (tools, technical assistance, etc.).		
Output	Principles of Sustainable Public Procurement, support for SPP implementation, monitoring and evaluation of SPP implementation, measuring impacts and communicating benefits created by SPP, global review on state implementation every 3 years, create dedicated working groups.		

Name	EcoProcura Conference Series		
URL	http://www.ecoprocura.eu/		
Owner	ICLEI	*Participants*	Purchasers from all levels of governments, suppliers, and policy-makers.
Focus	Green Procurement; European-wide forum to promote exchange and dialogue.		
Output	Conference series, each of which attracts 250-350 participants.		

Name	UN Office for Project Services – Sustainable Procurement		
URL	https://www.unops.org/english/Services/Procurement/Pages/Sustainable-procurement-workshop.aspx		
Owner	UNOPS; Partners - UNEP and International Training Centre of the ILO.	*Participants*	UNOPS procures on behalf of the UN, donor and recipient governments, intergovernmental organisations, international and regional financial institutions, non-governmental organisations, foundations, and the private sector.
Focus	The UN's central procurement resource with a focus on sustainable procurement; UNOPS provides sustainable procurement services for the partners listed above.		
Output	Procurement agent services; specialized procurement support; procurement assessments, training, and certification; procurement advisory services; sustainable procurement training tools and capacity building; outreach to suppliers on how to work with the UN.		

Name	CSR Sustainability Compass		
URL	http://www.csrcompass.com/about-csr-compass		
Owner	Ministry of Business and Growth Denmark; Confederation of Danish Industry. Partners: National Labour Market Authority; Danish Working Environmental Authority; Denmark's Industrialization Fund for Developing Countries – IFU, LCA Centre Denmark, Ecolabelling Denmark; Danish Ministry of the Environment; Save the Children Denmark; Ministry of Foreign Affairs of Denmark; Ministry of Foreign Affairs Norway; Agency for Public Management and eGovernment Norway; The Confederation of Norwegian Enterprise; The Swedish Environmental Management Council; International Chamber of Commerce Sweden; Ministry of Employment and the Economy Finland; SA-Confederation of Icelandic Employers Iceland.	*Participants*	Companies, tool is freely available online.
Focus	Provide guidance for companies to create responsible supply chain management.		
Output	Guidance and tools on responsible supply chain management. For example, tools for companies include "Global Compact Self-Assessment Tool," "Human Rights Compliance Assessment – Quick Check," and "the Climate Compass."		

Name	Global Lead Cities Network on Sustainable Public Procurement	
URL	http://www.sustainable-procurement.org/network-exchange/global-lead-cities/	
Owner	*Participants*	Worldwide cities. Founding participants include Seoul, Cape Town, Helsinki, Ghent, and Rotterdam.
Focus	Creating a worldwide network of cities that are taking the lead on sustainable public procurement to facilitate dialogue, increase awareness, and increase implementation of sustainable procurement practices	
Output	Set quantified targets, develop clear delivery strategy, annual evaluation of performance. Leading cities will also be ambassadors and champions of sustainable procurement. Creating a supportive political framework. Annual summits and information sharing activities.	

Name	UNDP Procurement Strategy and Sustainability		
URL	http://www.undp.org/content/undp/en/home/operations/procurement/Sustainable-Procurement.html		
Owner	UNDP	*Participants*	UNDP
Focus	Environmentally clean supply chain.		
Output	UNDP will incorporate sustainability and the social costs of carbon as two mandatory evaluation criteria in purchasing decisions. Will develop monitoring mechanisms, including assessments and spot checks, to promote vendor compliance. UNDP is a member of SPHS (see above) and is considering similar initiatives in other sectors such as renewable energy. Will review existing certification schemes and decide how to adapt them. Benchmarking - Green Procurement Index – Health, potentially will expand to other sectors, health is the pilot program.		

Name	GPP 2020 – Advisory Group European Commission		
URL	http://ec.europa.eu/environment/gpp/index_en.htm		
Owner	ICLEI – project coordinator. Inter-university research centre for technology; work and culture (IFZ); Federal Procurement Agency (Austria); United Nations Development Programme (Croatia); National Procurement Office (Germany); Competence Centre for Sustainable Procurement (Germany); Ecosistemi (Italy); Metropolitan Area of Rome; Consip S.P.A. (Italy); Rijkswaterstaat (Netherlands); Netherlands Enterprise Agency; OesteCIM, National Laboratory of Energy and Geology; Slovenian Ministry of Finance; Umanotera; Enoinstitut SCCL; Ministry of Territory and Sustainability; Catalan Energy Institute; Swedish Environmental Management Council.	*Participants*	Public purchases and procurement training providers.
Focus	Lowering greenhouse gas emissions through renewable energy, energy efficiency, and mainstreaming low-carbon procurement across Europe.		
Output	Training and networking events for procurers and procurement training providers; helpdesks in target countries; contributing to the EU's target to reduce greenhouse gas emissions by 20 per cent, increase the share of renewable energy by 20 per cent and increase energy efficiency by 20 per cent by 2020.		

Name	Business Social Compliance Initiative		
URL	http://bsciannualconference2015.com/programme/		
Owner	Business Social Compliance Initiative – an initiative of the Foreign Trade Association / Sponsors: DNV GL, ELEVATE, Tüv Süd, APCER, CSR Europe.	*Participants*	Companies and experts on sustainability and supply chain management
Focus	Supply chain management.		

Output	BSCI in general is business driven and seeks to support companies that wish to improve working conditions in their suppliers' farms and factories. Seeks to create global supply chains free of violations of local labour laws and ILO labour standards. Annual conference provides knowledge, networking, and tools to overcome sustainability challenges in supply chains. E.g. breakout sessions on "influencing the supply chain beyond your first tier," "Supply chain chemical management," and "what does it take to be a sustainability manager?"

Name	Procura+ Sustainable Procurement Campaign		
URL	http://www.procuraplus.org/		
Owner	ICLEI; National Partners - Interuniversitäres Forschungszentrum für Technik, Arbeit und Kultur (Austria), United Nations Development Programme (Croatia), Association AUXILIA (France), Energy, Environment and Local Development (Greece), Ecosistemi (Italy), Laboratório Nacional de Energia e Geologia (Portugal), Ecoinstitut (Spain).	*Participants*	Cities and towns in Belgium, Denmark, Finland, France, Germany, Italy, Portugal, Spain, Sweden, and others.
Focus	Environmental sustainability. Support public authorities in implementing sustainable public procurement, promote achievements of public authorities internationally, and foster exchange on good practice from public procurers and experts internationally		
Output	Procura+ Manual, which is aimed at public authorities and gives guidance on how to implement sustainable procurement in practice; Procura+ seminar series, where experts and practitioners can discuss the latest guidance, tools, and experiences related to sustainable procurement.		

Name	GreenXpo		
URL	http://www.greenxpo.eu/		
Owner	Projektträger Jülich (Germany); Greenovate! Europe (Belgium); youris.com (Belgium); Collaborating Centre on Sustainable Consumption and Production (Germany); Technopolis Group (Belgium); Lahti Region Development LADEC Ltd (Finland); SP Technical Research Institute Sweden; Association of Regional Development Agencies – EURADA (Belgium); ICLEI European Secretariat; National Cheng Kung University – NCKU (Taiwan).	*Participants*	Policy makers, enterprises, and society.
Focus	Environmental; faster and wider uptake and exploitation of technological as well as non-technological eco-innovations, in addition to good policy measures related to eco-innovation.		
Output	An online virtual knowledge library with real life as well as web-based events and activities to promote knowledge to potential users available at www.innovationseeds.eu		

Name	Sustainable Purchasing Leadership Council, SPLC		
URL	https://www.sustainablepurchasing.org/		
Owner	Initiated by the Keystone Center's Green Products Roundtable; Partners – Acquisiti & Sostenibilità; American National Standards Institute; Association for the Advancement of Sustainability in Higher Education; Business and Institutional Furniture Manufacturers Association; BSR Center for Sustainable Procurement; ICLEI; Institute for Supply Management; ISEAL Alliance; National Association of State Procurement Officers; Practice GreenHealth; Product Stewardship Institute; Responsible Purchasing Network; Sustainable Food Lab.	*Participants*	Purchaser organisations, supplier organisations, and NGOs
Focus	Provides recognition of and support to purchasers focusing on sustainability.		
Output	Professional development – trainings, webinars, discussion groups, online community, and continuing education credits; Tools – Principles for Leadership in Sustainable Purchasing v1.0, Guidance for Leadership in Sustainable Purchasing v1.0, Purchasing Category Guidance, Rating system for Leadership in Sustainable Purchasing v1.0; Summits and workshops; Leadership awards to recognize organisations that have advanced sustainable purchasing; Awareness raising about sustainable purchasing.		

Health

Name	Healthy Ageing Public Procurement of Innovations (HAPPI)		
URL	http://www.happi-project.eu/		
Owner	Réseau des Acheteurs Hospitaliers d'Ile-de-France; MercurHosp (Belgium); NHS Commercial Solutions (U.K.); Società di Committenza Regione Piemonte (Italy); Fédération des Hôpitaux Luxembourgeois (Luxembourg); BITECIC Ltd (U.K.); Bpifrance (France); University of Turin (Italy); Ecole des Hautes Etudes en Santé Publique (France); ICLEI; The Federal Procurement Agency (Austria); FIBICO (Spain).	*Participants*	Health institutions throughout Europe.
Focus	Establish the conditions for health institutions throughout Europe to collaborate in the purchase of "ageing well" and health innovative products, services, and solutions for the long term		
Output	Evaluating the solutions proposed by healthcare manufacturers; building an "ageing well" innovation centre for SMEs, Group Purchasing Organizations, and local authorities; a joint call for tender.		

Name	Health Care Without Harm		
URL	https://noharm.org/		
Owner	Health Care Without Harm	*Participants*	Hospitals and health systems.
Focus	Raising awareness on sustainable procurement amongst the European healthcare sector and advocating for green and social criteria to be implemented in tendering processes across Europe.		
Output	Network for Sustainable Development in Public Procurement (advocacy work on EU Directive), newsletter, workshops, membership in European Working Group on Ethical Public Procurement.		

Name	NHS Supply Chain: Labour Standards Assurance System		
URL	https://www.supplychain.nhs.uk/		
Owner	NHS Supply Chain, Department of Health (U.K.).	*Participants*	The U.K. National Health Service and Suppliers
Focus	Use NHS procurement as leverage to ensure suppliers are making improvements in labour standards management throughout their supply chains. Risk based approach, focusing on supply chains with documented human rights abuses such as gloves, surgical instruments, and uniforms.		
Output	NHS Supply Chain procures health services products in conformity with the EU Public Procurement regulations and consolidates delivery of different types of products to the U.K. trusts that order through NHS SC. In order to be a supplier to NHS SC, a company must be part of the Framework Agreement relevant to its product. The Labour Standards Assurance System (LSAS) has been launched as part of both the Direct Textiles Framework Agreement as well as the Framework Agreement for Surgical Instruments. LSAS is a progressive system ('maturity matrix') with four different levels that suppliers can fall within. Suppliers undergo a third party audit once a year to determine their level, and there are contractual obligations requiring that suppliers achieve certain milestones by a particular date (e.g. achieve level 2 by 3 September, 2014). If those milestones are not met, the supplier is removed from the Framework Agreement. They have developed a flexible toolkit to assist companies in implementation.		

Name	British Medical Association Medical Fair and Ethical Trade Group		
URL	http://bma.org.uk/working-for-change/international-affairs/fair-medical-trade		
Owner	British Medical Association (trade union and professional body for U.K. doctors).	*Participants*	U.K. doctors.
Focus	Monitoring labour conditions in supply chains; Disseminating information about abuses in health services product supply chains; Promoting ethical procurement in NHS		
Output	Guidance (in collaboration with Royal College of General Practitioners) on including ethical and sustainable criteria in procurement policies; Tools for suppliers regarding ethical trade; Conferences on health procurement; Reports since 2007 with SwedWatch on labour conditions in surgical instrument production in Pakistan pre and post inclusion of social criteria in Swedish procurement; Advocacy.		

Name	UN Initiative on Sustainable Procurement in the Health Sector		
URL	http://iiattsphs.org/		
Owner	Hosted by UNDP in Istanbul.	*Participants*	UNDP, UNEP, UNFPA, UNHCR, UNICEF, UN-OPS, WHO, UNITAID, Gavi- the Vaccine Alliance, the Global Fund to Fight AIDS, Tuberculosis, and Malaria.
Focus	Facilitate and coordinate introduction of green procurement in health sector among members; focus on greenhouse gas emissions, resource depletion, and chemical pollution; also work on social dimensions but current joint focus is on environmental sustainability; Establish evidence based standard; Capacitate UN procurement officers, suppliers, and health actors; Increase awareness of stakeholders		
Output	By 2015 green procurement criteria with immediate applicability; developing an online hub on green procurement (best practices / lessons learned).		

Name	UNFPA Green Procurement		
URL	http://www.unfpa.org/about-procurement		
Owner	UNFPA	*Participants*	UNFPA
Focus	Green procurement (focus on CO2 emissions, water, chemicals, and raw materials). Pilot program on condoms and IUDs.		
Output	Environmental requirements for condom suppliers. In upcoming condom tender, suppliers of condoms will have to be ISO 14001 certified, UNFPA will also look at waste and water treatment, air pollution, plan for saving energy and renewable energy, and packaging (e.g. use of recycled material). Implementation plan is to inform suppliers of new requirements 1-2 years ahead of time, have suppliers comply within 2-3 years, and conduct supplier audits in 3-5 years. Capacity development training.		

Name	Swedwatch		
URL	www.swedwatch.org/en		
Owner	SwedWatch	*Participants*	Fair Trade Center, Friends of the Earth, Swedish Latin America group, The Swedish Society for Nature Conservation (SSNC) and Church of Sweden.
Focus	Social/CSR, human rights and environmental concerns		
Output	Reporting on Swedish business relations in developing countries, Spreading the best practice cases and seminars.		

Construction

Name	PROBIS – Supporting Public Procurement of Building Innovative Solutions		
URL	http://www.probisproject.eu/		
Owner	ICLEI; partners - Environment Park Science and Technology Park for Environment, Torino (Italy) – coordinator.	*Participants*	Andalusian Energy Agency, Seville (Spain); Andalusian Institute of Technology, Seville (Spain); Lombardy Region – Housing Department, Milan (Italy); City of Torino (Italy); The European House – Ambrosetti SpA (consultancy firm) (Italy); SP Technical Research Institute (Sweden); Borlänge Kommun (Sweden); National Innovation Office, Budapest (Hungary); Miskolc Holding Local Asset Management Plc., Miskolc (Hungary).
Focus	Promote bidding through innovative solutions aimed at increasing energy efficiency and sustainability of European public buildings		
Output	Definition of common needs for Public Procurement Innovation; Elaboration of Tender functional and performance specifications and award criteria; Legal PPI framework adapted to the construction sector; Definition of a common procurement and contractual strategy; Risk management evaluation; Development of complete set of tender documents and contractual models; 4 procurement pilots, with monitoring and analysis of results; Workshop on feedbacks from pilot experiences.		

Name	iNSPiRe		
URL	http://www.inspirefp7.eu/about-inspire/		
Owner	The Institute for Renewable Energy (EURAC) – coordinator; CARTIF; Center for Applied Research at Universities of Applied Sciences – Sustainable Energy Technology (ZAFH); Solar Energy Resource Centre; FhG-ISE; Unit of Energy Efficient Buildings at the University of Innsbruck; Ca' Forscari University of Venice; Tosoni, Gumpp & Maier GmbH; ClimateWell; BLL; Tripan; Siko; CycleCo; ACCIONA; Manens-Tifs s.p.a.; the Vaillant Group; BSRIA; IP;, ICLEI; the Architects' Council of Europe (ACE); Union Internationale de la Propit Immobilire; Ludwigsburg GmbH; Municipal Housing and Land SLA.	*Participants*	The Institute for Renewable Energy (EURAC) – coordinator, CARTIF, Center for Applied Research at Universities of Applied Sciences – Sustainable Energy Technology (ZAFH), Solar Energy Resource Centre, FhG-ISE, Unit of Energy Efficient Buildings at the University of Innsbruck, Ca' Forscari University of Venice, Tosoni, Gumpp & Maier GmbH, ClimateWell, BLL, Tripan, Siko, CycleCo, ACCIONA, Manens-Tifs s.p.a., the Vaillant Group, BSRIA, IPL, ICLEI, the Architects' Council of Europe (ACE), Union Internationale de la Propit Immobilire, Ludwigsburg GmbH, Municipal Housing and Land SLA.
Focus	High-energy consumption		

Output	Multifunctional renovation packages aiming to reduce the primary energy consumption of a building to lower than 50 kWh/m2/year.

Name	Supply Chain Sustainability School		
URL	http://www.supplychainschool.co.uk/		
Owner	Action Sustainability. Partners: Abellio; Aggregate Industries; Balfour Beatty; BAM; BIFM; BRE; Carillion; CEEQUAL; CITB; Cofely UK; Covance; EMCOR; Galliford Try; Grosvenor; Highways England; Hochtief; HS2; Interserve; ISG; Kier, Laing O'Rourke; Lendlease; Marshalls; Morgan Sindall; National Grid; PHS Group; Siemens; Sir Robert McAlpine; Skanska; Sodexo; Tarmac; UKCES; United Utilities; VINCI Construction UK; VGC Group; Wates, Willmott Dixon and WP Group.	*Participants*	Construction, facilities management and infrastructure companies. Over 10,000 members.
Focus	Providing free support to companies to address sustainability in their supply chains; Environmental sustainability.		
Output	Sustainability training; e-learning modules; self-assessment and action plans; training; networking opportunities; Resource library; Current focus is on environment, but partnering with IHRB to do an e-learning human rights module.		

Private Security

Name	The Geneva Centre for the Democratic Control of Armed Forces (DCAF)		
URL	http://dcaf.ch/		
Owner	DCAF	*Participants*	DCAF
Focus	Research on existing procurement practices, overall content of project yet to be determined		
Output	Research / mapping of government procurement practices in relation to human rights and private security		

Apparel

Name	The Clean Clothes Campaign		
URL	http://www.cleanclothes.org/		
Owner	Alliance of organisations, including trade unions and NGOs both from Europe and from garment-producing countries. Regional campaigns in the Netherlands, Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Norway, Poland, Spain, Switzerland, Turkey, UK.	*Participants*	More than 200 organizations and unions in garment-producing countries.

Focus	Improving workers' rights in apparel and shoe supply chains through organising, transparency, consumer mobilisation, advocating for better supply chain management by brands, and educating workers about their rights.
Output	CCC model code of labour practices; living wage forum; reports; lobbying for legislation; awareness raising; pressuring brands to adopt a code of conduct.

Name	Sweatfree Purchasing Consortium		
URL	http://buysweatfree.org/		
Owner	States: Maine, New York, Pennsylvania Cities: Ashland, Oregon; Austin, Texas; Berkeley, California; Chicago, Illinois; Ithaca, New York; Los Angeles, California; Madison, Wisconsin; Milwaukee, Wisconsin; Olympia, Washington; Portland, Oregon; San Francisco, California; Santa Fe, New Mexico; Seattle, Washington; University City, Missouri.	*Participants*	States and Cities
Focus	Make sweatfree purchasing easy and effective.		
Output	Coordination and representation of public officials seeking to ensure tax dollars are not supporting sweatshops; resource centre for public entities; model code of conduct.		

Electronics

Name	Electronics Industry Citizenship Council		
URL	http://www.eiccoalition.org/		
Owner	EICC	*Participants*	Over 100 electronics companies (see website for full list).
Focus	Create an industry-wide standard on social, environmental, and ethical issues in the electronics industry supply chain.		
Output	Code of Conduct, Validated Audit Process, annual conferences, accountability to core standards, training and assessment tools.		

Name	Electronics Watch: Monitoring and Reform Programmes		
URL	http://electronicswatch.org/en		
Owner	Setem (Spain); DanWatch (Denmark); Fundacja Centrum CSR (Poland); People & Planet (UK); SOMO (Netherlands); Sundwind Agentur (Austria); WEED (Germany).	*Participants*	Public sector buyers from across Europe.
Focus	Improving working conditions in the global electronics industry through contract clauses and monitoring.		
Output	Main Outputs: Code of conduct, contract clauses for European public sector organisations to insert into procurement contracts (requiring winning bidder disclosure of supplier factory locations), Independent factory monitoring (based on the supplier factory location disclosure) and improvement plans; Training and support.		

Name	Business, Human Rights and the Environment Research Group		
URL	www.gre.ac.uk/bhre		
Owner	University of Greenwich	*Participants*	Researchers.
Focus	Workshops on socially responsible public procurement in electronics; Supply chain monitoring.		
Output	Due diligence guidance; Code of labour standards; Contract performance clauses; June 2014 workshop on socially responsible public procurement; Follow up workshop focused on procurement of electronics to include discussion of Electronics Watch model and monitoring supply chains.		

Food/Agriculture/Timber

Name	INNOCAT		
URL	http://www.sustainable-catering.eu/home/		
Owner	ICLEI – coordinator; Motiva; SP Technical Research Institute of Sweden; Resah-idf; the City of Turin (Italy); Environmental Park Torino; Johnson Matthey Fuel Cells.	*Participants*	Public and private buyers.
Focus	Aims to bring together a group of public and private buyers to publish a series of tenders for eco-innovative catering products, services, and solutions.		
Output	A sizeable launch market for new solutions in eco-innovative catering products.		

Name	European Sustainable Tropical Timber Coalition		
URL	http://www.europeansttc.com/		
Owner	Ministry of Economic Affairs (Netherlands); IDH, the Sustainable Trade Initiative; ICLEI; Copade; European Timber Trade Federation; Ecoinstitut Barcelona; FSC Europe.	*Participants*	Arte Latino, ASLA Foundation, BAM, Barcelona City Council, BEKA Holzwerk AG, Bellota, City of Amsterdam, City of Leeuwarden, City of Madrid, Cross Trade, Feim, Heijmans; Interholco AG, Kingfisher, Koninklijke Dekker, La Asociación Española del Comercio e Industria de la Madera, Le Commerce du Bois, Leroy Merlin Italia, Leroy Merlin Spain, Maderas Garcia Verona, Madinter, Malmo stad, Pazos, Praxis, Precious Woods, Réseau Grand Ouest, Rougier, Royal Boogaerdt Timber, Steel Blade, Stiho, Van Dam Bunnik, Van den Berg Hardhout BV, Ville de Cognac, Wijma Kampen BV.
Focus	Boost the market for sustainable tropical timber.		
Output	Expert assistance in planning sustainable timber procurement activities; technical support services such as training, supply chain mapping and match-making of demand and supply; annual seminars.		

Miscellaneous

Name	ICTI CARE Foundation		
URL	http://www.icti-care.org/e/default.asp		
Owner	International Council of Toy Industries (ICTI).	*Participants*	Toy factories and Toy brands.
Focus	Certification of toy factories, monitoring through audits by third party		
Output	Factory audit program using 7 qualified audit firms, Guidance and training for factories, ICP Committed Brands Program - advocacy to Toy brands to commit to purchasing only from suppliers certified by ICP, to join this program. ICTI Code of Business Practices, audits, annual factory surveys providing trends in factory management views, challenges, etc. Training and capacity building for factory management, workers, and auditors.		

Name	PRIMES – Green Public Procurement		
URL	http://primes-eu.net/		
Owner	ICLEI; Partners - Intelligent Energy Europe; National partners: Croatia, Denmark, France, Italy, Latvia, and Sweden.	*Participants*	Small and medium sized municipalities across Europe.
Focus	Green Public Purchasing; provide hands-on support ("learning by doing") for public purchasing organizations to lead to energy and CO2 reduction.		
Output	Detailed case studies for sharing between the partners and in the wider EU, broken down by product groups.		

Name	Water Public Innovation Procurement Policies		
URL	http://www.waterpipp.eu/		
Owner	Office International de l'Eau (OIEau) – coordinator; ICLEI; Central Procurement Company (ARCA); University of Zaragoza (UniZar); Agenzia Regionale per la Tecnologia e l'Innovazione - Regione Puglia (ARTI); Technical Research Centre (VTT); Stichting Deltares (Deltares); The European House – Ambrosetti SpA (TEHA); Water supply and sanitation Technology Platform (WssTP); Aqua Publica Europea (APE); The Environmental Sustainability Knowledge Transfer Network (ESKTN); City of Rotterdam.	*Participants*	Local and regional authorities, water utilities, innovation and procurement agencies.
Focus	Ensuring the integration of water and innovation demonstration projects and support to trans-national networks of procurers; exploring new innovation procurement methodologies and testing it in water sector.		
Output	Collaborative platform for stakeholders and procurers for mutual learning and debate; Collaborative Pilot Innovation Procurement Preparation; Collective implementation of procurement strategies; best practice model for European public procurement community.		

Name	ENIGMA – Enlightenment & Innovation ensured through Pre-Commercial Procurement in Cities		
URL	http://www.enigma-project.eu/en/		
Owner	Eindhoven; EUROCITIES; INNOVA, Agency for Health Quality and Assessment of Catalona (AIAQS); City of Stavanger; Intelligent Lighting Institute (TUe ILI); Bassano del Grappa; TNO; Aalto University; Espoo ESBO; Malmö; ICLEI; Lund University; LUCI Association.	*Participants*	Municipalities in Sweden, Finland, Italy, The Netherlands, and Norway.
Focus	Urban safety and energy efficiency.		
Output	City participants will initiate a joint Pre-Competitive Procurement process leading to the procurement of innovative solutions and radical improvements for these and other cities' urban safety and energy efficiency using next generation ICT applications in the context of innovative public lighting systems in part of their city fabric.		

Name	Clean Fleets		
URL	http://www.clean-fleets.eu/		
Owner	ICLEI – coordinator; Free Hanseatic City of Bremen; the Institute of Studies for the Integration of Systems; Palencia City Council; Romanian Association of Public Transport; the City of Rotterdam; Municipality of Sofia; City of Stockholm; Transport & Travel Research Ltd; Transport for London; TÜV Nord Mobility; VAG Freiburg, Zagreb Holding Ltd.	*Participants*	Public authorities and fleet operators.
Focus	Assists public authorities and fleet operators with the implementation of the Clean Vehicles Directive and the procurement or leasing of clean and energy-efficient vehicles.		
Output	Trainings and exchange to provide individual support with specific procurement actions and capacity building; a guide on how to procure clean and energy efficient vehicles with a modular training package, life cycle costing tool, sample tenders, and good practice examples.		

Name	Open Contracting Partnership		
URL	http://www.open-contracting.org/		
Owner	Open Contracting Partnership.	*Participants*	Representatives of national governments, businesses, civil society, technologists and international institutions on their board.
Focus	Increased number of contracts that are publicly disclosed, improved quality of publicly available information on contracting, enhanced accessibility to contracting data.		
Output	Global principles, data standard, research and management, advocacy, implementation and support tools, knowledge and community.		

ENDNOTES

[1] Out of the 20 jurisdictions surveyed, 18 of them are members of the OECD (although in total, surveyed jurisdictions represent 16 OECD members as Scotland and Northern Ireland are not independently members, but are part of the U.K.). The two jurisdictions that are not members of the OECD are the European Union (which is not capable of becoming a member as it is not a country) and South Africa.

[2] The term public procurement is mainly used in the context of the EU legislation; other systems use other phrases to cover the same concept. For example, in the US, reference is generally made to governmental contracts or public contracts, and the World Trade Organisation relies on the term government procurement.

[3] SUE ARROWSMITH ET AL., PUBLIC PROCUREMENT REGULATION: AN INTRODUCTION (2011), *available at* http://eprints.nottingham.ac.uk/1689/1/eprintspublicprocurementregulationintroduction.pdf.

[4] European Commission, *Public Procurement in a Nutshell,* http://ec.europa.eu/trade/policy/accessing-markets/public- procurement/ (last visited March 9, 2016); OECD, GOVERNMENT AT A GLANCE 148 (2011), *available at* http://www.oecd-ilibrary.org/governance/government-at-a-glance-2011_gov_glance-2011-en.

[5] For example, after US agencies created a standard for sustainable computers, 41 countries followed. Within a year 19 manufacturers had registered 532 products that meet the standard. EPEAT, *EPEAT Timeline*, http://www.epeat.net/about-epeat/history/ (last visited Feb. 29, 2016).

[6] That is the case, for instance, in the United Kingdom. In other countries, such as France, government contracts are regulated by administrative law.

[7] Peter Trepte, Regulating Procurement: Understanding the Ends and Means of Public Procurement Regulation 42 (Oxford 2006).

[8] *See* SUE ARROWSMITH ET AL., *supra* note 3.

[9] Consolidated Version of the Treaty on the Functioning of the European Union art. 26 (2), May 9, 2008, 2008 O.J. (C 115) 47 *available at* http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008E026 [hereinafter TFEU] (stating that "the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured…")

[10] Case 2/74 Reyners v. Belgium, 1974 E.C.R. 631.

[11] Directive 2014/24, of the European Parliament and of the Council of 26 Feb. 2014 on public procurement and repealing Directive 2004/18, 2014 O.J. (L 94) 65, Recital 1 [hereinafter EU Public Sector Directive].

[12] Directive 2004/17, of the European Parliament and of the Council of 31 March 2004 consolidating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, 2004 O.J. (L. 134) 1, Article 16.

[13] Directive 2004/18, of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, 2004 O.J. (L. 134) 114, Article 7.

[14] European Commission, *Legal Rules and Implementation*, http://ec.europa.eu/growth/single-market/public- procurement/rules-implementation/index_en.htm (last visited Feb. 29, 2016).

[15] *E.g.* Directive 2007/66/EC of the European Parliament and of the Council of 11 Dec. 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, 2007 O.J. (L. 335) 31.

[16] Under Directive 2014/24, services are fully covered by the procurement rules unless they are explicitly excluded or covered by the so called "light regime." The "light regime" applies to social, health, and cultural services, as well as other services listed exhaustively in Annex XIV of Directive 2014/24. EU Public Sector Directive, ***supra*** note 11.

[17] Case C-31/87 Gebroeders Beentjes BV v. the Netherlands, 1988 E.C.R. 4635.

[18] Case C-225/98 Commission v. France, 2000 E.C.R. I-7445.

[19] Case C-513/99 Concordia Bus Finland v. Helsingin kaupunki & HKL-Bussiliikenne, 2002 E.C.R. I-7213.

[20] *See* Directive 2004/18, of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, 2004 O.J. (L 134) 114, Article 26 (stating "Contracting authorities may lay down special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract notice or in the specifications. The conditions governing the performance of a contract may, in particular, concern social and environmental considerations"), Recital 1 (stating "This Directive is based on Court of Justice case-law, in particular case-law on award criteria, which clarifies the possibilities for the contracting authorities to meet the needs of the public concerned, including in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned and comply with the fundamental principles mentioned in recital 2"), and Recital 5 (stating "Under Article 6 of the Treaty [now Article 11 TFEU], environmental protection requirements are to be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 of that Treaty, in particular with a view to promoting sustainable development. This Directive therefore clarifies how the contracting authorities may contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring the possibility of obtaining the best value for money for their contracts"); *see also Id.* at Arts. 27, 50, & 55.

[21] *Europe 2020: A European Strategy for Smart, Sustainable and Inclusive growth*, COM (2010) 2020 final (Apr. 3, 2010) *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC2020&from=EN.

[22] Case C-448/01 EVN and Wienstrom, 2003 E.C.R. I-14527. This case established that it is acceptable to use ecological award criteria and to establish an award criterion that is related to the production method of the purchased product as long as it is relevant for the contract; however, the criteria must be expressly linked to the subject-matter of the contract.

[23] Case T-331/06 Evropaïki Dynamiki - Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Environment Agency (AEE), 2010 E.C.R. II-136. This case considered whether a bidder's general policies can be considered in the award stage of a contract. The ruling provides guidance on assessing environmental criteria, and describes the level of flexibility a contracting authority has in assessing what constitutes 'equivalent' evidence.

[24] Case C-368/10 Commission v Netherlands, delivered on 12 May 2012. The Court held that award criteria may concern aspects of the production process that do not materially alter the final product. Therefore, fair trade label requirements can constitute elements of the contract performance and can be used as award criteria for public contracts.

[25] Previously, the EU procurement Directives only partially addressed works concessions, and completely excluded service concessions, which were accordingly only subject to the principles of equal treatment, non-discrimination and transparency in accordance with the TFEU. The resulting fragmentation of legal coverage across procurement contracts was seen as distorting the market by permitting the direct award of some contracts without transparency or competition. As a result, the Concession Directive aims to create a stable legal framework for high value concessions. Directive 2014/23, of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, 2014 O.J. (L 94) 1 [hereinafter the Concessions Directive].

[26] The European procurement reforms were introduced as a result of the Commission recognising the key role of public procurement in the Europe 2020 strategy as one of the market based instruments for achieving smart, sustainable, and inclusive growth while ensuring the most efficient use of public funds. Consequently, the aim was for the directives to be revised and modernised in order to increase efficiency, facilitate participation of small and medium- sized enterprises in public procurement, and to enable procurers to make better use of procurement to support common societal goals. Further, there was also a need to clarify basic concepts to ensure legal clarity and to incorporate aspects of well-established relevant case law of the Court of Justice of the European Union. EU Public Sector Directive, *supra* note 11; Directive 2014/25 of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sector and repealing Directive 2004/17/EC, 2014 O.J. (L 94) 243 [hereinafter the Utilities Directive].

[27] EU Public Sector Directive, *supra* note 11; EU Utilities Directive, *supra* note 26.

[28] *See, e.g.,* EU Public Sector Directive, *supra* note 11 at Recitals 2, 41, 47, 91, 93, 95, 96, 123, Arts. 2(22), 18(2), 42(3)(a),43, 62, 68, 70.

[29] EU Public Sector Directive, *supra* note 11; EU Utilities Directive, *supra* note 26.

[30] The European Commission sent a letter of formal notice in May 2016 to the EU States that have failed to fully transpose one or more of the Procurement Directives. The States listed were Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Cyprus, Estonia, Ireland, Greece, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia, Finland, Spain, and Sweden. It is possible that some of these States have transposed one or two of the Directives. *See* European Commission, *Public Procurement: Commission Requests 21 Member States to Transpose New EU Rules on Public Procurement and Concessions* (May 26, 2015), http://ec.europa.eu/growth/tools- databases/newsroom/cf/itemdetail.cfm?item_id=8826.

[31] *See* ROBERT STUMBERG ET AL., TURNING A BLIND EYE? RESPECTING HUMAN RIGHTS IN GOVERNMENT PURCHASING (2014), *available at* http://icar.ngo/initiatives/procurement/. This report identified gaps in U.S. procurement rules and developed a menu of reforms that are specific to the apparel sector [hereinafter TURNING A BLIND EYE?].

[32] Due to the variation in and complexity of U.S. state level procurement, state level regulation of procurement is not discussed further in this report, which instead focuses on U.S. federal procurement regulation.

[33] Walsh-Healey Public Contract Act, 41 U.S.C. 6501-6511.

[34] 41 C.F.R. § 50-201.603(b). While the CFR provides Dec. 8, 1960 as the date on which the current regulation was finalized and posted in the Federal Register that is merely the date of the most recent revision of the exemption. The exemption has existed, in some form, since the very first regulations ever promulgated under the Act. *See* 1 Fed. Reg. 1405.

[35] Exec. Order No. 11,246, 30 Fed. Reg. 12319 (Sept. 28, 1965) ("Equal Employment Opportunity"); Exec. Order No. 13,672, 79 Fed. Reg. 42971 (July 23, 2014) ("Further Amendments to…Executive Order 11246").

[36] Federal Acquisition Regulation (FAR), 48 CFR § 101 et seq., at 22.403-1 *available at* http://acquisition.gov/far/index.html [hereinafter FAR]. (Construction Wage Rate Requirements statute); Davis- Bacon Act, 40 U.S.C. § 3141 (2012); McNamara-O'Hara Service Contract Act, 41 U.S.C. §§ 6701-6707 (2012).

[37] FAR, ***supra*** note 36 at Subpart 22.15, (Prohibition of Acquisition of Products Produced by Forced or Indentured Labor), which implements the Child Labor Exec. Order No. 13,126, 64 Fed. Reg. 32383 (June 12, 1999) ("Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor"), and laws that prohibit manufacture or import of goods made with forced or indentured child labor. These include 19 U.S.C. 1307, 29 U.S.C. 201, et seq ., and 41 U.S.C. chapter 65; FAR, *supra* note 36 at Subpart 22.17 (Combating Trafficking in Persons). The FAR provisions on trafficking derive from the Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. 7102, and Exec. Order No. 13,627, 77 Fed. Reg. 60029 (Oct. 2, 2012) ("Strengthening Protections Against Trafficking in Persons in Federal Contracts"). Federal Acquisition Regulation; Ending Trafficking in Persons, Final Rule, 80 Fed. Reg. 4967; 48 CFR Parts 1, 2, 9, 12, 22, 42, and 52 (January 29, 2015); Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. 7102.

[38] Proposed FAR Subpart 22.20 (Fair Pay and Safe Workplaces); Proposed Rule, Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA), Federal Acquisition Regulation, Fair Pay and Safe Workplaces, 48 CFR Parts 1, 4, 9, 17, 22, and 52 [FAR Case 2014–025; Docket No. 2014– 0025; Sequence No. 1], RIN 9000–AM81, 80 Fed. Reg. 30548 (May 28, 2015). This proposed rule implements Executive Order—Fair Pay and Safe Workplaces (July 31, 2014), *available at* http://www.whitehouse.gov/the-press-office/2014/07/31/executive-order-fair-pay-and-safe-workplaces.

[39] Sue Arrowsmith and Caroline Nicholas, *The UNCITRAL Model Law on Procurement of Goods, Construction and Services: Past, Present and Future*, *in* PUBLIC PROCUREMENT REGULATION IN THE 21ST CENTURY: REFORM OF THE UNCITRAL MODEL LAW ON PROCUREMENT Ch. 1 (Sue Arrowsmith ed., 2009); Caroline Nicholas, *The UNCITRAL Model Law: an example for the global community*, *in* INTERNATIONAL PUBLIC PROCUREMENT: A GUIDE TO BEST PRACTICE 19-34 (Hernández García ed., 2009; Caroline Nicholas, *Work of UNCITRAL on government procurement: purpose, objectives, and complementarity with the work of the WTO, in* THE WTO REGIME ON

GOVERNMENT PROCUREMENT: CHALLENGE AND REFORM 746-772 (Sue Arrowsmith & Robert Anderson eds., 2011).

[40] UNCITRAL is an organ of the United Nations General Assembly established to promote the harmonisation and unification of international trade.

[41] UNCITRAL, MODEL LAW ON PUBLIC PROCUREMENT (2011), *available at* http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2011Model.html.

[42] *Id.* at Art. 9(2)(b) (stating that suppliers or contractors shall meet such of the following criteria as the procuring entity considers appropriate and relevant in the circumstances of the particular procurement (…) That they meet ethical and other standards applicable in this State)

[43] *Id.* at Art. 11; UNCITRAL, GUIDE TO ENACTMENT OF THE UNCITRAL MODEL LAW ON PUBLIC PROCUREMENT 78-82, 85-89, and commentary on socio-economic policies (2012), *available at* http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2012Guide.html.

[44] *See* UNCITRAL, GUIDE TO ENACTMENT OF THE UNCITRAL MODEL LAW ON PUBLIC PROCUREMENT para. (f) on 21-22, (2012), *available at* http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2012Guide.html.

[45] Robert Anderson, Renewing the WTO Agreement on Government Procurement: progress to date and ongoing negotiations, 4 P.P.L.R 255 (2007); Robert Anderson, The Conclusion of the Renegotiation of the World Trade Organization Agreement on Government Procurement: What it Means for the Agreement and for the World Economy, 21 P.P.L.R 83 (2012); ROBERT ANDERSON, PHILIPPE PELLETIER, KODJOOSEI-LAH, & ANNA CAROLINE MULLER, ASSESSING THE VALUE OF FUTURE ACCESSIONS TO THE WTO AGREEMENT ON GOVERNMENT PROCUREMENT: SOME NEW DATA SOURCES, PROVISIONAL ESTIMATES, AND AN EVALUATIVE FRAMEWORK FOR WTO MEMBERS CONSIDERING ACCESSION (2012), available at https://www.wto.org/english/res_e/reser_e/ersd201115_e.htm; THE WORLD TRADE ORGANISATION REGIME ON GOVERNMENT PROCUREMENT: CHALLENGE AND REFORM (Sue Arrowsmith & Robert Anderson eds., Cambridge University Press, 2011).

[46] Currently the GPA has 17 parties. One of these parties is the European Union, and thus the GPA applies to a total of 45 WTO members. 30 more WTO members participate in the GPA Committee as observers, of whom 10 are taking steps to accede to the Agreement. WTO, *Agreement on Government Procurement: What is the GPA?*, https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm (last visited Nov. 10, 2015).

[47] WTO, Agreement on Government Procurement 2012 revised at Art. II(3), *available at* https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm

[48] RACHEL THRASHER, ON FAIRNESS AND FREEDOM: THE WTO AND ETHICAL SOURCING INITIATIVES (2014), *available at* http://www.bu.edu/pardee/research/global-economic-governance-2/wtoethicalsourcing/.

[49] The World Bank, *Procurement,* http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,pagePK:84271~theSitePK: 84266,00.html (last visited March 9, 2016).

[50] European Bank for Reconstruction and Development, *Procurement*, http://www.ebrd.com/work-with- us/procurement.html (last visited Nov. 10, 2015).

[51] African Development Bank, *Procurement*, http://www.afdb.org/en/projects-and-operations/procurement/ (last visited Nov. 10, 2015).

[52] AFRICAN DEVELOPMENT BANK, PROCUREMENT GUIDELINES (2015), *available at* http://www.adb.org/documents/procurement-guidelines

[53] Elizabeth Gasiorowski, *Sustainable Procurement One Step Closer to an ISO Standard* (2015) http://www.iso.org/iso/home/news_index/news_archive/news.htm?refid=Ref1873 (last visited March 9, 2016).

[54] OECD, PUBLIC PROCUREMENT FOR SUSTAINABLE AND INCLUSIVE GROWTH: ENABLING REFORM THROUGH EVIDENCE AND PEER REVIEWS, *available at* http://www.oecd.org/gov/ethics/PublicProcurementRev9.pdf

[55] Dacian Dragos & Bogdana Neamtu, *Sustainable Public Procurement in the EU: Experiences and Prospects*, *in* NOVELTIES IN THE 2014 DIRECTIVE ON PUBLIC PROCUREMENT 301-36 (Francois Lichere, Roberto Caranta, & Steen Treumer eds., 2014).

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[61] Ian Urbina, *U.S. Flouts Its Own Advice in Procuring Overseas Clothing*, N.Y. TIMES (Dec. 22, 2013), *available at* http://www.nytimes.com/2013/12/23/world/americas/buying-overseas-clothing-us-flouts-its-own-advice.html; TURNING A BLIND EYE?, *supra* note 31, at 14.

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[63] FREDERIK JOHANNISSON, CHILD MINED GOLD IN YOUR GADGETS?: CHILD LABOR IN GHANA AND MALI AND SOURCING POLICIES OF IT BRANDS 6 (2013), *available at* http://ibis.dk/sites/default/files/media/pdf_global/csr_pdf/child_mined_gold_in_your_gadgets_final.pdf; TURNING A BLIND EYE?, *supra* note 31, at 11.

[64] Danwatch, *Siden Kan Ikke Findes,* https://www.danwatch.dk/da/artikler/kritisable-arbejdsforhold-bag- gummihandsker-paa-danske-hospitaler/243 (last visited Nov. 12, 2015).

[65] Adhikari v. Daoud and Kellog Brown Root, et al, No. 09-1237 (S.D. Tex. Aug. 23, 2013) (Order granting and denying in part KBR's motion for summary judgment), *available at* http://www.cohenmilstein.com/media/pnc/9/media.1359.pdf.

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[67] DanWatch & GoodElectronics, Servants of Servers: Rights Violations and Forced Labour in the Supply Chain of ICT Equipment in European Universities (2015), *available at* https://www.danwatch.dk/en/undersogelse/servants-of-servers/?chapter=1.

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[69] David Barboza, *After Suicides, Scrutiny of China's Grim Factories*, N.Y. Times (June 6, 2010), http://www.nytimes.com/2010/06/07/business/global/07suicide.html; Students & Scholars Against Corporate Misbehaviour (SACOM), Workers as Machines: Military Management in Foxconn 2 (Oct. 12, 2010), *available at* http://sacom.hk/wp-content/uploads/2010/11/report-on-foxconn-workers-as- machines_sacom.pdf; Turning a Blind Eye?, *supra* note 31 at 9.

[70] Matthew Mosk, Bangladesh Factory Fire: Patterns for Marine Corps Sweaters, Tank tops Found in Ashes, ABC News (Dec. 4 2012); Turning a Blind Eye?, supra note 31 at 13.

[71] Verite, Risk Analysis of Indicators of Forced Labor and Human Trafficking in Illegal Gold Mining in Peru 38-39 (Jan. 2013); Turning a Blind Eye?, *supra* note 31 at 11.

[72] Théo Jaekel & Arthy Santhakumar, SwedWatch et. al, *supra* note 60.

[73] DanWatch, The Lost Thread: Violations and abuse of power in the garment industry in Bangladesh 23 (2015).

[74] Maquila Solidarity Network, *Vaqueros Navarra background*, (Sept. 18, 2007) http://en.archive.maquilasolidarity.org/node/711 (last visited Nov. 12, 2015); Turning a Blind Eye?, *supra* note 21 at 14.

[75] U.S. Dep't of State, Country Reports on Human Rights Practices for 2013: China 80 (2013), *available at* http://www.state.gov/documents/organization/220402.pdf; Turning a Blind Eye?, *supra* note 31 at 8-9.

[76] *E.g.* United Nations Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948); Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ.T.S. No. 5, 213 U.N.T.S. 221; Charter on Human and Peoples' Rights, Oct. 21, 1986, 1520 U.N.T.S. 217.

[77] The preamble to UDHR provides that every individual and every organ of society is expected to promote human rights.

[78] Claire Methven O'Brien, *Essential Services, Public Procurement and Human Rights in Europe*, (University of Groningen 2015), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2591898##.

[79] John Ruggie, Special Representative of the Sec'y-Gen. on the Issue of Human Rights & Transnational Corps. & Other Bus. Enters., *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31, (June 2011) [hereinafter Guiding Principles], *available at* http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

[80] *Id.*; *See also* John Ruggie, Special Representative of the Sec'y-Gen. on the Issue of Human Rights & Transnational Corps. & Other Bus. Enters., *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc A/HRC/8/5, (April 2008), *available at* http://www.reports-and materials.org/sites/default/files/reports-and- materials/Ruggie-report-7-Apr-2008.pdf.

[81] Guiding Principles, *supra* note 79 at 3.

[82] *Id.* at 6-7.

[83] *Id.* at 8. UNGP 6 provides that "States should promote respect for human rights by business enterprises with which they conduct commercial transactions," and indicates this can be done "including through the terms of contracts."

[84] *Id.* at 10.

[85] This is highlighted in General Comment No. 16 of the UN Committee on the Rights of the Child and in a statement released by the Committee on Economic, Social and Cultural Rights. U.N. Committee on the Rights of the Child, *General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights,* UN Doc CRC/C/GC/16, (April 2013), *available at* http://www.unicef.org/csr/css/CRC-C-GC-16_en.pdf; Committee on Economic, Social and Cultural Rights, *Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights*, 46th Session, UN Doc E/C.12/2011/1, (May 2011), *available at* http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.2011.1-ENG.doc.

[86] In particular, via national action plans on business and human rights: see next section. *see also,* Claire Methven O'Brien, Amol Mehra, Sara Blackwell, & Catherine Poulsen Hansen, *National Action Plans on Business and Human Rights: Current Status and Future Prospects for a New Business and Human Rights Governance Tool*, 1 Bus. and Hum. Rts. J. 117 (2015).

[87] *See e.g., UN Guiding Principles Reporting Framework Investor Statement,* http://www.ungpreporting.org/early- adopters/investor-statement/ (last visited Nov. 12, 2015).

[88] Many NHRIs and civil society organisations are now taking this view. *See e.g.* International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Edinburgh Declaration (2010), *available at* http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/10th%20%20Biennial%20Conference%20of%20the%20IC C.aspx; Turning a Blind Eye?, *supra* note 31.

[89] EUROPEAN COMM'N, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011-14 for Corporate Social Responsibility*, COM (2011) 681 final (Oct. 25, 2011), available at http://eur-lex.europa.eu/legal- content/EN/TXT/PDF/?uri=CELEX:52011DC0681&from=EN .

[90] EUROPEAN COUNCIL, STRATEGIC FRAMEWORK AND ACTION PLAN ON HUMAN RIGHTS AND DEMOCRACY (June 25,2012), *available at* http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf. The *Strategic Framework* provided for an extended deadline of the end of 2013 for Member States' development of NAPs.

[91] COUNCIL OF EUROPE, *Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights*, https://wcd.coe.int/ViewDoc.jsp?id=2185745&Site=CM (last visited Feb. 29, 2016).

[92] Human Rights Council Res. A/HRC/26/22, Rep. of the Human Rights Council, 26th Sess., June 10-27, 2014 (July 15, 2014).

[93] The eight countries that have published a NAP are the U.K., the Netherlands, Denmark, Finland, Lithuania, Sweden, Norway, and Colombia. Additionally, the U.K. published an update of its NAP in May 2016. Italy and Spain have published drafts of their NAPs. United Nations Office of the High Commissioner for Human Rights, *State National Action Plans,* http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx (last visited Nov. 12, 2015).

[94] ***See*** Claire Methven O'Brien, *supra* note 78 (providing a summary of procurement-related measures indicated by published human rights and business NAPs).

[95] U.K. FOREIGN & COMMONWEALTH OFFICE, GOOD BUSINESS: IMPLEMENTING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS 9 (2013), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf [hereinafter U.K. NAP]; ***See*** Claire Methven O'Brien, ***supra*** note 78.

[96] DUTCH MINISTRY OF FOREIGN AFFAIRS, NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS (Apr. 2014), *available at* http://businesshumanrights.org/sites/default/files/documents/netherlands-national-action-plan.pdf [hereinafter DUTCH NAP]; Sustainable development and policy House of Representatives 30 196, no. 33, May 2008, at 5.

[97] GOVERNMENT OF DENMARK, DANISH NATIONAL ACTION PLAN-IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS 13 (2014), *available at* http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf [hereinafter DANISH NAP].

[98] *Id.*

[99] FINISH MINISTRY OF EMPLOYMENT AND THE ECONOMY, NATIONAL ACTION PLAN FOR THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS 21 (2014), *available at* http://business- humanrights.org/en/finland-publishes-national-action-plan-on-business-human-rights [hereinafter FINISH NAP].

[100] *G-7 Leaders' Declaration, Schloss Elmau, Germany* (June 8, 2015), *available at* https://www.whitehouse.gov/the-press- office/2015/06/08/g-7-leaders-declaration.

[101] *See e.g.,* Judy Gearhart, *Global Supply Chains: Time for a Convention on Decent Work*, HUFFINGTON POST (June 2016), http://www.huffingtonpost.com/judy-gearhart/global-supply-chains-time_b_10228772.html

[102] U.K. Modern Slavery Act 2015, *available at* http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted.

[103] Proposition de loi du 30 Mars 2015 relative au devoir de vigilance des societies meres et des entreprises donneuses d'ordre, ***available at*** http://www.assemblee-nationale.fr/14/ta/ta0501.asp.

[104] U.S. Securities and Exchange Commission, Conflict Minerals Final Rule, 17 CFR parts 240 and 249(b), *available at* https://www.sec.gov/rules/final/2012/34-67716.pdf.

[105] *Id.*; U.S. Securities and Exchange Commission, Fact Sheet: Disclosing the Use of Conflict Minerals, https://www.sec.gov/News/Article/Detail/Article/1365171562058

[106] CALIFORNIA DEP'T OF JUSTICE, THE CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT: A RESOURCE GUIDE (2015), *available at* https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf.

[107] *Id.*

[108] Business Supply Chain Transparency on Trafficking and Slavery Act of 2015, H.R. 3226, 114th Cong. (2015), *available at* https://www.congress.gov/bill/114th-congress/house-bill/3226/text.

[109] Urmila Bhoola, Report of the Special Rapporteur on Contemporary Forms of Slavery, including its causes and consequences, A/HRC/30/35, (July 8, 2015); Ba kut Tuncak, Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes, A/HRC/30/40, (July 8, 2015).

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[111] UNEP, SUSTAINABLE PUBLIC PROCUREMENT: A GLOBAL REVIEW 80 (2013), *available at* http://www.unep.org/resourceefficiency/Consumption/SustainableProcurement/Publications/tabid/101249/Defa ult.aspx; UNFPA, *About Procurement,* http://www.unfpa.org/about-procurement (last visited Nov. 12, 2015);

[112] SwedWatch, www.swedwatch.com (last visited Nov. 12, 2015); DiFi, *About DiFi,* https://www.difi.no/om- difi/about-difi (last visited Nov. 12, 2015).

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130 FairPhone, https://www.fairphone.com/ (last visited Feb. 11, 2016).

131 DCAF, http://www.dcaf.ch/ (last visited Nov. 12, 2015)/

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133 Inspire, *About,* http://www.inspirefp7.eu/about-inspire/ (last visited Nov. 12, 2015).

134 *Supply Chain Sustainability School*, http://www.supplychainschool.co.uk (last visited Nov. 12, 2015).

135 Engineers Against Poverty, *CoST Initiative,* http://www.engineersagainstpoverty.org/site/engi/templates/general.aspx?pageid=37&cc=gb (last visited Nov. 12, 2015).

136 *Id.*

137 Open Contracting Partnership, *2015-2018 Strategy,* http://www.open-contracting.org/ (last visited Nov. 12, 2015).

138 Institute for Human Rights and Business, *Mega Sporting Events,* http://www.megasportingevents.org/ (last visited Nov. 12, 2015).

139 Australia, Czech Republic, Denmark, EU, Finland, Germany, Ireland, Italy, Netherlands, New Zealand, Northern Ireland, Norway, Poland, Scotland, South Africa, Sweden, Switzerland, Spain, the United Kingdom, and the United States.

140 The respondents comprised a mixture of NHRIs, CSOs, procurement agencies, academic institutions, and individual experts. A full list of respondents participating can be found in the acknowledgements sections. The basis for the qualification to the survey were: The potential interest of participant in the topics of Public Procurement and Human Rights; Carried out works, projects in the area of Public Procurement and Human Rights; Legal and scientific capability to carry through the analysis of national framework on Public Procurement and Human Rights.

141 Directive 2009/33 of the European Parliament and of the Council of 23 April 2009 on the Promotion of Clean and Energy-Efficient Road Transport Vehicles, 2009 O.J. (L.. 120) 5; Directive 2009/52 of the European Parliament and of the Council of 18 June 2009 Providing for Minimum Standards on Sanctions and Measures Against Employers of Illegally Staying Third-Country Nationals, 2009 O.J. (L. 168) 24.

142 Directive 2009/52 of the European Parliament and of the Council of 18 June 2009 Providing for Minimum Standards on Sanctions and Measures Against Employers of Illegally Staying Third-Country Nationals, 2009 O.J. (L. 168) 24.

143 The most relevant is the Decision of 14th June 2010 No. 465 that approved Rules for Environmental Criteria in

Public Procurement (Rules). These Rules are mandatory for public procurement by the Government and individual Ministries, central organisations, and by other organisations directed by Ministries. The Rules are recommended to regional governments, municipalities, and other public institutions.

144 IRISH DEPARTMENT OF THE ENVIRONMENT, COMMUNITY AND LOCAL GOVERNMENT, GREEN TENDERS: AN ACTION PLAN ON GREEN PUBLIC PROCUREMENT (2012), *available at* http://www.environ.ie/environment/sustainable-development/green-public-procurement/green-public- procurement.

145 Law-decree 24 June 2014, n. 90.

146 The autonomous communities are the first level of political sub-division in Spain.

147 The national Ley de Contratos del Sector Publico (2007, consolidated version 2011) regulates the so-called contracts subject to harmonization regulation, which are those contracts subject to the 2004 EU Directives on account of their subject-matter, purpose, and total cost. The 17 autonomous communities have competences on public procurement.

148 For example, in Switzerland: Federal Act against Unfair Competition of 19 December 1986 (SR 241); Federal Act on Cartels and other Restraints of Competition of 6 October 1995 (SR 251); Federal Act of 6 October 1995 on the Swiss internal market (SR 943.02); Federal Act of 8 October 1999 on the Minimum Conditions of Employment and Salary applicable to Workers Posted to Switzerland (SR 823.30); Federal Ordinance on Workers posted to Switzerland of 21 May 2003 (SR 823.201); Federal Act on Illegal Employment of 17 June 2005 (SR 822. 41).

149 In the Northern Ireland the Freedom of Information Act 2000; The Public Services (Social Value) Act 2012, which requires public authorities to have regard to economic, social and environmental well-being in connection with public services contracts.

150 Questionnaire Response from Magne Paulsrud, Senior Advisor: Public Administration, Ethical Trading Initiative –Norway (Oct. 2015), on file with authors.

151 There is an agreement between the European Community and the Swiss Confederation on certain aspects of government procurement of 21 June 1999 (SR 0.172.052.68), as well as a Convention establishing the European Free Trade Association of 4 January 1960 (EFTA) (SR 0.632.31).

152 The revision of the GPA in 2012 led to the initiation of a process to revise the Swiss legal framework for public procurement which is ongoing.

153 Federal Act on Public Procurement of 16 December 1994 (SR 172.056.1) (Switzerland).

154 Ordinance on Public Procurement of 11 December 1995 (SR 172.056.11) (Switzerland).

155 *See* SWISS CONFEDERATION, IMPLEMENTATION OF THE GPA IN SWITZERLAND: MEETING THE CHALLENGE OF SECURING EFFECTIVE INVOLVEMENT BY SUB-CENTRAL GOVERNMENT UNITS 7-8 (2010), *available at* https://www.wto.org/english/tratop_e/gproc_e/symp_feb10_e/leduc_4_e.pdf

156 Crown Entities Act 2004; Construction Contracts Act 2002; Contracts (Privity) Act 2002; Contractual Mistakes Act 1977; Contractual Remedies Act 1979; Frustrated Contracts Act 1944; Minors 'Contracts Act 1944; Illegal Contracts Act 1970; Sale of Goods Act 1908; Sale of Goods (UN Convention) Act 1994; Commerce Act 1986; Health and Safety in Employment Act 1992.

157 Government of New Zealand, *Principles of Government Procurement,* http://www.business.govt.nz/procurement/for-agencies/key-guidance-for-agencies/the-new-government-rules-of-sourcing/principles-of-government-procurement (last visited Nov. 12, 2015).

158 Government of New Zealand, Government Rules of Sourcing: Rules for Planning Your Procurement, Approaching the Market and Contracting (3rd ed. 2015), *available at* http://www.business.govt.nz/procurement/pdf- library/agencies/rules-of-sourcing/procurement-government-rules-of-sourcing-v3.pdf.

159 New Zealand Transport Agency, Land Transport Management – Procurement Manual (2014), ***available at*** https://www.nzta.govt.nz/resources/procurement-manual/; New Zealand State Services Commission, Guidance for Managing & Monitoring Major Projects and programmes (2011), ***available at*** http://www.ssc.govt.nz/monitoring- guidance; New Zealand State Services Commission, Cabinet Guidelines for Intellectual Property from

Public Service Research Contracts (2008), ***available at*** https://www.ict.govt.nz/assets/Uploads/Documents/ipr-guidelines-2008.pdf; The New Zealand Treasury, Public Private Partnership Guidance (2015), ***available at*** http://www.treasury.govt.nz/statesector/ppp/guidance; New Zealand Controller and Auditor General, Achieving Public Sector Outcomes with Private Sector Partners (2006), ***available at*** http://www.oag.govt.nz/2006/public-private/achieving-public-sector-outcomes-with-private-sector-partners.

[160] Official Information Act 1982 (New Zealand), *available at* http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html.

[161] Public Governance, Performance and Accountability Act 2013 (Aus), *available at* https://www.comlaw.gov.au/Details/C2013A00123.

[162] AUSTRALIAN DEPARTMENT OF FINANCE, COMMONWEALTH PROCUREMENT RULES (2014), *available at* http://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/

[163] *Id.*

[164] OECD, THE SIZE OF GOVERNMENT PROCUREMENT 29 (2002), *available at* http://www.oecd.org/newsroom/thesizeofgovernmentprocurementmarkets.htm.

[165] FAR, *supra* note 36.

[166] *See, e.g.,* Defense Federal Acquisition Regulation Supplement (DFARS), 48 C.F.R. § 201, et seq, ***available at*** http://www.acq.osd.mil/dpap/dars/dfars/index.htm.

[167] FAR, *supra* note 36 at §101 et seq. Congress authorized the Administrator of Federal Procurement Policy to implement procurement rules through the FAR at 41 U.S.C. § 1121(b). Congress authorized the Federal Acquisition Regulatory Council (FAR Council) to issue and maintain the FAR at 41 U.S.C § 1303.

[168] *E.g.* New Zealand is a party to the seven core international human rights instruments: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of the Child (CRC); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of Persons with Disabilities (CRPD). The United States has ratified a number of international human rights conventions that relate to procurement, but fewer than European countries. These cover civil and political rights, discrimination, forced labour, slavery, worst forms of child labour, and trafficking in persons. *See U.S. Dept. of State, Key international human rights documents: International conventions to which the United States is a party,* http://www.humanrights.gov/references/key-international-human-rights-documents.html (last visited March 10, 2016). For the most part, the United States ratified these conventions with reservations that keep them from being self-executing in the absence of domestic legislation. ***See*** ICAR, "SHADOW" NATIONAL BASELINE ASSESSMENT (NBA) OF CURRENT IMPLEMENTATION OF BUSINESS AND HUMAN RIGHTS FRAMEWORKS 16-17 (March 2015),
available at http://icar.ngo/initiatives/national-action-plans/.

[169] Australia and the United States.

[170] Denmark, Czech Republic, Finland, Ireland, Switzerland, Sweden, Germany, Italy, Poland, South Africa, Australia, United States, and Spain.

[171] Australia and South Africa. Section 39 of the South African Constitution states that, when interpreting the Bill of Rights, courts must promote the values that underlie an open and democratic society based on human dignity, equality and freedom and consider international law, and requires that when interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purpose and objects of the Bill of Rights. S. AFR. CONST., 1996, CH. 2, SECTION 39, *available at* http://www.gov.za/documents/constitution/chapter-2-bill-rights#39.

[172] In the U.K., the rights set out in the ECHR are protected under the Human Rights Act 1998.

[173] In Northern Ireland: Equal Pay Act 1970; Sex Discrimination Order 1976; Disability Discrimination Act 1995; Race Relations Order 1997; Fair Employment and Treatment Order 1999; Northern Ireland Act 1998 Equality

(Disability, etc.) Order 2000; Employment Equality (Sexual Orientation) Regulations 2003; Special Educational Needs and Disability Order 2005 Disability Discrimination Order 2006. Employment Equality (Age) Regulations 2006; The Equality Act (Sexual Orientation) Regulations 2006.

[174] Consolidated Act No. 1349 of 16 december 2008 (prohibiting discrimination in the labour market) and Consolidated Act No. 626 of 29 September 1987 (prohibiting discrimination based on race), *available at* https://www.retsinformation.dk/pdfPrint.aspx?id=122522.

[175] *E.g.* Australia.

[176] The Czech Republic's Constitution includes The Charter of Fundamental Rights and Basic Freedoms. The Constitution is the highest law of the land and applies to everything, and therefore it implicitly applies to government purchasing. Questionnaire Response from Filip Gregor, Head of the Responsible Companies Division, Frank Bold (Oct. 2014), on file with authors.

[177] Switzerland's Constitution contains a comprehensive and directly enforceable bill of rights in Chapter 1 of Title 2, which is largely congruent with the rights guaranteed in the ECHR but also enumerates some basic social rights. According to Article 35(1) of the Constitution, fundamental rights must be implemented throughout the entire legal system. The addressee of these fundamental rights is primarily the State and anyone exercising a 'public function' (see article 35(2) of the Constitution). The term 'public function' has to be understood in a broad sense. According to the Federal Supreme Court, public authorities of all branches of the State are thus bound by the fundamental rights, even if acting on a private law basis. Also, in the field of entrepreneurial activities, public authorities must observe and implement fundamental rights. Human rights thus apply to public procurement; *See* BERNHARD RÜTSCHE, WAS SIND ÖFFENTLICHE AUFGABEN? S. 158 (2013); THIERRY TANQUEREL, MANUEL DE DROIT ADMINISTRATIVE paras. 390 & 1005 ff (Schulthess 2011); PIERRE MOOR & ETIENNE POLTIER, DROIT ADMINISTRATIF, Vol. II 509 (3rd ed. 2011).

[178] In South Africa, Section 8 of the Constitution states that the Bill of Rights 'applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.' The full range of human rights in the South African Constitution therefore apply to public authorities in the context of public purchasing. S. AFR. CONST., 1996, CH. 2, SECTION 8, *available at* http://www.gov.za/documents/constitution/chapter-2-bill-rights#8.

[179] *See, e.g.,* Case C-236/09 Test-Achats 2011 E.C.R. I-773.

[180] Opinion 2/13 of the European Court of Justice (ECJ) of December 2014, *available at* http://curia.europa.eu/juris/document/document.jsf?docid=160882&doclang=EN. In this opinion, the ECJ found that the negotiated accession agreement of the EU to the ECHR was not compatible with Article 6 (2) TEU.

[181] DIHR, *Dansk Lovgivning,* http://menneskeret.dk/om-os/menneskerettigheder/menneskerettigheder-danmark/dansk- lovgivning (last visited March 11, 2015).

[182] The HRA prohibits discrimination in a number of areas of public life. Discrimination, under the HRA, occurs when a person is treated less favourably than another person in the same or similar circumstances. The Act lists the areas and grounds on the basis of which discrimination is prohibited and sets outs some exceptions. The Act also prohibits sexual and racial harassment and the incitement of racial disharmony, as well as the functions, powers and structure of the Human Rights Commission. Human Rights Act of 1993 (N.Z.), *available at* http://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html.

[183] Act on Processing of Personal Data, Law no. 429 of 31 May 2000 (concerning the processing of personal data), *available at* https://www.retsinformation.dk/forms/r0710.aspx?id=828; *See also* New Zealand Privacy Act 1993, *available at* http://www.legislation.govt.nz/act/public/1993/0028/latest/DLM296639.html.

[184] Consolidated Act No. 1072 of 7 September 2010 (work environment); Consolidated Act No. 879 of 26 June 2010 (encironmental protection); Consolidated Act No. 913 of 13 July 2010, (Health Act), *available at* https://www.retsinformation.dk/forms/r0710.aspx?id=133159; New Zealand Health and Safety in Employment Act 1992, *available at* http://legislation.govt.nz/act/public/1992/0096/latest/DLM278829.html.

[185] New Zealand Equal Pay Act 1972, *available at* http://www.legislation.govt.nz/act/public/1972/0118/latest/DLM407770.html. This Act provides for equal pay for men and women performing the same job.

[186] The New Zealand Employment Relations Act 2000, *available at* http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html. This Act promotes good employment relationships, "good Faith" bar-

gaining to promote good employment relationships, and provides for recognition of trade unions and freedom of association.

[187] The Danish Criminal Code: Consolidated Act No. 1007 of 24 October 2012, (penal code).

[188] CONSTITUCIÓN ESPAÑOLA, C.E., B.O.E. n. 311, Dec. 29, 1978 (Spain), 1978, *available at* http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_ 0.pdf.

[189] Human Rights Act 1998, §6, *available at* http://www.legislation.gov.uk/ukpga/1998/42/section/6.

[190] This point was litigated in relation to private provision of elder care, leading to enactment of legislation specifically extending the scope of the Human Rights Act 1998, §6 to this scenario. *See* Part D of this report for more information.

[191] Questionnaire Response from Magne Paulsrud, Senior Advisor: Public Administration, Ethical Trading Initiative – Norway (Oct. 2015), on file with authors.

[192] 1 kap. 9 a§ LOU.

[193] Federal Act of 13 March 1964 on Employment in Trade and Industry (SR 822.11); Federal Act of 20 March 1981 on Accident Insurance (SR 832.20).

[194] As stated and guaranteed in the Federal Act 24 March 1995 on Gender Equality (SR 151.1).

[195] Ordinance on Public Procurement of 11 December 1995 (SR 172.056.11)(Switzerland).

[196] *Id.* at Article 7(1).

[197] Ordinance on Public Procurement of 11 December 1995 Annex 2a (SR 172.056.11) lists the following ILO Core Conventions in annex 2a: International Labour Organisation, Convention No. 29 of 28 June 1930 on forced or compulsory labour (SR 0.822.713.9); International Labour Organisation, Convention No. 87 of 9 July 1948 on the freedom of association and protection of the right to organise (SR 0.822.719.7); International Labour Organisation, Convention No. 98 of 1 July 1949 on the application of the principles of the right to organise and the right to collective bargaining (SR 0.822.719.9); International Labour Organisation, Convention No. 100 of 29 June 1951 on equal remuneration between men and women for equal work (SR 0.822.720.0); International Labour Organisation, Convention No. 105 of 25 June 1957 on the abolition of forced labour (SR 0.822.713.9); International Labour Organisation, Convention No. 111 of 25 June 1958 on discrimination in employment and occupation (SR 0.822.721.1); International Labour Organisation, Convention No. 138 of 26 June 1973 on the minimum age for employment (SR 0.822.723.8); International Labour Organisation, Convention No. 182 of 17 June 1999 on the prohibition of and immediate measures to abolish the worst forms of child labour (SR 0.822.728.2).

[198] MARC STEINER, DIE BERÜCKSICHTIGUNG SOZIALER ASPEKTE IM RAHMEN DER ÖFFENTLICHEN BESCHAFFUNG, VERGABERECHTLICHES ARBEITSPAPIER 21, 54-55, 59-60 (2015), *available at* http://www.igoeb.ch/pdf/Sozialpapier_final_21_05_2015.pdf

[199] FEDERAL PROCUREMENT CONFERENCE, RECOMMENDATIONS FOR THE FEDERAL PROCUREMENT OFFICES 17 (2014), *available at* https://www.bkb.admin.ch/bkb/de/home/oeffentliches-beschaffungswesen/nachhaltige- beschaffung.html.

[200] MARC STEINER, NACHHALTIGE ÖFFENTLICHE BESCHAFFUNG – EIN BLICK AUF DAS VERGABERECHT DES BUNDES UND DIE PERSPEKTIVEN 170 (2014), *available at* http://www.nachhaltige- beschaffung.ch/pdf/Steiner_aktuelles_Vergaberecht_2014_nachhaltig.pdf.

[201] *See* WTO, Agreement on Government Procurement 2012 revised, *supra* note 47 at Arts. III & XVII; *see also* CHRISTOPHER MCCRUDDEN, BUYING SOCIAL JUSTICE, *supra* note 56 at 121-147.

[202] ERLÄUTERNDER BERICHT DES EFD/BBL ZUR REVISION DER VERORDNUNG ÜBER DAS ÖFFENTLICHE BESCHAFFUNGSWESEN (VE-VÖB) 5 (April 1 2015), *available at* https://www.admin.ch/ch/d/gg/pc/documents/2653/05_Erl.-Bericht-VoeB-d.pdf [hereinafter: Explanatory Report on the draft version OPP].

[203] *Id.*

[204] *Id.*

[205] MARC STEINER, DIE BERÜCKSICHTIGUNG SOZIALER ASPEKTE *supra* note 198 at 49-51.

[206] Ley de Contratos del Sector Publico (2007, consolidated versión 2011), Preamble.

[207] *Id.* at Art. 118.

[208] *Id.*

[209] Borrador de Anteproyecto de Ley de Contratos del Sector Publico, 17 April 2015, Preamble, Section II.

[210] *Id.*

[211] *Id.* at Preamble, Section V.

[212] *Id.* at Art. 145.10.

[213] *Id.* at Art. 200.

[214] *Id.* at Art. 199. This is an important distinction, as it refers specifically to the international social and labour obligations of the State, which includes a much wider range of international instruments than if it exclusively referred to the obligations of companies. This is not replicated in other dispositions. For example, when article 144 refers to environmental, social, or labour obligations with regards to abnormally low tenders, it refers exclusively to the obligations of the tenderer and not of the state.

[215] These include the autonomous communities of Cataluña, Andalucía, Islas Canrias, Pais Vasco, and Navarra.

[216] Opi Outhwaite & Olga Martin-Ortega, *Human Rights in Global Supply Chains: Corporate Social Responsibility and Public Procurement in the European Union*, 1 HUM. RTS. & INT'L LEGAL DISCOURSE (forthcoming 2016); INSTITUTE FOR HUMAN RIGHTS AND BUSINESS, PROTECTING RIGHTS BY PURCHASING RIGHT: THE HUMAN RIGHTS PROVISIONS, OPPORTUNITIES AND LIMITATIONS UNDER THE 2014 EU PUBLIC PROCUREMENT DIRECTIVES 5 (Oct. 2015) *available* at http://www.ihrb.org/pdf/occasional-papers/Occasional-Paper-3-Protecting-Rights-by-Purchasing-Right.pdf; *See also* Olga Martin-Ortega, Opi Outhwaite, & William Rook, *Buying power and working conditions in the electronics supply chain: legal options for socially responsible public procurement*, 19 INT'L J. OF HUM. RTS. 341 (2015).

[217] The International Agreements mentioned in the relevant Annexes are: ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise; ILO Convention 98 on the Right to Organise and Collective Bargaining; ILO Convention 29 on Forced Labour; ILO Convention 105 on the Abolition of Forced Labour; ILO Convention 138 on Minimum Age; ILO Convention 111 on Discrimination (Employment and Occupation); ILO Convention 100 on Equal Remuneration; ILO Convention 182 on Worst Forms of Child Labour.

[218] EU Public Sector Directive, *supra* note 11, at Article 57(1)(f).

[219] *Id.* at Articles 57(4)(a) 18(2)

[220] *See* Case C-225/98 *Commission v the French Republic* (Nord-Pas-de-Calais Region) [2000] ECR –I 7445, Case C-368/10 *Commission* v *Netherlands* ECLI:EU:C:2012:284.

[221] *See* Case 31/87 *Gebroeders Beentjes BV v The Netherlands* [1988] ECR 4635.

[222] The House report that accompanied the Walsh-Healey Act stated specifically that "[t]he object of the bill is to require persons having contracts with the Government to conform to certain labor conditions in the performance of the contracts and thus to eliminate the practice under which the Government is compelled to deal with sweatshops." Walsh-Healy Act, 41 U.S.C. § 65; Pub. L. No. 74-846; 49 Stat. 2036 (1936); H.R. Rep. No. 74-2946, at 4 (1936). The Supreme Court has recognized that the Act's "purpose is to use the leverage of the Government's immense purchasing power to raise labor standards." Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 507 (1943). Additionally, the Court has recognized that the Act's "purpose was to impose obligations upon those favored with Government business and to obviate the possibility that any part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment." Perkins v. Lukens Steel Co., 310 U.S. 113, 128 (1940).

[223] *See* Walsh-Healey Public Contract Act, 41 U.S.C. § 6502. The section states that it covers contracts "for the manufacture or furnishing of materials, supplies, articles, or equipment," which is to be distinguished from contracts for services or construction, which are not covered by the Act. *Id.* In fact it is only because the Secretary of Labor has exempted imported goods or services (under authority delegated by Congress) that the Walsh-Healy protections do not extend to all government supply chains. However, the language of the Act its statutory history and the Department of Labor's longstanding interpretation of the Act all indicate that the Act would apply to any part of a contract performed abroad, if not for the exemption: *See* TURNING A BLIND EYE?, *Supra* note 31.

[224] Walsh-Healey Public Contract Act, 41 U.S.C. 6501-6511.

[225] 41 C.F.R. § 50-201.603(b). While the CFR provides Dec. 8, 1960 as the date on which the current regulation was finalized and posted in the Federal Register that is merely the date of the most recent revision of the exemption. The exemption has existed, in some form, since the very first regulations ever promulgated under the Act. *See* 1 Fed. Reg. 1405.

[226] *Id.*

[227] FAR, *supra* note 36 at Subpart 22.15, (Prohibition of Acquisition of Products Produced by Forced or Indentured Labor), which implements the Child Labor Exec. Order No. 13,126, 64 Fed. Reg. 32383 (June 12, 1999) ("Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor"), and laws that prohibit manufacture or import of goods made with forced or indentured child labor. These include 19 U.S.C. 1307, 29 U.S.C. 201 , et seq ., and 41 U.S.C. chapter 65 .

[228] 22 U.S.C.A. § 7112, Additional activities to monitor and combat forced labor and child labor.

[229] FAR, *supra* note 36 at 22.1503 (Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor).

[230] FAR, *supra* note 36 at 22.1503

[231] FAR, *supra* note 36 at Subpart 22.17 (Combating Trafficking in Persons). The FAR provisions on trafficking derive from the Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. 7102, and Exec. Order No. 13,627, 77 Fed. Reg. 60029 (Oct. 2, 2012) ("Strengthening Protections Against Trafficking in Persons in Federal Contracts"). Federal Acquisition Regulation; Ending Trafficking in Persons, Final Rule, 80 Fed. Reg. 4967; 48 CFR Parts 1, 2, 9, 12, 22, 42, and 52 (January 29, 2015); Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. 7102.

[232] FAR, *supra* note 36 at 22.1701 (Applicability).

[233] FAR, *supra* note 36 at 22.1701 (Applicability).

[234] FAR, *supra* note 36 at 22.1703 (Policy).

[235] Media Note, U.S. Dep't of State, *State Department to Incorporate International Code of Conduct into Worldwide Protective Services Contract* (Aug. 16, 2013), http://www.state.gov/r/pa/prs/ps/2013/08/213212.htm.

[236] Exec. Order No. 11,246, 30 Fed. Reg. 12319 (Sept. 28, 1965) ("Equal Employment Opportunity").

[237] Exec. Order No. 13,672, 79 Fed. Reg. 42971 (July 23, 2014) ("Further Amendments to…Executive Order 11246").

[238] FAR, *supra* note 36 at 22.403-1 (Construction Wage Rate Requirements statute); Davis-Bacon Act, 40 U.S.C. § 3141 (2012); McNamara-O'Hara Service Contract Act, 41 U.S.C. §§ 6701-6707 (2012).

[239] FAR, *supra* note 36 at Subpart 22.19 (Establishing a Minimum Wage for Contractors).

[240] FAR, *supra* note 36 at 14.408-2 (responsible bidder – reasonableness of price); FAR, *supra* note 36 at 9.104-1 (General Standards). Other standards include: the contractor has adequate financial resources to perform, the ability to comply with a schedule, a satisfactory performance record, the necessary equipment and facilities, the necessary organization, experience, accounting and operational controls, and technical skills or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems,

quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors).

[241] FAR, *supra* note 36 at Subpart 3.10 (Responsible Bidder - Contractor code of business ethics and conduct).

[242] Proposed FAR Subpart 22.20 (Fair Pay and Safe Workplaces); Proposed Rule, Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA), Federal Acquisition Regulation, Fair Pay and Safe Workplaces, 48 CFR Parts 1, 4, 9, 17, 22, and 52 [FAR Case 2014–025;

Docket No. 2014– 0025; Sequence No. 1], RIN 9000–AM81, 80 Fed. Reg. 30548 (May 28, 2015). This proposed rule implements Executive Order—Fair Pay and Safe Workplaces (July 31, 2014), ***available at*** http://www.whitehouse.gov/the-press-office/2014/07/31/executive-order-fair-pay-and-safe-workplaces.

[243] Proposed FAR 22.2004-2 (Pre-award evaluation of an offeror's labor violations).

[244] *Id.*

[245] Proposed FAR 22.2004-1 (Contract requirements).

[246] TURNING A BLIND EYE?, *Supra* note 31.

[247] AUSTRALIAN DEPARTMENT OF FINANCE, COMMONWEALTH PROCUREMENT RULES, *supra* note 162.

[248] *E.g.,* Public Works and Procurement Regulation 2014 (NSW), *available at* http://www5.austlii.edu.au/au/legis/nsw/consol_reg/pwapr2014403/.

[249] "Relevant employer" is defined as a non-public sector employer (higher education institution, natural person, or a body or association regardless of whether or not it is incorporated, that has a total of 100 or more employees in Australia across all subsidiaries in the organisation's structure. WORKPLACE GENDER EQUALITY AGENCY, WORKPLACE GENDER EQUALITY PROCUREMENT PRINCIPLES 17 (2013), *available at* https://www.wgea.gov.au/about-wgea/workplace-gender-equality-procurement-principles.

[250] WORKPLACE GENDER EQUALITY AGENCY, WORKPLACE GENDER EQUALITY PROCUREMENT PRINCIPLES (2013), *available at* https://www.wgea.gov.au/about-wgea/workplace-gender-equality-procurement-principles.

[251] Questionnaire Response, Janet Anderson-Bidois, New Zealand Human Rights Commission, (Oct. 2015), on file with authors.

[252] NORWEGIAN AGENCY FOR PUB. MGMT. & E-GOVERNMENT (DIFI), SRPP GUIDE: ENSURING SOCIALLY RESPONSIBLE PROCUREMENT (2012); Norwegian Agency for Public Management and eGovernment (DIFI), *List of High Risk Goods*, http://www.anskaffelser.no/sosialt-ansvar/information-english/high-risk-products (last visited March 11, 2016).

[253] *E.g.*, EUROPEAN COMMISSION, BUYING SOCIAL: A GUIDE TO TAKING ACCOUNT OF SOCIAL CONSIDERATIONS IN PUBLIC PROCUREMENT (2010), *available at* http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=978.

[254] *See further*, Opi Outhwaite & Olga Martin-Ortega, Human Rights in Global Supply Chains: Corporate Social Responsibility and Public Procurement in the European Union, 1 HUM. RTS. & INT'L LEGAL DISCOURSE (forthcoming 2016).

[255] NORTHERN IRELAND HUMAN RIGHTS COMMISSION, *supra* note 58, at 31.

[256] FIRST MINISTER AND DEPUTY MINISTER NORTHERN IRELAND, GET IN ON THE ACT, *available at* http://www.ofmdfmni.gov.uk/human_rights_reportnew1-3.pdf.

[257] DEPARTMENT OF FINANCE AND PERSONNEL, POLICY HANDBOOK FOR PUBLIC PROCUREMENT IN NORTHERN IRELAND (2011), *available at* https://www.dfpni.gov.uk/publications/ni-public-procurement-policy-handbook; Department of Finance and Personnel, *Procurement Guidance Notes*, https://www.dfpni.gov.uk/articles/procurement- guidance-notes-pgns (last visited March 11, 2016).

[258] DEPARTMENT OF FINANCE AND PERSONNEL, BUILDSAFE-NI ACTION PLAN (2011), *available at*

https://www.dfpni.gov.uk/articles/buildsafe-ni-action-plan.

[259] *See* THE SCOTTISH GOVERNMENT, PROCUREMENT OF CARE AND SUPPORT SERVICES (2010), *available at* http://www.gov.scot/Resource/Doc/324602/0104497.pdf; ***See also*** The Scottish Government, Statutory Guidance on the selection of Tenderers and Award of Contracts – Addressing Fair Work Practices, including the Living Wage, in Procurement (Oct. 2015), ***available at*** http://www.gov.scot/Resource/0048/00486741.pdf (making clear that adherence to fair work practices means respecting not just the rights set out in the ECHR, but the rights included in ICESCR and other international documents).

[260] THE SCOTTISH GOVERNMENT, STATUTORY GUIDANCE ON THE SELECTION OF TENDERERS AND AWARD OF CONTRACTS – ADDRESSING FAIR WORK PRACTICES, INCLUDING THE LIVING WAGE, IN PROCUREMENT (Oct. 2015), *available at* http://www.gov.scot/Resource/0048/00486741.pdf.

[261] Matt Payton, *Israel Boycott Ban: The Local Authorities that Imposed Unofficial Sanctions Against 'unethical Companies,'* INDEPENDENT (Feb. 15, 2016), http://www.independent.co.uk/news/uk/politics/israel-boycott-ban-these-local- authorities-imposed-unofficial-sanctions-against-unethical-companies-a6875076.html

[262] *Id.*; *C.f.* the U.K. Crown Commercial Service subsequently released a procurement policy note on boycotts in public procurement stating that "boycotts in public procurement are inappropriate, outside where formal legal sanctions, embargoes and restrictions have been put in place by the U.K. Government.". Crown Commercial Service, *Procurement Policy Note: Ensuring Compliance with Wider International Obligations when Letting Public Contracts,* Information Note 01/16, (Feb. 17, 2016), *available at* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500811/PPN_on_wider_internat ional_obligations.pdf.

[263] *See* The Scottish Government, *Sustainable Procurement Duty Tools,* http://www.gov.scot/Topics/Government/Procurement/policy/corporate- responsibility/Sustainability/ScottishProcess/SustainableProcurementTools (last visited Mar. 21, 2016).

[264] *See* Swiss Confederation, *Unbefangenheitserklarung,* https://www.bkb.admin.ch/bkb/de/home/hilfsmittel/unbefangenheitserklaerung.html (last visited Nov. 13, 2015); Swiss Confederation, ***Richtlinie,*** https://www.bkb.admin.ch/bkb/de/home/hilfsmittel/richtlinie.html (last visited Nov. 12, 2015); for specific procurement sectors *see* IGöB, *Beschaffungsbereiche,* http://www.igoeb.ch/beschaffungsbereiche/index.htm (last visited Nov. 12, 2015).

[265] See Swiss Confederation, Unbefangenheitserklarung, https://www.bkb.admin.ch/bkb/de/home/hilfsmittel/unbefangenheitserklaerung.html (last visited Nov. 13, 2015); Swiss Confederation, Richtlinie, https://www.bkb.admin.ch/bkb/de/home/hilfsmittel/richtlinie.html (last visited Nov. 12, 2015); for specific procurement sectors see IGöB, Beschaffungsbereiche, http://www.igoeb.ch/beschaffungsbereiche/index.htm (last visited Nov. 12, 2015).

[266] The recommendations are linked to the "Sustainable Development Strategy" of the Federal Government from 2012- 2015, adopted in order to implement the constitutional task of making sustainable development a long-term objective of the Swiss national policy (see Article 2(2) of the Constitution). The Federal Government's idea behind this strategy is, *inter alia*, to set an example in its own consumer behaviour by respecting social, economic, health, and environmental factors when meeting its needs for goods, services, and construction works. *See* FEDERAL PROCUREMENT CONFERENCE, *supra* note 199; Explanatory Report on the draft version OPP, *supra note* 202, at 61.

[267] FEDERAL PROCUREMENT CONFERENCE, *supra* note 199, at 9.

[268] The National Agency for Public Procurement, *Sustainable Public Procurement,* http://www.upphandlingsmyndigheten.se/ (last visited Nov. 13, 2015).

[269] Questionnaire Response from Theo Jaekel, Researcher, Swedwatch, & Lisa Sennström, Swedish National Agency for Public Procurement (Oct. 2015), on file with authors.

[270] The Danish Council for CSR is an official multi-stakeholder body with an advisory role to government which comprises representatives of business associations, labour unions, and civil society. Danish Council for Corporate Responsibility, http://csrcouncil.dk/ (last visited March 11, 2016).

[271] THE COUNCIL FOR SOCIAL RESPONSIBILITY, RÅDETS ANBEFALINGER TIL IMPLEMENTERING AF STATERNES ANSVAR FOR AT BESKYTTE MOD VIRKSOMHEDERS NEGATIVE PÅVIRKNING PÅ MENNESKERETTIGHEDERNE (UN Guiding Principles - Protect) (Jan. 2012), *available at* http://raadetforsamfundsansvar.dk/

file/311102/raadets_anbefalinger_uk_18012012.pdf.pdf.

[272] The Danish Competition and Consumer Authority, Muligheder for at fremme bærdygtighed ved offentlige indkøb – ny vejledning om sociale hensyn og miljøhensyn ved offentlige indkøb, http://www.kfst.dk/Indhold%20KFST/OK%20nyheder/2014/20140402%20Vejledning%20om%20sociale%20og%20miljoehensyn (last visited Nov. 15, 2015).

[273] Forum For Bæredygtige Indkøb, Værktøjer, http://www.ansvarligeindkob.dk/viden-vaerktoejer/vaerktoejer/ (last visited Nov. 13, 2015).

[274] Danish Council for Corporate Responsibility, *Guidelines*, http://csrcouncil.dk/guidelines (last visited March 7, 2016).

[275] Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Piano d'azione per la sostenibilità ambientale dei consumi della pubblica amministrazione (April 2008), ***available at*** http://www.minambiente.it/sites/default/files/archivio/allegati/GPP/PAN_GPP.pdf.

[276] *E.g.* the International Labour Organizaion (ILO) Occupational Safety and Health Convention, 1981 (No. 155); Minimum Wage Fixing Convention, 1970 (No. 131); Social Security (Minimum Standards) Convention, 1952 (No. 102); Hours of Work (Industry) Convention, 1919 (No. 1).

[277] Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Guida per l'integrazione degli aspetti sociali negli appalti pubblici (June 2012), *available at* http://www.lavoro.gov.it/ConsiglieraNazionale/Documents/Evidenza/2012/20120801decreto6giugno2012guidaint egrazioneaspettisocialinegliappaltipubblici.pdf.

[278] First Step for Social Criteria in Procurement (Dec. 2009), *available at* http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/swedish-presidency/files/nat_laws_and_policy_init/nl_social_criteria_in_public_procurement_-_summary_en.pdf.

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[324] PAULINE GÖTHBERG, COUNTY COUNCIL AND REGIONS, PRESENTATION: SOCIAL PUBLIC PROCUREMENT IN SWEDEN (2013), *available at* https://noharm-europe.org/documents/procurement-presentation-pauline-gothberg- swedish-county-councils-and-regions; Questionnaire Response from Theo Jaekel, Researcher, Swedwatch, & Lisa Sennström, Swedish National Agency for Public Procurement (Oct. 2015), on file with authors.

[325] *Id.*

[326] The county councils' code of conduct refers to the UN Universal Declaration of Human Rights, the eight ILO core conventions, the UN Convention on the Rights of the Child, national legislation regarding labor rights and environmental protection, as well as the UN Convention against Corruption. Questionnaire Response from Theo Jaekel, Researcher, Swedwatch, & Lisa Sennström, Swedish National Agency for Public Procurement (Oct. 2015), on file with authors.

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[344] *Id.*

[345] 42 U.S.C. § 1981 et seq. (2012); Agencies must acquire "commercial items" and "commercially available off-the-shelf items" (COTS) when available. FAR, *supra* note 36 at 12.1 (Policy). COTS is a subset of the definition of "commercial item." FAR, *supra* note 36 at 2.101 (Definitions, "Commercial item," and "Commercially available off- the-shelf-item (COTS)).

[346] For types of contracts, *see* FAR, *supra* note 36 at 16.101 et seq.; Lowest price technically acceptable source selection process, FAR, *supra* note 36 at 15.101-2; Evaluation factors and significant subfactors, FAR, *supra* note 36

at 15.304(d) and (e); 10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

[347] Proposed FAR Subpart 22.20—Fair Pay and Safe Workplaces; Proposed Rule, Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA), Federal Acquisition Regulation; Fair Pay and Safe Workplaces, 48 CFR Parts 1, 4, 9, 17, 22, and 52 [FAR Case 2014–025;

Docket No. 2014– 0025; Sequence No. 1], RIN 9000–AM81, 80 Fed. Reg. 30548 (May 28, 2015). This proposed rule implements Executive Order—Fair Pay and Safe Workplaces (July 31, 2014), available at http://www.whitehouse.gov/the-press-office/2014/07/31/executive-order-fair-pay-and-safe-workplaces.

[348] Preferential Procurement Policy Framework Act No. 5 of 2000 (South Africa), *available at* http://ppp.worldbank.org/public-private-partnership/library/preferential-procurement-policy-framework-act-5-no- 5-2000; Preferential Procurement Regulations, 2001, Pertaining to the Preferential Procurement Policy Framework Act No. 5 of 2000, *available at* http://ppp.worldbank.org/public-private-partnership/library/preferential- procurement-policy-framework-act-5-no-5-2000.

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[351] PAULINE GÖTHBERG, COUNTY COUNCIL AND REGIONS, PRESENTATION: SOCIAL PUBLIC PROCUREMENT IN SWEDEN (2013), *available at* https://noharm-europe.org/documents/procurement-presentation-pauline-gothberg- swedish-county-councils-and-regions; THEO JAEKEL & ARTHY SANTHAKUMAR, SWEDWATCH ET. AL., *supra* note 60 at 21.

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[353] Questionnaire Response from Theo Jaekel, Researcher, Swedwatch, & Lisa Sennström, Swedish National Agency for Public Procurement (Oct. 2015), on file with authors.

[354] SWISS FEDERAL DEPARTMENT OF FINANCE & THE SWISS FEDERAL PROCUREMENT COMMISSION, SUSTAINABLE PROCUREMENT: RECOMMENDATIONS FOR THE FEDERAL PROCUREMENT OFFICES 16 (2014), *available at*

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[356] Circolare 23 giugno 2010, n. 4610.

[357] Law 2 novembre 2012, n. 190

[358] U.S. Department of Labor, International Labor Affairs Bureau, *List of goods produced with child labor*, http://www.dol.gov/ilab/reports/child-labor/list-of-goods.

[359] FAR, *supra* note 36 at 22.1503 (Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor).

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[361] Verité et. al, *Responsible Sourcing Tool,* http://responsiblesourcingtool.org/ (last visited May 16, 2016).

[362] U.S. GENERAL SERVICES ADMINISTRATION & U.S. DEPARTMENT OF STATE, VERIFICATION GUIDE FOR FEDERAL PURCHASERS OF SUSTAINABLE PRODUCTS, II.G SOCIAL SUSTAINABILITY BEST PRACTICES (November 2015); *SFTool*,

https://sftool.gov/plan/545/social-sustainability (last visited March 11, 2016).

[363] *SFTool*, https://sftool.gov/plan/545/social-sustainability (last visited March 11, 2016).

[364] Sweatfree Purchasing Consortium, *About,* http://buysweatfree.org/about (last visited March 3, 2016).

[365] SWEATFREE PURCHASING CONSORTIUM, MODEL CODE OF CONDUCT, *available at* http://buysweatfree.org/model_policy.

[366] AUSTRALIAN DEPARTMENT OF FINANCE, COMMONWEALTH PROCUREMENT RULES, *supra* note 62.

[367] AUSTRALIAN DEPARTMENT OF FINANCE, COMMONWEALTH PROCUREMENT RULES, *supra* note 62.

[368] AUSTRALIAN DEPARTMENT OF FINANCE, COMMONWEALTH PROCUREMENT RULES, *supra* note 62.

[369] Questionnaire Response from Ron Watermeyer, Infrastructure Options, (Oct. 2015) on file with authors.

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[372] For example, during the process of developing the Danish Procurement Act to implement the new Procurement Directive of the EU, comments were made by the 92 Group (a group of Danish NGOs for sustainability) emphasising the need to consider human rights issues and concerns along the entire supply chain. The concern raised was that the current regulation and the proposed new Act do not properly address this issue. AMNESTY INTERNATIONAL ET AL., HØRINGSSVAR: VEDRØRENDE DET OFFENTLIGES, *available at* http://www.ft.dk/samling/20141/lovforslag/l164/bilag/2/1510921/index.htm.

[373] SKI, BILAG H CSR (2013), *available at* http://csr-indkob.dk/wp-content/uploads/2013/06/Bilag-H-CSR.pdf.

[374] *Id.*

[375] PIANOo, *Getting Started with Social Conditions in Global Supply Chains,* https://www.pianoo.nl/about- pianoo/sustainable-public-procurement-spp/spp-themes/social-conditions-in-global-supply-chains/getting-started- with-social (last visited Feb. 18, 2016)

[376] PIANOo, *Getting Started with Social Conditions in Global Supply Chains,* https://www.pianoo.nl/about- pianoo/sustainable-public-procurement-spp/spp-themes/social-conditions-in-global-supply-chains/getting-started- with-social (last visited Feb. 18, 2016)

[377] PIANOo, *Getting Started with Social Conditions in Global Supply Chains,* https://www.pianoo.nl/about- pianoo/sustainable-public-procurement-spp/spp-themes/social-conditions-in-global-supply-chains/getting-started- with-social (last visited Nov. 13, 2015).

[378] MARC STEINER, *supra* note 198, at 48; FEDERAL PROCUREMENT CONFERENCE, *supra* note 199, at 10.

[379] For more details regarding these stages in the awarding procedure, *see* FEDERAL PROCUREMENT CONFERENCE, *supra* note 199, at 10-14.

[380] *Id.*

[381] For an overview *see* FEDERAL PROCUREMENT CONFERENCE, *supra* note 199, at 12-13.

[382] THEO JAEKEL & ARTHY SANTHAKUMAR, SWEDWATCH ET. AL., *supra* note 60, at 17.

[383] *Id.*

[384] *Id.*; Kristian Hemström, Stockholm County Council, *Webinar on Sustainable IT Procurement, available at* http://tcodevelopment.com/news/watch-webinar-on-demand-best-practice-sustainable-it-procurement/.

[385] THEO JAEKEL & ARTHY SANTHAKUMAR, SWEDWATCH ET. AL., *supra* note 60, at 17.

[386] FAR, *supra* note 36 at 22.1705 (Solicitation provision and contract clause).

[387] FAR, *supra* note 36 at 52.222-50(b), (Combating Trafficking in Persons).

[388] FAR, *supra* note 36 at 52.222-50(c), (d), (e), (f), (g), (Combating Trafficking in Persons).

[389] FAR, *supra* note 36 at 52.222-50(h), (Combating Trafficking in Persons).

[390] FAR, *supra* note 36 at 52.222-50(h), (Combating Trafficking in Persons).

[391] FAR, *supra* note 36 at 22.403-1 (Construction Wage Rate Requirements statute); Davis-Bacon Act, 40 U.S.C. § 3141 (2012); McNamara-O'Hara Service Contract Act, 41 U.S.C. §§ 6701-6707 (2012).

[392] In Italy, the awardee has a specific obligation to monitor the sub-contractor and its compliance with labour law for preventing speculative sub-contracting: lowering the unitary price settled within the award by more than 20% in the subcontract is prohibited. Italian Public Contract Code, Art. 118, c. 4.

[393] EU Public Sector Directive, *supra* note 11, at Article 18(2).

[394] Questionnaire Response from Theo Jaekel, Researcher, Swedwatch, & Lisa Sennström, Swedish National Agency for Public Procurement (Oct. 2015), on file with authors.

[395] *Id.*

[396] NIKLAS BRUUN, UPPHANDLING OCH VILLKOR ENLIGT KOLLEKTIVAAVTAL 153 (2015), *available at* http://www.regeringen.se/contentassets/44459a92cbc34b9fa9ffc8ecbe049f3f/upphandling-och-villkor-enligt- kollektivavtal-sou-201578.

[397] *Id.*

[398] FEDERAL PROCUREMENT CONFERENCE, *supra* note 199, at 11.

[399] *Id.*

[400] *Id.*

[401] FAR, *supra* note 36 at 52.244-2, (Subcontracts).

[402] FAR, *supra* note 36 at 52.244-2, (Subcontracts).

[403] FAR, *supra* note 36 at 52.215-6, (Place of performance).

[404] U.S. GENERAL SERVICES ADMINISTRATION AND U.S. DEPARTMENT OF ENERGY, *supra* note 362.

[405] FAR, *supra* note 36 at 52.203-13, (Contractor code of conduct).

[406] Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, § 2(b)(1)(D), 120 Stat. 1186, 1187 (2006); Reporting Executive Compensation and First-Tier Subcontract Awards, 77 Fed. Reg. at 44052-53. There is a long history of making information about the location where the work under federal contracts is performed available to the government. Congress has passed a number of laws recognizing the right of federal contracting agencies to inspect the facilities and records of contractors; exercising this right would not be possible without the location of the facilities. These statutes include: 10 U.S.C. § 2313 ("Examination

of records of contractor," including authorization "to inspect the plant"); 41 U.S.C. § 4706(b)(1) ("Examination of facilities and records of contractor"); 41 U.S.C. § 3905 ("Cost contracts," recognizing a "right to inspect the plans and to audit the books and records of a prime contractor or subcontractor engaged in the performance of a cost or cost-plus-a-fixed-fee contract").

[407] *USAspending.gov*, https://www.usaspending.gov/Pages/Default.aspx (last visited Nov. 13, 2015).

[408] FAR Case 2006-029, Federal Funding Accountability and Transparency Act (FFATA) - Reporting Requirement of Subcontractor Award Data, 72 Fed. Reg. 51306, 51309 (Sept. 6, 2007); Given that this fails to include subcontractors and vendors that are part of commercial supply chains, and considering that prime contractors often delegate work to subcontractors, it can be said that this undermines Congress's intent to require supply chain transparency. Note that Congress excludes de minimus transactions from the transparency mandate. Excluded are individual transactions of less than $25,000 (Transparency Act, § 2(a)(2)(B)) and procurement awards to business-

es with annual gross revenues below $300,000 (Transparency Act, §§ 2(a)(1)(A)(viii) and (1)(B)).

[409] Sweatfree Purchasing Consortium, *Uniform Management Program Request for Proposals*, http://buysweatfree.org/uniform_management_program (last visited Nov. 13, 2015).

[410] City of Los Angeles, *supply chain studies, monitoring reports and compliance reports of supply services by the Worker Rights Consortium*, http://gsd.lacity.org/sms/WRC/WRC_reports.htm (last visited Nov. 13, 2015).

[411] City of San Francisco, Office of Labor Standards Enforcement, *Sweatfree Contracting Ordinance*, http://www.sfgsa.org/index.aspx?page=434 (last visited Nov. 13 2015).

[412] Sweatfree Purchasing Consortium, *Welcome to Sweatfree Linkup!,* http://buysweatfree.org/linkup (last visited Nov. 13, 2015).

[413] Questionnaire Response from Ron Watermeyer, Infrastructure Options, (Oct. 2015) on file with authors.

[414] Questionnaire Response from Theo Jaekel, Researcher, Swedwatch, & Lisa Sennström, Swedish National Agency for Public Procurement (Oct. 2015), on file with authors.

[415] *Id.*

[416] *Id.*; SKL Kommentus, *System för uppföljandekontroll av etiska och sociala krav* https://www.sklkommentus.se/inkopscentral/vart-arbetssatt/System-for-uppfoljandekontroll-av-etiska-och-sociala- krav/ (last visited March 8, 2016).

[417] Kristian Hemström, Stockholm County Council, *Webinar on Sustainable IT Procurement, available at* http://tcodevelopment.com/news/watch-webinar-on-demand-best-practice-sustainable-it-procurement/

[418] *Id.*

[419] Federal Act on Public Procurement of 16 December 1994 (FAPP) Art. 8(2).

[420] Ordinance on Public Procurement of 11 December 1995 Article 6 (SR 172.056.11)(Switzerland; SWISS FEDERAL DEPARTMENT OF FINANCE & THE SWISS FEDERAL PROCUREMENT COMMISSION, SUSTAINABLE PROCUREMENT: RECOMMENDATIONS FOR THE FEDERAL PROCUREMENT OFFICES 10 - 14 (2014), *available at* https://www.bkb.admin.ch/bkb/fr/home/oeffentliches-beschaffungswesen/nachhaltige-beschaffung.html

[421] FEDERAL PROCUREMENT CONFERENCE, *supra* note 199, at 16.

[422] *Id.*

[423] *Id.* at 10.

[424] DEPARTMENT OF FINANCE, VALUE FOR MONEY AND POLICY REVIEW OF THE CONSTRUCTION PROCUREMENT REFORM INITIATIVE (Jan. 2011), *available at* http://constructionprocurement.gov.ie/wp-content/uploads/Value-for- Money-Review-of-Construction-Procurement-Reform-Initiative.pdf.

[425] Questionnaire Response from Jan-Christian Niebank and Christopher Schuller, German Institute for Human Rights (Oct. 2015), on file with authors.

[426] FAR, *supra* note 36 at 22.1704, (Violations and remedies).

[427] USAID, Procurement Executive's Bulletin No. 2012-07, Combating Trafficking in Persons (TIP).

[428] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 212.

[429] Preferential Procurement Policy Framework Act No. 5 of 2000 Art. 2(2) (South Africa), *available at* http://ppp.worldbank.org/public-private-partnership/library/preferential-procurement-policy-framework-act-5-no- 5-2000

[430] *See* International standards published by the International Organisation for Standardisation, ISO 10845 Part 1 & Parts 5 to 8 for comprehensive requirements.

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