



International Learning Lab
on Public Procurement and Human Rights

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Concept Note

Procurement risk and duty to protect

Governments purchase—or “procure”—goods and services like clothing, electronics, food, logistics, and energy from global supply chains. These sectors often source from the lowest-cost countries where common abuses in production processes may include forced labour, illegal child labour, grave health and safety breaches, discrimination, and denial of freedom of association. In addition, governments “contract-out” public services such as health and social care that can directly impact on the dignity and human rights of vulnerable and at-risk people.

Yet governments have a legal obligation to protect human rights, which includes protecting against abuses by private actors. In 2011, the UN Human Rights Council adopted the *Guiding Principles on Business and Human Rights* (UNGPs), which highlight that this obligation applies when governments purchase goods or public services.¹ Also in 2011, the OECD revised its *Guidelines for Multinational Enterprises* to align with the UNGPs, while numerous other international and regional bodies, including the European Union and Council of Europe, have since expressed their support for the UNGPs.²

Government procurement power

Unlike most consumers, governments purchase on such a scale that they can influence suppliers to respect human rights. Among 34 OECD countries, procurement accounts for 17% of GDP. Within specific sectors, the scale of public procurement can literally create and shape a market: after U.S. agencies created a standard for sustainable computers, 41 countries followed, and within a year, 19 manufacturers had registered 532 products meeting the standard.

Need for a learning lab

Governments themselves now acknowledge the need for measures to implement the UNGPs in the context of public procurement: the majority of national action plans (NAPs) on business

¹ Special Representative on Business and Human Rights, *United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Remedy” Framework*, adopted by the Human Rights Council, 17th Sess., Mar. 21, 2011, U.N. Doc. A/HRC/17/L.17/31 (June 16, 2011).

² OECD, *OECD GUIDELINES ON MULTINATIONAL ENTERPRISES* (as revised on May 25, 2011), available at <http://mneguidelines.oecd.org/text/>; *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/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF>; Eur. Consult. Ass., *Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights* (Apr. 16, 2014), available at <https://wcd.coe.int/ViewDoc.jsp?id=2185745&Site=CM>.

and human rights published to date have highlighted public procurement as an area requiring attention. In 2015, the G7 Leaders' Declaration gave emphatic support for measures to improve supply chain responsibility, and called for tools to support public procurers in meeting social and environmental commitments. 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,³ and the UN Working Group has identified public procurement as an important area in business and human rights.⁴ Civil society organisations and national human rights institutions have exposed weak controls leading to unsustainable public purchasing practices.⁵ At the same time, procurement agencies in a range of countries have begun to adopt new approaches to protect human rights through their supply chains. But getting such innovative practices to scale globally will require broad multi-stakeholder collaboration to share approaches and lessons learned, and to disseminate these amongst public procurers worldwide.

Learning Lab organisers and participants

The Learning Lab's overarching format will be that of a learning network of procurement and procurement-relevant organizations and individuals of global reach. This network will include, amongst others:

- Central and local government procurement agencies and purchasing officers;
- Representatives of other relevant government bodies, such as ministries;
- Procurement professional associations;
- Regional and international organizations;
- Non-governmental organizations (NGOs);
- National human rights institutions (NHRIs); and
- Relevant academics.

The Learning Lab's global network will be a platform and mechanism for:

- Experience-sharing amongst procurement actors on approaches to integrating respect for human rights;
- Generating knowledge about public procurement law and policy and human rights;
- Producing and disseminating tools and guidance to build capacity to integrate human rights issues amongst procurement professionals; and
- Promoting coherence between procurement and human rights in international and regional frameworks and initiatives.

³ Urmila Bhoola, *Report of the Special Rapporteur on Contemporary Forms of Slavery, including its causes and consequences*, A/HRC/30/35, (July 8, 2015); Başkut 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).

⁴ *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, A/HRC/29/28, (Apr. 28, 2015).

⁵ Robert Stumberg, Anita Ramasastry, and Meg Roggensack, *Turning a Blind Eye? Respecting Human Rights in Government Purchasing*, International Corporate Accountability Roundtable (2014), available at

<http://icar.ngo/initiatives/procurement/>; *Public Procurement and Human Rights in Northern Ireland*, Northern Ireland Human Rights Commission (Nov. 2013), available at

http://www.nihrc.org/uploads/publications/NIHRC_Public_Procurement_and_Human_Rights.pdf; *Healthier Procurement*, SwedWatch (Apr. 2015), available at <http://www.swedwatch.org/en/reports/healthier-procurement>; *Public Procurement*, DanWatch, available at <https://www.danwatch.dk/en/fokus-tax/offentlig-indkoeb-en/>.

In addition to Learning Lab participants, the Learning Lab is organized into project co-leads, a steering committee, and sector hubs.

The project co-leads coordinate development of the Learning Lab strategy, programme, and activities, and are an international team with experience in procurement and human rights: the Danish Institute for Human Rights, the Harrison Institute at Georgetown University Law Center, and the International Corporate Accountability Roundtable (ICAR).

The Learning Lab steering committee is comprised of Andy Davies (London University Purchasing Consortium), Amol Mehra (International Corporate Accountability Roundtable), Claire Methven O'Brien (Danish Institute for Human Rights), Olga Martin-Ortega (Business, Human Rights and the Environment Research Group, University of Greenwich), Annamaria La Chimia and Aris Georgopoulos (Public Procurement Research Group, University of Nottingham).

The Lab's work is organised into four hubs. Each hub is led by one organization with experience and expertise in the sector. Within the overall framework provided by the Lab strategy, hub leaders will drive Lab activities for their particular sector. They will, at a minimum, lead development of a report providing a high level overview of effective practices in their sector, organized by the phases of procurement (work stream II below). Hub leaders may also make additional contributions to the Learning Lab by developing tools and training materials (e.g. writing more specific issue papers or creating E-learning modules) concerning their respective sectors. The four hubs are electronics (Business, Human Rights and the Environment Research Group, University of Greenwich), private security (DCAF), apparel (ICAR and the Harrison Institute), and international financial institutions (Public Procurement Research Group, University of Nottingham).

Learning Lab Work Streams

The Learning Lab will capitalise on increasing focus on public procurement and growing interest in collaborative approaches to address its human rights challenges through **5 work streams**:

- I. ***Map procurement law and practice*** – Procurement law is complex, deriving from agreements at the EU and WTO level, and its interface with states' human rights commitments, including under the UNGPs, requires clarification. The Lab will undertake research and objective analysis to build understanding of this evolving legal framework. In the run-up to our pilot workshop for the Learning Lab, a questionnaire on public procurement and human rights was sent to individuals and institutions with relevant expertise in 20 different jurisdictions. These questionnaire responses were used to write a working paper that compares the extent to which countries respect human rights in their procurement process. This working paper is currently being expanded through additional research, and a full mapping report will be released in spring 2016. The Lab will also provide guidance, based on this analysis, to help assess public procurement law, policy, and practices in the context of national action plans (NAPs) on business and human rights, which states have been called on to develop by the UN Human Rights Council, EU, and Council of Europe.
- II. ***Develop effective practice reports*** – Procurement agencies have begun to experiment and innovate measures to integrate respect for human rights across all stages of

procurement—from risk assessment through to contract monitoring and enforcement. The Lab will identify state-of-the art practices and techniques from central and local governments, procurement agencies, academic experts, and independent investigators and seek to develop these further through dialogue and collaboration between expert participants. Using this research, each hub leader will develop a high level overview of effective practices in their sectors across the stages of procurement. These four reports will then be used to create a synthesis report, which will be published in November 2016. Additionally, the apparel hub has committed to developing four to six in depth effective practice reports, each one focusing on a particular stage of procurement. Each in depth effective practice report will summarise the gaps in human rights protections at that stage and will provide specific options for reforms to fill those gaps.

- III. ***Convene decision-makers*** – Government policy makers and procurement agencies need a forum to share innovations. By convening Learning Lab participants in the fall of each year, the Lab will enable them to harmonize practices and collaborate to achieve scale for maximum impact. Depending on the need to foster open peer-to-peer exchange, participation in some Lab activities may extend to procurement professionals only.
- IV. ***Develop on-line tools and guidance*** – Resources and expertise on public procurement and human rights, and other relevant practices, for example in the areas of green procurement and sustainable supply chain management from the private sector, are scattered. To remedy this, the Lab will develop an online repository of procurement-related materials for the participants in the project. Then the Lab will develop an Internet portal for procurement and human rights more generally, freely available to the public and chock-full of useful analysis and tools.
- V. ***Disseminate to international networks*** – The Lab will actively engage and disseminate its work products to Learning Lab participants, relevant procurement projects of international organisations such as the World Bank, United Nations, and the ILO, as well as procurement profession associations.