



Joint Committee on Human Rights Inquiry into Human Rights and Business

# Written Evidence Submitted by London Universities Purchasing Consortium

August 2016

## Introduction

London Universities Purchasing Consortium (LUPC) welcomes the opportunity to input into the Joint Committee on Human Rights' inquiry into human rights and business. LUPC is a non-profit, professional buying organisation led by its Members, for its Members, predominantly in the higher education, arts, sciences, health and cultural sectors<sup>i</sup>, spending in excess of £200m annually<sup>ii</sup>.

LUPC's values reflect those of its Members and its principal aim is to maximise the value of its Members' spend in the acquisition of goods and services without causing harm to others. It is a company limited by guarantee and a Contracting Authority under the Public Contracts Regulations (PCR) 2015<sup>iii</sup>. Many of its Members are also Contracting Authorities.

LUPC is a founding member of Electronics Watch<sup>iv</sup>, a campaign of EU public sector bodies that seeks to protect labour rights in global electronics supply chains, and participates in the International Learning Lab on Public Procurement and Human Rights<sup>v</sup>. LUPC was also the first UK public sector purchasing consortium<sup>vi</sup> to publish a Statement on Slavery and Human Trafficking<sup>vii</sup> under Part 6 of the Modern Slavery Act (MSA) 2015 and regularly organises symposia on socially responsible public procurement in collaboration with the Business, Human Rights and the Environment Research Group (BHRE) at the University of Greenwich.

## Public procurement for social change

LUPC welcomes the UK Government's updated National Action Plan on Business and Human Rights (NAP)<sup>viii</sup> through which it has re-iterated its commitment to the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>ix</sup> and the expectation that UK plc should be undertaking human rights due diligence.

In our view, the Government's updated NAP has missed an opportunity to use its leverage with businesses to scale up the practice of human rights due diligence, by employing public procurement as a powerful instrument of social change.

### **Applying social award criteria to major public contracts**

The updated NAP claims that the Government will '*Continue to ensure that UK Government procurement rules allow for human rights-related matters to be reflected in the procurement of public goods, works and services.*'<sup>x</sup> This is a softening of the language from the original NAP, which commits to '*ensuring that in UK Government procurement human rights related matters are reflected appropriately when purchasing goods, works and services.*'<sup>xi</sup>

The updated NAP does not specify what actions the Government is taking to 'allow' for human rights to be reflected in public procurement, but we assume that this refers to the explicit inclusion of '*social, environmental and innovative*' characteristics among allowable contract award criteria under Regulation 67 of PCR 2015<sup>xii</sup>. LUPC would like to see the Government encourage more use of 'social, environmental and innovative' criteria, both when selecting bidders and awarding contracts. This encouragement could be in the form of a Cabinet Office Procurement Policy Note<sup>xiii</sup> and/or training for public procurement practitioners in applying such criteria in award decisions and in other ways in which UNGPs can best be operationalised in the public procurement context.

### **Transparency in public supply chains**

The UK Modern Slavery Act is a pioneer legal instrument in the fight against human rights abuses in the supply chain. It is already raising awareness of the issues and encouraging industry and commerce to take action. LUPC believes that a similar requirement in Government and wider public sector procurement would re-inforce the United Kingdom's commitment to the UNGPs.

LUPC supports the intentions of the Private Members Bill, *Modern Slavery (Transparency in Supply Chains) Bill 2016-17*<sup>xiv</sup>, which seeks to amend the MSA by extending the requirements of Part 6 to an appropriate class of public bodies. This would mean that all public bodies over a certain size would be required to publish an annual Slavery and Human Trafficking Statement that sets out what steps each body is taking to mitigate the risk of human rights abuses in its supply chain.

The Bill also proposes establishing a requirement for enterprises bidding for large public sector contracts to disclose the steps that they are taking to ensure that their activities and those in their supply chain do not negatively affect human rights. LUPC concurs with the evidence submitted to this Inquiry in June 2016 by UNICEF, believing that this measure would:

- Help level the playing field. Apart from a broad requirement of all companies on human rights due diligence, procurement is the strongest lever that Government has to capture a large enough group of companies to ensure a critical mass are operating in this way.
- Lead by example: Government has stated that it wants companies to undertake human rights due diligence through their operations and supply chains, so it stands to reason that they should focus on companies in their own supply chain first.
- Directly reflect UNGP 6, which demands that, ‘States should promote respect for human rights by business enterprises with which they conduct commercial transactions.’<sup>xv</sup>
- Respond to growing business support: Almost a quarter of respondents to an Economist survey of CEOs said that provision of incentives based on human rights performance (e.g., preferential treatment in procurement process) would enable companies to better fulfil their corporate responsibility to respect human rights.<sup>xvi</sup>
- Follow established precedent: The United States Government prohibits contractors and subcontractors from supporting or engaging in human trafficking. For projects of a certain size, the Government also requires that contracting businesses prepare compliance plans detailing due diligence procedures to assess, prevent, mitigate and remediate any suspected involvement.

LUPC’s founding membership of Electronics Watch allows it to participate in an EU-wide collaboration of public bodies seeking to address human rights abuses in the global electronics supply chain. This year, LUPC successfully lobbied for clauses developed by Electronics Watch to be included in the UK higher education sector’s supply agreements for devices using the iOS operating system, requiring suppliers to adopt transparent supply chain management practices and respond to reports of labour rights abuses.

With its partners, LUPC has shown that public bodies can take direct action, either on their own or, most effectively, in collaboration with others, to address alleged human rights abuses uncovered in supply chains. In 2015, Danwatch, a Danish media research organisation, uncovered strong evidence of forced labour among students in a factory in Zhongshan, China, where IT servers are assembled for some of the world's leading suppliers<sup>xvii</sup>. Students were allegedly forced into internships on the production line, as a pre-condition of graduation. Universities among LUPC Members, which welcome thousands of Chinese students each year<sup>xviii</sup>, spend millions of pounds annually with these suppliers on this equipment. By working with these suppliers and with Electronics Watch, LUPC was able to secure a suspension of this practice, pending further investigation.

### **New grounds for mandatory exclusion of bidders for major public contracts**

Directing major public sector contracts only towards companies that are undertaking effective human rights due diligence would fulfil the Government's responsibility under UN Guiding Principle 6 and would also help level the playing field for companies that are taking human rights seriously. Equally, excluding companies who do not comply with their due diligence and reporting obligations from public contracts could be a powerful incentive for public suppliers to take their human rights responsibilities more seriously.

### **LUPC's recommendations**

In order to fulfil its obligations under Principle 6 of the UN Guiding Principles on Business and Human Rights, LUPC:

- Encourages the Government to develop a capability in due diligence and risk assessment among public procurement practitioners as part of their standard skill-set. With guidance and training, public bodies should be able to identify higher risk spend categories and source countries where human rights abuses are known to be prevalent. By working in collaboration with each other and with their suppliers, public bodies could then conduct supply chain mapping exercises, supplemented by supplier and factory audits to highlight where steps can be taken to mitigate risks of modern slavery, human trafficking, forced and bonded labour and other human rights abuses.
- Urges the Government to pass the necessary legislation to create a similar requirement to that established for companies in the Transparency in the Supply Chain clause of the MSA for Government and wider public sector procurement.

- Proposes the establishment and development of a Government-managed on-line database where information about higher-risk spend categories, source countries, suppliers and factories can be gathered, catalogued and shared, such as audit and media reports, supplier statements and evidence of action taken to address particular issues or mitigate risk.
- Strongly urges the Government to prioritise making human rights due diligence a requirement for those companies awarded significant public sector contracts.
- Invites the Government to consider establishing mandatory requirements for companies to undertake effective human rights due diligence in order to access all public sector contracts.

## Endnotes

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- <sup>i</sup> LUPC, [Our Members](#)
- <sup>ii</sup> LUPC, [Annual Review 2014-15](#)
- <sup>iii</sup> UK Government, [Public Contracts Regulations 2015](#)
- <sup>iv</sup> <http://electronicswatch.org/en/>
- <sup>v</sup> <http://www.hrprocurementlab.org/>
- <sup>vi</sup> Supply Management, [LUPC becomes first consortium to make Modern Slavery statement](#), (December 2015)
- <sup>vii</sup> LUPC, [Statement on Modern Slavery and Human Trafficking](#), (November 2015)
- <sup>viii</sup> UK Government, [Good Business Implementing the UN Guiding Principles on Business and Human Rights](#), (May 2016)
- <sup>ix</sup> UN Office of the High Commissioner of Human Rights, [Guiding Principles on Business and Human Rights](#), (2011)
- <sup>x</sup> UK Government, [Good Business Implementing the UN Guiding Principles on Business and Human Rights Updated May 2016](#)
- <sup>xi</sup> UK Government, [Good Business Implementing the UN Guiding Principles on Business and Human Rights](#), (September 2013)
- <sup>xii</sup> UK Government, [Public Contracts Regulations 2015](#)
- <sup>xiii</sup> UK Government, [Procurement Policy Notes](#)
- <sup>xiv</sup> UK Parliament, [Modern Slavery \(Transparency in Supply Chains\), \[HL\] 2016-17](#)
- <sup>xv</sup> UN Office of the High Commissioner of Human Rights, [Guiding Principles on Business and Human Rights](#), (2011)
- <sup>xvi</sup> The Economist Intelligence Unit, [The Road from Principles to Practice: Today's Challenges for Business in Respecting Human Rights](#), (2015)
- <sup>xvii</sup> Danwatch, [Servants of Servers](#), (August 2015)
- <sup>xviii</sup> UK Council for International Student Affairs, [Top Ten Non-EU Sending Countries](#), (2015)