I. Overview
This workshop will bring together relevant stakeholders to explore ways to operationalize the UN Guiding Principles on Business and Human Rights and the Sustainable Development Goals in Africa through public procurement laws, policies, and practices. The workshop will provide a brief introduction to the procurement process and relevant international and regional frameworks, which will be followed by in-depth discussions on two key themes: public procurement of private military and security services and public procurement and sustainable development.
II. About the International Learning Lab

The International Learning Lab on Public Procurement and Human Rights (Learning Lab) is a network of 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 is a platform and mechanism for:

- Experience-sharing among 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 among procurement professionals; and
- Promoting coherence between procurement and human rights in international and regional frameworks and initiatives.

The Learning Lab’s work is divided into four “hubs,” namely, electronics, apparel, international financial institutions, and private security. Each hub is led by an organization with relevant expertise, which will contribute research and tools that will be disseminated via the Learning Lab’s network.

III. Background

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 accounts on average for 10 – 15 per cent of GDP, and in sub-Saharan Africa it accounts on average for 14.9 per cent of GDP. However, in some countries this number is much higher. For example, in Angola it accounts for 26 per cent of GDP and in Eritrea it accounts for 33 per cent of GDP.

Public procurement is therefore a critical lever for governments to drive sustainable development and influence business practices in relation to human rights. This is highlighted in both the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the 2030 Agenda for Sustainable Development.

The UNGPs, which were unanimously endorsed by the UN Human Rights Council in 2011, 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. 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.

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.

As of yet, governments have not made any substantial efforts to assess the extent to which their public procurement laws, policies, and practices are aligned with the UNGPs and/or the 2030 Agenda for Sustainable Development. While some public bodies are innovating and addressing human rights issues and sustainable development in their procurement practices, most are not. This constitutes a failure to fulfil the State duty to protect and a failure to take advantage of the opportunities public procurement presents to drive sustainable development.

The Learning Lab in partnership with the International Corporate Accountability Roundtable, the Danish Institute for Human Rights, the Geneva Centre for the Democratic Control of Armed Forces, and the African Procurement Law Unit of Stellenbosch University, seeks to convene a one day workshop to explore public procurement in Africa and how it can be utilized to encourage the uptake of human rights related business practices in the private sector and advance human rights and sustainable development more broadly.

IV. Purpose and Objectives of the Workshop

This workshop will bring together relevant African stakeholders (including policy makers, public procurement practitioners, international financial institutions, international and regional governmental organizations, civil society organizations, labor organizations, and academics) to explore how African governments can operationalize the UNGPs and the SDGs through their public procurement laws, policies, and practices.

The workshop will be organized around three separate sessions. Session I will serve to set the stage for the workshop, providing information about the procurement process itself and relevant international and regional frameworks. Session II will focus on challenges and opportunities related to human rights and procurement of private security and military services. Session III will focus on challenges and opportunities for using public procurement to drive sustainable development.

The objectives of the workshop are to:

1) Increase awareness of key challenges and opportunities in leveraging public procurement to address human rights and sustainable development in Africa;
2) Develop a roadmap of opportunities to operationalizing the UNGPs and SDGs in public procurement in the African context;
3) Explore best practices, challenges, and opportunities to address human rights abuses by private military and security companies (PMSCs) through public procurement;
4) Explore best practices, challenges, and opportunities to address sustainable development through public procurement; and
5) Foster a network on public procurement and human rights in Africa.

During this workshop, participants will have the opportunity to delve into the themes, challenges, and opportunities briefly described below.

V. Workshop Themes

A) Public Procurement of Private Security and Military Services
The second session of the workshop will focus on public procurement of PMSCs. PMSCs provide a wide range of services such as training and technical support for armed forces, strategic planning, coastal surveillance, guarding people, and guarding facilities. PMSCs provide these services to a variety of clients, including governments, large companies, international NGOs, individuals, international financial institutions, and international organizations.

The PMSC industry has grown rapidly in Africa, with African States acting as territorial States (States on whose territory PMSCs operate), home States (States in which PMSCs are based), and contracting states (States that hire PMSCs). This rapid growth of the PMSC industry poses significant challenges for the continent, as the PMSC industry has been implicated in serious human rights abuses both globally and in Africa. For example, security personnel allegedly used violence and intimidation with firearms against gold miners in Senegal in 2003, and more recently in 2016 private security companies hired by universities in South Africa were accused of using violence and brutality against students protesting raises in tuition. In addition to concerns about the impacts of PMSCs on individuals and communities, there are also concerns about how PMSCs treat their own employees. While PMSCs do create employment opportunities, because government oversight of PMSCs is weak, employees are vulnerable to mistreatment, unfair labor practices, and low wages.

In order to address the complex issues associated with the use of PMSCs, and clarify the roles and responsibilities of the various actors, several normative frameworks have been developed including the 2008 Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict (Montreux Document) and the 2010 International Code of Conduct for Private Security Service Providers (ICoC). However, these frameworks have been not yet been adequately operationalized on the ground, including in the African context. As such, there is now a need to focus on inclusion of the good practices stemming from these standards into regulation, including procurement policies, and promoting implementation on the ground to put these standards into practice. Public procurement is a key lever that States should utilize to address a lack of human rights compliance by PMSCs, as commercial incentives are significant in inducing private security providers to respect human rights.
Opportunities to improve human rights compliance through public procurement have not been used to their full potential. A key challenge to the implementation of public procurement policies, to name just one example, is corruption in the selection process. In the African context, PMSCs are often owned by political or security elites, and directors of PMSCs are in many cases former members of the armed forces or police, and thus have close connections with those public bodies. As such, the potential for corruption in the bidding process is high, which can undermine implementation of existing or future regulations and policies.

**B) Public Procurement and Sustainable Development**

The third session of the workshop will focus on public procurement and sustainable development in Africa. As noted above, the new 2030 Agenda for Sustainable Development lays out 17 Sustainable Development Goals. SDG 12.7 calls on all States to implement sustainable public procurement policies and action plans as part of the drive towards sustainable production and consumption, decent work, and more inclusive economies.

Public procurement is an important tool for governments to use to advance social policy agendas and address issues such as poverty, gender inequality, discrimination, and unemployment, and is thus key for pushing sustainable and inclusive development and achieving the SDGs in Africa. For example, States can use public procurement to contribute to the achievement of SDGs 5 and 8 by including preferences for contracting with businesses owned by women, minority and/or historically disadvantaged persons, by promoting accessibility of public contracts to local and small and medium sized enterprises, and by contractually requiring contractors to comply with labor and social security laws.

Some African States are already using their public procurement to address some social issues. In a number of African states procurement laws provide for preferences to be given to bidders from targeted groups in the adjudication of public tenders. For example, in Gabon “SMEs, companies/citizens or residents of ECCAS and local communities/businesses” can receive a 10% preference for works contracts and 15% preference for contracts for goods;\(^7\) in Ethiopia, where "preference shall be granted in any procurement to locally produced goods, to small and micro enterprises established under the relevant proclamation and to local construction and consultancy companies" of between 7.5% and 25%;\(^8\) and in Namibia, where the new Public Procurement Act mandates "priority to such groups and primarily to women who were socially, economically or educationally disadvantaged by past discriminatory laws or practices over any other category of previously disadvantaged persons."\(^9\) South Africa probably provides the most extensive example of preferences to historically disadvantaged persons by means of set-asides, compulsory sub-contracting conditions in certain public contracts, and a comprehensive system of measuring bidders' contribution to government's broad-based black economic empowerment policy and granting preferences based on such contributions.\(^10\) However, much more needs to be done to align public procurement with the UNGPs and the SDGs on the continent.
When aligning public procurement with the UNGPs and SDGs, it is important to explore how social elements can be included in the procurement process itself. In particular, States should determine how to demand sustainable products and social protection in services during the tender process. States should also create effective monitoring and contract management systems to ensure that suppliers are not involved in human rights and labor rights violations (including forced labor and human trafficking) and to ensure that suppliers adopt best practice in relation to social issues such as user accessibility. Finally, States should look to the experiences of other States and consider lessons learned and examples of good practice.

One challenge that undermines sustainable development is corruption in public procurement. Even if the procurement laws and policies on the book aim to use public procurement to contribute to sustainable development, those laws and policies are only as good as their implementation. If contracting officers are awarding contracts to bidders that pay bribes, the goals of these laws and policies are undermined. Additionally, corruption in public procurement undermines sustainable development as contracts may go to unscrupulous bidders that will short change end users, for example, by using poor materials when building schools or hospitals.

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2 Id.
6 GENEVA CENTER FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, supra note 3, at 111-112.
9 Public Procurement Act 15 of 2015 (Namibia), section 70.
10 Preferential Procurement Regulations 2017 (South Africa).