



International Learning Lab
on Public Procurement and Human Rights



Submission from the International Learning Lab on Public Procurement and Human Rights to the UK All Party Parliamentary Group on Sport, Modern Slavery and Human Rights, Call for Evidence for the report into pressing human rights problems affecting large scale sporting events around the world

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Summary

- The state duty to protect human rights under the UN Guiding Principles on Business and Human Rights extends to public procurement;
- States and Local Organising Committees (LOCs) procure large volumes of goods and services in the design and delivery of a Mega Sporting Event (MSE) and can leverage this position to realise international human rights law obligations; achieve policy coherence; lead by example, as regards the transition to sustainable consumption envisaged by the UN Sustainable Development Goals; and display their human rights values and commitments to a large audience;
- Measures that the All Party Parliamentary Group (APPG) might consider include:
 - 1) Undertaking a survey of good procurement and human rights practices from recent MSEs;
 - 2) Recommending that selection criteria to host an MSE contain a policy commitment to include human rights protections within associated procurement exercises;
 - 3) Recommending that procurement exercises related to MSEs incorporate human rights protections and providing guidance to realise this;
 - 4) Recommending MSE-specific grievance mechanisms should have broad mandates to receive complaints about human rights abuses and violations in the procurement of goods and services related to the MSE fully accessible to those within the host State and in other States;
 - 5) Recommending that host States consider establishing procurement working groups to sit within the LOC to support the realisation of human rights protections detailed in the host state's bid.

1. Introduction

The International Learning Lab on Public Procurement and Human Rights¹ welcomes the UK All Party Parliamentary Group on Sport, Modern Slavery and Human Rights' call for evidence for its report into pressing human rights problems affecting large scale sporting events around the world.²

Designing and delivering a mega-sporting event (MSE) involves the procurement of goods and services in large quantities. For example, the Tokyo Metropolitan Government "has established a Hosting Reserve fund of USD \$4.5 billion for the construction and upgrade of infrastructure and city owned venues relating to the [2020 Olympic] Games."³ The 2022 Birmingham Commonwealth Games have a projected budget of around £750m with the UK Government contributing £560m and the local municipality contributing around £180m.⁴ Relevant procurements support the construction of stadia, security provision required to safeguard the games, clothing, merchandise and health equipment, for example.

A failure to adequately ensure human rights protections in the design and delivery of MSEs can lead to situations like those experienced, for example, at the Rio 2016 Olympics where widespread allegations of human rights violations around evictions, police violence, and poor labour conditions were made.⁵ The 2010 New Delhi Commonwealth Games faced numerous allegations of corruption in the procurement of goods and services, amongst other allegations of human rights violations and abuses,⁶ which had a profound effect on how the Commonwealth Games Association has since addressed human rights.⁷ The recent 2018 Gold Coast Commonwealth Games faced the situation where the new \$4.4bn Queensland trains introduced just before the MSE, and used to provide transport to the MSE, were incompatible with the Australian Disability Discrimination Act when the Australian Human Right Commission refused an exemption, stating that "It is not clear to the commission why the Queensland Government procured non-compliant trains in 2013, or why the rectification work did not occur between procurement in 2013 and entry into passenger service in 2017."⁸

MSEs receive a large amount of investment from host States, both at the national and local government levels. When these funds are administered by the government or by a Local Organising Committee (LOC) their procurement exercises can fall under the umbrella of public procurement rules. Public procurement is the purchase by the public sector of the goods and services it needs to carry out its functions.⁹ In Organisation for Economic Co-operation and Development (OECD) states, public procurement accounts

¹ <http://www.hrprocurementlab.org>

² The following submission and recommendations draw on *The Role of the State as a Buyer under Guiding Principle 6*, authored by Dr. Claire Methven O'Brien and Dr. Olga Martin-Ortega on behalf of the International Learning Lab on Public Procurement and Human Rights <https://static1.squarespace.com/static/56e9723a40261dbb18ccd338/t/5a1be556f9619afa6a6a6d08/1511777629220/UNWG+PP+submission+-+The+Role+of+the+State+as+Buyer+under+Guiding+Principle+6+-+O'Brien+Martin-Ortega+03.10+3.pdf>

as well as good practice examples of how to realise human rights and public procurement highlighted in *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions*, <http://www.hrprocurementlab.org/wp-content/uploads/2016/06/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf>.

³ <https://tokyo2020.org/en/organising-committee/procurement/guide/data/guide.pdf>

⁴ <https://www.birminghammail.co.uk/news/midlands-news/how-birmingham-pay-commonwealth-games-14003899>

⁵ <https://www.theguardian.com/world/2015/dec/08/rio-olympics-2016-human-rights-violations-report>

⁶ https://en.wikipedia.org/wiki/Concerns_and_controversies_over_the_2010_Commonwealth_Games

⁷ https://thecgf.com/sites/default/files/2018-03/CGF-Human-Rights-Policy-Statement-17-10-05_0.pdf

⁸ <http://www.abc.net.au/news/2018-03-02/qld-rail-train-not-granted-exemption-disability/9502556>

⁹ <http://www.hrprocurementlab.org/wp-content/uploads/2016/06/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf>

for 12% of GDP on average and is a substantial component of the overall economy.¹⁰ Public procurement can be the single most important source of revenue in some sectors, including health, construction and transportation. Public procurement, therefore, has the potential to influence global supply chains in a positive or negative way. Businesses contracted by government departments or public authorities and, in particular, those which carry out service delivery to the general public, may make decisions or take actions that impact on the human rights of individuals.

1. Policies addressing public procurement and human rights

A range of norms and policies address the interface between human rights and public procurement including the UN Guiding Principles (UNGPs)¹¹ and the 2030 Agenda for Sustainable Development (2030 Agenda).¹²

The UNGPs pay special attention to the state's role as a commercial actor. Guiding Principle 6 provides that "States should promote respect for human rights by business enterprises with which they conduct commercial transactions." Commentary to Guiding Principle 6 specifies:

"States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States' relevant obligations under national and international law."

Integrating human rights into public procurement is indispensable to achieving the 2030 Agenda, as Goal 12 aims to "ensure sustainable consumption and production patterns", and Target 12.7 calls on all States to "[p]romote public procurement practices that are sustainable, in accordance with national policies and priorities."¹³

Contracting out of public services is also specifically addressed by the UNGPs. This is relevant when looking at LOCs as an LOC may deliver public services with the public funds they receive including, for example, education, sport, and infrastructure. Guiding Principle 5 provides that "States should exercise adequate oversight in order to meet their international human rights obligations when they contract with or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights." Commentary on Guiding Principle 5 notes that:

"States do not relinquish their international human rights obligations when they privatise the delivery of services that may impact upon the enjoyment of human rights. Failure by a State to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail... legal consequences for the state itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human

¹⁰ <http://www.oecd.org/gov/ethics/public-procurement.htm>

¹¹ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

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<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> . See further, Claire Methven O'Brien and Olga Martin Ortega, "[The SDGs, human rights and procurement: An urgent need for policy coherence](#)" in UNOPS, *Thematic Supplement to the 2016 Annual Statistical Report on United Nations Procurement: Procurement and the 2030 Agenda* (2017).

¹³

<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.”

While highlighting the state's responsibilities, the UNGPs note that all businesses have a responsibility to respect human rights, which applies irrespective of their size, sector or state of operation, and which extends to their business relationships, including their supply chain. This means that suppliers to public authorities should consider and address the impacts of their activities, and those of their business partners, in and beyond their home jurisdiction.

Integrating measures to address human rights risks within public procurements associated to MSEs should thus be a central plank of government bodies' approach to safeguarding human rights in the context of such events.

2. Recent actions on public procurement and human rights

There are a number of examples of MSEs addressing public procurement in the course of their efforts to achieve sustainability and fulfil human rights obligations in specific areas. For example, the 'learning legacy' of the London 2012 Olympics highlights that: “Procurement was one of the critical elements for delivering the sustainability strategy of the London Organising Committee of the Olympic Games and Paralympic Games (LOCOG). LOCOG attempted to draw on best practices from existing organisations and build them into a bespoke framework.”¹⁴

The Glasgow 2014 Commonwealth Games LOC adopted a Procurement Sustainability Policy which states that: “The OC [Glasgow Organising Committee] is committed to managing and monitoring its supply chains to ensure that fair contract prices and terms are applied and that ethical, human rights and employment standards as expressed in the International Labour Organisations (ILO's) Fundamental Conventions¹, are met along with other local initiatives, where appropriate.”¹⁵

The Gold Coast 2018 Commonwealth Games LOC adopted a Human Rights policy,¹⁶ and a Sustainable Sourcing Code to procurement including minimum requirements around labour rights: “Suppliers must take appropriate steps to ensure that all locations used in the manufacture and supply of products and services to GOLDOC [Gold Coast 2018 Commonwealth Games Corporation] meet the requirements of the core International Labour Organisation's (ILO) Conventions and local laws of the country in which the products or services are sourced. This includes manufacturing sites and service centers of sub-contractors or sub-licensees who are engaged by GOLDOC Suppliers.

The list of ILO Conventions totals 190 laws which aim to improve the labour standards of people around the world. There are eight fundamental Conventions (on prohibition of forced labour, child labour, the right to organise in a trade union, and suffer no discrimination) which are binding upon every member country of the ILO from the fact of membership, since the Declaration on Fundamental Principles and Rights at Work in 1998. Where the international and national labour rights differ, the more stringent will be adhered to.”¹⁷

¹⁴ <http://learninglegacy.independent.gov.uk/documents/pdfs/sustainability/cs-games-sustainable-procurement.pdf> and <http://learninglegacy.independent.gov.uk/documents/pdfs/procurement-and-supply-chain-management/39-procurement-policy-pscm.pdf>

¹⁵ http://www.glasgow2014.com/sites/default/files/documents/G2014-Procurement-Sustainability-Policy-FINAL-V2-070213_0.pdf

¹⁶ <https://gc2018.com/sites/default/files/2017-11/Human%20Rights%20Policy%20GC2018.pdf>

¹⁷ https://gc2018.com/sites/default/files/2017-09/GC2018_Sustainable_Sourcing_Code.pdf and https://gc2018.com/sites/default/files/2017-09/CS537_-_SUS_Sustainability_Report_2015-16_Final.pdf

The Tokyo 2020 Olympics LOC has adopted a Sustainable Sourcing Code with additional commentary for specific sectors.¹⁸ This Sustainable Sourcing Code provides that: “To achieve sustainable Games, Tokyo 2020 takes measures to minimise the environmental impact of its procurement of raw materials, and all subsequent production, distribution, usage and disposal processes. In addition, Tokyo 2020 takes into consideration human rights, labour and other social issues during its procurement of products, services, etc.” Furthermore, the Tokyo Olympic LOC has established “a Grievance Mechanism for the Sustainable Sourcing Code ... and the corresponding Operational Standards.”¹⁹

Other good practice examples of public procurement and human rights within the UK include the NHS Supply Chain, which has been operating its Labour Standards Assurance System to introduce “ethical requirements which ... provides an extra level of corporate, social and ethical governance with regards labour standards, marking a major but progressive change in its procurement methodology.”²⁰ Other notable initiatives include the London Universities Purchasing Consortium,²¹ the Scottish Advanced Procurement for Universities and Colleges,²² and Transport for London which has become the first public body to join the Ethical Trading Initiative, Sedex, and Electronics Watch as part of an effort to manage labour rights risks in supply chains.²³

In addition, “In 2013 the [Northern Ireland Human Rights Commission] produced a report, ‘Public Procurement and Human Rights in Northern Ireland’, to advise on the applicable human rights standards in the context of awarding Government contracts. In 2017 the Central Procurement Directorate (within the [Northern Ireland] Department of Finance) is undertaking a project to embed human rights within the public procurement process and has piloted a human rights based approach to procurement. In addition the Department has developed a draft Practice Guidance Note on human rights in public procurement.”²⁴

We further recommend for your attention our 2016 report, ‘Public Procurement and Human Rights: A Survey of Twenty Jurisdictions’ (the report).²⁵ This highlights that although the UNGPs indicate the need for States to take active steps to avoid involvement in human rights abuses through their purchasing practices, our findings suggest that at this time central governments and other public bodies are not in general fulfilling this duty.

Including human rights protections within public procurement processes and contracts can help to strengthen business respect for human rights. Section V of the report details 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.

¹⁸ <https://tokyo2020.org/en/games/sustainability/>

¹⁹ https://tokyo2020.org/en/games/sustainability/data/operational-standards_EN.pdf

²⁰ <http://www.lrqc.co.uk/standards-and-schemes/LSAS/>

²¹ <http://www.lupc.ac.uk/>

²² <http://www.apuc-scot.ac.uk/>

²³ <https://tfl.gov.uk/corporate/publications-and-reports/procurement-information>

²⁴ http://www.nihrc.org/uploads/publications/NIHRC_Annual_Statement_2017.2.pdf further, the see the work of the Equality and Human Rights Commission at <https://www.equalityhumanrights.com/en/public-sector-equality-duty-scotland/procurement-guidance-scottish-public-authorities> and the Scottish Human Rights Commission at <http://www.scottishhumanrights.com/other-issues/business/>

²⁵ <http://www.hrprocurementlab.org/wp-content/uploads/2016/06/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf>

Our report moreover highlights new scope for actions in the area of public procurement and human rights permitted under EU Directive 2014/24/EU of 2014,²⁶ which includes measures to allow procurers to use procurement to further common societal goals. Subsequent legislation, such as the UK Public Services (Social Value) Act 2012 (England & Wales) and the Procurement Reform (Scotland) Act 2014 allow for economic, social, and environmental improvements through public procurement.²⁷ Prominently, the UK the Modern Slavery Act 2015 includes certain public buyers amongst the commercial organisations which have to report under its Transparency in Supply Chains provision (s.54).²⁸ Other public bodies have voluntarily produced transparency in the supply chain statements in the past two years.²⁹

Other relevant findings from the report include:

- a) 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;
- b) 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 often fails to address the spectrum of actual human rights risks that affect goods and services purchased under public contracts;
- c) 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;
- d) Systematic and comprehensive monitoring of the performance of public contracts with regard to respect for human rights amongst government suppliers is lacking;
- e) There is a lack of effective access to remedy for victims of human rights abuses in government supply chains; and
- f) There is a lack of policy coherence in relation to public procurement and human rights, which acts as a barrier to effective implementation of the UN Guiding Principles, and the Sustainable Development Goals.

However, on a positive note, besides the UNGPs and SDGs as already mentioned, international organisations appear increasingly ready to address such gaps and policy incoherence:³⁰

²⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>

²⁷ Further, see <https://beta.gov.scot/publications/universal-periodic-review-human-rights-united-kingdom-2017-scottish-government/pages/13/>

²⁸ Olga Martin-Ortega and Rahima Islam (2017), *UK Modern Slavery Act 2015 Transparency in Supply Chains: The First Year of Reporting by Universities*, BHRE Research Series, Report 1.

²⁹ Olga Martin-Ortega, Anna Gorna and Rahima Islam (2018), *"UK Modern Slavery Act Transparency in Supply Chains: Reporting by Local Authorities"*. BHRE Research Series, Report no. 2. March 2018.

³⁰ Claire Methven O'Brien and Olga Martin Ortega, "Discretion, divergence, paradox: Public and private supply chain standards on human rights" in S. Bogojevic, X. Groussot and J. Hettner *Discretion in EU Procurement Law*, Oxford: Hart Publishing, 2019 (forthcoming).

- The OECD has recently acknowledged links between public procurement, its responsible business agenda and sustainable development;³¹
- The ISO’s 2017 *Sustainable Procurement Guidance* (ISO 20400) urges the integration of human rights as well as green and other considerations in supply chain management, whether private or public;
- The G7’s 2015 Leaders’ Declaration calls for tools to support public procurers in meeting social and environmental commitments³²
- With reference to “Sustainable Global Supply Chains”, the 2017 G20 Leaders’ Declaration undertook to “work towards establishing adequate policy frameworks in our countries” to “foster...the implementation of labour, social and environmental standards and human rights in line with internationally recognised frameworks” though without specific reference to public procurement.³³

3. Recommendations to the All Party Parliamentary Group

Given the above context, we recommend that the APPG considers:

- 1) Undertaking a survey of public procurement human rights protections and measures from recent MSEs to assess current knowledge, needs, challenges and opportunities and to collate good practice and lessons learnt;
- 2) Recommending that selection criteria to host an MSE contain a policy commitment to include human rights protections within procurement exercises. Guidance should be developed to support bidders in developing such a policy;
- 3) Recommending that procurement exercises related to MSEs incorporate human rights protections. This could include:
 - i. Requiring that human rights due diligence is conducted by the State or LOC before procurement exercises are undertaken to identify salient human rights risks and identify a range of potential measures to address these, especially in areas or sectors of particular risk (e.g. the construction sector);
 - ii. Requiring suppliers publicly to disclose supply chain information including name and location of sub-contractors used to produce under the contract;
 - iii. Requiring suppliers to undertake and disclose their human rights due diligence practices/ policies;
 - iv. Engaging in robust monitoring, drawing from many different sources of information including workers themselves and civil society organisations (e.g. through worker-driven monitoring models like ElectronicsWatch);
 - v. Sharing information about suppliers and/or conducting joint monitoring with other public authorities;
 - vi. Contractually requiring suppliers to create and implement corrective action plans to remediate any identified abuses, or engage with an MSE specific grievance mechanism;

³¹ OECD, *Responsible business conduct in government procurement practices* (2017), available at: <https://mneguidelines.oecd.org/Responsible-business-conduct-in-government-procurement-practices.pdf>.

³² G7 Leaders Declaration. Summit 7-8 June 2015, available at: https://sustainabledevelopment.un.org/content/documents/7320LEADERS%20STATEMENT_FINAL_CLEAN.pdf (accessed 12 June 2018).

³³ G20 Leaders’ Declaration: Shaping an interconnected world. Hamburg, 7/8 July 2017, available <http://www.g20.utoronto.ca/2017/2017-G20-leaders-declaration.pdf> (accessed 12 June 2018)

- vii. Ensuring that purchasing staff have adequate training and resources to effectively implement human rights requirements (e.g. they are trained on how to evaluate due diligence practices and corrective action plans etc.);
 - viii. Practical guidance should be developed to support procurement agents and business enterprises in achieving these points;
- 4) Recommending MSE-specific grievance mechanisms should have broad mandates to receive complaints about human rights abuses and violations in the procurement of goods and services related to the MSE fully accessible to those within the host State and in other States;
 - 5) Recommending that host States consider establishing public procurement and human rights Working Groups to sit within the LOC to support the implementation of the public procurement human rights protections detailed in the host state's bid. Such bodies could include representatives of the relevant government departments, procurement professional associations, buyers from large public bodies, representatives of relevant sustainable procurement initiatives and civil society organisations, national human rights institutions and procurement law professionals.

Contact

Daniel Morris

damo@humanrights.dk

Danish Institute for Human Rights (on behalf of the International Learning Lab on Public Procurement and Human Rights)