

INTEGRATING HUMAN RIGHTS IN PUBLIC PROCUREMENT

A FOCUS ON LATIN AMERICA AND THE CARIBBEAN

INFORMATION NOTE OF THE UNITED NATIONS WORKING GROUP ON
BUSINESS AND HUMAN RIGHTS

Executive summary

Accounting for an average of 6% of GDP and 17.4% of public spending in LAC, public procurement is a significant area where States should adopt robust regulatory and policy frameworks to promote the respect for human rights across the public supply chain in line with [United Nations Guiding Principles on Business and Human Rights](#) (UNGPs), to fulfil human rights obligations. Goods and services purchased by public authorities can potentially become linked to adverse impacts on the full spectrum of human rights, not only workplace-related impacts, but also impacts on the environment, communities, end-users, and society as a whole. Therefore, integrating human rights into public procurement in line with the UNGPs can help identify, prevent, address and remedy any adverse human rights impacts related to public procurement. It also represents a conducive means for States to lead by example, drive positive change towards more sustainable economies in the long term and create a level playing field.

In this Information Note, the United Nations Working Group on Business and Human Rights (the Working Group) highlights the current state of play in Latin America and the Caribbean (LAC) regarding the incorporation of human rights standards into normative, policy and institutional public procurement frameworks. It also formulates recommendations to policymakers, contracting procurement authorities, businesses, national human rights institutions, and the United Nations system for advancing respect for human rights in public procurement.

The Working Group notes that some LAC States have progressed towards incorporating human rights considerations into public procurement, notably through na-

tional action plans on business and human rights (NAPs) and establishing environment and labour rights-related criteria in pre-tender and tender phases of procurement. In addition, LAC countries have used public procurement to foster environmental sustainability, including through sustainable or strategic public procurement, and promote the inclusion of labour of certain groups in vulnerable situations. Nevertheless, except for those having started to implement their NAPs, few countries integrate human rights considerations in a coherent manner to guarantee the respect of human rights in public procurement.

Despite the importance of human rights due diligence (HRDD) to prevent and address human rights abuses linked to public procurement, the requirement for suppliers to conduct human rights due diligence is unarticulated and absent from public procurement regulatory, policy and strategic frameworks in the region, except for very few examples. Therefore, States must place efforts to establish the conditions under which public buyers should include requirements or incentives to suppliers to conduct HRDD. HRDD should embrace all human rights and all pillars of sustainable procurement, including social, economic and environmental aspects, and not be limited to environment and labour related human rights – and extend beyond the first-tier suppliers' workers.

The Working Group also observes there is scope to strengthen policy coherence in the region, including fostering inter-institutional coordination and raising awareness on human rights obligations. To this end, inter-institutional coordination between all involved public bodies in policy and legal frameworks, including contracting procurement authorities (CPA) and focal points on human rights and responsible business conduct (RBC), but also with RBC National Contact Points of the Organization for Economic Development and Cooperation (OECD) (NCPs) and national human rights institutions (NHRIs), should be strengthened. In addition, the Working Group encourages CPAs to continue developing institutional frameworks through practical tools and effective guidelines, along with capacity-building activities for human rights-based procurement implementation, particularly on HRDD. In that sense, the Working Group stresses CPAs' central role and recommends having human rights experts within their staff.

Additionally, the Working Groups noted that LAC countries have created procurement risk assessment tools, risk management systems, transparent e-procurement

platforms, and procurement-related complaint mechanisms. Yet, human rights considerations should be comprehensively integrated into these developments.

Concerning access to remedy in case of adverse impact caused or linked to States' suppliers, the Working Group acknowledges the progress made by CPAs to create their own grievances mechanisms, as well as NHRIs in the region that have progressively investigated public procurement-related abuses on human rights. In that sense, States should strengthen and work with NHRIs and NCPs to improve the effectiveness of State-based-non judicial grievance mechanism. This coordination would also help strengthen policy coherence. They should also support the creation and/or strengthening of CPAs' grievance mechanisms to ensure that they can receive complaints regarding adverse human rights impacts, linked or caused by suppliers in an effective manner. In turn, the Working Group has not received any information concerning remedies provided by suppliers, through operational-level grievance mechanisms. Therefore, States should include in their policy and normative frameworks a requirement to suppliers to provide for remediation, including through the creation of a grievance mechanism in line with the UNGPs.

Similarly, States should ensure that requirements for multi-stakeholder engagement are inserted in the policy and regulatory frameworks, including with regard to processes of policymaking, development of capacity-building materials, identification of human rights-related risks and HRDD. The latter would help assess needs, challenges, and priorities and strengthen the legitimacy and efficiency of any actions related to human rights and public procurement.

The Working Group also positively notes that LAC countries have remarkably advanced towards including criteria to favour businesses that support, employ, or are owned by certain groups in vulnerable situations to access public contracts, such as women, ethnic groups and persons with disabilities. In this way, States are using their procurement power to contribute to fulfil the human rights of certain groups. However, this does not exempt States from taking imperative and non-negotiable steps to protect human rights of all people under its jurisdiction and tackle suppliers' abuse throughout the procurement process.

Finally, emergency procurement during the Covid-19 pandemic led to suspending or relaxing ordinary procedures and controls to meet urgent demands on health care goods, services and works. Despite multiple actions of States to develop guidance and foster transparency during the pandemic, human rights were not a core consideration within LAC countries' adaptation to the new conditions deriving from the pandemic. The Working Group encourages States to seize the opportunity that the Covid-19 aftermath represents to assess the efficacy and resilience of the public procurement legal system and policies and make the necessary adjustments to meet recovery needs and strengthen a culture of sustainability and human rights safeguards within public procurement.

In addition, the Working Group recommends all State suppliers to install and implement genuine and solid HRDD mechanisms, based on meaningful engagement with concerned stakeholders, including to establish their own grievance mechanisms and to support subcontractors to do the same.

Finally, the Working Group recognizes the key role civil society and NHRI play for such purposes and highlights some good initiatives in that sense.

Content

Executive summary	1
I. Introduction.....	6
II. Public procurement: definition and international legal and policy frameworks	11
III. Incorporating human rights into public procurement in LAC	15
III.1. State actions to protect human rights	17
A. Incorporating specific actions on public procurement in the National Action Plans on Business and Human Rights (NAPs)	17
B. Adopting requirements to request suppliers to conduct HRDD	18
C. Excluding, selecting, and rewarding suppliers/bidders based on their responsible business conduct	21
D. Conducting human rights risks assessment of the public supply chain .	23
E. Incorporating human rights requirements into framework agreements	25
F. Facilitating remedy for human rights abuses deriving from public procurement	26
G. Ensuring human rights and public procurement policy coherence	29
H. Participation and engagement with external stakeholders	37
III.2 State actions to fulfil human rights.....	38
III.3 Actions to promote human rights transparency and open data in the public procurement cycle.....	40
III.4 Actions to incorporate human rights considerations within emergency procurement regulation (Covid-19).....	44
III.5 Other stakeholders' actions for corporate respect of human rights in public procurement in LAC	47
A. State suppliers	47
B. NHRIs.....	49
C. Civil society organizations	50

I. Introduction

1. A States' supply chain is one of the most economically significant areas where the State can leverage its role as an economic actor to drive change, lead by example, meet their international human rights obligations and deliver on their political commitments to realise the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs).

2. While public procurement could be a conducive means to attain key economic and social policy objectives, it can also be associated to human rights abuses. The potential human rights abuses that can occur in a State's supply chain span the full spectrum of human rights, not only workplace-related impacts such as child and forced labour, precarious working conditions (excessive working hours, unsafe working conditions) and lack of freedom of association, but also impacts on communities, end-users, and the environment.

3. Nevertheless, and in line with the UNGPs, States can introduce measures across the procurement cycle to ensure that suppliers respect human rights, including through human rights due diligence.

4. In addition, States can use public procurement to advance human rights, particularly by favouring the labour inclusion of groups in vulnerable situations, and facilitating access to public contracts for suppliers within the informal economy to encourage their formalization.

5. These States' measures to protect and fulfil human rights through public procurement ensure that taxpayers' money is spent for social welfare and public services, which increases the credibility and legitimacy of public resource management. In addition, States can then lead by example, encouraging suppliers towards the same aim, and take steps forward in the shift towards more sustainable economies. When States include human rights in their consumption practices, they create demand in markets of responsibly manufactured and delivered goods, services and works, mainly when conducting large-scale purchases.¹ Responsible patterns of consumption by contracting public entities mirror the production of goods and services in a responsible fashion by private con-

¹ Olga Martin-Ortega, Opi Outhwaite and William Rook, "Buying power and human rights in the supply chain: legal options for socially responsible public procurement of electronic goods", (2015), *International Journal of Human Rights*, 19 (3), pp. 341-368.

tractors. In doing so, States create a level playing field, ensuring that all enterprises play by the same rules and discouraging business practices leading to human rights abuses that can create unfair competitive advantages.²

BOX 1. HUMAN RIGHTS-BASED PROCUREMENT: RESPECT, PROTECT AND FULFILL HUMAN RIGHTS BY STATES

Human rights-based procurement relates to States' core obligations to respect, protect and fulfil human rights.³

States' duty to respect human rights: States have an obligation to **respect** human rights in the context of public procurement. This obligation implies that they must refrain from interfering with or curtailing the enjoyment of human rights through their procurement activities and establishing contract conditions with suppliers oriented to prevent future human rights abuses.

States' duty to protect human rights: The UNGPs establish the duty to **protect** by preventing and redressing adverse impacts involving public procurement supply chains on rights-holders. Requiring suppliers to implement human rights due diligence (HRDD) across their supply chain strongly supports States' duties to protect. HRDD allows suppliers to identify, mitigate, assess, and communicate human rights impacts involved in the goods, supplies, or works they provide for States.

States' duty to fulfil human rights: States can also use public procurement to fulfil human rights to meet their international human rights obligations. The obligation to **fulfil** requires States to adopt the necessary measures towards the full realization of human rights, which can be disaggregated into obligations to facilitate, promote and provide.⁴ States are obliged to take the necessary steps "to the maximum of its available resources" to achieve progressively the full realization of economic, social and cultural rights and, definitely, public procurement is one key available resource under States' control.⁵ In the context of procurement, *fulfilling* human rights involves considering the ways in which public buying can create **positive impacts** on people.⁶ *See some examples from the region in Box 18.*

² Robert Stumberg, Anita Ramasastry, and Meg Roggensack, "[Turning a Blind Eye? Respecting Human Rights in Government Purchasing](#)", International Corporate Accountability Roundtable (ICAR), (2014).

³ Oliver De Shutter, "International Human Rights Law: Cases, Materials, Commentary" Cambridge: Cambridge University Press, (2010), pp.241-364. And pp.461-512. See

⁴ Committee on Economic, Social and Cultural Rights, "General Comment No.15 (2002): The right to water (arts.11 and 12 of the International Covenant on Economic, Social and Cultural Rights", [E/C.12/2002/22](#), paras. 25-29.

⁵ Committee on Economic, Social and Cultural Rights, "General Comment No 3 (1990): The Nature of States Parties' Obligations, Art. 2, para.1, of the Covenant", paras. 9-10.

⁶ "Fourth Regional Consultation for Latin America and the Caribbean looking into the future: actions to foster responsible business conduct", [A/HRC/44/43/Add.4](#), (8 June 2020), para 20. Some national courts have stressed that public interest is the ultimate and most important aim of public procurement. In such context, public interest can "lead to enforce rights of a certain group of people that requires State's special attention". See Colombian Constitutional Court, [Ruling 932-2007](#) Judicial Review, (8 November 2007), para. 13.

6. The present Information Note of the United Nations Working Group on Business and Human Rights (the Working Group)⁷ **seeks to enhance understanding and implementation by LAC countries of human rights-based procurement aligned with UNGPs, and other relevant international responsible business conduct-related instruments, as described below.** To this effect, while highlighting selected practices in the region to respect, protect and fulfil human rights through public procurement, the Working Group suggests some clear recommendations to policymakers, contracting procurement authorities (CPAs), States' providers, national human rights institutions (NHRIs) and the United Nations system to foster human rights respect in public procurement in the LAC region.

7. In the light of its analysis, the Working Group acknowledges **some notable efforts by policy makers and CPAs to support the use of public procurement to foster environmental sustainability and promote labour inclusion of certain vulnerable groups. However, few States take a holistic approach to integrate human rights considerations across the whole procurement process and beyond the first tier of their supply chains.**⁸

BOX 2. RECOMMENDATIONS FOR STATES TO INTEGRATE HUMAN RIGHTS INTO PUBLIC PROCUREMENT

- i. States should take actions to **respect and protect human rights:**
- a) Incorporate specific actions on public procurement in the **National Action Plans on Business and Human Rights (NAPs)**
 - b) Include **voluntary and binding legal requirements to request suppliers to conduct HRDD**
 - c) **Exclude, select and reward State bidders or suppliers** based on their responsible business conduct
 - d) **Conduct human rights risk assessments** of their operations and global supply chain
 - e) Incorporate human rights requirements into policies governing **framework agreements**, such as the requirement of HRDD
 - f) **Provide for or facilitate remedies** in case of human rights abuses across the public procurement chain, including establishing and/or strengthening **grievance mechanisms** in line with the UNGPs within CPAs.
 - g) Ensure human rights and public procurement policy coherence, including developing and enhancing **practical tools and operational** guidelines for human

⁷ Officially, the Working Group was established by the Human Rights Council in 2011 (resolution [A/HRC/RES/17/4](#)). It is part of the so-called Special Procedures of the Human Rights Council, which is comprised by independent human rights experts with a mandate to report and advise on human rights from a thematic or country-specific perspective. The Working Group is composed of five independent experts of balanced geographical representation and has the mandate to promote the effective and comprehensive dissemination and implementation of the UNGPs: Implementing the United Nations "Protect, Respect and Remedy" Framework.

⁸ OECD, "[Integrating Responsible Business Conduct in Public Procurement](#)", (2020), p. 45.

rights-based procurement implementation, together with **capacity-building activities** for **public buyers and suppliers**.

ii. States should take actions **to fulfil human rights**, including requirements that favour in the procurement process business which support, employ or are owned by vulnerable groups.

iii. States should take actions to promote **human rights transparency and open data** in public procurement.

iv. States should integrate **human rights considerations into emergency procurement**.

v. States should ensure that **multi-stakeholder participation** is part of the whole public procurement cycle including the decision-making processes, impact assessments and HRDD processes.

BOX 3. RECOMMENDATIONS FOR OTHER STAKEHOLDERS

i. **The United Nations** should systematically include human rights considerations in their own public procurement systems and initiatives, particularly **encouraging and incentivizing HRDD**.

ii. **States' suppliers** should design a **continuous HRDD-based management system**, in accordance with the UNGPs, that takes into account the actual and potential impacts of business activities on human rights and the contexts that merit reinforced processes, focusing specifically on groups at high risk of human rights violations such as women, the LGBTI community, children, indigenous communities, people of African descent and human rights defenders.⁹

iii. **States' suppliers** should **provide remedy** in case of human rights abuses, and to this end, create grievance mechanisms in consultation with rights holders, in line with the UNGPs.¹⁰

v. **States' suppliers and business associations** should **support business partners** to implement and/or strengthen HRDD processes.¹¹

vi. **NHRI** should assess the gaps of current normative and regulatory frameworks and public procurement practice in light of the UNGPs; participate in the elaboration, implementation and monitoring of the NAPs, and participate in any other inter institutional committee on public procurement and human rights / sustainability.

vii. **NHRI** should intervene to the extent of its mandate and authority to investigate human rights-related abuses in public procurement and to support victims' access to remedy.¹²

8. This Information Note is developed in the context of the project on Responsible Business Conduct in Latin America and the Caribbean (RBCLAC project)¹³, implemented together by the Office of the UN High Commissioner for Human Rights

⁹ On measuring HRDD, see the session "Tools to measure progress and challenges in the implementation of the Guiding Principles in Latin America" in the framework of the [VI Regional Forum](#); on ensuring respect for human rights defenders, see the Guidance of the UN Working Group on this topic ([A/HRC/47/39/Add.2](#))

¹⁰ <https://undocs.org/A/HRC/44/32>

¹¹ See: [A/HRC/47/39/Add.4](#), para. 43.

¹² See: [A/HRC/47/39/Add.3](#).

¹³ RBCLAC Project aims to promote responsible business conduct practices in line with international standards. For further information, see: <https://www.ohchr.org/EN/Issues/Business/Pages/JointProjectResponsibleBusinessConduct.aspx>.

(OHCHR), the International Labour Organization (ILO) and the Organization for Economic and Cooperation Development (OECD), with the support of the European Union. Particular consideration was given to legal, policy and institutional public procurement frameworks from nine priority countries in the Project - Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama and Peru. These States were invited to submit relevant information on their procurement frameworks.¹⁴ Complementary information was collected from official websites and secondary sources of information. In addition, three events were organized with States in the region, including the contracting authorities of Chile, Colombia, Panama, Paraguay, Peru and experts during the VI Regional Consultation for LAC on Business and Human Rights in Santiago, Chile, on the 3 and 4 of September 2019¹⁵, the V Regional Forum on Business and Human Rights in LAC, (online, 7-11 September 2020)¹⁶, and the VI Regional Forum on Business and Human Rights in LAC, (online 4-6 October 2021)¹⁷. In addition, external experts¹⁸ reviewed and provided inputs to this note.

¹⁴ The Working Group sent out a questionnaire to the 9 countries that are part of the RBCLAC Project.¹⁴ The Working Group thanks Argentina, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru for sending their submissions and cooperation.

¹⁵ OHCHR, "[Concept Note on Fourth Regional Consultation on Business and Human Rights for Latin America and the Caribbean. Looking ahead: Actions to foster responsible business conduct](#)", (2019); General Assembly, "Fourth Regional Consultation for Latin America and the Caribbean. Looking ahead: Actions to foster responsible business conduct", [A/HRC/44/43/add.4](#), (8 June 2020).

¹⁶ See: <https://youtu.be/8jiWOXxmhq8>

¹⁷ See: here <https://sched.co/mEMB>

¹⁸ Daniel Morris from the Danish Institute of Human Rights; Lena Diesing, Erika Bozzay and Shivani KANNABHIRAN from OECD; Helena Fonseca from the American States Organization; Annie Van Klaveren, Julia Gin and Nicolas Torres from ILO; Olga Martin-Ortega and Laura Trevino from Greenwich University; Raquel Coello-Cremades and Viktoria Smirnova from UN Women

II. Public procurement: definition and international legal and policy frameworks

9. Public procurement refers to the purchase by governments and state-owned enterprises of goods and services.¹⁹ The OECD Recommendation on Public Procurement defines the public procurement cycle as a “sequence of related activities, from needs assessment through competition and award, to payment and contract management, as well as any subsequent monitoring or auditing.”²⁰ Generally, it involves pre-tender, tender, and post-tender phases, all of which constitute the life cycle of public procurement. Pre-tender includes conducting a market analysis and determining the organisation's needs, budget, strategy, as well as technical, performance, selection, and award criteria. During the tender phase, private suppliers submit proposals and meet pre-tender requirements and public contractors assess and award the contract. Post-tender involves all related aspects to contract management, including monitoring its effective performance.²¹

10. The development of international legal and policy frameworks has supported the transition of the principle of value of money based on the cheapest price to include environmental and social objectives.²² The UNGPs, endorsed by the UN Human Rights Council in June 2021 and globally recognized as the authoritative framework to protect and respect human rights in a business-related context, provide that States should promote respect for human rights in public procurement. The Guiding Principles 4, 5 and 6 articulate an expectation for States to lead by example and take measures to protect from human rights abuses from businesses with whom they have contractual relationships. Guiding Principle Guiding Principle 6 provides “**States should promote respect for human rights by business enterprises with which they conduct commercial transactions**”. The commentary to Guiding Principle 6 elaborates the need to promote awareness of and respect for human rights through the terms of contracts, amongst other measures. Moreover, guiding Principle 5 calls on States to have adequate oversight over businesses with whom they have a contractual relationship to provide services that may impact the enjoyment of human rights. Finally,

¹⁹ See: <https://www.oecd.org/governance/public-procurement/>

²⁰ <https://www.oecd.org/gov/public-procurement/OECD-Recommendation-on-Public-Procurement.pdf>

²¹ OECD, “Integrating Responsible Business Conduct in Public Procurement”, (2020), pp. 74-87; Olga Martin-Ortega and Claire Methven O’Brien, “Advancing Respect for Labour Rights Globally through Public Procurement,” *Politics and governance*, 5(4), (2017), pp. 69–79.

²² Christopher McCrudden, “Using public procurement to achieve social outcomes”. *Natural resources forum*, 28(4), (2004) pp.257–267.

Guiding Principle 4 refers to additional steps States need to undertake to protect human rights by state-owned enterprises as duty-bearers, including through their procurement activities.

11. Human rights due diligence is a risk management process detailed in the UNGPs to operationalize the corporate responsibility to respect human rights. It allows businesses to identify adverse impact on human rights linked to their activities and supply chains, adopt measures to prevent or mitigate such impacts, and where the harm has already occurred, ensure that victims have access to an effective remedy. A State can require that its suppliers implement a human rights due diligence to address the risk of human rights abuses in state supply chains (see Chapter III.2.C).

12. In addition, the United Nations system has taken firm steps to include sustainable considerations in their own public procurement²³ and in their initiatives – in particular the United Nations Commission on International Trade Law (UNCITRAL),²⁴ and ILO.²⁵ Other international organizations such as the World Trade Organization (WTO)²⁶ have also taken action on the matter. In addition, SDG target 12.7 of the 2030 Agenda encourages States to “promote public procurement practices that are sustainable in accordance with national policies and priorities.”²⁷ On this basis, the uptake of sustainable public procurement (SPP) has grown and has been supported by voluntary global multi-stakeholder partnerships, such as the One Planet Network Sustainable Public Procurement Programme.²⁸

13. UN Women is also chairing an inter-agency Task Force on Gender-Responsive Procurement which is currently developing the Strategic Framework on Gender-Responsive Procurement, in line with the UNGPs.²⁹

²³ United Nations [Procurement Manual](#), (2019) establishes within section 15.2. Sustainability Considerations that “Requisitioners and Procurement Officials should be aware of the Sustainable Development Goals (SDGs) and inter-agency initiatives on procurement practices that incorporate the social, economic and environmental principles of sustainable development in support of SDG12 and target 12.7. The social dimension of the sustainable agenda considers the promotion of human rights, elimination of child labour, fair labour conditions, gender equality and wider ethical issues in the supply chain”.

²⁴ United Nations Commission on International Trade Law, “[Model Law on Public Procurement](#)” (2011);

²⁵ ILO adopted [Labour Clauses for Public Contracts Recommendation 84.](#);

²⁶ https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

²⁷ The Inter American Network on Government Procurement, “[Implementing Sustainable Public Procurement in Latin America and the Caribbean: Optimizing Value-for-Money Across Asset Lifecycles](#)”, International Institute for Sustainable Development, (2015), p.9.

²⁸ One Planet Network Sustainable Public Procurement Programme is supported by United Nations Environment Programme among other institutions, seeks to promote and accelerate the implementation of SPP globally. It has applied an [universal methodology](#) for measuring how States use procurement to protect human rights and the environment under SDG 12.7.1. Concerning the region, United Nations Environmental Programme has supported the “[Regional Strategy on Sustainable Consumption and Production \(SCP\) for the 10YFP Implementation in Latin-America and the Caribbean \(2015-2022\)](#)”, (5 May 2015), p. 10.

²⁹ See: https://www.ungm.org/Shared/KnowledgeCenter/Pages/PT_GRP

14. Despite these positive developments, human rights considerations, notably based on the UNGPs, are yet to be systematically integrated into those United Nations bodies. This is a missed opportunity for the United Nations system to deliver on what it says and contribute to greater overall coherence in global governance frameworks.

I. Working Group's Recommendation on integrating human rights requirements into United Nations initiatives and procedures

In continuation of the steps taken by the United Nations system, the United Nations should systematically include human rights considerations into their own public procurement system and initiatives, particularly encouraging and incentivizing HRDD for businesses with which they have commercial relations.

BOX 4. INTERLINKAGES BETWEEN HUMAN RIGHTS, SDGs and SPP

SPP is defined as “a process whereby organisations meet their need for goods, services and utilities in a way that achieves value for money on a whole-life basis in terms of generating benefits not only to the organisation, but also to society and the economy, while minimizing damage to the environment”.³⁰

SPP is framed by the SDGs and the 2030 Agenda, which has the protection and realization of human rights as a backbone. “A development path in which human rights are not respected and protected cannot be sustainable and would render the notion of sustainable development meaningless”.³¹ Therefore, SPP in its three fundamental pillars – economic, social and environmental- not only prescribes for the protection of human rights in the public supply chain but also supports human rights realization and fulfilment.³²

15. It is also worth highlighting OECD instruments with regard to public procurement. The OECD has issued a Recommendation of the Council on Public Procurement in 2015³³ as a landmark development of strategic and holistic use of public procurement. These recommendations should be read in light of OECD's Guidelines

³⁰ UN Environment Programme, [Sustainable consumption and production policies](#).

³¹ UN Working Group on Business and Human Rights, [“The business and human rights dimension of sustainable development: embedding “protect, respect and remedy” in SDGs implementation”](#), (2017), p.1.

³² For more information regarding linkage among UNGPs and SDGs, see here: UN Working Group on Business and Human Rights, [“The business and human rights dimension of sustainable development: embedding “protect, respect and remedy” in SDGs implementation”](#), (2017), p.1.

³³ See : <https://www.oecd.org/gov/public-procurement/recommendation/>

for Multinational Enterprises³⁴ and the OECD Due Diligence Guidance for Responsible Business Conduct³⁵ that provide practical guidance on risk-based due diligence. Several sector-specific due diligence guidance notes complement the OECD's risk-based due diligence framework. Risk-based due diligence, including with a focus on human rights, could be used in public procurement strategies decision-making and practices. In this line, in 2019 the OECD launched a programme on "Public Procurement and Responsible Business Conduct" to advance the integration of responsible business conduct focusing on integrating OECD risk-based due diligence into public procurement policies and practices along the public procurement cycle³⁶.

³⁴ See: <https://mneguidelines.oecd.org/>

³⁵ See: <https://mneguidelines.oecd.org/duediligence/>

³⁶ See: <https://www.oecd.org/governance/public-procurement/procurement-and-rbc/>

III. Incorporating human rights into public procurement in

LAC

11. Public procurement in LAC accounts for a significant part of the economy, representing 6% of GDP, and a large variety of GDP share among countries. It also implies significant public expenditure with an average of 17.4% of total government spending in LAC in 2017.³⁷ Common sectors in procurement with high public spending in several countries in the region are construction, development, renovation and maintenance of basic infrastructure (water, transport, energy, telecommunications) and health.³⁸

BOX 5. PUBLIC PROCUREMENT AS A SHARE OF GDP AND TOTAL GOVERNMENT EXPENDITURE										
	Mexico	Argentina	Paraguay	Costa Rica*	Peru	Ecuador*	Colombia	Brazil	Chile	LAC
GDP	3.6%	N/A	6.3%	13.8 %	9.9%	5,6%	9.9%	6.4%	5.2%	6%
Expenditure	15.9%	N/A	26.1%	25.4%	46.4%	16.8%	33.9%	13.5%	20.7%	17.4%

Source: OECD [Government at a Glance: Latin America and the Caribbean 2020, Chapter 10, figures 10.1 and 10.2.](#)
**Source:* OHCHR survey to countries.
***Source:* OHCHR survey to countries and [Budgetary Execution Report January-December 2017, p.12.](#)

16. With regard to governance authority on public procurement within the States of the region, generally it is under the competence of the Ministry of Economy or Finance. Within them, CPAs have been created almost in every country of the region. As a main task, CPAs establish and promote procurement-related policies and regulations, build capacities, and manage electronic systems of procurement information and data, but often do not act as a contracting authority. Also, their mandates include establishing framework agreements that public buyers use in purchases of specific goods and services. The use of framework agreements is mandatory at the central level in some countries and voluntary in others. (See III.1.E)

17. Nevertheless, almost each public entity, at the central and local level, is due to engage in public purchasing. For this reason, it is important that any measure target all public buyers, considering the human rights risks attached to the service and goods purchased as well as the quantity.

³⁷ See: [OECD, "Government at a Glance: Latin America and the Caribbean 2020, \(2020\), OECD Publishing, p.156.](#)

³⁸ OHCHR survey answered by Mexico, Peru, Costa Rica and Chile.

BOX 6. CENTRAL PROCUREMENT AGENCIES IN THE REGION								
Country	CPA	REPORTS TO/SITS WITHIN	KEY FUNCTIONS					
			PROCUREMENT-POLICIES	FRAMEWORK AGREEMENTS	MANAGE ELECTRONIC SYSTEMS	MONITOR PUBLIC BUYERS/BODIES	ADVISE PUBLIC BUYERS OR BODIES	CAPACITY-BUILDING ACTIVITIES
Argentina ³⁹	National Office of Procurement - ONC	The Secretariat for Public Innovation in the Chief of Cabinet	✓	✓		✓		
Brazil ⁴⁰	Central Procurement Agency - Central de Compras	Ministry of Economy	✓	✓	✓	✓		
Chile ⁴¹	Directorate of public purchases and procurement - ChileCompra	Ministry of Finance		✓	✓	✓	✓	✓
Colombia ⁴²	National Agency of Public Procurement (Colombia CompraEficiente)	National Department for Planning	✓	✓	✓			✓
Costa Rica ⁴³	General Directorate of Administration of Goods and Administrative Procurement (DGABCA)	Ministry of Finance		✓	✓	✓	✓	✓
Ecuador ⁴⁴	National Service of Public Procurement (SERCOP)	Collegiate Body ⁴⁵	✓	✓	✓		✓	✓
Mexico ⁴⁶	Administrative Office	Ministry of Finance ⁴⁷	✓			✓		
Panama ⁴⁸	General Directorate of Public Procurement	Ministry of Economy and Finance		✓	✓		✓	✓
Peru ⁴⁹	General Directorate for Supply	Ministry of Economy and Finance	✓		✓	✓	✓	✓
	Executor Body of Public Procurement - Peru Compras			✓			✓	

³⁹ [Decree 1023/2001](#) of 16 August 2001, article 23 modified by article 11 of Decree 666/2003.

⁴⁰ [Decree 9.745](#) of 8 April 2019, Annex I, articles 2 and 131.

⁴¹ [Law 19886](#) of 30 July 2003, articles 28 and 30.

⁴² [Decree 4170](#) of 3 November 2011, article 1 and 3.

⁴³ [Law 8131 of Financial Administration of the Republic and Public Budgets](#) of 18 September 2001, article 99 and [Decree 38890-H](#) of 2 December 2014, articles 1, 20 and 21.

⁴⁴ [Organic Law of the National System of Public Procurement](#) of 4 August 2008, articles 10, 11 and 43.

⁴⁵ Composed of, among others, the Ministry of Production, Employment and Competitiveness and the Ministry of Finance.

⁴⁶ [Organic Law of Federal Public Administration](#), article 31, XXV-XVI.

⁴⁷ [Decree of 11 October 21019](#)

⁴⁸ [Decree 85](#) of 16 April 2007 that approves organisational structure of the General Directorate of Public Procurement.

⁴⁹ [Law 30225](#) of 13 March 2019 Decree 082-2019-EF, articles 51 and 52.

III.1. State actions to protect human rights

A. Incorporating specific actions on public procurement in the National Action Plans on Business and Human Rights (NAPs)

18. As a first observation, the Working Group acknowledges that States of the region which have adopted NAPs have laid a stronger foundation to embed the respect for human rights in legal and institutional public procurement frameworks in a coherent manner.

Selected existing practice on NAPs

Chile's NAP sets out specific responsibilities to relevant government entities with regard to public procurement, including to CPA *ChileCompra* to incorporate "integrity agreement clause" in which suppliers are bound to respect human rights in line with the UNGPs and strengthen the inclusion of sustainability considerations through framework agreements and the usage of "Women Business Certificate". The Ministry of Foreign Affairs, the national human rights institution (NHRI) and the Ministry of Social Development and family are tasked with supporting the strengthening of capacity in this area and developing tools and information for implementation.⁵⁰

Colombia's first NAP, adopted in 2015,⁵¹ includes a chapter on the State as an economic actor, which assigns responsibilities to different public institutions to include human rights requirements and criteria in public procurement, notably to CPA *Colombia CompraEficiente*; the Ministries of Trade, Industry and Tourism; Environment; Agriculture and Rural Development; and the National Authority of Environment Licensing. To this effect, a Task Force group was created to elaborate award criteria based on human rights, including human rights due diligence, that should then be incorporated by its CPA into the public procurement system. **The Second NAP** adopted in December 2020 emphasised the [Guideline on Socially Responsible Public Procurement](#) as a key achievement of the first NAP, and further urged *Colombia CompraEficiente* to provide technical assistance to State actors for its implementation, particularly on awareness-raising and due diligence on human rights.⁵²

Peru, in its NAP, includes within the strategy of designing public policy to protect and prevent human rights abuses in the business context a concrete action regarding public procurement. It establishes public procurement schemes that align with the UNGPs and with responsible business conduct to determine how the scheme can prevent human rights abuses, which is assigned jointly to the Ministry of Justice and Human Rights, the Supervisory Body of Public Procurement (or OSCE), the Ministry of Economy and Finance and CPA *Peru Compras*. The NAP further assigns them and other relevant bodies to take adequate measures to ensure that procurement contributes to the formalization of economies; prevent public contracting with businesses that commit severe human rights abuses, particularly child and forced labour; and incentivize respect for human rights by suppliers in their supply chains.⁵³

⁵⁰ Ministry of Foreign Affairs, "[National Action Plan on Business and Human Rights Chile](#)" (2017), p.42-44.

⁵¹ Government of Colombia, "[National Action Plan on Business and Human Rights](#)", (2015) p.12-13.

⁵² Government of Colombia, "[National Action Plan on Business and Human Rights 2020-2022](#)", (2020), p.54.

⁵³ Government of Peru, [Supreme Decree 009-2021-JUS that approves the National Action Plan on Business and Human Rights 2021-2025](#), (2021), p.79.

II. Working Group's Recommendation on NAPs

- **States should develop a NAP that addresses public procurement and human rights. Actions on public procurement should be accompanied by smart objectives, indicators, timeframe for implementation,⁵⁴ and alignment with SDG 12 implementation.⁵⁵**
- **For the elaboration, implementation and follow-up of the NAP, States should establish effective inter-institutional mechanisms where relevant ministries and departments in charge of public procurement actively participate and commit, including CPAs⁵⁶.**

B. Adopting requirements to request suppliers to conduct HRDD

19. States should protect all human rights throughout their purchasing chain. To this effect, human rights requirements, in line with UNGPs, shall be made coherently throughout key public procurement policy and legal frameworks. In particular, a requirement that suppliers conduct HRDD is the cornerstone of realising human rights through public procurement.⁵⁷ As adverse human rights impacts may occur anywhere in the supply chain, the respect for human rights applies to suppliers and across the supply chain, including in the invisible workforce, such as the cleaning sector.⁵⁸

20. As set out in the UNGPs, HRDD is a process to proactively identify and manage potential and actual adverse human rights impacts of business activities. It should be an ongoing process, draw on human rights expertise and involve meaningful consultation with potentially affected groups and other relevant stakeholders. The process involves four core steps:

- (a) **Identifying and assessing actual and potential adverse human rights risks** that businesses which they may be involved either through their

⁵⁴ General Assembly, [“Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: National Action Plans on Business and Human Rights”](#), A/69/263, (5 August 2014), parr.73.

⁵⁵ UN Working Group on Business and Human Rights, [“The business and human rights dimension of sustainable development: embedding “protect, respect and remedy” in SDGs implementation”](#), (2017), p.2.

⁵⁶ See: the [Working Group Guidance on NAPs](#).

⁵⁷ General Assembly, “Promotion and Protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms,” [A/73/163](#), (16 July 2018), para. 82.

⁵⁸ Equality and Human Rights Commission, [“The invisible workforce: employment practices in the cleaning sector” Finding Reports”](#) (2014).

own activities or as a result of their business relationships, involving meaningful consultation with potentially affected groups and other relevant stakeholders.

(b) **Implementing appropriate measures that can address identified human rights impacts.** Measures can vary and largely depend on whether the enterprise causes or contributes to an adverse impact or is involved because the impact is directly linked to its operations, products or services by a business relationship.

(c) **Tracking the effectiveness of measures** that are addressing adverse human rights through qualitative and quantitative indicators, and feedback from both internal and external sources to determine whether these measures are accomplishing the aim they were created for.

(d) **Communicating** steps a, b and c, particularly to affected stakeholders. Often communication takes place through HRDD reports that are publicly available.⁵⁹

BOX 7. EXAMPLES OF HRDD REQUIREMENTS IN PUBLIC PROCUREMENT

HRDD as a condition that public buyers request from their suppliers could take place in different ways in the public procurement cycle. The following are some examples:

HRDD as a tender criterion to participate in bids or as an **award criterion** that provides preference or advantage over other participants: Bidders could submit evidence that they have set out HRDD mechanisms within a specific time frame prior to the process. Alternatively, bidders could submit, together with their economic and/or technical offer or proposal, identification of actual and real human rights risks over the goods and services they aim to supply to the State and the measures they would implement to address them in the event that the contract is awarded to them.

Whenever HRDD is set as an assessment criterion, bidding guidelines should clearly establish the weight they will give to it and the objective rules they will use to evaluate such criteria to award the contract. Verification methods for these examples can be HRDD reports issued in a given timeframe or equivalent evidence.

HRDD as a technical or performance condition for private contractors within the contract: Awarded suppliers and subcontractors should undertake HRDD as part of their

⁵⁹ For more information, see the [OHCHR Interpretative Guide on the Corporate Responsibility to Respect Human Rights](#) and [OECD Guidance on Due Diligence for Responsible Business Conduct](#).

contractual obligations. This means that suppliers should be liable for integrating this obligation in their contracts with subcontractors. Clear conditions under which such HRDD should be undertaken must be given to suppliers. In addition, contracting authorities should include the mechanisms and responsible body that will monitor and verify its implementation and the sanctions or supplier's liability in case of failing to comply with the terms of the contract regarding human rights. This means that suppliers should be liable for their or their subcontractors' failure to comply.

21. The Working Group observes that only a few LAC governments have included HRDD requirements for human rights-related risk identification by suppliers – some covering all human rights at risk, and others covering labour rights. On the other hand, some governments have established mandatory requisites for suppliers to handle risks related to corruption and integrity. To this end, integrity risks management programmes have been created. Even if those mechanisms are not human rights-based, they can be used as models to set out HRDD requirements in legal frameworks.

Selected existing practice on requirement for risks management

Colombia's legislation stipulates that public entities should include "estimation, type and allocation of risks involved in public contracting" in bidding guidelines.⁶⁰ Risk clusters involve social or political risks, which are those derived from changes in public policies and social conditions that impact the execution of the contract.⁶¹ The Guideline for Socially Responsible Public Procurement⁶² explicitly mentions that risk analysis should include human rights risks and public buyers should request HRDD to suppliers. It also provides further guidance on how to undertake each of the four core steps of HRDD.

Chile establishes within its legal framework that in case of regular services, higher points will be awarded to the bids with the best employment and remuneration conditions.⁶³

Argentina has a mandatory integrity programme for contracts to meet certain conditions within its legal framework. This programme includes a code of conduct with integrity policies and procedures applicable to all directors, managers and employees that guide planning and execution of works to prevent crimes established by law and a periodic risk assessment, as well as complaint and investigation mechanisms.⁶⁴ This is restricted to crimes like influence peddling, bribery, and illicit enrichment.

⁶⁰ [Decree 1150 of 2007](#), article 4.

⁶¹ [Document 3714 of 2011 "Foreseeable Risk in the Framework of Public Contracting Policy"](#), (2011), p.20.

⁶² See: https://colombiacompra.gov.co/sites/cce_public/files/cce_documents/cce_guia_cp_socialmente_responsables.pdf

⁶³ [Law 19886 "Administrative Contracts of Supply and Provision of Services"](#) of 30 July 2003, article 6.

⁶⁴ [Law 27401](#) of 2017 "Criminal Liability", article 22.

Brazil establishes mandatory implementation of an integrity programme by the awarded supplier within the six months following the start date of the execution of the contract when it comes to significant services and supplies.⁶⁵ Regulation should provide measures to be adopted, the way to verify them, and the penalties for non-compliance with such programme.

III. Working Group's Recommendations on requirement for HRDD

- **States should include a requirement that suppliers conduct HRDD within their legal systems and regulatory public procurement frameworks in line with the UNGPs. They should clearly establish whether suppliers are to conduct HRDD in a mandatory fashion or not, depending on the contract conditions (e.g., purchase amount, types of goods, services or works, duration of the contract or sector).**
- **CPAs should provide effective guidance to business enterprises on how to undertake effective HRDD, developing tools and training for suppliers and bidders.**
- **CPAs should also provide information regarding main human rights risks by sector or other relevant human rights data (e.g., data obtained from their public risk management systems).**

C. Excluding, selecting, and rewarding suppliers/bidders based on their responsible business conduct

22. In order to promote respect for human rights, States should select and reward responsible businesses which respect human rights and exclude those who have committed human rights breaches. In the region, some progress has been made to adopt legal requirements to exclude, select and reward bidders and suppliers with regard to labour rights, but not yet more vastly with regard to human rights.

Selected existing practice on excluding businesses

Argentina forbids businesses listed in the Public Registry of Employers with Labour Sanctions (REPSAL) from participating in public procurement processes during the time they remain in such registry.⁶⁶

Brazil excludes bidders sentenced in court in the five previous years for child or forced labour.⁶⁷

⁶⁵ [Law 14.133. Law of Bidding and Administrative Contracts](#) of 1 April 2021, article 25.

⁶⁶ [Decree 1023/2001](#) of 13 August 2001 article 28, h), subparagraph included by article 44 of Law 26.940 of 2 June 2014.

⁶⁷ [Law 14.133. Law of Bidding and Administrative Contracts](#) of 1 April 2021, article 14.

Chile enacted a significant law that dismiss bidders condemned of having practices against unions or workers' rights⁶⁸. However this law has been ruled unconstitutional by the Constitutional Tribunal⁶⁹

Costa Rica's regulation establishes that failure of the contractor to comply with labour and social security obligations established in legal frameworks as well as any other social commitment linked to this contract constitutes a serious breach and leads to liability for contractors, even to contractual termination without responsibility to the contracting body after compliance of due process rules. In the post-tender phase, during the execution of the contract, suppliers must provide evidence that they fulfil social security obligations. Breach of contractual obligations can lead to fines from 2% to 25% of the agreed monthly payment.⁷⁰

Colombia includes worker's rights protection measures throughout the duration of the contract by conditioning contract signature, renewal and payment to the submission of evidence by suppliers proving they comply with their social security obligations such as pensions and health contributions. If suppliers fail to comply, the contracting entity is entitled to withhold outstanding payments.⁷¹

Selected existing practice on selecting businesses

Costa Rica requests bidders to include, within their offers, disaggregated cost of workforce, the number and type of workers as well as working hours to accomplish the contract's objective. Also, the regulation includes within the bidding guidelines the following clause "It is an essential duty of the contractor to comply with labour and social security obligations established in legal frameworks as well as any other social commitment that it subscribes to linked to this contract".⁷² Costa Rica further establishes that contracts must include a clause obliging bidders to present a statement under oath that they do not engage in child labour.

Chile requests applicants to provide evidence of having enough workers so as to not surpass legal limits of daily working hours and overtime.⁷³ In the case of suppliers of regular services, Chile further establishes that contracting entities must include conditions of employment and remuneration as a technical criterion.⁷⁴

Mexico's Ministry of Public Function has created a platform, called in Spanish *Padrón de Integridad Empresarial*⁷⁵, which lists businesses that comply with business integrity principles, that could be potential suitable State contractors.

⁶⁸ [Law 19886 "Administrative Contracts of Supply and Provision of Services"](#) of 30 July 2003, article 4.

⁶⁹ For example in those sentences: Rol N°3570-17, 3702-17, 4722-18, 4800-18 and 5180-18, Rol N° 8820-20)

⁷⁰ [Technical Standard for the Implementation of Sustainable Criteria in Public Procurement and Guidelines to Enforce articles 29 of Law 8839 and 44 of its General Ruling \(2015\)](#), p.16. ; [Guideline of Social Criteria in Public Procurement Processes in Costa Rica \(2014\)](#), p. 15

⁷¹ [Law 789](#) de 27 December 2002, art 50. [Decree 1150](#) Of 16 July 2007 that amended the article 41 of the law 80

⁷² [Technical Standard for the Implementation of Sustainable Criteria in Public Procurement and Guidelines to Enforce articles 29 of Law 8839 and 44 of its General Ruling \(2015\)](#), p.16. [Guideline of Social Criteria in Public Procurement Processes in Costa Rica \(2014\)](#), p. 12-14.

⁷³ [Law 19886 "Administrative Contracts of Supply and Provision of Services"](#) of 30 July 2003, article 6.

⁷⁴ [Law 14.133](#) of Bidding and Administrative Contracts of 1 April 2021, article 14, and [Law 19886 "Administrative Contracts of Supply and Provision of Services"](#) of 30 July 2003, article 4.

⁷⁵ See: <http://padron.apps.funcionpublica.gob.mx/>

Selected existing practice on rewarding business

Chile establishes that a higher score can be given to bidders that exhibit better employment conditions and remunerations, such as salaries over the legal minimum wage and other benefits.⁷⁶

Peru establishes that additional points can be given to bidders that comply with certain evaluation factors such as criteria on environmental and social sustainability, social protection and human development, and integrity in public procurement. Amongst these criteria are the certifications SA8000 issued by a Certification Body accredited by the Social Accountability Accreditation Services (SAAS), or certifications on "Safe business free of violence and discrimination against women" given by the Ministry of Women and Vulnerable Populations, or on "Hiring of people with disabilities" by the Ministry of Labour and Employment Promotion. Certifications on "Anti-bribery management system" according to ISO37001 are also rewarded.⁷⁷

IV. Working Group's Recommendations on excluding, selecting, and rewarding suppliers/bidders

- **States should ensure a legal basis to exclude bidders that have committed human rights abuses.**
- **States should ensure a legal basis for the inclusion of human rights requirements and selection criteria in public procurement.**
- **States should consider setting an expectation that a certain percentage of procurements include human rights criteria.**
- **States should consider how to cascade criteria and requirements down their supply chains. States should include within their legal frameworks mandatory human rights criteria to exclude and select suppliers, which should consider not only labour and social security rights of workers, but also other relevant human rights.**

D. Conducting human rights risks assessment of the public supply chain

23. In order to ensure respect for human rights in its purchase chain, the State should identify human rights risks in their own supply chains – which means not

⁷⁶ [Law 19886 "Administrative Contracts of Supply and Provision of Services"](#) of 30 July 2003, article 6.

⁷⁷ [Standard Terms of Public Tender for Procurement of Goods. 11 July 2021 included in Directive No. 001-2019-OSCE/CD](#) p.28. [Standard Terms of Public Tender for Procurement of Services in General. Directive No. 001-2019-OSCE/CD](#), p.30. [SA8000 Standard](#) developed by Social Accountability International is based on internationally recognized standards of decent work, including the Universal Declaration of Human Rights, and ILO conventions, including elements of child labour, forced or compulsory labour, health and safety, freedom of association and right to collective bargaining, discrimination, working hours, disciplinary practices, remuneration and management system.

the risk on the institutions or suppliers, but on individuals and the environment. This analysis would help to request suppliers to meet specific measures and criteria.⁷⁸ Increasingly, the LAC States have developed risk management frameworks, which involve a methodology for assessing procurement risks of different nature. However, risk management mechanisms have focused on integrity and environmental risks.⁷⁹ This assessment would also help public buyers identify potential risks of human rights abuses to individuals and understand markets' capabilities and address them.

Selected existing practice to assess procurement-related risks

Argentina, through the National Office of Procurement, issued eleven sustainability sheets to operationalize sustainable criteria in public procurement in the sectors of lighting, cleaning services and products, catering, gloves, refrigeration, and office furniture.⁸⁰ These sheets include existing certifications, labels, and environmental risk assessments of specific goods and services. Also, they list examples of sustainable criteria that could address identified risks together with means of verification and general recommendations for public buyers.

Chile developed the observatory of Chile Compra⁸¹ to strengthen transparency, probity and efficiency of public procurement and tackle corruption. This initiative focused on integrity risks includes a system of red flag alerts that identifies gaps and opportunities in bids, mainly through a risk matrix oriented to identify and correct misbehaviours of contracting authorities.

Costa Rica created the Specific System of Risk Assessment (SEVRI) for the Integrated System of Public Procurement that identifies, assesses, analyses, manages, reviews, and documents relevant institutional risks that could impact public procurement processes. Notably, some risk clusters that have been identified are strategic planning, communication, or contractual agreements.⁸²

Peru's National Anti-Bribery System obtained the ISO 37001:2017 "Anti-Bribery Management System" certification, which acknowledges the prevention, detection and management of bribery risks according to international standards.⁸³

⁷⁸ OECD, "[Integrating Responsible Business Conduct in Public Procurement](#)", (2020), p. 70. See also: OECD "[Recommendation of the Council on Public Procurement](#)" (2015).

⁷⁹ OECD, "[Integrating Responsible Business Conduct in Public Procurement](#)", (2020), p. 70. See also: OECD "[Recommendation of the Council on Public Procurement](#)" (2015).

⁸⁰ Files issued by the National Purchasing Office include catering, climate conditioning, latex-free gloves, lightening, furniture, paper, plastic, condom, cleaning products, refrigeration, cleaning services. Link to files: <https://www.argentina.gob.ar/jefatura/innovacion-publica/oficina-nacional-de-contrataciones-onc/compras-publicas-sustentables> Link to files: <https://www.argentina.gob.ar/jefatura/innovacion-publica/oficina-nacional-de-contrataciones-onc/compras-publicas-sustentables>

⁸¹ See: <https://www.chilecompra.cl/conoce-el-canal-de-denuncia-anonima/>

⁸² [General Guidelines for the establishment and functioning of a Specific System of Risk Assessment \(SEVRI\), D-3-2005-CO-DFOE](#) of 1 July 2005. Information also obtained from the OHCHR questionnaire.

⁸³ See further at: <https://www.gob.pe/institucion/perucompras/noticias/187265-peru-compras-obtiene-certificacion-iso-antisoborno>

V. Working Group's Recommendations on human rights risk assessments

- **States should include in their mechanisms to identify and mitigate risks, risks to people and the environment – namely human rights, with a focus on groups that may suffer disproportionate impacts such as women, the LGBTIQ+ community, children, indigenous peoples, and other ethnic communities.⁸⁴**

E. Incorporating human rights requirements into framework agreements

24. The role of CPAs is crucial in the process of integrating human rights in public procurement policy and practice, including through the framework agreement they elaborate. Framework agreements are arrangements between one or more contracting authorities and one or more economic operators whose purpose is to establish the terms governing contracts to be awarded. Incorporating human rights requirements in those framework agreements would strongly support a more systematic human rights-based public procurement. In the region, most CPAs are mandated to develop these framework agreements. In that sense, notable progress has been made to include in the relevant normative and policies framework considerations to procure sustainably through framework agreements. However, explicit human rights considerations should be included.⁸⁵

Selected existing practice on incorporating human rights into framework agreements

Chile's NAP policy includes developing framework agreements that include sustainability considerations relevant to the industry and procurement of the framework agreement, including identifiable sustainability labels.⁸⁶ All framework agreements include a clause known as the "integrity pact", by virtue of which the bidder undertakes to respect the fundamental rights of its workers, meaning those enshrined in the Political Constitution of the Republic, in accordance with the Labour Code.

Costa Rica included provisions in procurement laws to foster, in a voluntary fashion, sustainable criteria in public procurement through framework agreements.⁸⁷ This provision has been implemented in framework agreements to purchase cleaning, wheels and some construction materials.⁸⁸

⁸⁴ See: BSR framework for conducting gender responsible due diligence in supply chains, based on the [UN Working Group report on gender dimensions of the UNGPs](#).

⁸⁵ OECD, "Framework Agreements", (2011), p.5.

⁸⁶ Ministry of Foreign Affairs, "National Action Plan on Business and Human Rights Chile" (2017), p.43.

⁸⁷ [Decree 33411](#) of 27 September of 2006, Ruling of the Law of Public Procurement, article 115; amended by Decree 41098 of 5 March 2018.

⁸⁸ Ministry of Environment and Energy, Ministry of National Planning and Economic Policy and Ministry of Foreign Affairs, "National Policy on Sustainable Production and Consumption 2018-2030", (2018), p.38. See further on Costa

VI. Working Group's Recommendations to include human rights considerations into framework agreements

- **States should include the obligation to comply with human rights, such as a HRDD requirement, in framework agreements and the contractual and guidance frameworks that govern them.**

F. Facilitating remedy for human rights abuses deriving from public procurement

25. As part of States' duty to protect human rights and in the context of public procurement, States should ensure that anyone who has suffered any human rights-related abuses by States' suppliers, including across their supply chain, has access to an effective remedy. The UNGPs distinguish three types of remedial mechanisms: State-based judicial, non-judicial grievances, and non-state-based grievances. For the two first categories, States should take appropriate steps to ensure their effectiveness. With regard to non-State-based grievance mechanisms, States should consider ways to facilitate access. While the three categories can serve to redress human rights abuses related to public procurement, the analysis of this Information Note will only focus on State-based non judicial grievance mechanisms and operational level grievance mechanisms.

- **State-based non-judicial grievance mechanisms**

26. As established in Guiding Principle 27 and 31, States should provide effective non-judicial grievance mechanisms that are legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning. Effective grievance mechanisms should place right holders at the cen-

Rica's sustainable criteria implementation through framework agreements at: https://www.hacienda.go.cr/docs/60c8e0bc7fa6b_Resumen%20Compras%20Sustentables%20Introduccion%20a%20CPS.pdf

tre of their entire process and be responsive to their diverse experiences and expectations.⁸⁹ The OHCHR, in its Accountability and Remedy Project⁹⁰, recommended policy objectives to improve policy coherence, ensure effectiveness and address cross-border challenges of State-based non-judicial mechanisms.⁹¹

27. State-based non-judicial mechanisms may be found at different government levels, have different forms, powers, and mandates.⁹² The range of human rights that can be abused throughout the procurement cycle is broad. Therefore, complaints regarding those abuses can fall into grievance mechanisms focused on specific human rights, such as labour and environment, or with broader human rights mandates. Notably, NHRIs and OECD National Contact Points (NCPs)⁹³ play a critical role in terms of facilitating right-holders' access to remedy or redressing adverse impacts caused by States' suppliers. Adherents to the OECD Guidelines on Multinational Enterprises (MNE Guidelines) commit to establish an NCP. Aside from promoting the MNE Guidelines, NCPs handle cases (referred to as "specific instances") in case of non-compliance with the Guidelines as a non-judicial grievance mechanism, providing access to remedy, including in relation to public procurement.⁹⁴

Selected existing practice on NHRI investigating human rights abuses in public procurement

Mexico's NHRI addressed diverse business-related abuses by the State's private contractors in relation to the discrimination in the access to transport services by persons with disabilities and older persons. It also addressed alleged abuses from private security subcontractors of railway concessionaires due to unlawful use of force.⁹⁵ Across

⁸⁹ General Assembly, "Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Access to effective remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework", [A/72/162](#) (18 July 2017), paras. 18-20.

⁹⁰ See: https://www.ohchr.org/EN/Issues/Business/Pages/ARP_II.aspx

⁹¹ General Assembly, "Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms", [A/HRC/38/20](#), (14 May 2020).

⁹² General Assembly, "Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms", [A/HRC/38/20](#), (14 May 2020), para. 6-8.

⁹³ [National Contact Points](#) are bodies created by governments who have adhered to the [OECD Guidelines for Multinational Enterprises](#). Their main role is to further the Guidelines' effectiveness by undertaking promotional activities, handling enquiries, and contributing to the resolution of issues that may arise from alleged non-observance of the guidelines in specific instances. These bodies can also assist enterprises and their stakeholders to take appropriate measures to further the observance of the Guidelines and provide a mediation and conciliation platform for resolving practical issues that may arise with the implementation of the Guidelines.

⁹⁴ <https://mneguidelines.oecd.org/ncps/>; for additional information on Grievance Mechanisms, see the Final Report of the OECD Pilot Project on Responsible Agricultural Supply Chains in Southeast Asia, page 50 <https://mneguidelines.oecd.org/oecd-pilot-project-on-responsible-agricultural-supply-chains-in-southeast-asia-final-report.pdf#page=50>

⁹⁵ National Human Rights Commission issued [Recommendation 2/2018](#) of 9 February 2018; [Recommendation 47/2013](#) of 29 October of 2013; [Recommendation 97/2019](#) of 29 October of 2019, and [Recommendation 72/2019](#) of 24 September 2019.

these cases, the NHRI recommended that responsible public authorities include contractual clauses on the mandatory respect of human rights by private contractors and concessionaires of public services like transport. This urge was restated in a general recommendation, in which the NHRI evidenced that most documented business-related abuses in the country in the past 30 years have occurred in public procurement contexts.⁹⁶

28. It is also worth noting that LAC countries' CPAs have also set out complaint mechanisms tasked with addressing issues related to procurement. These mechanisms should be mandated to handle, together with transparency, integrity and corruption-related issues, all adverse impacts on human rights that States' suppliers may have caused, contributed to or been linked to. They should at least be open to workers, affected communities or individuals, and their representatives and end users.

Selected existing practice on CPA's grievance mechanisms

Chile's Observatory *ChileCompra* serves as a complaint channel through which buyers, suppliers, or anyone can file a complaint regarding any situation that violates the probity, transparency or the integrity of the procurement process. Through its complaint platform⁹⁷, which operates through its Information System, any supplier, individual or interested party can complain against the purchasing processes of purchasing entities, and the entity involved in the complaint must respond through the same platform.

Ecuador's CPA, the National Service of Public Procurement (SERCOP)⁹⁸ allows online written complaints from any person regarding corruption acts in public procurement or conducts that violate the principles of public procurement.

Colombia's CPA, Colombia *CompraEficiente*, implements the System of Requests, Complaints, Claims, Suggestions and Reports (PQRSD) to request and access procurement-related information, file complaints about unlawful behaviour or acts of public servants, and suggest recommendations to enhance the CPA's service, resource allocation or participation in public management.⁹⁹

- **Promote operational-level grievance mechanisms and mandatory cooperation of suppliers with state-based non-judicial grievance mechanisms**

29. According to Guiding Principle 22, businesses have the responsibility to provide for or cooperate in the remediation of adverse human rights impact that

⁹⁶ National Human Rights Commission, "General Recommendation: Regarding respect and enforcement of human rights in business activities", [37/2019](#), (21 May of 2019), paras. 171 and 409.

⁹⁷ See: <https://www.mercadopublico.cl/Portal/Modules/Site/Reclamos/IngresoReclamo.aspx>

⁹⁸ See: <https://portal.compraspublicas.gob.ec/sercop/combatamos-la-corrupcion/>

⁹⁹ See: [Resolution 1707](#) of 2018, article 4.

they have caused or contributed. Operational-level grievance mechanisms can be an effective means of enabling remediation for those potentially impacted by business enterprises' activities when they meet certain effectiveness criteria, as set out in Principle 31. In that sense, OHCHR has defined clear policy objectives addressed to developers and operators to design and implement these grievance mechanisms in line with the effectiveness criteria of Guiding Principle 31.¹⁰⁰

30. In the region, there has been little development of operational-level grievance mechanisms and businesses' cooperation in remediation in the context of procurement. In addition, no mention has been made through regulatory and policy framework to request or encourage suppliers to establish their own grievance mechanisms to receive any human rights abuses-related complaints.

VII. Working Group's Recommendations to strengthen access to remedy

- **States should create grievance mechanisms managed by CPAs or enhance existing ones to cover complaints on human rights issues related to public contracts.**
- **States should strengthen other non-judicial state-based grievance mechanisms to enable their effectiveness on procurement-related human rights abuses – including strengthening the mandate of NHRIs to receive complaints, including those related to abuses in the procurement supply chain.**
- **States should include requirements of suppliers to create effective grievance mechanisms as part of suppliers' obligations or performance conditions in policy and regulatory frameworks.**
- **CPAs should provide specific guidance to suppliers to set up appropriate grievance mechanisms in line with the UNGPs.**

G. Ensuring human rights and public procurement policy coherence

31. The UNGPs recognize that there is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shape business practice. To ensure policy coherence in practice, the UNGPs clarify in Guiding Principle 8 that the "State should ensure that governmental departments, agencies and other State-based institutions that shape business practice

¹⁰⁰ General Assembly, "Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms", [A/HRC/44/32](#) (19 May 2020).

observe State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support". To achieve the appropriate balance, States need to take a broad approach to manage the business and human rights agenda, aimed at having the necessary policies, laws and processes to implement their international human rights law (vertical policy coherence); and supporting and equipping departments and agencies that shape business practices (horizontal policy coherence).

32. The Working Group acknowledges that the countries that have adopted a NAP and included specific actions on public procurement and consequently established inter-institutional coordination mechanisms and multi-stakeholders participation processes for its elaboration and implementation have fostered policy coherence among human rights and public procurement.¹⁰¹

33. In this line, in addition to encouraging LAC countries to adopt NAPs and include specific actions on public procurement, the Working Group suggests the following priority actions for the region:

- (1) Set human rights as a procurement objective;
- (2) Mainstream human rights in policies on sustainable public procurement;
- (3) Establish effective inter-institutional coordination between all involved public bodies; and
- (4) Support effective implementation of human rights-based procurement with practical tools and operational guidelines.

- **Set human rights as a procurement objective**

34. Given States' duty to respect, protect and fulfil human rights, human rights should be at the core of the public procurement legal and political frameworks, as part of the objectives that public procurement pursues. Most of the public procurement systems in the region share common objectives such as open competition, value for money, efficiency, transparency, technology, innovation, and integrity.¹⁰² Although the latter are economically driven, several countries have

¹⁰¹ UN Working Group on Business and Human Rights, (2016) "[Guidance on national action plans on business and human rights](#)", p.1.

¹⁰² Procurement aims are set out in Argentina in [Decree 1023/2001](#) of 13 August 2001, article 3; Colombia in its [Law 80 General Statute of Procurement of the Public Administration](#) of 20 October 1993, article 3; Chile in [Decree 250 Ruling of the Law about Administrative Contracts of Supply and Provision of Services](#) of 24 September 2004, article

also included environmental and social sustainability as part of the key aims of public procurement. Others have embedded social sustainability as part of their understanding of value for money.¹⁰³ However, economic factors such as the “lowest price” and “savings in contracts” continue to govern purchase decision-making in legal frameworks.

- **Mainstream human rights in SPP**

35. Policy coherence and alignment with States' human rights obligations and sustainability commitments have been paramount drivers to develop frameworks that support responsible business conduct aims.¹⁰⁴ LAC countries have made efforts to develop policies geared towards sustainable consumption and production policies (SCP) with specific targets on SPP aligned with their commitments on the sustainable development 2030 Agenda, namely SDG12. The Inter-American Government Procurement Network (INGP) of the Organisation of American States (OAS), has built a [repository](#)¹⁰⁵ that promotes information and knowledge exchanges on SPP implementation. Yet, these policies are detached from NAPs and frequently developed with an environment-only approach.

Selected practice on existing initiatives for policy coherence in SPP

Chile has developed a National Programme on Sustainable Consumption and Production (SCP) and a National Action Plan on SCP to implement it. The latter establishes sustainable infrastructure and public procurement as two working areas of sustainability in the public sector. Public procurement is focused on the embedment of sustainable criteria and public buyers training assigned to *ChileCompras*, the Ministry of Finance and the Ministry of Environment.¹⁰⁶

Colombia adopted the National Policy of Production and Consumption.¹⁰⁷ The policy sets out within its SPP strategy to define, regulate and implement an SPP plan based on a system of verifiable, precise and non-misleading information of the environmental quality

10; and Mexico in [Law on Acquisitions, Leases and Services of the Public Sector](#) of 4 January 2000, article 24. LAC countries that include sustainability within procurement's aims are Brazil in [Law 14.133. Law of Bidding and Administrative Contracts](#) of 1 April 2021, article 5; Costa Rica in its [General Law of Public Procurement 9986](#) of 27 May 2021, article 8 (law in force as of 1 December 2022); Ecuador in the [Constitution of the Republic of Ecuador](#), article 288; Peru in [Law 30225 on public procurement](#) of 13 March 2019, article 2.

¹⁰³ Mexico includes it within [Law on Acquisitions, Leases and Services of the Public Sector](#) of 4 January 2000, article 26 and Colombia through its [Guide of socially responsible public purchases](#) of 17 July 2018.

¹⁰⁴ OECD, “[Integrating Responsible Business Conduct in Public Procurement](#)”, (2020), p. 50.

¹⁰⁵ See : <http://ricg.org/es/datos-regionales/compras-publicas-sostenibles/>

¹⁰⁶ Ministry of Environment, “[National Action Plan on Sustainable Consumption and Production 2017-2022](#)”, (2020).

¹⁰⁷ Ministry of Environment, Household and Territorial Development, “[National Policy of Production and Consumption: Towards a culture of sustainable consumption and productive transformation](#)”, p.7.

of goods and services.¹⁰⁸ These actions are assigned to the National System of Environment (SINA) and other relevant public bodies.

Costa Rica adopted the National Policy on SCP 2018-2030, which has a particular focus on SPP.¹⁰⁹ Amongst its objectives is to embed gradually sustainable criteria in public purchases to boost the offer and demand of sustainable goods and services. Notably, it explicitly provides that “sustainable” includes environmental, social and economic criteria. The policy actions are assigned to different authorities, including the Ministries of Finance; Environment and Energy; Economy, Industry and Commerce and Labour and Social Security. The new General Public Procurement Act takes up the concept of strategic public procurement.

Panama adopted the Action Plan for the Implementation of Sustainable Public Procurement whose aim is to leverage the country’s sustainable and inclusive development.¹¹⁰ According to this Action Plan, it is more efficient to contract companies that, in addition to executing a project or providing a good or service, do so by hiring persons with disabilities and using environmentally friendly materials and clean energy systems.¹¹¹

- **Establish effective inter-institutional coordination between all public bodies involved**

36. Fostering efficient coordination and communication among all involved public institutions is key to ensuring policy coherence. To this end, establishing inter-institutional coordination mechanisms among public institutions, not only those that have procurement as a core mandate like CPAs but also bodies dedicated to human rights and SDGs implementation like Sustainable Committees and independent oversight bodies,¹¹² is an effective tool.

37. In the region, LAC countries have created institutional working groups responsible for implementing and monitoring sustainable consumption policies with a SPP focus and/or elaborating and implementing NAPs. In parallel, NHRIs and NCPs have also supported integrating human rights and responsible business conduct, more broadly, in public procurement in the region.

Selected practice on existing inter-institutional committees on SPP

¹⁰⁸ *Ibidem*, p.40.

¹⁰⁹ Ministry of Environment and Energy, Ministry of National Planning and Economic Policy and Ministry of Foreign Affairs, “[National Policy on Sustainable Production and Consumption 2018-2030](#)”, (2018), p.60-62

¹¹⁰ General Directorate of Public Procurement, “Action Plan for the Implementation of Sustainable Public Procurement”, (2020).

¹¹¹ *Ibidem*.

¹¹² See: <https://undocs.org/A/74/198>, para. 52.

Chile created the Committee on SCP within the Ministry of Environment, a collegiate body comprised of 18 public institutions that elaborates and facilitates implementation of the “National Programme on Sustainable Consumption and Production with the objective of shifting current patterns of consumption and production.”¹¹³

Costa Rica created the National Steering Committee on SPP (CDNCS), composed of the Ministries of Finance; Environment and Energy, Economy, Industry and Trade; Labour and Social Security. It has within its mandate to foster policy coherence, and enforce and monitor implementation of the National Policy on SPP, among other objectives.¹¹⁴ The CDNCS is in charge of Table 4 in the Technical Working Group for the Implementation of the National Policy on Sustainable Production and Consumption.

Selected practice on existing inter-institutional committees on BHR

Chile created the Inter-Ministerial Committee on Business and Human Rights to implement and monitor the NAP.¹¹⁵ However, the CPA, *ChileCompra*, does not take part in the committee despite having been assigned specific actions to be implemented under the NAP.

Colombia created a Task Force on Business and Human Rights in the first NAP to monitor progress of the NAP’s implementation, which continued for the second NAP.¹¹⁶ It is composed of public entities responsible for implementing the NAP, including the National Department for Planning where CPA *Colombia CompraEficiente* sits.

Peru created the System of Monitor, Assessment and Update of the NAP to collect information and evidence of NAP’s implementation to guide actions and objectives and enable transparency and accountability that facilitate decision-making and management. The implementation of this System corresponds to the Vice Ministry of Human Rights and Access to Justice.¹¹⁷

- **Support effective implementation of human rights-based procurement with practical tools and operational guidelines**

38. Incoherent procurement policy is often related to a lack of practical guidance on how public authorities can operationalize the State’s duty to protect

¹¹³ See further at: <https://mma.gob.cl/informacion-y-economia-ambiental/comite-de-consumo-y-produccion-sustainable/#:~:text=Desde%20sus%20inicios%2C%20se%20ha,las%20empresas%20y%20sus%20trabajadores.&text=El%20Objetivo%20General%20de%20esta,Producci%C3%B3n%20Limpia%20en%20las%20empresas.>

¹¹⁴ [Decree 39310](#) of 27 January 2015 “National Policy of Sustainable Public Procurement and Creation of the National Steering Committee on Sustainable Procurement”, articles 6-9.

¹¹⁵ See further at <https://ddhh.minjusticia.gob.cl/comite-interministerial-de-derechos-humanos-y-empre-sas#:~:text=El%20Comit%C3%A9%20Interministerial%20de%20Derechos,la%20Subsecretar%C3%ADa%20de%20Derechos%20Humanos.&text=y%20Empresas,-Los%20ministerios%20que>

¹¹⁶ Government of Colombia, “[National Action Plan on Business and Human Rights](#)”, (2015) p.10; Government of Colombia, “[National Action Plan on Business and Human Rights 2020-2022](#)”, (2020), p.60.

¹¹⁷ Government of Peru, [Supreme Decree 009-2021-JUS that approves the National Action Plan on Business and Human Rights 2021-2025](#), (2021), p.129.

human rights throughout their procurement activities,¹¹⁸ including in the LAC region.¹¹⁹ Therefore, improving public and private individuals and institutions' capacities to implement legal and policy frameworks on human rights and procurement is of paramount relevance.

39. CPAs play a crucial role in supporting public procurement bodies and business suppliers in implementing human rights-based procurement by providing them advice, raising awareness, building capacities, undertaking training, facilitating the exchange of knowledge and good practices, and developing practical guidelines on that matter.

40. Some countries of the region have developed specific guidelines for implementing public buyers' duty to protect human rights and supplier's responsibility to respect them.

Selected practice on tools and guidance

Chile provides in 17 directives¹²⁰ specific recommendations to be used by public buyers on how to integrate sustainability criteria in their purchases. The latter provides examples of criteria that could be used regarding inclusive purchases, including gender equality considerations. Directive 31¹²¹ also provides a code of ethics for suppliers, establishing that suppliers should respect the fundamental rights of workers, especially promoting human rights. Specifically, it states that suppliers must take the necessary measures to ensure that the production chain is free of child labour.

Colombia developed the Guidelines on Socially Responsible Public Procurement¹²² that encourage contracting authorities, bidders and suppliers to ensure respect for human rights, including through HRDD.

Costa Rica developed the Guide of Social Criteria and Procurement¹²³ that provides public buyers with concrete examples of labour and social security obligations that must be considered in public procurement processes, particularly when they involve contracts of construction, transformation or repair of public works, transport of materials, and goods, or supply of services.

¹¹⁸ General Assembly, "[Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Policy coherence in government action to protect against business-related human rights abuses](#)", A/74/198, (19 July 2019), parr. 22-25

¹¹⁹ This was discussed in the workshop with members of the [Inter American Government Procurement Network on human rights and public procurement in 2017](#).

¹²⁰ See: <https://www.chilecompra.cl/wp-content/uploads/2016/11/directiva-n13.pdf>

¹²¹ See: <https://www.chilecompra.cl/wp-content/uploads/2018/02/CodigodeEticaParaProveedoresdelEstado.pdf>

¹²² See: https://colombiacompra.gov.co/sites/cce_public/files/cce_documents/cce_guia_cp_socialmente_responsables.pdf

¹²³ See: https://www.hacienda.go.cr/docs/544ac58cc6ff7_1.%20Guia%20Criterios%20Sociales%20y%20Compras%20CR.pdf

41. Some countries have taken significant steps in developing detailed regulations for public buyers on implementing environmental sustainability in their procurement processes, which can be used as a model to guide the implementation of human rights-based procurement, notably Cosa Rica. A definition is provided regarding what type of goods, assessment score and weight public buyers should give to such criteria in decision-making; how to assess, weigh, prioritize and verify enforcement of criteria; and where or in which stage of the process should the criteria be included. This support can also serve to highlight ways in which public buyers can collaborate with suppliers to increase the market maturity where suppliers might not yet be able to deliver on stringent due diligence expectations. In addition the Inter-American Network on Government Procurement issued a model directive to promote SPP¹²⁴ that also provides critical guidance in this area.

Existing practice of Costa Rica on SPP

Costa Rica has established, in a voluntary fashion, within its legal and institutional framework-specific provisions on what, how, and where to guide public buyers to undertake SPP.

What: sustainable criteria should be promoted for purchases of reusable, recycled, biodegradable goods or made out of recycled materials.¹²⁵ Sustainable criteria should be verified objectively and defined on whether they admissibility or assessment criteria will be considered in the bidding process.¹²⁶ Admissibility criteria prevents any bidder that does not meet the criteria from participating in the process, whereas assessment criteria does not exclude participation but instead provides bidders that fulfil the criteria an advantage over others.

How: Weight and prioritization of sustainable criteria are undertaken through a Matrix for Sustainable Procurement Assessment¹²⁷ available online that includes environmental, social, economic and innovation clusters and e-learning training¹²⁸ to implement it. Verification is undertaken through environmental certifications and other mechanisms. Assessment criteria are undertaken by scoring an additional 20% in the assessment of offers.¹²⁹ Recently, an improvement has been incorporated into SICOP that allows entities to indicate whether they apply sustainable criteria as soon as they submit their bid.

Where: sustainable criteria are set out in the bidding guidelines early in the pre-tender stage.

Costa Rica has further established mechanisms that can monitor and assess with indicators sustainable criteria implementation to develop verifiable and quantifiable

¹²⁴ See: <http://ricg.org/en/publicaciones/directiva-modelo-para-la-promocion-de-compras-publicas-sostenibles/>

¹²⁵ [Law to Comprehensive Waste Management 8839](#) of 24 June 2010, article 29.

¹²⁶ [Technical Standard for the Implementation of Sustainable Criteria in Public Procurement and Guidelines to Enforce articles 29 of Law 8839 and 44 of its General Ruling \(2015\)](#).

¹²⁷ See: [https://view.officeapps.live.com/op/view.aspx?src=https://www.hacienda.go.cr/docs/60c8d0beb7367_Matriz%20Evaluacion%20Compras%20Sustentables%20\(MECS\).xlsx](https://view.officeapps.live.com/op/view.aspx?src=https://www.hacienda.go.cr/docs/60c8d0beb7367_Matriz%20Evaluacion%20Compras%20Sustentables%20(MECS).xlsx)

¹²⁸ See: <https://www.youtube.com/watch?v=eWS9QGkX--0>

¹²⁹ [Law to Comprehensive Waste Management 8839](#) of 24 June 2010, article 29.

results through the DGABCA and periodic reports.¹³⁰ These types of assessments can tackle reluctance while incentivizing SPP implementation. The General Comptroller of the Republic of Costa Rica highlighted challenges to implement sustainable public procurement in practice in a recent report.¹³¹

BOX 8. INTERNATIONAL INITIATIVES TO STRENGTHEN SUPPORT ON OPERATIONALIZATION OF HUMAN RIGHTS PROTECTION AND FULFILMENT IN PUBLIC PROCUREMENT

RBCLAC project: the RBCLAC Project provides an opportunity for governments to exchange experiences and good practices to respect, promote and fulfil human rights in the public procurement supply chain. For instance, an analysis on the status of the public procurement function of several countries is delivered through OECD RBC policies conducted under this project.¹³²

OECD e-learning Academy on Responsible Business Conduct conveys knowledge on responsible business conduct and OECD risk-based due diligence. The online course is targeted to suppliers (including those in public supply chains) and can serve public buyers in communicating expectations to their suppliers. The OECD RBC e-Learning Academy is also a resource for public buyers seeking to learn about risk-based due diligence themselves.¹³³

Inter-American Network on Government Procurement (INGP) is an Inter-American system mechanism that provides high-level horizontal technical cooperation to generate and strengthen linkages among its members; promote the exchange of human, technical, financial, and material resources to generate knowledge, experiences, and best practices in public procurement among the member states of the Organization of American States.¹³⁴

International learning lab on public procurement and human rights is a global network that generates knowledge, tools and guidance on human rights integration into public procurement, particularly within the apparel, private security and electronics sectors.¹³⁵

Electronics watch is a non-governmental organisation composed of contracting authorities, such as municipal authorities, universities, national government agencies and other public organisations that buy electronic products. It assists public buyers in developing due diligence criteria for decent working conditions in electronics supply chains.¹³⁶

VIII. Working Group's Recommendations on enhancing policy coherence

¹³⁰ [Technical Standard for the Implementation of Sustainable Criteria in Public Procurement and Guidelines to Enforce articles 29 of Law 8839 and 44 of its General Ruling \(2015\)](#).

¹³¹ See: <https://www.oneplanetnetwork.org/knowledge-centre/resources/auditoria-operativa-sobre-la-eficacia-eficiencia-y-economia-en-la>

¹³² <https://mneguidelines.oecd.org/oecd-responsible-business-conduct-policy-reviews.htm>

¹³³ See: <https://mneguidelines.oecd.org/oecd-e-learning-academy-on-responsible-business-conduct.htm>

¹³⁴ See: <http://ricg.org/>

¹³⁵ See: <https://www.hrprocurementlab.org/>

¹³⁶ See: <https://electronicswatch.org/en>

- **States should ensure that human rights are set as an objective of procurement within the policy and regulatory frameworks, including incorporating explicit human rights considerations into already existing social sustainability procurement aims. States should make sure that the human rights aspects are mainstreamed within SPP frameworks by explicitly including human rights language within them and the social pillar of sustainability.**
- **States should ensure that existing inter-institutional committees on SCP and SPP, and NAP tackle questions related to public procurement and human rights. To this end, CPAs and focal points on business and human rights or RBC should be permanent members of those committees. NHRIs and NCPs should also be invited to participate. Also, communication, exchanges of information and coordination between working groups are essential. In case any of these inter-institutional committees does not exist, States should establish one.**
- **States, including through CPAs, should provide technical advice, build capacities, and establish guidelines and supportive regulations addressing public buyers and suppliers on what, how, when, and where human rights could be integrated in public purchases, including from a gender lens.**

H. Participation and engagement with external stakeholders

42. Pursuant to the human right to participate in public affairs as set out in the International Covenant in Civil and Political Rights and as further elaborated on in other relevant provisions such the landmark Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)¹³⁷, States should ensure public participation in decision making processes with regard to public procurement. When shaping, reviewing and amending any public procurement-related regulatory and normative frameworks, competent authorities should consult external relevant stakeholders. External stakeholders may include civil society organisations, trade unions, end-users and businesses. These consultations may help inform decisions by providing relevant information on risks, opportunities and needs, foster efficiency and credibility of any decisions, measures and programmes, and support policy coherence. Development of practical tools and

¹³⁷ See: https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf

operational guidelines would also greatly benefit from these participation processes. Engaging with relevant key stakeholder is also key for the assessment of risks and for suppliers in their HRDD process (see points III.1.D and III.5.A)

43. Stakeholders may not be familiar with public procurement and human rights issues, for this reason they will need to be adequately informed on this area, including on relevant international and national regulatory frameworks.

44. Some governments in the region have established mechanisms to facilitate participation processes with key stakeholders, including civil society, businesses and workers.

Existing practice of multi-stakeholder engagement

Chile's Council of civil society of *ChileCompra* is a permanent body which ensures citizen participation in public procurement regulatory and strategic frameworks. It is made of representatives of 11 organisations of civil society. In addition, the citizen consultations of *ChileCompra* are a participatory initiative that seeks to incorporate citizens' views into policies, programme and any public procurement-related project. The questions where citizens' inputs are requested can be suggested by the Government or by citizens themselves.

IX. Working Group's Recommendations on participation and multi-stakeholder engagement

- **States should ensure they provide meaningful engagement with key stakeholders – business, CSOs, end-users, workers, academia etc., including in processes of policymaking, development of capacity-building materials, identification human rights risks, and guiding suppliers to engage with stakeholders in their HRDD.**

III.2 State actions to fulfil human rights

45. In the region, many countries have used the potential of public procurement to fulfil the rights of different groups by including assessment criteria that favour businesses that support, employ, or are owned by these groups. In particular, support has been given to small farmers, ethnic groups, women, people with disabilities, youth and long-term unemployed people, including former convicts.

46. It has also been noticed that in the region a special treatment is reserved for micro, small and medium enterprises (MSMEs) across the public procurement systems.¹³⁸ Moreover, there are specific provisions in legal frameworks that facilitate or simplify the procurement processes for certain vulnerable groups, favouring informal economy suppliers' formalization whilst providing a range of additional benefits for the State.

47. In particular, the adoption of gender responsible procurement (GRP) is highly beneficial to drive positive opportunities and outcomes for women, through public procurement. GRP is defined as the selection of services, goods and civil works that considers their impact on gender equality and women's empowerment, considering women not only as producers, but also users and consumers of good and services procured. In practice, GRP usually takes the form of affirmative policies that target women-owned businesses as suppliers. A recent brief by UN Women and the ILO emphasizes that policies that strive for decent work at all levels of supply chains should be an objective of GRP.¹³⁹

Selected existing practice on favouring vulnerable groups

Argentina,¹⁴⁰ Brazil,¹⁴¹ Chile,¹⁴² Colombia,¹⁴³ Mexico,¹⁴⁴ and Peru include assessment criteria that give preference to bidders with employees with disabilities over those who do not. The minimum percentage, when specified, ranges from 5 to 10% of all employees. Some countries, like Peru, verify this criterion through the bidder's registration in the Registry of Business Promoting Disabled People Employment of the Ministry of Labour and Employment Promotion.¹⁴⁵

Brazil establishes by law that a minimum of 30% of the financial resources transferred by the National Education Development Fund within the scope of the National School Feeding Programme should be allocated to the procurement of food sourced from family-based farms, including indigenous and quilombola communities.¹⁴⁶

Brazil, Chile, and Mexico include assessment criteria in favour of gender equality by requiring that a minimum percentage of the workforce responsible for the execution of

¹³⁸ OECD/CAF, América Latina y el Caribe 2019: Políticas para PYMEs competitivas en la Alianza del Pacífico y países participantes de América del Sur, (2019), OECD Publishing, Paris, pp. 69 and 75.

¹³⁹ UN Women and the ILO, 2021. "Rethinking Gender-Responsive Procurement: Enabling an Ecosystem for Women's Economic Empowerment." New York and Geneva

¹⁴⁰ [Law n° 25.689](#) of 28 November 2002, article 2; [Decree 312/2010 of Law 22.431](#) of 8 March 2010, article 8.

¹⁴¹ [Law No.8666 of 21 June 1993, article 3.5](#) amendment of 2015 included by [Law 13.146](#)

¹⁴² [Decree 250 Ruling of the Law about Administrative Contracts of Supply and Provision of Services](#) of 24 September 2004, article 23.

¹⁴³ [Decree 1082 of 26 May 2015](#), article 2.2.1.1.2.2.9

¹⁴⁴ [Law on Acquisitions, Leases and Services of the Public Sector](#) of 4 January 2000, article 14 and [Law of Public Works and Related Services](#) of 4 January 2000, article 38.

¹⁴⁵ [Directive No. 001-2019-OSCE/CD\) modified by Resolution No. 100-2021-OSCE/PRE](#), p.28.

¹⁴⁶ [Law No. 11.947](#) of 16 June 2009, article 14.

the contract is constituted by women who are victims of domestic violence;¹⁴⁷ giving additional points or percentages to bidders that have implemented gender equality policies;¹⁴⁸ and providing specific examples such as equal remuneration between men and women and percentage of female employees, respectively.¹⁴⁹

Mexico and Brazil have included measures to facilitate procurement to peasants and marginalized urban groups¹⁵⁰ and MSMEs¹⁵¹ by enabling the direct award of contracts under certain conditions.

Ecuador further assigned the National Service for Public Procurement to establish provisions that avoid the supplier's registry RUP representing an obstacle for artisans or SMEs.¹⁵²

X. Working Group's Recommendations on fulfilling human rights through public procurement

- **In line with LAC States' progress in meeting their international human rights obligations to fulfil rights to decent work, and to equality and non-discrimination, through public procurement, States should continue further development in this area – including support to vulnerable groups and those groups who also have been disproportionately affected by Covid-19-related economic and social consequences.**
- **States should accompany tender and award clauses to favour certain businesses with targeted measures to ensure that those businesses have the capacity to participate in public bidding.**¹⁵³

III.3 Actions to promote human rights transparency and open data in the public procurement cycle

48. Transparency is a crucial attribute of good governance, a detractor of corruption, and an enabler for human rights-based procurement. Both publication and usage of data related to the procurement cycle allow processes and decisions to be

¹⁴⁷ [Law 14.133. Law of Bidding and Administrative Contracts](#) of 1 April 2021, article 25.

¹⁴⁸ [Law on Acquisitions, Leases and Services of the Public Sector](#) of 4 January 2000, article 14.

¹⁴⁹ [Public Procurement Directive No. 17 Instructions to conduct inclusive public procurement that promotes equality of opportunity in the public market](#). Directive 17 sets out concrete examples of public buyers' measures to verify that bidders have employed disabled people, unemployed young people, or indigenous peoples. Public Procurement [Directive No. 13](#) Instructions to conduct sustainable procurement in the Chilean public market of 23 May 2011.

¹⁵⁰ [Law on Acquisitions, Leases and Services of the Public Sector](#): Article 41, XI.

¹⁵¹ [Complementary Law 147](#) of 7 August 2017, article 48.

¹⁵² [Organic Law of Public Procurement](#), article 59.1.

¹⁵³ UN Women, <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2021/Rethinking-gender-responsive-procurement-en.pdf>

monitored and reviewed, which creates an environment for more effective, accountable, and participatory purchases.

**BOX 8. OECD RECOMMENDATIONS OF THE COUNCIL ON PUBLIC PROCUREMENT:
PRINCIPLE OF TRANSPARENCY¹⁵⁴**

Adherents to the OECD recommendations should ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle.

- Promote fair and equitable treatment for potential suppliers by providing an adequate and timely degree of transparency.
- Allow for free access, through an online portal, for all stakeholders, including potential domestic and foreign suppliers, civil society and the general public to public procurement information.
- Ensure visibility of the flow of public funds, from the beginning of the budgeting process throughout the public procurement cycle.

49. Electronic government procurement refers to the use of information and communication technologies (e.g., the Internet) to enable a more efficient and transparent exchange of information and interactions and transactions between government and suppliers of goods and services. Digital technologies are being increasingly adopted to achieve standardisation and consistency, which, in turn, speed up the public procurement process. Open access to human rights requirements of public procurement and to information on adverse human rights impact should also be guaranteed. The latter would also provide other public buyers reference on which human rights criteria and under which terms have been used in similar purchases, as well as on suppliers, goods or services that meet certain human rights criteria or qualification, all of which facilitate implementation. Transparent and systematic information about suppliers' adverse human rights impacts is not only required for accountability purposes but could also enhance States' risk management systems by feeding them with relevant human rights risks and red flags on suppliers, sectors, types of goods or services – avoid contracting with suppliers that have violated human rights in past public contracts. Such transparency can have beneficial effects in the future by leading to behavioural changes on the part of suppliers and consequently to their compliance with human rights prerequisites in order to avoid negative exposure and a reduction of their chances of being awarded a contract. In addition, it can also enable more effective monitoring and oversight by procurement audit bodies, NHRIs, the public, and NGOs.

¹⁵⁴OECD, "[OECD Recommendation of the Council on Public Procurement](#)", p.7

Open data could be further used to measure its implementation, the economic costs and savings it entails, and sectors in which human rights integration is more challenging.

50. Overall, procurement data in LAC countries are registered in databases or e-procurement platforms managed by CPAs.¹⁵⁵ Some systems provide search tools and sheets or reports with information related to a particular search. However, these sheets are focused on public buying bodies, and less attention is given to specific details about who they are buying from and their subcontractors. Besides, the region experiences a lack of information on human rights requirements and adverse human rights impacts.¹⁵⁶ Noticeably, e-procurement platforms in LAC also include relevant information about sanctioned suppliers, often considered in procurement decision-making, particularly in admissibility criteria. Enhanced focus on human rights incorporation into contracts clauses and admissibility and/or assessment criteria would also help to include and sanction suppliers contributing to adverse human rights impacts. Information collection and usage through smart digital systems can enable CPAs and public procurement bodies to take actions in ongoing and future public contracts to ensure business accountability, independently of other administrative, civil, or criminal legal consequences or sanctions suppliers might face for committing such abuses.

Selected existing practice on e-procurement platforms

Chile's MercadoPublico¹⁵⁷ is a digital platform managed by *ChileCompra* through which public procurement activities and transactions of public buyers and suppliers take place. Besides, *ChileCompra* manages *DatosAbiertos*¹⁵⁸, a digital platform that facilitates procurement for its analysis, monitor and accountability.

Colombia's SECOP II¹⁵⁹ is managed by Colombia *CompraEficiente*. It serves as a transactional platform for public buyers and suppliers. It provides systematized platforms of procurement-related information with access data on a range of fields such as procurement schemes, purchasing body, awarded supplier, type of good and service that was bought, the value of the contract and key dates of the process, as well as related documents such as contracts and bidding guidelines.

¹⁵⁵ Inter-American Network of Public Procurement, "[Subregional Diagnose of data of public purchase and procurement: Colombia, Ecuador, Panama and Paraguay](#)", (2021), p. 12; OECD, "Government at a Glance: Latin America and the Caribbean 2020, (2020), OECD Publishing, p.158.

¹⁵⁶ General Assembly, "Fourth Regional Consultation for Latin America and the Caribbean. Looking ahead: Actions to foster responsible business conduct", [A/HRC/44/43/add.4](#), (8 June 2020), parra.22. See further information at: <http://ricg.org/es/datos-regionales/transparencia-contrataciones-abiertas-en-latinoamerica>

¹⁵⁷ See: <https://www.mercadopublico.cl/Home>

¹⁵⁸ See: <https://datos-abiertos.chilecompra.cl/>

¹⁵⁹ See: <https://www.colombiacompra.gov.co/node/22829>

Mexico *CompraNet*¹⁶⁰ through which any person can consult the files of each procurement and download annual procurement reports.¹⁶¹

Panama *PanamaCompra*¹⁶², managed by the General Directorate of Public Procurement (DGCP), serves as a transactional platform for public buyers and suppliers.¹⁶³ It provides search tools through which any person can filter and access different data related to procurement such as public buying body, purchase description, dates, quantity, and monetary amount. In bidding procurement schemes, they include information such as selection criteria.

Costa Rica SICOP¹⁶⁴, managed by DGABCA and provided by RACSA, is a transnational platform for the public and private sector. It offers search tools and more recently, the opportunity to access information through open data linked to the Public Procurement Observatory of the Ministry of Finance.

Selected existing practice on transparency platforms on State's suppliers and contractors that have been sanctioned

Chile, through *ChileCompra* provides access to any person to the lists of disqualified suppliers¹⁶⁵ to contract with the State due to being sanctioned for anti-union practices or transgressions to labour rights or criminal offences such as money laundering, financing terrorism, bribery and bankruptcy-related crimes.

Colombia's SECOP I and SECOP II¹⁶⁶ provide information related to sanctioned suppliers¹⁶⁷ with data about the procurement process, contracting authority, name of supplier, and monetary amounts of sanctions.

Mexico, through the Secretary of Public Affairs, provides public access to a directory with the list of the State's sanctioned suppliers and contractors¹⁶⁸, which includes the name of the supplier, amount of fines, and the cause of sanctions in a general form such as "breach of the contract", without specifying which terms of the contract were breached. This list can be downloaded through open data¹⁶⁹ managed by the Secretary of Public Affairs.

Peru, through its digital platform of the Peruvian State provides diverse lists of suppliers sanctioned from contracts with the State¹⁷⁰, including the list of suppliers sanctioned by the State Contracting Tribunal with a current sanction, which includes a search engine¹⁷¹ available to public.

¹⁶⁰ See: <https://www.gob.mx/compranet/documentos/datos-abiertos-250375>

¹⁶¹ [Law on Acquisitions, Leases and Services of the Public Sector](#) of 4 January 2000, article 14 and [Law of Public Works and Related Services](#) of 4 January 2000, article 2.

¹⁶² See: <https://www.panamacompra.gob.pa/Inicio/#!/busquedaAvanzada>

¹⁶³ [Law 22](#) of 27 June 2006 that regulates public procurement ordered by Law 153 of 2020, articles 2, 30, 47, 55.

¹⁶⁴ See: <https://www.sicop.go.cr/index.jsp>

¹⁶⁵ See: <https://www.chilecompra.cl/category/centro-de-documentacion/normativa/proveedores-inhabilitados-para-contratar/>

¹⁶⁶ See: <https://community.secop.gov.co/Public/Tendering/ContractNoticeManagement/Index?Country=CO&AuthorityVAT=900514813> and <https://www.contratos.gov.co/consultas/inicioConsulta.do>

¹⁶⁷ See: <https://www.datos.gov.co/Gastos-Gubernamentales/Multas-y-Sanciones-SECOP-I/4n4q-k399>

¹⁶⁸ See: https://directoriosancionados.funcionpublica.gob.mx/SanFicTec/jsp/Ficha_Tecnica/SancionadosN.htm

¹⁶⁹ See: <https://datos.gob.mx/busca/dataset/proveedores-y-contratistas-sancionados>

¹⁷⁰ See: <https://www.gob.pe/689-relacion-de-proveedores-sancionados-para-contratar-con-el-estado>

¹⁷¹ See: <http://www.osce.gob.pe/consultasenlinea/inhabilitados/busqueda.asp>

Costa Rica's SICOP provides information on sanctioned and debarred suppliers¹⁷².

XI. Working Group's Recommendations on enhancing transparency through e-procurement platforms

- States should use the potential of procurement-related data to predict statistic models and to classify and identify human rights-related risks in procurement processes,¹⁷³ including the publication of sanctions imposed on suppliers for human rights abuses as well as the classification of these sanctions in the lists of sanctioned suppliers.
- States should collect, assess, monitor, and publish information related to human rights protection and fulfilment through the electronic systems of open procurement data, and report on SDG 12.1.7. Collection and publication of this information is essential to measure progress on human rights-based procurement aligned with common procurement principles of transparency and efficiency. Such data would allow for supplier accountability and promote access to an effective remedy, including informing any CPAs' own grievances mechanisms and any other state-based mechanisms.

III.4 Actions to incorporate human rights considerations within emergency procurement regulation (Covid-19).

51. Emergency procurement is an exception under the general rules on open and competitive tendering practices and should be limited exclusively to satisfy the unforeseeable immediate needs of extreme urgency. Besides, the exceptional use of emergency contracting needs to be governed by clear policy and legal frameworks.¹⁷⁴ As highlighted in the OECD's analysis on initial policy responses to the Covid-19 crisis in public procurement and infrastructure governance, Covid-19 has required a massive increase in medical and protective equipment, in addition to infrastructure-related procurement, and resulted in high price volatility and exposed vulnerabilities in

¹⁷² See: <https://www.sicop.go.cr/index.jsp>

¹⁷³ Inter-American Network of Public Procurement, "[Subregional Diagnosis of data of public purchase and procurement: Colombia, Ecuador, Panama and Paraguay](#)", (2021), p. 12.

¹⁷⁴ OECD, "[Public Procurement and Infrastructure Governance: Initial policy responses to Coronavirus \(Covid-19\) crisis](#)", (2020), p.12.

healthcare supply chains.¹⁷⁵ In practice, this has entailed suspending or relaxing ordinary procurement procedures and controls related to transparency, responsibility and accountability. Covid-19 highlighted how disregarded human rights are in procurement under normal conditions and how their neglect is worsened under the urgent need for health supplies.¹⁷⁶ It uncovered inequality in access to health services and exposed how critical it is to procure resilient and innovative social infrastructure that can satisfy public needs in times of crisis, which ultimately impacts the human rights of end-users of health care services.¹⁷⁷

52. The Intergovernmental Network of Government Procurement of the America States Organisations assessed positively LAC purchasing agencies' capacity to address the health emergency¹⁷⁸. Most countries declared a state of emergency, published operational and informative guidelines to support public buyers' activities, developed procurement citizen control tools, used framework agreements to facilitate acquisitions, and used electronic means to give continuance and transparency to procurement processes. On the other hand, some LAC countries have loosened procurement procedures, eliminating requirements and procedural formalities of acquisition, and increased the use of direct purchasing.¹⁷⁹ The V Regional Forum on Business and Human Rights¹⁸⁰ showcased LAC countries' responses to Covid-19 and identified obstacles for public procurement practice in times of crisis to meet pressing challenges such as urgency and increased demands.¹⁸¹

Selected existing practice on transparency tools for emergency procurement

Panama set up a Covid-19 accountability portal¹⁸² within *PanamaCompra* and developed a Procedure Guideline for Emergency Purchases¹⁸³ to facilitate emergency purchases and

¹⁷⁵ OECD, "[Public Procurement and Infrastructure Governance: Initial policy responses to Coronavirus \(Covid-19\) crisis](#)", (2020), pp.35-36.

¹⁷⁶ Shekinah Apedo "[Forced Labour in Malaysia is being funded by EU Healthcare Systems](#)," *International Learning Lab on Public Procurement and Human Rights*, (2019).

¹⁷⁷ Cristina Contreras, "[Sustainable Infrastructure in a Post Covid Era](#)", Italian Institute for International Political Studies (2020).

¹⁷⁸See: https://secureservercdn.net/198.71.233.44/u1y.854.myftpupload.com/wp-content/uploads/2020/06/MAPEO_COVID-19-LAC.pdf

¹⁷⁹ Laura Treviño-Lozano and Olga Martín-Ortega, [Public procurement during Covid-19 in Latin America: Challenges, responses and next steps forward](#), International Learning Lab on Procurement and Human Rights Blog, (2020).

¹⁸⁰ See: <https://www.youtube.com/watch?v=8jiWOXxmhq8>

¹⁸¹ Andreas Daugaard, "[Public procurement in times of crisis: Navigating risks, challenges and opportunities for protecting and fulfilling human rights during Covid-19](#)", International Learning Lab on Procurement and Human Rights Blog, (2020).

¹⁸²See: <https://www.panamacompra.gob.pa/Inicio/#!/busquedaAvanzada?BusquedaTipos=True&IdTipoBusqueda=51&title=Rendición%20de%20Cuentas%20COVID-19>

¹⁸³See: <https://www.panamacompra.gob.pa/Documentos/legislacion/MANUAL%20DE%20PROCEDIMIENTOS%20PARA%20COMPRAS%20EN%20ESTADO%20DE%20EMERGENCIA%20v3.3.pdf>

publication of related information to secure procurement principles regarding publicity and transparency.

Peru included in the *Peru Compras* portal a section for Covid-19¹⁸⁴, which contains all information related to procurement during the pandemic and is accessible to all citizens. The OSCE published information on all Covid-19-related procurements in the National Open Data of the Presidency of the Council of Ministers¹⁸⁵, enabling citizens to download relevant information about Covid-19 purchases in Excel format. It developed a transparency tool¹⁸⁶ that showcases information on direct procurement of goods and services during the state of emergency.

Colombia implemented the Covid-19 Citizen Control Tool¹⁸⁷, which enables any person to access SECOP's spending behaviour, and information related to purchases of goods and services undertaken during the pandemic. Also, it developed a Transparency Guide in State Contracting during the Covid-19 pandemic¹⁸⁸ to facilitate emergency procurement management and citizen and audit body's control and supervision. According to the guide and regardless of the used procurement scheme, every contract must be disclosed in SECOP, and contracting authorities are required to use the word "Covid-19" in the subject matter of any contract to facilitate control and monitoring by citizens and civil society.

Ecuador, through SERCOP, developed an open contracting portal¹⁸⁹ with detailed information about Covid-19-related purchases.

Costa Rica has an investment map¹⁹⁰ that enables the visualization of the expeditious procedures for the purchase of goods, and services and the respective budget in the framework of the Covid-19 pandemic.

XII. Working Group's recommendations with regard to emergency public procurement regulations and human rights

- **States should seize the opportunity that represents economic recovery strategies to assess the efficacy, resilience and human rights safeguards of the public procurement legal system and policies, and develop emergency plans and risk management strategies to meet recovery needs and strengthen supply chains for a**

¹⁸⁴ See: <https://www.perucompras.gob.pe/contrataciones/contrataciones-emergencia-covid19.php>

¹⁸⁵ See: <https://www.datosabiertos.gob.pe/dataset/contrataciones-ante-la-emergencia-sanitaria-por-la-existencia-del-coronavirus-organismo>

¹⁸⁶ See: <https://portal.osce.gob.pe/osce/conosce/covid19.html>

¹⁸⁷ See: <https://app.powerbi.com/view?r=eyJrjoiMGQ5YTkxNzYtZWVhMC00ZTgxLWJmYzgtODE1NWE0ZGZmNDVkiwidCI6IjdiMDkwND-FILTIONTEtNDIkMC04Y2IxLTc5ZDVIM2Q4YzFiZSIsImMiOiR9>

¹⁸⁸ See: https://www.colombiacompra.gov.co/sites/cce_public/files/cce_documentos/v5_guia_de_transparencia_en_la_contratacion_en_la_pandemia_covid-19.pdf

¹⁸⁹ See: <https://portal.compraspublicas.gob.ec/sercop/datos-abiertos-una-innovadora-plataforma-para-transparentar-la-contratacion-publica/>

¹⁹⁰ See: <https://rendircuentas.mideplan.go.cr/>

future crisis.¹⁹¹ In that sense, States could also use the potential of public procurement to tackle social conditions that can be exacerbated during an emergency like Covid-19, such as unfair employment conditions, unemployment or distress of vulnerable groups or disadvantaged minorities, while driving communities' resilience.¹⁹²

- States should develop tools that guide and support emergency procurement when normal safeguards are temporarily suspended or downscaled. These should include human rights requirements, such as due diligence. Framework agreements with specific human right requirements may enable effective and expedited acquisitions of items that public buyers repeatedly purchase.
- States should support an enhanced transparency and accountability for emergency public procurement through existing e-procurement platforms.

III.5 Other stakeholders' actions for corporate respect of human rights in public procurement in LAC

A. State suppliers

53. As mentioned before, HRDD is the cornerstone of business responsibility to respect human rights. In order to fulfil their responsibility to respect human rights, all businesses, including those acting as State providers, should implement risk management mechanisms based on due diligence to identify, prevent and mitigate their adverse impacts and to account for how they address them.

54. Based on its report of human rights due diligence¹⁹³, its recent global roadmap for the next decade of the UNGPs¹⁹⁴ and regional roadmap for LAC¹⁹⁵, the Working Group assessed the current state of play with regard to corporate practice

¹⁹¹ OECD, "[Public Procurement and Infrastructure Governance: Initial policy responses to Coronavirus \(Covid-19\) crisis](#)", (2020).

¹⁹² Laura Farca and Dacian Dragos, "Resilience in Times Of Pandemic: Is the Public Procurement Legal Framework Fit for Purpose?," *Transylvanian Review of Administrative Sciences*, (2020), 16(SI), pp. 60–79.

¹⁹³See: <https://undocs.org/A/73/163>

¹⁹⁴See : <https://www.ohchr.org/Documents/Issues/Business/WG/ungps10plusroadmap.pdf>

¹⁹⁵See: <https://empresasyderechoshumanos.org/wp-content/uploads/2021/12/LAC-roadmap-ENG-roadtesting-version.pdf>

of human rights due diligence, including States' providers, and recommended different actions to companies, investors and business associations. It is crucial that States' providers also implement these recommendations.

55. In addition, in its reports on connecting business and human rights and the anti-corruption agenda,¹⁹⁶ and in its reports on business, human rights and conflict – affected regions ¹⁹⁷, the Working Group highlighted that businesses should conduct an enhanced due diligence process when operating in conflict and post conflict settings and when corruption is pervasive.

XIII. Working Group recommendations on HRDD for States' suppliers

- **States' suppliers should design a continuous HRDD-based management system, in accordance with the UNGPs, that takes into account the actual and potential impacts of business activities on human rights (both the company's own activities and those derived from its business relationships), and the contexts that merit reinforced processes (e.g., due to corruption issues or conflict contexts).**
- **A specific focus should be paid on groups that may suffer disproportionate impact such as women, LGBTI persons, children, indigenous communities, human rights defenders, and other ethnic communities.¹⁹⁸**
- **States' suppliers should engage in a meaningful, prior, timely and effective consultation of affected or potentially affected groups and other stakeholders in their HRDD processes on an ongoing and regular basis throughout the life cycle of a business activity, including prior to undertaking new activity or implementing operational changes. For meaningful participation, power imbalances should be identified, acknowledged and overcome, and full and culturally appropriate information should be provided, taking into account community human rights impact assessments and autonomous protocols on free, prior and informed consent (FPIC), where they exist.**

¹⁹⁶See: [A/HRC/47/39/Add.4](#), para. 34.

¹⁹⁷ See here: <https://undocs.org/A/75/212>

¹⁹⁸ See the Working Group Guidance to incorporate a gender lens to human rights due diligence ([A/HRC/41/43](#)), its Guidance to ensuring respect for human rights defenders ([A/HRC/47/39/Add.2](#)), the Working Group report on business and indigenous peoples ([A/68/279](#)), the [OHCHR Standards of Conduct](#) to address discrimination of LGBTIQ+ persons, the [toolkit to self-assess](#) gaps of implementation of the standards, [UNICEF Children's rights and business Atlas](#) for business to assess impact on children.

- States' suppliers should communicate widely and in a clear and transparent manner how the responsibility to respect human rights is being fulfilled, evidencing the results achieved¹⁹⁹ and providing remedy in case of human rights abuses.
- States' suppliers should also create grievance mechanisms in consultation with rights holders, in line with the UNGPs' effectiveness criteria and OHCHR recommended actions, to improve the effectiveness of grievance mechanism at the operational level.²⁰⁰
- States' suppliers should support business partners to prevent, mitigate and remedy negative human rights impacts in their value chain and support small and medium enterprises to implement and/or strengthen HRDD processes.²⁰¹
- Business organizations should train and provide technical and practical guidance to its partners for the implementation of the UNGPs and HRDD, including in the prevention and management of the most recurrent human rights risks in each productive sector,²⁰² paying special attention and support to SMEs and making the economic benefits of conducting HRDD visible.²⁰³

B. NHRIs

56. NHRIs play a key role in promoting the protection of human rights across the public supply chain, notably overseeing the legal and policy frameworks to ensure respect for human rights across the public procurement chain, supporting States' capacity-building to protect human rights in this area, and facilitating access to remedy in case of human rights-related abuses in the public supply chain. For the latter, the Working Group has developed some clear guidance²⁰⁴ on how NHRIs could foster their functions as a facilitator for remedy.

Selected NHRIs practice in supporting protection of human rights in public procurement.

¹⁹⁹ On measuring HRDD, see the session "Tools to measure progress and challenges in the implementation of the Guiding Principles in Latin America" in the framework of the [VI Regional Forum](#).

²⁰⁰ See: <https://undocs.org/A/HRC/44/32>

²⁰¹ See [A/HRC/47/39/Add.4](#), para. 43.

²⁰² For an example, see <https://www.bsr.org/en/our-insights/primers/10-human-rights-priorities-for-the-financial-sector>.

²⁰³ See for example Bağlayan, Başak, Landau, Ingrid, McVey, Marisa & Wodajo, Kebene, *Good Business: The Economic Case for Protecting Human Rights*, BHR, Frank Bold, ICAR, 2018. Also see report *Quantifying the Costs, Benefits and Risks of Due Diligence for Responsible Business Conduct Framework and Assessment Tool*, prepared by Columbia - SIPA for the OECD in 2016.

²⁰⁴ See <https://undocs.org/A/HRC/47/39/Add.3>

Argentina: In 2021, The Ombudsperson’s Office of the City of Buenos Aires (CABA) published a study on the situation of public procurement and human rights in CABA²⁰⁵. This study looks into available mechanisms and instruments and their effectiveness, considering their content, scope and role.

Peru conducted a study in four regions related to the prosecution of collusion and embezzlement in public procurement. The NHRI highlighted limitations of the complex public procurements process’s effectiveness and challenges to ensure accountability of responsible individuals.²⁰⁶ Furthermore, it recommended that the public procurement administration and other public entities ensure more transparency and active collaboration with the Prosecutor’s Office.

The **Danish Institute for Human Rights** developed a toolkit for policymakers and practitioners to promote respect for human rights in public procurement.²⁰⁷

XIV. Working Group recommendations to NHRIs

- **NHRIs should assess the gaps of current normative and regulatory framework and practice on public procurement in light of the UNGPs and human rights standards.**
- **NHRIs should participate in NAP processes and other inter institutional committees on public procurement and human rights/sustainability.**
- **NHRIs should investigate, on the basis on individual complaints or inquiries, human rights-related abuses in public procurement and support victims’ access to remedy.**

C. Civil society organizations

57. Civil society actors— non-governmental organisations, community-based organisations, unions, grassroots and social movements, to name but a few—contribute to the advancement of human rights. They seek to shape public policies through advocacy and education of government officials, politicians, businesses, international organizations, the general public, as well as other civil society actors. Civil society actors also work to support communities at conflict; give voice to the powerless; carry out research and monitoring; and assist vulnerable populations to claim their rights. This work is also crucial in relation to the respect of human rights in the public supply chain –monitoring abuses, assessing the current policy and normative frameworks and advocating for greater incorporation of human rights, participating in public policies’

²⁰⁵ See: <https://defensoria.org.ar/noticias/informe-como-avanzar-hacia-las-compras-publicas-basadas-en-derechos-humanos/>

²⁰⁶ Ombudsperson Office, [“Report 169: The Fiscal Archive of complaints of embezzlement and conspiracy”](#), (2014).

²⁰⁷ See: https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrb_2020/DIHR_Toolkit_public%20procurement_2020.pdf

development and monitoring, and supporting the development of capacity of state officials, NHRIs, right holders, businesses, and others.

Selected practice to promote respect for human rights in public procurement

Monitor Karewa monitors public procurement at the state and municipal level in Mexico.²⁰⁸

International Lab on Procurement and Human Rights has created platforms to generate knowledge, tools for guidance and capacity-building of local and national procurement agencies to integrate human rights into purchasing practices.²⁰⁹

Open contracting partnership seeks to transform how business is done by engaging stakeholders across government, business, and civil society to collaborate on reforms, engage users, respond to feedback and to create open data and tools to drive systematic change.²¹⁰

XIV. Working Group recommendations to civil society organisations

- **CSOs may consider assessing the current alignment of the policy and normative framework of public procurement with human rights, including the UNGPs, in order to advocate for and contribute to the design and implementation processes of public policies related to public procurement and BHR.**
- **CSOs may consider assessing and monitoring the human rights conduct of public providers, developing and supporting measures to generate data to measure the impact and outcomes of companies' HRDD processes.**
- **CSOs may consider providing legal and technical advice to victims so that they can participate meaningfully in legal proceedings.**
- **CSOs may consider continuing to provide support to marginalized groups in the business context, making the situation they face visible, and further promoting marginalized groups' awareness of their rights, especially in relation to the business context.**
- **CSOs may consider developing studies to assess business-related impacts in public procurement.**

²⁰⁸ See: <https://www.monitorkarewa.org/>

²⁰⁹ See: <https://www.hrprocurementlab.org/>

²¹⁰ See: <https://www.open-contracting.org/>