



PREVENTING TRAFFICKING IN PERSONS: THE ROLE OF PUBLIC PROCUREMENT

INTRODUCTION

Trafficking in persons is a human rights violation and a lucrative crime that is often found in the production of goods and in the delivery of services we consume. The International Labour Organization (ILO) estimates that US \$51 billion is generated annually from forced labour exploitation (including domestic work, agriculture and other activities)ⁱ, and according to the latest United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons, trafficking for the purpose of forced labour has steadily increased in recent years.ⁱⁱ

Men and boys comprise the largest share of detected victims who are trafficked for forced labour (65 per cent), while a lower share of the victims are women and girls (35 per cent)ⁱⁱⁱ. Children account for more than one third of all detected victims^{iv}, and the United Nations Children's Emergency Fund (UNICEF) reports that one in ten children globally is in child labour^v.

The industry sectors where the labour from victims of trafficking is predominantly exploited are, reportedly, construction, agriculture, manufacturing, fishing, mining, street trading and domestic servitude. While men comprise the vast majority of those exploited in the construction sector, women are mainly exploited in domestic work. Women and men are almost equally represented among the detected victims of trafficking in agriculture and manufacturing^{vi}.

Demand for goods and services that could be produced by trafficking victims provides traffickers with economic incentives to exploit their victims.

Therefore, addressing the demand side of trafficking in persons by preventing trafficking in supply chains is an area of urgent concern.

Governments have an obligation to prevent trafficking in persons for the purpose of forced labour. They must ensure companies act responsibly through binding legislation and codifying principles that require transparency and due diligence in private sector supply chains. Moreover, governments should also lead by example by applying the same criteria to their own procurement. If governments and private companies can detect and remove the risk of trafficking for forced labour within their supply chains, trafficking will become less profitable, and, hence, less widespread.

Strategies and measures that target the demand aspect of trafficking for the purpose of forced labour have been developed and adopted by some businesses in some countries. However, further adoption of legislative and policy measures, strengthened implementation, compliance and oversight are needed.

This Inter-Agency Coordination Group against Trafficking in Persons (ICAT) Issue Brief explains the role of public procurement in preventing trafficking for forced labour. It outlines the international and national policy framework; elaborates on various aspects of procurement including how to achieve sustainable procurement; informs about relevant international co-operation and partnerships; and provides recommendations for relevant stakeholders.



NORMATIVE AND POLICY FRAMEWORKS

International and national normative and policy frameworks recognize the duty of governments to undertake due diligence to protect people against human rights violations, including trafficking in persons, in their procurement processes.

“Human rights due diligence” in supply chains refers to processes to identify, prevent, mitigate and remedy human rights violations associated with commercial activities and business partnerships, including procurement.

Trafficking in persons and child labour are amongst the human rights risks that can be addressed in the procurement process.^{vii}

INTERNATIONAL FRAMEWORKS FOR STATES

The most sweeping obligation to address the demand aspect of trafficking for forced labour is found in Article 9(5) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime. Article 9(5) requires parties¹ to the Convention to take steps to “discourage the demand that fosters all forms of exploitation that lead to trafficking.”

Outside of the ‘demand’ framework, but related to preventing labour exploitation more generally, there are other human rights obligations set out in a number of core international and regional human rights instruments and treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child.

¹ Currently 178 countries.

In addition, the eight fundamental ILO conventions protect specific labour-related human rights, for instance the freedom from forced labour, the freedom of association, and the freedom from child labour. Together with the ILO Labour Clauses (Public Contracts) Convention of 1949, these establish a legal basis for protecting workers’ rights in public procurement.

According to the Vienna Convention on States Responsibility^{viii}, State obligations to protect human rights apply to all public bodies that purchase goods or services and include taking reasonable steps to protect individuals from human rights abuses by third parties, including companies. Ultimately, public procurement purchases mostly from private businesses.

A series of instruments, commitments and guiding principles further elaborate on protections against human rights violations in supply chains and supplement the international standards mentioned above.

The Committee on the Elimination of Discrimination against Women (CEDAW) *General Recommendation No. 38 on trafficking in women and girls in the context of global migration* calls upon States to tackle the demand that fosters exploitation and leads to trafficking by preventing and addressing trafficking in **all business operations and public procurement and corporate supply chains**.^{ix}

The **UN Guiding Principles on Business and Human Rights** (UNGPs^x) from 2011 clarify relevant provisions of existing instruments. The UNGPs outline the roles of both States and businesses according to three key principles, namely:

- the State duty to protect human rights, including from third parties such as business enterprises;^{xi}
- the corporate responsibility to respect human rights, which requires companies to



avoid contributing to adverse human rights impacts and seek to prevent them;^{xii} and

- the need to establish access to effective remedies when business-related abuses occur.

Through these principles, the UNGPs affirm that the state duty to protect against human rights violations extends to public procurement.^{xiii}

The United Nations took a further step towards mainstreaming international efforts on combating forced labour and human trafficking with the adoption of the **UN Sustainable Development Goals (SDGs)**^{xiv} in 2015. Although not legally binding, all countries and all stakeholders are expected to implement this plan by taking ownership and establishing a national framework for achieving the goals.^{xv}

SDG 12.7 specifically calls on all States to promote sustainable public procurement practices. It provides an opportunity for States to prioritize procurement from suppliers that comply with the three pillars of sustainable procurement: economic, social and environmental. SDGs 8.7 and 16.2 affirm the need for immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking, secure the prohibition and elimination of the worst forms of child labour, and to end child labour in all its forms by 2025.

REGIONAL FRAMEWORKS FOR STATES

Numerous regional instruments also advance this topic.

In the Americas and the Caribbean, the guidelines on prevention of the Second Work Plan to Combat Trafficking in Persons in the Western Hemisphere (2015-2021)^{xvi} established that the Organization of American States (OAS) Member States are recommended to develop or revise, as appropriate, policies or regulations to prevent government

procurement of goods and services derived from the exploitation of victims of trafficking in persons.

At the *European Union* level, the Directive on public procurement^{xvii} establishes that public authorities may consider multiple factors when awarding a contract, including sustainable development considerations. The Directive also makes it possible to exclude any economic operator previously convicted for trafficking in persons.^{xviii}

The Organization for Security and Co-operation in Europe (OSCE) has also adopted strong commitments on the prevention of human trafficking in government supply chains. The 2011 Ministerial Declaration on Combating All Forms of Human Trafficking^{xix} encourages participating Governments to incorporate due diligence and transparency standards in assessing and addressing risks of exploitation throughout supply chains, including “zero-tolerance” policies, in government procurement of goods and services. The 2013 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings^{xx} also recommends that OSCE participating States consider incorporating “zero-tolerance” policies or other similar standards in government procurement of goods and services.

NATIONAL FRAMEWORKS

Despite a wide range of national laws and policies addressing trafficking in persons for the purpose of forced labour, most countries have not yet implemented those policies through their public procurement. Some countries have adopted laws on procurement, while others have adopted measures only on specific high-risk industries, for example cotton harvesting. A compilation of these national approaches can be found in the OSCE *Compendium of relevant reference materials and resources on ethical sourcing and prevention of trafficking in human beings for labour exploitation in supply chains*.^{xxi} The document lists 130 initiatives of 35 different States, such as laws, policies, national action plans, and guidelines developed by national authorities to address forced labour and human trafficking in supply chains.



The Council of Europe (CoE) Group of Experts on Action against Trafficking in Human beings (GRETA) also published a *Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation*,^{xxii} providing examples of legislation and policies of European countries, including on fighting labour exploitation in their supply chains. Further, GRETA has published a Guidance Note on preventing and combating trafficking in human beings for the purpose of labour exploitation.^{xxiii}

Finally, the Organization for Economic Co-operation and Development (OECD) also published a *Compendium of Good Practices for Integrity in Public Procurement*, which provides country examples of how to detect and prevent integrity risks and promote the application of objective criteria, as well as factors for successful implementation of good practices in specific national contexts.^{xxiv}

FRAMEWORKS FOR INTERNATIONAL ORGANIZATIONS

International and regional organizations also have an integral role to play in tackling trafficking in persons in their own supply chains. This is considering the significant amounts of money that they channel towards procurement of goods and services per year. For example, in 2019, 39 United Nations entities and Organizations reported a collective US \$19.9 billion in procurement of goods and services.^{xxv}

At the UN level, in 2016 and 2017 the UN Security Council adopted two relevant resolutions. *UN Security Council resolution 2388 (2017)* tasks UN agencies to step up their efforts on prevention of human trafficking in their own supply chains, and specifically requests their major suppliers to implement those measures.^{xxvi} Earlier in 2016, the Security Council had adopted resolution *2331 (2016)*, which calls upon UN Secretary-General to follow up and report on the implementation of the resolution, especially with regards to strengthening

coordination among UN entities, including through ICAT, and implementation of “recommendations for UN agencies to mitigate the risk of contributing to trafficking in persons in armed conflict through procurement and supply chains”.^{xxvii}

In 2020, the OAS published a modification of its procurement contract rules to strengthen protection against human trafficking in the General Secretariat’s procurement of goods and services. The directive prohibits any person, corporation, partnership, association or other business entity, which is known to have engaged in practices inconsistent with international human rights laws and standards that prevent child labour, sexual exploitation and trafficking in persons to be hired or acquired by the General Secretariat.^{xxviii}

In Europe, the OSCE has adopted strong commitments on the prevention of human trafficking in its own supply chains. The *2017 Ministerial Decision on Strengthening Efforts to Prevent Trafficking in Human Beings* tasked “the Secretary General to review existing policies [...] and to ensure that no activities of the OSCE executive structures, including the issuing of contracts for goods and services, contribute to any form of trafficking in human beings [...]”.^{xxix}

USING PROCUREMENT TO COMBAT TRAFFICKING IN PERSONS

THE SCALE OF PUBLIC PROCUREMENT

As stated earlier, trafficking for forced labour is one of the most prevalent forms of trafficking in persons across the world, and the 2020 UNODC *Global Report on Trafficking in Persons* noted an increase in its prevalence.

Governments and international organizations have significant leverage through their procurement



processes to mitigate the risks of forced labour and human trafficking in their supply chains. The size of public procurement represents approximately 12% of Gross Domestic Product (GDP) in **OECD countries**,^{xxx} and to 13.3% of GDP in the **EU**, the latter amounting to 2 trillion EUR.^{xxxi} Total expenditure for participating States and Partners for Co-operation of **OSCE governments** reached an estimated US\$ 6 trillion in 2017.^{xxxii}

International organizations also have significant leverage. As earlier mentioned, 39 United Nations Organizations reported a collective US \$19.9 billion in procurement of goods and services in 2019 alone.^{xxxiii}

Given the scale of public procurement, ensuring that exploitative labour practices are not implicated in goods and services procured by governments and international organizations can be an effective tool to prevent trafficking for the purpose of labour exploitation. Due to their significant purchasing power, States and international organizations can lead the way in fostering and upholding standards for complying with the human rights obligations that were outlined earlier in this Issue Brief. By doing so, they contribute to the goal of achieving **sustainable public procurement**.

WHAT IS SUSTAINABLE PUBLIC PROCUREMENT?

Sustainable procurement is defined as “practices that integrate requirements, specifications and criteria that are compatible and in favour of the protection of the environment, of social progress and in support of economic development, namely by seeking resource efficiency, improving the quality of products and services and ultimately optimizing costs”.^{xxxiv} This concept provides an opportunity for states and international organizations to not only procure from suppliers that deliver the cheapest product, but also to prioritize procurement from suppliers that respect the three dimensions of sustainable public procurement: economic, social and environmental.

ACHIEVING SUSTAINABLE PUBLIC PROCUREMENT

Sustainable public procurement can be achieved with a process called “due diligence”, which is the process of identifying human rights risks in an organization’s supply chains, preventing them from occurring or mitigating those risks and reducing their impact.

In general, the specific activities involved in the processes of due diligence are:

- *Understanding the supply chain (including mapping); identifying and prioritizing risks:* It is important to be clear about who the suppliers are and where they supply from. A mapping of supply chains includes an assessment of actual and potential human rights impacts;
- *Managing risks in the procurement process and exercising leverage:* This should be done through engaging with suppliers and changing behaviour in the supply chain, for which exercising leverage is key;
- *Managing contracts, supplier engagement and monitoring:* The main aim of working with suppliers during the contract management phase is to eradicate trafficking/forced labour issues that may exist or arise. Encouraging suppliers to be proactive and open, to report risks as they come to light, and to engage in their resolution is essential;
- *Ensuring transparency and continuous monitoring:* Each contract manager should keep a record of progress and interactions with suppliers on how the processes are working. Dialogue with workers-led processes can help ensure effective and continuous monitoring;
- *Taking action when victims are identified:* Maintaining transparency on issues and risks of human rights abuses is important and working with suppliers offers the best chance for identifying and assisting victims and preventing re-occurrence.



INTERNATIONAL COOPERATION AND PARTNERSHIPS

The complexity of the role of procurement in preventing trafficking in persons requires close partnerships and international co-ordination. This is not only relevant to maximize the exchange of information, data, and best practices, but also for harmonizing the approach and achieving maximum leverage over supplier behavior.

ICAT is the leading anti-trafficking coordination mechanism among United Nations agencies and other international and regional organizations. One of the thematic priorities for ICAT is trafficking for forced labour and its prevention in supply chains. Among other activities, ICAT recently developed an Issue Brief on *Trafficking in Persons for the Purpose of Forced Labour*.^{xxxv}

In recent years, ICAT engaged with the Procurement Network of the United Nations High-Level Committee on Management (HLCM-PN) on the topic of prevention of trafficking in public procurement practices and has met with the HLCM-PN Task Force for the Development of a Joint Approach in Combating Human Trafficking and Forced Labour in Supply Chains. The Task Force was formed under the HLCM-PN Sustainable Procurement Working Group to respond to the imminent need identified by the UN Security Council in resolution 2388 (2017) to enhance transparency in the UN system organizations' procurement and supply chains to counter trafficking in persons. The objective of the Task Force is to bring together procurement and policy/program specialists to develop a joint approach in combating forced labour and human trafficking in supply chains. Several UN agencies and other International Organizations have already joined the Task Force.

Alliance 8.7 is a global partnership committed to promoting effective measures to eradicate forced labour, human trafficking and child labour, in line

with Target 8.7 of the 2030 Agenda for Sustainable Development. Alliance 8.7 brings together stakeholders at all levels to collaborate, strategize, share knowledge, and ultimately accelerate progress to deliver on this commitment by 2030. Partners include governments, international and regional organizations, workers' organizations, employer and business organizations, civil society organizations, academic institutions and other relevant stakeholders and networks.^{xxxvi}

RECOMMENDATIONS FOR STAKEHOLDERS

There is steady growth in policy measures and laws addressing trafficking and forced labour through public procurement. Still, the persistence of trafficking in persons and forced labour in supply chains, including child labour, requires further, more concentrated action. Procurement contract provisions must be monitored and enforced, and due diligence should be integrated into every stage of the procurement process.

Policy makers and international organizations should make sure that initiatives align with recognized international tools and instruments, such as the UN Guiding Principles^{xxxvii}, the ILO Multinational Enterprises (MNE)^{xxxviii} and, when relevant, regional instruments and guidelines^{xxxix}.

Thus, ICAT advocates for a comprehensive response, including through^{xli}:

- **Strengthening government public procurement and transparency measures.** Strengthening measures is necessary to minimize the risk of purchasing goods and services that have been produced by trafficked or exploited labour. These measures should include requiring suppliers to provide access to audit reports and to the names and addresses of factories in their supply chains; and defining award criteria that require the implementation of human rights standards in supply chains.



- *Addressing the gap between policy and implementation.* In recent years, several countries and international organizations have adopted legislation or policy on due diligence. Nevertheless, implementation of measures to prevent trafficking in persons in supply chains is still lagging behind. Procurement contract provisions must be monitored and enforced; codes of conducts must be embedded in additional strategies; and meaningful auditing processes need to be installed. Enhancing business compliance, through administrative, civil or criminal sanctions and overall strengthened accountability measures, should be considered.
 - *Harmonizing compliance requirements.* Promoting consistency and clarity around obligations for businesses operating globally will be important for establishing a level playing field among all enterprises and making it easier for businesses to live up to global expectations concerning sustainable supply chains.
 - *Increasing collaboration among key stakeholders.* A stronger exchange between different sectors, including governments, the private sector, employment agencies, inter-governmental organizations, trade unions, and NGOs, would be effective in improving standards and harmonizing approaches. Entities may further benefit from closer collaboration between their procurement professionals and policy departments/project managers.
 - *Promoting information sharing.* Sharing of best practices and expertise should be further promoted. Broader availability of reliable data and evidence could enable sustainable collaboration.
 - *Training and capacity building of stakeholders, including State actors such as labour inspectors.* Relevant stakeholders should be encouraged to deliver and participate in training on preventing trafficking/forced labour in supply chains.
- Guidance is crucial to support the implementation of new required processes.
- *Considering gender-responsive approaches to procurement.* Given that women and girls are disproportionately affected by trafficking in persons, a gender-responsive approach to procurement promotes procurement practices that contribute to gender equality and empowerment of women and girls, contributing to overall socioeconomic changes and, therefore, reducing their vulnerability to trafficking in the long term.^{xlii}



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WHAT IS ICAT?

The Inter-Agency Coordination Group against Trafficking of Persons (ICAT) is a policy forum mandated by the General Assembly to improve coordination among United Nations agencies and other relevant international organisations to facilitate a holistic and comprehensive approach to preventing and combating trafficking of persons. ICAT was formally established in March 2007, pursuant to General Assembly resolution 61/180. ICAT consists of 30 organizations and entities as of September 2021.

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