



## **Essential Elements of State National Action Plans for Implementation of the UN Guiding Principles on Business and Human Rights**

**Expert Workshop organised by the UN Working Group on Business and Human Rights**

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### **DIHR-ICAR Briefing Note: Protecting Human Rights through Government Procurement**

#### **1. Introduction: The human rights impacts of public procurement**

Government spending in procurement of goods and services is a major component of the overall global economy. Across OECD countries, public procurement accounts for an average of 12% of GDP.<sup>1</sup> The United States (U.S.) government, for example, spends approximately \$350 billion dollars annually in federal procurement alone.<sup>2</sup> In the European Union (E.U.), around one fifth of GDP is spent on procurement, including procurement by public utilities.<sup>3</sup>

Governments accordingly wield great influence over respect for and enjoyment of human rights through their procurement of good and services. This includes, first, their capacity to affect conditions in global supply chains, given their status as ‘mega-consumers’ and, therefore, their capacity to ‘make’ and sustain markets.<sup>4</sup>

Beyond the state duty to protect, and their role as business regulator, governments may be implicated in human rights violations through their procurement activities and relationships. Suppliers of goods to governments have been implicated in the use of child labour,<sup>5</sup> forced labour,<sup>6</sup> interference with the right to freedom of association and to form trade unions,<sup>7</sup> and in breaches of a range of other labour rights.<sup>8</sup> For example, Shirts with US Marine logos were found in the charred rubble of a factory fire in Bangladesh that killed 112 workers.<sup>9</sup>

Second, governments impact human rights through procurement because they set the terms for delivery of public services by private actors following privatization or ‘contracting out’. Such services, which can include health and social care, immigration services, housing, criminal justice and security services, and public utilities, such as water, energy and transport, touch directly on the human rights of service users.<sup>10</sup> Here also, documented cases have demonstrated the potential for serious human rights abuses in the absence of appropriate standards relating to the terms and oversight of delivery of government service contracts.<sup>11</sup>

## **2. Public procurement and the United Nations Guiding Principles on Business and Human Rights**

The United Nations Guiding Principles on Business and Human Rights (UNGPs) explicitly identify public procurement as within the scope of Pillar I of the UN “Protect, Respect and Remedy” Framework. According to Guiding Principle 6, governments “should promote respect for human rights by business enterprises with which they conduct commercial transactions.” As the commentary to Principle 6 elaborates:

“States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law”.<sup>12</sup>

In addition, Guiding Principle 5 addresses the need for measures to safeguard human rights in the context of privatisation. It provides:

“States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.”

According to the Commentary:

“States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights....As a necessary step, the relevant service contracts or enabling legislation should clarify the State’s expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises’ activities, including through the provision of adequate independent monitoring and accountability mechanisms.”

The standards indicated by Guiding Principles 5 and 6 are reinforced by Guiding Principle 8, which requires States to ensure policy coherence across all “governmental departments, agencies and other State-based institutions that shape business practices”.<sup>13</sup> For state-owned and state-controlled enterprises, they are also specifically reinforced by Guiding Principle 4.<sup>14</sup>

### **3. Public procurement and human rights: state of play in the United States and European Union**

#### **3.1 United States**

The “U.S. Government Approach on Business and Human Rights<sup>15</sup>” was published by the US Bureau of Democracy, Human Rights and Labor of the US State Department in 2013. The Approach identifies a number of measures at the federal level that have incorporated human rights considerations into procurement processes.

Generally, the body of laws that govern procurement in the US, the Federal Acquisition Regulation (FAR),<sup>16</sup> prohibits child labor,<sup>17</sup> human trafficking,<sup>18</sup> and discrimination within US territory.<sup>19</sup> Additionally, numerous Executive Orders and agency decisions expand human rights protections within procurement processes.

For example, Executive Order (EO) 13627 “Strengthening Protections Against Trafficking in Persons in Federal Contracts”,<sup>20</sup> issued by President Obama, requires contractors bidding for contracts over \$500,000 to develop and maintain compliance plans relating to the prevention of human trafficking.<sup>21</sup> Contractors and subcontractors are required to certify their compliance annually, stipulating that neither the contractor nor their employees have engaged in trafficking-related activities.<sup>22</sup> For contracts above \$500,000, contractors and subcontractors are also required to maintain compliance plans and post such plans at their work sites.<sup>23</sup>

Additionally, the Department of Defense has stipulated that contractors are required to conform to a new technical standard prescribing the principles and requirements for a quality assurance management system for contractors performing private security functions outside the United States.<sup>24</sup> The Standard aims to establish a comprehensive and systematic process to preemptively manage the risks, including human rights abuses, associated with private security contractor operations.

Relatedly, the US is also a founding member of the International Code of Conduct for Private Security Providers Association (ICoCA), a multi-stakeholder initiative intended to promote respect for international humanitarian and human rights law.<sup>25</sup> The State Department has indicated a commitment to requiring bidders for its Worldwide Diplomatic Services contract to be ICoCA members.<sup>26</sup>

## 3.2 European Union

### 3.2.1 EU Directive on Public Procurement

The EU is founded on the principles of free movement of goods, services, capital and people within EU boundaries.<sup>27</sup> Historically, doubts were cast over whether these principles constrained the authority of public bodies in EU member states to promote equality, “green,” or “ethical” considerations through public procurement. It was questioned whether tender or contract terms requiring businesses to ensure gender equality, to supply “fair trade” products or, in the case of services and infrastructure project, to engage local workers, could be consistent with a requirement on public purchasers to select the most “efficient” or “most economically advantageous tender” (MEAT).<sup>28</sup>

Recent EU policy developments, however, have emphasised the constitutional status of human rights within the EU legal order and the role of public purchasing in securing sustainable development.<sup>29</sup> In this context, the EU has enacted a new public procurement Directive providing a binding framework for national public procurement laws and policies in EU member states.<sup>30</sup> The objectives of the new Directives are to:

- (1) “Increase the efficiency of public spending to ensure the best possible procurement outcomes in terms of value for money...” and to
- (2) “Allow procurers to make better use of public procurement in support of common societal goals such as protection of the environment, higher resource and energy efficiency, combating climate change, promoting innovation, employment and social inclusion and ensuring the best possible conditions for the provision of high quality social services.”<sup>31</sup>

The new public procurement Directive specifically addresses the inclusion of societal, environmental or other characteristics in the technical specifications of the tender,<sup>32</sup> contract award criteria,<sup>33</sup> and conditions for contract performance,<sup>34</sup> including obligations concerning sub-contractors.<sup>35</sup> It also makes it mandatory for contracting authorities to reject abnormally low tenders if the low price is due to non-compliance with EU legislation or international law related to social, labour or environmental law.<sup>36</sup> Mandatory exclusion also applies where a business has been convicted of child labour or human trafficking,<sup>37</sup> and a contracting authority can exclude tenders if it is aware of violations of obligations, by a tenderer, in the areas of social, labour law or environmental law.<sup>38</sup>

The EU has made various commitments to support implementation of the UNGPs.<sup>39</sup> Despite this, however, the need for public procurers and businesses to whom they award contracts to respect human rights in general, beyond the specific issues mentioned above, is not addressed by the new Directive. It is also unclear if guidance to be developed under the Directive will address this gap.

### **3.2.2 Public procurement and human rights in EU Member States and National Action Plans on Business and Human Rights**

The EU has also called on its Member States to develop National Action Plans (NAPs) on Business and Human Rights. All NAPs published to date have addressed public procurement, as summarised below.

#### ***Denmark***

With reference to Guiding Principle 6, Denmark's NAP recalls that, in collaboration with municipalities and other stakeholders, the government developed "common public sector guidelines for responsible procurement", which are "a practical tool to determine when and how Corporate Social Responsibility can be applied in connection with public procurement".<sup>40</sup>

#### ***Italy***

Italy's business and human rights baseline report<sup>41</sup> describes the legal framework for national measures on public procurement provided by EU Directives, and reports measures taken to promote the participation of workshops for persons with disabilities in public tendering processes. It also notes the Italian Code of Public Contracts permits exclusion of contractors from procurement contracts on grounds including conviction in a criminal offence, violations of safety norms, norms relating to labour relations, social security contributions, and the right of persons with disabilities to work, and non-payment of taxes.<sup>42</sup> It also refers to the system for making of complaints by tenderers.<sup>43</sup> Finally it notes the definition, via Ministerial Decrees, of minimum environmental criteria for products, and the publication of a *Guide for the integration of the social aspects in public contracts*, intended to support public bodies in complying "with internationally-recognized standards on human rights and working conditions". The *Guide* envisages dialogue between contracting authorities and tenderers over social criteria during the tendering process, a commitment by a successful tenderer in the form of a "Declaration of conformity to minimum social standards", and collaboration between the in monitoring the commitments undertaken.<sup>44</sup>

#### ***Netherlands***

According to the Dutch National Action Plan, the "national sustainable procurement policy"<sup>45</sup> requires companies supplying the Dutch government with goods and services to respect human rights.<sup>46</sup> The NAP reports that this requirement has been included in all central government EU contract award procedures since 1 January 2013. Under the Dutch policy, suppliers to government are able to fulfil the requirement in different ways, such as "joining a reliable multi-stakeholder supply chain initiative (quality mark or certification institute) or, if they have any doubts, carrying out a risk analysis."<sup>47</sup>

The Dutch NAP notes that consultations with stakeholders during the development of the NAP “showed that sustainable procurement policy is not regarded as effective in implementing social and human rights criteria,” and concludes that both companies and public purchasers lack sufficient awareness of risks. Accordingly, the NAP commits the government to reviewing the current policy for consistency with the Organization for Economic Co-operations and Development Guidelines for Multi-national Enterprises and the UNGPs, and will consider its extension to municipal, provincial and water authorities.

### ***United Kingdom***

In its NAP, the UK government reports that it has “Sought...to ensur[e] that in UK Government procurement human rights related matters are reflected appropriately when purchasing goods, works and services.”<sup>48</sup> It notes that under UK public procurement rules, public bodies are required “to have due regard for equality-related issues” in their procurement activity and that a tenderer may be excluded on the ground of information showing grave misconduct in the course of its business or profession, which “might arise in cases where there are breaches of human rights”.<sup>49</sup>

In terms of additional actions to be taken, the UK NAP commits to “Review the degree to which...State contracting and purchasing of goods and services, are executed with respect for human rights, and make recommendations to ensure compliance with the UNGPs.”

Noteworthy, although not mentioned by the NAP, , UK national human rights institutions and some public authorities have developed guidance in the area of public services that advises how equality and human rights can be integrated systematically into the commissioning process.<sup>50</sup>

## **4. Essential elements of NAPs on public procurement: recommendations**

The supply chain responsibilities of private companies have been scrutinised by NGOs, unions, investors, and the media for over two decades, and a range of multi-stakeholder and industry initiatives intended to address these concerns have been established as a result.<sup>51</sup> Yet, while some governments have taken steps towards “greener” or “ethical” public procurement, and some examples of dedicated measures on human rights can be found, overall government practice that lives up to the respective standards for States and businesses identified by the UNGPs is lacking.

With reference to the experiences described above, four systemic weaknesses in approaches to integrating respect for human rights into public procurement frameworks can be identified:

- i) **Definition of human rights:** In many cases, governments apply selective or restricted definitions of human rights. For example, businesses may be liable to exclusion from public contracts only for breaches of the ILO Core Labour Standards, but not for breaches of other fundamental human rights under the international Bill of Rights, such as the right to life, the right against torture, inhuman or degrading treatment, the rights to privacy and freedom of expression, or against discrimination on unlawful grounds, outside the workplace.
- ii) **Relationship with international trade regimes and public procurement principles:** Obligations on States under free trade agreements and obligations on individual contracting authorities to secure economic efficiency in their procurement activities have in the past often been claimed to preclude the protection of human rights, despite States' obligations to the contrary under national constitutions and international legal agreements.
- iii) **Holistic approach:** Too often, isolated measures have been taken (e.g. provision for exclusion of tenderers on restricted grounds) that are inadequate to secure the overall goal of respect for human rights throughout the government supply chain. A holistic approach is needed that is preventive, rather than reactive; that mainstreams human rights systematically throughout each stage of the tendering process; and which follows through with guidance and capacity building support for commissioning authorities, public procurement professionals, and businesses that are potential tenderers.
- iv) **"Social clauses" vs respect for human rights:** Governments frequently fail to distinguish their *discretion* to use public procurement to promote social objectives (such as youth employment) with their *duty* to respect and protect human rights in their supply chain and in the context of privately delivered public services, in line with Pillar I of the UN Framework.

On this basis, guidance to States on public procurement and NAPs should include the following essential elements:

- 1) National law should clearly indicate that the State's domestic and international human rights obligations apply to public bodies in the context of public procurement, and clearly permit public authorities to conduct public procurement so as to give effect to these obligations, enacting new legislation to this effect, where necessary.

- 2) National law and/or policy should clearly permit and make provision for the integration of human rights considerations throughout and at each stage of the public procurement process, including advertisement, definition of technical specifications, selection and award stages and in contract performance clauses, where relevant.
- 3) National law and/or policy should clearly permit the application of the full range of sanctions, in the context of public procurement, against companies found responsible for breaches of human rights.
- 4) Relevant public authorities should undertake a comprehensive risk assessment to identify high, medium, and low risk purchase categories for goods and services, addressing each stage of the procurement process, according to human rights potentially affected by the goods and services in question.
- 5) Informed by the results of a risk assessment, relevant responsible bodies within States should develop and disseminate dedicated guidance on public procurement and human rights for commissioning public authorities and tenderers, to support effective implementation of legislation and policies above. Implementation should further be supported by training, advice and information for public procurement professionals and tenderers, particularly small and medium-sized enterprises.
- 6) States should identify whether there are any restrictions on their ability to secure respect for human rights in public procurement deriving from regional or international trade regimes and, if needed and in line with Guiding Principle 8, engage with relevant bodies to seek amendments or interpretive guidance consistent with internationally accepted human rights requirements.
- 7) In addition, States could be advised to consider requiring evidence of the performance of human rights due diligence, in line with Pillar II of the UN Guiding Principles, for the award to companies of government contracts.<sup>52</sup> Such evidence could include certification, corporate policies or commitments to respect for human rights, compliance plans, corporate reporting on human rights, and evidence of remediation.<sup>53</sup>

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- <sup>1</sup> Excluding procurement by state-owned utilities: OECD iLibrary, Size of public procurement market: [http://www.oecd-ilibrary.org/sites/gov\\_glance-2011-en/09/01/index.html?contentType=%2fns%2fStatisticalPublication%2c%2fns%2fChapter&itemId=%2fcontent%2fchapter%2fgov\\_glance-2011-46-en&mimeType=text%2fhtml&containerItemId=%2fcontent%2fserial%2f22214399&accessItemIds=](http://www.oecd-ilibrary.org/sites/gov_glance-2011-en/09/01/index.html?contentType=%2fns%2fStatisticalPublication%2c%2fns%2fChapter&itemId=%2fcontent%2fchapter%2fgov_glance-2011-46-en&mimeType=text%2fhtml&containerItemId=%2fcontent%2fserial%2f22214399&accessItemIds=) .
- <sup>2</sup> Mission Statement, OFFICE OF MGMT AND BUDGET, <http://www.whitehouse.gov/sites/default/files/omb/procurement/mission.html> (last visited April 18, 2014).
- <sup>3</sup> European Commission, Annual Public Procurement Implementation Review, 2012, [http://ec.europa.eu/internal\\_market/publicprocurement/docs/implementation/20121011-staff-working-document\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/implementation/20121011-staff-working-document_en.pdf), 6, (last visited April 18, 2014)
- <sup>4</sup> Stumberg, R., Ramasastry, A. & Athreya, B. (2013), “Government Procurement: Promoting Procurement Policies that Ensure Business Respect for Human Rights”, (Summary of Forthcoming Report), International Corporate Accountability Roundtable.
- <sup>5</sup> A 2014 audit at Zongtex Garment Manufacturing in Phnom Penh, Cambodia, which makes clothes sold by the US Army and Air Force found nearly two dozen under-age workers, some as young as 15: Ian Urbina, *U.S. Flouts Its Own Advice in Procuring Overseas Clothing*, NY Times, 22 December 2013.
- <sup>6</sup> In a pending lawsuit, the families of Nepalese workers allege that they were fraudulently recruited by a U.S. defense subcontractor, transported to Iraq against their will, and kidnapped by Iraqi insurgents while en route to a U.S. military base. The workers’ executions were broadcast on Nepali television: *Adhikari v. Daoud & Kellogg Brown Root*, et al, No. 09-1237(S.D. Tex. Aug. 23, 2013) 1-3.
- <sup>7</sup> Maquila Solidarity Network, *Vaqueros Navarra background* (Sept. 18, 2007), <http://en.maquilasolidarity.org/node/711>.
- <sup>8</sup> “A defense contractor that makes body armour and tactical gear failed to pay overtime wages at its factory in Tijuana, Mexico.”, in B Skorpén Claeson, *SUBSIDIZING SWEATSHOPS II* 39 (S Brown ed., 2009).
- <sup>9</sup> M Mosk, *Bangladesh Factory Fire: Patterns for Marine Corps Sweats, Tank Tops Found in Ashes*, ABC News, (Dec. 4, 2012), <http://abcnews.go.com/Blotter/bangladesh-factory-fire-patterns-marine-corps-sweats-tank/story?id=17875010&singlePage=true>.
- <sup>10</sup> See e.g. A Hallo de Wolf, *Reconciling Privatisation with Human Rights*, 2012, Cambridge: Intersentia.
- <sup>11</sup> In the United Kingdom, abuses of the rights of elderly persons in the context of private care homes have been extensively documented, see e.g. Northern Ireland Human Rights Commission, *In Defence of Dignity: The Human Rights of Older People in Nursing Homes* (2012), <http://www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf>; UK Equality and Human Rights Commission, *Close to Home: An inquiry into older people and human rights in home care*; UK Joint Parliamentary Committee on Human Rights, *The Human Rights of Older People in Health Care*, 18<sup>th</sup> Report of Session 2006-7, Vol. I, available at: <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/156/156i.pdf>. Human rights abuses have been alleged against numerous companies contracted to provide asylum and immigration detention and removal services around the world, see e.g. NYT, *Companies use immigration crackdown to turn a profit* (28 September 2011), <http://www.nytimes.com/2011/09/29/world/asia/getting-tough-on-immigrants-to-turn-a-profit.html?pagewanted=1&r=2&hp&> , and their role in providing housing for asylum seekers and refugees has also been highlighted, e.g. “Outsourcing and housing for asylum seekers”, *New Statesman* 3 June 2013, <http://www.newstatesman.com/politics/2013/06/rape-cannot-be-monetized-outsourcing-and-housing-asylum-seekers> . On issues raised by privatisation of corrections and public utilities, amongst other sectors, see

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e.g. contributions in De Feyter K and F Gomez Isa (eds), *Privatisation and Human Rights in the Age of Globalisation* (2005, Antwerp: Intersentia).

<sup>12</sup> *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Doc A/HRC/17/31, 21 March 2011.

<sup>13</sup> P.11.

<sup>14</sup> P.9.

<sup>15</sup> Department of State through Bureau of Democracy, Human Rights and Labor, US Approach to Business and Human Rights, May 01, 2013, <http://www.humanrights.gov/2013/05/01/u-s-government-approach-on-business-and-human-rights/#BusinessCase>

<sup>16</sup> Federal Acquisition Regulation (FAR), 48 CFR 101 *et seq.* The FAR is available at: <http://acquisition.gov/far/index.html>.

<sup>17</sup> FAR, 22.1504 Violations and remedies; Exec. Order No. 13,126, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor (June 12, 1999), 64 Fed. Reg. 32,383 (June 16, 1999).

<sup>18</sup> FAR, 22.1703 Combat human trafficking – policy; 22.1704, Violations and remedies.

<sup>19</sup> FAR 22.807(b)(1) and (2) Exemptions

<sup>20</sup> Exec. Order No. 13627, 77 Fed. Reg. 60029 (Oct. 2, 2012).

<sup>21</sup> *Id.*

<sup>22</sup> 77 Fed. Reg. 60029 (Oct. 2, 2012).

<sup>23</sup> *Id.*

<sup>24</sup> MGMT. SYS. FOR QUALITY OF PRIVATE SEC. CO. OPERATIONS – REQUIREMENTS WITH GUIDANCE (American National Standards Institute 2012)

<sup>25</sup> See: International Code of Conduct for Private Security Service Providers, available at: <http://www.icoc-ppsp.org/>

<sup>26</sup> See: "As long as the ICOC process moves forward as expected and the association attracts significant industry participation, the Bureau of Diplomatic Security (DS) anticipates incorporating membership in the ICOC Association as a requirement in the bidding process for the successor contract to the Worldwide Protective Services (WPS) program", in U.S Department of State, *State Department to Incorporate International Code of Conduct into Worldwide Protective Services Contracts*, Media note, August 16, 2013, available at: <http://www.state.gov/r/pa/prs/ps/2013/08/213212.htm>

<sup>27</sup> [http://europa.eu/legislation\\_summaries/internal\\_market/index\\_en.htm](http://europa.eu/legislation_summaries/internal_market/index_en.htm).

<sup>28</sup> See C McCrudden, *Buying Social Justice. Equality, Government Procurement & Legal Change*, 2007, Oxford: OUP, Chs. 10-14.

<sup>29</sup> The European Charter of Fundamental Rights, which entered into force in 2009, and the prospect of EU accession to the European Convention on Human Rights strengthen the constitutional status of human rights in the EU legal order.

<sup>30</sup> On 15 January 2014 the European Parliament adopted a Directive on public procurement (COM (2011) 896) as part of the Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth (see COM (2010) 2020). The Proposal revises procurement in public works, supply and service contracts and replaces Directive 2004/18/EC. The new public procurement proposal is complemented by a new utilities directive (COM (2011) 895) which replaces Directive 2004/17/EC and a new concession contract Directive (COM (2011) 897).

<sup>31</sup> Explanatory Memorandum to the Commission's proposed Draft Directive.

<sup>32</sup> See for example, Parliamentary text Articles 42 and 43

<sup>33</sup> See for example, Parliamentary text Articles 67 and 68.

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<sup>34</sup> See Parliamentary text Article 70.

<sup>35</sup> Parliamentary text Article 71.

<sup>36</sup> Parliamentary text Articles 69(2)(d) and (e).

<sup>37</sup> Parliamentary text Article 57(1)(f).

<sup>38</sup> Parliamentary text Article 57(4)(a).

<sup>39</sup> In particular, the European Commission Communication on CSR of 2011 and the EU Strategic Framework on Human Rights and Democracy.

<sup>40</sup> Danish Government, Danish National Action Plan-Implementation of the UN Guiding Principles on Business and Human Rights, March 2014,

[http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark\\_NationalPlanBHR.pdf](http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf), at 13. The guidelines on procurement are available in Danish at: [www.csr-indkob.dk](http://www.csr-indkob.dk).

<sup>41</sup> The Foundation of the Italian Action Plan on the United Nations "Guiding Principles on Business and Human Rights", available at <http://business-humanrights.org/media/documents/foundations-ungps-nap-italy.pdf>.

<sup>42</sup> Article 38, para (1) (c) of Code of Public Contracts, Legislative Decree 163/06 states:

"(1) provides for, respectively, the exclusion from participation to selection procedures to a candidate who:  
c) has been convicted by a judgment which has the force of res judicata, or irrevocably convicted of a criminal offence, or has been passed a judgment imposing the penalty/sanction requested (by the parties), pursuant article 444 of Criminal Procedure Code, for serious offences against the State or the Community concerning his professional conduct; the conviction by a judgment which has the force of res judicata, for one or more offences of involvement in a criminal organization, corruption, fraud, money laundering, as defined in the EU acts quoted at Art.45, para.1, Directive CE 2004/18 is in any case cause for exclusion; has committed serious infringements, duly verified, to the norms on safety and to any other obligation deriving from the labor relations; has committed serious violations, definitively proven, to obligations relating to the payment of social security contributions in accordance with the legal provisions of the Italian legislation or those of the country in which he is established; does not comply to the norms disciplining the right to work of disabled people."

<sup>43</sup> With reference here to Art. 47 Charter of Fundamental Rights of the European Union.

<sup>44</sup> P55.

<sup>45</sup> Sustainable development and policy, House of Representatives 30 196, no. 33, May 2008

<sup>46</sup> The Government of Netherlands, *National Action Plan on Business and Human Rights*, <http://business-humanrights.org/media/documents/dutch-national-action-plan-dec-2013.pdf>, at 5

<sup>47</sup> P5.

<sup>48</sup> HM Government, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights*, September 2013, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236901/BHR\\_Action\\_Plan\\_-\\_final\\_online\\_version\\_1\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf), p9.

<sup>49</sup> Id.

<sup>50</sup> See *Procurement of Care and Support Services*, Scottish Government, 2010: <http://www.scotland.gov.uk/Resource/Doc/324602/0104497.pdf>; on equality see e.g. Equality and Human Rights Commission, *Mainstreaming Equality Considerations in Public Procurement: A guide for public authorities in England*. On the framework for public procurement in Northern Ireland, Northern Ireland Human Rights Commission, *Public Procurement and Human Rights in Northern Ireland*, <http://www.nihrc.org/documents/NIHRC%20Public%20Procurement%20and%20Human%20Rights.pdf>.

<sup>51</sup> Such as the Fair Labor Association, Social Accountability International, Ethical Trading Initiatives, Sedex and

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others.

<sup>52</sup> Regarding due diligence, UN Guiding Principle 17 states that: “In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”

<sup>53</sup> For detailed recommendations on strengthening government regulations for procurement, see: <http://accountabilityroundtable.org/analysis/government-procurement-project-summary-of-forthcoming-report/>