



Más derechos para más gente



CENTRO VINCULAR



Workshop on Human Rights and Public Procurement

With the support of the United Nations Working Group on Business and Human Rights

Santiago, 6th of October 2017

The Inter-American Network on Government Procurement

The Inter-American Network on Government Procurement (INGP) is an initiative constituted as a regional technical cooperation mechanism. It is composed of governmental institutions, and headed by the national directors of procurement in the 32 participating countries of Latin America and the Caribbean, each of whom has the highest national responsibility regarding the regulation, management and modernization of government procurement and who consequently handle 10-20% of their respective countries' GDP.

The INGP aims to: strengthen government procurement capacity in each country in order to increase efficiency and transparency; to generate and maintain spaces for reflection, mutual knowledge, supportive technical cooperation, training and exchange of experiences between the institutions that integrate the Network; and hence to contribute to the enhancement of the government procurement practices of the Region, as well as to strengthen ties between governments, the organization of society related to public procurement and international organizations.

About the partners and collaborations

Centro Vincular was established in 2001 at the Catholic University of Valparaíso as the first university center in Chile specialized in developing methodologies and integrating sustainability in the management of public and private organizations. With a broad network of international and regional partners, the Center focuses its activities in doing applied research, implementing knowledge transfer projects, delivering capacity building programs and working closely to public institutions and decision makers to assist in the development of smart and coherent policies to promote responsible business conduct and respect for human rights in the region.

The **Danish Institute for Human Rights** is a state institution, independent of government with a national and international mandate by law. Globally, the Institute is in a unique position since it is the only national human rights institution that in addition to the national mandate has substantial international capacity. This combination, together with a solid experience, gives the Institute access to operate in the nexus between government institutions, business and NGOs.

The International Corporate Accountability Roundtable (ICAR) harnesses the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality. To further this mission, ICAR has worked extensively on public procurement and human rights, beginning with the publication of our seminal report "Turning a Blind Eye? Respecting Human Rights in Government Purchasing." Building on this report, ICAR partnered with the Danish Institute for Human Rights and the Harrison Institute at Georgetown University Law Center to create the International Learning Lab on Public Procurement and Human Rights (Learning Lab).

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The **International Learning Lab on Public Procurement and Human Rights** aims to be a network of central and local government procurement agencies and purchasing officers; representatives of other relevant government bodies, such as ministries; procurement professional associations; regional and international organizations; non-governmental organizations (NGOs); national human rights institutions (NHRIs); and relevant academics.

The **United Nations Working Group on Business and Human Rights** is supporting this workshop, as a "Regional Consultation" for the purpose of an addendum report for next Human Rights Council on this topic.

The Organization of American States (OAS), as Technical Secretariat of the Inter American Network on Government Procurement (INGP).

Public Procurement

Public procurement can be understood as a broad term encompassing almost all purchasing by the state; which includes government departments and other public authorities such as district councils. It embraces a wide spectrum, from tenders for multi-million dollar infrastructure and urban development, to the commissioning of essential public services from private providers in the areas of health and social care, to the purchase of items such as uniforms, stationery and foodstuffs.

Public procurement is a major component of the global economy, accounting for €1000 billion per year and on average 12% of GDP in OECD countries.¹ Public procurement can be the single most important source of revenue in some sectors, including health and research-related industries, construction and transportation. In recent years, as the concern of policy-makers to promote the transition to sustainable economies has increased, interest in the role of integrating social as well as environmental sustainability considerations into public procurement policy and practice has grown.

While efficiency and cost effectiveness are amongst the primary objectives of public procurement, the realisation of human rights through public procurement should also be a primary objective to policy makers. Such objectives can include promoting sustainable green growth; the development of small and medium-sized enterprises; innovation; standards for responsible business conduct and broader industrial policy objectives.²

Public Procurement and Human Rights

The UN Guiding Principles on Business and Human Rights (UNGPs), adopted unanimously by the UN Human Rights Council in 2011, affirm the duty of central governments and other public authorities to promote respect for human rights in their supply chains. Guiding Principle 6 states that:

¹ OECD iLibrary, Government at a Glance 2015

² <http://www.oecd-ilibrary.org/docserver/download/4215081e.pdf?expires=1478724794&id=id&accname=guest&checksum=CC112B13866F207D68E5E8A22466117F>

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‘States should promote respect for human rights by business enterprises with which they conduct commercial transactions.’

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.’

Contracting out of public services is also specifically addressed by the UNGPs. Guiding Principle 5 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.’

The Commentary on Principle 5 provides that:

‘States do not relinquish their international human rights obligations when they privatise the delivery of services that may impact upon the enjoyment of human rights. Failure by a State to ensure that business enterprises performing such services operate in a manner consistent with the State’s human rights obligations may entail... legal consequences for the state itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State’s expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises’ activities, including through the provision of adequate independent monitoring and accountability mechanisms.’

Taken together, these principles mean that public authorities must look beyond the impact of public procurement on the human rights of people in their home jurisdiction. In purchasing goods and services from suppliers in other countries, public authorities are under a duty to take reasonable measures to ensure they are not implicated in human rights abuses across the supply chain. Further, the government and public authorities must require and support businesses themselves to achieve respect for human rights in practice.

In 2015, the G7 Leaders’ Declaration called for tools to support public procurers in meeting social and environmental commitments. Likewise, the 2030 Sustainable Development Agenda highlights the role of government procurement as key to the transition to sustainable production and consumption, decent work, and more inclusive economies: Sustainable Development Goal 12.7 calls on all countries to implement sustainable public procurement policies and action plans. The ISO’s 20400 Guidance on sustainable procurement, to be launched in 2017, moreover addresses the integration of human rights into procurement policy and practice by both private and public buyers.

In addition, governments and international organisations are introducing measures to extend private companies’ responsible supply chain and disclosure obligations, including in relation to human rights. Legislative measures, for example in the United States, the United Kingdom, and at EU level, have recently imposed new supply chain reporting obligations on businesses including relating to human rights concerns.

In 2011, the OECD revised its Guidelines for Multinational Enterprises to incorporate the concept and requirement of “human rights due diligence” as expressed in the UNGPs. In addition, the OECD has

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published sector-specific guidance on due diligence. In 2016, the 105th session of the International Labour Conference (ILC) focused on how to promote decent working conditions in global supply chains, while a revision of the ILO Declaration on Multinational Enterprises is now being undertaken in that light.

Foreseen participants

National directors and representatives from public procurement agencies in charge of regulation, management and modernization of government procurement, members and close organizations of the INGP

Objectives

- Introduce human rights to public procurement professionals of the INGP
- Introduce the legal foundations of human rights law and how these apply to states, focusing on the context of public procurement and in relation to legal principles around public procurement
- Share experiences on inserting social, human rights, and environmental protections into public procurement exercises
- Look beyond the law and examine experiences relating to the economic and commercial benefits of integrating human rights into public procurement exercises
- Discuss how INGP could support further integration of human rights in public procurement in the INGP and define further steps and commitments

Venue: Centro de Estudios Avanzados y Extensión (CEA) de la PUCV - Antonio Bellet 314, Providencia-Santiago

General program

No.	Description of the session	Leading organisation
Welcome and introductions 10:00 – 10:20		<i>President of the INGP Ambassador of Sweden</i>
Session 1 10:20 – 12:00	<p>Introductions to human rights and public procurement</p> <ul style="list-style-type: none"> • Round of Introductions and overview of meeting objectives and agenda • Human rights law overview and an introduction to the UN Guiding Principles on Business and Human Rights and its connection to the Sustainable Development Agenda • Introduction to Human Rights and Public Procurement: risks and responsibilities in government supply chain <p><u>Keynote Address</u></p>	<p><i>Dante Pesce – Catholic University of Valparaíso, Member of the UNWG on Business and Human Rights</i></p> <p><i>Nicole Van der Meulen, ICAR</i></p> <p><i>Professor Geo Quinot from Stellenbosch</i></p>

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	<ul style="list-style-type: none"> Background on public procurement and relevant legal frameworks and principles The state as an economic actor and utilising public procurement for human rights realisation and policy aims Relationship between human rights duty and other legal principles and policy objectives of procurement (e.g. The search for the best value for money and its relationship with the promotion of RBC and respect for human rights along the value chain of public purchases) <p>Questions and answers</p>	
<p>Session 2</p> <p>12:00 – 12:45</p>	<p>Opportunities and challenges - INGP</p> <ul style="list-style-type: none"> Examples from the INGP on human rights and relevant policy objectives (environmental, sustainable, social etc.) achieved through procurement to date. Opportunities for integrating environmental, social and human rights concerns into public procurement, and potential hurdles to overcome (e.g. legal framework, capacities, culture) 	<p><i>Trinidad Inostroza, Presidenta RICG y Directora de Chilecompra</i></p> <p><i>Input from other INGP members</i></p> <p><i>*(see guiding questions session 2 at the end of program)</i></p>
<p>Lunch</p> <p>12:45 – 13:45</p>		
<p>Session 3</p> <p>13:45– 15:15</p>	<p>Overview of initiatives worldwide to integrate HR into public procurement</p> <p>Current state of play, including the 20 jurisdictions overview and highlighting existing tools and material on human rights and public procurement</p> <p>Presentation of 3 case studies – examples of successes, obstacles faced, and how to overcome obstacles</p> <ul style="list-style-type: none"> Natalie Evans, London Pauline Gothberg, Stockholm Geo Quinot, South Africa <p>Questions and answers</p>	<p><i>Daniel Morris, DIHR</i></p> <p><i>Experts and practitioners</i></p>
<p>Coffee break (organization for group discussions)</p> <p>15:15 – 15:30</p>		
<p>Session 4</p>	<p>Group discussions around the following topics</p>	<p><i>Daniel Morris, DIHR</i></p>

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<p>15:30– 17:15</p>	<ul style="list-style-type: none"> • Variables that may support or restrict steps to integrate human rights criteria into the public procurement cycle • Needs (guidelines, tools, expert support, capacity building) to integrate human rights into public procurement • Feedback to the group 	<p>Nicole Vander Meulen, ICAR</p> <p><i>*(see guiding questions session 4 at the end of program)</i></p>
<p>Closing Session 17:15 – 17:30</p>	<p>Conclusions and next steps</p> <ul style="list-style-type: none"> • Look to the implementation of a project to “integrate human rights into the procurement cycle: Supporting members of the Inter-American Network of Government Procurement (INGP) 	<p>President of the INGP Dante Pesce – Catholic University of Valparaíso</p>

***Session 2 – guiding questions that help INGP members participate with their experiences in the session**

How does the public procurement system in your country/ region already integrate human rights and/or relevant policy objectives (e.g. social, environmental, economic criteria) in the procurement cycle?

- Describe the public policy priorities channelled through public procurement (gender, labour, etc.) and how they are integrated (framework agreements, guidelines, minimum requirements or tie-break criteria, etc.)
- Why were specific policy priorities selected to be integrated in the procurement cycle? What was the driver?

***Session 4 – guiding questions for group discussions**

The group discussions are comprised of two themes (roughly 30 mins each followed by 15 min feedback)

Dependant on number and language, four groups will be built to discuss the questions within the two themes. Diversity of experiences and expertise will guide constitution of the groups.

In each of the two themes, there will be a short individual reflection on the questions, followed by group discussion in order to come up with some conclusions that will be shared in plenary to the other groups.

Theme 1: What challenges do you envisage in your country to fully integrate human rights in the public procurement cycle (tender specifications, prequalification criteria, selection criteria, contract clauses, supplier monitoring and performance review, supplier codes of conduct)?

- What have been the challenges so far?
- What are the opportunities for improvement in current legislation on public procurement, public policy priorities, political will, cultural variables, institutional weakness
- Identify variables that may support the steps to integrate human rights criteria into the public procurement cycle in your country/region

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Theme 2: How can we work together to overcome challenges to integrating human rights in government procurement?

- Identify three or more concrete needs and/or initiatives that the INGP could support (e.g. tools, guidelines, technical assistance, capacity/training, policy/legal assistance)

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Taller sobre derechos humanos y las compras gubernamentales

Con el apoyo del Grupo de Trabajo de las Naciones Unidas en Empresas y Derechos Humanos

Santiago de Chile, 6 de octubre 2017

Objetivos

- Hacer una introducción sobre los derechos humanos para los profesionales de la contratación pública de la RICG
- Introducir los fundamentos jurídicos de los derechos humanos y su aplicación a los estados, con foco en el contexto de la contratación pública y en relación con los principios jurídicos relativos a la contratación pública
- Compartir experiencias sobre la integración de salvaguardas sociales, de derechos humanos y ambientales en los ejercicios de contratación pública
- Mirar más allá de la ley y examinar las experiencias relacionadas con los beneficios económicos y comerciales de la integración de los derechos humanos en los ejercicios de contratación pública
- Discutir cómo la RICG podría apoyar una mayor integración de los derechos humanos en la contratación pública y definir los pasos a seguir y compromisos

Lugar: Centro de Estudios Avanzados y Extensión (CEA) de la PUCV - Antonio Bellet 314, Providencia-Santiago

Programa general

No.	Descripción de la sesión	Líder de la sesión
Bienvenida 10:00 – 10:15		<i>Presidente de la RICG</i> <i>Embajador de Suecia</i>
Sesión 1 10:15 – 12:00	Introducción a los derechos humanos y las compras gubernamentales <ul style="list-style-type: none"> • Ronda de introducciones y mirada general a la reunión y los objetivos del taller • Visión general sobre los derechos humanos e introducción a los Principios Rectores de las Naciones Unidas sobre las empresas y los derechos humanos y su vinculación con la Agenda de Desarrollo Sostenible • Introducción a los derechos humanos y las compras gubernamentales: riesgos y responsabilidades en la cadena de suministro del gobierno 	<i>Dante Pesce –</i> <i>Universidad Católica de Valparaíso,</i> <i>Miembro del Grupo de Trabajo de Naciones Unidas sobre Derechos Humanos y Empresas</i> <i>Nicole Van der Meulen, ICAR</i>

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	<p><u>Discurso principal</u></p> <ul style="list-style-type: none"> • Antecedentes de las compras gubernamentales y los marcos y principios jurídicos pertinentes • El Estado como actor económico y la utilización de las compras gubernamentales para la realización de los derechos humanos y los objetivos de política pública • Relación entre los derechos humanos y otros principios jurídicos y los objetivos políticos de las compras gubernamentales (ej: la búsqueda del mejor valor por el dinero y su relación con la promoción del respeto de los derechos humanos a lo largo de la cadena de valor de las compras públicas) <p>Preguntas y respuestas</p>	<p><i>Profesor Geo Quinot de la Universidad Stellenbosch</i></p>
<p>Sesión 2</p> <p>12:00 – 12:45</p>	<p>Oportunidades y desafíos - RICG</p> <ul style="list-style-type: none"> • Ejemplos de la RICG sobre derechos humanos y objetivos de política pública relevantes (medioambientales, sostenibles, sociales, etc.) logrados a través de las compras • Oportunidades para integrar salvaguardas ambientales, sociales y de derechos humanos en las compras gubernamentales y los obstáculos potenciales a superar (por ejemplo, marco legal, capacidades, cultura) 	<p><i>Trinidad Inostroza, Presidenta RICG y Directora de Chilecompra</i></p> <p><i>Participación de miembros de la RICG</i> <i>*(ver preguntas orientadoras para sesión 2 al final)</i></p>
<p>Almuerzo 12:45 – 13:45</p>		
<p>Sesión 3</p> <p>13:45– 15:15</p>	<p>Visión general de iniciativas en todo el mundo para integrar los derechos humanos a las compras gubernamentales</p> <p>Estado del arte: vista a 20 jurisdicciones, destacando los instrumentos y material existentes sobre derechos humanos y las compras gubernamentales</p> <p>Presentación de 3 estudios de caso – ejemplos de éxito, obstáculos enfrentados y cómo superarlos</p> <ul style="list-style-type: none"> • Natalie Evans, Londres • Pauline Gothberg, Estocolmo • Geo Quinot, Sur Africa <p>Preguntas y respuestas</p>	<p><i>Daniel Morris, DIHR</i></p> <p><i>Expertos y practicantes</i></p>

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Café (organización para las discusiones grupales) 15:15 – 15:30		
Sesión 4 15:30–17:15	<p>Discusiones grupales sobre los siguientes temas</p> <ul style="list-style-type: none"> • Variables que pueden apoyar o restringir medidas para integrar criterios de derechos humanos en el ciclo de compras gubernamentales • Necesidades (guías, instrumentos, fortalecimiento de capacidades) para integrar los derechos humanos en las compras gubernamentales <p>Retroalimentación grupal</p>	<p><i>Daniel Morris, DIHR</i> <i>Nicole Vander Meulen, ICAR</i></p> <p>*(ver preguntas orientadoras para sesión 4 al final)</p>
Sesión de cierre 17:15 – 17:30	<p>Conclusiones y pasos a seguir</p> <ul style="list-style-type: none"> • Evaluar la realización de un proyecto para "integrar los derechos humanos en el ciclo de compras: apoyo a los miembros de la Red Interamericana de Compras Gubernamentales" 	<p><i>Presidente de la RICG</i></p> <p><i>Dante Pesce – Universidad Católica de Valparaíso</i></p>

***Sesión 2 – preguntas orientadoras que contribuyen a que los miembros de RICG participen con sus experiencias en la sesión**

¿Cómo se han integrado los derechos humanos y/o los objetivos de política pública relevantes (por ejemplo, criterios sociales, ambientales y sostenibles) en el ciclo de adquisiciones del sistema de contratación pública de su país / región?

- Describir las prioridades de políticas públicas canalizadas a través de la contratación pública (ej. género, trabajo, etc.) y cómo se integran (acuerdos marco, directrices, requisitos mínimos o criterios de desempate, etc.)
- ¿Por qué se seleccionaron las prioridades políticas específicas para integrarlas en el ciclo de adquisiciones? ¿Cuál fue el impulsor?

***Sesión 4 – preguntas orientadoras para la discusión grupal**

Las discusiones de grupo se componen de dos temas (aproximadamente 30 minutos por cada uno seguido de retroalimentación de 15 minutos)

Dependiendo del número y el idioma, se construirán 4-5 grupos para discutir las preguntas dentro de los dos temas. La diversidad de experiencias y conocimientos guiará la constitución de los grupos.

En cada uno de los dos temas habrá una breve reflexión individual sobre las preguntas, seguida de discusión en grupo para llegar a algunas conclusiones que serán compartidas en sesión plenaria a los otros grupos

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Tema 1: ¿Qué desafíos prevé en su país para integrar plenamente los derechos humanos en el ciclo de contratación pública (pliegos de condiciones, criterios de precalificación, criterios de selección, cláusulas contractuales, supervisión y revisión de los proveedores y códigos de conducta de los proveedores)?

- ¿Cuáles han sido los mayores desafíos hasta ahora?
- ¿Cuáles son las oportunidades para mejorar la legislación vigente en materia de contratación pública, la voluntad política, las variables culturales, las debilidades institucionales, las prioridades de política pública, entre otras?
- Identificar variables que puedan apoyar los pasos para integrar criterios de derechos humanos en el ciclo de adquisiciones públicas en su país / región

Tema 2: ¿Cómo podemos trabajar juntos para superar los retos que plantea la integración de los derechos humanos en la contratación pública?

- Identificar tres o más necesidades concretas y / o iniciativas que la RICG podría apoyar (por ejemplo, herramientas, asistencia técnica, guías, capacitación, asistencia legal/política)

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