

OHCHR's contribution to the EU Public Procurement Directives evaluation

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The United Nations Human Rights Office (OHCHR) welcomes the European Commission's initiative to evaluate the three legislative acts that regulate public procurement in the EU. OHCHR appreciates the inclusive process in relation to the call for evidence and the broader policy debate on the revision of the public procurement directives.

In relation to legal and policy coherence, it is essential that the EU public procurement directives are revised to ensure alignment with international human rights norms and principles, including labour standards and the right to a clean, healthy and sustainable environment. In addition to legal obligations, States have also made a political commitment to achieve the Sustainable Development Goals of the 2030 Agenda. Therefore, human rights and sustainable development should be identified as core aims of public procurement.

Under the international human rights framework in which all rights are universal, indivisible, interdependent and interrelated, States have a duty to respect, protect and fulfil human rights. As recognized by the United Nations Guiding Principles on Business and Human Rights (UNGPs), States, at all levels of government, must take steps to protect against human rights abuses by business enterprises, and they are expected to take additional steps depending on the connection between the State and business activities. In cases where businesses are owned or controlled by the State, or receive substantial support and services from State agencies, the UNGPs call on States to consider requiring human rights due diligence by those business enterprises.

The use of public procurement as a strategic policy tool to enhance the realization of human rights

According to the International Covenant on Economic, Social and Cultural Rights, article 2(1), States must mobilize the maximum of their available resources for the progressive realization of economic, social and cultural rights. This obligation includes responsibilities related to resource generation, allocation and spending of central, regional and local governments, which should follow the principles of transparency, participation and accountability, and contribute to the fulfilment of human rights. Public procurement should therefore be used as a transformative policy tool in realizing human rights by leveraging government spending.

Under international human rights and labour standards, States also have an obligation to respect, protect and fulfil the right of everyone to the enjoyment of just and favourable conditions of work, including fair wages and equal remuneration, safe and healthy working conditions and reasonable limitation of working hours. Furthermore, trade union rights, freedom of association and the right to strike are crucial means of introducing, maintaining and defending just and favourable conditions of work.

In addition, the UN Committee on Economic, Social and Cultural Rights has elaborated on the normative content of economic accessibility (affordability) that applies to economic, social and cultural rights, such as the rights to health, water, sanitation and food. For example, in its General Comment No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the ICESCR), the Committee has stated that health facilities, goods and services must be affordable for all, including socially disadvantaged groups, and that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

In the revision of the public procurement directives, OHCHR recommends the following:

- Strengthen the mandatory conditionalities to ensure alignment with international human rights law by
 - 1) establishing selection and award criteria based on internationally recognized human rights, the principles of equality and non-discrimination, including gender equality, and preferential contracting to groups that face discrimination or are in a situation of vulnerability; and
 - 2) integrating human rights, the principles of equality and non-discrimination, including gender equality, into contract performance clauses in order to ensure the possibility of annulling or amending a contract in cases where adverse human rights impacts occur.