

## WORKSHOP SUMMARY: ACCESS TO REMEDY AND REMEDIATION FOR HUMAN RIGHTS ABUSES IN PUBLIC PROCUREMENT

### 1 INTRODUCTION

This workshop was organised in collaboration between the [Danish Institute for Human Rights \(DIHR\)](#), [Electronics Watch](#), and the [University of Greenwich's Business, Human Rights and the Environment research group \(BHRE\)](#). The 1.5-day event took place at The Danish Institute for Human Rights' offices in Copenhagen, Denmark, on 26 and 27 October 2022. The 18 participants included procurement and sustainability professionals from local, regional, national, and international bodies, and the organisers.

The aim of the workshop was to:

- i. build a common understanding of remedy in the context of public procurement from the perspective of rightsholders, so that public buyers can better facilitate it; and
- ii. share experiences, challenges, and/ or lessons learned on how to engage and support a focus on remedy in different value chains and scenarios.

The workshop was held under the [Chatham House Rule](#). Individual activities within the workshop are listed in the agenda in Annex 1.

### 2 KEY CONSIDERATIONS

Participants identified several key issues that affect the provision of effective remedy for human rights violations in global value chains linked to public procurement. Among others, these include:

- **Political support and an enabling policy and regulatory environment:** Participants noted that the current policy and regulatory environment is often unclear about the responsibilities of buyers to ensure remedy for harm in global supply chains. They highlighted the value of operating in institutions and teams where there is strong support for human rights. In this enabling environment, public buyers can easier use their leverage to promote social dialogue between suppliers, workers and direct employers to resolve grievances and enable access to remedy where violations occur.
- **Transparency and access to information:** Many public bodies do not have as much information on their value chains as they would like, especially further down in the supply chain. This results in limited visibility of suppliers and locations of production in public value chains. Public buyers noted that their own suppliers have expressed a lack visibility of their value chains. Transparency is a prerequisite for identifying and remedying harm to workers in supply chains.

- **Addressing the role of states:** Participants noted that the ability to engage with remedy is complicated when public value chains run through states where national legislation does not provide adequate human rights protections—either because the law is inadequate or because there is no capacity or willingness to enforce it. In some jurisdictions, state actors themselves cause or contribute to human rights violations. In such places, union leaders and human rights defenders are often under attack. This intimidation means workers are unlikely to raise grievances for fear of punitive action, including losing their jobs. Public buyer contracts could stipulate the need for adequate HR systems that enable grievances to be raised and resolved, which also protect workers and their representatives from harassment.
- **Bridging the distance to rightsholders in global value chains:** Public bodies have limited information on, and often lack access to, rightsholders in their value chains. First tier suppliers may be many tiers removed from sub suppliers involved in manufacturing. It is therefore difficult for public buyers to verify whether sub suppliers undertaking the manufacturing are complying with applicable labour standards. The distance from rightsholders also makes it difficult to identify groups who might be particularly vulnerable to human rights abuses, such as workers, their dependents, and local communities.
- **Increasing leverage:** Participants noted that in some cases the spend of a single public buyer represents a small share of that suppliers' total sales. This means they have limited influence over whether and how those suppliers address grievances and provide remedy to workers in their value chains. This is even more challenging when the company is not a recognised brand with a public reputation to protect. Knowing how to exercise leverage is often challenging in complex supply-chains such as electronics, where there is a multiplicity of actors, geographies, and risks. As such, collaborating with other public buyers and using collective leverage is optimal.
- **Addressing pricing and purchasing practices:** A broad objective of public procurement is to achieve value for money for taxpayers. This has often meant paying the lowest price. However, increasingly there are legal requirements to consider social value and sustainability factors in tendering and contracting criteria, which includes considerations of 'abnormally' low costs that should prompt public buyers to scrutinise these issues more carefully. Public buyers that prioritise lowest costs to the exclusion of other factors can accelerate a race to bottom in human rights standards and contribute to human rights abuses. That is why responsible purchasing practices, including payment terms, should be embedded in all contracts throughout the supply chain.
- **Facilitating coordination and coherence:** Public bodies procure a wide range of products and services but have differing codes of practice and expectations with regard to human rights due diligence. This lack of consistency makes it difficult for suppliers to comply with different standards, and also increases confusion and inadequate action when it comes to monitoring compliance and provision of remedy. Some participants mentioned the lack of consistency within their own governments and departments as an additional challenge. Sharing lessons

and good practice between public buyers that are committed to improving human rights due diligence can advance a more coherent approach.

- **Criteria in tenders and clauses in contracts:** Some participants highlighted that utilising the tender process to reward those who have grievance and remediation procedures in place can be challenging. This is partly due to their suppliers' limited understanding and capacity on this, but may also be due to the way criteria in tendering and contracting are weighted. Participants noted the importance of including contractual clauses to ensure that information can be gathered by the public buyer to support remedy (e.g., monitoring, audits, access to documentation/sites). They also acknowledged that contracts could be used to require corrective action, or to threaten suspension and/or termination of the contract if suppliers do not address human rights abuses and prevent it from re-occurring. That said, it was noted that contractual clauses should be realistic. One participant referred to their newly updated contract clauses, which now include specific clauses on remedy based on the relevant UN and OECD guidance. These clauses will be made public early in 2023 and other procurement authorities could use or adapt them in their own contract clauses.
- **Measuring impact:** Participants noted that measuring the effectiveness of actions to provide remedy can be challenging. It requires multiple sources of information – including evidence from rightsholders themselves. However, public buyers largely rely on self-reporting platforms, social auditing and certifications as their main source of information when assessing risk and getting a basic level of assurance for the products and services they buy. Measuring human rights impacts is often more challenging than environmental impacts. Some issues are harder to detect by auditors during a site visit, such as discrimination and intimidation. Also, records of wage payments, working hours and other working conditions may be misleading and inaccurate, and as such may not appear in 'non-conformances' or corrective action plans. In addition, because rights violations and the provision of remedy are context specific, it can be difficult to use a standardised set of indicators to assess effectiveness of all aspects of remedy across cases. However, there are international principles that provide a strong basis for this.
- **Generating resources:** Participants highlighted that there is generally a challenge in finding the resources, including time and money to conduct human rights due diligence, including value chain monitoring and remediating identified abuses. As a potential solution, it was noted that some public buyers have reduced the number of suppliers they use, which has enabled them to increase their leverage through increased spend, while also using their time to engage with fewer key suppliers.
- **Public buyer expertise:** Participants noted that public buyers often lack human rights knowledge, including on remedy. While some larger organisations might have human rights experts, these do not necessarily engage with procurement functions. They highlighted the need for further training of public buyers on human rights, including remedy, and sharing knowledge between public buyers. They also raised the challenge that many suppliers lack knowledge on human rights in general and remedy specifically. When asked for a risk

assessment, the quality of information is poor - often citing generic information from corporate social responsibility (CSR) reports or contract organisations that provide generalised risk-assessments. Participants agreed there is a demand to build the capacity of suppliers on HRDD and remedy.

- **Resources:** Some participants noted that it would be helpful to have a common platform of credible sources of information on human rights risks and abuses, as well as useful tools to evaluate risks and take appropriate action.

### 3 NEXT STEPS

All workshop participants recognised the importance of remedy for human rights violations in public procurement value chains and expressed a desire to continue working collaboratively on the topic. The following next steps were proposed:

- **Principles for worker-driven remedy:** Participants were presented a draft set of principles to guide remedial processes and outcomes to address harm to workers in global value chains, which was commissioned by Electronics Watch in 2022 and developed by the BHRE. These principles are based on international human rights law and developed following a series of consultations with rightsholders and their representatives.
  - **Action:** Electronics Watch and BHRE will finalise the principles as part of a larger project on worker-driven remedy in public value chains. Next steps include consulting the members of the workshop and other key stakeholders before finalising the principles.
- **Information sharing:** Participants suggested increased sharing of value chain information, especially among public buyers and purchasing networks with common suppliers. This could help to improve value chain transparency, especially in cases where companies are reluctant to share information about their sub-suppliers.
  - **Action:** Beyond value chain data, BHRE is collecting resources and data on best practices, as well as producing regular blog posts on perspectives about public procurement and human rights due diligence on the [Public Procurement Lab website](#).
  - **Action:** Electronics Watch will continue to monitor and share information about working conditions in electronics and related value chains and update its public buyer affiliates about remediation in specific cases.

The organisers welcome the opportunity to continue to work collaboratively with the participating institutions and other stakeholders committed to learning about and advancing remedy for human rights abuses through public procurement. We would also welcome the opportunity for a follow up consultation in the coming year to review progress and envision the path ahead. Please reach out to Cindy Berman, [cberman@electronicswatch.org](mailto:cberman@electronicswatch.org) at Electronics Watch and/or Daniel Morris, [damo@humanrights.dk](mailto:damo@humanrights.dk) email at the DIHR if you'd like to contribute to this work.