



Protecting Human Rights through Government Procurement

Recommendations for Responsible Supply Chain Management, Corporate Accountability, and Worker Access to Remedy in US Government Procurement

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The International Labor Rights Forum (ILRF), a human rights organization that advocates for workers globally, welcomes the US Government's initiative to launch a consultative process for developing a National Action Plan for responsible business conduct, consistent with the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises. With more than a decade of hands-on experience on government procurement and human rights, we welcome this opportunity to submit comments, focusing on government's duty to protect human rights in global supply chains through procurement.¹ We believe this should be a priority issue for the US Government for three reasons:

- Research indicates the problem of governments purchasing products or services made or provided in conditions that violate human rights is severe and widespread;²
- Current supply chain vetting systems are inconsistent and incomplete;³ and,
- US Government purchasing power is so large that it has the potential to be a market leader, influencing US business abroad and building better relations with allies in the process.⁴

To help the US Government exercise its duty to protect human rights in global supply chains through procurement we recommend that the US National Action Plan direct the US Government, including its agencies and entities, to:

1. Plug the human rights standards gaps in procurement policy.
2. Define responsible supply chain management in terms of transparency, accountability, and responsible business practices.
3. Obtain compliance data from workers through bottom-up reporting, not top-down certifications.
4. Guarantee worker access to remedy.
5. Pool resources and strengthen human rights leverage.

RECOMMENDATION 1: Plug the Human Rights Standards Gaps in Federal Procurement Policy

Government contractors operating global supply chains should, at a minimum, ensure that they and their suppliers comply with domestic labor standards as defined by law where they operate and the core internationally recognized human rights. UNGP 12 defines these rights as the International Bill of Human Rights⁵ as well as the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work.

Unfortunately, current federal procurement policy only seeks to protect workers in global supply chains from scattered harms, such as forced child labor or human trafficking, and does not seek to guarantee workers' full set of labor and human rights. By

contrast, US trade policy seeks to guarantee workers a broader set of rights. For example, the Generalized System of Preferences (GSP), the US's largest trade preference program, requires beneficiaries to respect internationally recognized worker rights, including freedom of association, the right to bargain collectively, freedom from forced labor and child labor, and acceptable conditions of work with regard to wages, working hours, and occupational health and safety.⁶ In June 2013, two months after the Rana Plaza tragedy, President Obama suspended Bangladesh's trade benefits under the GSP program citing its failure to take steps to afford workers internationally recognized rights. Yet, there is still no procurement policy that prohibits US government entities and agencies from purchasing goods made in deathtrap factories in Bangladesh or in other global factories that do not comply with internationally recognized worker rights. When US trade and procurement policy are at odds US foreign policy weakens.

The US National Action Plan should direct the US Government to plug the human rights standards gaps in procurement policy, improving policy coherence and strengthening US human rights impact globally.

**RECOMMENDATION 2:
Define Responsible Supply Chain Management in Terms of Transparency, Accountability, and Responsible Business Practices**

The UNGPs require business enterprises to carry out ongoing human rights due diligence identifying and assessing any actual and potential human rights impacts with which they may be involved through their business relationships (UNGP 17 and 18), to take appropriate action, depending on their leverage, to prevent and mitigate adverse human rights impacts (UNGP 19), and to account for how they address their human rights impacts (UNGP 20).

Consistent with the UNGPs, the US National Action Plan should direct the US Government to define a process of responsible supply chain management

Towards More Effective Supply Chain Management

Responsible supply chain management can be implemented through a set of contract performance conditions that require due diligence by investigating and mitigating risk of violations, providing remedy, and preventing recurrence. Contract clauses should address:

+ Labor and Human Rights Conditions: Goods must be made in compliance with with domestic labor standards and core internationally recognized human rights.

+ Trading Conditions: Contractors' own business practices, including pricing and delivery schedules, must not increase risk of labor violations.

+ Disclosure and Transparency: Contractors must disclose all organizations in the supply chains linked to the goods that agencies purchase, and the approximate volume of those goods made by the organizations.

+ Verification: Contractors must exercise their leverage to ensure suppliers' full cooperation with independent investigations and remediation activities. Contractors must also develop and submit their own compliance plans proportional to the contractors' influence and leverage in the supply chain, which are incorporated into the contract. These plans should include a grievance mechanism that guarantees workers' safety and ensures their complaints are addressed expeditiously.

+ Engagement and Enforcement: The US Government should ensure complete and expeditious remediation of violations in order that workers are made whole, by means of: (1) Grievance procedures, including steps for filing complaints on-site and for appeal to the relevant government agency; (2) Escalation procedures set out in the contract, including mandatory meetings and reporting on grievances; (3) Contractual sanctions, including liquidated damages that are used to provide financial compensation to workers or otherwise make them whole.

through which buyers and their contractors ensure that their activities do not infringe directly or indirectly on the rights of workers in their supply chains. Responsible supply chain management should be based on the following principles:

- Full supply chain transparency, including names and addresses of organizations in global supply chains that supply goods to US government agencies and entities, as well as the volume of goods they supply so that independent verification and government-oversight of contractor compliance is possible and the contractor's human rights leverage with suppliers can be objectively assessed.
- Business practices, including pricing and lead times, that do not increase risk of labor violations.
- Commitment to remediate non-compliances and prevent recurrence of non-compliances.
- Failure to document and remediate violations of workers' rights that are difficult to measure or detect at a glance, such as discrimination or violations of freedom of association.
- Conflict of interest—where auditors are paid by the factories they audit or when companies monitor themselves—resulting in unreliable findings and lack of adequate follow-up.
- Division between social auditing and the purchasing practices of global corporations. While establishing codes of conduct and holding suppliers responsible for compliance, global corporations may also establish prices, lead times, and design specifications that provide incentive to factory owners to game social audits and continue to produce goods below the cost of labor and human rights compliant production. This disconnect has spawned an entire industry of services to fake compliance for social audits in order to sustain orders of global corporations and create the perception of compliance.

These principles should be implemented as enforceable contract performance conditions (see text box on page two).

RECOMMENDATION 3: Obtain Compliance Data from Workers through Bottom-Up Reporting, Not from Top-Down Certifications

The US National Action Plan should ensure that the US Government learns from the failures of social auditing in the private sector. In a post-Rana Plaza world, it is clear that industry-controlled social audits of supply chains have failed to protect workers from injury and death, as well as from violations of domestic labor standards and the core internationally recognized human rights.

The fundamental flaws of industry-controlled social auditing have been documented in a wide range of academic and journalistic literature.⁷ Those flaws include:

- Snapshot audits that fail to capture violations as factory conditions can change day-to-day. A fire door that is unlocked one day may be locked the

next day. An aisle that is clear one day may be obstructed the next day, when an emergency order has resulted in boxes being stacked in inappropriate areas. Social auditors would not know about these violations unless they happened to arrive at the right moment.

- Failure to document and remediate violations of workers' rights that are difficult to measure or detect at a glance, such as discrimination or violations of freedom of association.
- Conflict of interest—where auditors are paid by the factories they audit or when companies monitor themselves—resulting in unreliable findings and lack of adequate follow-up.
- Division between social auditing and the purchasing practices of global corporations. While establishing codes of conduct and holding suppliers responsible for compliance, global corporations may also establish prices, lead times, and design specifications that provide incentive to factory owners to game social audits and continue to produce goods below the cost of labor and human rights compliant production. This disconnect has spawned an entire industry of services to fake compliance for social audits in order to sustain orders of global corporations and create the perception of compliance.

Instead, the US National Action Plan should direct US Government agencies and entities to obtain compliance information regarding contractors' factories and suppliers from workers, through their trade unions whenever present, and through civil society organizations (CSOs) based in regions where the factories and suppliers are located. These organizations have appropriate monitoring and labor rights expertise and maintain ongoing programs and activities with workers. Workers go to these organizations to report or solve problems and may themselves initiate inquiries about alleged non-compliances; by contrast, workers are often fearful of speaking candidly about working conditions when meeting with industry auditors lest they would lose their employment. Also unlike most industry social auditors, trade unions and local CSOs can also respond rapidly to a situation that needs

quick redress, and conduct sustained monitoring over an extended period of time to ensure appropriate prevention of recurrent violations.

**RECOMMENDATION 4:
Guarantee Worker Access to Remedy**

Responsible supply chain management does not alone guarantee full compliance with applicable labor and human rights standards. Therefore, the US National Action Plan should also direct the US Government to ensure workers who suffer human rights violations in the course of making products or delivering services for government agencies have access to effective remedy to make them whole. As UNGP 25 notes, remedy “may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions, as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”

Providing access to remedy means workers must know how to use a grievance mechanism that guarantees their safety and ensures their complaints are addressed expeditiously. Commensurate with their leverage and influence in the supply chain, suppliers to the US government must maintain effective grievance systems. As a final safety net, the US Government, when acting as a buyer, must also develop a mechanism to provide workers in its supply chains access to appeal, and the applicable government agency or entity must be accountable for contributing appropriately to remediate the violation. Enforcement actions should be made available and support remediation and non-recurrence.

**RECOMMENDATION 5:
Pool Resources and Strengthen Human Rights Leverage**

While the US federal government is the world’s single largest consumer, US state and local governments together purchase twice as much as the federal government. Adding US state and local governments purchasing to federal government purchasing therefore triples overall government purchasing

power.⁸ Collaborating with state and local government agencies, the US Government will maximize its potential for positive impact on human rights in supply chains connected to government procurement.

UNGP 19 directs business enterprises to use and, if possible, increase their leverage to prevent and mitigate adverse human rights impact in their supply chains. Public agency buyers should do the same by increasing the number of public agencies pooling resources and sharing information to address human rights and labor rights issues in contractors’ supply chains.

Accordingly, the US National Action Plan should direct US Government agencies and entities to develop appropriate models of interagency collaboration, as well as collaboration with US state and local government agencies and coordination or informal exchanges with leading government agencies in other countries. Interagency and inter-governmental collaboration can help to create capacity for guiding and supporting responsible supply chain monitoring, independent factory investigations, and government-operated worker grievance procedures.

Examples of intra and inter-governmental collaboration to increase human rights leverage in global supply chains include:

- The [Sweatfree Purchasing Consortium](#), a collaborative effort of US state and local government agencies to purchase apparel made in good working conditions, which has developed model contract clauses and criteria to ensure contractor capacity to comply with labor rights standards in global supply chains, as well as a factory database for information sharing.⁹
- The [City of Madison Cooperative Contract](#) for uniforms. The City of Madison is seeking to maximize its purchasing power and influence in the supply chain to protect and respect human rights by inviting other US public agencies to use the same contract. The contract includes strict human rights due diligence requirements, including a binding compliance plan to disclose, remedy, and

prevent violations. As a cooperative contract, it is open to tens of thousands of public agencies in the United States.

- All of Sweden's 21 county councils—the government units responsible for healthcare and public transportation—use the same code of conduct for labor standards, contract performance requirements, and [procurement routines and follow-up procedures](#). They also share the cost of factory audits and audit results through a common web portal.
- Norwegian municipalities, which use the same code of conduct and contract performance clauses, and [share resources](#) for collaborative factory auditing.
- [Electronics Watch](#), public agency buyers from the UK and the Netherlands (thus far) who append contract performance clauses developed by Electronics Watch to their ICT contracts, and share resources via an annual affiliation fee to conduct supply chain monitoring.

ENDNOTES

1. The UN Guiding Principles on Business and Human Rights (UNGPs) clearly establish government's responsibility to protect workers' human rights through procurement. According to UNGP 6, government's duty to protect human rights extends to the responsibility to "promote respect for human rights by business enterprises with which they conduct commercial transactions." In particular, "procurement activities provides [them] with unique opportunities to promote awareness of and respect for human rights." The UNGPs establishes a framework of action that should guide governments' work in procurement and human rights. Both the contracting authority (i.e. the government agency) and the contractor (i.e. the supplier to the government) must undertake an ongoing effort to investigate and mitigate risk of human rights violations, to remedy violations where they have occurred and prevent their recurrence, and to maximize their capacity to positively influence human rights compliance in supply chains.
2. Non-governmental organizations, investigative journalists, and government agencies in the US and elsewhere have investigated and found severe labor rights violations in factories that make a wide variety of products for public agencies, including apparel, electronics, hospital garments, surgical instruments, pharmaceuticals, office equipment, and private security services. See, for example, the following English language sources: [Amnesty International](#) (2013); [City of Los Angeles](#) (2008-2015); [City and County of San Francisco](#) (2010-2013); [Electronics Watch](#) (2014); [ILRF](#) (2008, 2009, 2010, 2014); [The New York Times](#) (2013); [US Senate HELP Committee](#) (2013).
3. Wide gaps in human rights due diligence in federal agency procurement, recently documented in ICAR's report, [Turning a Blind Eye](#), exacerbate the risk that the US government is entangled in human rights abuses in its supply chains. In addition, ILRF's report, [Dangerous Silence](#), shows that the US Military Exchanges, retail stores that operate on US military installations under the authority of the Department of Defense, rely entirely on audits conducted by or on behalf of private sector retailers to investigate risk of human rights violations in their apparel supply chains, and do not take any steps independently to mitigate risk or remedy and prevent recurrence of violations. This lack of human rights due diligence and oversight in US Military Exchange supply chains first came to light when [Marine Corps licensed apparel was found](#) in the rubble of the Tazreen Fashions factory, where 112 workers were killed in November 2012.
4. As the world's largest consumer, spending about \$350 billion on goods and services according to the [Office of Federal Procurement Policy](#), the US Government has both the duty and opportunity to positively impact human rights compliance in global and domestic supply chains. No other single entity in the world has greater influence through its purchasing.
5. This includes the Universal Declaration of Human Rights and the main instruments through which it has been codified—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
6. See, [Generalized System of Preferences](#) in the Trade Act of 1974.
7. See, for example, [AFL-CIO](#) (2013), [Brown](#) (2014), [Clean Clothes Campaign](#) (2005), [Esbenshade](#) (2012), [Frank](#) (2008), [The New York Times](#) (2012).
8. According to [OECD](#), federal agency procurement accounts for about 4% of the US Gross Domestic Product (GDP) while state and local government procurement make up another 8% of US GDP.
9. Dozens of US state and local government agencies require apparel suppliers to disclose factories that make the products they buy, and some of these agencies pool that information into a shared database maintained by the [Sweatfree Purchasing Consortium](#). [The New York Times](#) has recognized their path-breaking work on disclosure and transparency as a model for federal agency procurement. The US Government can combine strength with state and local agencies, and take steps to deepen transparency beyond tier one (assembly factories) and broaden it (beyond apparel).