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BUSINESS AND HUMAN RIGHTS

GUIDE ON HUMAN RIGHTS BASED APPROACHES TO PUBLIC PROCUREMENT IN DISASTER RISK MANAGEMENT IN TÜRKİYE

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CONTENTS

ACRONYMS

CoE	Council of Europe
CSO	Civil Society Organization
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EHRDD	Environmental and Human Rights Due Diligence
ESG	Environmental, Social and Governance
EU	European Union
ILO	International Labour Organization
MoTF	Ministry of Treasury and Finance
NAP	National Action Plan
OECD	Organisation for Economic Co-operation and Development
PPA	Public Procurement Authority
PPL	Public Procurement Law
RBC	Responsible Business Conduct
SDG	Sustainable Development Goals
SMEs	Small and Medium-Sized Enterprises
UN	United Nations
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights

1. INTRODUCTION

Disasters occur when hazardous events interact with existing conditions of exposure, vulnerability and capacity, to cause serious human, material, economic and environmental losses and impacts, disrupting the functioning of a community or society (UNDRR, 2024).

After disasters, governments and the private sector must respond quickly, for instance, through search and rescue operations and distribution of emergency supplies. During the disaster recovery phase, the main focus is reconstruction and improving social, environmental and economic resilience. Besides, however, governments should in general apply proactive disaster risk-management approaches to achieve disaster risk prevention and preparedness as a precondition for securing human rights, environmental protection and sustainable development goals.

Public procurement has a central role to play in the post-disaster context. After a disaster, governments rely on public procurement to source emergency supplies and logistics services. Disaster recovery requires large-scale procurement of civil engineering works, transport, housing and telecommunications systems, for instance.

Yet public procurement can also make a critical contribution to disaster risk prevention, where government purchasing contributes to reducing known disaster risks, and strengthens individual and community resilience. Accordingly, public procurement policy and practice should consistently integrate disaster risk reduction – especially where populations are vulnerable to hazards such as earthquakes or weather events linked to climate change.

One important tool for managing human rights risk linked to public procurement is human rights due diligence. In line with international human rights treaties and the UN Guiding Principles on Business and Human Rights, governments are required to control human rights risks associated with public purchasing activity. At the same time, all businesses, including suppliers to government, should perform human rights due diligence to identify and manage human rights and environmental risks associated with goods and services they produce, or which they purchase from others (UN 2008, 2011, OECD 2019, 2023).

By integrating human rights due diligence approaches into their purchasing practices, governments and businesses can furthermore contribute to **sustainable development** as reflected in the UN 2030 Agenda and Sustainable Development Goals.

Applying human rights due diligence to public procurement, including in the disaster risk management context, should accordingly help to:

- Address underlying labour, social, environmental and climate-change related vulnerabilities
- Improve the environmental profile of disaster risk management measures
- Strengthen disaster preparedness
- Reduce effective disaster risk to people, the economy and the environment and
- Promote energy transition and social sustainability in the private sector, while also enhancing the effectiveness and efficiency of government procurement.

1.1 Objectives

Guide on Human Rights Based Approaches to Public Procurement in Disaster Risk Management in Türkiye was prepared by the United Nations Development Programme (UNDP) as part of the United Nations Business and Human Rights Guiding Principles Implementation Project, which is funded by the Government of Japan. This Guide aims to support the integration of human rights due diligence into public procurement rules and practices in Türkiye, in order to promote respect for human rights in the business sector, as well as effective disaster risk management, including disaster risk prevention, preparedness and mitigation, and sustainable development.

1.2 Who is this Guide for?

The following stakeholders should find this Guide useful: policymakers; public procurement practitioners; private sector procurement and supply chain practitioners; other stakeholders in the disaster risk management sector, including public, non-profit and international organisations.

1.3 Overview of the Guide

Section 2 Human Rights, Public Procurement and Disaster Risk Management demonstrates why and how human rights due diligence should be integrated into public procurement rules and standards, and how this can contribute to effective disaster risk management as well as international sustainable development objectives.

Section 3 Sustainable Public Procurement in Türkiye highlights how human rights and sustainability considerations are currently approached in Türkiye public procurement law, policy and institutional practice, including in post-disaster contexts.

Finally, **Section 4** provides preliminary **Recommendations on Public Procurement, Human Rights Due Diligence and Effective Disaster Risk Management in Türkiye.**

2. PUBLIC PROCUREMENT, HUMAN RIGHTS AND DISASTER RISK MANAGEMENT

Public procurement is the process whereby the public sector purchases goods, services, or works from companies it needs to perform its functions and duties (EC 2020). Public procurement accounts for 15% of GDP across OECD countries and its value globally amounts to over US$13 trillion annually (Open Contracting Partnership and Spend Network, 2020). Over the last decade, public procurement spending relative to GDP amongst OECD countries has risen to 12.9% (OECD 2023).

Given this scale, public authorities can be designated as "mega consumers" (FAO et al 2023). The terms of purchase agreements defined by public buyers have potential to influence markets for individual products, services or suppliers. In some cases, they may even have potential to transform business models, production and consumption patterns in specific industrial or service sectors.

This is important because business activity continues to be linked to a range of human rights abuses, such as modern slavery and human trafficking, unsafe working conditions, discrimination and environmental harms, such as water pollution, remain widespread. Such harms breach state duties to uphold and protect human rights under international human rights and labour laws. Moreover, such abuses distort competition: where businesses engage in or contribute to such harms, this puts firms that observe legal rules and meet the costs of doing so, at a disadvantage.

To ensure a level playing field for businesses, it is therefore essential that governments integrate human rights requirements into public procurement policies and processes. Consequently, since 2011, international actors and states have adopted legal and policy measures directing that all businesses undertake due diligence to give practical effect to their responsibilities to respect human rights. In some cases, these extend beyond human rights to wider aspects of 'responsible business conduct' such as the environment and good governance (UN 2011, OECD 2011, 2018, 2023, nd; EU 2011; COE 2016; Methven O'Brien 2018; République Française 2017; Deutscher Bundestag 2021; DIHR nd).

Further, this contributes to aligning businesses and their activities to the environmental and social dimensions of sustainable development and in particular the UN 2030 Agenda and Sustainable Development Goals.

Besides – and although less recognised until now - integrating human rights due diligence can enhance the role of public procurement in achieving effective disaster risk management. This is because, firstly, ensuring respect for human rights and environmental protection during disaster recovery and reconstruction is essential to avoid exacerbating the exposure to disaster-related hazards of affected communities. Secondly, integrating respect for human rights and environmental sustainability into government purchasing can make a substantial contribution to reducing individual and community vulnerabilities and resilience, and hence to future disaster prevention.

Bringing these concerns together, this chapter outlines international standards that call for governments to integrate respect for human rights and human rights

due diligence into public procurement frameworks and practices. Next, it shows how doing this can help governments to achieve a 'triple dividend': ensuring respect for human rights; advancing sustainable development; and enhancing disaster risk management and resilience.

2.1 Public procurement and human rights: Government duties

Under international treaties, states have a duty to protect individuals from harms to their human rights by private actors, including businesses (Council of Europe, 2016). This is reflected by the first 'Pillar' of the UN Business and Human Rights three-pillar framework, the State Duty to Protect (UNHRC 2008), as further elaborated by the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs)

The UNGPs have been endorsed by the UN Human Rights Council, the Council of Europe (COE), Organisation for Economic Cooperation and Development (OECD) and Organisation for Security and Cooperation in Europe (OSCE). States are called on to take effective action to promote their national implementation (UNHRC 2011, OECD 2011, COE 2016, OSCE 2018).

As highlighted by the UNGPs, the state duty to protect human rights entails that governments should 'promote respect for human rights by business enterprises with which they conduct commercial transactions' (UNGP 6, UNHRC 2011). "[C]ommercial transactions", the UNGPs observe, that States "conduct with business enterprises, including through their procurement activities, provide a unique opportunity for States to promote respect for human rights by business including through the contract terms".

Likewise, the Council of Europe has indicated that its 'Member States should apply additional measures to require business enterprises to respect human rights, including, where appropriate, by carrying out human rights due diligence…when member States: – conduct commercial transactions with business enterprises, including through the conclusion of public procurement contracts (COE 2016, Appendix, paragraph 22).

In addition, according to the Council of Europe, states should "evaluate the measures taken…and respond to any deficiencies" in the public procurement context, and further provide for "consequences if the respect for human rights is not honoured, such as, for example, the termination of public procurement contracts as a measure of last resort" (COE 2016, Explanatory Memorandum, paragraph 39).

For the OECD, similarly, 'Given the power of public procurement to act as a lever for change, there is a growing expectation that governments uphold [responsible business conduct] commitments in their role as an economic actor, through public procurement' (OECD 2020, Section 1.1).

Returning to the UNGPs, these also call on states 'to exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services' (UNGP 5). Given the rights of victims of human rights abuses, effective and accessible remedy mechanisms should also be available where human rights abuses occur in the delivery of public contracts (UNHRC 2011, UNGP 22).

To summarise:

- Under human rights treaties, states have a positive 'duty to protect' against human rights abuses by third parties, including businesses
- This 'duty to protect' applies to preventing human rights abuses linked to government purchasing, for example, where government suppliers fail to observe minimum human rights, labour or environmental standards

- Public buyers must exercise adequate oversight to prevent corporate human rights abuses when they contract with businesses to supply the state – especially in where there are specific known risks linked to relevant products, services or industry sectors, such as modern slavery and human trafficking, unsafe or exploitative working conditions, and environmental pollution

2.2 Corporate human rights due diligence

Besides governmental duties to protect against human rights abuses linked to public procurement, business actors themselves must respect human rights.

While businesses are not as such bound by international human rights laws, nevertheless all businesses have a 'corporate responsibility to respect human rights', according to which they should not harm human rights.

This in turn entails that businesses should take active steps to prevent or mitigate any adverse impacts on human rights they have "caused or contributed to" through their own activities, as well as any negative human rights impacts that are "directly linked" to their operations, products or services via their business relationships.

This 'corporate responsibility to respect human rights' extends to all business relationships, whether contractual or non-contractual, and throughout the business' value chain (UNHRC 2011, GP13, GP17), including indirect as well as direct supply relationships.

Accordingly, businesses must implement a process of corporate human rights 'due diligence' as a mechanism to avoid infringing human rights and to address and remedy any adverse human rights impacts they may be involved in.

In terms of scope, corporate human rights due diligence undertaken by businesses should consider all internationally-recognised human rights (UNHRC 2011, GP12).

As a cyclical process, due diligence comprises the following four steps (UN 2011, GPs17-20):

1. **Assessing actual and potential impacts** of business activities on human rights, including through human rights risk and impact assessment;
2. **Integrating appropriate measures** to address impacts into company policies and practices;
3. **Tracking the effectiveness** of measures taken by the business to prevent or mitigate adverse human rights impacts; and
4. **Communicating publicly** about the businesses' human rights due diligence process and its results.

Because businesses are highly diverse in their size, types of activities and operating locations, corporate human rights due diligence is also scalable and context-sensitive, and can be designed to reflect what is relevant and feasible for each business in its specific situation (GP14).

Similarly, where businesses identify negative impacts on human rights linked to their activities or those of business partners, they may prioritise measures to address the most severe, extensive and irremediable harms first (GP17).

For many businesses, the supply chain is a key source of risks to human rights. Accordingly, within companies, the procurement function will often be a primary locus for implementing measures to prevent, control and remediate human rights abuses.

This is reflected, for instance, under the OECD's Due Diligence Guidance for Responsible Business Conduct (2018). For the OECD, 'Responsible Business Conduct' means conduct that respects applicable human rights as well as environmental and other responsible business standards.

In its Due Diligence Guidance, the OECD recommends *inter alia* that businesses:

- "Carry out a broad scoping exercise to identify all areas of the business, across its operations and relationships, including in its supply chains, where Responsible Business Conduct (RBC) risks are most likely to be present and most significant" (OECD 2018, Section 2.1); and
- "Carry out iterative and increasingly in-depth assessments of prioritised operations, suppliers and other business relationships in order to identify and assess specific actual and potential adverse RBC impacts".
- Further, the OECD's 2018 Due Diligence Guidance indicates that, "...expectations of new business relationships can be communicated and agreed to through formal agreements or documentation," such as "through supplier codes of conduct, joint venture contracts, side letters to investee entities etc".

Such agreements or documents, the OECD highlights, can be drafted to establish:

The buyer's expectations that business relationships meet relevant standards

The buyer's expectations about transparency, monitoring and reporting concerning suppliers and contract performance

The buyer's specifications about how suppliers must cascade requirements to their own business relationships through the supply chain or value chain

Grounds for terminating a contract due to failure to meet sustainability expectations (OECD 2018, p.60).

2.3 Public procurement and human rights due diligence

Human rights due diligence thus has a dual role in public procurement. First, pursuant to general legal duties and policy commitments to protect against business-related human rights abuses, governments and specifically procurement agencies must exercise adequate oversight to prevent harms to human rights in the supply chain.

Adequate oversight in this context requires (P1 in Figure 1):

- Integrating relevant human rights standards into public procurement law and policies (see further section 2.2);
- Undertaking risk identification and assessment across the public supply base to establish which sectors, products and services are linked to human rights risks
- Aligning the terms of public tenders to relevant human rights and environmental standards
- Engaging in ongoing monitoring, review and evaluation of effectiveness of measures taken to control and remediate human rights risks in government supply chains
- Communicating to stakeholders and publicly to ensure transparency and promote awareness and learning about the measures taken in this context.

Secondly, informed by the results of such internal measures, public buyers should determine and apply measures to require or promote due diligence by suppliers to state bodies (P2 in Figure 1): This includes:

- Promoting awareness and learning about due diligence during pre-tender market engagement
- Ensuring the terms of public contracts respect human rights and environmental standards promoting human rights due diligence requirements for suppliers
- Monitoring suppliers' compliance with during contract performance
- Establishing complaint or remedy mechanisms for alleged victims of business-related human rights abuses linked to public procurements
- Effective investigation of suspected or reported abuses.

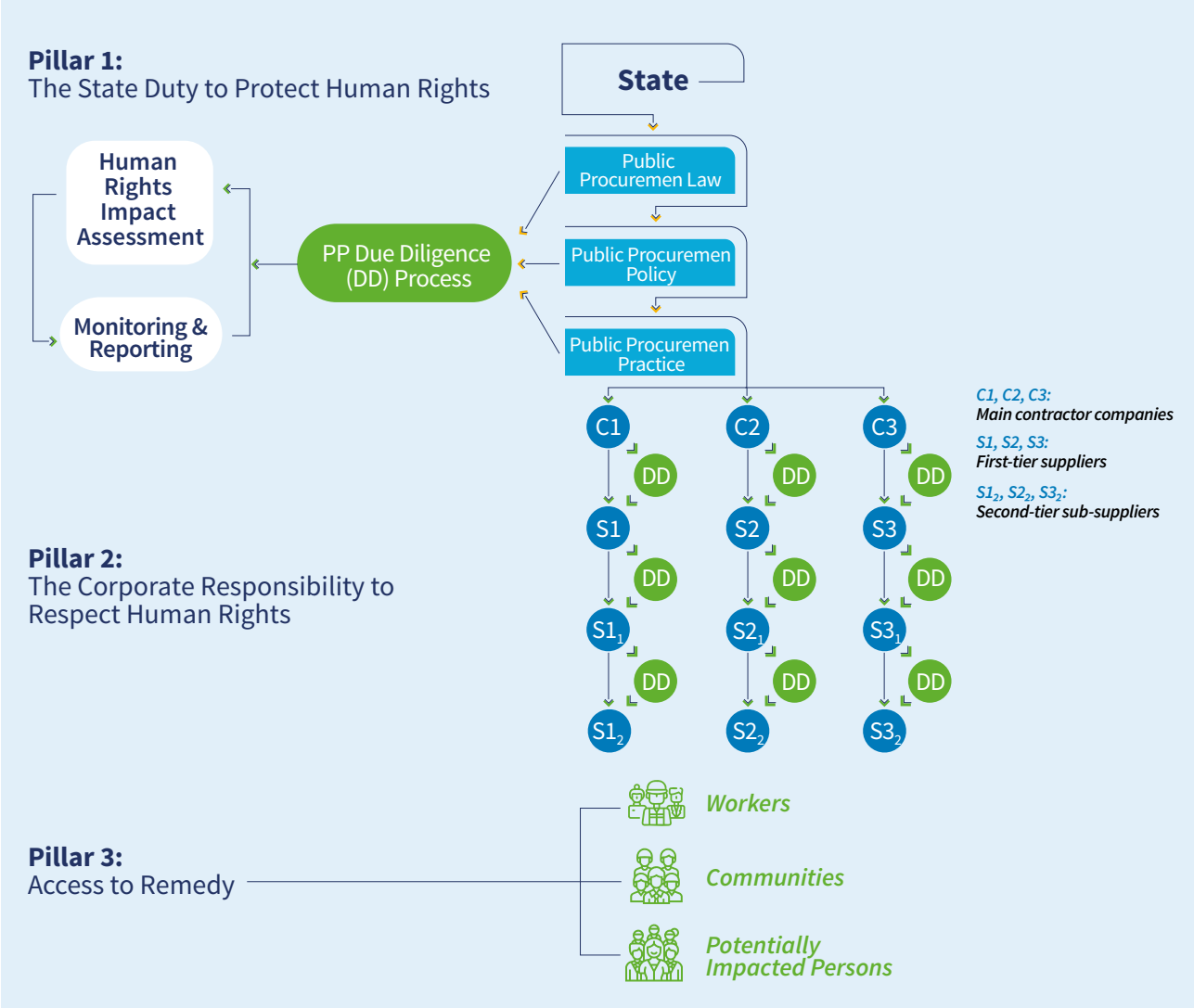

Figure 1: Adapted from Danish Institute for Human Rights. 2020. DRIVING CHANGE THROUGH PUBLIC PROCUREMENT: A toolkit on human rights for procurement policy makers and practitioners

Example:

Sweden's Regional authorities have together developed guidance and sustainability due diligence contractual terms.

The guidance is based on the Swedish National Agency for Public Procurement ´s model for the purchasing process. It helps procurers to prepare the procurement based on the contract terms on sustainability due diligence, to then carry out the procurement and realize the contract.

The guidance for suppliers is based on the contract terms for the supplier's commitments, the supplier's due diligence and the supplier's reporting obligation.

Swedish Regions, Sustainable Public Procurement 2024)

2.4 Public procurement and sustainable development

The core or 'primary' objective of procurement is "delivering goods and services necessary to accomplish government mission in a timely, economical and efficient manner" (OECD, 2015, 6). In the past, 'efficiency' or achieving 'best value for money' in public contracting was often understood as requiring public buyers to seek to obtain the maximum quantity or quality for the lowest price, while taking advantage of competition among the widest possible base of suppliers.

Increasingly, however, governments have adopted strategic procurement and sustainable public procurement policies, which recognise that, in reality, public buyers are not always be concerned exclusively with purchasing maximum quantity at cheapest price. Rather, governments frequently want to ensure that procurement achieves social or environmental benefits or prevents or mitigates adverse impacts during the performance of the contract (EC 2021).

Governments likewise may want to use public procurement to advance specific social goals such as labour market inclusion of disadvantaged groups or to promote environmental sustainability goals. Governments also need to ensure that procurement rules are in line with their international legal obligations, including in the areas of human rights and minimum labour standards.

Hence, increasingly, public procurement is identified as a key driver for sustainable development. This is reflected in a range of international frameworks, including the UN 2030 Agenda and Sustainable Development Goals (SDGs), adopted by the UN General Assembly in 2015 (UNGA 2015), which establish sustainable public procurement as a specific objective.

These frameworks recognise that, given its large scale, and significance within the overall economy, public procurement has potential to contribute directly to transitioning economies towards sustainable consumption. However, it can also help do this indirectly: by demonstrating demand for goods and services that meet social and environmental criteria, public procurers may influence suppliers and the wider market to adopt new or enhance existing measures to advance environmental and social objectives.

Goal 12 of the SDGS

- commits states to "ensure sustainable consumption and production patterns"
- Includes Target 12.7, which is that governments should "promote public procurement practices that are sustainable, in accordance with national policies and priorities" (UNGA 2015).

Likewise, the OECD has urged governments to develop sustainable public procurement strategies. To support these, governments should engage staff to work on sustainable public procurement; and assess results to evaluate its performance (OECD Recommendation V 2015, 9). This is important for "the effectiveness of the public procurement system…as a whole, at all levels of government…" (Recommendation X, OECD, 2015, 11; see also UNEP Sustainable Public Procurement Implementation Guidelines (UNEP 2021). According to the United Nations Environment Programme, the uptake of sustainable procurement practices amongst private organisations is also accelerating. Global data "confirm that sustainable procurement is becoming a mainstream practice across all organisational types" (UNEP 2022, iii).

2.5 Integrating human rights and due diligence in public procurement practice

Against the background of such global standardsand trends, it is now widely seen as essential that public procurement respects human rights and encourage markets towards greater social and environmental sustainability. Indeed, a growing number of national governments, international and regional organisations, such as the Council of Europe and European Union, and multilateral development and finance institutions have established "policy frameworks conducive to sustainable procurement

and/or have integrated sustainable procurement in their circular, green economy or sustainable development agendas" (UNEP 2022, iii;; Methven O'Brien and Caranta 2024, EC 2021). For example, the OECD now recommends that public buyers now balance the primary procurement objective with 'use of the public procurement system to pursue secondary policy objectives' (OECD, 2015, 6).

In addition, establishing human rights due diligence requirements for businesses via public tenders is identified as a mechanism for securing public procurement that respect human rights and promotes sustainable development (Martin-Ortega and Methven O'Brien 2018).

Consequently, public buyers should integrate human rights and sustainability factors across the full public procurement process as this section outlines next.

Steps of the **procurement process:**
1. Procurement planning
2. Tendering (award) procedure
3. Contract management and execution
4. Contract monitoring and evaluation.

The **tendering (or award) procedure** comprises four further steps:
1. Selection
2. Technical specifications
3. Award
4. Contract performance clauses.

The types of measures that can be taken by public buyers to integrate risk reduction and sustainability are varied, depending on which aspect of human rights or sustainability is being addressed, and at which stage of the procurement process, as well as applicable legal and policy frameworks (for discussion regarding the Türkiye framework, see section 3).

To illustrate, mechanisms that public buyers may use to include human rights and sustainability objectives in their procurements include the following (DIHR 2020, Methven O'Brien and Caranta 2024):

Procurement planning	Establishing a risk categorisation scheme and database of standard clauses on risk-informed human rights requirements, and sharing good practices
Technical specifications	Including, as technical requirements, references to social labels, environmental labels or certification standards as relevant to the goods, services or works procured (e.g. e-cars; fair trade coffee)
Exclusion grounds	Consider introducing exclusion grounds for suppliers who have been found responsible by courts of other official bodies of serious human rights, social or environmental abuses within a specific timeframe, so they are disqualified from eligibility to compete for public contracts (e.g. companies convicted for the use of child labour or wage discrimination)
Selection criteria	Include requirements in selection criteria that suppliers perform human rights due diligence, or have an environmental management system or experience of working with specific disadvantaged groups before they can win a given contract
Award criteria	Include non-price award criteria that address human rights, environmental or social considerations relating to the bid (e.g. the level of supply chain disclosure the supplier can provide; what human rights risk management measures have been applied to harms by sub-contractors).
Contract performance conditions	Set terms concerning contract execution that improve respect for human rights or wider sustainability factors (e.g. requiring suppliers to disclose subcontractors; to disclose incident reports on labour issues; or to implement capacity building initiatives, e.g. on health, safety and environment (HSE), human trafficking, forced labour or sex discrimination).

Example:
Purchasing authorities at national and subordinate levels adopting a policy that clearly commits to respect for human rights in public procurement and supporting guidance.

- The Netherlands' national sustainable procurement policy requires companies supplying goods and services to respect human rights as part of the "social conditions" applicable to all central government EU contract award procedures since 1 January 2013.

Example:
Undertaking risk analysis to identify product and service categories purchased by government bodies that carry the highest risk of human rights abuses.

- The Scottish Government has developed a Sustainable Procurement Prioritisation Tool for public buyers to support the structured assessment of spend categories according to social and environmental sustainability parameters.

Example:
Applying contract clauses and monitoring that require successful bidders to ensure respect for human rights in service delivery or during the production or manufacturing process.

- Electronics Watch is an EU-wide collaboration of public bodies seeking to address human rights abuses in ICT supply chains. It provides template contract performance clauses that meet procurement law requirements while also including a Code of Labour Practices for suppliers containing human rights and labour standards safeguards. Electronics Watch produces country profiles, thematic research, factory surveys, and investigative reports to evaluate whether the Code is being met.

Example:
Introducing technical specifications and award criteria for human rights by immediate suppliers, and other business entities in the value chain.

- In Spain, the city of San Sebastian included social clauses referring to compliance with ILO standards and its verification in technical specifications for a clothing and footwear tender. Bidders for the contract were excluded from the process unless they could demonstrate compliance with the technical specifications, including by disclosing subcontractors and suppliers.

2.6 Public procurement and disaster risk management

- Disaster risk management is the application of disaster risk reduction policies and strategies to prevent new disaster risk, reduce existing disaster risk and manage residual risk, contributing to the strengthening of resilience and reduction of disaster losses.

Disaster risk management takes a context-specific approach that evaluates the vulnerability and resilience of specific communities and works to counteract their risk exposure by supporting their individual and collective capacities. It does this, for instance, via measures addressing disaster prevention, disaster preparedness and disaster mitigation.

The United Nations Sendai Framework for Disaster Risk Reduction 2015-2030 aims to reduce disaster risk and losses in terms of human lives, livelihoods, health, and economic, social, cultural, and environmental

assets of individuals, businesses, communities, and countries. The Sendai Framework emphasises the need for a risk-informed, system-wide approach to disaster risk reduction and highlights disaster risk reduction as a strategic priority for sustainable development (UNISDR 2023).

As noted in the Introduction to this Guide, in the aftermath of disasters, governments depend on public procurement to source emergency supplies, logistics and a range of other goods and services needed to help individuals and communities cope with the immediate impacts of the disaster. This is referred to as the 'absorption phase'.

Next, during the 'disaster response' and 'disaster recovery' phases, public procurement is a mechanism to put in place the main components of post-disaster resilience-building. At this point, large-scale procurement is needed to deliver, for example, civil engineering works, restoration of transport and telecommunications networks, rebuilding of housing and other public infrastructure in education and health systems.

This shows the potential of public procurement as a lever of proactive disaster risk management. Where public procurement integrates disaster risk analysis, it can address underlying vulnerability and exposure reduction. It can also help build resilience, diminishing loss of life, safeguarding livelihoods and protecting critical public infrastructure. In turn this allows governments achieve effective disaster prevention, disaster preparedness and risk reduction.

Further, disaster risk-informed public procurement can be a mechanism for financial protection and action prioritization for all stakeholders, including the general population, government authorities as well as private sectors.

Example:
Regional governments have leveraged public funds for acquiring disaster insurance for public properties, to secure more favourable premiums for disaster insurance for the poorest and most vulnerable populations than otherwise available, to promote an insurance culture and transfer disaster risk to the private insurance market (Cardona-Arboleda, 2015: 4).

Public procurement is therefore integral to implementing effective and progressive disaster risk strategies. In the same vein, while sustainable procurement is an important tool for achieving social and environmental development goals, public procurement for disaster risk management goes further, influencing factors that contribute to a more favourable general environment for prevention and reducing the negative impacts of hazards in the future.

2.6.1 Human rights, sustainability and post-disaster procurement

Disasters jeopardise human rights by aggravating individual and community vulnerability.

- Earthquakes and climate-related weather events such as floods or drought increase displacement, insecurity and vulnerability, particularly for women and girls, placing them at greater risk of human trafficking and other forms of labour and human rights abuse (Hoogestyn et al 2024).
- Post-disaster debris clean-up efforts may involve handling raw sewage, human and animal bodies, medical waste, and chemicals such as gasoline, oil, corrosives, lead and other heavy metals. Integrating appropriate health and safety, labour and environmental and anti-corruption requirements into clean-up contracts is essential to avoid secondary and tertiary impacts on human health of workers and local communities in the short and medium-term.
- When disaster strikes, children get cut off from schooling, nutrition and health care. They can lose critical social services and protection, while finding themselves in hazardous environments. In some places, this is especially the case for girls and children with disabilities. Children whose families live in poverty are also more impacted by

disasters and the consequences of climate change (UNICEF 2024).

- In Bolivia, persistent low impact disasters were found to reduce children's net preschool enrolment, increase dropout rates (preschool) and also to increase the gender gap in achievement rates (primary).

What has been less recognised until recently, however, is that disaster-response measures can also unintentionally have such consequences. Where post-disaster response measures related procurements do not integrate adequate measures to protect human rights and prevent abuses, this can intensify harms associated with disasters for individuals and communities.

Example:

- **Following Hurricane Katrina, hundreds of thousands of residents were displaced while flooding, lack of power and destroyed buildings were devastating for communities (Fletcher et al., 2006). Labour regulations were temporarily relaxed to facilitate rebuilding efforts that were undertaken by a largely immigrant labour force, with 25 percent of construction workers, for example, being undocumented. This unintentionally increased the risk of labour abuses and many cases of labour exploitation and trafficking occurred (Fussell, 2009). These included migrant workers who were victims of debt bondage and labour exploitation after being recruited to work in luxury hotels in hospitality and maid-service functions; shipyard workers and manual labourers repairing residential properties. In addition, evidence suggests a high incidence of sex trafficking, particularly of displaced minors, in the wake of the disaster (NHTTAC 2018).**

It is therefore imperative that post-disaster procurement fully aligns with and integrates human rights standards and specifically requires suppliers to government to perform human rights due diligence, in the ways discussed above in section 2.3. Doing so can eliminate or mitigate risks associated with the specific contracts in question. Beyond this, however, it can contribute to disaster risk reduction in the longer-term by addressing systemic vulnerabilities.

Examples:

- **When homes are built during post-disaster reconstruction that do not address the social housing needs and cultural practices of the communities affected, they are often abandoned or modified by communities (Doherty 2020). Incorporating inclusive stakeholder participation measures as part of tender development processes can avoid such inefficiencies while also enhancing disaster recovery for affected communities.**
- **The costs of disasters are not borne equally, as the most economically and socially vulnerable people typically suffer most (Karim and Noy 20164). Minimum labour standards address matters such as child labour, health and safety, sex discrimination, minimum pay and leave entitlements. Ensuring such standards are met in the performance of local public contracts, particularly in lower-wage sectors, will enhance the physical, social and financial resilience of populations.**

3. SUSTAINABLE PUBLIC PROCUREMENT IN TÜRKİYE

3.1 Public procurement: Türkiye legal and policy framework

Public procurement processes in Türkiye are governed by *the Public Procurement Law No. 4734 (PPL)* and *the Public Procurement Contracts Law No. 4735 (PPCL)* along with their secondary regulations, e. g. *Public Procurement General Communiqué*. Türkiye has enacted these two laws as part of the European Union (EU) Acquis and to align with WTO standards (Ninth Development Plan 2007-2013) (Kaplan 2012) (Akdoğan 2014).

The PPL determines the principles and procedures to be applied in tenders by public institutions, organisations that are subject to public law, owned or controlled by the public, or that use public resources. The PPCL then addresses the arrangement and implementation of contracts regarding tenders made under the *PPL No. 4734 Art. 1.*

Although the PPL is partially aligned with the EU Directives on public procurement, the public procurement legislation and practice in Türkiye sometime diverges from EU procurement standards through, for example, amendments, exceptions (PPL No. 4734, Art. 3) and exclusions . (European Commission, 2022)

3.1.1 Principles and procedures under the PPL

The PPL identifies the following primary principles for tender processes:

transparency, competition, equal treatment, reliability, confidentiality, public control, meeting the needs under appropriate conditions and on time, and efficient use of resources (Kaplan, 2012) (Akdoğan, 2014) (PPL No. 4734, Art. 5, 2002).

Further, the PPL No. 4734, Art. 3defines tender procedures to be applied under open, restricted, and negotiated procedures. All bidders can submit offers in the open tender procedure according to PPL No. 4734, Art. 19, however, the restricted procedure is a process when bidders are invited to submit offers, following pre-qualification by the contracting public authority.

Procurement of goods, services, or works may be conducted by a **restricted procedure** where the open procedure is not applicable as the nature of the procurement necessitates specialty or high technology (PPL No. 4734, Art. 20). On the other hand, a negotiated procedure can only be made in exceptional cases specified in the PPL, when the tender value is less than certain monetary thresholds according to t*he Public Procurement Authority (2023, Art. 3/1,ç)* (*TRY 1,439,543.00 (~ $53,296.00)*[1] *for 2023*) or must be made urgently.

1 Based on Indicative Rates of the Central Bank of the Republic of Turkey Determined on 14.08.2023: 1 USD=27.01 TRY

Under the Public Procurement Law, in cases of sudden and unforeseen events such as natural disasters, pandemics, or exceptional circumstances related to defense and security that the contracting authority could not have anticipated—where it is imperative to conduct the procurement urgently—the use of the negotiated procedure may be deemed appropriate (Public Procurement Law No. 4734, 2002, Article 21).

In addition, there is a **direct procurement procedure** where authorities can directly procure their needs without a tender announcement (PPL No. 4734, Art. 22). This method applies only to specific situations explicitly identified under the PPL, such as where a given need can only be met by a single real or legal person. In this method, procurement is performed by conducting price research in the market without the obligation to search for qualification requirements for bidders (PPL No. 4734, Art. 22).

Following evaluation of bids, the tender is awarded to the bidder who submitted the 'most economically advantageous offer'. The most economically advantageous offer is determined based on price alone or considering the price and factors other than price, such as operating and maintenance costs, cost-effectiveness, efficiency, quality, and technical value.

In the tenders where the most economically advantageous offer will be determined by considering factors other than price, these elements' monetary values or relative weights shall be determined in the tender document (PPL No. 4734, Art. 40) (Public Procurement Authority, Art. 53.3).

The relevant public authority has the entire discretion on which method can be used to determine the most economically advantageous bidder (Public Procurement Authority, Art. 53.3). If factors other than price are considered, the public authority shall specify those factors clearly and unambiguously in the administrative specification document, and those factors shall not prejudice the primary principles of public procurement. Moreover, the legislation clarifies that it is not obligatory to determine only quantitative factors as non-price factors; qualitative determinations can also be made within this scope.

3.1.2 Institutional support

The Public Procurement Authority (PPA) is primarily responsible for regulating and overseeing public procurement processes covered by the Public Procurement Law. (PPL No. 4734, Art. 53). The PPA has administrative and financial autonomy. Its duties include: preparing and developing public procurement legislation; devising standard tender documents and contracts; providing guidance and training on public procurement legislation; ensuring national and international coordination; and conducting research and development activities. To promote consistent application of the PPCL, the PPA also drafts and publishes Standard Contracts regarding purchasing goods or services and construction works (PPCL No. 4735, Art. 1).

Additionally, the PPA maintains the "Electronic Public Procurement Platform". This is an online system where public procurement announcements and technical specifications are published and can be publicly tracked and examined. The Platform also offers training materials and videos explaining public procurement rules and practices. These do not however appear currently to include materials on sustainable procurement.

Lastly, the Public Procurement Authority (PPA) serves as the mandatory administrative review body and is authorized to examine and decide on complaints related to non-compliance with procurement legislation (PPL No. 4734, Art. 53). Candidates, actual and potential bidders who claim that they have suffered or are likely to suffer a loss of right or damage due to unlawful transactions or actions during the tender process may file complaints and appeals before the relevant public institution and the PPA, respectively. Final decisions issued by the PPA regarding appeals can be subject to judicial scrutiny.

3.3 State-Business Nexus in Türkiye

Türkiye's Twelfth Development Plan (2024–2028) foresees the revision of public procurement legislation in line with international norms and standards, prioritizing a procurement approach that promotes digitalization, innovation, and sustainability. The Plan also outlines a policy framework—particularly under the chapters on Fiscal Policy, Manufacturing Industry, and Environmental Protection—for updating public

procurement practices with a focus on sustainability and developing green public procurement strategies. (Twelfth Development Plan, 2024–2028)

In line with the Development Plan, Turkey's Medium-Term Programme for 2025–2027 also indicates that the public procurement legislation will be revised accordingly. Moreover, it highlights that a centralized, savings-oriented e-Procurement System will be introduced to enable detailed analysis and management of public procurement. (Medium-Term Programme, 2025–2027)

The State-business nexus takes provides various opportunities to influence business respect for human rights and its contribution to sustainable development and effective disaster risk management. As outlined by the UNGPs, such opportunities arise where the state owns or controls business enterprises, and where the state assigns the delivery of public services to businesses. The state-business nexus also encompasses commercial contracting between the state and businesses, in other words, public procurement. In this context the state should take steps to ensure that regulations regarding respect for human rights and the environment are implemented.

In Türkiye, various rules govern state-business relationships. While state-owned or controlled enterprises are governed by "*State Economic Enterprises Decree-Law No. 233*" and "*Communiqué on Monitoring and Reporting of the Activities of Public Enterprises*," their procurement practices are governed mainly by the Public Procurement Law No. 4734.

Public-Private-Partnership (PPP) models are also commonly used in Türkiye for some investments and public services projects, where different methods, such as build-operate-transfer, build-operate, build-rent or concession, may be adopted for public services performed by business enterprises (Çapar, Demir, & Yıldırım, 2015).

There is not yet a dedicated strong legal or policy framework in Türkiye aiming to make public procurement practices fully socially and environmentally sustainable. While some elements of the existing regulatory framework address sustainability issues indirectly,scope to integrate sustainability factors into public procurement could be extended.

3.4 Post-disaster public procurement in Türkiye: 2023 earthquake

On 6 February 2023, a magnitude 7.8 earthquake occurred in southern Türkiye, followed by a second 7.5 magnitude earthquake (U.S. Geological Survey, 2023). Early estimations indicated that the earthquakes killed 50,700 people, destroyed more than 313,000 buildings and left 3.3 million people homeless across a territory of 110,000 sq km covering 11 provinces with a total population of 15.6 million according to UNDP (2023). After this disaster, several administrative and legislative measures were taken to mitigate the adverse impacts of earthquakes, including in the scope of public procurement procedures.

In this regard, the *Public Procurement Authority (PPA)* postponed the dates of pre-set tenders and extended deadlines to provide offers or submit required documentation. Meanwhile, the Decision of the President increased the monetary threshold to *TRY 5,000,000.00 (~ $185,116.00)* for direct procurement procedures until 28.02.2023 to meet the needs arising from the earthquake (Presidency of the Republic of Türkiye, 2023). In addition, a Presidential Decree No. 127, 2023 was published, including measures to be taken for public procurement transactions. These measures include the extension of specific legal periods or permission to transfer the procurement contract upon the bidder's application.

Post-disaster reconstruction has started early in the recovery period with the aim of implementing a fast timetable for the construction of new houses (Presidency of the Republic of Türkiye, 2023).

4. PUBLIC PROCUREMENT, HUMAN RIGHTS, AND DISASTER RISK MANAGEMENT IN TÜRKİYE: RECOMMENDATIONS

According to the insights presented in this Guide, governments have a duty to protect human rights in the context of business activity, which includes public procurement. This entails that public procurement laws, policies and practices should align with human rights standards and promoting corporate human rights due diligence. At the same time, by implementing respect for human rights in public procurement governments can advance sustainable development, and also achieve more effective disaster risk management.

To support these objectives, this section makes preliminary recommendations, taking into account the context of Türkiye existing frameworks for public procurement regulation, as described in the previous chapter.

4.1 National policy framework on public procurement, human rights and sustainable development

As highlighted by UN, Council of Europe and OECD instruments as mentioned in section 2, firstly, states should establish legal and policy commitments to uphold human rights and environmental protection in public supply chains, including via promoting corporate human rights due diligence processes.

Specific measures this may entail include:

- Developing a clear policy commitment to uphold human rights, environmental protection and due diligence in the area of public procurement;
- Developing and applying an appropriate national strategy for integrating human rights and environmental protection into public procurement systems;
- Establishing appropriate planning, baseline analysis, risk assessment and target outcomes as the basis for the development of action plans or guidelines for implementation of human rights and environmental commitments in government purchasing;

- Developing appropriate impact assessment methodology to measure effectiveness of the strategy and measures applied;
- Measuring results according to appropriate milestones to provide policy makers with necessary information against policy objective target outcomes;
- Periodically assessing the aggregate effect of pursuing respect for human rights and environmental sustainability on the public procurement system, and taking account of the need to avoid objective overload (OECD 2015, 12).

These steps should take into account the extent, severity and irremediability of potential impacts on human rights or the environment associated with the purchase of goods or services by government institutions.

Government bodies should further ensure the responsible procuring entities are adequately resourced to prepare, initiate and implement measures indicated above.

4.2 Securing respect for human rights and sustainable development by government suppliers

Secondly, public procurement authorities need to ensure effective measures are in place to secure compliance by government suppliers with existing minimum legal obligations, both statutory and contractual, as well as international human rights and environmental standards. This should include specific measures to promote the undertaking by suppliers of corporate human rights due diligence, linked to government contracts.

In this context, consideration should be given to:

- Extending grounds for exclusions of suppliers from public tenders to encompass breaches of human rights, minimum labour or environmental standards
- Monitoring suppliers' compliance with minimum human rights, labour and environmental standards during performance of government contracts, linked to prioritised material risks identified during public procurers' risk human rights and sustainability risk assessment processes
- Requiring suppliers to establish adequate whistleblowing and remediation mechanisms that are accessible to workers, trade unions and NGOs, to help contracting authorities become aware of possible breaches of environmental, social and labour obligations
- Introducing human rights and sustainable purchasing contract clauses, including clauses that require or promote performance by suppliers, and through the value chain, of human rights due diligence.

4.3 Public procurement and effective disaster risk management

As highlighted earlier in this guide, public procurement can contribute significantly to addressing underlying vulnerabilities, hence boosting resilience and achieving disaster exposure reduction. Disaster-sensitive procurement hence has a critical role to play in effective disaster risk management strategies. On the other hand, government procurement, where it does not align with human rights and environmental standards, can exacerbate individual and community vulnerabilities in the aftermath of disasters, while increasing, or failing to diminish, future disaster risks.

Integrating national procurement and disaster risk frameworks is therefore imperative. Achieving this goal requires action on a number of levels, with consideration given to actions including the following:

1. Establishing a national policy framework on public procurement and disaster risk management, to address the role and value of alignment to international human rights, applicable labour and environmental standards in government purchasing, and international disaster risk management approaches, as mechanisms to enhance resilience and reduce effective disaster risk exposure, while also contributing to sustainable development goals.

Such a framework, to implement effective mitigation and prevention, should include in its scope:

- All phases of the procurement process i.e. procurement planning, tendering (award) procedure: selection, technical specifications, award and contract performance clauses; contract management and execution; contract monitoring and evaluation.
- Emergency procurement rules
- Appropriate procurement strategies for specific post-disaster scenarios (e.g. direct negotiations, option contracts, framework agreements).
- Transparency of disaster-related procurement including disaster-procurement reporting, audit, evaluation and accountability frameworks and decision traceability.
- Budgetary management of financial resources for disaster-related public procurement.
- Review of financial protection programmes
- Reviewing cooperation, provision and competence mechanisms to respond to high peaks of demand efficiency

2. Establishing and implementing training for public procurement practitioners on post-disaster procurement, as well as the role of human rights, due diligence and sustainability factors and integrating this into professional qualification frameworks. For example, a Practitioner Toolkit for decision-making and design of procurement strategy according to risk (hazard profile and effects on demand, special vulnerabilities e.g. human rights specially affected) could be developed.

Professionalisation has a positive impact on the effectiveness of public procurement, including with reference to disaster risk management, due to

i) increased technical competence,

ii) greater transparency and accountability,

iii) enhanced management effectiveness,

iv) better understanding of specific needs,

v) higher quality assurance,

vi) facilitation of coordination, collaboration, and cooperation, and

vii) encouragement of innovation and technology in carrying out the function (Coppola & Piga, 2019; McKevitt et al., 2012; Rodríguez Arana & Díaz Bravo, 2023).

3. Supporting potential suppliers to government by developing guidance for businesses on disaster risk management, human rights, due diligence and sustainability, to include self-assessment tools or checklists.
4. Engaging in pilot projects to test and evaluate proposed approaches for enhancing the disaster risk management profile of public contracts.
5. Establishing local centres of disaster-risk management procurement expertise and support in disaster-affected areas.

GLOSSARY

Award criteria:
The various elements a contracting authority (or entity within utilities procurements) evaluates to select the tender that provides the best value for money, such as price and quality.

Capacities:
The collective resources available to individuals and families to withstand and recover from a disaster.

Contracting authority:
A public organisation under a duty to apply public procurement and concession rules when acquiring works, goods or services.

Contract performance conditions:
Specific contractual terms included in a public procurement contract that define how the contract should be performed, and which may include environmental, social or employment-related considerations.

Disaster:
A serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts (UNDRR 2017).

Disaster risk management:
The formulation, implementation and evaluation of public policies to understand and reduce disaster risk with the aim of achieving acceptable resilience and sustainability standards. It includes measures dedicated to:

Disaster prevention:
implementing policies to reduce a real, already identified, or potential risk in the medium and long term.

Disaster preparedness:
taking short-term measures in the face of a high level of risk that has been identified.

Disaster mitigation:
actions seeking to minimise the adverse impacts of a hazardous event.

Exposure to hazards or threats:
Proximity and likelihood of different types of disasters occurring. This may be linked to a community's activities, characteristics, or location, and their degree of adaptation to their environment.

Human rights due diligence:
A cyclical process or group of processes that is undertaken to identify, prevent, mitigate and account for actual and potential adverse impacts on human rights or other matters in a business' own operations, supply chain or commercial relationships (OECD 2019, 15).

Public procurement:
Purchasing by central governments or other public bodies to "deliver…[the] goods and services necessary to accomplish government mission in a timely, economical and efficient manner" (OECD, 2015, 6).

Resilience:
The ability of a system, community or society exposed to hazards to resist, absorb, accommodate, adapt to, transform and recover from the effects of a hazard in a timely and efficient manner" (UNISDR 2017). The resilience of a human community can be measured according to its capacity for:

- **Absorption:**
  the ability to resist the impact of a disaster
- **Response:**
  how long it takes for governments to meet the population's basic needs and achieve stabilisation, and
- **Recovery:**
  how long it takes before a community's previous level of performance is regained or surpassed, after a disaster event.

Selection criteria:
Pre-conditions that economic operators must meet to participate in public tenders. These may relate to matters such as bidders' suitability to pursue the professional activity in question, their economic or financial standing, technical and professional ability.

Socially Responsible Public Procurement (SRPP):
Procurement that aims to address the impact on society of the goods, services and works purchased by the public sector. SRPP recognises that public buyers may not be concerned exclusively with purchasing at cheapest price or best value for money, but also in ensuring that procurement achieves social benefits and prevents or mitigates adverse social impacts during the performance of the contract (EC 2021).

Strategic procurement:
Procurement aiming to achieve policy objectives that go beyond best financial value for money, such as environmental or social goals, innovation, industrial policy, and resilience.

Sustainable public procurement (SPP):
Procurement that considers environmental and social aspects of goods and services purchased by government buyers, as well as their price, quality and effectiveness.

Technical specifications:
The technical prescriptions contained in procurement documents that define the characteristics of a required material, product or supply. Such characteristics may address, for example, environmental performance.

Vulnerability:
The conditions determined by physical, social, economic and environmental factors or processes which increase the susceptibility of an individual, a community, assets or systems to the impacts of hazards (UNDRR, nd).

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