Foreword

The 2030 Agenda for Sustainable Development and Sustainable Development Goals (SDGs) seek to ‘realize the human rights of all’, to ‘leave no one behind’ and to ‘reach those furthest behind first’. The shared principles and commitments of the 2030 Agenda are grounded in the United Nations Charter, the Universal Declaration of Human Rights, international human rights treaties, including the Declaration on the Right to Development.

Public procurement in OECD countries accounted for 13.3 per cent of GDP in 2017, nearly 30 per cent of total general government expenditure, and the picture is similar in middle-income and developing countries. The European Union estimates that including utilities procurement brings the percentage total in the 28 EU countries from 16 per cent to 19 per cent of GDP, over €2 trillion per annum.

It is therefore difficult to conceive of a tool available to all states with higher potential economic leverage to implement their human rights commitments. Public procurement, besides facilitating essential public services, provides a means for public investment in infrastructure, and offers the opportunity to target those investments to maximise developmental impact. It also allows governments to improve the living standards of all, promote the highest attainable standard of physical and mental health; and support education, cultural activity and scientific benefits. In addition, by requiring high-quality and innovative goods and services in procurement contracts, governments can, for example, promote minimum wage and decent work commitments. Yet despite the clear potential, public procurement policy-makers have relatively recently turned to human rights and the social dimension of sustainable development policy.

Public procurement systems are commonly expressly subject to a set of objectives derived from both international commitments and national priorities, including meeting public purchasers’ needs, promoting integrity and avoiding corruption, value for money, procedural efficiency, competition, fair and equal treatment and transparency.

Early discussions in UNCITRAL centred around whether to include ‘secondary’ policies (such as green procurement) alongside these traditional objectives.
objectives. Now, the focus is how to do so. This seismic shift is reflected in the fact that these policies are no longer considered ‘secondary’, but are referred to as horizontal, sustainability or smart procurement policies and constitute mainstream objectives. As this collection demonstrates, human rights policies are now an integral part of the mix.

The pursuit of human rights policies through procurement must be set in this context, which raises complex issues. For example, how can human rights be implemented alongside the traditional public procurement objectives? While requiring transparency, competition and objectivity in decision-taking, and non-discrimination and procedural fairness in their application, reflects long-standing good procurement practice, undoubted trade-offs will arise. The most immediate one may be the extent to which a price premium for better-than-minimum commitments is acceptable. There may also be trade-offs with other sustainability policies, for example, promoting SMEs versus human rights priorities. In addition, the discretion needed to address some aspects of human rights involves subjectivity – traditionally considered to raise the risk of corruption, underlying the importance of transparency in the application of human rights standards. These are new facets of old dilemmas, but none the less challenging for that.

Public procurement law and policy should provide a clear enabling framework for governments, with appropriate safeguards and respecting international norms. In light of the varying legal and other human rights commitments, there is an urgent need for exploration of the issues raised. The eventual legal and policy frameworks will require additional guidance, effective tools for implementation, and the right incentive structures. Leadership and professional capacity-building will therefore be essential, as will be capturing lessons learned from established areas of sustainability, such as environmental policies. In addition, these developments can offer suppliers an opportunity to innovate, harness technology and build value. As in any significant policy development, ongoing monitoring and evaluation are vital for public buy-in and long-term sustainability.

In this context, this book will make a bold and essential contribution, bridging the fields of human rights and public procurement, practitioners, civil society organisations and scholars. Its value lies in setting out clearly the procurement and human rights aspects of these issues, acknowledging rather than glossing over complexity, laying out dilemmas clearly, and also in signposting a way forward in terms of rapprochement and cross-disciplinary cooperation. It is, rightly, optimistic – the procurement community has proven itself adept at innovation and change.
Given the high stakes in human and social development, and urgent sustainability challenges, this effort has not come a moment too soon, and I commend this book to all policy-makers, practitioners and scholars concerned with public procurement.

**Caroline Nicholas**
Senior Legal Officer, International Trade Law Division
United Nations Office of Legal Affairs (UNCITRAL Secretariat)