Editors' preface

Despite its scale and significance within the global economy, and increasing prominence in the context of new norms such as the United Nations Guiding Principles on Business and Human Rights (UNGPs), as well as the United Nations 2030 Agenda and Sustainable Development Goals, public procurement until recently remained a neglected topic within the broader emerging field of business and human rights.

With the aim of addressing this gap in scholarship, practice and advocacy, from 2013 onwards each of us sought to initiate dialogue and collaboration with members of the public procurement profession through networks including the International Federation of Purchasing and Supply Chain Management, International Purchasing and Supply Education and Research Association, London Universities Purchasing Consortium, the UK Local Government Association, the Higher Education Procurement Association, the European Ethical Working Group on Public Procurement and the 10 Year Framework of Programmes on Sustainable Public Procurement led by the United Nations Environment Programme.

Subsequently, we met and embarked on collaborative work through the platform of the International Learning Lab on Public Procurement and Human Rights, established by the Danish Institute for Human Rights, the Harrison Institute for Public Law at Georgetown University and the International Corporate Accountability Roundtable.¹ As a result we identified a range of common interests and concerns. One was a lack of analysis addressing the legal duties of public buyers in the procurement context under human rights instruments. We realised that basic analytical questions had not yet been posed, much less definitively answered. For instance, do the human rights duties of public buyers stop at national borders, applying only to workers producing goods or providing services domestically, or do they rather extend across the length of global supply chains? In addition, we were puzzled by the subordination of human rights to principles of non-discrimination, competition and 'value for money' in the context of 'social' or 'sustainable' procurement

¹ International Learning Lab on Procurement and Human Rights, www.hrprocurement.org.

policies and initiatives, in which context human rights are characterised as discretionary policy objectives, rather than lexically prior fundamental norms.

On the other hand, we were inspired by the efforts of a progressive vanguard of procurement practitioners, quietly innovating to advance human rights due diligence measures in their supply chains, in spite of a typically less than supportive legal, policy, institutional environment, budgetary and other resource constraints. Likewise we were impressed by the interventions of national human rights institutions (for instance in Scotland, Northern Ireland and at the United Kingdom level) and new collaborative constellations linking practitioners, human rights and labour activists, such as Electronics Watch in Europe, and the Sweatfree Purchasing Consortium in the United States, and their potential to overcome at least some of the obstacles faced by public buyers in introducing human rights-based requirements into the contracting process. Equally, international experiences related via International Learning Lab meetings, for instance from South Africa, illuminated the rich diversity of existing techniques and forms from which current discussions could draw.

We then launched this project to pursue a deeper investigation of the opportunities, risks and dilemmas, legal and practical, posed by the prospect of closer integration and enmeshing of public procurement and human rights. Drawing from the network of the International Learning Lab on Public Procurement and Human Rights, and beyond, in convening the authors for this volume, we sought to assemble a diverse group in terms of disciplinary and institutional perspective, with practical experiences spanning the different ‘worlds’ of public procurement and human rights.

This approach in turn uncovered a variety of doctrinal disconnects and persisting practical challenges. Significant gaps remain between the two ‘worlds’ of public procurement and human rights law, each motivated by distinct values and structures of reasoning, besides their different substantive and procedural rules. Culturally, human rights scholars and lawyers are used to venturing into the ‘foreign’ territory of other specialised legal fields to challenge prevailing interpretations and practices, while for procurement lawyers and practitioners, the subjection of cardinal principles to fresh scrutiny based on seemingly open-ended, and sometimes aspirational human rights standards, can be a discomfiting experience. On the other hand, incomplete understandings of the complex and competing policy objectives embodied by public procurement regimes, even without the addition of respect for human rights, can yield crude or unworkable recommendations for reform.

Much more work will be needed in the future, therefore, to strengthen mutual understanding, communication and indeed tolerance, between these two discourses. Yet given the scale of global human rights and sustainability challenges now facing the world, and the still untapped potential of public procurement to drive respect for human rights and responsible business conduct,

we believe this task is an urgent one. Our final hope, therefore, is that the present volume, far from providing definitive answers to the questions and dilemmas raised, rather represents a first contribution to a constructive and continuing cross-disciplinary conversation.

Claire Methven O'Brien and Olga Martin-Ortega

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