



A review of Dutch policy for socially responsible public procurement

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Do Dutch governments incorporate human rights in the procurement of phones, coffee, natural stone and clothing?

Companies with a global supply chain are often associated with violations of international labour standards. At the same time, it is difficult to properly identify all risks in the supply chain, and take appropriate measures to prevent and mitigate adverse impacts. Governments and local authorities can play an important role in setting standards for social responsibility through their procurement and tendering processes. In the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles), 'procurement policies' are explicitly named as a tool for governments to encourage the protection of human rights by businesses.¹

Every year, the Dutch government buys more than €60 billion² worth of products and services. More clearly defined guidelines for procurement could contribute to structural improvements in the working conditions in supply chains around the globe. In 2005, the Dutch government established clear goals for sustainable public procurement. In 2012, it developed the so-called 'Social

Conditions', which also incorporate the international labour standards. The current government also expects suppliers to comply with these Social Conditions.³

Goal of this research

SOMO values the exemplary role of the Dutch government and believes in the positive influence that procurement policy can have on working conditions in supply chains around the globe. For many years, SOMO has been active in a variety of projects to promote socially responsible public purchasing by governments.⁴ However, there is a substantial lack of clarity about how these policies are applied at national and local level. SOMO aims to provide more insight into the concrete application of the Social Conditions in the procurement process to create awareness among policy-makers and civil society, and to ensure that the results can be included in policy evaluations.

This research reviews the application of the Social Conditions as established by the Dutch government and other conditions based on international labour standards. SOMO looked into tenders by the Government of the Netherlands (hereafter, 'the national government'), Dutch provinces, district water boards and municipalities. These tenders are divided into four sectors: electronics (and phones in particular); (work) clothing; coffee (for coffee

machines); and natural stone (used for the (re)development of streets and public spaces).

The Dutch government is a major customer in these four production chains, which have seen many violations of international labour standards in the past. This research reviews if and how international labour standards are incorporated in Dutch government tenders in the four above-mentioned sectors during the period January 2013 to October 2013.

Chapter 1 outlines the context; the international standard framework and possible violations of these standards in the four sectors. Chapter 2 deals with the sustainable public procurement policy. Chapter 3 presents the research into the application of the Social Conditions or other social criteria by Dutch authorities. The results are shown schematically and are illustrated by means of four examples. The final chapter provides conclusions and recommendations about improving socially responsible procurement policy for both national and local government.

Methodology

This research looks into public tenders published on the Dutch digital announcement platform TenderNed. The 25 selected tenders meet the following criteria:

- ❑ The publication date is between 1 January and 1 October 2013;
- ❑ The scope includes phones, natural stone, coffee and work clothing;
- ❑ The value of the tender exceeds the European threshold;
- ❑ The procurers (the contracting authorities inviting for tenders) include the national government, district water boards, provinces or municipalities.

The tenders were then analysed with regard to the application of the Social Conditions or other criteria related to international labour standards. This report distinguishes between the 'Social Conditions', the policy as formulated by the Dutch government (see paragraph 2.2) and 'social criteria', which include all references to international labour standards. All the procurers of the 25 tenders were sent a questionnaire to enable them to respond to SOMO's initial analysis. Five procurers completed the questionnaire. Additionally, six procurers were interviewed by phone to find out how the criteria were applied. Three of these interviews are included in Chapter 3.

Please note: this research does not address the way in which the current policy for socially responsible purchasing was established. Moreover, the report only partially addresses the efforts eventually made by suppliers to meet

the social criteria, and the actual impact of the policy on the working conditions in production chains.

1 International labour standards

Human rights related to labour have been established in various articles in the Universal Declaration of Human Rights. The UN's International Labour Organization (ILO)⁵ has further detailed human rights related to labour in various conventions and recommendations. The ILO's international labour conference in 1998 established a number of principles and rights related to labour as fundamental labour standards that are universally applicable. The member states of the ILO that did not ratify these ILO conventions are also bound to these principles. The eight principles can be divided over four different areas:

- ❑ Freedom of Association and Protection of the Right to Organise (ILO Conventions 87, 98, supplemented with 135)
- ❑ Forced Labour (ILO Conventions 29 and 105)
- ❑ Minimum Age and Child Labour (ILO Conventions 138 and 182)
- ❑ Discrimination (ILO Conventions 100 and 111).⁶
- ❑ These ILO conventions have been signed by over 150 nations, including the 27 EU member states.

The following statements are also commonly included as international labour standards:

- ❑ Employment security (ILO Tripartite Declaration of Principles, art. 24-28)
- ❑ Occupational Safety and Health (ILO Convention 155)
- ❑ Hours of Work (ILO Convention 1)
- ❑ Living wages (ILO Tripartite Declaration of Principles, art. 34).

1.1 Violations in four sectors

Phones

Over the past few decades, much of the production process of electronics, including phones and computers, has shifted to special economic zones in low-wage countries such as China, India, Thailand and Mexico. Employees in this sector are mostly young women, including migrant workers. The production of electronics often takes place in unhealthy, unsafe work places, and employees often do not earn living wages; they work long hours and are often forced to work overtime. A demeaning management style is also very common.⁷ Additionally, vulnerable groups such as temporary workers, migrant workers⁸ and students⁹ are often exploited. In many cases, employees are prevented from standing up for themselves by being denied the right to organise (by joining trade unions, for example), or to bargain collectively.¹⁰

The production of electronics involves a wide array of metals that are often extracted in developing countries, where human rights are frequently violated and the environment is often damaged. One example is the Democratic Republic of Congo, where the proceeds of the extraction of tin and coltan are used to buy weapons that are sometimes used against the country's own population.¹¹

Coffee

In coffee producing countries such as Colombia, Brazil, Ethiopia, Indonesia, Peru, Uganda and Vietnam, social issues arise both at large coffee plantations and in the processing industry and among small farmers. Despite the increase in coffee prices in the past few years, the income of many coffee farmers is under pressure, and they often do not earn enough money to get by.¹² Price fluctuations result in low profits and high risks for coffee producers. Small-scale farmers and labourers are often not well organised and have a poor negotiating status. In some countries, the production of coffee involves child labour.

Certification schemes such as Max Havelaar, UTZ Certified and Rainforest Alliance in the Netherlands have grown more familiar over the past few years. These certifications aim for compliance with the following international labour standards: abolition of forced labour, child labour and discrimination, and compliance with the right to living wages, freedom to organise and healthy working conditions.¹³

Natural stone

Most of the natural stone used in the Netherlands originates from China and India. In these countries, the extraction and processing of natural stone goes hand in hand with large-scale violations of labour and human rights. Many quarries and sawmills do not offer workers official labour contracts. Labourers are hired indirectly via (illegal) labour subcontractors.¹⁴ Without a contract, the workers are not insured in case of accidents; nor are they insured against common occupational diseases such as 'black lung'. Safety in Chinese tile sawmills and quarries is also a major problem, with a high incidence of accidents. Workers often work seven days a week for very low wages, and must pay for their own gloves, dust masks and other protective gear.¹⁵ Many of the labourers are forced to work because of high debts to their employers. Child labour is relatively common in both China and India. In India, workers are paid piece-wages and the amount they earn is often so low that they have to work long hours to earn a sufficient income. Discrimination is also a major issue in India: most workers come from a low caste with the associated low social status.¹⁶

Clothing

The production chain for clothing is complex, with various social issues arising at all stages of the production process (cotton cultivation, spinning, weaving, dyeing and stitching). The main violations in the sector result from pressure from clients on manufacturers to deliver at low prices and with fast delivery times. This pressure is passed on to the workers throughout the supply chain: they often work 70 to 80 hours a week to achieve production goals, and even then hardly earn enough money to make a living. Additionally they are usually unable to defend their rights through a trade union. The working conditions in clothing factories are extremely unsafe, and in the past few years fires and collapsing buildings have cost thousands of lives. Discrimination, violence and (sexual) intimidation are not uncommon. Child labour and forced labour are also common problems, especially in the links of the chain that are not monitored by clients, such as the spinning facilities and stitching activities that are subcontracted. These violations occur in all major textile and clothing producing countries: India, Bangladesh, China, Pakistan, Cambodia and Vietnam.¹⁷

Cotton farmers are also losing their source of income through the (forced) use of genetically modified seeds that provide an increased yield in the first year, but also cause irreparable damage to the land as a result causing low yields in the following years. Cotton pickers (often women and children) frequently get sick from working with dangerous pesticides without adequate protection.¹⁸

2 National policy for sustainable public procurement

In 2005, clear goals for sustainable public procurement were established for the national government, municipalities, provinces and district water boards in the Netherlands.¹⁹ Methods were developed to include sustainability as an aspect in government tenders in which the so-called 2011 Criteria Documents played an important role. These documents describe sustainability requirements for the public purchasing of approximately 45 product groups. Initially the policy was only focused on the environment. Social criteria, the so-called Social Conditions, which include internationally accepted labour standards and human rights, were added in 2012.

Since 1 January 2013, all tender contracts from the national government that exceed the European threshold (the amount above which work must be contracted out within Europe²⁰) must include the Social Conditions. The offices of central government have also been asked to commit themselves to the application of the Social Conditions. Additionally, new policy guidelines²¹ were implemented on 1 April 2013 as a result of which the 'most economically advantageous

tender' (MEAT) has become the standard. MEAT awards points to aspects such as cost as well as quality and sustainability.

Within a few years, the Netherlands will have to implement a different European procurement directive that creates space for indicating a preference for bidders who keep a close watch on the working conditions in international supply chains.²²

The current Cabinet recently evaluated the policy for sustainable public purchasing. The evaluation only involved the application of environmental requirements. The plan is that the application of the Social Conditions will be evaluated individually in 2014. The Cabinet has expressed the long-term ambition of requiring companies that supply the government to perform a risk analysis, and to prove that they are respecting human rights in accordance with the UN Guiding Principles.²³ Another aspect that will be looked into is whether the Social Conditions policy is in line with the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (OECD guidelines).²⁴

2.1 Criteria Documents

The Criteria Documents list the sustainability aspects and criteria for each product group with regard to environmental conditions. However, the social aspect is not included in documents specific to the respective product groups. Although, the Criteria Document for natural stone (street furniture product group) does mention the possible problematic working conditions in natural stone extraction. It states that the basic ILO standards are not always respected and that the sector involves dangerous working conditions, child labour, low wages and forced labour as a result of debts.

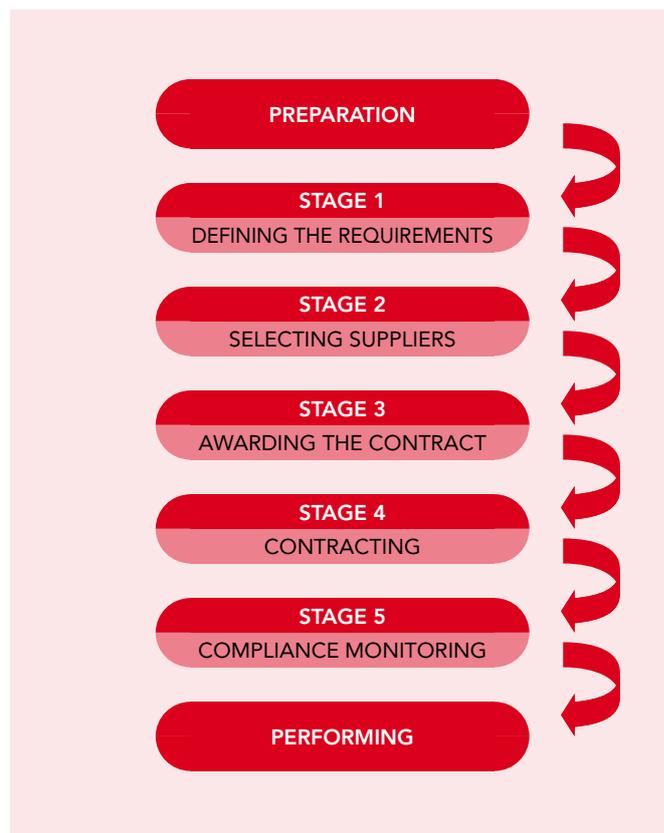
The Criteria Document for street furniture also indicates that "due to a lack of information and the difference in these types of aspects it is impossible to include them in tenders as a requirement".²⁵ The sustainability requirements in these Criteria Documents are considered to be a minimum for sustainable procurement. Dutch authorities are free to pursue higher or additional goals.²⁶ The criteria are divided over the various stages in the purchasing process:

2.1.1 Four types of criteria

The Criteria Documents describe four basic approaches to how sustainability can be addressed for the defining stage of a tender document. Every tender request must provide clarity on these four different criteria.

1. The *qualification criteria* describe the grounds for exclusion and suitability criteria. They are used to evaluate whether suppliers are able to deliver the

Figure 1: The purchasing process



requested materials, products or services. A supplier can be excluded if a serious fault or offence has been observed (for example, a violation of the environmental act).²⁷ Sustainability can also be applied as a suitability requirement in the technical competence of the supplier. To illustrate: a green supplier must employ a skilled designer with expertise in the field of the origin of plants and biodiversity.²⁸

2. The 'List of Requirements' (Programma van Eisen) includes the *technical capacity* in order to compare the quality of the bidders that meet the suitability requirements. Participants are challenged to make the best offer. The requirements may involve sustainability, as long as they are related to the subject matter of the tender. It is possible, for instance, to adopt the underlying sustainability aspects from a certification. An example is a requirement for a certain energy-saving level for wireless telephones.²⁹ Or the amount of harmful substances in work clothing.³⁰ Often bidders can meet these demands by proving that they are associated with a certification; EnergyStar for energy consumption, and the Öko-Tex 100 label for harmful substances in work clothing are examples of these certifications.

3. The *award criteria* are based on the MEAT. Points are awarded both to price and to quality, which can be linked to sustainability characteristics. The more points awarded to a sustainability requirement, the higher the chance that the tender will be awarded to the bidder that makes efforts in the field of sustainability. For work clothing, for instance, extra points may be awarded to a higher percentage of organic cotton.³¹
3. The conditions under which the tender will be performed are called the *contract performance clause* and are binding to the bidder that is awarded the contract. This may include a contractual clause with sustainability requirements with best efforts obligations for the contracted party. Contract clauses must be included in the tender documents to make sure bidders are fully informed of them and can take them into account in their proposal. The Social Conditions as established by the national government can be applied as contract clauses.

The existing criteria are mainly focused on environmental requirements. Nonetheless, social criteria are frequently included in the qualification criteria, technical capacity or award criteria in practice. The four approaches can also be combined in the same procurement procedure.

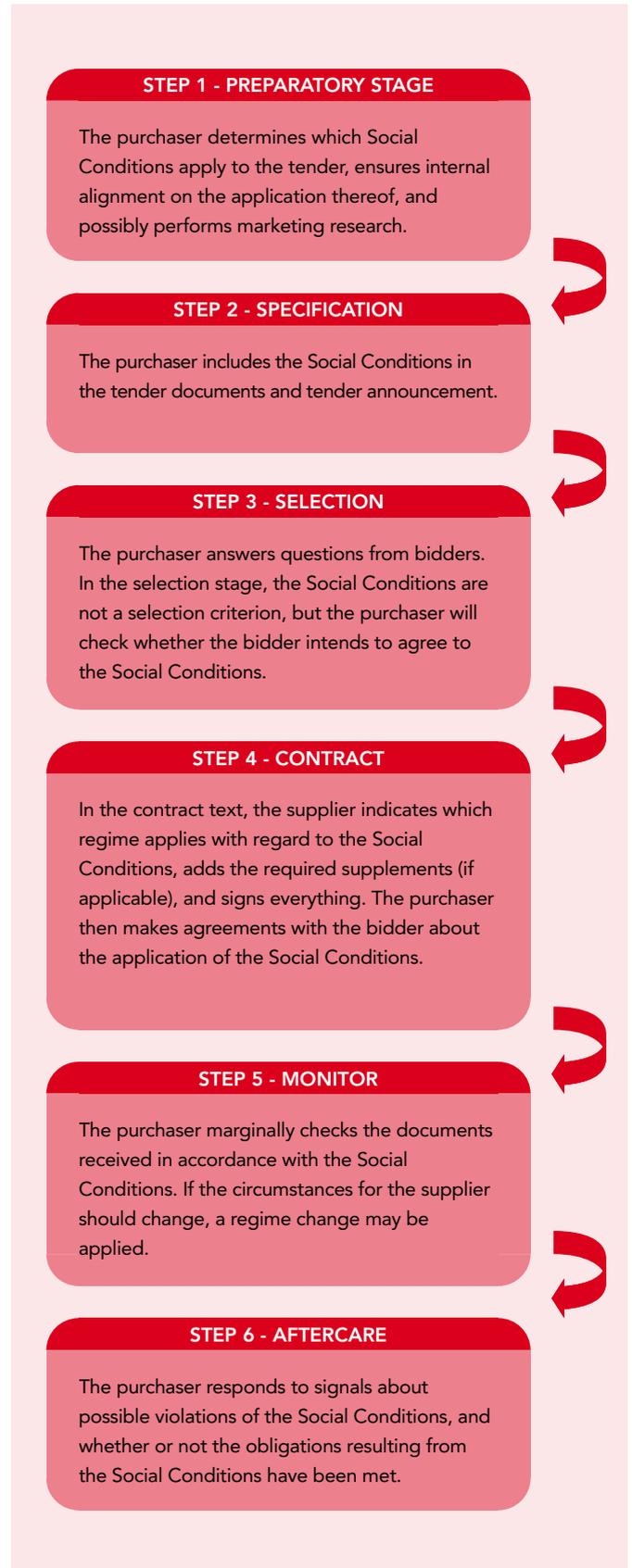
2.2 Social Conditions

In addition to the Criteria Documents, the national government in the Netherlands formulated the above-mentioned Social Conditions in 2012. These conditions are not suitable for selecting a supplier, but are intended as a contract performance clause at the contract stage. A manual for procurers ('Handleiding sociale voorwaarden') was developed and explains the steps to be taken at each purchasing stage:

The Social Conditions are generic conditions that apply to all product groups, which means they are not product or product-group specific like the criteria formulated in the Criteria Documents. The Social Conditions are based on the basic ILO standards: freedom of association and the right to organise, the abolition of forced and child labour, the elimination of discrimination and respect for human rights.

For the purchasing of coffee, work clothing, tea, cocoa and flowers, there are additional conditions related to living wages, working hours, safety, fair trade standards, minimum price and pre-financing.³² If there are concrete indications for structural risks of labour rights violations in other product groups, such as natural stone or electronics, the additional standards can also be applied to those product groups.

Figure 2: Step-by-step plan Social Conditions



Source: Pianoo, *Handleiding sociale voorwaarden*, May 2013

The procurer can include this specific report in the tender, in which case the supplier has to establish a plan regarding how the risks can be reduced.³³

As part of the Social Conditions policy, the Netherlands acknowledges certification systems. A certification system is a partnership between businesses and civil society within a particular sector, working on better international working conditions. If the bidder is associated with a certification system that has been approved and certified by the government, the Social Conditions are automatically met.

The following certification systems are currently approved: Fair Wear Foundation (clothing), Max Havelaar, UTZ Certified and Rainforest Alliance (coffee).³⁴

The steps in Figure 2 are all described in further detail in the *Handleiding sociale voorwaarden*³⁵, including tools for procurers. In Step 4, the contract stage, the supplier can choose from three so-called regimes:

- ❑ **Regime 1.** The company indicates it is a member of a certified chain initiative.
- ❑ **Regime 2.** The company indicates it foresees no problems in its chain, which is justified by a risk analysis.
- ❑ **Regime 3.** The company indicates that there are risks and that it will make reasonable efforts³⁶ to analyse the social impact in the chain and take measures where necessary. The supplier is initially focused on removing risks within the company itself. The next focus is on its direct suppliers. If this is not successful, the focus is on links further down the chain. The efforts are aimed at minimising violations of the social standards in the chain. In this framework, the supplier is asked to:
 - Start with the realisation of a risk analysis
 - Publish an annual report³⁷ on the realisation of the Social Conditions within the framework of the tender during the course of the contract
 - Submit a timely plan of approach (only if the procurer indicated additional social standards or a specific report)
 - Adapt the management policy where necessary³⁸
 - Take suitable measures to mitigate actual violations of the standards.

3 Results

This research analysed 25 tenders: nine for coffee, three for natural stone, five for work clothing and eight for electronics (phones). These involved:

- ❑ three tenders from Dutch Ministries;
- ❑ one from *Staatsbosbeheer*, the national body for nature management;
- ❑ two from *Rijkswaterstaat*, part of the Ministry of Infrastructure and the Environment;
- ❑ four from provinces; and
- ❑ 15 from municipalities.

The most significant results of the analysis of these 25 tenders are indicated below. The appendix of this report includes a list with a brief overview of both the contents and form of the applied social criteria for each tender.

3.1 Social Conditions rarely applied

Only three of the 25 tenders actually refer to the Social Conditions as formulated by the Dutch government. In these three tenders, the Social Conditions were included in the tender request. Twelve tenders refer to working conditions in extraction or production, the basic ILO standards or the additional labour standard of living wages. Ten cases did not address social aspects at all. Figure 3 provides an overview of how often and in what way the tenders referred to social criteria.

The Dutch Ministry of Defence applied the Social Conditions, and thus the basic ILO standards, in a tender for work clothing. The municipality of Groningen applied the Social Conditions in the purchasing of phones, and also applied the additional conditions that are not part of the generic Social Conditions, namely living wages, fair trade standards, minimum price and pre-financing, working hours and health & safety on the work floor. Similar conditions were also included in a natural stone tender by the municipality of Utrecht, which applied the additional conditions and clearly indicated which social issues are at play in the specifications.

Also of note is that the Ministry of Defence did not apply any clear social criteria in a tender for coffee, although the national government is obliged to apply the Social Conditions. The tender does state that corporate social responsibility (CSR) is highly valued but does not refer to the international labour standards in its requirements or contract performance clause.

Five coffee tenders only refer to living wages or the organic cultivation of coffee, or to one of the approved certifications (Max Havelaar, UTZ Certified and Rainforest Alliance) or similar. As a result, they do not explicitly question the underlying goal of these certifications, such as respecting the fundamental labour standards of the ILO. The Criteria

Figure 3: References to social criteria in 25 tenders

Reference	Phones	Coffee	Natural stone	Clothing	Total
Social Conditions	1	0	1	1	3
ILO standards and living wages	0	1	0	3	4
ILO standards	1	0	1	0	2
Living wages or abolition of child labour	0	5	0	1	6
No social criteria	6	3	1	0	10
Total	8	9	3	5	25

Figure 4: Different approaches of addressing social criteria

Approach	Phones	Coffee	Natural stone	Clothing	Total
Qualification criteria	0	0	0	1	1
Technical capacity	0	5	1	1	7
Award criteria	0	0	0	2	2
Contract performance clause	2	1	0	1	4
Multiple	0	0	1	0	1
None	6	3	1	0	10
Total	8	9	3	5	25

Documents indicate that certifications can serve as proof that the relevant criteria are met.

3.2 International labour standards often used as selection criteria

A further analysis of the 25 selected tenders shows that the various social criteria are applied in several different ways. To categorise the application methods, we use the four types of criteria as indicated in Section 2.1.1. Figure 4 shows how often and at what time in the tender process the social criteria are mentioned. It seems that social criteria are only described as a contract performance clause in four cases, despite it being recommended by the national government.

In six cases, the social criteria were included in the List of Requirements. The procurers deviated from the national policy for socially responsible purchasing by actually increasing the emphasis on social criteria and evaluating bidders on whether they respect labour standards.

There are very different ways in which bidders can prove that they meet the social criteria in the selection stage. Sometimes they are asked to submit a plan of approach, while at other times, signing a statement or being associated with a certification scheme is sufficient to demonstrate their best efforts in the field of respecting labour standards in the supply chain.

Three of the tenders included social criteria as part of their awarding criteria, and awarded points to the performance of the bidders in this field. Here the application also varies strongly from tender to tender. In two cases, the social aspects were combined as one set of points for sustainability. As a result, it is unclear whether human rights are actually included or that they could be a substitute for the environmental conditions.

Three of the studied tenders were written by the national government; only one of these included the Social Conditions as a contract performance clause. One case did not

mention the Social Conditions at all, and one tender applied international labour standards as an award criteria. The latter is described in further detail in Section 3.3.

The analysed coffee tenders showed that social criteria are usually included in terms of technical capacity; sometimes directly referring to a certification without explicitly naming the underlying social standards. Specific certifications should not be a substitute for social criteria. Instead they can serve as proof for the fact that a bidder meets certain social criteria.

3.3 Four examples

In all of the tenders, the procurers used some form of social criteria, but each used them in a different way. Below are four examples to illustrate these differences.

Phones – contract performance clause

The municipality of Groningen bought phones, smartphones and accessories such as chargers. The procurer states that the supplier must meet the Social Conditions as a contract performance clause: “The supplier has a best effort obligation to comply with the social standards. Social conditions involve, among other things, respecting the fundamental labour standards of the ILO and the additional conditions focused on living wages, fair trade standards, minimum price and pre-financing, working hours and health & safety in the work place”.³⁹ Groningen municipality has clearly decided to apply additional standards to phones, but no specific report of social risks was included in the tender.

In a conversation with an official from the Groningen municipality, it became apparent that it had arranged a market consultation in which it addressed the Social Conditions and announced that the standard text of the Social Conditions would be included in the contract. The supplier accepted the Social Conditions as a contract performance clause and indicated that regime three applied. The supplier then submitted a plan and an analysis of the supply chain. The procurer, Groningen, announced it would evaluate the planned approach. The best efforts promised by the supplier will be evaluated by the client and discussed with the supplier on an annual basis.⁴⁰

Coffee – technical capacity

Rijkswaterstaat Corporate Services bought drink machines and ingredients. The studied coffee tender includes a List of Requirements, which states that the coffee should be grown and processed in compliance with the applicable ILO standards for living wages: “Bidders with UTZ certification and the Max Havelaar certification comply with this requirement. Proof thereof should be submitted at the request of the client.”⁴¹

A written reply from an employee of Rijkswaterstaat Corporate Services to the questionnaire sent by SOMO and a telephone interview on the subject⁴² showed that the department had meetings with bidders to discuss certifications. The choice eventually came down to a supplier that is associated with one of the government approved certification schemes. To learn how to best shape the social criteria in the tender documents, the client met with a procurement expert from the government.

Natural stone – all kinds of criteria

The municipality of Utrecht bought a large batch of natural stone for the redevelopment of the Stationsplein. In the preliminary stages of the project, the municipality was in contact with the initiators of the ‘Duurzame Pleinen’ (Sustainable Squares) awareness project.⁴³ The municipality included international labour standards at all stages of the procurement process. The description of the commission details Utrecht’s policy in the field of fair trade, CSR and international social standards. It also describes the labour issues in the natural stone chain: child labour, forced labour, health and safety, no formal conditions of employment, low wages, long working hours and discrimination. The qualification criteria of the municipality of Utrecht state that the bidder must have a description of the measures taken “within the framework of environmental management, including the social aspects in the chain and which guarantees they are able to offer in this field”.⁴⁴

The List of Requirements indicates that the bidders must submit a plan regarding the guarantees they can provide in this regard. This requires a chain analysis as well as a risk analysis. At the very least, the extraction and processing location must be addressed, including a risk analysis related to non-compliance with the fundamental ILO standards. Utrecht also chose to apply additional labour standards related to working hours, health & safety in the work place and wages. Bidders who did not meet these requirements were not taken into consideration.

The plan should also describe what measures the bidder will take to minimise risks in the chain, and, for each risk, how the social and environmental standards are or will be safeguarded in policy; how the company handles the prioritisation of violations; how communication on labour standards with the supplier will take place and what agreements are and will be made in this regard; the intended results per risk, including the associated timeline; how the company handles monitoring; and the way and frequency in which the planned approach is updated.

The award stage gives points to the way the social standards are safeguarded; sustainability can amount to as much as 20 to 100 points. This is also determined by

looking at the planned approach. Finally, the supplier agrees to the Social Conditions included in the contract.

A conversation between SOMO and the municipality of Utrecht showed that the supplier was invited to a meeting in which the social aspects were discussed in detail. The contractor was awarded points for its sustainability efforts. Eventually, the municipality of Utrecht selected a supplier of Spanish natural stone, which presented the least number of social issues. If it had selected natural stone from India or China, suppliers would have been asked for clear best efforts, based on the planned approach, as described above. The parties that submitted a limited plan were not taken into consideration or given feedback.⁴⁵

Clothing – award criteria

The National Agency of Correctional Institutions (*Dienst Justitiële Inrichtingen*), which is part of the Dutch Ministry of Justice, bought protective clothing for its employees. The chapter on suitability criteria states that, in addition to a certified environmental policy, bidders must submit information on sustainability aspects, and participation in CSR and sustainability promoting organisations such as Fair Wear, Fair Trade, etc.

The planned approach should involve both compliance with and the promotion of labour standards. It is unclear, however, whether this is applied as a binding qualification criterion. It is clear that, if bidders sign the ILO statement, they can acquire points (three out of 12) at the award stage. The statement says: “With regard to ILO the bidder must declare or prove that none of the supplied goods was produced using child labour as in Convention 182 of the ILO. This applies to the entire production chain. It can also be substantiated through the establishment of a code of conduct (...) or if the bidder is associated with, for example, the Fair Wear Foundation or similar.”⁴⁶

The department did not include these conditions as contract clauses, as the policy was intended for ministries and executive bodies. It also appears that the only aspect referred to is the ILO convention on child labour, and not any of the other basic ILO standards.⁴⁷

Conclusions and recommendations

Conclusions

- ❑ Each of the 25 studied tenders is very different. The structure and way the various criteria and conditions are included and formulated varies greatly. This makes it difficult to evaluate the level of sustainability. Moreover, it seems that every procurer and every (local) government has its own distinctive way of working.
- ❑ Among the studied tenders, 15 of the 25 cases (60 per cent) respect international labour standards as specifications in the tender, but most do not comply with the regulations and tools of the national policy for socially responsible public purchasing.
- ❑ The *Handleiding sociale voorwaarden* gives procurers tools for including social criteria in the contracting stage. In practice, however, it seems that social criteria are also included in the selecting stage, as this allows procurers to choose a bidder who is a frontrunner in respecting labour rights. This may challenge businesses to demonstrate more efforts in this field.
- ❑ The natural stone tender by the municipality of Utrecht stood out in a positive way. During the various steps of the *Handleiding sociale voorwaarden*, Utrecht went far beyond the policy. All bidders were asked to submit a planned approach that included a proper risk analysis, as well as measures to minimise possible risks. The presented plan was evaluated at the selection stage and partly determined the eventual decision.
- ❑ The Social Conditions policy only applies the additional conditions for the sectors of coffee, tea, cocoa, flowers and work clothing. Other sectors are only subject to the basic ILO standards, unless a specific report is included in the tender by the procurer. This does not reflect a uniform policy, and does not challenge specific sectors to take further steps.
- ❑ This research shows that procurers are not yet sufficiently engaged with applying social criteria. The telephone interviews SOMO carried out with six procurers underlined that they do not have enough knowledge of adverse impacts in production chains and only look at whether bidders submit the requested documents.

Recommendations

- ❑ The Dutch policy for socially responsible public procurement should be uniform in the expectations of suppliers with regard to respecting human rights. The OECD Guidelines should form the basis for all companies that supply to the government regardless of sector, product group, product, material or service.
- ❑ Suppliers should be required to carry out a risk analysis of the possible adverse effects in the supply chain, and to take measures to prevent adverse impacts or contribute to compensation for the victims, if damages should occur. The best effort obligations that apply to the supplier should be in accordance with the due diligence process from the UN Guiding Principles.
- ❑ The *Handleiding sociale voorwaarden* should be included as a minimum in all government policies for socially responsible public procurement. They should also be expanded with possibilities for applying the criteria in the selection stage. In this regard the national government can use the natural stone tender by the municipality of Utrecht as an example.
- ❑ The recently accepted European procurement directive should be implemented in the Netherlands in the next two years. These new European regulations offer new possibilities for including social criteria in the selection stage. This opportunity should be seized by the Dutch government.
- ❑ The national government should work together with local governments to stimulate the application of Social Conditions.
- ❑ The national government should monitor the policy for socially responsible public purchasing on the application of the Social Conditions, regime choices, efforts made by suppliers and effects of the policy on labour rights in production chains. The government should be transparent about its findings and provide concrete improvement plans for sectors that are lagging behind and in which considerable social violations occur, such as the electronics sector.
- ❑ The national government should further expand its knowledge and capacity in this area. It is important, for instance, that procurers and contract managers can properly evaluate the supplied documents that bidders present to show their efforts to respect human rights, as well as monitoring bidders' efforts. It would be useful to involve parties from civil society in this process.

Appendix: Overview of tenders and social criteria

Phones

1. In a tender that includes the public procurement of phones, the municipality of Utrecht does not list any requirements with regard to social standards, but does expect that the supplier that is awarded the tender will make efforts to prevent the violation of international social standards during the performance of the contract. The basic labour standards of the ILO are applied (forced labour and slavery, discrimination, child labour; freedom of association and the right to organise).⁴⁸
2. The municipality of Groningen bought mobile phones, smartphones and accessories such as chargers. The supplier has a best effort obligation to comply with the social standards. This tender is described in Section 3.3.⁴⁹
3. The municipality of Assen bought hardware and software, including office automation and phones. The specification document does not include conditions with regard to social standards. A CSR policy is listed as a preference, and bidders can score points that are taken into account at the award stage. Only submissions in which all the stated requirements and demands are answered positively are taken into account for further evaluation.⁵⁰
4. In a tender for wireless telephones, the municipality of Heemstede included a requirement related to energy consumption. Social criteria were not included.⁵¹
5. The municipality of Maassluis refers to the Criteria Document in its List of Requirements, which does not include social criteria. It involves a tender for a communication system including phones.⁵²
6. The municipality of Schijndel requires the supply of a telephone switchboard to be realised in an environmentally-friendly and sustainable way with regard to energy consumption, energy savings and recycling.⁵³
7. In a joint tender, the district water boards Groot Salland in Zwolle, Reest and Wieden in Meppel, Regge and Dinkel in Almelo, Velt and Vecht in Coevorden, and Zuiderzeeland in Lelystad do not list any social criteria. The award criteria in this tender are based on the Criteria Document for socially responsible procurement of telephone equipment, as shown in an appendix on the List of Requirements. The tender involves ICT hardware, including mobile phones.⁵⁴

8. The municipality of The Hague does not apply social criteria. In the selection guidelines, the municipality clearly indicates its requirements with regard to sustainability for the tender at hand, namely an environmental guarantee. The tender involves analogue, digital and mobile phones.⁵⁵

Coffee

9. For the municipality of Eindhoven, social aspects apply in the cultivation of crops. In the preconditions of the tender, a criterion for coffee is that it should be produced using an organic method. The bidder should prove this by means of an EKO certification or similar. An explanatory note also states that the government certified chain initiative UTZ Certified and/or Fair Trade is also allowed as an alternative to EKO certification.
10. Rijkswaterstaat Corporate Service bought drink machines and ingredients. In its List of Requirements, it stated that the coffee should be cultivated and processed in accordance with the standards as provided by ILO with regard to living wages. Bidders with UTZ certification and Max Havelaar certification meet this requirement. Proof thereof should be submitted at the request of the procurer.⁵⁶
11. The municipality of Vlaardingen requires coffee to be grown and processed in accordance with the ILO standards for living wages or fair trade. Bidders with UTZ certification, Max Havelaar certification or Fair Trade certification automatically comply. This is included in the List of Requirements.⁵⁷
12. The Rijnland district water control board decided to make the procurement and use of hot drinks more sustainable. The requirements are drawn up in the Criteria Document by AgencyNL. The List of Requirements states that the ingredients of coffee and cocoa should be supplied with a certified certification or similar, and include criteria in the field of working conditions and fair trade provisions. Bidders can prove their compliance with the following certifications: EKO, Fair Trade, Rainforest Alliance and UTZ Certified.⁵⁸

13. The municipality of Bergen op Zoom wants the ingredients that will be supplied for the drink machines to be produced organically, which can be proven by means of the EKO certification or similar. A notice of information shows that the phrasing is changed to: "the supplied ingredients were produced via a sustainable method, which bidders can prove by means of an EKO or UTZ certification or similar". It involves a precondition.⁵⁹
14. As technical capacity, the Dutch Ministry of Defence states that bidders sign a self-declaration related to CSR. They should declare: "When purchasing products and services we pay close attention to the social and environmental aspects that play an important role in production, transport and use, and will make agreements with our suppliers and clients in this regard". The List of Requirements for the instant coffee, however, does not include a requirement related to social criteria.⁶⁰
15. For the purchasing of warm drinks machines, the Province of North Holland included special contract performance clauses for sustainable coffee. The article with these conditions includes the following: "The supplier guarantees that the coffee, tea and cocoa will be subject to fair trade conditions; the supplier guarantees that the coffee supplied is traceable throughout the entire supply chain; the supplier guarantees that its suppliers will comply with the production conditions with regard to fundamental labour conditions as determined by the ILO."⁶¹
16. A joint tender from the Municipality of Oss, the Municipality of Veghel and the Municipality of Sint Oedenrode does not refer to any social criteria. The tender was withdrawn. In a reaction, the procurer stated that the substitute tender will be more focused on social aspects.⁶²
17. The municipality of Almere complied with the national government policy to purchase fair trade or similar products wherever possible. The machines and ingredients meet the criteria for the socially responsible public procurement of drinks machines; this is included as a technical capacity and also stated in the award stage. This may involve references to certifications. The document, however, does not include social criteria. The 2013 public purchasing policy of the Municipality of Almere 2013 states that "deliveries that were or are not produced under acceptable working conditions (including child labour, forced labour, employee discrimination, the absence of living wages) will be excluded". Yet it is unclear how this is realised in this tender.⁶³

Natural stone

18. The Province of Gelderland is buying natural stone elements in 2014-2016. The documents required to be submitted for the tender include the code of conduct for natural stone, which states that the natural stone should be extracted in a sustainable way and excludes hazardous working conditions and child labour. The List of Requirements also mentions the exclusion of these factors. A planned approach should indicate how the production of the natural stone will be realised, which may earn bidders points.⁶⁴
19. Utrecht has included all ILO conventions in all stages of the procurement process; see Section 3.3 for further details.⁶⁵
20. The municipality of Breda is procuring stone for road works, part of which involves the placement of natural stone elements. The tender mentions cobblestones, tiles and (flush) kerbs in natural stone that should meet specific quality requirements. It refers to the Criteria Documents, but this does not include social criteria.⁶⁶

Work clothing

21. Staatbosbeheer is buying safety clothing and means of personal protection for forestry and nature management. It lists compliance with all eight labour standards of the ILO as qualification criteria. Bidders are excluded if they cannot prove compliance. In case serious violations are suspected, the procurer maintains the right to terminate the contract prematurely.⁶⁷
22. Amsterdam-West is purchasing work clothing for approximately 150 employees who are active in various disciplines in the field. The Programme of Requirement states that, at the time the tender is awarded, bidders should be a member of an independent organisation that aims for good working conditions in the global clothing industry, and in particular in low-wage countries where clothing is produced for the Dutch market. A minimum requirement is compliance with the ILO standard.⁶⁸
23. The Province of North Brabant is buying work clothing and safety clothing. In the award criteria, bidders can earn points with sustainability (5 out of 100), including by proving that the entire production chain aims for the internationally recognised labour standards by signing a code of conduct or guideline (the Fair Wear code of conduct, for example). A technical capacity requirement is compliance with the basic standards of the ILO.⁶⁹

24. The National Agency of Correctional Institutions, part of the Ministry of Justice, is buying protective clothing. Social criteria are applied as award criteria; see Section 3.3.⁷⁰

25. The Ministry of Defence is entering into a contract for the on-demand delivery of personal protection equipment for a period of four years. The Ministry is applying the Social Conditions in accordance with the policy of the national government. During the performance of the contract, there must be a contribution to awareness raising on human rights. The supplier must make efforts to identify and prevent violations of social standards. This involves fundamental labour standards (forced labour, slavery, child labour, discrimination and freedom to organise) and human rights from the Universal Declaration of Human Rights.⁷¹

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