



AGENTS FOR CHANGE

How public procurers can influence labour conditions in global supply chains. Case studies from Brazil, Pakistan and Thailand.

Report #82



Swedwatch is a religiously and politically independent organisation that examines Swedish companies' business operations abroad. The organisation's purpose is to reduce adverse social and environmental impacts, encourage best practice, share knowledge and hold an open dialogue with Swedish companies so that the business community pays greater attention to these issues. Swedwatch has six member organizations: The Church of Sweden, Diakonia, the Swedish Society for Nature Conservation, Fair Action, Solidarity Sweden-Latin America and Africa Groups of Sweden. This report, which can be downloaded at www.swedwatch.org, is authored by Swedwatch. The Church of Sweden stands behind the report and has participated in developing its recommendations.



Authors: Therese Sjöström and Linda Scott Jakobsson
Cover illustration: Maurilo Clareto Costa/Danwatch
Photos: Jonas Gratzner, Vilhelm Stokstad, Maurilo Clareto Costa/Danwatch
Layout and Illustration: Åse Bengtsson Helin and Anders Birgersson
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Executive summary

As reflected in the United Nation's Sustainable Development Goals (SDGs) and in the new European Union (EU) directives on public procurement, public procurement has increasingly been recognised as a powerful tool by which to generate fairer supply chains around the world. Although significant policy advancements have been made, a range of challenges must be addressed. This report focuses on the social aspects of supply chains and examines how contracting authorities in the EU can use social criteria to improve labour conditions in countries where poor labour standards are rife.

Swedish contracting authorities are generally considered global forerunners in the implementation of sustainability criteria¹, but have managed to apply social criteria only to a limited share of products procured. This report draws on experiences and lessons learned from the Swedish public market in the hope that they may prove useful to policy-makers and contracting authorities in other countries. This report also aims to provide Sweden's own purchasing authorities with an overview of risks and opportunities.

Findings from Swedwatch investigations uncover vastly diverging procurement practices that indicate a gap in oversight regarding social criteria and suggest a varying degree of maturity in setting social criteria, depending on the type of product procured. Case studies presented review labour conditions in 1) Pakistani factories that produce surgical instruments, 2) Thai poultry factories; and 3) Brazilian coffee farms, and illustrate how Swedish contracting authorities have used social criteria (or not).

Swedwatch's findings also indicate that where social criteria have been implemented in the procurement process, human rights and labour conditions have improved over time. In contrast, high risk products that are not procured with consideration of social criteria are not as likely to improve in terms of labour conditions. The cases investigated by Swedwatch included forced labour, child labour, over-indebtedness, and hazardous working conditions.

When reviewed and analysed against existing rules and regulations, Swedwatch found clear evidence that:

- Strict demands related to social considerations in public procurement contracts can create positive change on production sites;
- Efficient implementation of social criteria must be preceded by a product-specific risk analysis. Implementation requires competent procurement officials with adequate knowledge of human rights risks in supply chains.
- Continuous monitoring is crucial for real improvement of labour conditions on production sites.

¹ Swedwatch interview with Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 16 March 2016.

Many untapped opportunities exist for coordination and collaboration between contracting authorities within the EU. These opportunities can make the implementation of social criteria – and the impact from such criteria – more efficient – and ultimately lead to significantly improved conditions in the supply chain. Swedwatch also provides practical guidance on socially responsible public procurement for political decision-makers within the EU and contracting authorities, along with targeted recommendations intended to inspire key actors to maximise the inherent potential of public procurement to deliver on the SDGs.

Recommendations

Political decision-makers at the EU level should:

- Increase cooperation between member states in developing standards for social criteria in public procurement.
- Implement directives that require all processed food products to indicate the country of origin, in order to increase transparency throughout the food chain.
- Explore whether an EU certification that guarantees fair social conditions behind consumer products could be the next step forward. A reference point could be the social equivalent to the EU Ecolabel.
- Develop a resource centre with practical guidance on sustainable public procurement – both social and environmental – to raise the competence and efficiency of public procurement officers globally.

National political decision-makers should:

- Adopt a national strategy for sustainable public procurement that includes a commitment to the UN Guiding Principles on Business and Human Rights (UNGPs), and which applies to contracting authorities at all levels.
- Ensure support for sustainable public procurement, for example by establishing a national authority responsible for coordination.²
- Collaborate with contracting authorities in other countries to increase leverage in specific industries. This may include, for example, joint demands for products that are free from forced labour, child labour, etc.
- Allocate sufficient financial resources to ensure adequate competence among procurement officers.³

2 The coordination should include ensuring that methods, tools, findings from risk analysis and audit reports are shared, preferably also with colleagues in other EU and non-EU countries.

3 Capacity building may include training on human rights risk in supply chains, and how to implement and monitor the adequate criteria.

Contracting authorities should:

- Integrate social aspects in procurement processes, based on the recommended steps in this report (page 22-23).
- Allocate adequate financial resources within the public authority for (1) implementation and monitoring of social criteria, including risk analysis and auditing and (2) ensuring adequate competence and working hours among procurement officers.
- Actively collaborate with other contracting authorities to coordinate and harmonise efforts, and share methods and documentation. This may include, for example, audit reports.
- Engage with credible organizations that conduct research on labour conditions in high-risk production countries in order to understand risk contexts.
- Explore and evaluate the full range of tools presented in the EU directives to include social criteria when rewarding contracts and/or technical specification.

1. Introduction

Public authorities have significant buying power: annual spending on goods and services through public procurement in the European Union (EU) is over €2,400 billion.⁴ In many sectors – including health and education services, energy and transport – public authorities are commonly the principal buyers.⁵

A substantial share of these goods is produced in developing countries, where work conditions, salary regulations and respect for human rights may not be enforced. By using their leverage as large buyers and actively including environmental, social and ethical criteria in their procurement contracts, public procurers have a significant role to play in positively contributing to more sustainable societies, particularly in countries where goods are produced.

Policy-makers and government officials increasingly recognise the potential associated with using public procurement as a strategic tool in poverty reduction in producing countries, including enhancing respect for international labour standards, such as the ILO core Conventions.⁶ As a result, significant policy developments have been

4 World Trade Organization, Statistics for 2011 reported under Article xix:5 of the Agreement, Report by the European Union, GPA/114/Add.5, 22 October 2014, available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_Soo6.aspx?Query=@Symbol=%20gpa/114/add.5&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#

5 European Commission Website, available at <http://ec.europa.eu/growth/single-market/public-procurement/> (retrieved 21 September 2016).

6 United Nations Environment Programme, The Impacts of Sustainable Public Procurement - Eight Illustrative Case Studies, 2012, available at <http://www.unep.org/resourceefficiency/Portals/24147/scp/procurement/docsres/ProjectInfo/StudyonImpactsofSPP.pdf>

made in this arena in recent years. For example, in 2012, the Council of the European Union adopted new directives on public procurement which apply to all member states and which outline expectations on public procurers to ensure that the goods and services procured are produced with respect for labour rights.

Similarly, in September 2015 the United Nations (UN) unanimously adopted the 2030 Agenda for Sustainable Development, and thereby committed to “end poverty, protect the planet, and ensure prosperity for all”. With 17 Sustainable Development Goals (SDGs) at its core, the agenda refers to the importance of promoting sustainable public procurement practices.⁷ The Swedish government has also declared that public procurement should be used to achieve the SDGs and stated this intention in its June 2016 national strategy for public procurement.⁸

With these encouraging signals from all relevant policy levels as reference point, Swedwatch seeks to increase understanding of how contracting authorities in EU member states can use social criteria to generate more sustainable supply chains, and ultimately contribute to the SDGs. By using examples from the Swedish public procurement context, this report examines how Swedish public procurement is used (or not) to influence working conditions in countries where labour right violations are rife. It also highlights the possibilities and needs related to social considerations in public procurement.

The report presents findings from three case studies conducted in Pakistan, Thailand and Brazil during 2014–2015 and provides an overview of social considerations within the Swedish contracting authorities. Since Swedwatch’s findings from Brazil have not been published before, the example of social criteria setting related to publicly procured coffee is presented in depth.

The audience for this report is primarily:

- public procurers within the EU who are developing processes to enhance social criteria setting;

7 Goal 12 (“Ensuring sustainable consumption and production patterns”) will be measured based on 11 targets. Target 7 refers to sustainable public procurement. United Nations Website, available at <http://www.un.org/sustainabledevelopment/sustainable-development-goals/> (retrieved 22 September 2016).

8 The Government of Sweden, Key note by Prime Minister Stefan Löfven address at World Economic Forum Session “Operationalizing the Sustainable Development Goals” (SDGs), Davos, 20 January 2016, available at <http://www.government.se/speeches/2016/01/key-note-by-prime-minister-stefan-lofven-address-at-world-economic-forum-session-operationalizing-the-sustainable-development-goals-sdgs/>
The government is exploring how to make Sweden one of the world’s first fairtrade nations, in which sustainable public procurement is a key component. For further discussion of the importance of public procurement in SDG implementation, see United Nations, The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet – Synthesis Report of the Secretary-General On the Post-2015 Agenda, New York, December 2014, available at http://www.un.org/disabilities/documents/reports/SG_Synthesis_Report_Road_to_Dignity_by_2030.pdf

- policy- and decision-makers at the national and local levels who seek to understand the challenges and needs related to social criteria setting as the new EU directives are being implemented; and
- suppliers who compete for public contracts.

2. Methodology

This report is the result of investigations for three separate case studies. Swedwatch published the results of two of them, conducted in Pakistan and Thailand, in 2015.⁹ The research included field visits and interviews with workers, union representatives, government officials and labour rights experts. The projects included surveys of contracting authorities and interviews with their employees regarding their procurement policies.

The third investigation builds on Swedwatch's previous studies on Brazilian coffee production.¹⁰ In June 2015 Swedwatch conducted a field visit to Brazil's largest coffee-producing state, Minas Gerais, where half of the country's coffee is grown. Together with the Danish research organisation Danwatch,¹¹ Swedwatch visited coffee plantations and interviewed coffee workers, trade union representatives, pesticide experts and local authorities. Swedwatch also obtained access to confidential reports from the Brazilian Ministry of Labour and Employment which described the liberation of workers on other coffee plantations from slave-like conditions.

Based on findings in Brazil, Swedwatch surveyed public procurers in 18 Swedish municipalities, county councils and regions and government agencies on the sustainability of their coffee procurement processes; 15 of the public authorities were chosen because they had purchased coffee during the past three years, varied in size and geographical location, and represented different types of public entities – i.e., municipalities, county councils and regions and government agencies at national level. The three most densely populated municipalities were also selected since they are significant public procurers, but of these Stockholm was the only municipality to submit a complete response.¹²

9 Swedwatch, Healthier Procurement, 2015, available at http://www.swedwatch.org/sites/default/files/healthier_procurement.pdf and Swedwatch, Trapped in the Kitchen of the World, 2015, available at http://www.swedwatch.org/sites/default/files/tmp/76_thaikyckling_151123_ab.pdf

10 Swedwatch, Kaffe från Brasilien – en bitter smak av orättvisa (Coffee from Brazil – a bitter taste of injustice), 2005, available at http://www.swedwatch.org/sites/default/files/swedwatch_-_kaffe_fran_brasilien_en_bitter_smak_av_orattvisa.pdf

11 Danwatch is an independent media and research center that publishes investigative journalism focusing on corporate social responsibility, human rights, environment and conflict areas in a global perspective.

12 Malmö municipality provided a partial reply and shared a list of its purchases, which showed that all five types of coffee it purchased were double certified (either with KRAV and Fairtrade, or with KRAV and UTZ). Malmö was the first city in Sweden to receive a Fairtrade city diploma (2006); the Swedish equivalent of a Fair Trade Town. Göteborg municipality did not respond.

A total of 11 complete responses and three partial replies were submitted.¹³ Six of the largest coffee brands in Sweden were also surveyed on their sale of coffee to public procurers. Company replies were a useful complement to the research process, but are not presented in their entirety given that the focus of this study is on public procurers. Swedwatch also interviewed experts on public procurement and representatives from the Fairtrade and Rainforest Alliance organisations.¹⁴

3. Laws and guidelines for sustainable public procurement

Every year, over 250,000 public authorities within the EU spend around 14 percent of their countries' GDPs on the purchase of goods and services.¹⁵ Guidelines from the UN and the new EU directives explicitly promote that these purchases need to be made with respect for human rights and labour rights. By clarifying the legal frameworks and possibilities, individual contracting authorities are responsible for - and increasingly expected to - use public procurement to promote better labour conditions in production countries.

3.1 Defining sustainable public procurement

Sustainable public procurement is commonly divided into two aspects – environmental and social – but the latter can be a source of confusion. While ‘social criteria’ is commonly used as a broad, all-encompassing term to denote all areas related to human and labour rights, it is also occasionally used to refer to national issues such as promoting hiring unemployed persons or initiatives for social integration.¹⁶ To complement this more limited interpretation of social criteria, the term ethical criteria is sometimes used to refer to other social issues outside of the purchasing country. Ethical criteria thus address respect for human and labour rights in countries of production (commonly low-income countries) and include principles of fair trade.¹⁷ Ethical criteria are used in public procurement to ensure that suppliers actively assume

13 Eleven respondents submitted complete replies: Karlskoga, Trelleborg, Eskilstuna and Stockholm municipalities; Västernorrland, Västmanland, Västra Götaland, Stockholms and Skåne county councils; and the two national-level government agencies Regeringskansliet and Kammarkollegiet. Falkenberg municipality and two county councils, Sörmland and Malmö, provided partial replies. Although limited in nature, the general content of the three partial replies is strikingly similar to that provided in the complete responses.

14 Fairtrade uses international trade as a tool to promote human rights, development and the protection of the environment. The Rainforest Alliance works to conserve biodiversity and shift to more sustainable livelihoods by transforming land-use practices, business practices and consumer behaviour. The full list of respondents to the coffee investigation is available in Annex 1.

15 European Commission Website, available at <http://ec.europa.eu/growth/single-market/public-procurement/> (retrieved 21 September 2016).

16 Upphandlingsmyndigheten Website, available at <http://www.upphandlingsmyndigheten.se/hallbarhet/socialt-ansvarsfull-upphandling/> (retrieved 16 March 2016).

17 *ibid*



Many migrant workers from Brazil's poorest states pay a one-way bus ticket to Minas Gerais during the coffee harvest season. Many work at coffee plantations under illegal conditions and sometimes do not receive their due salary. Several workers expressed that if they would receive their salary, they would afford the return fare and go back home. PHOTO MAURILO CLARETO COSTA/DANWATCH



responsibility for minimizing the risk of violating human and labour rights at production sites and throughout the value chain of a product, and to minimise the risk of allowing public funds to contribute to such violations.

Based on this rationale, ‘ethical’ criteria could arguably be more accurate for the topic of this study as it focuses on labour conditions outside of Europe and Sweden and does not, for example, consider collective agreements on the Swedish labour market. Nevertheless, the more commonly used term ‘social’ will be used in this report to refer to human and labour rights in countries of production.¹⁸ Social criteria as used in this study refer to the following regulatory frameworks:

- The International Bill of Human Rights: the world’s most comprehensive common definition of human rights. It consists of the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights and its two Optional Protocols.¹⁹
- The International Labour Organization (ILO) eight core Conventions (No. 87, 98, 29, 105, 138, 182, 100, 111). The conventions cover subjects that are considered fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour and minimum age; and the elimination of discrimination in employment and occupation.²⁰
- The UN Convention on the Rights of the Child, Article 32: states that governments should protect children from work that is dangerous or that might harm their health or education.²¹
- Existing legislation in the country of production concerning occupational health and safety and the working environment.
- Existing legislation in the country of production concerning labour rights, including minimum wage and social security.
- Existing legislation in the country of production concerning environmental protection.
- The UN Convention against Corruption: the first global legally binding international anti-corruption instrument.²²

18 *ibid.*

19 United Nations Human Rights Office of the High Commissioner, The International Bill Of Human Rights, 1948, available at <http://www.ohchr.org/Documents/Publications/Compilation1.1en.pdf>

20 International Labour Organization Website, available at <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (retrieved 20 September 2016).

21 United Nations Human Rights Office of the High Commissioner, Convention on the Rights of the Child, 1989.

22 United Nations office on Drugs and Crime, United Nations Convention Against Corruption, 2004.

3.2 The UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (UNGPs), adopted by the UN Human Rights Council in 2011, is the most comprehensive framework to date clarifying corporate responsibilities regarding human rights. The framework's 31 principles also specify the role of states in regards to safeguarding human rights within a business context.

States' obligations under international law, the duty to protect, represent a standard of conduct. This means that states are not responsible per se for the human rights abuses of private actors. The UNGPs, however, stress that: "(...) States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse". Taking steps to prevent abuses in the production of goods and services for the public sector, through social criteria in public contracts, is therefore part of the state duty to protect.

A central concept in the UNGPs is human rights due diligence, which includes assessing actual and potential human rights impacts, integrating and acting upon these findings, tracking responses and communicating how the impacts are addressed. Although the human rights due diligence process itself, as defined in the UNGPs, is directed towards businesses, it is fundamental for public procurers because social criteria need to relate to this process. By requiring suppliers to have an ongoing process to improve working conditions throughout the supply chain, public buyers set achievable expectations that constantly push suppliers to perform to a higher standard.

3.3 New EU directives on public procurement

Following the revision of EU directives related to public procurement in 2011,²³ the European Parliament and the Council adopted three new directives in February 2014.²⁴ Each EU member state is required to transpose the directives into national law.²⁵ Several countries, including Sweden, have been delayed in doing so.²⁶

Social and environmental criteria are two main focuses-areas of the new directives. In the preamble the directives clearly state that: "Public procurement plays a key role in the Europe 2020 Strategy (...) as one of the market-based instruments to be used to

23 Directives 2004/17/EC (procurement in the water, energy, transport and postal services sectors) and 2004/18/EC (public works, supply and service contracts), as well as the adoption of a directive on concession contracts.

24 The three new directives are: Directive 2014/24/EU on public procurement (the focus of this report); Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors; and Directive 2014/23/EU on the award of concessions contracts.

25 Due by April 2016.

26 Council of the European Union, Council adopts directives for the reform of public procurement, 11 February 2014.

The UNGPs and human rights due diligence

According to the UNGPs, businesses must take measures to address adverse human right impacts. These measures include prevention and mitigation and, when needed, remediation. In order to meet these requirements, a company should:

- Develop and maintain a public policy statement on meeting responsibilities to respect human rights, and should realise and include this statement in internal policies and processes, as well as relevant communications and training for staff;
- Continually conduct human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights; and
- Provide processes for remediating any adverse human rights impacts that they cause or contribute to.

Management of risks should be communicated externally in such a way that stakeholders, especially those affected by the operations, can assess whether the company has sufficiently managed risks. It is especially important for companies that operate in high-risk contexts such as conflict areas to publicly report on how they conduct their human rights due diligence.

According to the UNGPs, human rights due diligence is an ongoing process that a company should conduct, taking into account its specific circumstances (such as the industry, country of operations, size of the company, etc.), in order to meet its responsibility to respect human rights. The process should:

- Cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to operations, products or services related to its business relationships;
- Vary in complexity with the size of a business, the risk of severe human rights impacts, and the nature and context of its operations; and
- Be ongoing, recognizing that human rights risks may change over time as business operations and operating contexts evolve.

achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds.”²⁷ This statement signals that social criteria are now a priority. The articles discussed in this section are from Directive 2014/24/EU on public procurement. An important addition to the directive necessitates compliance with social and labour requirements in the performance of public contracts. This is outlined in Article 18.2, under “Principles of Procurement”:

“Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X”.

²⁷ Directive 2014/24/EU, preamble 2.

Annex X includes reference to the eight ILO core Conventions, as well as conventions focused on environmental considerations.²⁸

What “appropriate measures” imply is still unclear and will to a large extent be up to member states to define. Nonetheless, the directives send a clear message that social criteria are a priority and an integral part of public procurement.

The directive also highlights that social considerations may be taken into account at every stage of a public procurement process, including technical specifications, selection criteria, award criteria and/or contract performance clauses. For an overview on the possibilities and limitations regarding the use of social criteria in the different stages of the procurement process based on the EU directive, see Annex 2 “New EU Directives on public procurement”.

4. Use of social criteria within the Swedish context

Sweden has 340 national-level government agencies, 21 county councils and regions, and 290 municipalities that procure goods and services for public institutions such as public offices, hospitals, retirement homes, schools and army units.²⁹ Together with Norwegian and a number of German counterparts, Swedish contracting authorities are generally considered global forerunners in the implementation of sustainability criteria.³⁰ However, Swedish contracting authorities have thus far only managed to apply social criteria to a small portion of the many products that are publicly procured.

28 Annex X references the eight ILO core Conventions, as well as conventions focused on environmental consideration: ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise; ILO Convention 98 on the Right to Organise and Collective Bargaining; ILO Convention 29 on Forced Labour; ILO Convention 105 on the Abolition of Forced Labour; ILO Convention 138 on Minimum Age; ILO Convention 111 on Discrimination (Employment and Occupation); ILO Convention 100 on Equal Remuneration; ILO Convention 182 on the Worst Forms of Child Labour; Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention); Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention); and the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention), and its three regional protocols.

29 Government of Sweden, Government Offices of Sweden Website, available at <http://www.government.se/government-policy/municipalities-and-county-councils/> (retrieved 20 September 2016).

30 Swedwatch interview with Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 16 March 2016.

4.1 Social criteria in the Swedish public sector

While Swedish contracting authorities lacked directives on implementing sustainability criteria in the 1990s, they gradually took the initiative to introduce environmental considerations into the process. Following directives from the European Commission in 2007, the Swedish government presented an action plan for environmentally aligned procurement, which further enhanced the inclusion of environmental criteria. While no equivalent government action plan for social criteria has been created, contracting authorities are again leading the way.

The three types of contracting authorities in Sweden – county councils and regions, municipalities and government agencies – rely on somewhat different structures to implement their social criteria. These practices and criteria are outlined below.

4.1.1 County councils

Swedish county councils and regions³¹ are responsible for health care and public transportation. Annually they buy goods and services worth €12 billion. The county councils started their work on social criteria in public procurement in 2007 and eventually developed a shared code of conduct to facilitate their implementation. This process used a formalised structure with a steering committee, a national coordinator for social responsibility, an expert group and point of contact in each county council.³²



³¹ Nine county councils are called regions as they have an extended responsibility concerning regional development. Going forward, regions are included when referring to “county councils” in this report.

³² Swedwatch interview with Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 7 June 2016.

County councils have prioritised the following eight categories of goods for social criteria in public procurement:³³

- IT and communication;
- Food and related services;
- Pharmaceuticals;
- Surgical products and gloves;
- Medical instruments, including stainless steel medical articles and sutures, staples and laparoscopy articles;
- Textiles and related services;
- Topical medical products; and
- Medical devices (with associated consumables).

These categories were chosen due to their high procurement volumes and associated risks of adverse human rights and environmental impacts. When buying these goods, county councils are required to consider social criteria in the procurement process. The national coordinator helps local public procurers within the county councils to set up and monitor social criteria within these defined categories.³⁴

The county councils' code of conduct refers to the Universal Declaration of Human Rights, the eight ILO core Conventions, the UN Convention on the Rights of the Child Article 32, national legislation regarding labour rights and environmental protection, as well as the UN Convention against Corruption. The requirements of the code of conduct are generally implemented through contract performance clauses. The underlying ethos is that while the county councils do not want requirements to be optional, they do not wish to exclude suppliers that do not meet the social criteria at the time of the bidding process.³⁵

The contract performance clauses require suppliers to have procedures in place to ensure that the production of goods and/or services delivered during the term of the

33 Hållbar Upphandling Website, available at <http://www.xn--hllbarupphandling-8qb.se/> (retrieved 15 September 2016).

34 Swedwatch interview with/and email from Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 11 May and 8 September 2016. Swedwatch, *Trapped in the Kitchen of the World*, 2015. This report is discussed in more detail in Section 5.2.

35 Contract performance clauses require suppliers to demonstrate compliance during the contract period, after the contract has been awarded, not excluding any bidders during the bidding phase. However, Stockholm county council has included social criteria as qualification criteria in five tender requests for multifunction printers, gloves, instruments, and surgical articles. The qualification criteria do not replace the contract performance clauses, but provide a minimum level of requirements which with the tenderer must comply. One of the awarded contracts was challenged in court by a losing tenderer, but the case was dismissed. Email from Kristian Hemström, Deputy Sustainability Manager, Stockholm county council, 8 September 2016.

contract occurs under conditions that are compatible with the code of conduct. At a minimum, these procedures must include:³⁶

- A division of responsibilities regarding social consideration in the supply chain.
- A description of how producing subcontractors are assessed based on social aspects.
- An outline of requirements placed on subcontractors in terms of social responsibility. Requirements must at a minimum correspond to those that the county council imposes on the supplier.
- A description of how monitoring and dialogue with the subcontractors is conducted. The issues monitored and discussed must be relevant to the requirements.
- A timetable for monitoring and for dialogue with the subcontractor.
- How deviations from the requirements are handled.

Suppliers that are awarded a contract need to account for how these requirements are met by answering a self-assessment questionnaire (SAQ). The SAQ consists of a number of questions regarding the processes that the suppliers use to identify and mitigate risk related to the code of conduct.³⁷ Each year, appointed county councils undertake an appraisal of adherence to the social criteria for contracts related to the risk categories of goods, and share the results among all county councils. An expert group is also involved in the evaluation and monitoring process. County councils reserve the right to perform audits further up the supply chain, and 12 such audits have been performed since 2010, covering products such as IT, pharmaceuticals, surgical instruments and textiles.³⁸ Suppliers are required to address any deviations from the code of conduct within a set time frame. Repeated deviation or non-cooperation from a supplier is deemed a breach of contract, and may lead to contract termination.³⁹

The county councils have established a formal agreement with South-Eastern Norway Regional Health Authority⁴⁰ and the SKL Kommentus Central Purchasing Body (SKI) - a central purchasing body that provides framework agreements to Swedish municipalities and county councils - to share information on audits and monitoring in order to avoid overlapping their efforts.⁴¹ Discussions with other Nordic countries have also

36 At the time of writing, the contract clauses were about to be updated.

37 Swedwatch developed the SAQ and evaluation template for the county councils in 2013 and updated them in 2016.

38 Sveriges regioner och landsting, Socialt ansvarstagande i offentlig upphandling, Verksamhetsrapport 2015.

39 Email from Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 7 June 2016.

40 Helse Sør-Öst

41 Sveriges regioner och landsting, Socialt ansvarstagande i offentlig upphandling, Verksamhetsrapport 2015, and Swedwatch interview with Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 11 May 2016.



According to the global labour rights organization Solidarity Center, migrant workers in Thailand experience some of the worst abuse in the world. PHOTO JONAS GRATZER

been initiated to explore possible joint efforts to implement social criteria in public procurement.

During 2015 and 2016, the national cooperation on social criteria focused on risk assessment which among, other things, included training on the topic.⁴² The next step is to establish a “category strategy” based on risk, which will form the basis of the development of an action plan for each product. The action plan will specify the risks and the social and environmental criteria that should be implemented to mitigate the risks. It should also outline the monitoring phase. Responsibility for each product category will be allocated to specific county councils.⁴³

42 Sveriges regioner och landsting, Socialt ansvarstagande i offentlig upphandling, Verksamhetsrapport 2015.

43 Swedwatch interview with Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 16 March and 11 May 2016.

4.1.2 Municipalities

In general, Swedish municipalities lack strong processes for implementing social criteria and do not collaborate to the same extent as the county councils. They do include social criteria in their contracts to some extent, although with certain variations. In a Swedwatch survey from 2015, 76 percent of the respondents (80 out of 290 municipalities responded to the survey questions) reported that they included social criteria⁴⁴ mainly as contract performance clauses. Monitoring proved more of a challenge: 46 of the 80 replying municipalities answered that they monitored their suppliers in some way.⁴⁵ Overall, the municipalities reported that more time, competence and political will were needed to improve the implementation of social criteria in public procurement.⁴⁶

SKL Kommentus Central Purchasing Body (SKI) offers municipalities and county councils framework contracts for a wide range of goods and services. It includes social and environmental criteria in its contracts and uses a code of conduct, as well as contract performance clauses. SKI monitors social criteria during the contract period by checking suppliers' processes and how they are implemented. If non-compliances are discovered, suppliers are required to take measures to comply. SKI has the right to charge a penalty fine or terminate the contract if substantial violations are found.⁴⁷ In 2016, SKI consolidated its code of conduct and contract clauses to match those of the county councils.

Since 2011 SKI has provided, and used, a framework agreement for social auditing. For an annual fee, around 90 of Sweden's 290 municipalities have joined the agreement of social audits with SKI, which includes factory as well as desktop audits of suppliers to the public sector. The participating municipalities specify the suppliers they would like audited on a biannual basis. An expert group, consisting of eight members from municipalities, the National Agency of Public Procurement and SKI, then selects which suppliers will be audited, based on the risk and the number of requests. All municipalities that are party to the agreement can access the audit reports (15–20 per year) and results.⁴⁸ SKI monitors corrective actions taken by the audited supplier.⁴⁹ The 2015 Swedwatch survey of municipalities found that the SKI joint auditing scheme is the only social criteria monitoring con-

44 However, some of the respondents referred to social criteria in a Swedish context, such as the inclusion of collective bargaining agreements, etc.

45 Again, some of the respondents referred to social criteria in a national context.

46 Berger M. Gravert, E. Persson, A. Social criteria in public procurement, 2015. The report was conducted in collaboration between Swedwatch and students from the Royal Institute of Technology KTH.

47 SKL Kommentus Inköpscentral Website, available at <https://www.sklkommentus.se/inkopscentral/om-oss/hallbar-upphandling/> (retrieved 10 May 2016).

48 SKL Kommentus Inköpscentral Website, available at <https://www.sklkommentus.se/inkopscentral/vart-arbetssatt/hallbarhetskollen/Hur-gar-en-revision-till/> (retrieved 20 September 2016).

49 SKL Kommentus Inköpscentral Website, available at <https://www.sklkommentus.se/inkopscentral/vart-arbetssatt/hallbarhetskollen/Hur-gar-en-revision-till/> (retrieved 10 October 2016).

ducted by a third of the responding municipalities that reported performing any sort of follow-up (14 out of 46).⁵⁰

The number of “Fairtrade Cities” in Sweden has steadily increased since 2006, when the first was announced (Malmö); 75 municipalities (and one county council) have since followed suit. In order to qualify for the diploma, a municipality must (among other requirements) have a measurable goal concerning the consumption of fair trade products and increase its consumption of such products within municipal contracts, based on the principles of fair trade and the ILO core Conventions.⁵¹

4.1.3 Government agencies

The 340 Swedish government agencies use central framework agreements to purchase a wide range of goods and services, from office supplies and furniture to transport vehicles and ICT products. The more than 1,000 unique framework agreements are administrated by the National Procurement Services (Statens Inköpscentral), a national purchasing body within Kammarkollegiet (a government agency responsible for legal, financial and administrative services). Government agencies can also perform their own procurement of contracts to complement the central agreements if necessary.⁵²

It is unclear how many government agencies include social criteria in their contracts. However, a Swedwatch sample survey shows that more than half of the 12 responding agencies use social criteria – for example Customs, the Defence Materiel Administration and the Coast Guard – but that most of them do not monitor compliance. The agencies mention lack of time, resources, unclear directives and competence as some of the reasons why they do not include social requirements in their contracts.⁵³ Historically, Kammarkollegiet has only included social criteria in a few contracts, but it is now including them in a majority of its new contracts. Kammarkollegiet has also started a review of its processes concerning the inclusion of social criteria, including auditing and risk analysis of its framework agreements.⁵⁴

50 Berger M. Gravert, E. Persson, A. Social criteria in public procurement, 2015. The report was conducted in collaboration between Swedwatch and students from the Royal Institute of Technology KTH.

51 Fairtrade Sweden, Vad är en Fairtrade city?, 15 June 2016, available at http://fairtrade.se/app/uploads/2016/07/Vad_%C3%A4r_en_Fairtrade_City.pdf,

52 Kammarkollegiet Website, available at <https://www.avropa.se/topplankar/In-English/> (retrieved 20 June 2016).

53 Angelstam M. and Martinez D, Social Criteria in Public Procurement, 2016. The sample survey was made in collaboration between Swedwatch and students at KTH, Royal Institute of Technology in 2016. A survey was sent out to 40 of the largest government agencies (universities were not included).

54 Email from Sebastian Svartz, lawyer at the National Procurement Services, Kammarkollegiet, 24 May 2016.

PRACTICAL GUIDANCE ON IMPLEMENTING SOCIAL CRITERIA BASED ON THE SWEDISH EXPERIENCE

Drawing on the processes that Swedish public procurement actors have elaborated over the past decade, the following steps can be recommended to other actors when implementing social criteria within the procurement process.



STEP 4

Monitoring social criteria is crucial for achieving real change. Monitoring can be carried out in different ways. For example, if contracts performance clauses are used, questionnaires can be sent out along with the tender request for the winning supplier to answer during the contract period, asking questions that concern knowledge of supply chains, risk assessment, strategies and procedures to mitigate risks, audits and corrective actions, preventive actions and training. A template can be used to assess incoming answers. Questionnaires can be an effective way to collect data, as long as the suppliers' answers are serious and exhaustive. Another way is to meet face-to-face with the supplier, which helps build a relationship and allows more in-depth and open-ended discussions.

A desktop or factory-level audit can supplement the initial assessment process. Therefore, the right to perform audits, either directly or through a third party, must be included in the contract. An audit can show if the supplier's processes and routines adhere to the procurer's code of conduct – and call for corrective action if not.

If a certification is available, it can be a useful tool for monitoring and validation, as long as the certification standard is included in the tender specification in an adequate way.

Step 4 Monitoring

Step 5 Corrective action plan

STEP 5

If the supplier's processes to meet the demands are insufficient, or if the audit reveals non-compliance, the supplier needs to develop a corrective action plan. This plan should include, for example, detail on the deviation, the corrective measure, possible cause, time frame, and person responsible. The contracting authority needs to maintain close contact with the supplier to verify that corrective measures are taken in order to ensure future compliance.

Step 6 Sanctions

STEP 6

If the supplier lacks interest in improving insufficient processes or taking action on non-compliance, sanctions such as freezing the contract, imposing fines or terminating the contract can be used. These measures should be included in the contract and only be used as a last resort.

55 UN Universal Declaration of Human Rights, the eight ILO core Conventions, the UN Convention on the Rights of the Child (art. 32), national legislation regarding labour rights and environmental protection, as well as the UN Convention against Corruption.

4.2 National support

The National Agency for Public Procurement is a government agency responsible for helping public authorities and entities carry out their procurement requirements. It is tasked with establishing an effective – as well as socially and environmentally sustainable – public procurement system.⁵⁶ It supports contracting authorities through a number of tools and initiatives concerning social considerations. For example, the CSR Compass⁵⁷ (CSR-kompassen) is a step-by-step tool including templates, examples and advice on how social criteria can be formulated, implemented and monitored. The agency also develops free, downloadable templates on environmental criteria, and some social criteria, for example for furniture, fossil fuels, coffee, tea and cocoa. It also brings together representatives from ten public authorities to help develop social criteria and discuss social considerations in a national (e.g., social integration) and global (ILO core Conventions, human rights, etc.) context.⁵⁸

On 30 June 2016 the Swedish government published its National Strategy on Public Procurement, which aims to clarify expectations of public buyers and how public procurement can be used to help achieve societal goals. One of the focus areas of the strategy is social criteria. It urges public procurers to use social criteria and refers to the SDG and UNGP frameworks. The strategy also mentions that the National Agency for Public Procurement will be tasked with developing tools to help public procurers more easily identify risk categories of goods and services, where social criteria are relevant.⁵⁹

5. Case studies: implementation of social criteria on different products

In 2015, Swedwatch published two reports that examined human rights issues in publicly procured products: health care equipment from Pakistan and food from Thailand. Findings from research illustrated a significant difference in public procurers' knowledge regarding human rights risks related to the two product categories. This suggests that social criteria varies significantly depending on the type of product being purchased.

Based on comparative investigations from 2007 to 2015, *Healthier Procurement*⁶⁰ showed that although serious challenges remain, conditions have improved in several

56 Upphandlingsmyndigheten Website, available at <http://www.upphandlingsmyndigheten.se/en/omossmeny/about-us/> (retrieved 20 September 2016).

57 CSR refers to Corporate Social Responsibility. CSR Kompassen Website, available at www.csr-kompassen.se (retrieved 10 September 2016).

58 Upphandlingsmyndigheten Website, available at <http://www.upphandlingsmyndigheten.se/hallbarhet/stall-hallbarhetskrav/> (retrieved 10 May 2016).

59 Regeringskansliet, Nationella upphandlingsstrategin, 2016, available at <http://www.regeringen.se/globalassets/regeringen/dokument/finansdepartementet/pdf/2016/upphandlingsstrategin/nationella-upphandlingsstrategin.pdf>

60 Swedwatch, *Healthier Procurement*, 2015, available at http://www.swedwatch.org/sites/default/files/healthier_procurement.pdf

of the Pakistani factories that manufacture surgical instruments from which Swedish county councils source. Improvements can be attributed in part to that county councils in Sweden started including social criteria in public contracts. As will be shown in more detail, this has evolved to also include other categories within the health sector.

In *Trapped in the Kitchen of the World*,⁶¹ Swedwatch interviewed migrant workers at six poultry factories in Thailand. The research identified severe labour rights violations in factories, including debt bondage and reports of child labour. It also found that Swedish county councils and municipalities had limited knowledge about, and resources for, setting social criteria in the procurement of food products such as poultry. The report helped draw the attention of public procurers, and as a result county councils added food as a risk category in their system for socially sustainable procurement in 2016.

Since 2005 Swedwatch has reported on the working conditions in Brazilian coffee farms. During the field study in 2015 the research team concluded that although improvements have taken place, many of the labour rights violations identified in 2005 remain, especially in regard to forced labour and health impacts from pesticides. The 2015 research also showed that Swedish contracting authorities are at the forefront in procuring coffee sustainably. Strict social and environmental criteria are widely applied when coffee is publicly procured. Since Brazil does not offer substantial volumes of coffee certified with the most comprehensive certifications, Swedish contracting authorities only purchase Brazilian beans to a limited extent. The following sections discuss the three case studies: surgical instruments in Pakistan, Thai poultry farming and Brazilian coffee in the context of public procurement.

5.1 Surgical instruments

The global market for surgical equipment was estimated at €4.4 billion in 2013 and has since grown significantly.⁶² An increasing proportion of commonly used surgical instruments including retractors, scissors and forceps supplied to healthcare providers globally are manufactured in Sialkot, Pakistan: an estimated 2,300 companies⁶³ manufacture more than 150 million surgical instruments every year, almost 95 per cent of which are exported.

Although Pakistan has ratified all eight fundamental ILO core Conventions, labour rights abuse in the country is still widespread. Swedwatch reports on labour rights in the Pakistani surgical instruments industry since 2007 have documented appalling work conditions in several workshops in Sialkot, including widespread child labour, lack of health and safety measures, violations of local labour laws with regard to minimum wage and excessive overtime, and anti-union policies and practices.

61 Swedwatch, *Trapped in the Kitchen of the World*, 2015, available at http://www.swedwatch.org/sites/default/files/tmp/76_thaikyckling_151123_ab.pdf

62 PR Newswire, *Surgical Equipment: Technologies and Global Markets*, 15 October 2014.

63 Trade Development Authority of Pakistan, *An overview Surgical and Medical Instruments Industry of Pakistan*, 2012, available at http://www.tdap.gov.pk/doc_reports/TDAP_Report_on_Surgical_&_Medical_Instuments_Industry_in_Pakistan.pdf



The city of Sialkot relies heavily on its surgical manufacturing industry, and there are numerous workshops where workers grind, file and polish surgical instruments for local exporting companies. Workshops differ in size but often consist of no more than one or two rooms. PHOTO VILHELM STOKSTAD

Swedwatch's first report on the issue⁶⁴ received widespread media attention and highlighted the risks of severe labour rights violations during the production of goods used in public hospitals. At the time, Swedish county councils did not include any social criteria in their contracts.

Following the report, Sweden's three largest county councils⁶⁵ embarked on a joint initiative to implement social criteria in their procurement processes, which set a precedent for Sweden's more systematic approach to social criteria-setting. As a first step, the county councils established a common code of conduct for their suppliers. Next, they introduced follow-up questions to monitor suppliers' adherence to the code. Over the next few years, all 21 of Sweden's county councils began using the same code of conduct. Their cooperation was eventually expanded by the appointment of a national coordinator for social responsibility and the system now in place to implement and monitor social criteria, as is explained in section 4.1.1 in this report.

Swedwatch revisited some of the factories in Pakistan in 2014 to monitor progress in working conditions and labour rights following the county councils' inclusion of

64 Swedwatch, *The Dark Side of Health Care (Vita rockar och vassa saxar)*, 2007, available at http://www.swedwatch.org/sites/default/files/vita_rockar_vassa_saxar.pdf

65 Stockholm, Västra Götaland and Skåne.



Even though chairs and workbenches have been introduced at some factories and workshops, some workers still prefer to sit in the same way as they have been used to in the past.

PHOTO VILHELM STOKSTAD

social criteria in public contracts. Overall, Swedwatch found positive developments in the factories supplying Sweden. Conditions at the factories' sub-suppliers had also improved. The prohibition of child labour was strictly enforced, the minimum wage was adhered to and employees were not forced to work overtime.

Challenges nevertheless remained within the areas of health and safety: workers were still operating machinery without personal protective equipment, wage levels were also insufficient, and capacity building in unionisation and collective bargaining was lacking. The evaluation of workshops outside Swedish supply chains, where no social requirements were mandated, revealed little change since 2007. Employees still worked in cramped, poorly lit workshops with no ventilation. They were paid a per-piece rate, lacked safety equipment and child labour was still common practice. The report concluded that although much remains to be done to improve working conditions in the industry as a whole, the introduction of social criteria in public contracts has had tangible effects for people employed to produce surgical instruments in Pakistan. In Sweden, the county councils remain the leading agents for social criteria setting and their list of high-risk product categories for which such criteria applies is currently being expanded.

Migrant workers in Thailand

Migrant workers' communities in Thailand are often segregated from the rest of society. The everyday life of countless migrant workers in labour-intensive sectors such as construction, fishery, plantations and manufacturing can often be described as taking place in a parallel reality. Language and cultural barriers create separation, and factors such as economic debt to brokers and employers, confiscated documents and fear of harassment by the authorities force many migrants to lead their lives only between their workplace and often overcrowded accommodation, in a high degree of isolation from the outside world. These circumstances applied to many of the migrant workers interviewed for Swedwatch's report.

5.2 Poultry

Swedish import of food products in 2013 to the public sector was estimated at a value of around €479 million of which €21 million of which was poultry, according to the latest available study.⁶⁶ The share of processed food was estimated at approximately €300 million. Thailand is a prominent world supplier of poultry meat products with chicken having become one of the country's most important agricultural exports, after rice and rubber. Its total poultry exports are expected to exceed 900,000 tonnes by the 2020s.⁶⁷ The EU has become its biggest market for export. About 270,000 tonnes of poultry meat products were shipped from Thailand to the EU in 2014. Sweden has imported poultry products from Thailand since at least the late 1990s and in 2015 Thailand was Sweden's second-largest supplier of processed poultry products, after Denmark.⁶⁸

Thai poultry meat products follow a complex supply chain before they reach the consumers in cafés and restaurants, schools, hospitals and retirement homes in Sweden. Existing EU legislation contributes to the opaqueness; products labelled with EU as "origin" may actually come from a non-EU country, such as Thailand. This makes it nearly impossible to estimate the total volume of Thai poultry imported to the Swedish market annually. According to a Swedish importer, at least half of all the Thai poultry consumed in Sweden is not included in the official import statistics.

Swedwatch's interviews with 98 migrant workers at six factories in Thailand indicate that severe violations of human and labour rights are frequent in the nation's poultry industry. As migrant workers, the interviewees represent the bottom of Thailand's labour pyramid. At all factories included in the field study, worker testimonies

66 Ryegård, on behalf of Lantbrukarnas Riksförbund, Offentlig marknad för livsmedel i Sverige samt import av livsmedel till aktörer i offentlig sektor, 3 October 2013.

67 The Poultry Site, Global Poultry Trends 2014: Asia Biggest Exporter of Processed Chicken, 10 September 2014, available at <http://www.thepoultrysite.com/articles/3258/global-poultrytrends-2014-asia-biggest-exporter-of-processed-chicken/> (retrieved 4 October 2016).

68 Jordbruksverket, Marknadsrapport Fågelkött, March 2016, available at <http://www.jordbruksverket.se/download/18.798f6d8e153b8fd9951b5896/1459233534293/Marknadsrapport+matf%C3%A5gel+2016-03-16.pdf> (retrieved 4 October 2016).

indicated circumstances defined as debt bondage by ILO standards. Confiscation of personal documents, debt due to excessive recruitment costs and illegal salary deductions contribute to restricting the workers' freedom. Extortion by corrupt police and other officials is a daily risk for many migrant workers who cannot show valid papers. At three of the factories, interviewed workers reported child labour involving children as young as 14.

Swedwatch's survey of Swedish county councils in 2015 showed that none of the councils in Sweden's three largest regions⁶⁹ regularly conducted audits specifically related to human and labour rights in product categories including poultry within their public procurement system. The survey also revealed limited knowledge about, and resources for, enforcing social criteria in the procurement of food products. These three county councils had prioritised requirements regarding animal welfare and product quality over social criteria. The same applied to public procurers in the municipalities.

According to Peter Nohrstedt at the SKL Kommentus Central Purchasing Body (SKI) "Historically public procurers in general have not set social criteria in their procurement of food products. It appears as if the knowledge of working conditions in this sector of production generally is low among public procurers at the Swedish municipalities."⁷⁰

Peter Nohrstedt explains that desktop audits have been conducted for some of the Swedish wholesalers' activities and routines. Following Swedwatch's contact with him, the expert group decided to conduct new desktop audits, in cooperation with the county councils, to identify poultry suppliers in Thailand exporting to Sweden.⁷¹ A decision was made to also audit two poultry factories in Thailand that supply Swedish municipalities and county councils.⁷² As a result of the report, the county councils added food items as a risk category and a risk analysis of food items including poultry, fish, rice, fruit and processed foods (such as pizza) was conducted along with a risk assessment training of staff. A risk based action plan has also been established for the coming years.⁷³

Labour violations within the Thai food industry are not confined to poultry. Various media reports during 2014 and 2015 exposed the severe abuse of migrant workers, mainly from Cambodia and Myanmar, in the Thai fishing industry. Thousands of

69 Skåne, Stockholm and Västra Götaland.

70 Swedwatch interview with Peter Nohrstedt, Sustainability Manager, SKL Kommentus AB, 14 October 2015.

71 *ibid.*

72 Scheduled for late 2016. Email from Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 5 October 2016.

73 Sveriges regioner och landsting, Socialt ansvarstagande i offentlig upphandling, Verksamhetsrapport 2015, Swedwatch interview with/and email from Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 11 May and 26 September 2016.



In the report "Trapped in the kitchen of the world", the interviewed migrant workers stated that they were indebted to their brokers or employers prior to entering Thailand. Recruitment fees led the migrant workers to different levels of debt bondage. PHOTO JONAS GRATZER



people are reported to have been trafficked into slavery over many years, with workers often beaten, tortured and sometimes killed.⁷⁴

FACT

ILO definitions

Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by subtler means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities. Forced labour, contemporary forms of slavery, debt bondage and human trafficking are closely related terms, although they are not identical in a legal sense. Most situations of slavery or human trafficking are, however, covered under ILO's definition of forced labour.⁷⁵

5.3 Coffee

Swedish coffee consumption per person is among the highest in the world, and while most coffee is sold in retail outlets, an estimated 10 percent is purchased via public contracts.⁷⁶ According to Swedwatch's research, more than €7.5 million in Swedish public funds was spent to procure over one million tonnes of coffee over the past three years.⁷⁷

The global coffee industry as a whole has made progress in sustainability over the past decade. There is greater awareness of the human rights and environmental risks related to coffee in comparison to many other foods and beverages, in spite of similar work conditions. The coffee industry has also been more active in promoting fair working practices than its peer industries such as tea, cocoa and juice. By the end of the 1980s, coffee was the first product for which Fairtrade developed criteria.⁷⁸

Today consumers find an increasing range of coffee that is certified according to either social or environmental criteria, or both.⁷⁹ Many companies have made serious efforts to enhance control over their supply chains, and some have created their own sustainability programmes for coffee farmers. Despite such efforts, Swedwatch's findings show that the risks of serious labour rights violations at farms in the world's

74 The Guardian, Trafficked into slavery on Thai trawlers to catch food for prawns, 10 June 2014, available at <https://www.theguardian.com/global-development/2014/jun/10/-sp-migrant-workers-new-life-enslaved-thai-fishing>

75 International Labour Organization, The meanings of Forced Labour, 10 March 2014, available at http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang--en/index.htm (retrieved 5 October 2016).

76 Swedwatch phone interview with Douglas Jonhag, Purchasing Manager, Sofiero Kafferosteri, 22 March 2016.

77 The actual number is considerably higher since the figure is only based on ten public procurers, and excludes coffee procured by one of the largest procurement authorities (Kammarkollegiet).

78 Swedwatch interview with Elisabet Lim, Product and Key Account Manager Cotton, Coffee, Wine, Cosmetics, Timber, Gold, Fairtrade Sweden, 24 September 2015.

79 Fairtrade Sweden Website, available at <http://fairtrade.se/produkter/kaffe/> (retrieved 10 June 2016).

dominant coffee producing country – Brazil – are still high. The risks appear to be particularly high at farms that are not audited by certification bodies or part of credible sustainability programmes. An estimated 0.25 percent of the coffee produced at the over 300,000 coffee farms in Brazil is organically produced.⁸⁰ Similarly, the Fair-trade organisation only buys coffee from 20 cooperatives in Brazil – a small number, considering that Brazil is by far the world’s largest producer.⁸¹

5.3.1 Brazilian coffee workers today

During a field visit to the coffee state Minas Gerais in 2015, Swedwatch found that many coffee workers in Brazil still work under illegal conditions. In 2015 the Brazilian Ministry of Labour and Employment inspected 16 coffee plantations in Minas Gerais. At five of them, inspectors found conditions that qualify under the Brazilian criminal code as “analogous to slavery”.⁸² A total of 128 workers, including six children and teenagers, were liberated during these inspections.⁸³ Over the last five years, several hundred workers have been freed from Brazilian coffee plantations. According to Luiz Machado, head of ILO’s Programme to Combat Forced Labour in Brazil, it is the tip of the iceberg: “Since 1995, only about half of the cases in which workers report conditions analogous to slavery were inspected. The other 50 percent were never reached by the authorities. One of the reasons is that authorities do not have the necessary resources to help all the workers that experience slave-like conditions.”⁸⁴

Swedwatch’s investigation further revealed that many of the labour rights violations identified in 2005⁸⁵ – such as sub-minimum wages, excessive work hours and lack of protective equipment – are still commonplace. Another continuing problem is that many coffee harvesters work without contracts registered in their “carteira de trabalho”, the official document ensuring that workers earn the right to social benefits including sick pay, vacation pay, pension and unemployment benefits.

80 Naturskyddsföreningen, Störst på kaffe – världsmästare på besprutning, 25 September 2015, available at <http://www.naturskyddsforeningen.se/nyheter/storst-pa-kaffe-varldsmastare-pa-besprutning>

81 Swedwatch interview with Elisabet Lim, Product and Key Account Manager Cotton, Coffee, Wine, Cosmetics, Timber, Gold, Fairtrade Sweden, 24 September 2015.

82 This legal definition includes subjecting a person to forced labour or degrading working conditions, and restricting a person’s freedom of movement because of debt to an employer or agent.

83 Ministério Público do Trabalho em Minas Gerais (Public Ministry of Labour in Minas Gerais), “Operação conjunta flagra exploração de trabalho análogo ao de escravo na colheita de café” (Joint operation exposes exploitation of work analogous to slavery in the coffee harvest), 13 August 2015, available at <http://www.prt3.mpt.gov.br/procuradorias/prt-belohorizonte/484-operacao-conjunta-flagra-exploracao-de-trabalho-analogo-ao-de-escravo-na-colheita-de-cafe> (retrieved 4 October 2016).

84 Danwatch interview with Luiz Machado, Head of Programme to Combat Forced Labour in Brazil, International Labour Organization, 7 May 2015.

85 Swedwatch, Kaffe från Brasilien — en bitter smak av orättvisa (Coffee from Brazil – a bitter taste of injustice), 2005, available at http://www.swedwatch.org/sites/default/files/swedwatch_-_kaffe_fran_brasilien_en_bitter_smak_av_orattvisa.pdf

Brazil: Better conditions on certified plantations?

According to Vilson Luiz da Silva,⁸⁶ head of Minas Gerais' largest agricultural workers' union, workers are often reluctant to complain about the poor working conditions on Brazilian plantations: "Today, many workers are being replaced by machines so they don't dare to complain about conditions to the plantation owner. Some owners threaten their employees, saying, 'Accept the conditions, or you'll be replaced by a machine'".

Da Silva believes that conditions on certified plantations are significantly better than those on uncertified plantations. Some of the most common coffee certification schemes in Brazil are 4C, UTZ and the Rainforest Alliance. Only a very small percentage of coffee production in Brazil is certified organic and Fairtrade. Fairtrade only buys from 20 cooperatives in Brazil. "The certified plantations know that if they don't observe the rules and ensure good working conditions, they will lose their next order. So certification does make a big difference", says da Silva.

There is a lively debate regarding the varying credibility of certifications and verifications. While it is beyond the scope of this study to evaluate each certification, the survey reveals that virtually all responsibility for ensuring that conditions have been up to standard at a coffee farm lies with the certification agencies themselves. Given the certifications' varying focuses and thresholds (for example, on which ILO conventions they include or how much pesticides they allow), it is essential that procurers choose among the certifications carefully, and that they are sufficiently prepared to make informed decisions.

Since Swedwatch's 2010 report, Brazilian authorities have continued to address child labour, apparently with some success.⁸⁷ However, the risk is still considerable: according to the Brazilian Institute of Geography and Statistics, 116,000 children aged 5–17 worked in the agriculture sector in the state of Minas Gerais in 2013. Of these, 60,000 were under 14.⁸⁸

Brazil is one of the world's largest buyers of pesticides,⁸⁹ and the health effects experienced by the country's agricultural workers are increasingly becoming a source of concern. A number of pesticides that are banned in the EU are allowed in Brazil, some of which are so toxic that contact with skin can be fatal. Others can cause "seri-

86 Swedwatch interview Vilson Luiz da Silva, President, Federação dos Trabalhadores na Agricultura do Estado de Minas Gerais (Labour Union for Agricultural Workers in Minas Gerais), 2 July 2015.

87 Swedwatch interview with Clovis Eduardo Meirelles, Agronomic and Safety Engineer, Fundacentro, 30 June 2015, and Swedwatch interview with Roni Barbosa, Director, Observatorio Social, 29 June 2015.

88 Instituto Brasileiro de Geografia e Estatística (Brazilian Institute of Geography and Statistics), Banco de Dados Agregados, Pesquisa Nacional por Amostra de Domicílios (Bank of Aggregated Data, National Survey of Household Samples), available at <http://www.sidra.ibge.gov.br/bda/tabela/listabl.asp?z=pnad&o=3&i=P&c=1926> (retrieved 15 September 2016).

89 Reuters, Why Brazil has a big appetite for risky pesticides, 2 April 2015, available at <http://www.reuters.com/investigates/special-report/brazil-pesticides/>



Brazilian authorities inspect coffee plantations that allegedly subject workers to slave-like conditions. Over the last five years, several hundred workers have been freed from Brazilian coffee plantations. It is estimated that the authorities only manage to inspect around half of the plantations characterised by such conditions. PHOTO MAURILO CLARETO COSTA/DANWATCH

ous acute and long-term health problems” including damage to reproductive systems and Parkinson’s-like symptoms such as coordination problems and trembling hands.⁹⁰ Brazilian agricultural workers who have been continuously exposed to pesticides have been found to be more likely to develop cancer and experience miscarriages, birth defects, respiratory problems and a loss of sensibility in limbs. These effects are especially noticed in workers on the country’s cotton, corn and coffee fields.⁹¹ Nevertheless, many workers spray coffee bushes with pesticides without using the protective equipment that is required by law.

Since agricultural workers commonly bring their clothes and protective gear home to be washed – a chore usually left to wives and daughters – women are increasingly exposed to the toxins.⁹² In order to reverse these negative developments, there needs to be stronger demands from buying countries:

90 Swedwatch interview with Eduardo Garcia Garcia, Researcher, Fundacentro, 30 June 2015.

91 Email from Erik Jørs, Senior consultant on the Clinic of Occupational and Environmental Medicine at the University Hospital and the University of Southern Denmark in Odense, 15 October 2015.

92 Swedwatch interview with Clovis Eduardo Meirelles, Agronomic and Safety engineer, Fundacentro, 30 June 2015.



A number of toxic pesticides that are banned in the EU are allowed in Brazil. Seasonal coffee workers commonly do not use protective personal equipment to protect themselves from exposure to the toxic substances. Recent studies have found that women are increasingly exposed to the toxins as they wash their husband's work clothes by hand. PHOTO MAURILO CLARETO COSTA/DANWATCH

“The usage of pesticides will only decrease if there is pressure from external buyers. Some countries have decided to only buy sugar from Brazil that is organic. This type of pressure is the only thing that can change the situation. Foreign buyers’ demands for no toxics, no forced labour, and no child labour on farms – these are the key points that can make the industry improve”.⁹³

The claim is in line with Swedwatch's research findings, and is an additional incentive to European public procurers to use their leverage as important buyers on the global market to contribute to the improvement of labour conditions in producing countries by implementing social criteria.

5.3.2 Survey results from Swedish public procurement of coffee

In this context, it is relevant to examine the extent to which Swedish contracting authorities actively seek to avoid contributing to the violations that take place on coffee farms in Brazil and elsewhere. Swedwatch requested 18 Swedish public procurers to respond to a survey on sustainability processes in the public procurement

93 Swedwatch interview with Clovis Eduardo Meirelles, Agronomic and Safety engineer, Fundacentro, 30 June 2015.

of coffee. It received eleven complete responses and three partial replies. All the respondents reported that they procure coffee that is either certified with an organic or social certification – or, as in the majority of cases, both.

Although the statistical number of respondents is limited (11),⁹⁴ the aggregated survey responses indicate the extent to which Swedish public procurers are aware of social and environmental challenges related to a high-risk product such as coffee. It also shows how they are adapting their procurement policies to mitigate such risks.

According to the survey, all the coffee procured by ten contracting authorities over the past three years holds at least one sustainability certification.⁹⁵ Most of it is double certified with one social and one organic certification, and the combination of the strongest certifications – Fairtrade and KRAV – is predominant.⁹⁶ Given that the strictest certifications are most common, very little of the publicly procured coffee originates from Brazil.

It is worth noting that in neighbouring Denmark, there is a significant difference. According to a survey by Danwatch, less than one percent of the coffee procured by Danish public procurers is certified.⁹⁷ It is therefore highly likely that coffee from Brazil and similarly high-risk labour rights environments ends up in Danish hospitals and public offices.⁹⁸

5.3.3 Setting criteria

Overall the responses to Swedwatch's survey are strikingly similar, and all procurers in the survey pose environmental and social criteria of some kind.⁹⁹ Even more encouraging is that sustainability criteria (both social and environmental) are a top priority for most, ranking higher than price, taste and quality. When asked how the ranking was decided, the majority of the respondents (8) referred to a political deci-

94 It should however be noted that both Göteborg and Uppsala hold Fairtrade city diplomas, and are therefore obliged to continuously increase their consumption of fair trade products such as coffee. Falkenberg municipality, which provided a brief comment, also sets strong sustainability criteria.

95 The actual number is considerably higher, since the figures exclude coffee procured by Kammarkollegiet, which appears to be the only procurer that does not solely buy certified coffee. In its response, Kammarkollegiet explained that it procures a wide range of coffee products, both with and without certifications, but that it increased the range of coffee produced under organic and socially responsible conditions during its last procurement due to an increased demand.

96 Notably, the three procurers that provided partial replies also purchase double-certified coffee.

97 Part of Danwatch's research for the report Bitter Coffee.

98 Danwatch, Bitter Coffee, 2016, available at <https://www.danwatch.dk/wp-content/uploads/2016/03/Danwatch-Bitter-Coffee-MARCH-2016.pdf>

99 Three respondents, however, emphasised environmental aspects more than social: Stockholm municipality, Västmanland county council and Stockholm county council. Stockholm municipality and Västmanland county council, however, stressed that they intended to strengthen the social side of their procurement policies and that they would like to qualify for a Fairtrade diploma.

sion.¹⁰⁰ During the tendering process, all procurers except one¹⁰¹ made their sustainability criteria mandatory, meaning that coffee suppliers need to offer sustainably produced coffee to be considered.

5.3.4 Obstacles to setting sustainability criteria

The Swedwatch survey asked contracting authorities to list what they perceive as the largest obstacles to posing strong demands on sustainability during the procurement process in order to identify the main hindrances to sustainable procurement in general (i.e., not limited to coffee) and how these hindrances may be overcome. The two main hindrances were identified as (1) striking the right balance between posing far-reaching demands without distorting the competition and (2) insufficient resources to learn about the issues in depth. Several procurers mentioned the need for greater internal capacity to assess the documentation submitted to verify that the criteria have been met. Indeed, the most frequently mentioned point when asked what the procurers need in order to reach their goal was “resources”. One county council¹⁰² suggested allocating resources to either hire a third party or to hire staff that can conduct risk assessments and follow-ups on site.

Survey respondents were also asked to suggest political decisions that would facilitate the procurement of coffee that is guaranteed to have been produced according to the highest social and environmental standards. Three respondents suggested that procurers should be allowed to directly request certain certifications, especially in regard to Fairtrade. Two respondents experience that the Swedish Public Procurement Act restricts them from imposing strong sustainability criteria.

5.3.5 Certifications

Regarding following up on suppliers’ adherence to sustainability criteria, all respondents rely on the third-party certifications as a guarantee.¹⁰³ None of the procurers in Swedwatch’s survey had conducted a risk assessment for coffee,¹⁰⁴ and none had identified any deviations from the criteria posed. Based on these comments it is clear that if any deviations had taken place, the procurers would not have had the opportunity to identify them on their own. The responses also reveal that procurers are strongly dependent on certifications living up to their promises.

It is worth noting that most procurers have also increased their share of other certified colonial goods, mainly in regard to organically certified cocoa, tea and sugar.

100 During its latest procurement, Stockholm municipality did not rely on any political decisions with regards to social criteria, and notably it is also one of the few respondents that to date has been weaker on socially conscious procurement. Thus political decisions appear to be an important determinant of strong sustainability standards among procurers.

101 Västmanland county council.

102 Västra Götalands county council.

103 As a complement to the certifications, two respondents also conduct dialogues with their suppliers. Stockholm county council carries out its own environmental monitoring, and Västernorrland county council intends to start doing so.

104 The public procurers were asked if they had conducted a risk assessment for the coffee value chain in general, or concerning labour conditions at coffee farms in Brazil.

The purchasing of Fairtrade-certified versions of these products has also increased, although to a lesser extent.¹⁰⁵

FACT

Message to the industry

When asked what the coffee companies should do to allow procurers to only buy coffee of the highest sustainability standards, respondents mentioned the following:

- "If doable, they should standardise their certifications on production conditions." *Regeringskansliet and Kammarkollegiet*
- "The industry should only produce good products that are Fairtrade, and thereby demonstrate that they are taking their responsibility seriously." *Trelleborg municipality*
- "The industry should continuously provide us procurers with transparent information about their sustainability efforts. If they succeed in keeping track of their entire supply chain, and can ensure that all their coffee lives up to the highest sustainability standards, things would be very easy for us." *Västernorrland county council*
- "The industry should increase the offer of coffee that lives up to the highest sustainability standard." *Stockholm municipality*

FACT

Certifications and verifications

Sustainability certifications may serve as an efficient tool to public procurers. A large number of certification labels are offered on the market, but not all of them have the same scope. It is therefore important that public procurers are well acquainted with their differences. Below follows a brief overview of common sustainability certifications.

Global Coffee Platform

Launched in March 2016, the Global Coffee Platform (GCP) is an amalgamation of two predecessors: the 4C Association and the Sustainable Coffee Program. GCP is not a certification scheme; it is an entry-level standard for coffee production in which member companies commit to source an "increasing" amount of responsibly produced coffee. While 4C was limited to industry actors, GCP also invites civil society organisations. A core component of GCP is the "Baseline Common Code", which consists of 27 principles of sustainable coffee production. It also includes a list of unacceptable pesticides. The platform's ultimate objective is for all coffee production to achieve a baseline level of social, environmental and economic sustainability.¹⁰⁶ GCP is considerably less strict than the certifications within the industry, and although its promoters argue that it may serve as a stepping stone to more comprehensive certification systems, critics refer to it as the least serious initiative.

¹⁰⁵ Trelleborg municipality, which holds a Fairtrade diploma, appears to go the furthest with regards to sustainable procurement: it applies the same strict criteria to coffee as it does to cocoa, vanilla sugar, tea, pepper, ginger and bananas.

¹⁰⁶ Global Coffee Platform, Baseline Common Code, GCP_Doc_01_Baseline Common Code_v2.1_en, April 2016, available at http://www.globalcoffeeplatform.org/assets/files/GCP_Doc_01_Baseline-Common-Code_v2.1_en.pdf

UTZ Certified

UTZ it is one of the world's largest sustainability certification initiatives for coffee, tea and cacao. The UTZ standards are broad and encompass managerial, environmental and social/labour concerns. The UTZ code of conduct requires employers to adhere to a number of ILO conventions, including the eight core Conventions. The certification also prohibits certain pesticides and includes a system that enables coffee to be traced from the coffee plant to the supermarket. In 2015 UTZ took an important step towards strengthening its social aspect by introducing living wages to workers on large farms (which Fairtrade and Rainforest Alliance also have done). UTZ includes a premium to farmers. To be labelled with the UTZ logo, 90 percent of the product content must be certified.¹⁰⁷ Critics accuse the certification of being weaker in comparison to other certifications.

Rainforest Alliance

The Rainforest Alliance provides support to farmers in the areas of more efficient production, protection of animal species, improvement of working conditions and the prohibition of certain pesticides. It monitors coffee as well as other products such as cocoa, tea, fruit, flowers and furniture. The certification does not constitute proof of organic products, but is instead an indication of lower levels of harmful chemicals. As part of the Rainforest Alliance certification, employers must adhere to the ILO conventions on labour rights. The certification programme strives to improve farmers' incomes through more efficient farming, and offers various training, for example on bookkeeping, to farmers. The requirement to pay a living wage is scheduled to be incorporated into the standard in 2016.¹⁰⁸

To carry the seal, at least 30 percent of the coffee beans in a Rainforest Alliance-certified package must come from a certified farm. The remaining 70 percent can be from conventional (unaudited) farms. (For example, the Rainforest Alliance label on Löfberg's most popular coffee "Mellanrost" reads, in small text, that 30 percent of the beans are certified.) The seal can also be used without indicating a fixed percentage, which means that at least 90 percent of the content is certified.¹⁰⁹ Critical environmental organisations have accused the certification of being too lenient in its demands on farmers, especially with regard to the amount of pesticides that are allowed in the production.

Fairtrade

Fairtrade is a certification focused on ethical production, with human rights and development at its core. It is the certification with the most far-reaching ethical and social requirements. The overall goal of Fairtrade is to ensure that producers receive a price that covers the cost of sustainable production for their produce (Fairtrade products include coffee, tea, vanilla), which protects them against price fluctuations on the world market. This is done by guaranteeing a minimum price to small-scale farmers. The programme also entails a fixed premium for the product that is sold, which is invested in the local community (e.g., in the form of a school or clinic). Fairtrade also includes environmental requirements, although less strict than KRAV, and provides an economic incentive to farmers who also become organic certified.¹¹⁰

According to Fairtrade Sweden, 98 percent of the Fairtrade-certified coffee sold in Sweden in 2015 was also organic certified. Although the demand for Fairtrade products is rapidly increasing, certified farmers have struggled with unsold produce in the past. To be labelled with the Fairtrade logo, 100 percent of the product content must be certified.¹¹¹

KRAV

The Swedish initiative KRAV is, together with the EU Ecolabel, the most far-reaching certification related to prohibiting the use of chemical pesticides and fertilisers. These certifications also distinguish themselves in that their criteria must be met from the start, as opposed to the gradual improvements that most other certification schemes accept. KRAV is a member of the International Federation of Organic Agriculture Movements, the international control body for organic farming. The KRAV label is found on a wide range of products. KRAV also includes basic social criteria; to date it has not intended to be a substitute for social certifications, but it is currently developing this aspect of its programme. Coffee packages with a KRAV label must contain 100 percent organic certified coffee.¹¹²

EU Ecolabel

The EU Ecolabel programme is a voluntary labelling scheme designed to help consumers within EU member states identify products with the lowest environmental impact. It is awarded by independent third-party organisations via a verification process. The scheme is limited to environmental conditions and does not emphasise the social aspects of producing a product. Currently, the label does not include a product group for food or feed products, but covers a wide range of goods including textiles, electronics, cleaning products and paint. The EU Ecolabel offers guidance on how it can be used in the implementation of environmental criteria within public procurement.¹¹³

107 UTZ Website, available at <https://www.utz.org/> (retrieved 20 September 2016).

108 Rainforest Alliance Website, available at <http://www.rainforest-alliance.org/about> (retrieved 20 September 2016).

109 Rainforest Alliance Website, available at <https://thefrogblog.se/2014/12/19/varfor-tillater-rainforest-alliance-30/> (retrieved 20 September 2016).

110 Fairtrade International Website, available at <http://www.fairtrade.net/about-fairtrade.html> (retrieved 19 September 2016).

111 Swedwatch interview with Elisabet Lim, Product and Key Account Manager Cotton, Coffee, Wine, Cosmetics, Timber, Gold, Fairtrade Sweden, 24 September 2015.

112 KRAV Website, available at <http://www.krav.se/om-krav> (retrieved 20 September 2016).

113 European Commission Website, available at <http://ec.europa.eu/environment/ecolabel/products-groups-and-criteria.html> (retrieved 18 September 2016).

5.4 Sweden's next steps

In this context, will public procurers eventually be able to solely purchase goods produced under sustainable conditions? “Yes”, according to Pauline Göthberg, National Coordinator for sustainable procurement at the Swedish county councils. But in order for that to happen, a number of internal challenges must be addressed. She explains “We need to see strong political leadership paralleled with internal capacity building”. According to the UNGPs the state has a duty to protect human rights – not least through its procurement activities. “Expressing political expectations on business enterprises bidding for public contracts to address their social and environmental impact is important,” according to Göthberg. She also highlights the unique opportunity that county councils have to use their joint buying power to create a demand for sustainable products and services.

“Showing political leadership is necessary but not sufficient,” says Göthberg. “We also need adequate resources to build up internal competence and to, based on contractual agreements, monitor and measure performance results and accountability.” She adds that “Sustainable procurement is a matter of strategic importance and we therefore need to have an organisation that can identify, prevent and mitigate risks associated with human rights, labour rights, environment and corruption through our supply chains.” An important element of this relates to competence among public procurement officials: “Enhancing the competence among public procurers will allow them to better identify and manage risks, and above all, to ensure adequate follow-ups of the criteria that have been set.”¹¹⁴ “Looking ahead, strong political leadership together with adequate internal resources will be key in making sustainable procurement an effective tool to reach a sustainable development,” concludes Göthberg.

Lisa Sennström at the National Agency for Public Procurement agrees that more resources must be allocated, especially to smaller municipalities that often struggle to match the competence of larger public authorities. Sennström also stresses the need for greater cooperation and practical tools: “It is not realistic to demand that every small municipality travels to India to conduct its own factory audits. Our agency has an important role to play to increase cooperation, disseminate information, point to risks and provide efficient tools that make the procurements more sustainable.”¹¹⁵ The National Agency for Public Procurement is currently updating its CSR Compass, the tool that helps novice public procurers establish a more sustainable procurement process. The agency is also developing a web-based database that will compile information about suppliers’ social considerations and help contracting authorities monitor suppliers’ compliance with social clauses. The update is taking place in collaboration with the county councils and SKI to ensure that the criteria and monitoring processes are harmonised between the different agencies.¹¹⁶

114 Swedwatch interview with Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 16 March 2016.

115 Swedwatch interview with Lisa Sennström, Policy unit, The National Agency for Public Procurement, 21 March 2016.

116 Swedwatch interview with Lisa Sennström, Policy unit, The National Agency for Public Procurement, 21 March 2016.

6. Conclusions and way forward

From an international perspective, Swedish contracting authorities are at the forefront of taking social considerations into account in public purchasing. So what can the contracting authorities throughout Europe learn from the Swedish example?

The main challenges concerning social criteria boils down to a lack of risk awareness and lack of monitoring. The Thai poultry case shows that although the county councils have been working with social criteria for several years through a systematic and structured process, they failed to identify food items in general (and processed poultry meat in particular) as a high-risk product. The same applies to municipalities that focused on animal welfare but missed the impact on humans. The work conditions and social risks related to the production of surgical instruments were initially also characterised by unawareness and insufficient knowledge.

If performed well, a process of on-going risk assessment enables contracting authorities to work proactively instead of responding to findings from third parties. The risk assessment will also stipulate how contracting authorities can formulate their social criteria and what they can expect suppliers to be aware of during the monitoring stage. For these reasons, risk assessments are key. The enhanced focus on risk assessment and broadened risk categories by the Swedish county councils are therefore important.

When it comes to monitoring, it is evident that the contracting authorities are struggling. As the case of Pakistani production of surgical instruments show, real change on the ground is a result of long-term commitment and monitoring from the contracting authority's side. Without the commitment, positive change over human rights and work conditions is not likely to materialise, and setting social criteria risks becoming merely an administrative burden with little actual impact. Monitoring is therefore crucial. For this reason, the gap in monitoring among contracting authorities in general in Sweden is troublesome, although positive examples of the contrary also exist (such as the joint auditing through SKI and the county councils' system for social considerations).

Competence, time, resources and political directives are identified as areas in need of improvement. If public authorities are to carry out due diligence and take full social responsibility, policy- and decision-makers at all levels need to allocate resources and support for social considerations in general, and to enable monitoring in particular. By doing so, they will truly acknowledge public procurement as a powerful tool for sustainable development, as recognised by the EU commission and in the UN SDGs.

In order to make monitoring and the entire process of social considerations more efficient, collaboration, consolidation and information-sharing is needed. Although not perfect, the collaborative process of the Swedish county councils, as well as the joint auditing scheme among municipalities through SKI, are two good examples of how social considerations can be systematically included in the procurement process in order to build leverage through joint purchasing power. Doing so pushes suppliers to comply with social standards.

By working together at different levels, public authorities also avoid potential overlaps in monitoring and auditing. Risk assessments, policy documents, methods, procedures and audit reports can easily be shared to build capacity and streamline efforts. Consolidation of criteria and monitoring procedures can also help suppliers to understand what is expected.

The surveyed contracting authorities in this report procure coffee certified with at least one sustainability certification label. The procurement of coffee stands in stark contrast to other goods, such as poultry, where no equivalent certification exists. Goods that are not covered by certifications require higher risk awareness and close monitoring from public procurers. Therefore, credible certifications should be used when available, since they constitute an efficient tool in monitoring and validating social criteria.

In the Swedish context, the aspiring collaboration between county councils and SKI, the approaching steps of Kammarkollegiet and the increasing support from the National Agency of Public Procurement are steps in the right direction. From a European perspective, coordination and collaboration across country borders have the potential to enhance socially responsible procurement processes. This should be further explored and utilised. In doing so, contracting authorities can learn from the Swedish example in order to build sustainable systems of implementation and avoid pitfalls. If processes are consolidated and systemised throughout Europe, there are possibilities to build substantial leverage and apply considerable pressure on suppliers to create real positive change on farms and factory floors around the globe.

In summary, the report's findings indicate that:

- Strict demands for social considerations in public procurement contracts can create positive change on production sites.
- Efficient implementation of social criteria must be preceded by a product-specific risk analysis. It also requires competent procurement officials who have adequate knowledge of human rights risks in supply chains.
- Continuous monitoring is crucial for real improvement of labour conditions on production sites.
- Financial resources must be allocated to ensure that:
 - adequate competence is obtained among public procurement staff
 - there is sufficient monitoring and dialogue with suppliers – as well as physical audits.
- Credible certification schemes are efficient tools that can facilitate the implementation and monitoring of social criteria. For products that are not covered by credible certification schemes, long-term engagement and active dialogue with suppliers is crucial.
- There are many untapped opportunities for coordination and collaboration between contracting authorities within the EU that can make the implementation of social criteria – and the impact of such criteria – more efficient.

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- Pauline Göthberg, National Coordinator, Sustainable Procurement, Swedish County Councils, 16 March, 11 May, 7 June 2016.
- Peter Nohrstedt, Sustainability Manager, SKL Kommentus AB, 14 October 2015.
- Roni Barbosa, Director, Observatorio Social, 29 June 2015.
- Vilson Luiz da Silva, President, FETAEMG, Labour Union for Agricultural Workers in Minas Gerais, (Federação dos Trabalhadores na Agricultura do Estado de Minas Gerais), 2 July 2015.

Annex 1

Respondents to Swedwatch survey on social criteria in public procurement of coffee.

Contracting authorities

Complete replies submitted:

Karlskoga municipality
Trelleborg municipality
Eskilstuna municipality
Stockholm municipality
Västernorrland county council
Västmanland county council
Västra Götaland county council
Stockholm county council
Skåne county council
Regeringskansliet (government agency)
Kammarkollegiet (government agency)

Partial replies submitted:

Falkenberg municipality
Sörmland county council
Malmö county council
Malmö municipality

Abstained from responding:

Sölvesborg municipality
Uppsala municipality
Falkenberg municipality
Olofström municipality
Göteborg municipality

Swedish coffee roasters/companies

Complete replies submitted:

Löfbergs
Arvid Nordquist
Gevalia/Jacobs Douwe Egbert (JDE)
Zoégas/Nestlé

Abstained from responding:

Kahls Kaffe
Lindvalls kaffe

Annex 2

This annex highlights several key points in the EU Directives that relate to public procurement and does not purport to address all areas of interest. The articles outlined in this annex are from Directive 2014/24/EU¹¹⁷ on public procurement unless otherwise stated.

New EU Directives on public procurement

In 2011, the European Commission proposed the revision of the existing Directives¹¹⁸ regulating public procurement as well as the adoption of a directive on concession contracts.

The three directives - Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, and Directive 2014/23/EU on the award of concession contracts - were voted on by the European Parliament and adopted by the Council in 2014. EU countries had until 18 April 2016 to transpose the above-mentioned directives into national law.¹¹⁹

One of the main focuses of the new directives is social and environmental criteria. This is reflected both in the Articles and in the preamble to the Directives which states that “*Public procurement plays a key role in the Europe 2020 Strategy (...) as one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds.*”¹²⁰

Overview

Setting social criteria in public procurement is now a clear expectation on the part of the EU. Under *Principles of Procurement*, Article 18.2 promotes compliance with social and labour requirements in the performance of public contracts:

“Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.”

117 Full text of the Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC is available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=en>

118 Directives 2004/17/EC: procurement in the water, energy, transport and postal services sectors) and 2004/18/EC: public works, supply and service contracts.

119 Council of the European Union, Council adopts directives for the reform of public procurement, 6337/14 (OR. en) PRESSE 64, 11 February 11 2014, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/140975.pdf

120 Directive 2014/24/EU, preamble 2, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=EN>

Annex X includes reference to the eight ILO core Conventions, as well as conventions focused on environmental considerations.¹²¹ Although ‘appropriate measures’ will to a large extent be up to member states to define, the assertion is clear on that social criteria are an integral part of the public procurement process.

The directive clarify that social considerations may be taken into account at every stage of a public procurement process: as technical specifications, selection criteria, award criteria, and/or contract performance clauses.

Technical Specifications

Article 42.1 of the public procurement directive states that:

“The technical specification shall lay down the characteristics required of a works, service or supply. Those characteristics may also refer to the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life cycle even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.”

It is important to note that it is prohibited to refer to the general policies of the company, or to a specific make or source, or a particular process or to trade marks, patents, types or a specific origin favoring or eliminating certain products or undertakings. Requirements in technical specifications have to be linked to the subject matter, but do not have to be visible in the product or service provided.

Selection Criteria

When it comes to selection criteria, there is a new exhaustive list of what a contracting authority can request as evidence of the technical abilities of economic operators. Annex XII (referring to Article 58) state that *“an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract”* can be used as means of proof. This can be particularly relevant where technical specifications require processes not evident in the use phase and which can therefore only be assured through supply chain tracking. Selection criteria must also be related and proportionate to the subject matter of the contract. Contracting authorities cannot ask for over-arching supply chain mana-

¹²¹ ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise; ILO Convention 98 on the Right to Organise and Collective Bargaining; ILO Convention 29 on Forced Labour; ILO Convention 105 on the Abolition of Forced Labour; ILO Convention 138 on Minimum Age; ILO Convention 111 on Discrimination (Employment and Occupation); ILO Convention 100 on Equal Remuneration; ILO Convention 182 on Worst Forms of Child Labour; Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention); Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention); Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10 September 1998, and its three regional protocols.

gement systems. However, requirements can address the supply chain linked to the subject matter and contracting authorities can oblige the tenderer to demonstrate sufficient evidence of their ability to meet such selection criteria.

Exclusion

The directive also includes an option for contracting authorities to exclude suppliers deemed to be in violation of social- and labour-related standards. Article 57.4 (a) refers to Article 18.2 and Annex X (see above) and outlines that if a contracting authority can demonstrate “*by any appropriate means*” that a tenderer is in violation of any of the obligations referred to in Article 18.2, that tenderer may be excluded. These are discretionary grounds for exclusion and can either be left to each contracting authority to decide to apply or not, or up to each Member State to include as a requirement when transposing the directives.

Award Criteria

The *most economically advantageous tender* (MEAT) is used when including social considerations in award criteria. According to Article 67, the most economically advantageous tender shall be identified on the basis of the price or cost (using a cost-effectiveness approach, such as life-cycle costing), and may include the best price-quality ratio which shall be assessed on the basis of criteria. These criteria include qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. The concept of MEAT can take the form of one of the following ways to choose the winning tender:

- Lowest price – the price that is paid to the supplier;
- Lowest cost – this includes the price, but also other costs incurred in running, servicing and disposing of the product. It may include the cost of energy consumed, and other costs related to environmental externalities. In calculating lowest cost, the contracting authority should use a life-cycle costing method as defined in Article 68.
- Best price-quality ratio (BPQR) – this allows the procurer to score a tender against the authority’s own award criteria. This list can include environmental and social criteria, which are linked to the subject matter of the contract, but must include either a price or cost criterion as well.

Important to note is that any BPQR criterion must be formulated in a way that will allow the contracting authority to effectively verify the information provided by the tenderer and to decide how well the tender meets that criterion. Such criteria must therefore be clearly formulated and based on objective and verifiable grounds.

Article 68 encourages public authorities to consider the full life-cycle of products in their purchasing decisions, not only the immediate price. Contracting authorities may consider criteria related to production of the works, services or supplies to be purchased. This may include incorporating costs of improving labor standards in manufacturing countries in tender evaluations. According to Article 67.2, Member States may

stipulate that contracting authorities are prohibited from using price- or cost-only in award criterion, thereby requiring a BPQR approach.

Contract Performance Clauses

Article 70 states that as long as the requirements are linked to the subject matter of the contract and are indicated in the call for competition or in procurement documents, contract performance clauses may include social requirements. Contract performance clauses are verified only during the execution of a contract and cannot be used as a decisive factor in awarding contracts. Requirements contained in contract performance clauses are nevertheless mandatory and can be used to improve the performance of the supplier without excluding suppliers who do not meet the requirements at the time of the bidding process. At bidding stage, the tenderer promises to perform the contract in accordance with requirements by way of a simple declaratory statement.

By combining mandatory requirements in the form of contract performance clauses with optional requirements in the form of award criteria, public authorities could support suppliers that demonstrate ethical manufacturing practices at the time of bidding. Award criteria could focus on more progressive processes that demonstrate proactive efforts to address risks. Such criteria could allow a higher immediate cost price. Suppliers unable to demonstrate such processes could still be awarded the contract, but without any compensation on price. Thus, although no suppliers would be excluded, competitive advantage would be gained by those with relevant processes in place. Any supplier awarded the contract would nevertheless be obliged to adhere to a code of conduct for protecting labour rights, as detailed in contract performance clauses.

Abnormally low tender

Article 69.3 states that contracting authorities shall reject a tender where they have established that the tender is abnormally low due to lack of compliance with obligations under Article 18.2, i.e. social requirements.

Labels

A further development in the new directives is a clarification regarding the use of labels. Article 43 states: *"Where contracting authorities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics"*.

This means that the contracting authority is no longer required to include an exhaustive list of the certification criteria and can simply refer to the specific label in question. However, the authority must also accept other equivalent labels. In some cases where the tender can't provide a relevant label, but where the tenderers' technical dossiers proves fulfillment of the certification standard in question, this shall also be accepted as means of proof of compliance.

Implementation of the EU directives in Sweden

In June 2016, the Swedish government put forward a bill¹²² on new procurement legislation based on the EU Directives. In Chapter 17 § 4 it is stated that:

”A contracting authority shall, if it is needed, require the supplier to perform the contract under specified conditions in accordance with ILO core Conventions, if the work is performed under such conditions that the Swedish labour law is not applicable.

The authority shall also require the supplier to ensure that the subcontractors directly involved to perform the contract fulfil the conditions set out in the first section.”

The definitions of “if it is needed” and “subcontractors” are vague. It remains uncertain to what extent suppliers throughout global supply chains are included. Regardless, it can be expected that Swedish contracting authorities will have to apply social criteria to a greater extent if the article comes into force.

¹²² Sveriges Regering, Regeringens proposition, 2015/16:195 Nytt regelverk om upphandling, 2016, available at <http://www.regeringen.se/contentassets/5cc3302198594030a4coa75cff492da2/nytt-regelverk-om-upphandling-del-1-av-4-kapitel-1-21-prop.-201516195>

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