

6. STATES AS ECONOMIC ACTORS

6.1 The Key Issues

The commercial nexus between the State and the private sector can be positive in human rights terms, but can also be associated with abuses and ambiguities about accountability – particularly regarding international activities and operations outside the domestic jurisdiction of the controlling State, such as by State-owned enterprises (SOEs). States have only recently started responding to the need for greater accountability for their economic activities, but also the diplomatic and commercial opportunity of better aligning their economic power with their international obligations, including human rights.

States can exercise powerful incentives and disincentives over companies registered in their jurisdiction and operating within their territories. This influence is, of course, at its highest if the State itself owns the company in question, but even publicly listed and privately owned companies can be influenced by States, for example when States or sovereign wealth funds own a significant percentage of the shares (section 6.2). States are also powerful customers. Public procurement represents a significant part of the GDP of most countries, and in some markets it can be a dominant force (section 6.3). Finally, States can also be vendors – sellers of services or products to the private sector (section 6.4).

6.2 States as Owners or Part-owners of Companies

According to UNCTAD, there at least 650 transnational State-owned enterprises (SOEs) around the world doing business through more than 8,500 foreign affiliates, of which about 56% of such enterprises originate from developing economies.¹⁵⁷ In 2010, 19 of the world's 100 biggest multinational companies, as well as 28 out of the 100 biggest multinationals in emerging markets in 2009, were State-owned.¹⁵⁸ UNCTAD's 2011 World Investment Report notes:

The government is a majority shareholder in about 44% of these SOEs, and a holder of less than 50% of the stock in 42%. In the latter type of SOEs, the government is usually the largest minority shareholder, or owns 'golden shares' which enable it to influence the composition of the board of directors and the way the enterprise is managed. There are exceptions to this, where states own smaller percentages of shares more purely as a form of investment.¹⁵⁹

"SOEs" come in a large variety of forms. There are those owned and operated or managed by the State. There are also sovereign wealth funds (SWFs), which are a classic example of the portfolio investment model of States using specific investment vehicles. In the case of the **Norwegian Pension Fund**, which owns about 1% of privately owned tradable shares globally, this can represent significant leverage, and the Government of Norway is almost unique in having some aspects of human rights explicitly included in its fund management criteria. Some sovereign wealth funds have banded together under the banner of the International Forum on SWFs¹⁶⁰. They are bound by the Santiago Principles,¹⁶¹ which mention ethical standards and related risk criteria, but leave the parameters to each SWF to implement and disclose.

¹⁵⁷ UN Global Compact, "Working with SOEs", Human Rights and Business Dilemmas Forum (2012). Available at: <http://human-rights.unglobalcompact.org/dilemmas/working-soe/#.UpYPu2RdUr8>

¹⁵⁸ UNCTAD, "World Investment Report 2011: Non-Equity Modes of International Production and Development", (June 2011), reported in UN Global Compact, op. cit.

¹⁵⁹ For example the Government of Finland's 10% share in the mobile telephone company, TeliaSonera, which is mainly under private ownership in Sweden.

¹⁶⁰ <http://www.ifswf.org/>

¹⁶¹ <http://www.iwg-swf.org/pubs/gapplist.htm>

State ownership or part-ownership of business enterprises is not just a vestige of State-run economies, but rather has reemerged in its current form in every economy in the world. The OECD notes that SOEs are: "...prevalent in utilities and infrastructure industries, such as energy, transport and telecommunication, whose performance is of great importance to broad segments of the population and to other parts of the business sector".¹⁶² Banks can now be added to the list. In the aftermath of the financial crisis, the **UK** – one of the world's leading privatizers of previously publicly owned assets – renationalized a number of leading financial institutions to prevent them from failing. So too was the national rail infrastructure company renationalised in the UK during the 1990s. Importantly, there is an important opportunity for the 2014 update of the OECD Guidelines on Corporate Governance of State-owned Enterprises, to be fully aligned with the OECD Guidelines for Multinational Enterprises, including the new human rights chapter.¹⁶³

This suggests that SOEs are a permanent part of the economy in many States, although the business sectors involved will vary. Jurisprudence within the Council of Europe suggests that whether any business has "State-like duties", rather than just corporate responsibilities to respect rights, depends on whether it is carrying out a function normally associated with the State.¹⁶⁴ Beyond Europe this seems not to be the consensus position, partly because globally there is much greater variance as to what are regarded as public functions.

Interestingly, some private companies reflect that SOEs have an unfair advantage in the global marketplace in human rights terms. For example, the "Human Rights and Business Dilemmas Forum" of the UN Global Compact notes that SOEs:

- *Are more likely to pursue non-commercial objectives, including geostrategic, political and social objectives that trump company reputation or profitability (it should be noted, that where 'parent' governments do respect human rights – the opposite can equally be true, with SOEs used to support the human rights of citizens in a way that goes beyond commercial considerations),*
- *Are likely to be less transparent and accountable to markets and consumers than their non-government linked counterparts,*
- *Often enjoy a position of market domination due to the advantages conferred on them by their 'parent' governments, reducing their incentives for acting in a responsible, accountable way that will appeal to investors and customers*
- *Can operate with higher levels of impunity from legal sanction or political censure than other companies,*
- *May come under pressure to transfer knowledge and know-how to 'parent' governments that may then be misused to commit human rights violations,*
- *May – in certain circumstances – be subject to sovereign immunity, or may be used by governments to distance themselves from human rights abuses carried out on their behalf.¹⁶⁵*

Some States have specific a Government agency that administers and regulates SOEs, such as **China's** State-owned Assets Supervision and Administration Commission or **South Africa's** Department of Public Enterprises. Such agencies ensure their SOEs are internationally competitive and can raise funds in the international capital markets. As such, they have a strong role in guiding these SOEs' conduct at home and abroad. This is an obvious area for policy coherence efforts and a coherence opportunity between these SOE agencies and their foreign affairs ministries

¹⁶² OECD, "Guidelines on Corporate Governance of State-owned Enterprises" (2005), p. 9. Available at: <http://www.oecd.org/daf/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf>

¹⁶³ OECD, "Guidelines on Corporate Governance of State-owned Enterprises" (2005), p. 9. Available at: <http://www.oecd.org/daf/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf>

¹⁶⁴ *Forster v. British Gas plc*, case of the European Court of Justice, 1991, cited in Camilla Wee, "Regulating the Human Rights Impact of State-owned Enterprises: Tendencies of Corporate Accountability and State Responsibility", International Commission of Jurists (Denmark, 2008). Available at: <http://www.reports-and-materials.org/State-owned-enterprises-Oct-08.pdf>

¹⁶⁵ UN Global Compact, "Working with SOEs", Human Rights and Business Dilemmas Forum (2012). Available at: <http://human-rights.unglobalcompact.org/dilemmas/working-soe/#.UpYPu2RdUr8>

to ensure human rights are respected by States' SOEs anywhere in the world. In this context, human rights can even serve a beneficial diplomatic function and aid for bilateral cooperation, such as has been demonstrated between **Norway** and **China** who announced in late-2012 a cooperation agreement between their two Governments and their respective State-owned extractive companies on issues relating to sustainability, including human rights.¹⁶⁶

Some countries' policies and regulation target SOEs for greater accountability and transparency on social and human rights issues. Much regulatory activity has been seen around SOE disclosure and transparency in particular, with an increasing number of countries targeting SOEs with disclosure regulations, including: **Brazil, China, Ecuador, Finland, France, Iceland, Indonesia, India, the Netherlands, a, South Africa, Spain and Sweden.**¹⁶⁷ **Finland** for example issued a Government Resolution on State Ownership Policy 2011,¹⁶⁸ asking non-listed state-owned companies and State majority-owned companies to report their sustainability performance in an accurate and comparable manner, with an Annex featuring a reporting model based on the GRI's G3 Guidelines. **India's** recently revised Sustainable Development and Corporate Social Responsibility Guidelines for Central Public Sector Undertakings (CPSEs), issued by the Indian Department of Public Enterprises (DPE)¹⁶⁹, which entered into force in April 2013, have a special focus on employee rights and welfare and include a dedicated section on transparency and disclosure of CPSE's strategies and activities. While not legally binding, in a letter dated 24 April 2009, the **Netherlands'** Minister of Finance informed Parliament that he expects the largest Dutch State Holdings to use the GRI Guidelines in their reporting practices, with due consideration of the effort needed to implement reporting practices and the goals that different companies expect to reach through reporting.¹⁷⁰ The Minister also expects to include all the largest holdings in the national Transparency Benchmark of the Ministry of Economic Affairs.¹⁷¹ In **China** SOEs are encouraged to publish sustainability reports, resulting in around 1,700 reports a year to date.¹⁷² **Sweden** issued mandatory Guidelines in 2007 for external reporting by State-owned companies requiring a sustainability report based on the comply or explain approach using GRI G3's Guidelines¹⁷³, which must be independently assured. Sweden explains this specific requirement for SOEs as follows:

*A responsible and professional owner should, among other things, take responsibility for issues relating to sustainable development, for example ethical issues, the environment, human rights, gender equality and diversity. All companies bear this responsibility but the state-owned companies are to set an example and be at the leading edge of this work.*¹⁷⁴

¹⁶⁶ See: Norway News, "Chinese Press Visited Norway" (14 December 2012). Available at:

<http://www.norwaynews.com/en/~view.php?7352a54jPb4837x2851pi844TK3887TV76HBh253Naq8>

¹⁶⁷ KPMG et al, "Carrots and Sticks: Sustainability reporting policies worldwide – today's best practice, tomorrow's trends". 2013 edition, pg. 17. Available at:

<https://www.globalreporting.org/resourcelibrary/Carrots-and-Sticks.pdf>.

¹⁶⁸ Government of Finland, "Government Resolution On State Ownership Policy" (3 November 2011).

Available at: http://valtioniomistus.fi/english/files/2012/01/Periaatepaaetoetes03112011_eng.pdf

¹⁶⁹ Indian Ministry of Heavy Industries and Public Enterprises, "Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises" (2013). Available at:

http://dpe.nic.in/sites/upload_files/dpe/files/Revised_CSR_Guidelines2_31122012.pdf

¹⁷⁰ See: Radostaw Wolniak and Patrycja Hąbek, "CSR Reporting in France and the Netherlands", 2013, pg. 95. Available at:

http://www.wydawnictwo.am.szczecin.pl/administrator/components/com_jresearch/files/publications/14_ZN_A_M_34106_Wolniak_Hubek.pdf

¹⁷¹ See: http://www.transparantiebenchmark.nl/en/about_transparency_benchmark/objective

¹⁷² See for example: Simon Zadek, "China: the path to responsible business and sustainable growth", The Guardian (23 March 2013). Available at: <http://www.theguardian.com/sustainable-business/blog/china-sustainability-corporate-social-responsibility>

¹⁷³ See: www.sweden.gov.se/sb/d/8739/a/94120

¹⁷⁴ Swedish Ministry of Enterprise: 'Energy and Communications: 'Guidelines for External Reporting by State-owned companies', November 2007, cited in Camilla Wee (2008) Op. Cit.

State-ownership looks set to be part of the world's political economy for the remainder of the century – some have even predicted it might become a defining part of it.¹⁷⁵ At present, there remains evidence that such ownership can still serve to shield these companies from their human rights responsibilities and in some cases facilitate the abuse of rights when these companies are operating outside of their national jurisdictions. There remain ambiguities under international law as to when such companies have human rights duties more similar to those of States – or human rights responsibilities more akin to private companies. What is beyond doubt, however, is that all SOEs have a responsibility to respect human rights, and are accountable for their human rights impacts and associated mitigations and preventative steps. In addition, there do seem to be increasing signs of more positive trends, with SOEs becoming more transparent about their own impacts and also engaging in local human rights dialogues in countries where they are operating.¹⁷⁶ As noted, some Governments seem also to be willing to explore the ways in which State-ownership can more explicitly be used as an area for diplomatic cooperation and as a lever for improving standards in third countries.

6.3 States as Customers

Public procurement is a powerful part of the political economy – amounting to between 15%-25% of the Gross National Product of OECD member states, and even more in developing countries.¹⁷⁷ Many States remain cautious about introducing human rights considerations into the procurement process, but the reasons for this risk aversion can be misplaced. In 2010 for example, the World Trade Organisation's (WTO) Director-General at the time Pascal Lamy, remarking on the traditional mistrust between the two issues, affirmed that human rights and trade are in fact mutually supportive, that "human rights are essential to the good functioning of the multilateral trading system, and trade and WTO rules contribute to the realisation of human rights".¹⁷⁸ Yet States and public authorities also fear legal challenges, particularly in countries with more litigious cultures and legal regimes. Some States may fear that companies will see human rights requirements as trade barriers, as akin to local content and other trade practices designed to favour local businesses.

Social issues may be taken into consideration in different ways at different stages in the procurement process. For example, since 2004, the **European Union** Procurement Directive has required that public procurement does not discriminate between tenderers and that all processes are open and transparent. The EU principles of equal treatment, transparency, proportionality, non-discrimination on grounds of nationality, and free movement of goods and services also apply to all public sector contracts.¹⁷⁹ More recently, the EU updated its rules on public procurement, integrating new provisions allowing for social and environmental considerations and innovations to be taken into account when awarding public contracts.¹⁸⁰

¹⁷⁵ See for example: Adrian Wooldridge, "The visible hand: The crisis of Western liberal capitalism has coincided with the rise of a powerful new form of state capitalism in emerging markets" *The Economist Magazine* (21 January 2012). Available at: <http://www.economist.com/node/21542931>

¹⁷⁶ Note for example the work of the **Myanmar** Centre for Responsible Business in Yangon, initially established by IHRB and the Danish Institute for Human Rights. Available at: <http://www.myanmar-responsiblebusiness.org/>. See also the membership of the Nairobi Process: A pact for responsible business in oil and gas exploration in **Kenya** and wider **East Africa**, established by IHRB and the Kenyan National Commission on Human Rights in 2013. Available at: <http://www.ihrb.org/about/programmes/nairobi-process.html>

¹⁷⁷ International Development Law Organisation, "Public Procurement". Available at: <http://network.idlo.int/eng/publicprocurement/Pages/index.aspx>

¹⁷⁸ WTO News, "Lamy calls for mindset change to align trade and human rights" (13 January 2010). Available at: http://www.wto.org/english/news_e/sppl_e/sppl146_e.htm

¹⁷⁹ Equality and Human Rights Commission, "Buying Better Outcomes: mainstreaming equality considerations in procurement" (March 2013), pg. 8. Available at:

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/buying_better_outcomes_final.pdf

¹⁸⁰ See further: EurActiv, "EU brings innovation into public procurement rules" (15 January 2014). Available at: <http://www.euractiv.com/future-eu/parliament-approves-new-rules-pu-news-532783>

Rather than acting as a trade barrier, human rights – if appropriately integrated into the procurement process – can align with WTO as well as regional trade requirements such as those of the European Union. There is nothing to prevent more explicit references to human rights, as noted during a recent enquiry within the **UK** Parliament:

The Procurement Directive enables contractors to exclude suppliers if they have been found guilty of human rights breaches. ...it is perfectly open for public sector procurers to stipulate compliance for basic human rights principles as well, particularly where we are talking provision of care services or things which directly engage human rights provisions as well. So it is not that we do not think that these things are important, but there are opportunities to bring this into play and we need to make sure that they are done across the public sector.¹⁸¹

It should be noted that the Government of the **Netherlands** has already introduced social criteria for its own procurement, based on ILO Core Conventions¹⁸², and the **US** Government recently extended its own provisions to include due diligence measures relating to forced child labour and human trafficking¹⁸³. Other Governments are looking closely at the issue, including **Norway**, **Northern Ireland** and **Scotland**¹⁸⁴. **Finland** for example recently issued a guide to socially responsible public procurement to enable its agencies to incorporate social and human rights criteria within their processes.¹⁸⁵ Additionally, the inclusion of certain human rights within local authority procurement is practiced in a number of **Scandinavian** and **Baltic** cities, as well as **San Francisco**, and procurement for mega-sporting events such as **London 2012 Olympics** or the **Glasgow 2014 Commonwealth Games**.¹⁸⁶ In **England**, equality outcomes can already be a standard consideration, whether this relates to ethnicity, age, sexual orientation or disability, for example:

Incorporating equality outcomes, where relevant and in a proportionate way, should be a normal part of designing and specifying a service. It is important that they are considered upfront before the procurement process starts. This will help identify the specific needs of different potential users and allow them to be appropriately

¹⁸¹ Evidence given by the **UK** Government to the Parliamentary Human Rights Joint Committee, No.287, Human Rights and the UK Private Sector, 2009. Available at: <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/5/9071405.htm>

¹⁸² For further details on the **Dutch** Government initiative see, for example: Gisela ten Kate, "Tying public procurement to human rights standards" SOMO (August 2013). The author notes: "These criteria contain the fundamental principles of the International Labour Organisation (ILO): 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 the elimination of discrimination in respect of employment and occupation. For some specific sectors, such as cacao, garments, flowers and tea, additional criteria are being formulated with regard to a living wage, fair trade principles and statutory working hours. Under this policy, selected contractors must indicate the existence of social risks. If they do, the contractual requirements may include disclosure of suppliers and an action plan to respect ILO standards. In theory, the contract can be terminated if the company fails to live up to the performance requirements." Available at: <http://www.thebrokeronline.eu/en/Blogs/Spurring-economic-transition/Tying-public-procurement-to-human-rights-standards>

¹⁸³ The **US** 2013 Ending Trafficking in Government Contracting Act amends and strengthens the protections in section 106(g) of the Torture Victims Protection Act by prohibiting in all federal contracts acts that directly support human trafficking and by requiring compliance and certification measures to help prevent trafficking and related acts. See further: <http://www.humanrights.gov/2013/05/01/u-s-government-approach-on-business-and-human-rights/>

¹⁸⁴ Note, for example, the work of the **Scottish** Human Rights Commission on social care procurement, now published by the Scottish Government. Available at: <http://www.scottishhumanrights.com/ourwork/business/businessinscotland>

¹⁸⁵ Ministry of Employment and Economy, Government of **Finland**, "Guide to Socially Responsible Public Procurement" (November 2013). Available at: http://www.tem.fi/files/38102/TEM_Opas_Sos.hank_EN_netti.pdf

¹⁸⁶ See further: IHRB, "Striving for Excellence: Mega-Sporting Events and Human Rights" (October 2013). Available at: http://www.ihrb.org/pdf/2013-10-21_IHRB_Mega-Sporting-Events-Paper_Web.pdf

reflected in the process. Properly done, this should help you buy better outcomes and therefore achieve value for money, while helping to meet your corporate objectives.¹⁸⁷

There are three stages of the public procurement process where human rights might be appropriately applied:¹⁸⁸

When Specifying Requirements

Specific human rights criteria can be made part of the requirements all bidders must meet when setting the tender. The challenge is finding the right balance between the need for value for money versus public policy preferences. For example the criteria might set a percentage for both price and quality considerations provided they are material to the product or service to be provided.

One current concrete example of this is in relation to the Governments that have made accession to the International Code of Conduct for Private Security Companies – and therefore due diligence relating to human rights contained within this Code and the Montreux Declaration upon which it is based – a condition for bidding for Government contracts. States known to have already implemented this practice include the **US, Switzerland and Finland**.

When Selecting Candidates

The rights of specific vulnerable groups can be integrated into the selection process, including at the first stage in specifying human rights, labour and other social development qualifications in the bidding documents themselves. For example, some local authorities have specified child rights, disability rights or the rights of older persons when inviting tenders for local transport or transport design. Some states give preference for minorities-owned businesses, such as by ethnic minority groups or disabled persons. Three authorities are known to have invited children and older persons to “test” short-listed applicants to see if, in their opinion, the applicants had met the design or service specification, enabling the participation of these vulnerable groups in assessing the robustness of the procurement process.

When Monitoring Effectiveness of the Service or Product Provided

Most contracts will have provision for “grave professional misconduct” under which penalties might be incurred or contracts might be revoked. However, such professional misconduct is rarely clearly defined and itself contributes to the risk adverse culture surrounding public procurement. Clearly definitions of misconduct, which might include the non-respect of human rights, might give both the State as well as the business a clearer understanding of the boundaries of acceptable behaviour during the life-span of a project.

Given the above, there is evidence that human rights is beginning to find its way into public procurement when it meets the standards of non-discrimination, transparency and equal treatment in relation to all tenderers and when human rights are material to the product or service in question. The procurement process itself allows the public authority to create its own “legal microcosm” for doing so, and legal challenges by tenderers are much less likely if the human rights in question are internationally recognised, such as those within the UN Bill of Rights or the ILO Core Conventions.

¹⁸⁷ UK Equality and Human Rights Commission, “Buying Better Outcomes: mainstreaming equality considerations in procurement” (March 2013). Available at:

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/buying_better_outcomes_final.pdf

¹⁸⁸ See the work of Jamie McRorie, on which this analysis is based: “Public Procurement and Human Rights” Parts 1 (2008) and 2 (2009), Scottish Human Rights Journal. Available at:

<http://www.scottishhumanrights.com/publications/journal/article/issue43procurementhumanrights> and <http://www.scottishhumanrights.com/publications/journal/article/issue44articleprocurementp2>

The implications for States are two-fold. On the one hand, States with very accessible public markets, i.e. into which it is easy for foreign companies to compete for public tenders, such as **Finland** for example, can and do already specify human rights requirements at the national and local level. On the other hand, businesses from such accessible markets also report that they face barriers to entry when trying to bid for public tenders in other parts of the world – places where there are at present rarely human rights content to tenders.¹⁸⁹ Given there would be no national interest in reducing national social standards, there is a case to be made for further human rights specifications to best safeguard the quality and impacts of such services. In fact, States such as Finland that have already begun integrating human rights considerations and processes to their public procurement also have a compelling national interest in encouraging other States to do likewise in order to provide a more level playing field for their own companies when operating abroad.

6.4 States as Vendors to Companies

Much less has been written about the role States can have as a provider of raw materials, goods or services to the private sector. In theory, it is a major unexplored area of leverage in human rights terms.

States as the Provider of Raw Materials and Natural Resources

In most States, natural resources such as oil, gas and mineral deposits are sovereign property regardless of who owns the surface land. These deposits are a valuable resource to their domestic industries but also companies based in other jurisdictions. The need for States to source from other jurisdictions, for security of supply, is reflected in a large number of bilateral agreements between States, and sometimes also in agreements between the companies concerned and Governments of the States in which they are operating. The more cross-cutting nature of these agreements in relation to human rights has already been explored in section 5 of this report, but a few specific examples in relation to natural resources will be made here.

Whilst the Government of **Germany** does not explicitly refer to human rights in either of its bilateral agreements on raw materials with **Kazakhstan**¹⁹⁰ or **Mongolia**¹⁹¹, it does in the general policy of the German Ministry of Economics in relation to such agreements. Countries such as **Japan** and **Switzerland** have similar agreements. Similarly the Government of **France** has a bilateral agreement with **Niger** under which its mainly State-owned company mines for uranium for the French nuclear industry. Countries such as **China** also have a myriad of such supply agreements for their own industries. Others – such as the **UK** – have security and development agreements with countries such as **Somalia**, in contexts where oil and gas exploration by UK-registered companies can also take place.¹⁹² A number of **Gulf States** and companies have developed strong relations with a number of **African** countries for the provision of natural resources for their own industries.¹⁹³ It is not known whether specific references to human rights

¹⁸⁹ Ministry for Foreign Affairs, Government of Finland, “Survey on Internationalisation and Trade Barriers” (2013). Available at:

<http://formin.finland.fi/public/default.aspx?contentid=277185&contentlan=2&culture=en-US>

¹⁹⁰ “Agreement between the Government of the Federal Republic of Germany and the Government of Kazakhstan on Cooperation in the fields of raw materials, industry and technology” (2012). Available at: <http://www.bmwi.de/English/Redaktion/Pdf/agreement-kazakhstan-germany,property=pdf,bereich=bmwi2012,sprache=en,rwb=true.pdf>

¹⁹¹ “Agreement between the Government of the Federal Republic of Germany and the Government of Mongolia on Cooperation in the fields of raw materials, industry and technology” (2011). Available at: <http://www.bmwi.de/English/Redaktion/Pdf/agreement-between-germany-and-mongolia-cooperation-raw-materials-industry-technology,property=pdf,bereich=bmwi2012,sprache=en,rwb=true.pdf>

¹⁹² For example: Katrina Mansori “Former Tory Leader spearheads Somali oil deal” Financial Times (6 August 2013). Available at: <http://www.ft.com/cms/s/0/0a9e0f74-febe-11e2-b9b0-00144feabdc0.html>

¹⁹³ For example: Mirna Sleiman, “Wealthy Gulf Investors warm to Africa” Reuters (2 January 2013). Available at: <http://www.reuters.com/article/2013/01/02/us-gulf-africa-investment-idUSBRE9010B520130102>

are made in any of the above agreements, but the opportunity to integrate considerations within these and similar future agreements should be advanced.¹⁹⁴

States as the Provider of Services

States will often provide specific services for their own companies to facilitate trade and market entry. Some of these services have already been discussed in section 5 of this Report, and it is encouraging that some of these – such as export credit or trade-related services – are starting to align more explicitly with human rights standards.

In addition to those already mentioned, States can also provide security for companies as well many services including those relating to infrastructure, transport, energy, education and rule of law, all of which are critical to the effective operation of businesses. Labour provision is another interesting service area in which the States were often historically a primary labour provider to businesses. Today, the role of private or third party labour providers is now an integral part of how most labour markets operate. In a minority of countries, such as **Russia** for example, labour provision remains a core State function and therefore is directly guided by the human rights duties of the State. Labour provision in **China** has been a critical part of its economic development, and legislative developments in relation to labour providers have explicitly aligned these activities to international standards such as the core conventions of the International Labour Organisation.¹⁹⁵ Other States, such as **Bangladesh**, have admitted to having less well regulated labour providers but a sovereign interest in how these providers send workers to third countries and to protect their workers from labour exploitation prevalent in many destination countries.¹⁹⁶ The Government of the **Philippines** and **Mexico** are amongst those that have developed specific consular services to assist in the protection of rights of their migrant workers in specific destination countries.

States as the Provider of Products

States are not traditionally viewed as the provider of products – most of this is administered through public procurement – but financial products are one notable exception. Currencies and other financial products such as sovereign bonds and gilts are essential components of the way that financial markets work and are critical to any business worldwide. The recent financial crisis in **Europe** has demonstrated the critical role such products play in the enjoyment of human rights by whole populations – in particular the capacity of the State to protect and fulfil economic and social rights. State-backed pension funds are another example and no less controversial.

These are such a fundamental relationship that is deserving of a report in its own right, and as such all this Report can do in the limited space available is highlight this important area of further research and engagement. States are very significant vendors to the private sector in ways that sometimes escape analysis. Some of these are integral to the fundamental purpose of States, but others are more strategic and competitive in the global marketplace. Sometimes, such as in decisions to join specific currencies or monetary unions, States agree to provide services to each other and therefore indirectly condition the products and services available to the private sector.

¹⁹⁴ Things are more complex when the role of sovereign wealth funds is considered. There has been a good deal of alarm over claims of so-called “land grabs” by such funds, as well as private interests, over recent years. (See further: For example: Ambrose Evans-Pritchard, “The backlash begins against the world landgrab” Daily Telegraph (12 September 2010). Available at:

http://www.telegraph.co.uk/finance/comment/ambroseevans_pritchard/7997910/The-backlash-begins-against-the-world-landgrab.html). It is note-worthy that a few private companies have publicly distanced themselves from any such activities in their supply chains for reasons of respecting human rights. See further: Mark Tran, “Coca-Cola vows to axe suppliers guilty of land grabbing”, The Guardian (8 November 2013). Available at: <http://www.edie.net/news/6/Coca-Cola-vows-to-axe-suppliers-guilty-of-land-grabbing/>

¹⁹⁵ See further: <http://www.ilo.org/public/english/bureau/program/dwcp/download/china.pdf>, p 3.

¹⁹⁶ See for example, The Dhaka Principles for Migration with Dignity. Available at: www.ihrb.org. See also, European Commission, “Employment and Recruitment Agencies Guide to Implementing the UN Guiding Principles on Business and Human Rights” (2013). Available at: <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/>

Further analysis of the complexities of relationships, and implications for human rights, in States' role as vendors are needed.

6.5 Summary Note

States are powerful economic actors – they can use their ownership, buying and selling power to improve human rights protections within their own value chains and can offer a model to private actors as to how to behave. States have only recently started responding to the need for greater accountability for their economic activities, but also the diplomatic and commercial opportunity of better aligning their economic power with their international obligations, including human rights. Parliamentarians, business, investors and civil society should have high expectations of the State to make significant progress on this issue within the shorter term.

There have been increasing signs of positive trends toward transparency of State-owned enterprises (SOEs), and also their engaging in local human rights dialogues in countries where they operate. Some States have also shown willingness to explore ways that State-ownership can more explicitly be used as an area of diplomatic cooperation and a lever for improving social standards in third countries. While there may remain ambiguities under international law as to when businesses have "State-like" human rights duties, what is beyond doubt is that all SOEs, in their variety of forms, have a responsibility to respect human rights.

Within their public procurement processes, States can also incentivise companies to incorporate human rights considerations, including human rights due diligence, into their operations before they qualify for bidding for Government contracts. Few States currently do so, but indications are that some are actively looking at how best to use this leverage. For those States that have already begun integrating human rights considerations and processes into their public procurement, they have a compelling national interest in encouraging other States to do likewise in order to provide a more level playing field for their own companies when operating abroad.

Much less has been written about the role States can have as a provider of raw materials, goods or services to the private sector. In theory, it is a major unexplored area of leverage in human rights terms.