



# The Power of Procurement

## Public Purchasing in the Service of Realizing the Right to Food

### SUMMARY

This briefing note explains how public procurement can contribute to the progressive realization of the human right to adequate food, and how it already does so in a number of countries. It describes why public procurement matters for food and nutrition security strategies, and what it can achieve. It identifies which kind of public procurement should be encouraged, based upon country examples, and identifies five key principles that should be integrated into public procurement schemes and modalities, such as the need to target vulnerable groups; support food accessibility and adequate diets;

ensure environmental sustainability; and include participation, accountability and empowerment as strong features of public procurement schemes. It reviews frequently cited 'obstacles' to the implementation of some of these principles, including budgetary constraints, institutional and legal issues, and demonstrates that there is room to develop ambitious public procurement policies and programmes. It also addresses potential constraints presented by the WTO Government Procurement Agreement. It ends with a number of recommendations to policy-makers.

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## Introduction

The public sector is an extremely important purchaser of goods and services. Governments spend on average 12% of their GDP on public procurement in OECD countries, and slightly less in developing countries, although estimates vary.<sup>1</sup> All over the world, public authorities award contracts for food provision and food-related services for cafeterias in civil service buildings, hospitals, prisons, schools, universities, as well as social programmes such as in-kind transfers or social restaurants. For instance, the public catering sector in the UK represents some £2 billion per year (approx. US \$3 billion or €3,16 billion).<sup>2</sup>

The 2005 World Summit included the expansion of “local school meal programmes, using home-grown foods where possible” among the four “quick-impact initiatives” that should be implemented to achieve the Millennium Development Goals.<sup>3</sup> School feeding programmes exist in almost all high- and middle-income countries, as well as in 70 out of the 108 low- and middle-income countries, with support from the World Food Programme.<sup>4</sup> However, other procurement schemes hold even greater economic significance. This is the case especially for in-kind food aid programmes managed by public authorities. In 2010-11, federal food subsidies in India (in-kind transfers of grain for the most part) accounted for 0.9% of India’s GDP, while federal and state food subsidies accounted for 2.7% of total annual expenditure incurred by Indian federal and state governments.<sup>5</sup> In some countries public procurement of food has rapidly expanded over recent years. Brazil, for instance, increased its budget or its National School Feeding Programme fourfold between 2003 and 2011.<sup>6</sup>

The inclusion in public procurement programmes of certain non-economic objectives — buying social justice, in the phrase of Christopher McCrudden<sup>7</sup> — is not new. Governments have used their purchasing power to achieve important redistributive and developmental goals such as encouraging racial equality in employment (for instance in the United States and South Africa), promoting gender equality (several European countries), and empowering indigenous peoples (as used by Canada in order to increase the participation of First Nations peoples,<sup>8</sup> or by Malaysia in order to increase the economic empowerment of the native Malays or ‘Bumiputera’).<sup>9</sup>

Public procurement is not commonly associated with the human right to adequate food. Indeed, the debates on the reform of public procurement policies have usually been correlated either with the implementation of principles of openness, transparency and non-discrimination, as emphasized in the Agreement on Government Procurement (GPA) under the auspices of the World Trade Organization (WTO) that entered into force in 1995, or more recently with principles related to 'pro-poor development', food security and sustainability. At the 2005 World Summit (High-Level Plenary Meeting of the 60th session of the General Assembly), governments recommended 'the expansion of local school meal programmes, using home-grown foods where possible' and identified this effort as one of the four 'quick-impact initiatives' that should be implemented to achieve the Millennium Development Goals.<sup>10</sup> The procurement of local food products is receiving more support than at any time since the mid-2000s, generally for the benefit of small-scale farmers whose ability to sell their produce at remunerative prices is otherwise limited. In 2011, the United Nations Secretary General recalled that procurement can 'harness the power of the supply chain to improve people's lives', and emphasized that the enormous purchasing power of international organizations – the UN bought \$14.5 billion worth of goods and services in 2010 (approximately €10 billion) – can exert a positive influence on economic systems to the benefit of people.<sup>11</sup> Nevertheless, 'pro-poor' public procurement policies, let alone those specifically aimed at realizing the right to food, have traditionally not figured prominently among the development policies of most States and international agencies. And existing programmes remain limited, with some notable exceptions.

This briefing note explains how institutional purchasing can contribute to the progressive realization of the human right to adequate food, and how it already does so in a number of countries. **Section 1** describes why public procurement matters for food and nutrition security strategies, and what it can achieve. It highlights why initiatives such as the Home-Grown School Feeding programmes (HGSF) and the Purchase for Progress (P4P) programme have gained increased attention in recent years. **Section 2** then turns to discussing which kind of public procurement should be encouraged, based on country examples. This section identifies five key principles that should be integrated into public procurement schemes and modalities: such

schemes should target vulnerable groups; support food accessibility and adequate diets; ensure environmental sustainability; and include participation, accountability and empowerment. Finally, **section 3** reviews frequently cited 'obstacles' to the implementation of some of the principles identified in Section II, including budgetary constraints and institutional and legal issues. It argues that there is room to develop ambitious public procurement policies and programmes, even taking into account potential constraints presented by the WTO Government Procurement Agreement and by the EU directives on public procurement. The note concludes with a set of **recommendations** addressed to policy-makers.

## 1. Public procurement as a driver of food and nutrition security

Of course, governments have the option to procure food by disregarding social imperatives and sourcing indiscriminately from global markets in the search for the cheapest opportunities. However, in doing so it would risk exacerbating the prevailing dynamics of global food systems, whereby commodities produced by industrial operators can be imported cheaply in bulk – often creating a 'dumping' effect for domestic small-scale producers and adding to the numbers of those who will be in need of eventual state support, including publicly procured food aid. But public procurement can be used instead to support small-scale food producers, who are among the most marginalized in many developing countries, to improve their access to markets. This may have powerful impacts on the reduction of rural poverty. This is the rationale behind policies implemented in various countries and initiatives such as the Home-Grown School Feeding programmes (HGSF) and the Purchase for Progress (P4P) programme, launched in 2008 by the World Food Programme (see Boxes 1 and 2).

A wide range of actors such as national governments in several continents, food sovereignty advocates, United Nations agencies, and philanthropic organizations such as the Bill and Melinda Gates Foundation, increasingly support the use of social interventions such as school feeding for agricultural development purposes. This approach brings together two strands of food security policies:

### Box 1: Home-grown School Feeding Programmes

In 2003, African governments included a Home-Grown School Feeding Programme (HGSFP) in the Comprehensive Africa Agriculture Development Programme (CAADP), the agricultural programme of the African Union's New Partnership for Africa's Development (NEPAD). The programme takes note of the need to provide 50 million African school children with adequate nourishment, while stimulating local food production more widely. HGSF programmes are school feeding programmes that provide food produced and purchased within a country to the extent possible. The United Nations World Food Programme (WFP) has collaborated with the Bill and Melinda Gates Foundation, the New Partnership for

Africa's Development (NEPAD) and other partners to encourage the development of HGSF programmes. Such programmes link school feeding programmes with local small-scale farmer production by creating an ongoing market for small food producers. Home-grown school feeding programmes now exist in various countries such as Ghana, Nigeria, Kenya as well as Thailand and Japan, and have been conducted on a national scale in Ghana and Nigeria.<sup>124</sup> Such programmes have received increased attention from a range of development actors, including States, donors, international agencies, and philanthropic foundations.<sup>125</sup> A global network has been created.<sup>126</sup>

### Box 2: The 'Purchase for Progress' pilot initiative (World Food Programme)

In September 2008, the World Food Programme (WFP) formally launched its Purchase for Progress (P4P) initiative, which is probably now the best known example of a programme that aims at enhancing the development impact of food procurement activities. According to the WFP, P4P exemplifies the shift from food aid to food assistance that characterises its 2008-2013 strategic plan.<sup>127</sup> The P4P initiative is a five-year pilot programme that includes 21 countries in Africa, Asia and Central America, supported by the Food and Agriculture Organization of the U.N. (FAO), the Bill and Melinda Gates Foundation, the Howard G. Buffett Foundation and various donors.

As of 31 December 2011, WFP had concluded P4P purchase contracts for over 207,000 tons of food valued at US\$75 million (€ 57,7 million). The WFP expects 500,000 small-scale farmers to increase their incomes by \$50 (€35) through participation in the programme and aims to see purchases through

P4P modalities amount to approximately 15% of WFP's total spending on local food procurement in the pilot countries over the five years.<sup>128</sup> In 2009, P4P purchases represented 9% of local and regional purchases in participating countries.<sup>129</sup> In 2012, the WFP purchased 2.1 million tons of food worth \$1,1 billion (€ 0,83 billion).<sup>130</sup> The 207,000 tons purchased through the P4P therefore represent about 9,9% percent of the total purchases in volume and 6,8% in economic value.<sup>131</sup> A comprehensive assessment of the P4P, including econometric and statistical analyses, is ongoing but will not be released before the end of 2013, while a final evaluation is planned in 2014. In the meantime, a number of governments also implicitly acknowledged the potential of P4P to contribute to their national development goals by replicating and expanding the initiative, including buying from supported farmers' organizations to meet a portion of their requirements.

■ **Demand-assisted growth.** From this perspective, the strategic use of public procurement can kick-start a process of agricultural transformation in developing countries. The strategy holds that agricultural growth is necessary for poverty reduction, but is held back by small-scale food producers being disconnected from markets, the result of poor governance and infrastructure. Such constraints can be overcome by using social protection programmes (like school feeding) to drive a demand-assisted agricultural growth strategy. The improved access to markets that results from such an approach makes it easier, less costly and less risky for small-scale food producers to engage with input and output markets. The demand for food in such social interventions is also highly predictable, allowing farmers to plan production accordingly.<sup>12</sup>

■ **Economic (re)-localization.** Localizing (or re-localizing) economic activities, including food production and consumption, is now increasingly seen as an important component of sustainable development strategies. The social, economic and environmental benefits of localized public procurement strategies to farmers, citizens and consumers include a reduction of “food miles”, access to fresh and nutritious food, and allowing small-scale producers to sell their products, since large-scale producers and commodity buyers dominate the global food chains and are more competitive on larger markets.

Targeted procurement initiatives promoting small-scale farming systems can produce a range of direct and indirect benefits. Home-grown school feeding interventions guarantee a steady income flow to the producers and other supply chain actors, encouraging the development of new individual and collective skills; they may also create additional job opportunities.<sup>13</sup>

However, a series of obstacles need to be overcome in order to make public procurement work for small-scale food producers. Some frequently noted obstacles include limited access to suitable storage and post-harvest handling infrastructure, which results in increased post-harvest loss and spoilage; shortcomings in the ability of farmers’ organizations to help farmers improve productivity, pool marketable volumes, improve quality, identify markets, and negotiate sales; lack of access to markets, credit and information about market dynamics.<sup>14</sup>

These obstacles are magnified by a narrow definition of what constitutes “value for money” in public procurement schemes. Since the 1980s, a range of countries have developed cost-based contracting cultures that systematically favour ‘low cost’ options by stressing value for money in a limited sense.<sup>15</sup> This tendency has favoured traders, intermediaries, and large-scale corporate agri-food companies that have developed a buyer power enabling them to exert downward pressure on the prices they pay to farmers.<sup>16</sup> However, “the cheapest” is not necessarily “best value” when broader social, environmental and economic considerations are taken into account, including national development goals as well as States’ obligations to progressively realize the human right to adequate food (see Box 3). In the future, such ‘horizontal objectives’ — objectives that are not necessarily connected with the procured item’s functional objectives — may have to be admitted as relevant considerations in public procurement, to escape from an excessively narrow definition of what such schemes are meant to achieve.

## 2. Principles and examples for aligning public procurement modalities with the requirements of the right to food

Public procurement schemes are often addressed without taking into account human rights or even the specific concern of poverty alleviation in the domestic agricultural sector. Section 2 reviews a series of principles to align public procurement modalities with the normative and analytical framework of the human right to adequate food as provided by international human right law. Indeed, while a number of countries have used ‘sustainable’, ‘green’, ‘social’, or ‘ethical’ procurement as levers for accelerating the transition towards sustainable consumption and production systems, and while sustainable public procurement was identified as a key area of work for the 10-Year Framework of Programs (10YFP) on sustainable consumption and production mandated by the Johannesburg Plan of Action adopted at the 2002 World Summit on Sustainable Development,<sup>17</sup> there is no binding international definition of what constitutes a ‘sustainable public procurement’ scheme.

### Box 3: The right to adequate food

The right to adequate food is a human right recognized under international law, which protects the right of all human beings to feed themselves in dignity, either by producing their food or by purchasing it.<sup>132</sup> As authoritatively defined by the Committee on Economic, Social and Cultural Rights in its General Comment No. 12: “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement”.<sup>133</sup>

Ensuring the right to food requires the possibility either to feed oneself directly from productive land or other natural resources, or to purchase food. This implies ensuring that food is available, accessible and adequate. *Availability* relates to there being sufficient food on the market to meet the needs. *Accessibility* requires both physical and economic access: physical accessibility means that food should be accessible to all people, including the physically vulnerable such as children, older persons or persons with disabilities; economic accessibility means that

food must be affordable without compromising other basic needs such as education fees, medical care or housing. *Adequacy* requires that food satisfy dietary needs (factoring a person’s age, living conditions, health, occupation, sex, etc), be safe for human consumption, free of adverse substances and culturally acceptable.

Clearly, the requirements of the human right to adequate food have implications for the kinds of policies states should pursue regarding social justice, public health and environmental protection, including public procurement policies. Indeed, it has been made clear that the implementation of the right to adequate food requires the adoption of appropriate economic, environmental and social policies, at both the national and international levels, “oriented to the eradication of poverty and the fulfilment of all human rights for all”.<sup>134</sup> States are required to discharge their responsibilities arising from the right to adequate food “progressively”,<sup>135</sup> as well as “individually and through international assistance and cooperation”.<sup>136</sup>

To fill this gap, the Special Rapporteur proposes to set out a number of principles grounded in the human right to adequate food. The right to food obliges states to ensure physical and economic access at all times to adequate food or means for its procurement.<sup>18</sup> In the fulfillment of his mandate, the Special Rapporteur on the right to food has interpreted the requirements of the right to food in line with the General Comment No. 12 of the Committee on Economic, Social and Cultural Rights, which identifies four key components of the right to adequate food (paras. 7-13):

1. “The *availability* of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”;
2. “The *accessibility* of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights”. Accessibility is understood both as physical accessibility and as economic accessibility, requiring those who depend on food production for their livelihoods to receive

adequate remuneration for their work, allowing them to satisfy their own needs, and that net food buyers can afford the food that they purchase on the market;

3. “*Sustainability*” in turn is defined as being “linked to the notion of adequate food or food security, implying food being accessible for both present and future generations”;
4. “*Adequacy*” of diets requires “that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation”, requiring that measures are taken to “maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns”.

Many national and sub-national administrations have established public purchasing policies that seek to support local producers, linking them with local consumers. Public procurement approaches of this

sort can certainly make an important contribution to strengthening local food systems and therefore, as this note will illustrate, to the realization of the right to food. However, public procurement approaches can also contribute to the right to food by linking producers to consumers across borders, as in fair trade schemes that support livelihoods of small-scale food producers in developing countries.

Building on the requirements of the right to food, the Special Rapporteur has identified 5 key principles for reorienting public procurement policies. These policies should: (a) target vulnerable food-insecure groups such as small-scale food producers; (b) ensure that food producers receive remunerative prices for their production and that farmworkers benefit from living wages; (c) guarantee that diets are sufficiently diverse to ensure that individuals have access to the full range

of micronutrients required, and that the food provided is culturally acceptable; (d) ensure environmental sustainability; and (e) increase empowerment, participation, and accountability in the food system. Moreover, to be fully effective, public procurement policies and programmes should be integrated within right to food national strategies and framework laws, and be fully coordinated with other food security policies.<sup>19</sup>

The following sections discuss these five principles in greater detail. Drawing on examples from Brazil, India, the United Kingdom, as well as programmes supported by international agencies or regional organizations — such as the Home-Grown School Feeding Programmes (HGSF) and World Food Programme's Purchase for Progress (P4P) initiative —, this note shows that these principles are operational and already applied, with success, in many parts of the world.

**Table 1: Five principles for aligning public procurement modalities with the requirements of the right to food**

The requirements of the right to food	Principles for public procurement schemes
Targeting vulnerable food-insecure groups, and in particular small-scale food producers	<b>Principle #1:</b> Source preferentially from small-scale food producers and actively empower them to access tenders
Improving food accessibility	<b>Principle #2:</b> Guarantee living wages as well as fair and remunerative prices along the food supply chain
Ensuring adequacy of diets	<b>Principle #3:</b> Set specific requirements for adequate food diets
Ensuring environmental sustainability	<b>Principle #4:</b> Source locally whenever possible and impose on suppliers that they produce food according to sustainable methods
Guarantee participation, accountability, empowerment and coherence in policy-making	<b>Principle #5:</b> Increase participation and accountability in the food system

### **Principle #1: Source preferentially from small-scale food producers**

Procurement schemes should include clear procurement modalities favouring small-scale food producers (e.g. selection or award criteria favouring certain types of producers, decentralized small scale procurement processes, purchase quotas or exclusivity for small-scale food producers, choice of products mostly grown by small-scale farmers such as specific local types and varieties etc.).

Targeted actions vis-à-vis food-insecure vulnerable groups are expressly recommended by the UN Committee on Economic, Social and Cultural Rights, which notes that “socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes”.<sup>20</sup> States should therefore pay particular regard to the plight of small-scale food producers, including smallholders, pastoralists and herders, small-scale fishers and forest dwellers who together make up a significant share of food-insecure people. Public

procurement schemes can contribute to the realization of the right to food, providing they not only establish measures to source preferentially from small-scale food producers but also establish support measures to actively empower small-scale food producers to access tenders.

In the absence of targeted programmes, small-scale food producers are de facto excluded from many public tenders. Indeed, public procurement schemes tend to systematically favour economic actors who are capable of responding to large standard procurement and bidding processes. Traders and large-scale economic actors have many advantages over small-scale producers in this regard, even when the small-scale food producers are grouped in farmers' organizations: they have established processes, experience with tenders, more working capital and better access to finance.<sup>21</sup>

Different formulas have been used to ensure appropriate targeting of small-scale food producers. The Home-Grown School Feeding Programmes (HGSF) led by the WFP, for instance, target farmers who: own less than 3 hectares of land; face food insecurity and/or are living on less than \$2/day; have a reputation for hard work; have potential for increasing yields; belong to a membership-based cooperative; are willing to join a membership-based cooperative; and are located in areas where other agricultural aid agencies are present.<sup>22</sup> In the **P4P initiative**, the maximum farm size for accessing the programme varies from country to country (2 hectares in Ethiopia and Rwanda and 10 hectares in Mali and Burkina Faso).<sup>23</sup> Targeting women farmers is also vital to effectively benefit vulnerable and food-insecure groups.<sup>24</sup> The P4P initiative aims to include 50 per cent of women among beneficiaries, and is already approaching this target in many countries, with the notable exception of Ethiopia.<sup>25</sup> Obviously, targeting small-scale food producers means in practice working with intermediary organisations representing them, including farmers' associations and cooperatives.

**Brazil's Act No.11, 947 of 16 June 2009** provides that a minimum of 30% of the financial resources transferred by the federal government to states and municipalities in order to implement the National School Feeding Programme (PNAE), now covering more than 49 million children, must be used to buy food sourced from family-based farms, including indigenous communities, Quilombolas (descendants of Afro-Brazilian slaves),

and beneficiaries of land redistribution programmes. Family farmers are legally defined in Brazil's National Family Farming Act (Law 11.326) according to four requirements: the rural establishment (or undertaking area of activity) must not exceed four agrarian units (a measure defined by each municipality on the basis of prevailing agro-ecological conditions); the labour used in the related activities must be predominantly family-based; the family's income must come primarily from farming and smallholding activities; and the holding must be directly managed by the family.<sup>26</sup> In 2010, public authorities indicated that 1,576 municipalities were buying products from local family-based farms.<sup>27</sup>

The quota system established by Brazil in 2009, as part of the Zero Hunger strategy, is the first example of an innovative policy and a powerful tool for supporting family-based farms and specific vulnerable groups. By ensuring that public procurement schemes support family farms, it makes a significant contribution to the reduction of rural poverty, as well as to improved diets for children.

In terms of tendering modalities, the **P4P pilot programme** implements 'smallholder-friendly' procurement modalities, i.e. which have specifically been designed to deal with the difficulties that small-scale farmers face in selling to the WFP. These modalities include among others *pro-smallholder competitive tendering* (competitive tendering practices that are better suited to the needs of farmers organizations and small/medium traders, involving reducing tender sizes and waiver of the requirement of bag marking); *direct contracting* (purchasing directly from farmers' associations, sometimes through a warehouse receipt system that encourages the participation of small-scale farmers); and *forward contracting* (allowing for the use of contracts that specify a minimum price that WFP will pay upon future delivery, thereby reducing farmers' risk).<sup>28</sup>

These procurement modalities are not intended as long-term solutions, however. In the WFP's strategy, the P4P initiative aims to enable small farmers to gradually engage in formal markets, which for WFP means competitive tenders. The measures are designed to address specific constraints for a fixed period while farmers' organizations or small traders develop the capacity to engage with markets without external support. The anticipated transition through

the procurement modalities is from direct contracting through forward contracting to competitive tendering, while WFP country offices are encouraged to consider an 'up or out' strategy whereby they reassess their support to participants that fail to develop the capacity to engage in formal markets.<sup>29</sup>

**Brazil's Food Purchasing Programme** (*Programa de Aquisição de Alimentos*, PAA), established in 2003 to supply social assistance networks and to build a strategic food reserve, allowed for the public purchase of food items by the National Food Supply Company (CONAB) from targeted family-based farms, without a competitive bidding procedure. The food acquired by the PAA is channelled to local institutions serving food-insecure populations (including community kitchens and popular distribution centres). The impacts are significant. In 2009, PAA procurements totalled 590.55 million R\$ (approx. \$337 million - €235 million), and food was purchased from more than 130,000 family farms: though this represents less than 3% of Brazilian family farms, it marks a threefold increase since 2003, at the launch of the programme, when only 42,329 farms supplied to PAA.<sup>30</sup>

In contrast, **India's Public Distribution System (PDS)**, although an important component of India's national food security strategy, does not integrate modalities to source preferentially from small-scale food producers.<sup>31</sup> The PDS is the main vehicle of the procurement of subsidized food to millions of food-insecure households. It procures, stores, rations and subsidises the retailing of major staple food grains through an important network of government warehouses and food retail outlets. In 2012, more than 85 million tonnes of rice and wheat were held in stock.<sup>32</sup> The scheme was criticized in recent years because of its large contributions to government budget deficits, economic inefficiency and poor targeting.<sup>33</sup> In 2013, the National Human Rights Commission called for the PDS to be more inclusive, noting that "very large numbers of those who are hungry, poor or malnourished, and who need its support, are excluded" from the Targeted Public Distribution System as it is currently designed.<sup>34</sup>

While failing to target small-scale farmers, the PDS has nonetheless made efforts to decentralize its procurement policy in a way that prepares the ground for more ambitious geographical and social targeting on the purchasing side. Public procurement schemes

could have greater impacts on the incomes of depressed farming areas, and by extension on alleviating food insecurity, by sourcing agricultural products not only from breadbasket regions – such as Punjab in the case of India – but from all regions of a country. This represents a significant break from past practice. India's Public Distribution System dates back to the pre-independence era and conceives of government procurement on a country-wide scale. This means, in effect, that public purchases are concentrated among the country's key productive regions. The Food Corporation of India (FCI), set up in the early 1960s mostly purchased food grains from the states of Punjab, Haryana and Andhra Pradesh. In 1997-1998, the Decentralised Procurement Scheme was introduced to encourage procurement in non-traditional States, thereby extending the benefits of minimum procurement prices to farmers in more States. This system was also expected to improve efficiency and cut transportation costs.<sup>35</sup> However, the results of past attempts to greater decentralization have been mixed. Although the Decentralised Procurement Scheme has resulted in a diversification of the procurement of rice and wheat to non-traditional states,<sup>36</sup> the states of Punjab, Haryana and Andhra Pradesh still accounted for nearly 78 per cent of food grains procured for the central pool in 2007–08, and more than half the grains are still procured today from two States only, Punjab and Haryana.<sup>37</sup> In 2011-12, as part of the debate on the Food Security Bill, the National Advisory Council recommended further decentralization efforts, noting that the examples of the states of Chhattisgarh and Orissa showed it was possible to "convert erstwhile 'food deficit areas' into 'surplus areas' apart from benefiting small farmers through MSP [minimum support price] and incentivizing production".<sup>38</sup> The Right to Food campaign, an informal network of organizations and individuals committed to the realization of the right to food in India, has also advocated further decentralization,<sup>39</sup> a call echoed by academics who demanded decentralised procurement of food grains under the PDS "to ensure revival of agriculture in resource-poor areas".<sup>40</sup>

The National Food Security Act, No. 20 of 2013,<sup>41</sup> takes into account these concerns. It provides that the Central Government, the State Governments and the local authorities shall advance food and nutritional security, by striving to progressively realise certain objectives, including the revitalization of agriculture and improvements in procurement, storage and movement related interventions in the management of food stocks

(s 31 and Schedule III). The revitalisation of agriculture includes “ensuring livelihood security to farmers by way of remunerative prices, access to inputs, credit, irrigation, power, crop insurance, etc.”; and reforms in procurement include “incentivising decentralised procurement including procurement of coarse grains” and “geographical diversification of procurement operations”. Though the new legislation is still in the first phase of implementation, these are important and welcome organizing principles, that illustrate a desire to use food aid as a tool to contribute to rural development and to supporting the incomes of small-scale farmers.

In OECD countries, local authorities that reformed their public procurement policies have mostly tried to deliberately source from ‘local’ producers rather than from ‘small-scale’ food producers. However, in **Scotland**, the local council of East Ayrshire introduced a sophisticated tendering process that included the division of the contract into smaller parcels, and increased flexibility in regard to EU fruit and vegetable marketing standards in order to enable smaller suppliers and organic producers to access the programme.<sup>42</sup> In **Italy**, the municipality of Rome sources 2% of the food served in the city’s schools from social cooperatives that employ former prisoners or work land seized from the Mafia.<sup>43</sup>

Preferential sourcing from small-scale food producers should go hand in hand with building the capacity of small-scale producers’ organisations to grow, process and sell their produce. Capacity-building activities include training farmers and farmers’ organizations in commodity handling and storage, warehouse operation, quality standards, quality control, and relationship building with market actors, in order to enable them to aggregate and market greater quantities of quality products. Other specific interventions may be required to tackle the barriers these food producers face to entering tenders, including practical interventions such as supporting transportation for harvesting and access to equipment.

Capacity-building activities are included in **Brazil’s Food Purchasing Programme (PAA)** as well as in the **P4P initiative**. In Brazil, precarious logistical infrastructure and difficulties that family farmers face in delivering the agreed products were identified among the obstacles for municipalities to increase their sourcing from family farms. The PAA has meanwhile laid emphasis

on farmers’ organisations, particularly through certain sub-programmes that require public purchases to be made from formal groups and are thus only accessible to farmers’ organizations.<sup>44</sup> In addition, the PAA has enabled organized family farmers to access rural credit through public channels and reliable banks, which means that they are less likely to depend on exploitative money lenders (rural credit is provided at lower interest rates, with long term payback conditions, etc.). In the WFP’s P4P initiative, training sessions have taken place to enhance the ability of its recipients to achieve the quality standards required by WFP, reduce losses, and preserve the quality of foodstuffs during storage.<sup>45</sup> The **Purchase from Africans for Africa Programme**, inspired by Brazil’s PAA, also includes capacity-building activities: the capacity of small-scale farmers and farmers’ associations to grow, process and sell their produce is the subject of training activities.<sup>46</sup>

In addition to capacity building, public authorities should also take into account the risks that small-scale food producers may be encouraged to take on in order to enjoy the expected benefits of selling to procurement schemes. Public procurement guarantees, to a certain extent, access to market at remunerative prices — although how strong a guarantee this represents, and how remunerative the prices, shall depend on the specificities of each programme. On the other hand however, joining such programmes may require that farmers purchase certain inputs and invest in new technologies, or that they specialize in one crop — in other terms, take greater risks and shift to a more highly capitalized form of farming. Empowering food producers means designing, where relevant, appropriate mitigation and response strategies.<sup>47</sup>

## **Principle #2: Guarantee living wages as well as fair and remunerative prices along the food supply chain**

School feeding programmes, social restaurants and in-kind social support programmes may improve food accessibility for all citizens or targeted vulnerable groups. However, the focus of these policies on the beneficiaries of food services should not obscure the importance of sustainable food systems ensuring living wages to all workers along the supply chain, as well as fair and remunerative prices to food producers, in order to guarantee that they are also in a position to purchase adequate food.

Procurement modalities targeting small-scale food producers, combined with capacity-building measures, can yield significant positive effects. The impacts of the **P4P initiative** after three years of participation have been shown to include increased agricultural productivity, an increased percentage of surplus-producing households, and an increased amount of money put in women's hands.<sup>48</sup> The WFP also notes that even poorly performing farmers' organizations "can and will meet WFP quality standards if they receive adequate training and equipment and are rewarded for quality".<sup>49</sup> A review conducted across six countries also concluded that members of participating farmers' organizations had been able to scale up their production and bring the quality of their produce up to WFP standards.<sup>50</sup>

The stronger the requirements are imposing payment of a living wage to waged workers employed by the beneficiaries of public procurement schemes, and the better the remuneration of producers entering the scheme, the more public procurement policies will contribute to improving livelihoods and to multiplier effects on the local economy. Public authorities should ensure that contractors pay a 'living wage' to all waged workers — a wage that "provides an income allowing workers to support themselves and their families", as required under articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.<sup>51</sup> They should also monitor compliance with labour legislation: only companies paying living wages and complying with their obligations towards their employees should be able to access open tenders for public procurement.

Public authorities should also ensure that independent small-scale food producers are paid fair and remunerative prices for their products. As recommended by the Special Rapporteur in his report on contract farming, the pricing mechanisms should be clear and transparent and show how prices incorporate production costs, risks and returns.<sup>52</sup> While a variety of price models exist (e.g. spot market-based pricing, split pricing, fixed prices and flexible price model), in the view of the Special Rapporteur, the ideal pricing mechanism is one replicating the formula used in fair trade schemes. The producer should be guaranteed a fixed minimum price based on the need to meet sustainable production costs and to ensure a living wage for all the workers concerned (including family members, where applicable) (see A/HRC/13/33, paras. 14-17), but the prices paid by the buyer should be higher if market prices increase. Fair

trade contracts are also long-term, allowing planning and sustainable production practices; they are the result of a negotiation with farmers' organizations, and suppliers are paid a substantial share of the payment up front.<sup>53</sup> Procurement modalities, including award criteria for selection of contractors in open tenders, should reflect these important aspects. Disputes concerning the implementation of the agreed pricing mechanism should be subject to an independent arbitration mechanism.

**The Minimum Support Price (MSP) of India's PDS procurement policy** demonstrates the centrality of pricing questions to any procurement scheme. The Food Corporation of India procures wheat and rice through purchase centres at pre-announced procurement prices (Minimum Support Price) that are set by the central government. The food is then sold to state civil supplies corporations or food corporations at the Central Issue Price (CIP) that is also set by the government. The state then distributes the food to those below the poverty line through fair price shops or ration shops at 'ration' or 'issue' prices. The cost incurred by FCI in this operation is reimbursed by the central government. The 'fairness' of procurement prices is an important issue from a right to food perspective. The existence of MSPs, and the levels at which they are set, remain controversial. Farmers and right to food campaigners have called for increases in MSPs in order to reduce agrarian distress, while other actors recently advocated eliminating MSPs in the name of curbing inflation and ensuring cheap food for consumers. In the face of calls for the government to reduce or withdraw MSPs when food aid in India was revised with the proposal for a National Food Security Act, the Right to Food Campaign stepped up its defence of fair, remunerative floor prices for farmers, calling for MSPs to be set 'at least' 50% higher than the weighted average cost of production, regardless of issue prices.<sup>54</sup> The National Food Security Act, No. 20 of 2013,<sup>55</sup> confirms the reference to a minimum support price, though without setting precise reference levels at which this price should be set by the Central Government (s 2, (10)).

In **Brazil**, beneficiary farmers of the PAA food purchasing programme received three times the income of non-beneficiaries, who have limited bargaining power with intermediaries.<sup>56</sup> Inclusion in the PAA means predictable demand and hence basic income security for family farmers, who can sell to the programme at market prices until they reach a predefined (financial) threshold.

The introduction of fair trade criteria in public tenders is another example of how procurement can contribute to fairer pricing. Over 1,500 towns in 18 countries make commitments to increase their sourcing of fair trade products under the International Fair Trade Towns Campaign. **Spain** has passed a Law on Public Procurement allowing for the inclusion of fair trade criteria in public procurement,<sup>57</sup> and in **Italy**, seven regions (Toscana, Abruzzo, Umbria, Liguria, Marche and Friuli Venezia Giulia) have adopted the practice.<sup>58</sup> Many other examples could be cited in which, with or without explicit legislative authorization, local authorities rely on fair trade criteria in their public procurement policies.

### Principle #3: Set specific requirements for adequate food diets

Consistent with the duty to progressively realize the right to adequate food,<sup>59</sup> public procurement schemes should promote diversified diets and facilitate access to nutritious, micro-nutrient-rich fresh foods, especially for vulnerable poor consumers; preferably by integrating targets in order to decrease consumption of fats, sugars, salt and animal proteins. This is especially urgent in countries with rising child obesity levels.

In **India**, the Decentralised Procurement Scheme introduced in 1997-98, particularly for implementation of the National Mid-day Meal Programme (NMMP) — one of the largest school-feeding programme in the world, providing one meal per school day to around 150 million children —, included an objective to source from a wider variety of foods (such as millet, pulses, eggs, soy beans) in order to improve nutritional

outcomes. This remained an elusive goal for many years, and it is still only partly achieved at the time of writing.<sup>60</sup> In September 2012, the inclusion of millet in the National Mid-day Meal Programme (NMMP) was mandated by the Agriculture Ministry in order to increase the demand for the cereal and, thereby, enhance farm incomes.<sup>61</sup> The 2013 National Food Security Act also has a provision to provide subsidized millets along with wheat and rice.<sup>62</sup> In **Brazil**, the National School Feeding Program, a major component of the Zero Hunger strategy benefiting 49 million children, not only targets malnourishment, in particular in the North and North East, but also looks to address obesity through the composition of school meals.<sup>63</sup>

Among wealthy countries, Scotland and Italy are considered pioneers in the ‘school food revolution’ that includes strong food adequacy dimensions<sup>64</sup> (see Box 4). **Scotland** invested £63.5 million (approx. US\$114 million - €93 million) in school food reforms from 2003–2006 after an expert panel commissioned by the Scottish government called for a radical reform of the school meals service in its 2002 landmark report ‘Hungry for Success’.<sup>65</sup> The experts had called for a whole school approach to school meals, including a new system of nutrient-based standards. The county of East Ayrshire pioneered the full implementation of the experts’ recommendations, launching a programme in 2004 promoting the use of fresh, organic and local food. All primary schools were brought into the reform in 2008. The reforms significantly increased users’ satisfaction with the service: 67% of children think that school meals taste better and 77% of parents think the scheme is a good use of taxpayers’ money.<sup>66</sup> In **Italy**,

### Box 4: School food reform and human rights: killing two birds with one stone

The impacts of school feeding programmes on education and nutrition outcomes in developing countries have been studied for a very long time.<sup>137</sup> However, studies in developed countries have been more recent. One recent example concerns the United Kingdom: the shift from low-budget processed meals towards healthier options in 80 schools from the Greenwich district of South-East London as part of the “Jamie Oliver Feed Me Better” campaign has led to significant improvements in educational outcomes, including a 4% improvement

in the number of pupils aged 11 reaching a high level in English tests, a 6% improvement in the number reaching high level in Science tests as well as a 15% fall in absenteeism — most likely linked to illness and health.<sup>138</sup> In other words, the promotion of the right to adequate food in schools through public procurement also improves the realization of the right to education. What is already evident for school feeding programmes in developing countries where children are undernourished proves itself to be just as valid for wealthy countries.

where a healthy school meal service is considered as part of children's right to education and health,<sup>67</sup> the City of Rome has been taking the lead, through a range of initiatives to promote healthy food, as well as introducing several food education initiatives. In the **United Kingdom**, the government agreed in 2006 to recommendations made by the School Meals Review Panel in its report 'Turning the Tables', including the importance of school lunches to be 'free from low-quality meat products, fizzy drinks, crisps, and chocolate or other confectionary', the need for pupils to be served 'a minimum of two portions of fruit and vegetables with every meal', and the restriction of deep-fried items to no more than two portions in a week.<sup>68</sup> In addition, the Food for Life Partnership (FFLP) led to implement the whole-school approach to 2,700 schools in England between 2007 and 2012.

**Principle #4: Source locally whenever possible and expect from suppliers that they produce food according to sustainable methods**

Public procurement schemes should discriminate in favour of sustainably sourced food, in line with the need to make the transition towards low-carbon and low-external-input modes of production, including agroecological practices.<sup>69</sup> Public procurement schemes should also aim at supplying locally and seasonally, so as to reduce the ecological footprint of the food produced.

An increasing number of procurement schemes already bring territorial and seasonal dimensions into public procurement. Through **home-grown school feeding programmes (HGSF)** in **Scotland** and in **Italy**, local authorities have actively promoted local producers in ways that have escaped or circumvented the European regulatory constraints of 'non-discrimination'. A majority of local products are used to prepare school meals in the Italian towns of Fanano, Ascoli and Borgo San Lorenzo.<sup>70</sup> In Scotland, the reforms of school food procurement resulted in a 70% reduction in food miles.<sup>71</sup> **Japan** also promotes local produce in its national school feeding programme. The practice known as *chisan chishou* (literally: local production and local consumption) connects schools to local farming or fishing communities.<sup>72</sup> In the **United States**, more than 1000 schools in 38 states, engaged in the Farm to School movement, aim to increase the

role of fresh and local products in diets.<sup>73</sup> In **France**, similar initiatives have been promoted within the recent French National Food Programme (*Programme National pour l'Alimentation*). In **Canada**, following a workshop between the Group Purchasing Organization and its suppliers which helped to dispel the myth that local sourcing is inherently problematic, the Nutrition Group at St. Joseph's Health System, Group Purchasing Organization and My Sustainable Canada have sourced food for 28 healthcare facilities in the province of Ontario, increasing local food procurement by 15%.<sup>74</sup>

Many public purchasing programmes also target organic farming and seek to promote agroecological practices. **Brazil's** Public Food Acquisition Programme (PAA) offers strong price incentives (an additional 30 per cent) to organic farmers,<sup>75</sup> and the federal government aims to procure 'agroecological food products' from 25,000 small food producers by 2015.<sup>76</sup> **Italy** passed a law in 1999 explicitly promoting the use of organic, typical and traditional products in public procurement. The City of Rome took a leading role in improving its school service, which serves 150,000 children. A permanent roundtable was established to ensure dialogue between city authorities and contracted suppliers, who were encouraged to improve the sustainability of their products, including the use of fair trade products and the introduction of food education initiatives, through various award criteria. In 2010, 14% of the food served in the city's schools was certified as fair trade, 26% was local, and 67.5% was organic.<sup>77</sup> In **Scotland**, the sophisticated tendering process initiated by the county of East Ayrshire included increased flexibility in regard to EU fruit and vegetable marketing standards in order to enable smaller organic producers to access the programme.<sup>78</sup> These initiatives are part of a broader trend: more than 50% of OECD countries reported in a survey conducted in 2007 that they had amended their legislation in order to introduce environmental criteria into public procurement.<sup>79</sup>

**Principle #5: Increase participation and accountability in the food system**

Public procurement schemes should go beyond merely imposing criteria upon contracting producers and consumers in a top-down fashion. Instead, they should aim at empowering a range of actors who are commonly marginalized in market-oriented food chains, including elected representatives (decentralized local authorities

such as municipal councils), school authorities, students, parents, local producers, and nutrition experts. This can be achieved by increasing participation in the design, implementation and assessment of the procurement schemes, and by ensuring that relevant actors and institutions are held accountable to citizens. This is consistent with a rights-based approach (Box 5). It is also a principle at the heart of the success of recent innovative procurement initiatives. Improved participation and accountability, ideally, should be complemented by a coherent, inter-ministerial approach to ensure that the benefits secured by progressive procurement methods are not undermined by conflicting policies or developments.

Specific measures ensuring the equitable representation of women on committees representing contracted suppliers could be established. Procurement contracts should facilitate communication between parties through appropriate management structures and should identify ways of resolving disputes. While the legal system is one of the main accountability mechanisms available, other mechanisms should be established. Among them are negotiation spaces, independent arbitration mechanisms, fora in which contractors, consumers and others actors engaged in food procurement schemes can raise concerns, and conflict mediation by third parties. Regular meetings should be organized between the parties to ensure a consistent

flow of communication so as to identify problems at an early stage. The Special Rapporteur refers in this regard to his proposals concerning the contribution of contract farming to the realization of the right to food.<sup>80</sup>

Multi-level governance systems can effectively empower local actors and reinforce democratic choices in food systems. In **Brazil**, the participation of municipal and state governments, schools, producers, enterprises, parents and students in the design of school meals, facilitated by the decentralization and localization of the school feeding programme, was a key factor in its success. New institutions, in particular the School Feeding Committees (*Conselho de Alimentação Escolar*), ensure that school menus are nutritionally and culturally adequate.<sup>81</sup> They have contributed to increasing efficiency and accountability by helping local actors to monitor the flow of funds, to negotiate the budget, and also to create various partnerships, including with wholesalers.<sup>82</sup> In 2010, such committees had been established in about half of the more than 5,500 municipalities in Brazil, giving social legitimacy to the programme and improving political accountability.<sup>83</sup> In **Scotland**, producers and consumers were actively engaged in the school food reform in various ways, resulting in the empowerment of decentralized public authorities.<sup>84</sup> The promotion of home-grown food in **HGSF programmes** empowers not only farmers, who have new opportunities to sell their

### Box 5: Participation and accountability, two procedural requirements of the rights-based framework

*Participation* means that every person and all peoples are entitled to active, free and meaningful participation in and contribution to decision-making processes that affect them. Consistent with guideline 10.3 of the *Voluntary Guidelines in support of the progressive realization of the right to adequate food in the context of national food security (Right to Food Guidelines)*, approved by the member States of the FAO Council in 2004, the requirement of participation ensures that local agricultural and nutrition contexts be considered. It also means that solutions will be demand-driven and that local partners will be identified. Participation requires that beneficiaries take part in the process of evaluation,

and co-design the solutions that could benefit them most. This is not only empowering, but also enhances the effectiveness of interventions because it builds a feedback loop to facilitate ongoing learning and improvement of policies.

*Accountability* requires that, once commitments are made and targets set, progress is monitored, including progress in the delivery of resources, and a failure to achieve results will lead to redefine the means chosen. It requires that elected representatives, government officials and other duty-bearers be held accountable for their actions, ensuring effective remedies where rights are violated.<sup>139</sup>

products, but also consumers — such as parents and teachers — who can initiate negotiations with local authorities on school meals. These examples illustrate how public procurement schemes that apply the rights-based principles of participation, empowerment, and accountability “shift the focus of procurement from state and market-oriented interventions to combinations of various channels underpinned by localized and creative institutional arrangements”.<sup>85</sup>

In addition, public procurement policies should be integrated into national food and nutrition security strategies, ideally underpinned by framework laws, in order to improve consistency and efficiency in achieving food and nutrition security. Inter-sectoral consistency should also be improved through inter-ministerial and/or inter-departmental coordination mechanisms.

Countries across the world are increasingly adopting national strategies and framework laws that apply the normative and analytical right to food framework.<sup>86</sup> Some of them are integrating procurement policies in such national strategies or policies, and instituting mechanisms to ensure policy coherence. In **Brazil**, the school feeding programme is mentioned in the 1998 Constitution, and is institutionalized in two pieces of legislation, establishing, *inter alia*, the National Fund for Educational Development (FNDE). In the **United Kingdom**, the Department for Environment, Food and Rural Affairs led the implementation through an inter-ministerial taskforce of a Public Sector Procurement Initiative, which is designed to help the government to put its Sustainable Farming and Food Strategy into practice.<sup>87</sup> Alongside **Belo Horizonte (Brazil)**, the city of **Bogota (Colombia)** is among the first cities to have made school meals an integral part of broader food security objectives and based their action on notions of rights, justice and equity. In 2004, Bogota's mayor launched the ‘Bogota sin hambre’ (‘Bogota without hunger’) campaign, which was recast in 2007 as the ‘Bogota bien alimentada’ campaign (‘Bogota well-nourished’), itself part of Bogota's 2007-2015 Food Security and Nutrition Public Policy, established with the specific goal of securing the right to food. The policy affirms that all people have a right to food and that the State is responsible for ensuring that those rights are met. New initiatives included new school food programmes, introducing kitchens into new and renovated schools; improving the nutritional quality of the meals served; and specifically targeting disadvantaged communities

including indigenous groups, migrants and ethnic minorities. The school food programme now reaches approximately 678 000 students.<sup>88</sup>

In the context of its work on **Home-Grown School Feeding programmes (HGSF)**, the World Food Programme observed that such programmes “should have clear political and legal foundations that establish the legitimacy of the programme and define its purpose within the policies of the social sector”.<sup>89</sup> The creates a stability of expectations, encouraging producers to invest, encouraging schools and other institutional actors to meet the cost increases that the transition to more sustainable schemes may lead to in the short term, and ensuring at all stages — from design to evaluation through implementation — accountability in the process. These are the key objectives that a legal and institutional framework for public procurement schemes should help to realize.

### 3. Are there budgetary, institutional and legal obstacles?

Among the most frequently cited ‘obstacles’ to the implementation of the principles identified in Section 2, are budgetary constraints and legal impediments, particularly under the WTO Government Procurement Agreement. The following paragraphs address these concerns.

#### a) The economics of sustainable food procurement

Particularly in times of economic downturn and attempts to reduce public debt, the costs anticipated are often seen as a major obstacle to making public procurement schemes more consistent with right to food strategies — contributing to improved food security and to better nutritional outcomes, while preserving the resource base. However, certain costs associated with public procurement should be treated as *investments*, rather than merely as expenses; and once their multiplier effects on the local economy and their positive social and environmental impacts are taken into account, they may in fact be seen as favorable to, rather than a liability for, healthy public budgets.

Consider some figures that have been calculated in the course of the debate on public procurement. The total incremental benefits of supplying 50 million primary school-age children in **Africa** with locally produced food could potentially amount to about US\$ 1.6 billion per year in 2003 prices (€1.3 billion); of this total, 57% would accrue to consumers and 43% to producers.<sup>90</sup> In the **United Kingdom**, it has been estimated that additional spending for sustainable and local procurement of school food generated a return of £3 for every £1 spent, in programmes implemented in Nottinghamshire and Plymouth. The benefits largely accrue to local businesses, who gain additional contracts and incomes (nearly 70% of the total value generated in Nottinghamshire); to local employees who can access additional jobs, enhanced job security, and well-being benefits (15%); to state/central government given the reduced demand for unemployment benefits (10%); to the city council (3%), which benefited from the higher take-up of school meals after the reforms; and to the environment (2%), through reduced transportation impacts, although the methodology is incomplete on this last aspect. In Nottinghamshire, the total value generated is over £5 million each year for additional investment of £1.65 million. These figures are yielded by applying the Social Return on Investment (SROI) analysis, a holistic cost and benefit analysis that evaluates activities across the ‘triple bottom line’ of social, environmental and economic impacts. However, the study is not yet comprehensive, as it does not take into account any of the health, educational or cultural benefits of a ‘whole school approach’ to food. A better understanding of the displacement effects of local procurement is also necessary. However, according to the New Economics Foundation, in the case of food supply, procuring from farms and suppliers with smaller, localized supply chains entails an increase in labour intensity resulting in a net gain in employment terms.<sup>91</sup> In **East Ayrshire (Scotland)**, school food reform has produced a SROI index of above 6, meaning that ‘for every £1 invested in the initiative, over £6 of value is created in economic, social, environmental and other outcomes’.<sup>92</sup>

Such multiplier effects cannot be ignored in assessing the costs of targeted procurement programmes. Procuring from farmers’ groups can indeed be more expensive than procuring from traders — up to an additional 17-18% in 2007 for millet in **Mali**, according to a study commissioned by the WFP. But such costs may be

justified taking into account the full range of benefits, including higher incomes and improved market skills for small-scale food producers, as well as against the multiplier effects on the local economy.<sup>93</sup>

Specific principles also have positive budgetary implications. The economic rationale for sourcing locally (which is part of Principle #5) is illustrated by the cost of **India’s** PDS system, which could be reduced by as much as 30% by further cuts in storage and transportation costs, including through deepened decentralization.<sup>94</sup> The adequacy principle (Principle #4) is particularly important for all countries in which obesity rates are rising, since more responsible public purchasing of food can lead to more healthy diets and to savings on health care costs. In the **United Kingdom**, low cost public procurement for school feeding programmes were found to be one of the causes of the high rate of child obesity:<sup>95</sup> the government spends more money on treating diabetes in three days than it spends on the School Lunch Grant in an entire year,<sup>96</sup> leading to calls for ‘value for money to be assessed on a whole life basis’.<sup>97</sup> Decision-makers should increasingly look at the cost of inaction, which is spiralling out of control for issues such as obesity and diabetes, and consider that higher expenditure in the short-term may result in longer terms benefits. The application of a rigorous oversight of contract caterers’ charges can result in savings for municipalities and producers’ organizations alike. For instance, it has been estimated that major catering firms in the **United Kingdom** obtain volume discounts of around 12% and end-of-year rebates of 3% from their suppliers, with no transparency on how this is returned to the public sector.<sup>98</sup> Such margins could contribute to covering the additional expenses related to ensuring better food services in schools and better prices for producers engaged in sustainable food systems.

## b) The WTO Government Procurement Agreement

Concerns have sometimes been expressed that the WTO Government Procurement Agreement (GPA) may prohibit the establishment of public procurement schemes implementing recommendations such as those made in this briefing note, for the WTO Members that are parties to this agreement.<sup>99</sup>

But this is a misperception. Both the current and the revised text of the GPA allow scope to include sustainable

development concerns, and right to food principles, in public procurement. Moreover, the preamble to the WTO Agreement, which informs the GPA, recognizes the importance to act “in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development”.<sup>100</sup> The interested reader is referred to Appendix 1 for a more detailed legal exposition.

As long as selective procurement schemes do not constitute an unnecessary obstacle to international trade, and the inclusion of “secondary” objectives does not lead to discrimination, there is nothing in the GPA preventing signatories from establishing food procurement schemes that stipulate that the food must have been produced in a manner that does not cause excessive environmental damage, that complies with basic minimum labour standards, that ensures that small-scale food producers are not gradually pushed out of food supply chains because they alone must bear the cost of compliance with private standards on health, safety and traceability, etc.

Some countries bound by the GPA have adopted procurement policies favouring local suppliers, relying on mechanisms that may be seen as in violation of the national treatment requirement. Schemes that focus on ecological sustainability by placing limits on the carbon emissions arising from “food miles” result in imposing limitations on the distances over which food can be

transported, therefore leading potentially to *de facto* discrimination in violation of that requirement.

However, even as regards their clauses that could be deemed in violation of the principle of non-discrimination, these constraints do not in fact impose significant obstacles to using public procurement as a means to support the realization of the right to food. First, these kinds of contracts are often ‘small’ and, as the applicability of the GPA depends inter alia on value of the contract, they might not be covered by it. Specific thresholds have been negotiated by each party and range between 130,000 SDR (Special Drawing Rights) and 15 million SDR (between approximately 202,800 USD and 23.4 million USD at the exchange rate at the time of writing). Consequently, when the value of the contract does not exceed the thresholds, procurement conditions that favour local suppliers are allowed.

Secondly, as it currently stands, the vast majority of GPA signatories are OECD countries. Developing countries are not bound. They are therefore free to put in place procurement schemes that further food security by supporting local or regional farmers. This could effectively re-connect farmers to local markets, and increase the attractiveness of such markets for producers. The markets created by such schemes may present an attractive and viable alternative to the situation the vast majority of producers find themselves in, i.e. where they must either join the conventional global supply chains, or disappear from the market altogether.<sup>101</sup>

### Box 6: Public Procurement in the Service of Sustainable Development in the European Union

In 2008, the Dutch province of Groningen launched a public tender for the supply and management of automatic coffee machines. The tender stipulated, inter alia, that the coffee had to be produced by smallholders, who would be paid a minimum price, alongside a premium price for social development. The tender referred to products bearing the EKO and Max Havelaar labels. Douwe Egberts protested that these requirements effectively excluded them from the tender, because their coffee, certified by the UTZ label, did not fulfil all the stipulated

conditions. The Dutch court found in favor of the province, stating that Groningen was free to pursue ethical and sustainability goals under both Dutch and EU public procurement law,<sup>140</sup> in particular as specified in the 2004 Directive on public contracts (Directive 2004/18/EC of 31 March 2004)<sup>141</sup> and that the conditions were laid down in a manner that was transparent and open.<sup>142</sup> There were 20 other producers in the Netherlands who could have complied with those conditions, meaning that it did not restrict the field to just one producer.<sup>143</sup> In other

words, social and ethical linkages do not violate the fundamental principles of public procurement.<sup>144</sup>

When the European Commission referred the Netherlands to the Court of Justice of the European Union in 2010, the Court expressly confirmed the compatibility with EU law of including fair trade and organic agriculture criteria in public procurement. The Court limited its criticism to the use of labels to achieve that end, ruling that the underlying criteria were not sufficiently precise and objective.<sup>145</sup>

The new EU Directive on public procurements (2014/24/EU) adopted on 26 February 2014 (repealing Directive 2004/18/EC)<sup>146</sup> does not merely confirm this case-law; it was in fact specifically designed to allow greater use of public procurements in supporting other policy objectives of the Europe 2020 agenda.<sup>147</sup> Indeed Directive 2014/24/EU aims to be a positive instrument tailored to allow greater use of public procurements in the support of a set of “common societal goals such as protection of the environment, higher resource and energy efficiency, combating climate change, promoting innovation, employment and social inclusion and ensuring the best possible conditions for the provision of high quality social services”.<sup>148</sup> It does so in two ways: (i) beyond the setting of thresholds defining its scope of application which *de facto* favors small-scale food producers, it contains measures aimed at facilitating the access of small-and-medium size enterprises to public procurements – such as the possibility for public authorities to divide up large contracts into lots of a size more manageable by small-scale producers –; and (ii) it widens the range of criteria that may be included both in defining the object of the procurement and in awarding the contract. Public authorities are specifically authorized to adopt a life-cycle approach to the product, service or work object of the procurement, and include environmental externalities in the analysis of the most “economically advantageous” tender.<sup>149</sup>

(i) Directive 2014/24/EU recognizes the “strong trend emerging across Union public procurement markets towards the aggregation of demand by public

purchasers, with a view to obtaining economies of scale, including lower prices and transaction costs”,<sup>150</sup> but warns on the negative effects of such practices for small-scale producers. Public procurers are therefore encouraged “to divide large contracts into lots”<sup>151</sup> on a quantitative or qualitative basis, so that contracts can better correspond to the capacities of small-scale enterprises.<sup>152</sup> A procedure is also prescribed to allow the awarding of lots to different producers or service providers and therefore ensure the effectiveness of the system.<sup>153</sup>

(ii) The criteria used to design the procurement and to award the contract have been extended to allow for the inclusion of environmental, social and labour requirements. Quite notably “characteristics may (...) 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”.<sup>154</sup> The notion of “life-cycle” introduced refers to the steps “from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation”.<sup>155</sup> The same variety of criteria may also be used to assess the tenders and award the contracts.<sup>156</sup> Remarkably “qualitative, environmental and/or social aspects”<sup>157</sup> including environmental externalities may be taken into account when assessing which of the tenders is most “economically advantageous”.<sup>158</sup>

Directive 2014/24/EU therefore allows considerable leeway for — and indeed encourages — the designing of public procurements in a way that will benefit small-scale producers. It is also noteworthy to mention, as a final remark, that the Directive specifically underlies the necessity of “initiatives at the national level” in addition to the provisions of the Directive to encourage and facilitate the participation of small-scale producers to public procurements.<sup>159</sup>

## 4. Conclusion and Recommendations

This note highlights five key principles that public authorities may wish to keep in mind in order to align public procurement policies with the full realization of the right to adequate food. The range of examples surveyed shows that this alignment is not only logistically and economically viable, but has also succeeded in strengthening of local food producers and improving diets. A commitment by States to link right to food goals to their procurement contracts could have profound transformative effects. By creating a demand for sustainable diets, governments have the power to set a positive trend and accelerate a transition towards sustainable food systems that respect the rights of vulnerable groups, including small-scale food producers. Public procurement policies also represent a rare opportunity to link the right to food of consumers and of producers in a meaningful way. If States effectively implement the principles recommended in this note, it will mean that private actors will have to comply with norms derived from the right to food in order to be eligible for government contracts, thereby developing practices which might spill over into corporations' other activities. By insisting on 'sustainable diets' in schools, hospitals, civil service canteens as well as social programmes, public authorities may encourage individuals and companies to do the same, much like any public information or awareness campaign. Indeed, the many campaigns currently being run by various governments to encourage healthy and nutritious diets and lifestyles among citizens, would undoubtedly be boosted if the public saw that governments were themselves 'following through', by purchasing healthy and nutritious foods for schools, ministries, etc. This could provide a laudable example of leadership, whereby "the government is seen as leading by example, encouraging national undertakings and individual consumers to take up the habit".<sup>102</sup>

### The Special Rapporteur offers the following recommendations:

**States should align their public procurement policies and schemes with their duty to progressively realize the right to adequate food.** This includes taking into account the set of recommendations put forward for contract farming in general, which the Special Rapporteur set out in 2011,<sup>103</sup> but it goes beyond that. Food procurement

schemes should 1) source preferentially from small-scale food producers and actively empower them to access tenders; 2) guarantee living wages as well as fair and remunerative prices along the food supply chain; 3) set specific requirements for *adequate* food diets; 4) source locally and demand from their suppliers that they produce food according to sustainable methods; and 5) increase participation and accountability in the food system. The effectiveness of such public procurement policies and programmes would be maximized by fully integrating them under right to food national strategies and framework laws, and by coordinating them with other food security policies.

**Countries that are signatories of the WTO Government Procurement Agreement (GPA)** are not systematically prevented from establishing public procurement schemes that contribute to the realization of the right to adequate food, as illustrated by many countries who reformed their school feeding programmes in recent years in accordance with the principles outlined in this note. The GPA does, however, impose restrictions on schemes that result in a discrimination between suppliers on the basis of their geographic location. **Countries that have not signed and/or ratified the GPA** have greater discretion with respect to the public procurement schemes that they may lawfully establish. This discretion can and should be used to advance the right to adequate food.

**The World Trade Organization (WTO) Committee on Government Procurement** should integrate the protection and realization of all human rights, including the right to food, in the objectives to be pursued by 'sustainable procurement'. The integration of the five principles identified in this note should be fully integrated in the future work of the GPA, in particular in the Work Programme on Sustainable Procurement as specified in the revision of the GPA (GPA/112, Annex 7, para 1).

**The World Food Programme (WFP), the Food and Agriculture Organization (FAO) and their partners are encouraged to continue and expand the Purchase for Progress pro-programmes after their pilot phase.** Beyond WFP and FAO, United Nations agencies should lead by example by fully integrating the five principles highlighted in this note in their procurement policies, not only for their daily activities but also when organizing food catering for national, regional and international conferences, meetings and forums.

## Appendix: The Government Procurement Agreement (GPA) of the World Trade Organization

Contrary to what is sometimes assumed, neither the GPA nor the revised text<sup>104</sup> pose a substantial legal barrier to taking into account social and ethical considerations in the public procurement of food. This conclusion can be arrived at by close reading of both the GPA and the revised text, and by reference to comparable language in the GATT, and the jurisprudence of the WTO Panel and Appellate Body. The GPA has thus far given rise to little case law. However a case related to the inclusion of human rights concerns in public procurement came close to a WTO Panel ruling. In 1998, the European Communities and Japan filed a complaint against the United States after the State of Massachusetts enacted a statute restricting access to government contracts by corporations doing business with Burma.<sup>105</sup> The European Communities and Japan requested the establishment of a WTO Dispute Settlement Panel, alleging that the Massachusetts Myanmar Act violated the obligations of the US under the GPA in four respects: 1) a violation of Article VIII(b) on the basis that it imposed conditions on a tendering company which were not “essential to ensure the firm’s capability to fulfill the contract”; 2) a violation of Article X which prohibits the imposition of qualification criteria that are political rather than economic in nature; 3) a violation of Article XIII(4)(b) which requires the award of contracts to be based on economic rather than political criteria; 3) a violation of Article III prohibiting discrimination. Japan also issued a formal complaint to the US alleging violations of Articles III(2), VIII(b), X, and XIII(4) GPA. However, the US Supreme Court struck down the Massachusetts Act on US constitutional grounds before the dispute could actually be heard.<sup>106</sup>

There is a widely-held perception that the GATT prohibits States from treating foreign products less favourably, where the difference between those foreign products and domestic products lies in the process or production methods (PPMs) of such products, rather than their physical characteristics: such PPMs include social and ethical concerns. In fact, WTO Members may argue PPMs are a legitimate basis for regulatory distinctions<sup>107</sup>: where consumers

express a preference for products produced in compliance with certain environmental standards, such products are not to be treated as substitutable to products that do not comply with such standards.

But this has hardly been decisive in determining whether such a distinction will be considered discriminatory against foreign products. This is because the test is whether such distinctions treat *products originating from different WTO Members* without discrimination, *not* whether they treat products that comply with certain standards like products that do not comply. Contrary to what is sometimes assumed, the WTO Agreements allow regulatory distinctions to be made between products that cannot be differentiated by physical characteristics or by their end-use by the consumer yet have been produced under different conditions.<sup>108</sup> Such regulatory distinctions must not be discriminatory towards foreign products, however, and must not result in disproportionate obstacles to trade.<sup>109</sup>

Moreover, while the GATT prohibits discrimination between “like” products, the GPA only prohibits discrimination between “products”. Judging by the stance of the Appellate Body towards textual fidelity, this difference is likely to be very significant.<sup>110</sup> As such, the only relevant question under the GPA is whether foreign suppliers<sup>111</sup> have been treated at least as favourably as domestic ones. There will be no need to ask whether there has been a difference in treatment between various types of products that may be similar.<sup>112</sup>

Art VI.1 GPA like Art. X of the revised text allows procuring entities to lay down technical specifications including process and production methods as long as they do not create unnecessary obstacles to international trade. This provision does not make any distinction between product-related and non-product related PPMs. Moreover, the revised text contains an important new provision (Art. X.6) which explicitly allows public authorities to adopt technical specifications to promote the conservation of natural

resources or the protection of the environment. Even if Article X.6 does not specifically mention any other “secondary” policy objective there is no reason why the promotion of the right to food should be treated differently. Article VI.2(b) GPA and Article X.2(b) of the revised text provide that technical specifications shall, where appropriate, be based on international standards. Such standards must also be specified in terms of performance rather than design or descriptive characteristics. Understandably, they may not specify particular brand names, producers or suppliers, except where there is no other intelligible way of describing the procurement requirements and words such as “or equivalent” are inserted appropriately in the tender. These requirements do not create any obstacle to socially and ethically linked procurement.

With respect to the qualification of suppliers under Art. VIII(b) GPA, the important points are that such qualifications “shall be no less favorable to suppliers of other Parties than to domestic suppliers and shall not discriminate among suppliers of other Parties”, and that they “shall be limited to those which are essential to ensure the firm’s capability to fulfill the contract in question”. This last condition was the core of the complaint by the EU and Japan against the US concerning the Massachusetts Myanmar Act. It has sometimes been interpreted to imply that that conditions pertaining to the technical and commercial competence of firms are the only proper considerations procurement authorities may bear in mind. In short, it was asserted by the EU and Japan that the fact that a firm may have interests in Myanmar does not bear upon any of these factors, and therefore such a condition is improper. This argument is premised, however, on a narrow view of the purposes of government contracts; their aims may be broader than simply acquiring a good or a service, and they may genuinely – i.e., without a protectionist motive being present – seek to further certain social aims. Conditions for participation in tendering procedures imposed on suppliers by the revised text are more stringent than those laid down in Art. VIII(b) GPA and are limited to those that are “essential to ensure that a supplier has the *legal, commercial, technical and financial abilities to*

*undertake the relevant procurement*”.<sup>113</sup> However, it has been rightly noted that contracting authorities may find essential the ability to supply products that respect certain social criteria.<sup>114</sup> Thus, nothing in the text of Art. VIII(b) GPA and Art. VIII.1 of the revised text seems to prohibit governments from pursuing these social policies through their procurement schemes. With respect to the award criteria Article XIII.4(b) specifies that procurers may decide to award the contract to the “most advantageous” tender: since, from the point of view of the pro-curing entity the value of the tender may be influenced by social and ethical concerns, the term “most advantageous” must be construed to allow the inclusion of award criteria of non-economic nature.

Finally, ethical procurement schemes may be justified by incorporating ethical considerations as conditions of the contract.<sup>115</sup> Returning to the example of the Myanmar Act, the Massachusetts State Legislature could have simply provided that the winning contractor would have to divest itself of all interests in Myanmar for the duration of the contract.<sup>116</sup> For instance, a condition may be stipulated requiring compliance with ethical food production requirements for the duration of the contract. It has sometimes been suggested that this might constitute a circumvention of the obligations stipulated under the GPA.<sup>117</sup> However, the GPA should be read as restricting the discretion of governments only with respect to the technical specifications, supplier qualifications and award criteria, and not with respect to the conditions of the contract, for the reason that such conditions really pertain to the purpose of the contract.<sup>118</sup> Indeed, it cannot lightly be assumed that the parties to the GPA intended to give up this power, because many of them, such as the US and the EU, had in place extremely politically sensitive procurement plans in operation at the time of contracting, including the highly symbolic Executive Order 11246 (1965), by which the US has instituted affirmative action policies in employment for government contracts.

Moreover, Art. XXIII GPA and Art. III of the revised text provide exceptions for actions taken for national security reasons, and, as long as they “are not applied in a manner which would constitute arbitrary

or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade”, and also for measures necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property, *inter alia*. In the absence of any case-law on Art. XXIII GPA, guidance will have to be drawn from the Panel and Appellate Body’s jurisprudence on the Art. XX GATT, which is broadly similar, but makes no mention of “public order” or “public safety”. Given that the Appellate Body has found that the GATT is not to be “read in clinical isolation from public international law”,<sup>119</sup> it can be argued that the notion of public order should draw inspiration from internationally recognized human rights instruments, such as the ILO.<sup>120</sup> Indeed, the Appellate Body in *US — Gambling*<sup>121</sup> gave wide latitude to the US in determining what constituted threats to public morality, so much so that the mode of WTO jurisprudence appears to be quite permissive as to the scope of the public

morality and order exceptions, but instead becomes strict in the examination of the non-discrimination requirement.<sup>122</sup> Thus, procurement schemes advancing the right to food are not *per se* prohibited by the GPA as long as they do not constitute a disguised form of protectionism (e.g. schemes that buy food solely from local farmers, or that aim at enhancing ecological sustainability by placing limits on “food miles”, or carbon emissions arising from transporting food).

As such, there is considerable scope to think that ethical food procurement schemes should be capable of being saved by the Art. XXIII.2 GPA public morality and public order exceptions, in so far as they do not treat foreign suppliers less favourably than domestic ones.<sup>123</sup> The same reasoning is applicable to Art. III of the revised Agreement. As such, it is argued that the GPA presents much scope and potential for States to undertake and broaden ethical food procurement schemes to the benefit of impoverished smallholders and consumers around the world.

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#### Appendix

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105. An act regulating contracts with companies doing business with or in Burma (Myanmar), ch.130, 1996 Session Laws, Mass. Gen. Laws Ann., Ch. 7 223 (West 1997).
106. *Crosby v National Foreign Trade Council*, 530 US 363 (2000).
107. *European Communities-Measures Affecting Asbestos and Products Concerning Asbestos (EC-Asbestos)*, WTO doc. WT/DS135/AB/R, AB-2000-11 (12 March 2001) (Report of the Appellate Body), para. 101 (suggesting that the framework for examining 'likeness' includes four characteristics of the goods concerned : '(i) the physical properties of the products; (ii) the extent to which the products are capable of serving the same or similar end-uses; (iii) the extent to which consumers perceive and treat the products as alternative means of performing particular functions in order to satisfy a particular want or demand; and (iv) the international classification of the products for tariff purposes'). See also *European Communities - Measures Affecting the Approval and Marketing of Biotech Products*, WTO docs. WT/DS291/R, WT/DS292/R and WT/DS293/R (29 September 2006) (Reports of the Panel). In this case, which concerned the *de facto* moratorium on the approval of genetically modified organisms by the EC as well as bans on GMOs issues by individual Member States of the EU, the Panel suggested that the regulatory option chosen by the EU could be explained by the perception of consumers concerning the safety of GMOs, independently of the question whether such a perception was grounded on solid scientific evidence. They stated, in the context of the SPS Agreement: '...it is not self-evident that the alleged less favourable treatment of imported biotech products is explained by the foreign origin of these products rather than, for instance, perceived differences between biotech products in terms of their safety...' (para. 7.2514). See S. Joseph, *Blame it on the WTO? A Human Rights Critique*, Oxford: Oxford University Press, 2011, p. 99; Adam McBeth, *International Economic Actors and Human Rights*, Routledge, Oxford, 2010, p. 135.

108. See in particular Howard F. Chang, "An Economic Analysis of Trade Measures to Protect the Global Environment", *Georgetown Law Journal*, vol. 83 (1995), p. 2131; Steve Charnovitz, "The Law of Environmental "PPMs" in the WTO: Debunking the Myth of Illegality", *Yale Journal of International Law*, vol. 27 (2002), pp. 59-110.
109. See, for instance, *United States - Measures concerning the importation, marketing and sale of tuna and tuna products*, WTO doc. WT/DS381/R (Report of the Panel, 15 September 2011), esp. para. 7.249 (noting that, whereas the preference of consumers for 'dolphin-free' tuna could be treated differently from tuna not harvested according to techniques that preserve dolphins, the 'likeness' should be assessed between Mexican tuna products and tuna products from the US or other countries, and not between tuna that is 'dolphin-safe' and tuna that does not present this characteristic: to substitute the latter comparison to the former would be to presume that the Mexican tuna per definition would not be able to comply with the conditions allowing it to be certified as 'dolphin-safe'). The Appellate Body did not question this conclusion, as it was not part of the appeal made by the Parties to the dispute: *United States — Measures concerning the importation, marketing and sale of tuna and tuna products*, WTO doc. WT/DS381/AB/R (Appellate Body Report of 16 May 2012), para. 203, *in fine*.
110. See Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996, (Gasoline case) IIB where it criticized the Panel for its failure "to take adequate account of the words actually used".
111. The expression "foreign suppliers" is used as shorthand for both foreign-based suppliers as well as domestic suppliers with foreign links, foreign affiliations, etc.
112. C. McCrudden, *Buying Social Justice*, cited above, pp. 481–482.
113. Article VIII:1 of the GPA revised text (emphasis added). See Arie Reich, "The New Text of the Agreement on government Procurement: An Analysis and Assessment", *Journal of International Economic Law*, vol. 12(4) (2009): 989.
114. Cristoph Spannemann, "The WTO Agreement on Government Procurement – A Means of Furtherance of Human Rights?", *Zeitschrift für Europarechtliche Studien*, vol. 4 (2001), pp. 63 et seqq.
115. J. C. McCrudden, *Buying Social Justice*, cited above, pp. 488 – 491.
116. *Id.* 489.
117. S. Arrowsmith, "Public Procurement as an Instrument of Policy and the Impact of Market Liberalisation", *Law Quarterly Reports*, vol. 111 (1995), p. 235, at p. 281. However, she has since resiled from this line of thought: see S. Arrowsmith, *Government Procurement in the WTO*, Kluwer Law International, 2003, 340 at fn. 49. She now argues that social policy linkages "that are non-discriminatory have only a limited effect in restricting access to markets, since an interested supplier can often adapt its practices for the contract – although it is true that this is not always possible..." Moreover, she acknowledges that objections to linkages as contract conditions based on concerns about transparency are "not convincing", that governments have a "legitimate concern not to be closely associated with practices of which they disapprove", and that "qualification conditions are the only really effective method for enforcing secondary conditions..." As such, there is "insufficient reason to preclude their use".
118. B. Hoekman and P. Mavroidis, "Basic Elements of the Agreement on Government Procurement", in B. Hoekman and P. Mavroidis (eds.), *Law and Public Policy in Public Purchasing: Studies in International Trade Policy*, University of Michigan Press, 1997, p. 134.
119. Appellate Body Report, *United States. Standards for Reformulated and Conventional Gasoline (United States v. Brazil and Venezuela)*, adopted 20 May 1996, WT/DS2/AB/R. ("Reformulated Gasoline").
120. McCrudden, *Buying Social Justice*, cited above, at p. 496. Also see Report of the Special Rapporteur on the right to food, Addendum - Mission to the World Trade Organization (25 June 2008), A/HRC/10/5/Add.2, para. 35. Article 3.2. of the Dispute Settlement Understanding confirms that WTO norms may be "clarified ... in accordance with customary rules of interpretation of international law", which includes article 31, para. 3 (c) of the Vienna Convention on the Law of Treaties stipulating that the interpretation of treaties must take into account "any relevant rules of international law applicable in the relations between the parties". These rules may evolve, particularly, as a result of legal interpretation: see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, 16, para. 53; *Case concerning the Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, I.C.J. Reports 1997, 7680, paras. 132147. On the need for an evolutionary interpretation, see Appellate Body Report, 12 October 1998, *United States Import Prohibition of Certain Shrimp and Shrimp Products (United States v. India, Malaysia, Pakistan, Thailand)*, WT/DS58/AB/R, para. 129.
121. Appellate Body Report, *United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS2/AB/R, adopted 20 April 2005. See in particular paras. 296 – 299.
122. McCrudden, *Buying Social Justice*, cited above, at p. 493.
123. M. Trebilcock and R. Howse, *The Regulation of International Trade*, 3rd ed. (Routledge, 2005), p. 584.

#### Boxes

124. James Sumberg and Rachel Sabates-Wheeler, Linking agricultural development to school feeding in sub-Saharan Africa: Theoretical perspectives, *Food Policy* 36 (2011), p. 343.
125. World Food Programme, 2008. Home-grown School Feeding: A Framework to Link School Feeding with Local Agricultural Production. Rome: WFP.
126. <http://hgsf-global.org/>
127. Note: Strategic Objective 5 of the 2008-2013 Strategic Plan focuses on "using WFP's purchasing power to support the sustainable development of food and nutrition security systems and transform food and nutrition assistance into a productive investment in local communities". See World Food Programme, P4P Purchase for Progress: A Primer. P4P Coordination Unit Publication, World Food Programme, Rome, 2012, p. 4.
128. World Food Programme, P4P Purchase for Progress: A Primer. P4P Coordination Unit Publication, World Food Programme, Rome, 2012, pp. vii-viii, 7-8. Note: Some 300 farmers' organizations in 19 countries have supplied 65 % of the total (135,000 tons); the remainder has been purchased from emerging traders or nascent marketing platforms such as commodity exchanges and warehouse receipt systems.

129. World Food Programme, WFP 2008 — 2013 Purchase for Progress (P4P) Initiative: A Strategic Evaluation (mid-term), October 2011, Commissioned by the Office of Evaluation. Report prepared by Jonathan Mitchell and Henri Leturque.
130. World Food Programme, Food Procurement Report 2012, Rome, p.1.
131. Author's calculations.
132. The right to adequate food is recognized under Article 25 of the Universal Declaration of Human Rights and under Article 11 of the International Covenant on Economic, Social and Cultural Rights. The core content of the right to food and the corresponding obligations of States to respect, protect and fulfill the right to food, are defined by the Committee on Economic, Social and Cultural Rights in its General Comment No. 12. The prescriptions found in General Comment No. 12 are complemented by the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* adopted by the Member States of the FAO Council in November 2004 at the 127th Session of the FAO Council. For a copy of the Voluntary Guidelines, see <http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.htm>.
133. Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food, U.N. Doc. E/C.12.1999/5 (12 May 1999), para 6.
134. Id. at 4.
135. Art. 2(1), International Covenant on Economic, Social, and Cultural Rights (ICESCR), and General Comment No. 12: The Right to Adequate Food, at paras 6, 14 and 16. See also, UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties Obligations, 5th Sess., para. 2, U.N. Doc. HRI/GEN/1/Rev.1 (1990).
136. Art. 2(1), ICESCR.
137. Sarah W. Adelman, Daniel O. Gilligan, Kim Lehrer, *How effective are food for education programs? A critical assessment of the evidence from developing countries*. International Food Policy Research Institute (IFPRI), Food Policy Review 9 (2008), pp. 1-85.
138. Michèle Belot and Joachim James, "Healthy School Meals and Educational Achievements", *Journal of Health Economics*, vol. 30 (3) (2011), 489-504.
139. FAO The Right to Food Unit, *Guide to Conducting a Right to Food Assessment* (FAO The Right to Food Unit, 2009), Box 2.1, available from [http://www.fao.org/righttofood/publi\\_en.htm](http://www.fao.org/righttofood/publi_en.htm). See also <http://www.undg.org/?P=221>.
140. *Douwe Egberts Coffee Systems Nederland B.V. v. Provincie Groningen* (2007), Voorzieningenrechter Rechtbank Groningen, 97093/KG ZA 07-320. at para. 4.4.
141. Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134 of 30.4.2004, p. 114).
142. Id. at para. 4.3.
143. Id. at para. 3.3.
144. See the similar case also brought by Douwe Egberts against the Dutch municipalities of Den Helder and Alkmaar, recently handed down by a court in Alkmaar, Netherlands on April 2010. *Douwe Egberts Coffee Systems Nederland B.V v Gemeente Den Helder & Gemeente Alkmaar* (2010), Voorzieningenrechter Rechtbank Alkmaar, 117231/KG ZA 10-44.
145. *European Commission v Kingdom of the Netherlands*, C-368/10, 10 May 2012. For more information on legal Cases ruling on the inclusion of green, social and fair trade criteria into European tenders, see: European Fair Trade Association, State of Play of Fair Trade Public Procurement in Europe, September 2010, pp. 25-33; and ClientEarth, Identifying Opportunities for Sustainable Public Procurement. Briefing No. 2: Horizontal Objectives in Public Procurement, October 2011, pp. 8-11.
146. Directive 2014/24/EU of the European Parliament and the Council, of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94 of 28.3.2014, p. 65).
147. See in particular Recital 2; and see, among others, ClientEarth, Providing an enabling legal framework for sustainable public procurement, Key points for the revised Directive, November 2012, 4 pp.; ClientEarth, The EU's commitment to sustainable development. Time to progress from Green Public Procurement to Sustainable Public Procurement?, February 2012, 7 pp. ; ClientEarth, Identifying Opportunities for Sustainable Public Procurement. Briefing No. 2: Horizontal Objectives in Public Procurement, October 2011, 16 pp. Available on <http://www.clientearth.org/public-procurement/publications/>.
148. Proposal for a Directive of the European Parliament and of the Council on public procurement, COM(2011) 896 final, p. 2.
149. See art. 42 and 68, Directive 2014/24/EU.
150. Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (not yet published in the Official Journal), Recital 59.
151. Directive 2014/24/EU, Recital 78.
152. See also Directive 2014/24/EU, Recital 20: "For the purposes of estimating the value of a given procurement, (...) it should be allowed to base the estimation of the value on a subdivision of the procurement only where justified by objective reasons. For instance, it could be justified to estimate contract values at the level of a separate operational unit of the contracting authority, such as for instance schools or kindergartens, provided that the unit in question is independently responsible for its procurement. (...)".
153. See Directive 2014/24/EU, art. 46. According to paragraph 4, Member States may render obligatory for public authorities to divulgate the reasons for not dividing the contract into lots.
154. Directive 2014/24/EU, art. 42, §1, sub. 2.  
The lessons of the Douwe Egbert case regarding labels have been integrated in art. 43 of the Directive.
155. Directive 2014/24/EU, art. 2, §1, (20).
156. See Directive 2014/24/EU, art. 67-69.
157. Directive 2014/24/EU, art. 67, § 2.
158. See Directive 2014/24/EU, art. 68.
159. See Directive 2014/24/EU, Recital 124.

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**Olivier De Schutter** was appointed the UN Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council. He is independent from any government or organization, and he reports to the Human Rights Council and to the UN General Assembly. For more on the work of the Special Rapporteur on the right to food, visit [www.srfood.org](http://www.srfood.org) or <http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx>. The Special Rapporteur can be contacted at [srfood@ohchr.org](mailto:srfood@ohchr.org).