

## *Preparedness Assessment for the Integration of Sustainability Criteria into the Public Procurement of Infrastructure in Vietnam*

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*Tom Moerenhout and Nguyen Tung Lam*

*December 2011*

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## *Executive Summary for Policy-Makers*

### **The Current Integration of Sustainability Standards into Infrastructure Procurement**

- The Environmental Impact Assessment (EIA) is the tool most used for large infrastructure projects. It is compulsory. However, the capacity and resources of those who need to follow up on EIAs are limited, and effective implementation is not always strong. Apart from the EIA, there are few hard law instruments designed to integrate sustainability criteria into public procurement. Laws on environmental and social protection are not sufficiently implemented.
- There is a punishment mechanism for non-compliance with legal requirements. Companies can be blacklisted with the consequence of a prohibition on bidding for one year. This is also published in the newspaper. However, fines are too low to actually enforce compliance.
- There are no standards integrated into the law on bidding. If standards are included in actual regulations, they are included in ministries' decrees. However, most of the time, standards are only integrated into the specification of technical requirements and they depend heavily on the investors. Donors require more sustainability integration than does the government. To date, there are no sustainability standards included in a pre-selection of potential infrastructure suppliers.
- When criteria are included, the environmental score is still relatively low (10 per cent; maximum 20 per cent); especially, time frame, quality and costs remain important. Depending on the ministry, there is more or less attention to environmental and social standards. Whereas the Public Procurement Agency is open to integrating standards, the Ministry of Finance prioritizes the lowest cost. Bidding documents and evaluations often assess immediate costs, rather than life-cycle costs.
- Whereas ministries and companies know of the existence and content of ISO 14000 and SA 8000, they have not seriously assessed ISO 26000. In general, few awareness-raising activities exist within the government itself. Ministries do not know or value the importance of sustainability standards for business development. Consequently, there is not much governmental support to prepare the Vietnamese market to integrate sustainability standards, both in terms of financial support or training.
- There is insufficient competition in bidding processes for infrastructure projects.

### **Market Readiness**

- There will be initial short-term costs for both the government and private sector, but medium-term cost savings outweigh the cost of delaying further integration.
- Small and medium sized enterprises (SMEs) have a difficult time catching up because they did not implement prior environmental or social standards. They are currently seeking training because they are required to abide by more standards by foreign markets or by large foreign direct investment (FDI) or Vietnamese companies that subcontract them. There is thus more of a market incentive than governmental guidance. SMEs need more training to implement future changes. They could reduce compliance costs and gain competitiveness if they caught up sooner rather than later.
- There are concerns that costs would be too high, but most stakeholders suggest that the Vietnamese market could provide infrastructure and goods with a higher standard if changes are incremental and announced well in advance through a roadmap to sustainable public procurement (SPP). Because of the lack of capacity, the government could play a large role in helping SMEs to structurally adjust their processes to become more profitable and sustainable.

- There is an information deficit in both the public and the private sector. Government ministries that wish to include references to sustainability criteria in laws do not know how to go about this exercise and miss examples from best practices. Private sector companies that wish to obtain certification of some kind often do not know how to acquire such certificates.

### The Use of Public-Private Partnerships for Procurement

- Vietnam is approaching the GDP per capita level of a lower middle-income country. Therefore, Official Development Aid (ODA) will slowly decrease. The Vietnamese government is looking at public-private Partnerships (PPPs) as a possible financing mechanism for future infrastructure projects.
- A few pilot projects have been initiated. However, there is a need for a thorough study on the feasibility of PPPs and whether they can bring value for money for the government. Ministries have identified the need to assess whether PPPs are suitable, and are seeking collaboration with experts.
- There is a concern that environmental and social standards will be reduced in PPPs in order to attract the private sector for collaboration. This concern is most present in the procurement of infrastructure, because there is no international market that can require sustainability integration externally.

### Policy Recommendations

- Including sustainability standards efficiently will require the following steps:
  - a. A review of the procurement process and the roles of different ministries and agencies. These ministries and agencies will have to collaborate closely to achieve efficient integration. There should be more legal clarification and consistency. Sustainability criteria should be included at all parts of the procurement cycle. Specifically, their integration into the pre-selection of infrastructure developers would send a strong signal to the market.
  - b. A review of national standards under the leadership of Standards, Metrology and Quality (STAMEQ). There should be a careful assessment of which standards to implement incrementally. The government should develop a roadmap to SPP of infrastructure. This should cover detailed information on next steps and future legal requirements.
  - c. An awareness raising campaign in both the public and the private sectors. This campaign should be complemented with the training of government officials in SPP of infrastructure and the training of companies, in particular SMEs, to adjust their processes to become more profitable and sustainable.
  - d. Transparent information platforms. Valuable information should be collected and disseminated. This includes information for government agencies on how to approach SPP in drafting their legal documents, as well as information for the private sector on how it can obtain sustainability certificates.
- Demonstration and pilot projects could establish the benefits of SPP the best. Such projects could be started in a specific sector in a specific region where the local government is more open to sustainable, profitable infrastructure development. In addition, a pilot project with a relatively low technical complexity could allow more clear results and implementation. It is, further, of crucial importance that demonstration is initiated through pilot projects that will deal with corruption as little as possible. Construction and infrastructure procurement and development lack transparency. Transparency, however, is a necessary precondition to the success of SPP implementation.

- Assuring compliance with existing criteria will be necessary. The government will have to safeguard the enforcement of existing laws and criteria. To preclude SMEs from being unable to carry costs, it is important that existing laws are enforced immediately. This implies that more resources and trained personnel will be allocated to the verification of compliance, including the follow-up of EIAs. The idea of installing a system in which a government accredited external auditor would have to verify compliance and carry liability after doing so should be assessed.

## *Background Note*

The Vietnamese Institute of Strategy and Policy on Natural Resources and Environment (ISPONRE) was established by the Prime Minister under the Ministry of Natural Resources and Environment (MONRE). ISPONRE is the advisory unit of MONRE for legislation, policy and strategy development. It is responsible for long-term planning for sustainable solutions that balance socioeconomic development and environmental protection. To effectively do this, ISPONRE proposes and develops strategies and policies within the areas of MONRE's mandate, including the conduct of economic analyses and strategic planning for natural resource management.

The International Institute for Sustainable Development (IISD) is an international policy think tank that promotes sustainable development across several portfolios—international trade and investment, economic policy, climate change, measurement and assessment, subsidies and natural resources management. IISD is currently managing projects on sustainable public procurement (SPP) in Ghana, Brazil and Vietnam, and will soon restart in India as well. In addition, the organization has commenced its research on the potential of public-private partnerships in SPP of infrastructure, in which it will provide technical assistance to policy-makers. On a similar line, IISD is coordinating the International Initiative on Sustainable Public Procurement, which is intended to build on best practices to provide technical expertise and broker cross-country collaboration on SPP.

ISPONRE is conducting a policy research in the field of public procurement, to examine how Vietnam's legal and policy framework for environmental protection may be optimized to allow for the successful introduction of green procurement, in line with the country's current examination of "Green Growth." Supporting this activity, in 2009, the Korean International Cooperation Agency provided assistance to the Public Procurement Agency of Vietnam's Ministry of Planning and Investment to upgrade public procurement, through the trial deployment of an electronic public procurement system (EPPS), based on the electronic bidding system of the Republic of Korea (KONEPS) and the optimized fit to the realities of Vietnam.

To support this process, ISPONRE approached IISD to explore the prevailing framework for public procurement of infrastructure and to make recommendations on how it can be greened. A lack of efficient infrastructure is currently listed by many investors as the number one problem when operating in Vietnam and can potentially slow Vietnam's growth. Because investment efficiency will have to increase to maintain rapid growth, it is both an opportunity and a necessity to include sustainability standards in new or adjusted institutional frameworks and legislation.

IISD and ISPONRE collaborated to carry out a feasibility study and preparedness assessment of SPP of infrastructure in Vietnam. This analyzed the legal and institutional framework of traditional public procurement and public-private partnerships for the procurement of infrastructure, as well as the hurdles and opportunities for integrating sustainability criteria into both methods of public procurement in the future. At the same time, the study paid specific attention to market readiness in order to make sound and implementable sustainable development policy recommendations that are inclusive of both environmental concerns and the socioeconomic development of Vietnam.

This work would not have been possible without the generous support of the State Secretariat for Economic Affairs of the Swiss Confederation (SECO). SECO is responsible for economic and trade policy measures with partner countries and aims at integrating partner countries like Vietnam into the global economy by promoting sustainable economic growth, hence contributing to poverty reduction.



## 1.0 Research Design

### 1.1 National Background of the Study

Since the introduction of the Doi Moi policy 25 years ago in 1986, Vietnam's economy has gradually shifted from a centralized command economy to a socialist market economy, in which economic liberalization and integration into the world economy stand central. Vietnam became a member of the Association of Southeast Asian Nations (ASEAN) in 1995 and a member of the World Trade Organization (WTO) in 2007.

Vietnam has a rapidly growing economy. Before the financial crisis of 2008/2009, the annual GDP growth rate rose from 6.79 per cent in 2000 to 8.46 per cent in 2007.<sup>1</sup> Even in difficult times of global recession that reduced exports, Vietnam's GDP grew the last three years at, respectively, 5.3 per cent (2009), 6.8 per cent (2010) and 6.3 per cent (2011 projection).<sup>2</sup> In absolute current prices, GDP has gone up from 441,000 billion VND in 2000 to 1,658,000 billion VND in 2009.<sup>3</sup>

The share of agriculture in economic output is declining. In 2009 agricultural produce accounted for about 21 per cent of Vietnam's output, down from 25 per cent in 2000 but still employing over 50 per cent of Vietnam's labour force.<sup>4</sup> The share of industry and construction, however, has risen significantly, from 36 per cent of GDP in 2000 to more than 40 per cent in 2009. In absolute terms, this translated into a growing output with the equivalent of 162,000 billion VND in 2000 to 667,000 billion VND in 2009. The share of the services sector in GDP has remained relatively constant throughout the last decade.<sup>5</sup>

In its five-year socioeconomic development plan, Vietnam puts emphasis on the harmonization of socioeconomic development with a rational and efficient use of natural resources and environmental protection, to redress environmental pollution and to raise the effectiveness of the state administration of environmental protection.<sup>6</sup> The 2003 National Strategy for Environmental Protection until 2010 and Vision toward 2020 follows similar lines. Related to construction, this strategy asks for strict control on the dust emissions of road upgrading and urban construction, as well as for the construction of waste treatment facilities.<sup>7</sup>

### 1.2 Relevance of Public Procurement of Infrastructure in Vietnam

Government expenditure accounted consistently for over 25 per cent of GDP since 2001 and over 27 per cent since 2006. In absolute numbers, the part of GDP owed to state spending grew from 170,000 billion VND in 2000 to an estimated 583,000 billion VND in 2009. Total expenditure, in itself, rose from 109,000 billion VND in 2000 to 495,000 billion VND in 2008.

<sup>1</sup> General Statistics Office of Vietnam, 2011, "Key Indicators on National Accounts," available at [http://www.gso.gov.vn/default\\_en.aspx?tabid=468&idmid=3&ItemID=9911](http://www.gso.gov.vn/default_en.aspx?tabid=468&idmid=3&ItemID=9911).

<sup>2</sup> EconStats, 2011, "Vietnam," available from World Economic Outlook (WEO) data, International Monetary Fund, at <http://www.econstats.com/weo/CVNM.htm>.

<sup>3</sup> General Statistics Office of Vietnam, 2011, "Key Indicators on National Accounts."

<sup>4</sup> CIA World Fact Book website.

<sup>5</sup> General Statistics Office of Vietnam, 2011, "Key Indicators on National Accounts."

<sup>6</sup> Government of Vietnam, 2011, "Vietnam's Five-Year Socio-Economic Development Plan, 2006-2010," available at [http://www.chinhphu.vn/portal/page?\\_pageid=439,44703553&\\_dad=portal&\\_schema=PORTAL&pers\\_id=1091359&item\\_id=1091460&p\\_details=1](http://www.chinhphu.vn/portal/page?_pageid=439,44703553&_dad=portal&_schema=PORTAL&pers_id=1091359&item_id=1091460&p_details=1).

<sup>7</sup> Socialist Republic of Vietnam, 2003, "National Strategy for Environmental Protection until 2010 and Vision toward 2020," Ministry of National Resources and Environment, Hanoi.

GDP by construction, which includes both public and privately owned projects, grew from 24,000 billion VND in 2000 to an estimated 110,000 billion VND in 2009.<sup>8</sup> The share of construction to total GDP amounted to 6.3 per cent in 2009 and 6.4 per cent in 2010. This shows that construction remains a significant sector in Vietnam's economy.

In the last five years, the state of Vietnam increased its spending on construction from 6,795 billion VND in 2005 to an estimated 14,679 billion VND in 2010. Investment in construction accounted for almost 5 per cent of total state investments in 2009. In addition to state investment, foreign direct investment (FDI) was the main source of funding for 707 construction projects at the beginning of 2011. Apart from manufacturing (7,358 projects) and professional, scientific and technical activities (991 projects), the construction sector was the sector in which FDI started most projects and in which it invested the most (11,589 billion VND). In 2010, 174 new construction projects were licensed, adding up to a total investment of 1,816 billion VND. Most FDI projects are financed by the Republic of Korea, Taiwan and Japan.<sup>9</sup>

During the last decade, the share of infrastructure procurement in the total GDP of Vietnam has been consistently between about 8 per cent and 10 per cent of GDP.<sup>10</sup> This is more than the suggested 7 per cent of GDP that developing countries should spend on infrastructure to sustain rapid growth. Despite the high spending and resulting increase in infrastructure stocks and access, Vietnam has encountered serious infrastructure challenges that could slow down rapid growth if not addressed properly. Inefficient, insufficient and inappropriate infrastructure is now identified as the main hindrance for companies operating in Vietnam.<sup>11</sup>

Thanh and Dapice identify electricity and transport as the two main problematic sectors harming Vietnam's competitive position. They argue convincingly that the level of investment is not the problem, as the Vietnamese government claims, but rather the efficiency of investment. The authors identify project selection, investment coordination and management as general problems. Particularly poor planning and project design, lack of capability in site management and supervision, and financial difficulties contribute to higher costs of large-scale infrastructure projects. At the same time, Vietnam is developing toward a per-capita lower middle-income economy and will therefore witness a significant decrease in ODA, which is currently used for a substantial amount of infrastructure projects. Therefore, there are two main challenges: increasing investment efficiency and collecting additional investment.<sup>12</sup> As will be described later in the report, Vietnam is assessing the possibility of public-private partnerships (PPPs) for projects now mainly funded by ODA.

### 1.3 Objectives and Research Questions

Considering the importance of public procurement of infrastructure to the Vietnamese economy and sustainable development, IISD and ISPONRE decided to study the current and potential future integration of sustainability criteria into infrastructure procurement. As investment efficiency will have to increase to maintain rapid growth, it is both an opportunity and a necessity to include sustainability standards in new or adjusted institutional frameworks and legislation. The status quo for both sustainability standards and public infrastructure procurement is not an option.

<sup>8</sup> General Statistics Office of Vietnam, 2011, "Key Indicators on National Accounts."

<sup>9</sup> Data from [http://www.gso.gov.vn/default\\_en.aspx?tabid=468&idmid=3&ItemID=9911](http://www.gso.gov.vn/default_en.aspx?tabid=468&idmid=3&ItemID=9911).

<sup>10</sup> Numbers vary slightly according to what source is used and how infrastructure is defined (state spending or total spending). For example, see D. H. Hoang Xuan Ty, 2009, "Sustainable Public Procurement Preparedness Assessment in Vietnam: A Reference to the Timber Industry," International Institute for Sustainable Development; and D. D. Nguyen Xuan Thanh, 2009, "Vietnam's Infrastructure Constraints," Harvard Kennedy School, ASH Institute for Democratic Governance and Innovation, Harvard.

<sup>11</sup> Nguyen Xuan Thanh, 2009, "Vietnam's Infrastructure Constraints."

<sup>12</sup> Nguyen Xuan Thanh, 2009, "Vietnam's Infrastructure Constraints."

This study will provide an in-depth analysis of the current state of play and the problems and solutions associated with future initiatives. Because sustainable development aims at establishing inclusive policies that integrate environmental, economic and social promotion, IISD and ISPONRE identified two sets of overall objectives: (1) identify opportunities to introduce and implement sustainable public procurement (SPP) of infrastructure in Hanoi, through the participation of Vietnamese ministries and agencies, and (2) assess private sector readiness to supply sustainable infrastructure.

The specific aims and objectives of this study are to:

1. Explore the prevailing legislative and institutional framework for the public procurement of infrastructure in Hanoi. Explore whether PPPs are used and to what extent.
2. Examine whether sustainability criteria—with a particular emphasis on ISO 26000—are already integrated into the public procurement of infrastructure in Vietnam. Examine whether markets already include such criteria in their operations.
3. Identify hurdles and opportunities for the integration of sustainability criteria into the legislative and institutional framework for public procurement of infrastructure in Hanoi. Assess the readiness of the private sector (including domestically owned enterprises) if sustainability criteria were to be included in infrastructure procurement.
4. Make conclusions and recommendations on how infrastructure procurement can be greened, including soft law instruments, legislative upgrades and institutional reform. Make conclusions and recommendations on market readiness.
5. Identify stakeholders who could provide leadership in implementing sustainable infrastructure procurement.

Two main research questions are derived from these objectives. They are related to the three dimensions that necessitated research: the legal setting and the institutional framework for public procurement of infrastructure and works, along with the private sector readiness.

1. **“Where are sustainability criteria integrated into the procurement of infrastructure, and where could the integration still be strengthened?”** The study aims at analyzing the existing and potential policy incentives for the green procurement of works, with a particular emphasis on the standards set out in ISO 26000. It looks at the legal setting and institutional framework. This policy part has the goal of being descriptive in tracking down where environmental and social criteria are already included in the legislative and institutional framework related to infrastructure procurement. It will also be prescriptive in setting out a number of policy recommendations to increase the integration of sustainability standards into the legal and institutional settings.
2. **“Is the Vietnamese private sector ready to supply infrastructure that abides by new sustainability criteria, and what could be done to prepare them for this change?”** The study aims at analyzing the difficulties that Vietnamese bidders (state owned companies and private enterprises) could encounter when being required to supply infrastructure according to green and social standards. It will be descriptive in analyzing how the bidders are preparing for this change and prescriptive in formulating suggestions on how the private sector could prepare itself more, as well as how the government could assist with preparation.

## 1.4 Methodology

The study is explorative in nature and was conducted through an in-depth analysis of legal documents and interviews with stakeholders across the public and private sectors (private companies and domestically owned enterprises), as well as with the international donor and development community. Three main steps were undertaken:

- Since Vietnam’s public administration is still highly centralized, an important first step was to understand the legal framework on the procurement of infrastructure. This legal study was complemented by the unravelling of the institutional framework through which infrastructure procurement takes place. The desk study included a detailed analysis of, among others, relevant national laws, regulations, policies regarding the state budget, public spending, procurement regulations and construction law.
- In a second step, IISD and ISPONRE identified the already existing integration of sustainability standards into the regulations and institutional framework concerning infrastructure procurement. Semi-structured interviews were held to verify the existing regulatory framework and standards integration.
- In a third step, IISD and ISPONRE conducted conference calls, semi-structured interviews and focus group meetings to collect the opinions of stakeholders. Public entities, private companies and international donors were consulted. These methods were used to identify the hurdles and opportunities for future integration of sustainability standards into the public procurement of infrastructure.

## 1.5 Structure of the Report

The report is structured as an explorative research study based on six main parts, which will each provide an answer to the objectives of the study.

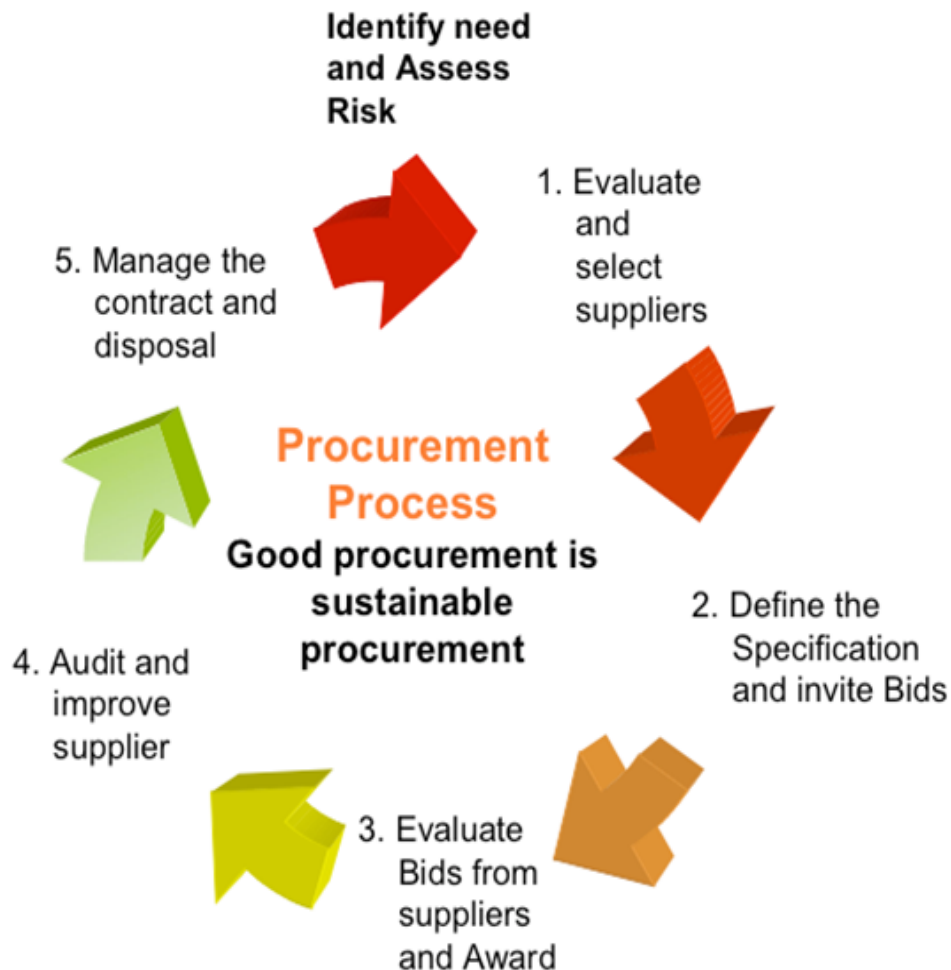
	TITLE	CONTENT
1	Introduction	Includes a background note with an overview of the national context in which the study took place, the relevance of infrastructure procurement, a description of the objectives of the study and the methodology used to reach these objectives.
2	Rationale for sustainability standards in the public procurement of infrastructure	Explains the substance and value of key concepts such as the procurement cycle, traditional public procurement and PPPs, sustainability standards based on international standards for the procurement of infrastructure, and market readiness assessments.
3	Public procurement of infrastructure in Vietnam	Explores the prevailing legislative and institutional framework for the public procurement of infrastructure. Explores whether PPPs are used and to what extent.

4	Current integration of sustainability criteria into infrastructure procurement	Examines whether sustainability criteria are already integrated into the public procurement of infrastructure in Vietnam. It also examines whether markets are already including such criteria in their operations, and what drives markets to implement changes to their processes.
5	Opportunities and hurdles for the integration of sustainability criteria into infrastructure procurement	Identifies hurdles and opportunities for the integration of sustainability criteria into the legislative and institutional framework for public procurement of infrastructure in Vietnam. It also assesses the readiness of the private sector (including domestically owned enterprises) if sustainability criteria were to be included in infrastructure procurement.
6	Conclusions and recommendations	Makes conclusions and recommendations on how infrastructure procurement can be greened, including soft law instruments, legislative upgrades and institutional reform. It also communicates recommendations to prepare markets to supply sustainable infrastructure.

## 2.0 Sustainability Standards in the Public Procurement of Infrastructure

### 2.1 Introduction to the Procurement Cycle

The procurement cycle involves a long and complex process in which government ministries interact with each other and with the private sector. Every step of the process holds the potential for the integration of sustainability criteria. It is imperative to understand the legal regime and institutional framework behind every one of these steps before being able to assess market readiness and make valuable and implementable policy recommendations.



**FIGURE 1. THE MARRAKECH TASK FORCE ON THE SPP CYCLE.**

Source: B. Morton, 2009, "Sustainable Public Procurement," presentation, September 9, Port Louis, Mauritius, United Nations Environment Programme.

## 2.2 Procurement Methods

There are two broad methods through which governments can procure goods, services and works: traditional public procurement or public-private partnerships (PPPs). The difference between these two methods can depend on individual countries' legislation. Traditional procurement implies that government is the most important investor, and hence keeps most control over the procured goods, services or works. This does not mean that all countries demand the government to hold 100 per cent of the financing costs. Sometimes this could be 100 per cent, other times 70 per cent or even 50 per cent. There is no international standard to determine the difference between PPPs and other forms of public procurement. It is a continuum decided upon by national governments themselves. PPPs, on the other hand, seek participation of the private sector in the provision of public infrastructure and services.

Traditional government investment does not mean there is no participation by the private sector. It is possible that governments do not consider the management method a PPP if the government carries more than 50 per cent (or 60 per cent, 70 per cent, etc.) of the financial burden. Similarly, regulations often stipulate a certain percentage of the financial burden that needs to be carried by the private sector before a project can be considered a PPP.

In PPPs, the private sector takes over a substantial proportion of project risk and financing in exchange for the reception of profits related to the implementation of the project. For example, a PPP could be used for the construction of a highway. The private sector could take over the risk of design, construction and operation by financing more of the project. In exchange, it could receive the right to take a toll on road users. PPPs are increasingly attractive for middle- and lower-income countries and are expected to occur more frequently in the future. However, one should be careful in idealizing PPPs. So far, it seems that PPPs are yet to deliver on their potential for long-term sustainability.<sup>13</sup>

## 2.3 Sustainability Standards in Public Procurement

The definition of SPP that was used by the Marrakech Task Force on SPP reads as follows: "Sustainable public procurement [SPP] is a process whereby organizations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy whilst minimising damage to the environment."<sup>14</sup> Public procurement can be an appropriate medium to achieve sustainable development because of the size of government spending. Spending about 45 per cent to 65 per cent of its budget on procurement, governments can have a major influence on the evolution of markets and key players within those markets.

To achieve SPP, there is a need to review the entire procurement cycle, from the identification of needs over the definition of specifications to the management of the contract. Such a review can be an excellent opportunity for governments to make necessary changes in the legal regime and for institutional frameworks to achieve more time and cost efficiency in the procurement process. At the same time, they would lead by example and give markets the much-needed incentives to produce greener and more social products, which will strengthen international competitiveness.

SPP implies the integration of sustainability standards into the different steps of the procurement cycle. These criteria can be based on international standards. This study drew specifically from the standards incorporated in ISO 26000

<sup>13</sup> S. Colverson and O. Perera, 2011, "Sustainable Development: Is There a Role for Public-Private Partnerships?"

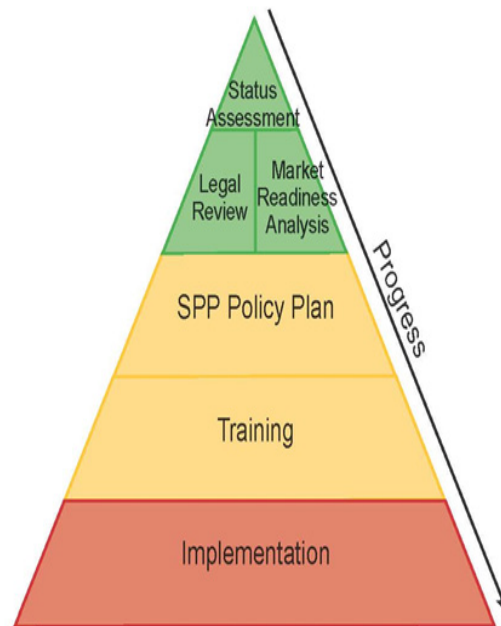
<sup>14</sup> Department for Environment, Food and Rural Affairs, 2006, "Procuring the Future – Sustainable Procurement National Action Plan: Recommendations from the Sustainable Procurement Task Force," DEFRA.

to identify and define social and environmental standards to be used in stakeholder consultations.<sup>15</sup> In addition, IISD and ISPONRE relied on ISO 14001 (Environment Management),<sup>16</sup> SA 8000 (Social Accountability),<sup>17</sup> TCVN ISO 14020 (Eco-Labeling), and ISO 14064 and 14065 (Greenhouse Gas Monitoring, Quantification and Reporting).

## 2.4 Status Assessment, Legal Review and Market Readiness Assessment

The implementation of SPP is only the last step in a process that aims at preparing regulators and private sector companies carefully for a necessary change. This careful preparation is meant to accelerate the medium- to long-term benefits of SPP, while minimizing potential short-term costs. This report takes on the challenge to assist with the first steps toward SPP of infrastructure in Vietnam.

The report consists of a status assessment, a legal review and a market readiness assessment. All three have been conducted in cooperation with regulators and private sector representatives. A legal review stipulates the current environmental regulations, the current public procurement legislation for infrastructure and its main characteristics, and the criteria for sustainable development that are currently integrated or considered. Drawing on this knowledge, the hurdles and opportunities for further integration are assessed. Second, a market readiness assessment touches upon the existing capacity to supply infrastructure more sustainably and analyzes in depth the infrastructure supplier markets to identify their capacities, concerns, needs and potential solutions. The assessment is crucial in determining whether actual implementation could be expected.



**FIGURE 2. THE MARRAKECH TASK FORCE SPP IMPLEMENTATION PYRAMID.**

Source: B. Morton, 2009, "Sustainable Public Procurement," presentation, September 9, Port Louis, Mauritius, United Nations Environment Programme.

<sup>15</sup> For a summary, see International Organization for Standardization, 2011, "ISO 26000 – Social Responsibility," [http://www.iso.org/iso/iso\\_catalogue/management\\_and\\_leadership\\_standards/social\\_responsibility/sr\\_discovering\\_iso26000.htm](http://www.iso.org/iso/iso_catalogue/management_and_leadership_standards/social_responsibility/sr_discovering_iso26000.htm).

<sup>16</sup> For a summary, see US Government, 2005, "Summary of Requirements for ISO14001:2004," [http://www.fs.fed.us/ems/includes/sum\\_ems\\_elements.pdf](http://www.fs.fed.us/ems/includes/sum_ems_elements.pdf).

<sup>17</sup> For a summary, see Global Quality Village, 2011, "SA8000: 2008 Social Accountability Standard," <http://www.globalqualityvillage.com/sa8000.php>.



### 3.0 Organization of Public Procurement of Infrastructure in Vietnam

In recent years, the legal system related to managing public procurement has been continuously adjusted, in order to allow for a stricter control of funding. Vietnam has since adopted a number of laws and decrees governing public procurement, most recently in 2005 and 2009: the Law on Procurement (Law No. 61/2005/QH11), adopted in 2005 and amended by Law No. 38/2009/QH12 in 2009 (together, the “Law on Procurement”); subsequently, the government issued implementing regulations for the Law on Procurement in Decree 85/2009. Public procurement rules are also addressed in the 2003 Law on Construction. Part 4 on Current Integration of Sustainability Criteria will discuss the construction law.

There are many decrees and circulars implementing these laws. This section will address and review a number of laws on public procurement, relevant to infrastructure. First, the role of the state budget law will be set out. Second and third, the main provisions of the 2005 bidding law and the 2009 amending law are presented. Fourth, two government decisions on the financing of infrastructure works are laid out. Many government projects already include private participation. This important fourth section will also set out the institutional framework of such procurement of infrastructure with private participation.

#### 3.1 State Budget Law

According to State Budget Law No. 01/2002/QH11 (December 27, 2002) and its supporting regulations, the Ministry of Finance annually chairs the production and development of the state budget estimation, making plans to allocate the central budget for next year and submitting these to the government on the basis of budget estimations reported by the local and central agencies.

In the National Assembly session at the end of the year, the government submits the state budget estimation and allocation plans for the next year’s central budget to the National Assembly. The National Assembly makes a decision on these by November 15.

The State Budget Law sets up some principles relating to expenditures on infrastructure investment, with an emphasis on state budget accumulation for investment aimed at developing infrastructure (Article 8). In accordance with regulations regarding public purchase, there are currently many state agencies at the central and local level directly involved in the process of developing the state budget estimation. Therefore, if the Vietnamese government issues supplementary budget estimation regulations that integrate elements of environmental protection and social equality into procurement of, for example, infrastructure, such regulations will promote the purchase of socially and environmentally friendly infrastructure across different levels of government. The regulations relating to budget estimation can thus have a potential high and integrating impact.

#### 3.2 2005 Bidding Law

Bidding Law No. 61/2005/QH11 (December 12, 2005) is the highest legal instrument that regulates public procurement. According to the Bidding Law, when state agencies purchase properties they should choose from one of seven bidding forms (Articles 18 to 24). These forms also apply for construction investment projects.

Bidding dossiers have technical and financial requirements. Related to construction and installation, bidding packages include technical requirements based on technical designs, which are accompanied by estimates, technical instructions, and other necessary requirements (Article 32), and which include environmental requirements. Article 28 sets out the principles of bid evaluation:

1. The bid evaluation must be based on the criteria and other requirements in the bidding dossiers in order to select contractors that have full capabilities, experiences and feasible solutions for execution of bidding packages.
2. The bid evaluation must, apart from the provisions of Clause 1 of this Article, also be based on submitted bids and contractors' written explanations thereon.
3. The bid evaluation must comply with the order provided in Article 35 of this Law.

Evaluation criteria in bidding dossiers must include these bid-evaluation methods. Bid-evaluation criteria cover criteria for the evaluation of capabilities and experience in cases where pre-qualification is not applied, along with criteria for general evaluation of consultancy service-bidding packages or contents for determination of expenses on the same technical, financial and commercial grounds for comparing and ranking bids, with regard to procurement, construction and installation or Engineering, Procurement and Construction bidding packages. In the case of bidding for infrastructure projects, the point-rating method or method of evaluation by the "pass" or "fail" criterion applies to the technical requirements taken up in the specification.

Upon formulation of technical evaluation criteria through a point scale, the minimum score for the technical requirements must be specified but cannot be lower than 70 per cent of the total technical points, or not lower than 80 per cent for bidding packages with high technical requirements. For bids that have passed the technical evaluation, the expenses on the same technical, financial and commercial grounds shall be used for comparing and ranking bids. Bids of contractors with the lowest expenses on the same grounds are ranked first (Article 29). In short, construction bids first need to satisfy 70 per cent (or 80 per cent) of the technical criteria. Only in a second step, the financial cost plays the most important role.

### 3.3 2009 Amendment to the Bidding Law

Decree No. 85/2009/ND-CP on guiding the Bidding Law and the selection of construction contractors under the Construction Law delivers further guidance on evaluation criteria applicable to bids for construction and installation bidding packages, particularly in Article 26.

First, this article specifies that the criteria for evaluation of contractors' capability and experience, applicable to bidding packages not requiring pre-qualification, include:

- a. Experience on execution of similar bidding packages in Vietnam, in similar geographical areas and sites;
- b. Technical capability: the number and qualifications of staff and technical workers directly involved in the execution of bidding packages and the quantity of available construction equipment, along with the capability of mobilizing construction equipment for the execution of bidding packages;
- c. Financial capability: total assets, total payable debts, short-term assets, short-term debts, turnover, profits, value of contracts currently performed and other criteria.

The Amendment follows the 2005 Bidding Law in that the determination of specific requirements for each criterion is based on requirements set out in every different bidding package. Evaluation criteria specified in this clause are “pass” and “fail”. Contractors that “pass” all the three contents specified at points a, b and c meet the capability and experience requirements and are evaluated positively. The 2009 amendment thus mainly adds the element of previous experience in similar projects.

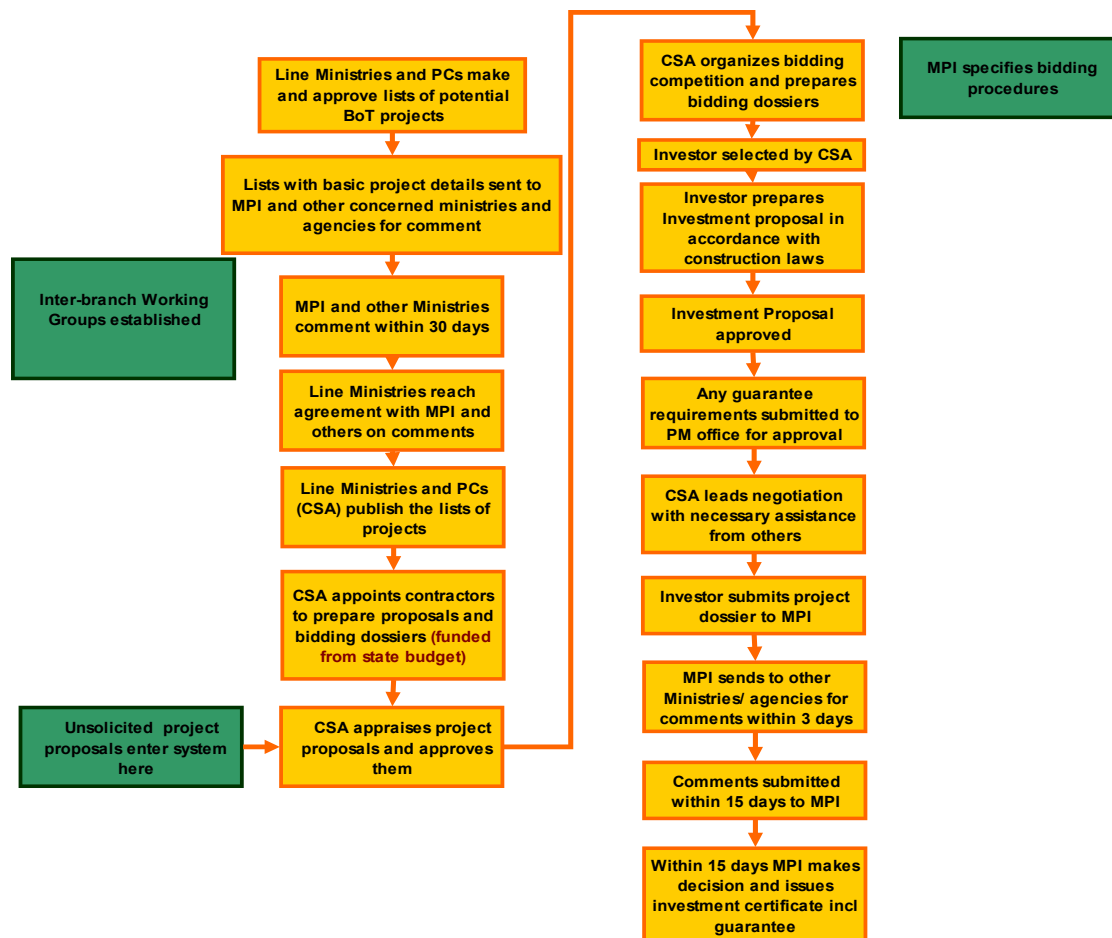
Second, in terms of the technical evaluation criteria, the amendment pays attention to the satisfaction of requirements for technical designing dossiers and accompanied estimates. Unless the bidding dossier, based on the characteristics of the bidding package, requires contractors to strictly follow the construction measures indicated in the bidding dossier, the dossier should contain a provision that contractors may propose construction measures different from those indicated in the original dossier. In that case, the bidding dossier should specify evaluation criteria that are applicable to the contractors’ proposed changes. Such specific evaluation criteria include the satisfaction of environmental sanitation conditions and other conditions on fire prevention and labour safety, the extent of satisfaction of warranty requirements, and measures to guarantee quality and the construction schedule.

The marking method using the criterion “pass” or “fail” can again be used for the proposed changes, depending on the characteristics and specific conditions of each bidding package. When it is necessary to speed up the evaluation of infrastructure bids with simple technical requirements, the bidding dossier may state that the evaluation will be conducted at the same time as the technical capability and tenders of contractors and their proposed schedules for execution of the bidding packages are considered.

### 3.4 Private Sector Participation in Government Procurement of Infrastructure

On November 9, 2010, Vietnam’s Prime Minister issued the long-awaited Decision No. 71/2010/QĐ-TTg, a pilot step investment scheme based on the PPP model, in order to address the growing financing needs of infrastructure projects in Vietnam. “Decision 71” took effect on January 15, 2011.

The concept of PPP, however, is not new under Vietnamese law. Indeed, most of the infrastructure projects in Vietnam have been carried out in accordance with the regulations set out in Government Decree No. 108/2009/ND-CP (“Decree 108”), dated November 27, 2009, for build-operate and transfer (BOT), build-transfer-operate (BTO) and build-transfer (BT) forms of investment. Whereas the Decision 71-type of procurement has not been used so far, Decree 108-type projects have already been used for many infrastructure projects. The difference mainly lies in government involvement in the financing process and after the initial construction phase. The following graph shows the most commonly used institutional framework for Decree 108-type financed infrastructure projects. An explanation of the roles of different ministries in the Decree 108-type of projects can be found in Appendix 1.



**FIGURE 3. SIMPLIFIED INSTITUTIONAL FRAMEWORK OF A DECREE 108<sup>18</sup> PROCESS.**

Source: World Bank, 2008, "Infrastructure Financing in Vietnam: The Evolving Role of Banks, Capital Markets, Infrastructure Funds, and PPPs," Analytical and Advisory Assistance (AAA) to the Government of Vietnam (GOV), December 1.

With Decision 71, the Vietnamese government aims to encourage more investment from the private sector than was the case in Decree 108. These investors can be both domestic and foreign, and are expected to aid the funding requirements of infrastructure projects. Before the actual regulations are enacted, Decision 71 will be in operation for three to five years from the effective date.

Decision 71 sets out requirements regarding the allocation of financial resources to fund an eligible PPP project. More details on corporate and contract structuring of the project are also provided. With regards to the financial structure, on the basis of the total investment capital, Decision 71 and Decree 108 restrict the minimum and maximum thresholds of the financial participation of state and private investors. Such thresholds remarkably differentiate Decision 71 from

<sup>18</sup> Decree No. 108/2009/ND-CP ("Decree 108"), dated November 27, 2009.

Decree 108. It is important to notice that so far most procurement of infrastructure is done using the 2009 Decision 108 requirements. However, to deal with future withdrawal of ODA and increased spending on infrastructure projects, the government hopes to fund more projects using the 2010 Decision 71 specifications.

Regarding state contribution, 49 per cent of the total investment capital is the maximum threshold of state capital that may be contributed in a Decree 108-type project. The 49 per cent mentioned in Decree 108 is reduced under Decision 71 where state participation—including state capital, investment incentives and relevant financial policies—cannot exceed 30 per cent of the total investment capital. Decision 71 also further clarifies that state capital must not be an equity contribution in the project company and it is not associated with any right to receive profit distribution from the project revenue. The Prime Minister must approve state participation.

Regarding investor equity capital, as inferred from the maximum threshold that state participation may be, private participation must hold at least 70 per cent of the total investment capital of the Decision 71-type PPP project. Private participation must comprise of equity capital and loan capital. Equity capital is required to be at least 30 per cent of private participation and accordingly, at least 21 per cent of the total investment capital. Loan capital must be mobilized from commercial loans or other sources without state involvement, which includes government guarantees.

## 4.0 *Current Integration of Sustainability Criteria into Infrastructure Procurement*

### 4.1 Legal Framework

The legal system related to the integration of sustainability criteria into infrastructure procurement has developed substantially in the last decade. Section 4.1 will only address the current integration of sustainability criteria into legislation related to procurement of infrastructure. It will give an overview of all legislative documents that— theoretically—can have an effect on greening government sponsored infrastructure projects. The section outlines three important government strategies, laws related to environmental protection and energy efficiency, and the environmental considerations in the construction law. Section 4.2 will assess the strength of this legal framework and its actual implementation.

One of the first strategic documents mentioning all aspects of environmental protection and natural resource use, paving the way for sustainable development in Vietnam, is the National Environment and Sustainable Development Plan of 1991-2000. During this period, the view of sustainable development was confirmed in the “1998 Directive No. 36-CT/TW of the Politburo on strengthening environmental protection in the industrialization and modernization process of the country.” In addition, to implement sustainable development goals, many directives, resolutions of the Party, and many legal documents of the state were enacted and implemented. Examples are: Decision No. 256/2003/QD-TTg of the Prime Minister dated 12/2/2003 on approval of the Vietnam National Environmental Protection strategy to 2010 and orientation to 2020, and Decision No. 153/2004/QD-TTg of the Prime Minister dated 02/12/2003 issuing the Strategic Orientation for Sustainable Development in Vietnam (Agenda 21). These orientations provide the legal basis to engage ministries, branches, localities, organizations and individuals associated with the implementation and coordination of infrastructure projects to ensure sustainable development of the country. The government also issued documents in order to efficiently use, and thus save, resources by consuming and producing more sustainably.

#### **A. Strategic Orientation for Sustainable Development in Vietnam (Agenda 21)**

Decision No. 153/2004/QD-TTg (August 17, 2004) initiated the Strategic Orientation for Sustainable Development in Vietnam. The Strategy relates to cleaner production, environmental friendliness, and clean industrialization. One of the core principles of the Strategic Orientation is the development of clean production and environmentally friendly systems in the manufacturing industry. Technology that facilitates modern and clean production is to be prioritized. The implementation of a cleaner industrial process, and changes in production and environmentally friendly consumption patterns have also been acknowledged as priorities.

One important measure is the restructuring of production activities and consumer services. The Strategic Orientation sets out that this would be best achieved by a review and revision of technical standards, including an upgrade of technology to improve efficient environmental use of products, as well as encouraging innovation and inventions that will save energy and materials and create less waste. The Orientation also calls for the encouragement of the application of cleaner production technologies, environmentally friendly technologies and technologies to reuse and recycle waste. Additionally, improving product quality is deemed essential in order to lower costs of production and service provision, to improve standards, to increase the quality for the consumer and to use natural resources more efficiently.

The legal document addresses specifically the need for the implementation of necessary measures, using policy means such as communication, education and economic tools such as a consumption tax to correct and guide rational consumption, combat waste and increase consumer savings. These kinds of strategic aims for the manufacturing industry are relevant to infrastructure projects, as they affect materials that are used in construction processes. So far, however, there are no requirements to utilize more environmentally friendly materials in construction processes.

## **B. Vietnam's National Environmental Protection Strategy to 2010**

This was the first strategic document that encompassed the breadth of environmental fields and natural resources in Vietnam. In order to achieve sustainable production and consumption, the strategy set specific objectives to be reached in 2010: 50 per cent production and business companies were to be certified with an environmental standard or ISO 14001 certificate. In addition, 100 per cent of enterprises with exported products were to apply environmental management systems under ISO 14001. An 80 per cent target of producers and business companies being granted environmental standard or ISO 14001 certificates was set for 2020. In this year, 100 per cent of exports and 50 per cent of commodities should be using environmental labels under ISO 14021. There are no specific requirements for infrastructure suppliers. However, considering they are themselves large purchasers of materials, these 2020 targets, if implemented, will be a significant addition to greening the supply of infrastructure. The government could gain additional sustainability in infrastructure projects by actively implementing and enforcing the Environmental Protection Strategies.

## **C. Cleaner Production in Industry Strategy**

The Prime Minister signed Decision No. 1419/QĐ-TTg (September 7, 2009) to approve the "Cleaner Production in Industry to 2020 Strategy," in which the overall goal is "cleaner production, to be widely applied in industrial production facilities to improve the efficient use of natural resources, materials and fuels; to reduce emissions and limit pollution; for environmental protection; and to improve environmental quality, human health and ensure sustainable development."

The Strategy's 2015 objective is to ensure that 50 per cent of industrial production facilities are aware of the benefits in applying cleaner industrial production methods, to have 25 per cent of industrial production facilities utilizing cleaner industrial production methods, and, for those facilities, to have saved 5 per cent to 8 per cent in energy consumption, raw materials, fuels and materials per product. Similar to the Environmental Protection Strategy, the effect on infrastructure supply is only secondary. The infrastructure development sector itself is not immediately targeted.

## **D. Environment Protection Law 2005**

### **1. Indirect Soft Law and Hard Law Instruments**

The Environmental Protection Law was enacted in 2005 and gives a comprehensive legal framework to contribute to managing environmental protection activities, including regulations on sustainable production and consumption. It addresses a number of key issues relevant to government sponsored infrastructure projects (see below). The law has both soft law and hard law provisions. Examples of potentially relevant soft law provisions are:

1. Article 33 holds: “The State encourages production and consumption of products that create less pollution, are bio-degradable, that use waste to produce clean energy; and that are produced or imported using machinery, equipment and vehicles that use clean and renewable energy.”
2. Article 34 outlines regulations to increase environmentally friendly consumption habits: “The State encourages organizations and individuals to consume recycled, organic, naturally packaged, eco-labelled products and other environmental friendly products. To promote this, the Ministry of Culture and Information, news agencies and newspapers have a responsibility to coordinate with the Ministry of Natural Resources and Environment for advocacy, referral and advertisement of environmentally friendly products and goods to consumers for use.”

While these provisions only “encourage” sustainable production and consumption, the 2005 Law also mandates preferential support policies for environmental protection activities. Article 117 specifies:

1. The State shall provide land-related preferences and supports for the following environmental protection activities:
  - a. Building concentrated daily-life waste water systems;
  - b. Building facilities for recycling and treatment of ordinary solid wastes, hazardous wastes and waste burial sites;
  - c. Building environment-monitoring stations;
  - d. Relocating seriously polluting establishments;
  - e. Building environment engineering industrial establishments and environmental protection works for public environmental protection interests.
2. Exemption from and reduction of taxes and charges for environmental protection activities are provided for as follows:
  - a. Recycling, treatment and burial of wastes; production of clean energy and renewable energy shall enjoy exemption from or reduction of turnover tax, value-added tax, environment tax and environmental protection charges;
  - b. Machinery, equipment, means and tools imported for direct use in collection, storage, transport, recycling and treatment of wastes; environment monitoring and analysis; production of clean energy and renewable energy shall be exempt from import tax;
  - c. Products recycled from waste, energy recovered from waste incineration, environment-friendly natural material-substituting products shall be subsidized by the State.
3. Organizations and individuals investing in environmental protection shall be prioritized to get loans from environmental protection funds; loans borrowed from other credit institutions for investment in environmental protection shall be considered for post-investment interest payment supports or investment credit guarantee according to the charters of environmental protection funds.
4. Key environmental protection programs and projects of the State, which need big amounts of capital, shall be prioritized to use ODA capital.



## 2. Environmental Impact Assessments and Construction-Specific Provisions

One of the more significant legal requirements in the law is stipulated in Article 18. This article mandates owners of infrastructure projects to conduct an Environmental Impact Assessment (EIA) before starting projects.<sup>19</sup>

**TABLE 1. THE EIA PROCESS IN VIETNAM.**

CONTENT	REQUIREMENT
Object	Certain project
Elaborator	Owner of project
Time of elaboration	EIA report must be elaborated simultaneously with formulation of feasibility study report
Appraiser	Appraisal council or appraisal service organization
Form of approval	Decision approving EIA report
Result of approval	Decision approving EIA report is prerequisite for being granted investment licenses, construction and operation permits
Post approval responsibility	Responsibilities of project owner and approval agency according to the law

In relation to construction activities, the Environment Protection Law stipulates in Article 40:

1. Construction planning must comply with environmental protection standards and requirements.
2. Construction of works must satisfy the following environmental protection requirements:
  - a. For works built in residential areas, measures must be taken to ensure that no dust is dispersed and noise, vibration and light will not exceed allowable limits;
  - b. Construction materials must be transported by means, which meet technical specifications, causing no leakage, spillage and environmental pollution;
  - c. Waste water, solid wastes and other kinds of wastes must be collected and treated up to environmental standards.
3. People's Committees at all levels and public order management units may apply measures to handle owners of works and means of transport that violate environmental protection regulations.

Most specific standards related to construction projects are thus limited in space and time: they affect the construction process, site and transport during the construction process. Life-cycle sustainability standards are so far not included in any legal requirement.

<sup>19</sup> Article 18 specifies: "1. Owners of the following projects must elaborate environmental impact assessment reports:

- a/ Projects of national importance;
- b/ Projects planned to use part of land of or exerting adverse impacts on, the natural sanctuaries, national parks, historical and cultural relic sites, natural heritages or beautiful landscapes which have been ranked;
- c/ Projects to potentially exert adverse impacts on the river watershed, coastal areas or areas of protected ecosystems;
- d/ Projects to construct infrastructure works in economic zones, industrial parks, hi-tech parks, export-processing zones or craft village areas;
- e/ Projects to construct new urban centers or concentrated residential areas;
- f/ Projects to exploit and use groundwater or natural resources on a large scale.
- g/ Other projects having potential risks or adverse impacts on the environment."

## **E. Decree No. 04/2009/ND-CP Providing for Incentives and Supports for Environmental Protection Activities**

This Decree continues on the 2005 Law on Environmental Protection and specifies the favourable treatment of land and capital, and free or reduced taxes and charges for environmental protection activities. An example is the support for investment in building infrastructure works (Article 8):

1. Investors of projects to build environmental protection works specified in Clauses 1 and 2, Section I, Part A of the List will enjoy supports for investment in infrastructure works as follows:
  - a. The State provides supports for investment in building technical infrastructure works and work items (roads, electricity transmission lines, water supply and drainage works) outside project areas and connected with common regional technical infrastructure systems;
  - b. In case the State has not yet provided support capital for works and work items specified at Point a, Clause 1 of this Article according to project schedules, investors may use other lawful capital sources to invest in their projects in order to put these projects into operation according to schedule. These capital amounts will be cleared against land use levy or rent amounts and other remittances payable by investors into the state budget under regulations.

Circular No. 230/2009/TT-BTC of the Ministry of Finance provides a detailed guidance on tax incentives for environmental protection activities, which is stipulated by Decree 04/2009/ND-CP. This Circular specifies that those enterprises that are active in environmental protection activities as described by law, have a reduced applicable tax rate of 10 per cent of investment income.

Newly established enterprises from investment project for environmental protection activities and that are located in areas with difficult or extremely difficult socioeconomic conditions, are eligible for free tax for four years taxable income; and 50 per cent for next nine years.

## **F. Energy Efficiency Regulations**

Energy is the critical key to the success or failure of competitive advantage and national sustainable development strategies. However, while the energy output of Vietnam is low, the energy consumption of Vietnam is comparatively large, rendering the country vulnerable to an energy deficit in the near future. As energy consumption has been increasing, it has particularly attracted the government's attention. In September 2003, the government issued Decree No. 102/2003/ND-CP on the use of energy saving and efficiency measures, with the Ministry of Industry and Trade assigned as the focal point for the implementation of this Decree. This is considered the first normative, grounded important for the implementation of the activities on the use energy efficiency in Vietnam. Other detailed guidances are Directive No. 01/2004/TT-BCN of the Ministry of Industry (now Ministry of Industry and Trade) guiding the use energy saving and effective for the production facilities, and Directive No. 19/2005/CT-TTg on 2/6/2005 of the Prime Minister on the implementation of use electricity saved.

In November 2005, standards for energy savings in commercial buildings were issued, with the goal of reducing energy losses and improving energy efficiency and thrift in Vietnam for living conditions and work. In April 2006, the Prime Minister issued Decision No. 79/2006/QD-TTg approving the national target program on energy saving and efficiency. The program shows the specific objectives of saving 3 per cent to 5 per cent of the total energy consumption in the

country in the period 2006-2010, and from 5 per cent to 8 per cent of the total energy consumption in the period 2011-2015, compared with current forecasts of energy development and socioeconomic development in the development plan. In 2006, the Ministry of Industry (now the Ministry of Industry and Trade) issued Circular No. 08/2006/TT-BCN to guide the order and procedures for energy labelling for products, including refrigerators and air conditioners.

After six years of implementing, the Decree on energy saving and efficiency achieved some initial results. However, Decree 102/2003/ND-CP limited itself to the objectives of raising community awareness about energy saving and efficiency use.

Recently, on June 17, 2010, the Law on Economical and Efficient Use of Energy was issued by the National Assembly and took effect from 2011 on. On March 29, 2011, the government issued Decree No. 21/2011/ND-CP providing detailed regulations and measures to implement the Law of Energy saving and efficiency. This Decree took effect in May 2011 and replaces Decree No. 102/2003/ND-CP dated 03/09/2003 on the energy saving and efficiency. The Law on Economical and Efficient Use of Energy includes 12 chapters and 48 articles with objectives related to the development of national energy, energy security, exploitation and the use of efficient energy resources to meet the overall objectives of environmental protection and socioeconomic development. Additionally, the Law also encouraged the formation of networks of service providers to participate in energy-saving programs and projects at the local level. It stipulates the list of vehicles and equipment that must have energy labels: "Manufacturers and importers of devices and equipments shall label devices and equipment after obtaining energy label certificates from competent agencies" (Article 39).

Specifically, the Law stipulates mandatory measures for economical and efficient use of energy applicable to construction (Article 15):

1. Applying planning and architectural designing solutions suitable to natural conditions in order to reduce energy consumption for lighting, ventilation, cooling and heating.
2. Using heat-insulated materials conformable with applicable national or foreign standards on energy yield announced or recognized by competent state agencies in order to reduce thermal transmission through walls, roofs, doors and windows.
3. Using and installing devices and equipment with high energy yield which are designed and manufactured in conformity with applicable national or foreign standards on energy yield announced or recognized by competent state agencies.
4. Using automatic management and control systems to operate energy-consuming devices and equipment suitable to the sizes of works.
5. Installing electric and thermal measuring devices, temperature controllers and controllers of electric and thermal supply systems in different positions of buildings suitable to weather conditions and use purposes.
6. Using energy-saving building materials and non-baked materials, installing devices using solar energy and biogas in construction works.
7. Applying standards, technical regulations and norms on economical and efficient use of energy to construction works.

Likewise, there is a regulation relating to economical and efficient use of energy in state-funded investment projects, in which "investors of state-funded projects to build or upgrade infrastructure and construction works shall comply with this Law suitable to each operation domain and other relevant laws on economical and efficient use of energy in all project stages" (Article 29).

After the Law of Energy Saving and Efficiency was issued by the National Assembly, the Ministry of Industry and Trade made specific plans for the actual implementation of the Law. So far only some of the content has been implemented. But the thorough implementation and everyday effectiveness of the legislation is not just the responsibility of management agencies, but also depends on the awareness of organizations and individuals on the issue. This awareness is still relatively limited, despite the relevance to the roles of these stakeholders in the public procurement process.

## G. Construction Law and Related Documents

The Construction Law regulates the basic principles of construction activities, including environmental considerations such as the principles ensuring environmental hygiene (Article 4), requirements to invest in protecting the environment during projects of work construction (Article 36) and requirements related to the environmental impact assessment (Article 37).

In order to direct the implementation of both laws, the government issued Decree No. 111/2006/ND-CP (September 29, 2006) to guide the implementation of the Bidding Law and the selection of contractors under the Construction Law. This Decree was later replaced by Decree No. 58/2008/ND-CP (May 5, 2008) and its most recent incarnation is Decree No. 85/2009/ND-CP (October 15, 2009).

This Decree No. 85/2009/ND-CP stipulates that one of the key points of the technical evaluation standards in bids for government procurement is the environmental impact assessment (EIA). Details of the EIA content are prescribed in the Law on Environmental Protection 2005, Decree No. 80/2006/ND-CP (August 9, 2006), subsequently amended and supplemented by Decree No. 21/2008/ND-CP (February 28, 2008). On April 18, 2011, the Government issued Decree No. 29/2011/ND-CP, which replaced some provisions of strategic environmental assessment, environmental impact assessment and environmental protection commitment in Decree No. 21/2008/ND-CP and Decree No. 80/2006/ND-CP. Generally, Decree No. 29/2011/ND-CP strengthened some material in the environmental impact assessments.

## 4.2 Analysis of the Strength and Implementation of the Current Legal Framework

### Legal Framework

The legal framework itself mainly supports sustainable procurement of infrastructure indirectly. The last decade legal sustainability requirements have increased significantly. These legal provisions can be either mandatory or voluntarily. To date, there are few specific hard law provisions that make requirements for the sustainable public procurement (SPP) of infrastructure. The current integration of sustainability concerns into legal requirements is still relatively weak. For example, some important articles of the 2005 Protection Law carry no legally binding force and only encourage the demand side to purchase more environmentally friendly products. Government ministries indicate that to date, they themselves hardly prioritize more sustainable products or infrastructure; priority goes to the lowest immediate cost of infrastructure. In addition, there is an insufficient connection between the different laws guiding public procurement of infrastructure. This can increase complexity for the implementing governmental agencies. These different ministries and agencies only collaborate on a limited level to incorporate sustainability criteria in public procurement.

## Compliance and Monitoring

ODA currently funds many of infrastructure projects, mainly related to water and waste treatment. These types of ODA projects are stricter on environmental and social criteria. These standards are taken up in the bidding invitation. Bidders need to prove that they can comply with the standards at the bidding moment. There is often a pre-selection for big or very specific projects. However, even when ODA projects require stricter standards, a significant problem for increasing sustainability standards in construction remains the actual enforcement of the existing legal requirements.

In general, most SMEs have not implemented the necessary changes to abide by the existing regulations. Already running behind, it makes it only more difficult and costly for them to adjust to future social and environmental criteria. Donors are currently demanding more of such standards and it becomes increasingly difficult for larger companies to subcontract Vietnamese SMEs if there is actual monitoring in place. Government respondents indicate that insufficient government monitoring caused this lack of compliance on the side of SMEs and other construction companies. It is estimated that for more than 400,000 ongoing construction projects, there are in total between 100 and 200 government teams that are active in verifying health and safety at the construction site.

## Penalization of Non-Compliance

In case developers do not comply with the technical criteria written down in the bidding specification and contract, the government foresees penalization measures. The law specifies that non-complying companies do not only get a fine, but are also prohibited from participating in tendering processes for one year; this is published in the newspaper. To date, however, these measures are widely inadequate to address non-compliance. The fines are much too low to encourage Vietnamese companies to actually comply with regulations. It makes more sense economically to pay the fine than to carry the costs to comply with current regulations and contract specifications. The fine depends on the damage to the environment. However, it is sometimes as low as USD \$40.

Higher fines are necessary. However, these fines still risk companies choosing the easier path of paying the fine than the complex but potentially less costly path of making structural adjustments to comply with the law. Therefore, more frequent investigation and monitoring, as well as training for companies, should complement these higher fines.

## 4.3 Procurement Process and Institutional Framework

### Social and Environmental Criteria in the Technical Specifications

While not included in the framework legal documents, social and environmental criteria are included in the specifications for the infrastructure project at the time of bidding. To evaluate these specifications, the scoring method is used. In total, the environmental score represents about 10 per cent, maximum 20 per cent, of the total score. Different departments decide upon the scores. For example, the department of quality management of the Ministry of Transport decides on the different scores for transport projects. In general, respondents identify that both the governmental procurer and infrastructure supplier attach more importance to experience, time frame and quality, than social or environmental standards.

## Competition in Bidding

There are problems related to competitiveness in infrastructure bidding. For example, in the transport sector, only about 30 per cent of construction projects are bid for competitively. In other projects, suppliers are directly selected. More competition is necessary, and would increase the actual integration of sustainability criteria in the bidding stage, if compared to a similar process with direct selection.

## Institutional Design

The institutional framework is evolving. Since the 1990s, donors have been asking for more efficiency in government procurement. Within the Ministry of Planning and Budget, the Office for Bidding Management was upgraded to the Department of Bidding Management and eventually a specific Public Procurement Agency was set up within this department. The specific role of this agency is to assist the Prime Minister on procurement policies and to help other agencies and ministries implement the regulations related to procurement. This ministry tries to spread awareness of the legislation via the management of a newspaper and a transparent website that includes all the laws. They also provide training to ministries all over the country. This training does not include MONRE and is only focused on the procurement process. However, currently the Bidding Law is being revised. The Public Procurement Agency is seeking to include a general reference to environmental and social awareness in the law. However, they lack the know-how on how to go about the inclusion of such references.

The Ministry of Finance decides on state budget planning. The Public Procurement Agency is not in the place to try to integrate social and environmental criteria at that level. The Ministry of Finance itself is clear in ranking environmental or social criteria lower than the short-term cost of a project. In terms of financing, no environmental or social standards are included as yet, and there are no specific plans to do so in the foreseeable future.

## Cost Analysis

Cost analysis is one of the most important elements in the bidding evaluation. Despite being only the second step in the evaluation, after the evaluation of compliance with technical criteria, it is often the most important one. Most infrastructure suppliers are able to meet the technical criteria, most certainly the few underdeveloped ones related to social and environmental standards. Meeting the technical criteria on paper, though, does not yet mean that these standards are actually implemented in the construction project. In general, at the bidding stage, costs matter significantly.

Currently, there is no sufficient capacity or technical assistance on how life-cycle costs can be calculated. Therefore most of the time, cost calculations and criteria are based on immediate short-term project costs, which is often an unfavourable system for sustainable designs that require higher initial investments but save costs over the lifetime of the project. In effect, if the contracted supplier of infrastructure is not involved during the rest of the life of the infrastructure project, it is not in his interest to assess life-cycle costs that will reap benefits after the construction phase but increases the costs both at the time of the bidding competition and for the private company during construction.

For example, the construction of wastewater treatment plants has been the subject of a tendering process. As the contracted supplier was not responsible for the long-term operation of the plant after the construction phase, the company had few interests in increasing up-front capital investments to reap the benefits (cost savings) later on. To decrease this inefficient cost analysis, the government can attempt to develop PPPs. However, this would only cover one part of governmental procurement of infrastructure. Better would be to provide training to companies to calculate life-cycle cost and subsequently mandate this by law.

## 4.4 Market Readiness

### Lack of Capacity

Currently, SMEs are in extreme financial difficulties. They have little access to finance and hence it is difficult to convince them of the business case of social responsibility, as included in ISO 26000. Besides financial capability, they do not have the capacity to perform basic tasks that could increase efficiency. For example, in the goods industry, SMEs do not have the capacity to calculate adequate prices. It is therefore more adequate for donors and government to assist in profit driven change first. This in itself will lead to more resource efficient use. Eventually, spillover effects will benefit the integration of social and environmental standards.

### Private Sector Dealing with Standards

In case of infrastructure projects, the contracted developer is responsible for the entire process of construction. This means that companies that won the tender often subcontract different parts of the construction process to other companies. For example, design development is often subcontracted, which is in itself the most important stage of a lot of infrastructure projects. It is difficult for the government to keep track of technical criteria in this inevitable system of subcontracting, which is normal in construction processes. Increased monitoring or a listing of eligible companies at different stages of the infrastructure development process could decrease the lack of compliance through subcontracting.

### Trans-Pacific Strategic Economic Partnership

In light of the negotiation of Vietnam's accession to the Trans-Pacific Strategic Economic Partnership (TPP), the Public Procurement Agency hopes to streamline Vietnam's procurement policies with the international standard, including the integration of social and environmental criteria. For this to happen, the Ministry of Natural Resources and the Environment (MONRE) would need to prepare legislation based on standards developed by STAMEQ (Standards, Metrology and Quality, under the Ministry of Science and Technology).

### Foreign Pressure

Infrastructure, unlike goods, is bound to be domestic. The increase in sustainability standards for export-oriented Vietnamese companies often goes via international markets. For example, the United Kingdom has tough guidelines when it comes to importation of textile products. This has an immediate effect on Vietnamese markets, as British importers require proofs of certification or evaluations of company processes. Infrastructure, however, does not have this type of import-related foreign regulations. Therefore, the government will have to be more proactive to train larger infrastructure suppliers, as well as SMEs, to include sustainability criteria. Similarly, ODA companies often subcontract parts of the infrastructure development to Vietnamese SMEs. This is one more market system through which, if properly monitored, SMEs are encouraged to higher sustainability criteria in their work.

Recently, donors have started taking over this role of foreign pressure. They start requiring stricter criteria for ODA sponsored infrastructure development. However, because of its socioeconomic development, Vietnam will see a decrease in ODA funding. Therefore, the government is assessing whether PPPs are possible to close the funding gap that ODA retreat will leave behind. It is feared by some respondents that the government might compromise on actual environmental and social demands in order to attract more private market participants. The potential of foreign encouragement of the supply of sustainable infrastructure is rather limited.

## 5.0 Opportunities and Hurdles for the Integration of Sustainability Criteria into Infrastructure Procurement

On September 5, 2008, the Prime Minister issued Directive No. 27/2008/CT-TTg on reorganizing the procurement work. The Directive has indicated the existence of bidding activities where: the situation of formal and collusive bidding still continues, and sufficient information of the tender is not being provided to be posted publicly on the Vietnam Public Procurement Review; where development, appraisal and approval of the bidding plan does not comply with the regulations and many localities abuse the form of bidding appointment; where violations are not strictly managed; where timelines in the bidding are not obeyed, causing delay of the bidding process, and where there is a lack of human resources for public procurement or resources of limited capacity.

The examples mentioned above limit competitiveness, extend performance time and increase costs in bidding. The Directive clarifies the requirement that state agencies must address these shortcomings. The present decentralized model has caused many impediments to procurement management by both central agencies and localities. The centralized model is still in pilot mode, and has not been implemented into practice yet.

Mainstreaming of environmental factors in the process of procuring public assets and goods has been applied in many countries but is a relatively new process in Vietnam. State agencies using their budgets for procurement of assets and infrastructure do not seem to be interested in environmental issues. This is partly because the legal instruments on procurement do not have specific requirements on environmental criteria. Sections 5.1, 5.2 and 5.3 set out the hurdles and opportunities to increase sustainability standards in Vietnam's procurement of infrastructure. Section 5.4 will communicate a few primary concerns to the government's plans to use the PPP mechanism in future infrastructure procurement.

### 5.1 Legal Framework

#### Future Standards

STAMEQ is responsible for revising compulsory standards every three or five years. It establishes a committee that includes all branches of government, and consultants with at least five private sector stakeholders in the decision-making process. In the future, there might be the idea of including energy efficiency standards as a climate change response within an international framework. However, this idea is only growing and will depend on many situational variables, such as the development of international collaboration. Another respondent indicated that an international provision of allowing some sort of local-content standards could help Vietnam to move forward on integrating sustainability criteria.

#### Modification of Main Legal Structures

Governmental respondents point out that if the government wishes to include more sustainability criteria, it should work on a specific roadmap. The current strategies are insufficient and too abstract. A roadmap will be necessary to give the private sector sufficient time to implement changes, while also giving much-needed certainty to construction companies and investors about what the requirements will be in the foreseeable future. This roadmap should not only include burdensome measures, but also methods through which the government will assist the private sector in this transformation phase. These methods can include subsidies that are in the WTO Green Box and increased incentives for technology transfer from foreign to domestic companies.



This framework will equally guide legal reform. To date, many laws and decrees require different things, a situation that leads to investor uncertainty and chaos through which non-compliance is easily achieved. Streamlining legal requirements will be necessary. In addition, the law-making process is not open enough to stakeholder participation. The government does upload draft law to receive feedback from civil society organizations (CSO), but this hardly works. Currently, the Vietnam Environment Agency is trying to make CSO participation mandatory under law, which would go beyond mere online publication.

### **Suggestion to Reform Environmental Impact Assessments Monitoring**

One of the only hard legal requirements is that project developers conduct EIAs prior to the start of construction. These EIAs need to include both an assessment of the potential effect on the environment during the construction phase and solutions to reduce the environmental impact. As with other environmental legislation, these EIAs focus on the environmental impacts during the construction process, not on sustainability over the life cycle. One of the major problems is that it is common to find that after EIA reports are approved, investors deploy only the major construction component of their projects while ignoring environmental protection measures. A lack, or failure, of post-inspection systems is a major contributor to this significant problem. In recent times, there has been more follow-up, but resources are still very limited.

One suggestion to reform EIAs is to shift the responsibility of their follow-up from the government to the investor. In this suggestion, the investor would be mandated by law to hire an external auditor to verify its compliance with the EIA. If a company would fail to comply, the responsibility and liability would shift from the company to the external auditor. It would be the government's role to accredit independent consultants to serve as external auditors and to administer their compliance. However, it would also be possible for any legal person harmed by a lack of compliance with the EIA to initiate a case against the external auditor. Such a socialized process would increase the quality of the EIA and its implementation, as well as the compliance rates.

### **Extending the 2010 Environmental Protection Tax Law to Construction Materials**

The Environmental Protection Tax Law No. 57/2010/QH12, (November 15, 2010), establishes regulations on what can be taxed or not, on taxpayers, tax bases, taxation, and the environmental protection tax refund. The Environmental Protection Tax Law includes four chapters and 13 articles, and takes effect on January 1, 2012.

Under the provisions of this Law, there are eight taxable commodity groups: petroleum, coal, liquid hydrochlorofluorocarbon (HCFC solution), plastic bags, herbicides, preservatives in forestry production, storage disinfectants, and a small range of pesticides. The Environmental Protection Tax Law was issued to adapt to the requirements of sustainable economic development, as well as to encourage economic development associated with reduced environmental pollution, in accordance with current economic circumstances and future predictions. This law contributes to raising societal awareness of environmental issues, thus changing production and consumption patterns.

While not immediately linked to procurement, it is a good step toward greening the purchase of goods and services. Similarly, the government could expand this environmental protection tax law to include materials related to construction. This would increase the attention of constructors to environmentally friendly products more directly.

## 5.2 Procurement Process and Institutional Framework

### Increase the Role of Government for Structural Adjustment

There are legal venues that have not been addressed yet. For example, there are no social and environmental standards taken up in the bidding law. Many respondents nevertheless identify this bidding law as a central document that could give significant guidance to other governmental agencies and the market. Despite the objectives taken up in their Strategy, the central government does not support companies financially to implement the necessary adjustments to achieve ISO 14000 certification. There have been some initiatives by local governments, in which a fixed budget was allocated to support SMEs to become ISO 14000 certified. The budget was distributed on a first come, first serve basis. This shows the potential for the involvement of local governments in sustainability integration.

In spite of the large potential that centralized action could have, some donors are of the opinion it might be worth opting for a regional rather than a sectoral approach. Because of a lack of compliance and governmental enforcement, sustainability strategies might yield more results if efforts are funnelled to specific islands within some sectors in regions that are more committed to profit driven change.

### Public and Private Sector Awareness

Awareness raising activities should focus both on the private and the public sectors. Many respondents indicate that sustainability standards such as ISO 26000 are either not known among governmental officials, or their value and necessity are underestimated. To date, standards are not integrated into the cognitive processes of many government ministries. This poses a significant problem, both in terms of reaching sustainability objectives through public procurement policies, as well as incentivizing the Vietnamese market to adjust their processes to meet international standards, which will be crucial for the export-oriented segments of the Vietnamese market. The training of government officials is indicated as a necessary first step to achieve SPP and markets to the reality of today's international markets and standards.

Awareness raising activities are ongoing to inform the public about the value of sustainability. For example, the Green Purchasing Network is one such initiative that is sensibilizing public opinion. This method could increase private sector awareness because of changing priorities on the demand side.

### Integrate Standards into the Listing Process, Not the Bidding Process

So far if standards are included, they are included in the technical specifications of the bids. This means standards are dependent on every project and that every procurer can choose what type of sustainability criteria to include. In effect, many companies hire consultants to prepare the bidding response. These consultants can reply to sustainability concerns on paper, often creating an ad hoc response to specific criteria. This is an important strategy to deal with detailed problems that specific projects may bring along. However, only integrating standards at the specification stage leaves out an important tactic to encourage markets to address their processes in a more sustainable, long-term manner. Many respondents suggest including sustainability criteria, such as standardization, in the listing process. Hereby, open competitiveness or direct selection would be replaced by a pre-selection method in which potential suppliers would be narrowed down based on their company profiles (including standardization or an equivalent of

sustainability policy). This type of pre-selection method would help companies, including SMEs, to take incremental steps, starting with the assessment of their own processes to continue to the formation of technical solutions to more specific problems within the company processes. One respondent suggests that a centralized, governmental and independent body should conduct such a type of pre-selection. Ideally the body would exist of experts who are highly paid and enjoy independence comparable to the independence a central bank enjoys in its work.

## 5.3 Market Readiness

### Incremental Changes

The much-needed integration of sustainability criteria into government procurement will have to be implemented gradually via incremental steps. Because of a lack of monitoring and enforcement, the government has allowed non-compliance on the side of Vietnamese companies, including SMEs, who have fallen behind. Therefore, future standards need to be phased in incrementally so that SMEs can first catch up with previous requirements. To stay competitive, however, private sector compliance with existing laws should be prioritized, including training, awareness raising and financial support, if necessary. Most respondents indicate that Vietnamese could implement more sustainability criteria, if their integration would be well structured and incremental.

### Information Problem

Access to information on how certification can be acquired is worryingly low. For example, private foreign companies have requested from a Vietnamese design consultancy company to obtain a green certificate. Despite the fact that this consultancy company was active in consulting project developers on infrastructure projects, including the legal requirements such as sustainability criteria, it did not know how such a green certificate could be obtained. Companies that are willing to gain market competitiveness through increased integration of sustainability criteria into their processes are blocked from doing so by a lack of information. It could be useful for non-governmental or governmental organizations to provide a transparent platform to businesses on how to get certification.

### The Future Role of ISO 26000

ISO 26000 carries the advantage of introducing a holistic approach to social responsibility. It is increasingly gaining international support, with even China voting for its adoption. This Chinese yes-vote had an effect within the region in general and to Vietnam specifically. Vietnam itself has not voted during the vote, as they were unsure of what China was going to vote. Eventually, due to the complexity and limited capacity, the decision-making process in Vietnam got lost. Consequently, few government agencies are informed about the existence and value of ISO 26000. It is, however, expected that this standard will gain importance. Already, several international donors and partners, such as UNIDO, work to spread ISO 26000 among the business community.

ISO 26000 exports an integrated way of thinking about sustainability toward stakeholders. It is not only relevant to large companies, but also SMEs are encouraged to integrate ISO 26000 into their company profiles. Currently, Vietnamese companies are not yet ready for technical implementation of ISO 26000. Rather, most awareness raising organizations, such as UNIDO and its partners, work on the development of logical processes within Vietnamese organizations. Many of them, in particular SMEs, do not yet have the habit of analyzing the processes of their company

with regards to the company itself and its stakeholders. An important step could be taken when companies are trained to understand auto-analysis based on ISO 26000 as a risk assessment tool to do good business, rather than a burden. To achieve this, it seems that checklists are not yet the appropriate means to integrate more sustainability. A checklist method can be used later on when making more technical adjustments makes progress, but so far the objective of UNIDO and its consultants is to open up companies to assess their own processes first.

Currently, consultants are in training to assist companies in assessing their own processes. After their training by UNIDO, they will receive a platform; a brand (“Corporate Social Responsibility group Vietnam”), a framework, a constitution and a UN network to rely on during their work. The end goal is to have these consultancy businesses growing so they eventually have the capacity to employ specific trainers on specialized issues, such as safety in the textile industry, or others. Such a consulting strategy bears potential for infrastructure suppliers as well, mainly the small and medium sized enterprises.

## 5.4 The Future Role of Public-Private Partnerships

As described above, Public-Private Partnerships (PPPs) could allow the involvement of the private sector and project developers in the operation and maintenance of the facility. This could reduce life-cycle costs, as project developers would be encouraged to raise initial capital investments to gain savings during the lifetime of the infrastructure. In addition, it could lower the burden on government expenditures at a time Vietnam is observing a decrease in ODA funding due to its economic development. PPPs are thus seriously considered to become the main method of financing current ODA projects such as water works in the future.

Despite its theoretical attractiveness, managing successful PPPs to reap the theoretical benefits is a challenge that many governments, including those in the West, have not yet completely mastered. Therefore, it is necessary to assess whether PPPs are suitable for specific project. The Vietnam Environment Administration (VEA) is currently planning a feasibility study for PPPs for environment related projects such as wastewater management. However, there are concerns among other respondents that the water tariff is too low to make a project like this economically viable for private investors. In addition, the VEA is researching how a PPP mechanism could be formed and what stakeholders it should involve to work transparently and effectively. Pilot projects may include wastewater and waste treatment plans. Results so far show that it is a big challenge to attract private investors.

Besides environment-related projects, also the transport ministry is concluding pilot projects for the use of type-71 PPPs for the construction and operation of two express ways. The government would clear the land, while the private sector would pay for construction. After construction, the private sector would be allowed to take toll to cover its up-front costs. There are concerns that the government would lower sustainability criteria to attract private sector. Especially for domestic infrastructure projects in which ODA would no longer play a role and in which there is no sustainability demanding international market, this could mean that instead of using the potential of government procurement in raising environmental and social standards, the use of PPPs would harm these objectives.

## 6.0 Conclusions and Recommendations

### 6.1 Conclusions

#### The Current Integration of Sustainability Standards into Infrastructure Procurement

- The Environmental Impact Assessment (EIA) is the tool most used for large infrastructure projects. It is compulsory. However, the capacity and resources of those that need to follow up on EIAs are limited and effective implementation is not always strong. Apart from the EIA, there are few hard law instruments designed to integrate sustainability criteria into public procurement. Laws on environmental and social protection are not sufficiently implemented.
- There is a punishment mechanism for non-compliance with standards. Companies can be blacklisted with the consequence of a prohibition on bidding for one year. This will also be published in the newspaper. However, fines are too low to actually enforce compliance.
- There are no standards integrated into the law on bidding. If standards are included in actual regulations, they are included in ministries' decrees. However, most of the time, standards are only integrated into the specification of technical requirements and they depend heavily on the investors. Donors require more integration than does the government. To date, there are no sustainability standards included in a pre-selection of potential infrastructure suppliers.
- When criteria are included, the environmental score is still relatively low (10 per cent, maximum 20 per cent); especially, time frame, quality and costs remain important. Depending on the ministry, there is more or less attention to environmental and social standards. Whereas the Public Procurement Agency is open to integrating standards, the Ministry of Finance prioritizes the lowest cost. Costs within bidding costs are often short-term costs, rather than life-cycle costs.
- Whereas ministries and companies know of the existence and content of ISO 14000 and SA 8000, they have not seriously assessed ISO 26000. In general, few awareness-raising activities exist within the government itself. Ministries do not know or value the importance of sustainability standards for business development. Consequently, there is not much governmental support to prepare the Vietnamese market to integrate sustainability standards, both in terms of financial support or training.
- There is insufficient competition in bidding processes for infrastructure projects.

#### Market Readiness

- There will be initial short-term costs for both the government and private sector, but medium-term cost savings outweigh the cost of delaying further integration.
- Small and medium sized enterprises (SMEs) have a difficult time catching up because they did not implement prior environmental or social standards. They are currently seeking training because they are required to abide by more standards by foreign markets or by large FDI or Vietnamese companies that subcontract them. There is thus more of a market incentive than governmental guidance. SMEs need more training to implement future changes. They could reduce compliance costs and gain competitiveness if they caught up sooner rather than later.
- There are concerns that costs would be too high, but most stakeholders suggest that the Vietnamese market could provide infrastructure and goods with a higher standard if changes are incremental and announced well in advance through a roadmap to SPP. Because of the lack of capacity, the government could play a large role in helping SMEs to structurally adjust their processes to become more profitable and sustainable.

- There is an information deficit in both the public and the private sector. Government ministries that wish to include references to sustainability criteria in laws do not know how to go about this exercise and miss examples from best practices. Private sector companies that wish to obtain certification of some kind often do not know how to acquire such certificates.

### The Use of Public-Private Partnerships for Procurement

- Vietnam is approaching the GDP per capita level of a lower middle-income country. Therefore, ODA will slowly decrease. The Vietnamese government is looking at PPPs as a possible financing mechanism for future infrastructure projects.
- A few pilot projects have been initiated. However, there is a need for a thorough study on the feasibility of PPPs and whether they can bring value for money for the government. Ministries have identified the need to assess whether PPPs are suitable and are seeking collaboration with experts.
- There is a concern that environmental and social standards will be reduced in PPPs in order to attract the private sector for collaboration. This concern is most present in the procurement of infrastructure, as there is no international market that can require sustainability integration externally.

## 6.2 Recommendations

Taking into account the above findings, and inputs and contributions from the government officials, international donors and representatives from the infrastructure supply sector, the following recommendations could be made to the government.

- SPP of infrastructure can be introduced and implemented with the consensus and support of the central government and with the cooperation between ministries through the issuing of policies and detailed guiding documents.
- Including sustainability standards efficiently will require the following steps:
  - a. A review of the procurement process and the roles of different ministries and agencies. These ministries and agencies will have to collaborate closely to achieve efficient integration. There should be more legal clarification and consistency. Sustainability criteria should be included at all parts of the procurement cycle. Specifically, their integration into the pre-selection of infrastructure developers would send a strong signal to the market.
  - b. A review of national standards under the leadership of Standards, Metrology and Quality (STAMEQ), under the Ministry of Science and Technology. There should be a careful assessment of which standards to implement incrementally. The government should develop a roadmap to sustainable procurement of infrastructure. This should cover detailed information on next steps and future legal requirements.
  - c. An awareness raising campaign in both the public and the private sectors. This campaign should be complemented with the training of government officials in SPP of infrastructure and the training of companies, in particular SMEs, to adjust their processes to become more profitable and sustainable.
  - d. Transparent information platforms. Valuable information should be collected and disseminated. This includes information for government agencies on how to approach SPP in drafting their legal documents, as well as information for the private sector on how it can obtain sustainability certificates.

- Demonstration and pilot projects could establish the benefits of SPP. Such projects could be started in a specific sector in a specific region where the local government is more open to sustainable, profitable infrastructure development. In addition, a pilot project with a relatively low technical complexity could allow more clear results and implementation. It is further of crucial importance that demonstration is initiated through pilot projects that will deal with corruption as least as possible. Construction and infrastructure procurement and development lack transparency. This, however, is a necessary precondition to the success of SPP implementation.
- Assuring compliance with existing criteria will be necessary. The government will have to safeguard the enforcement of existing laws and criteria. To preclude SMEs of being unable to carry costs, it is important that existing laws are enforced immediately. This implies that more resources and trained personnel will be allocated to the verification of compliance, including the follow-up of Environmental Impact Assessments. The idea of installing a system in which a government accredited external auditor would have to verify compliance and carry liability after doing so should be assessed.

## *Appendix 1: Institutional Responsibilities in “Decree 108” Projects*

Decree No. 108/2009/ND-CP (November 27, 2009) on investment in the form of build-operate-transfer (BOT), build-transfer-operate (BTO) or build-transfer (BT) contracts stipulates the role of state management in articles 46 to 50, as follows:

Tasks of the Ministry of Planning and Investment:

- To guide regulations on the making and approval of project proposals and feasibility study reports; and to select investors and negotiate project contracts, contents of a project contract, order of and procedures for the grant.
- To comment on planning and lists of projects drafted by ministries, branches and provincial-level People’s Committees.
- To assume the prime responsibility for, and coordinate with concerned ministries and branches in, submitting to the Prime Minister for consideration and decision the implementation of projects.
- To comment on the selection of investors for negotiating project contracts and appoint its representatives to join inter-branch working groups at the request of ministries, branches or provincial-level People’s Committees on a case-by-case basis.
- To assume the prime responsibility for, and coordinate with ministries, branches or provincial-level People’s Committees in, guiding, examining and inspecting according to their competence project activities;
- To review and evaluate the implementation of investment projects in the form of BOT, BTO or BT contracts.

Tasks of the Ministry of Finance:

- To guide the implementation of regulations on project preparation expenses and use of operating funds of competent state agencies in the course of project management; financial contents of project contracts; conditions for and methods of payment.

Tasks of the Ministry of Justice:

- To join in negotiating issues relating to applicable laws, settlement of disputes, government guarantee and other legal issues of project contracts at the request of competent state agencies on a case-by-case basis.
- To appraise and comment on the disparity between the terms of project contracts and domestic laws.

Tasks of other ministries and branches:

- To make and announce lists of projects of ministries and branches in accordance with this Decree.
- To comment on planning on and policies for implementation of projects in the domains under their management.
- To receive projects outside lists of projects already announced and prepare feasibility study reports or project proposals respectively under Articles 11 and 12 of this Decree.
- To personally, or authorize their attached competent state agencies to, sign and implement project contracts under Article 3 of this Decree.
- To approve plans and results of bidding for selection of investors for negotiating project contracts falling within their competence.



Tasks of provincial-level People's Committees:

- To draw up and announce lists of projects of localities in accordance with this Decree.
- To comment on planning on and policies for implementation of projects in the domains under their management.
- To receive projects outside lists of projects already announced and prepare feasibility study reports or project proposals respectively under Articles 11 and 12 of this Decree.
- To personally, or authorize their attached competent state agencies to, sign project contracts under Article 3 of this Decree.
- To examine application dossiers, and grant, modify and revoke investment certificates for the projects falling within their competence as provided for in Clause 2, Article 24 of this Decree.
- To approve plans and results of bidding for selection of investors for negotiating project contracts falling within their competence.

## *Appendix 2: Institutional Responsibilities in “Decision 71” Projects*

Regulation on Pilot Investment in the Public–Private Partnership Form (promulgated together with the Prime Minister’s Decision No. 71/2010/QĐ-TTg of November 9, 2010) stipulates roles of ministries in articles 7, 8 and from articles 47 to 51. The government formed an inter-sector team to implement pilot PPP projects. The articles clarify the roles of different government institutions as follows:

State agencies:

- State agencies competent to sign and perform project contracts include ministries, ministerial-level agencies, government-attached agencies and People’s Committees of provinces or centrally run cities (below collectively referred to as ministries, sectors and provincial-level People’s Committees).

Inter-sector working team:

- An inter-sector working team shall be set up by the Minister of Planning and Investment to assist competent state agencies in formulating and implementing projects.
- The inter-sector working team is composed of representatives of the Ministries of Planning and Investment; Finance; Justice; Industry and Trade; Transport; and Construction, the State Bank of Vietnam and other relevant agencies. Members of the inter-sector working team shall assist their ministries, sectors or agencies in giving opinions on the projects in the sectors under the management of their ministries, sectors or agencies.
- The inter-sector working team is tasked to:
  - + Selecting consultants to make feasibility study reports and investors to implement projects;
  - + Appraising feasibility study reports and results of selecting investors to implement projects;
  - + Negotiating and finalizing project contracts;
  - + Review experience from pilot projects to improve policies on investment in the public–private partnership form, build capacity and develop human resources for sectors and localities:

Tasks of the Ministry of Planning and Investment:

- Appraising project proposals, state participation portions, investment security mechanisms.
- To give opinions on investor selection results to competent state agencies.
- To join and assist competent state agencies in implementing projects.
- To assume the prime responsibility for and coordinate with relevant agencies in supervising the implementation of projects.
- To guide regulations on investor selection, negotiation and conclusion of project contracts and other relevant matters.
- To guide competent state agencies in planning development investment capital to be used for projects, including investment preparation capital, state capital within state participation portions in projects and other expenses related to the implementation of projects.
- To plan central budget funds to be used for projects.
- To raise and manage concessional loans from bilateral and multilateral donors under current law and capital of other sources to cover part of investment preparation expenses and contribute to state participation portions in projects.

Tasks of the Ministry of Finance:

- To join in appraising project proposals for inclusion of projects in the project list.
- To join in appraising state participation portions in projects, investment security mechanisms for projects and other matters which fall beyond the competence of ministries, sectors or localities.
- To assist competent state agencies in negotiating, finalizing and signing project contracts with regard to matters under its management.
- To supervise the progress of contribution of capital for realization of state participation portions in projects.
- To guide competent state agencies in disbursing state participation portions.
- To coordinate with the Ministry of Planning and Investment in planning development investment capital for projects, including investment preparation expenses, state capital within state participation portions in projects and other necessary expenses related to the implementation of projects.

Tasks of the State Bank:

- To give opinions on foreign currency security ratios, matters related to capital sources, foreign exchange management, and other matters as a basis for appraising state participation portions in projects.
- To join in raising and managing concessional loans from bilateral and multilateral donors under current law and capital of other sources to cover part of investment preparation expenses and contribute to state participation portions in projects.
- To assist competent state agencies in negotiating, finalizing and signing project contracts with regard to matters under its management.
- To coordinate with the Ministry of Finance in supervising the progress of contribution of capital for realizing state participation portions in projects.

Tasks of competent state agencies:

- To plan development investment capital for projects under their management, including investment preparation expenses, state capital within state participation portions in projects and other necessary expenses related to the implementation of projects.
- To make project proposals in the sectors and domains under their management under Article 12 of this Regulation.
- To receive project proposals from investors, consider and propose the addition of projects to the project list under Article 14 of this Regulation.
- To give opinions on project proposals. Projects' feasibility study reports and other matters at the request of the Ministry of Planning and Investment.
- To make project feasibility reports under Article 17 of this Regulation.
- To propose state participation portions in projects and investment security mechanisms for projects.
- Based on approved plans (in development investment capital, to allocate investment preparation capital for central budget-funded or -supported projects.
- Based on feasibility study reports (including proposed state participation portions) approved under Articles 17 and 18 of this Regulation, to allocate development investment capital for projects (for investment projects managed by localities and planned by provincial-level People's Committees) for investment with state capital within state participation portions in projects.
- To organize bidding to select investors negotiate, finalize, sign and perform project contracts under Articles 19 and 20 of this Regulation.

Published by the International Institute for Sustainable Development.

International Institute for Sustainable Development

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