

Implementation Assessment of the Anti-Corruption Law: How far has Vietnam come at the Sector Level?

- A Case-Study of the Construction Sector

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Executive Summary

Vietnam has passed one of the most comprehensive and ambitious Anti-Corruption Laws (AC-Law) in Asia – for which it deserves all due credit. This report has analysed efforts to “bring the law into life” (“dua phap luat vao cuoc song”) at the sector level through a case-study of the construction sector. Bringing “the law into life” requires reshaping the incentives and building capacity in a number of fields.

While Vietnam has made much progress in moving towards a more preventive approach the country – like most other countries – is struggling to make its integrity policies fully operational at the sector level. The anti-corruption dialogue meeting between the Government (GoV) and development partners in May 2009 focused on the construction sector. To spur the effectiveness and realism of the policy dialogue, an evidence-based analysis of the implementation of the AC-Law in the construction sector was warranted. Against this backdrop, the objective of the analysis was,

- To stimulate the effectiveness and realism of the policy dialogue between the GoV and the development partners through an evidence-based analysis of the implementation of the AC-Law in the construction sector.

The analysis looked at key provisions of the AC-Law to see how these have been translated into reality at the sector level through a review of the construction sector. Key provisions identified for analysis included: the ministerial action plans of the Ministry of Construction and the Ministry of Transportation; the Asset declaration of public servants in the construction sector; the transparency in procurement in the construction sector; the transparency in management of construction investment project; the roles & responsibilities of society; and detection & inspection of corruption in the construction sector. While a lot of progress can be noted, the assessment of the implementation of the AC-Law in the construction sector points to several areas where actions are needed to boost the intended effects - most of these are pertinent at the general level and applicable to other sectors,

- *While the AC-Law is a sound instrument, corruption in the construction sector can only be curbed through a broader set of structural economic and governance reforms, e.g. increasing competition in the SOE sector to reduce the opportunities for collusion, and the governance set-up of construction projects, e.g. checks-and-balance on and the design of the PMUs. Also the case-studies of provincial efforts to implement the AC-Law highlighted the linkage between PAR and AC-Law.*
- *There is a lack of coherent, yet simple, sector-specific system to track policy implementation of the AC-Law in the construction sector at the input, output and outcome level. The monitoring system should not be used as a mechanical check-list but as a part of a learning cycle – since no one really knows beforehand what will work and what will not work. This issue is a generic challenge of policy implementation in Vietnam. As a consequence, little is known about the extent and specific nature of corruption in the construction sector. In this context, a strengthening general monitoring of governance & anti-corruption, e.g.*

through the VHLSS and specifically a dynamic value chain approach to identify the most corruption-prone risks in the project cycle of capital construction seem warranted.

- The provisions in the AC-Law *requiring public servants to declare their assets are facing difficulties in implementation due to the policy design* – as indicated in a case study of the MoC. In sum, too many officials are required to declare, verifications are not taking place and proportionate, credible sanctions are not applied. While this might seem like a missed opportunity, the GoV could also see it as a learning cycle. The findings of the challenges associated with asset declaration could feed into the revision of the decree 37/2007 planned in 2010.
- Vietnam has come a long way in improving the legal framework for transparency in procurement through the AC Law and its regulations and other laws. However, the *transparency provisions are only partially enforced*. The oversight role of civil society on procurement, the planned introduction of e-procurement, the plan to establish regional bidding centres for centralised procurement, and reform of the handling of denunciations & the protection and reward of whistleblowers are entry points for enforcing the transparency requirements. However, in order to target efforts it is necessary to gain an understanding of the specific constraints. A better data and indicators system on procurement transparency could inform the specific action needed.
- Society's role in spurring integrity in the construction sector should be strengthened. *The institutional and legal media framework for covering corruption has been strengthened with the AC-Law but ambiguities still exist*. In particular the pending revision of the *Press Law presents an opportunity to protect the right & responsibility of the media to report on corruption*. The current ambiguity in the legal framework is reflected in the empirics. Media coverage of corruption in construction has dropped significantly since the PMU 18 scandal. *Increasing the involvement of professional and technical associations, e.g. in checking bidders compliance with using contractually committed building materials, should also be considered*.
- The framework for inspection, detection and judicial follow-up of corruption in the construction sector is complicated and subject to several general and sector-specific laws and implementation guidelines. While inspection has performed very well in identifying waste and inefficiency in construction investment projects, the number of detected corruption cases is insignificant compared to the detected defaults and losses in capital construction. *To strengthen the enforcement and deterrent effects of inspection, detection and judicial follow it might be considered to provide stronger independence to inspectors and auditors; to eliminate the inconsistencies between different laws (e.g. AC-Law and Criminal Law); to provide stronger incentives for good performance, accountability and enforcement; and to strengthening protection/ incentives for denunciator/ whistleblower*

1. Introduction

At the global level, Vietnam has made major strides in addressing the systemic issues of corruption during the last decade. The Anti-Corruption Law (AC-Law) passed by the National Assembly in November 2005 provides a legal landmark in the Government of Vietnam's (GoV) efforts to curb corruption. Vietnam has opted for a law with much broader coverage than other anti-corruption laws. For instance, the law and its secondary legislation provide provisions for addressing corruption at the sector levels. As such, the Vietnamese government deserves all due credit for approaching integrity issues at the generic as well as sector levels, particularly in light of the recent global efforts to move governance and anti-corruption efforts to the sector levels.¹ In May 2009 the GoV promulgated the "Strategy for Preventing and Combating Corruption towards 2020" applying a systemic approach to anti-corruption including preventive, demand-side and sector specific solutions and development of a framework for monitoring progress.

Yet Vietnam – like most other countries – is still struggling to make its policies fully operational at the sector level. The anti-corruption dialogue meeting between the GoV and development partners in May 2009 addressed corruption in the construction sector. A closer look at the construction sector seems pertinent in light of the existing diagnostic data on the corruption landscape of Vietnam, which found that the construction sector was one of the most corruption prone areas.² Also, the second stimulus package recently announced by the government will be significantly larger than the first one put forward in December 2008 and could amount to as much as Dong 140 trillion (around 8-10 % of GDP). This major package reinforces the importance of strengthening integrity in the construction sector as a major share of the package is envisaged for infrastructure development.

Against this backdrop, the objective of the analysis was,

- To stimulate the effectiveness and realism of the policy dialogue between the GoV and the development partners through an evidence-based analysis of the implementation of the AC-Law in the construction sector.³

This analysis looks at key provisions of the AC-Law to see how these have been translated into reality at the sectoral level through a review of the construction sector. Key provisions identified in this regard include,

- Analysis of the action plan of the Ministry of Construction (MoC)
- Analysis of Asset declaration of public servants in the construction sector
- Transparency in procurement in the construction sector

¹ See e.g. "The Many Faces of Corruption – Tracking Vulnerabilities at the Sector Level", The World Bank 2005 and also corruption in construction sector, see e.g. Charles Kenney "Construction, Corruption & Developing Countries", WPS4271, 2007, The World Bank, "Measuring & Reducing the Impact of Corruption in Infrastructure", WPS4099, The World Bank, 2006

²See "Report on the Findings of the Diagnostic Study on Corruption in Vietnam", The Party's Central Committee of Internal Affairs, 2005 and the Investment Climate Survey, the World Bank, 2006

³A subsidiary aim of the study is to provide some guidance on how the implementation of the Anti-corruption Law can be strengthened at the sector level.

- Transparency in management of construction investment project
- Roles & Responsibilities of the society
- Detection & Inspection of Corruption

The first four themes are preventive measures while the inspection targets detection, feeding into the punitive & enforcement chain of anti-corruption but also serving as a deterrent against corruption.

Methodology. The team reviewed the existing legal documentation, government reports, media information and undertook qualitative interviews with relevant stakeholders at national and provincial levels. To the extent that quantitative data was available it was included to triangulate conclusions. Field trips were carried out in Da Nang and Bac Ninh.

This report is based on an assumption that policy making does not follow a linear model where implementation is conceived as simply putting government documents into practice and where failures are mostly attributed to the lack of political will, but can also be the lack of resources, lack of knowledge how to fight corruption and lack of understanding of the nature of the problem. Conversely, the policy making process is seen as a dynamic interaction with multiple feed-back loops permeated by politics and power issues that influence or even dominate technical approaches. This is particularly true for anti-corruption policies which affect the distribution or access to power and reduce opportunities to accumulate (illicit) economic wealth and thus restrict power. The capacity concept used in this report thus both relates to functional-technical and political dimensions. In this context, the term “incentives” is also used in a broader meaning of factors affecting agents’ behavior than the usual Vietnamese narrow focus on remuneration aspects.

While the approach applied in this report concurs with Gainsborough et al 2009 that corruption is systemic, it also maintains that a focus on implementation is warranted as the formal and informal institutions are altered, albeit slowly and in a non-linear fashion, through new laws and regulations.⁴

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The mission was carried out from May 06 - 22, 2009. The Team would like to express its sincere appreciation of the support provided by the Office of the Steering Committee against Corruption for facilitating the research, field trips and interviews. Officials from OSCAC, the Government Inspectorate, MPI, the Ministry of Construction and Jim Anderson, Senior Governance Specialist, the World Bank all provided very valuable comments and corrections to the draft report., The findings and conclusions of this report represent the views of the authors only.

⁴ Gainsborough et al asserts that a focus on implementation might blur the focus on the real causes of corruption, i.e. the systemic nature. See Gainsborough et al “Corruption, Public Administration Reform and Development”, UNDP, 2009, p. 20.

2. A Glance at the Anti-Corruption Law and its secondary legislation

Vietnam has opted for a comprehensive AC-Law. Typically, anti-corruption laws focus on one or a few specific issues such as asset disclosure, outlawing of bribery, the establishment of an independent Anti-corruption agency etc. A desk review of other anti-corruption laws indicated that Vietnam has the most wide-ranging law in terms of thematic scope in Asia.⁵ While this is a reflection of the importance attached to curbing corruption, Vietnam has put the bar high in the efforts to curb corruption. And thus implementation will be very challenging – not at least at the sector levels. At the strategic level the AC-Law is consistent with the Socio-Economic Development Plan 2006-2010. Overall, it puts emphasis on systemic approaches to reduce the opportunities of corruption, in contrast with the almost exclusively punitive measures that prevailed until not long ago.

The law includes ambitious and all-embracing provisions on corruption prevention, detection of corruption, handling of corruption, organisation and mechanisms for investigation, prosecution and judicial agencies in anti-corruption, role of society and media in anti-corruption, international cooperation in anti-cooperation, and implementation arrangements. In a number of policy areas, e.g. the sound requirements for budget transparency embedded in decision 192/2004, the AC-Law elevated an existing legal framework into a consolidated integrity law.

In this contest the Vietnamese Government deserves all due credit for swiftly issuing most of the required secondary legislation in just one year after the law took effect in 2006. A depiction of the AC-Law and its secondary legislation is presented in table 1 below:

⁵ Other Asian Anti-Corruptions Laws reviewed included: the South Korean Anti-Corruption Act; the Indonesian Law 20/1999 on the “Eradication of Criminal Corrupt Acts”; the Malaysia Act 575/1997 on Anti-Corruption; the 1988 Singapore “Prevention of Corruption Acts”.

Figure 1: Legal Mapping: the Law on Anti-Corruption and its Secondary Legislation

| <i>Typology of Legal Document</i> | <i>Legal document, Status and Content</i> |
|---|---|
| 1) Law, Strategy or Action Plan | <p>Law on Preventing and Fighting against Corruption : Dated 29 November 2005, amended August 2007, Revision mandating the establishment of provincial Anti-Corruption Steering Committees.</p> <p>Decision 30 of the Prime Minister dated 31 October 2006: Promulgates the action plan of the Government in implementing the Law on Preventing and Fighting against Corruption</p> <p>Government Resolution 21/NQ-CP dated May 12 2009 Promulgates the Strategy for Preventing and Combating Corruption Towards 2020 and the 2009-2011 Action Plan for the Implementation of the National Strategy for Preventing and combating Corruption Towards 2020</p> |
| 2) Policies and Implementing guidelines on institutional mechanisms for curbing corruption | <p>Resolution 1039 of the standing Committee of the National Assembly dated 28 August 2006: Regulates the organization, powers and operations of the central Administering Board for Preventing and Fighting against Corruption</p> <p>Resolution No. 1046 of the Standing Committee of the National Assembly dated 30 September 2006: Approving the Decision of the Chairman of the People’s Supreme Procuracy on the creation of the Department for Exercising the Prosecution Right and Procuracy</p> <p>Decision 13 of the Prime Minister dated 24 January 2007: Regulates the establishment, powers and operations of the Office of the Central Administering Board for Preventing and Fighting against Corruption</p> <p>Decision 1424 of the Prime Minister dated 31 October 2006: Regulates the establishment of the Department of Preventing and Fighting against Corruption under the Government Inspectorate</p> <p>Decision 01 of the MPS dated 2 January 2007: Establishing the Anti-Corruption Bureau/Unit for Investigation of Corrupt Crimes</p> <p>Decision 13 of the Prime Minister dated 24 January 2007: Regulates the establishment, powers and operations of the Office of the Central Administering Board for Preventing and Fighting against Corruption</p> <p>Joint Circular 2462 dated 19 November 2007: Regulates arrangements for exchange and management of information on anti-corruption among the Government Inspectorate, the People's Supreme Procuracy, the People's Supreme Court, the State Audit, the Ministry of Public Security, and the Ministry of Defense.</p> <p>Decree 65 of the Government dated 20 May 2008: Promulgates the regulation on functions, tasks, authority and organizational structure of the Government Inspectorate.</p> <p>Joint Resolution 19 of the Government and the Central Committee of the Vietnam Fatherland Front dated 22 August 2008: Promulgates the regulation on working coordination of the Government and the Central Committee of the Vietnam Fatherland Front in anti-corruption performance.</p> |
| 3) Implementing guidelines on policies for curbing corruption | <p>Decree 120 of the Government dated 20 October 2006: Regulates in detail, among others corruption acts</p> <p>Decree 37 of the Government dated 9 March 2007: Regulates in detail the transparency on incomes and assets of, mainly, State officials</p> <p>Circular 2442 of the Government Inspectorate dated 13 November 2007: Provides guidelines for the implementation of a number of articles of the Government Decree No. 37 of transparency of assets and income</p> <p>Decision 85 of the Prime Minister dated 3 July 2008: Promulgates the list of persons obliged to make income and asset declarations under clause 11, article 6, of Government Decree No. 37</p> <p>Decree 47 of the Government dated 9 March 2007: Regulates in detail responsibilities of State agencies, press agencies, enterprises, associations, inspectorates and citizens in preventing and fighting against corruption. Directive 02 of the Ministry of Finance dated 21 June 2007: Promulgates arrangements for the implementation of Decree 47</p> <p>Decree 102 of the Government dated 14 June 2007: Regulates, among others, the duration in which State officials may not do business after retirement</p> <p>Decision 64 of the Prime Minister dated 10 May 2007: Regulates, among others, the gifts receiving by bodies, organizations, entities and State officials</p> <p>Decision 03 of the Minister of Internal Affairs dated 26 February 2007 : Issues the regulations on conduct of State officials at local authorities</p> <p>Decree 158 of the Government dated October 27, 2007: Providing the List of position & time period for rotation of cadres and public servants</p> <p>Decision 30 of Prime Minister dated 10 January 2007: Promulgates the Master Plan for the Administrative Procedures Simplification Project in the field of state management for the period 2007-2010.</p> <p>Decision 03 of the Ministry of Home Affairs dated 26 February 2007: Issues the code of conduct for public officials and civil servants working in local governments.</p> <p>Directive 20 of the Prime Minister dated 24 August 2007: Promulgates payment of salaries for state-budget salaried subjects into their bank accounts</p> <p>Decree 107 of the Government dated 22 September 2006, Regulates responsibilities of heads of bodies, organizations and entities using assets and budget of the State in the event there are corruption acts in such bodies, organizations and entities</p> <p>Circular 08 of the Ministry of Home Affairs dated 1 October 2007: Guides the implementation of Decree 107 when corruption occurs in non-business units, SOEs, social organizations and socio-professional organizations that use state budget or property.</p> <p>Decision 7 of the Prime Minister dated 4 January 2008: Promulgates the implementation plan for Simplifying the Administrative Procedures in the fields of state management for the period 2007-2010.</p> <p>Decree 19 of the Government dated 14 February 2008: Provides duty-based allowances for cadres involved in corruption prevention and combat</p> <p>Decree 91 of the Government dated 19 August 2008: Regulates the publication of auditing results and outcomes of realization of auditing conclusions and proposals of the State Audit.</p> <p>Decision 115 of Prime Minister dated 27 August 2008: Promulgates the regulation on publicity on the management and use of state property at state agencies, public non-business units, and organizations assigned to manage and use state property.</p> |

The table highlights the extensive number of implementation guidelines. While this is in accordance with the legal procedures and a due process of regulation, the huge number of resolutions, decrees, decisions, circulars and directives pose a serious challenge of monitoring and tracking actual implementation, or with a Vietnamese phrase “Bringing the law into life” (“dua phap luat vao cuoc song”). The monitoring will have to be embedded at various horizontal and vertical levels. In the context of this report, the construction sector is analysed to see how far Vietnam has come in this regard.

In terms of the framework of this report and in the results hierarchy, the legal documents constitute important inputs to translate the provisions of the law into outputs and eventually outcome. In the Vietnamese political discourse, the AC-Law has to be seen in the context of Party decisions. Thus Party Resolutions and Decisions, such as the Resolution passed by the 3rd plenum of the 10th Party Congress, are at least at par with the AC-Law. The amendment of the AC-Law in August 2007 was a result of the Resolution by the 3rd Plenum, which among other things mandates establishing Provincial Anti-Corruption Steering Committees.

A general review of the secondary legislation indicated that the documents are sufficient in coverage with regard to the “why” and “what” of policy implementation, whereas the “how to do it” in terms of capacity and incentives is less clear.⁶ E.g. the Decree on rotation of civil servants could be a promising initiative to break down patronage relations within the civil service, however, enforcement will have to be transparent and clean. At a more general level, all this lends support to the hypothesis that the GoV has performed well in terms of establishing a supporting legal framework to enforce the law whereas implementation at the output and even more so the outcome & impact levels remain a challenge. In the context of implementation and enforcement, the AC-Law faces the same challenges as other laws and secondary legislation. A key difference from other laws, however, is the configuration of interest, which remains much more adverse to the implementation with regard to the AC-Law as it seeks to reduce the opportunities of corruption and increase the risks of getting caught.

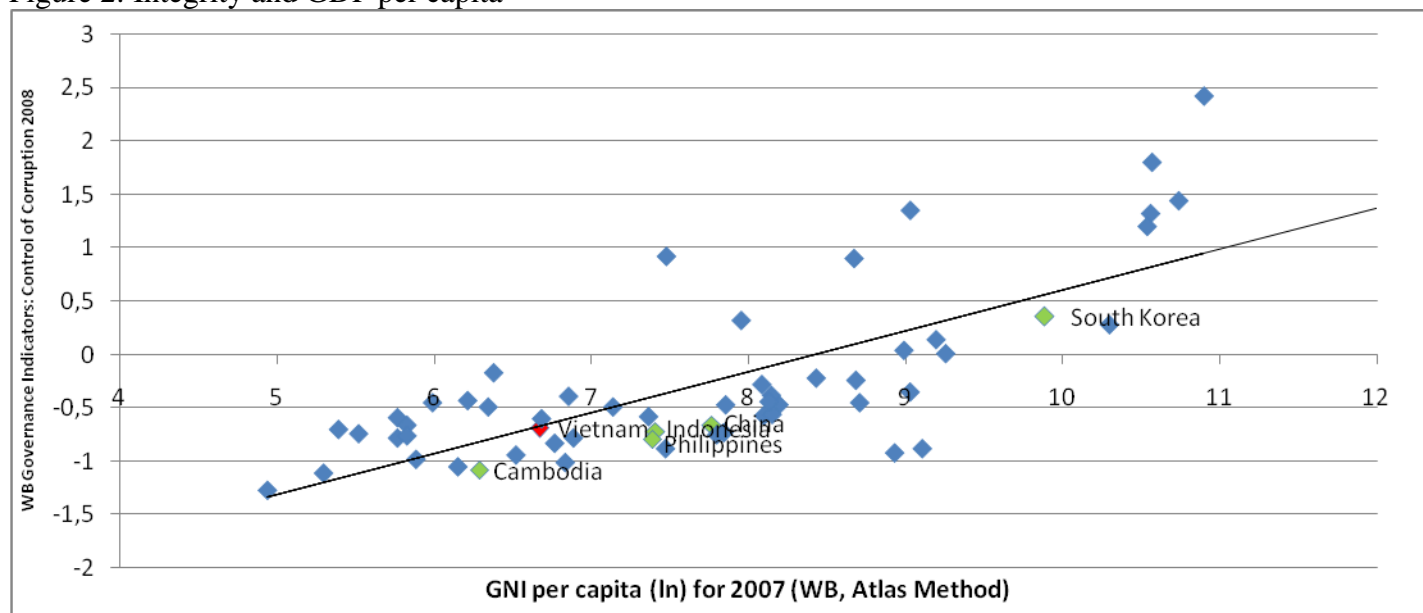
In May 2009 the GoV promulgated the “Strategy for Preventing and Combating Corruption towards 2020” and the 2009-2011 Action Plan to support the first phase of the strategy – the two latter phases run from 2012-2016 and 2017-2020. The comprehensive Strategy and Action Plan applies a systemic approach to anti-corruption including preventive, demand-side and sector specific solutions and development of a framework for monitoring progress. Importantly, the Action Plan includes several intentions to learn from what has worked and not worked in the implementation of the AC-Law. E.g. revisions of stipulations relating to asset declaration (Decree 27/2007), staff rotation (Decree 158/2007) and strengthening integrity in the public-private nexus of anti-corruption are planned. This is commendable as it will facilitate a learning approach to the implementation of the AC-Law.

⁶ The “why” refers to the policy goal or objective; the “what” refers to the scope and themes of the policy objective, whereas the “how” refers to the specific institutional mechanisms for implementation and enforcement.

3. Unbundling corruption in Vietnam

Corruption is undoubtedly one of the most serious challenges faced by Vietnam. The long-term pattern of development will very much depend on the government's ability to tackle it, and to overcome it. Vietnam is often portrayed as a widely corrupt country in cross-country surveys, e.g. Transparency International's (TI) Corruption Perception Index ranks Vietnam 123 among 179 countries, only slightly above the Philippines in terms of integrity.⁷ But Vietnam is not the only country facing such challenge. To a large extent, corruption is a development issue. And it is inaccurate to portray Vietnam as unusual in this respect. By several standard measures, the extent of corruption is actually comparable to that of other countries at a similar development level (see figure 2).

Figure 2: Integrity and GDP per capita



Sources: *World Governance Indicators 2007 and World Development Indicators 2008.*

But the reality on the ground is more complex. The World Bank's Investment Climate Assessments, on the other hand, put Vietnam on a par with Malaysia, one of the least corrupt countries in the region. And to complicate the picture even further, recent panel data compiled by CIEM/DERG University of Copenhagen shows that the number of SMEs paying bribes dropped significantly from 41.2% in 2005 to 26.5% in 2007, although the bribe as a % of total revenue had increased from a modest 0.5 % to 0.67%, which is somewhat at odds with the Provincial Competitiveness Index (PC) that identifies bribery as one of the key binding constraints in doing business. Also, the 2007 TI Global Corruption Barometer report suggests that 6-18% respondents reported they paid a bribe to obtain a service.⁸ A culture of sharing, whereby bounties are to be equitably distributed, blurs the boundaries of corruption even further.

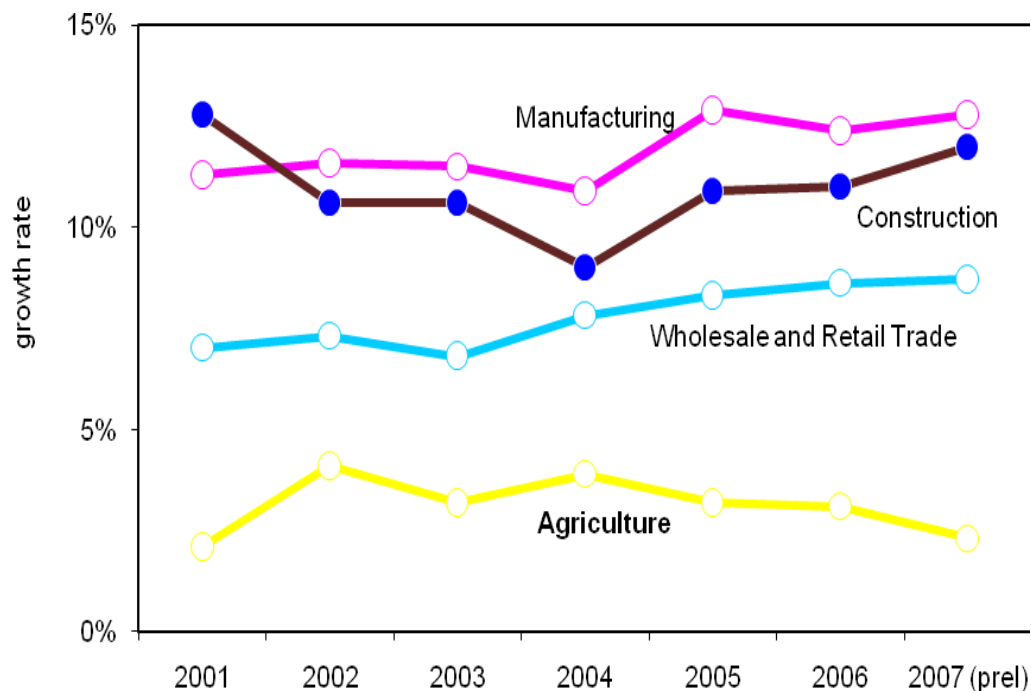
⁷ Methodological concerns about the (ab-)use of these indicators have also been voiced and one should be careful in using the indicators for anything more than painting with a broad brush. See e.g. Arndt, C. and Oman, C. (2006): "Uses and Abuses of Governance Indicators. Development Centre Studies, OECD, Paris"

⁸ For the Transparency International data see http://www.transparency.org/policy_research/surveys_indices/cpi and http://www.transparency.org/policy_research/surveys_indices/gcb/2007 For the World Bank Investment Climate Surveys see <https://www.enterprisesurveys.org/Portal/>. For data on SME see Rand, John et al "Vietnam Business Environment: Evidence from a business survey in 2007", CIEM/DERG, 2009, forthcoming.

3.1. Unbundling the Construction Sector and Corruption

The construction sector has been one of the booming sectors during Vietnam's remarkable and extended period of growth and poverty reduction. In 2008 it accounted for more than 7% of GDP as compared to 5.9% in 2002. Recorded growth in the construction sector has been well above average growth and only surpassed by growth in manufacturing as indicated in figure 3 below.

Figure 3: Growth in Sectors 2001-2007



Source: GSO, 2008

While the construction sector has been undergoing a remarkable transition with non State Owned Enterprises (SOE) accounting for around 55% of total sector output in 2006 compared to 38% in 2002, the sector is still dominated by a few large SOEs. These are financially and technically capable of delivery of large-scale infrastructure and construction projects. Thus in 2006 total fixed assets of construction SOEs accounted for 53% of total sector assets while delivering 41% of total business turnover.⁹ In this context of rapid growth and at a time when the institutions of a modern market economy are still emerging in the construction sector, extensive opportunities of rent-seeking exist. E.g. when competition is limited to a relatively modest number of large SOEs in the construction sector the risks of collusion - often reflected in the similarity of bids - are obvious.¹⁰

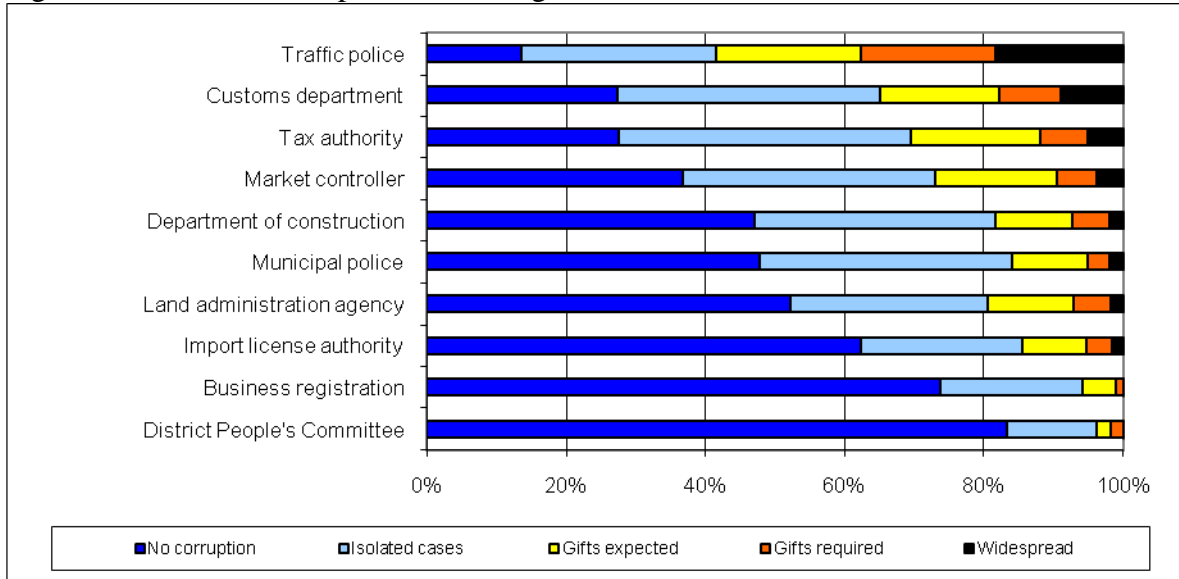
In spite of the sizeable investments co-existing with challenges to maintain integrity in the construction very little is known about the specific extent and nature of corruption in the sector. The diagnostic survey on corruption, undertaken in 2005, identified agencies in the construction

⁹ According to preliminary estimates construction growth plummeted to 0.2% in 2008, due to the bursting of the real estate bubble but the sector is expected to rebound in 2009. GSO Statistics 2008.

¹⁰ Similarity of bids may also partly be due to generalized reliance on SOE costing norms

sector among the five most corruption prone sectors¹¹. According to the Investment Climate Survey undertaken by the World Bank, around 20% thought that gifts were expected or required when dealing with the Department of Construction (see figure 3). This finding contrast with data from the Provincial Competitiveness Index showing that construction firms report more informal charges than firms in other sectors.¹² The occurrences of the Project Management Unit (PMU) 18 and the Pacific Consulting International (PCI) scandals have shed some light on the qualitative nature of the problem, e.g. the governance structure of SOEs and the institutional design of PMUs where external scrutiny and accountability are somewhat deficient.

Figure 4: Perceived Corruption Across Agencies



Source: Investment Climate Survey 2005.

In sum, it is challenging to deconstruct the quality, nature and extent of corruption in the construction sector. This underscores the need for further drilling down at the sector level. In this context, a value chain approach to identifying the specific risks at each stage of a construction project seems warranted.

¹¹“Report on the Findings of the Diagnostic Survey on Corruption in Vietnam” Central Committee of Internal Affairs, Hanoi, 2005, p. 39. There is considerable evidence that most cross-country existing perception measures appear to be very weak proxies for the actual extent of corruption in the construction sector, largely (but inaccurately) measuring petty rather than grand corruption. See also Charles Kenny “Measuring & Reducing the Impact of Corruption in Infrastructure”, WPS4099, The World Bank, 2006

¹²See <http://www.pcivietnam.org/>

4. Implementation Analysis of the AC Law in the Construction Sector

This section will review how selected articles of the AC Law have been implemented in the construction sector. The following themes will be analysed,

- Analysis of the ministerial action plan of the MoC
- Analysis of Asset declaration of public servants in the construction sector (AC-Law section 4, article 44-53)
- Transparency in procurement in the construction sector
- Transparency in management of construction investment project
- Roles & Responsibilities of the society
- Detection & Inspection of Corruption

4.1 Implementation of the Anti-corruption Action Plan: Case study of MoC

Prime Minister's Decision 30/2006/QĐ-TTg dated 6 February 2006 provides a guideline for the formulation of an action plan to implement the AC-Law, focusing on five policy areas.¹³ Decision 30 was later supplemented by the National Assembly's Standing Committee's resolutions on the system of national and provincial-level steering committees and the Government Inspectorate's guiding document, Correspondence 810/TCP-CCTN dated 13 May 2008, on monitoring requirements for the two-year implementation period (2006-2008). Decision 30 is not the only guiding document for the implementation of the AC-Law, however; there is also Resolution no. 4-NQ/TW dated 21 August 2006 of the Party's Central Committee (Session X) on the strengthening of the party leadership on anti-corruption and anti-waste, covering ten solution areas.¹⁴ To implement anti-corruption measures, central and local state management agencies as well as their sub-units formulated the AC plan drawn from both Decision 30 and Resolution no. 4.

The MoC is a unique case in that it promulgated its AC plan early, even before the promulgation of Decision 30. Decision 163/QĐ-BXD dated 25/01/2006 emphasizes coordination with relevant government agencies to promulgate implementing legal documents for the AC-Law; improvement of the legal framework on construction; reform of the administrative procedures, working regulations, and selected financial records; legal propagation of construction and anti-corruption; reform of the administrative procedures and publicity of procedural requirements, working regulations, and selected financial records; and implementation of grassroots democracy in the work unit.. The MoC report on the two-year implementation (2006-2008) records that by mid-2008, all of its sub-units had set up a section to implement the AC-Law and the Law on Anti-Waste.

¹³ The five components include promulgation of secondary legal documents; improvement of the existing sectoral policy and institutional framework; propagation of the AC-Law; strengthening of the inspection; promotion of the role of citizens, the VFF, and the press; and inspection and investigation of corruption-related cases.

¹⁴ The ten components include: legal education to raise the awareness of party members, cadres, officials, and the people on anti-corruption and anti-waste; increase the vanguard role of the Party and party members; improve personnel work for anti-corruption purposes (salary reform, asset and income transparency for party members, cadres, and officials, implementation of the code of conduct, implementation of regulations on gift giving, and entertainment of guests); guarantee of transparency; improvement of policies on the management of the economy and society (regulations on land use and use of offices, basic construction, public procurement, improvement of revenue collection and spending regimes, corporatization, capital management, and the management of state property and personnel at SOEs); increase the effectiveness and efficiency of inspection, auditing, prosecution and trials; legal propagation; development of specialized Anti-Corruption agencies; increase of popular monitoring and monitoring by elected bodies; and international cooperation on anti-corruption.

4.1.1. Review of Outputs and Activities of the MoC's and DOC's Plans¹⁵

The outputs and activities of the AC plans were related to the Public Administration Reform Program (PAR) applying its rubrics of institutional reform, organizational reform, civil service reform, financial reform, and modernization of the government. Regarding *institutional reform*, the key outputs and activities included three aspects. First was the development of the legal framework under the jurisdiction of the Ministry as seen in the Law on Construction and its secondary legal documents. This was supplemented by the reform of the legal affairs unit in the Ministry. Second was the simplification of procedures and promotion of transparency in procedural matters, an output further buttressed by Proposal 30 on procedural simplification. Third is the supply of information to units and individuals. The majority of state management agencies under review emphasized the simplification procedures. The localities under survey, Da Nang and Bac Ninh, emphasized the supply of administrative procedural services through the one-stop shop mechanism, transparency of procedural requirements, the application of information technology to procedural reform, and customer satisfaction.

In the area of *organizational reform*, the key outputs and activities focused on four areas. First is the clarification of responsibilities between the Minister and vice-minister. The Minister directly steers the operation of the inspectorate sector with the exception being when the areas to be inspected fall under the responsibilities of vice-ministers.¹⁶ Second is the improvement of coordination among sub-units within the Department of Construction. Finally, there were moves to standardize certain aspects of organizational performance through the application of ISO.

In relation to *financial reform*, one new key output is related to the revision of regimes, cost norms, and criteria for internal operation. Another is salary payment through bank transfer. A third group of PAR outputs is related to block grants, which was accompanied by the development of internal spending norms, the output was credited as generating savings and transparency of each state management unit. Other outputs are related to waste reduction, including activities such as the reduction of the number of meetings and their costs.

In the area of the promotion of preventive measures regarding the civil service system, the key outputs and activities centered around working styles of cadres and officials; recruitment, promotion, and rotation of officials; and asset declarations. One crucial output was the implementation of the grassroots democracy principle at the work unit. Following the general principle of grassroots democracy, it focused on the rights of officials in the work unit to “know”, “discuss”, “act”, and “review” (biet, ban, lam kiem tra). To buttress the rights to know, the AC output includes publicizing information about financial regimes on a monthly, quarterly, and yearly basis, as well as during the unit's meetings. A fifth emphasis is on the application of IT in management and steering internal work (including finance, personnel, legal documents, and petition handling).

¹⁵ Discussion on plan formulation and plan monitoring of the MoC is based on materials obtained from the Ministry of Construction and its sub-units, the Department of Construction in Da Nang and Bac Ninh, and the provincial and construction inspectorate units in Da Nang and Bac Ninh. In addition reviews of plans and reports from the MoT, MARD, & MoTI. The team thanks OSCAC for organizing field studies in Da Nang and Bac Ninh and thanks Anti-Corruption Bureau of the Government Inspectorate for granting access to ministerial and provincial reports

¹⁶ The responsibilities of the inspectorate sector are clarified in Directive no. 94/2006/CT-BXD dated 28 March 2006 on the strengthening of inspection of units under the Ministry.

The outputs and activities outlined above are AC plans for the MoC. It is noteworthy that although Party Resolution 04 has highlighted capital construction as one of the four priority areas, the AC action plan of the Ministry of Construction does not contain a separate plan to implement anti-corruption in the capital construction sector. It can be argued that this component has been integrated into the overall plan. It can also be argued that given the nature of capital construction as a sector cutting across a wide range of ministries and local administrative units, having a ministerial plan for the capital construction project is not feasible. At the local level, there is an emphasis on capital construction as a separate area. (See Section 3.4)

4.1.2. Measurement of Results

The MoC concludes in its report on the two-year implementation period (2006-2008) that the level of corruption and waste was reduced completely. With the exception of the case of the General Corporation for Construction in Central Vietnam, the number of cases taking place at units under its jurisdiction was small. Existing materials indicate that the case of the General Corporation for Construction in Central Vietnam falls under the rubric of the management of SOEs engaged in construction activities and SOEs' malpractices in financial management. Nevertheless, the case usefully reflects a combination of problems ranging from the lack of management skills by the head of the General Corporation, poor decision making on finance, and violations of financial regulations to various forms of abuse of authority, which is the basis for corruption practices. The case also calls for attention to the need to reflect on the indicators for the "prevention" side of the AC Law (See Figure 5)

The reports from the Da Nang DoC and the Bac Ninh Inspectorate unit shed some light onto what different localities might use as their result indicators. The Da Nang DoC report considered the absence of petitions launched against the unit in 2008 as a result indicator. Its report also relied on gift giving as a criterion, reporting that in 2008 there was no case of officials receiving gifts and as a result, there were no procedural records for returning gifts to the government as required. The Bac Ninh Inspectorate unit's report focused on the lack of a unified legal document, waste, and the number of petitions as result indicators.

Figure 5: Highlighted Wrongdoings by the General Corporation of Construction for Central Vietnam (COSEVCO)

| |
|---|
| <p>Who Was Involved? The President of the Board of Management of the General Corporation and the leadership of subsidiary construction companies, factories, research institutes, and an accountant.</p> <p>What are the Wrongdoings? Abuse of position and authority when carrying out public duties, & deliberate violations of financial regulations in managing the company's projects. Specific wrongdoings include, among other things,:</p> <ul style="list-style-type: none"> • Member companies were operating at a loss. At a number of units, the assessment of the cost of property was higher than the real prices. • COSEVCO borrowed money from the bank to fund a factory project (Wood-for-Construction Factory) to be managed by a member company. The capital of the factor was later raised without any financial basis. Accounting was manipulated. • Replacement of imports of factory equipment from Europe with those from Asia took place without amendment of the original contract. • Use of international consultants beyond the ceiling time in the original contract, leading to a waste of the state budget. |
|---|

Source: Interviews and News Reports

4.1.3 Challenges and Recommendations for Planning and Monitoring of AC in Capital Construction

The challenges in plan implementation center around four areas: role of the leadership, incentives for implementing units, institutional arrangements, and implementation capacity.

Leadership Commitment and AC Implementation. The VCP has played an adequate part in the anti-corruption program, as seen through the comprehensive guidelines provided in Resolution 04. Nevertheless, from the strategic point of view, two strategic leadership commitment areas are crucial. The first is to buttress the current link between PAR and AC implementation under the rubric of governance reform, PAR contributing to AC implementation and *vice versa*. The second is to emphasize the AC implementation as a key strategy for Vietnam's sustainable growth and competitiveness. From the implementation point of view, leadership commitment may be reflected in two areas. First is in the area of broadening the AC coalition to involve both government and non-government sectors. Specifically, at the provincial level, despite Resolution 04 calling for an active role by elected bodies, the role of local councils, their committees, and individual deputies remained uneven across provinces. Second is to concretize the AC implementation in the capital construction sector. Despite the fact that capital construction forms a major part of the state budget, and despite the fact that it is emphasized in Resolution 04, there has been no separate action plan targeting this sector.

Incentives for Implementing Units. The field studies show that implementing units used the reduction of waste, the reduction of the number of corruption cases detected, and an improved relationship between the government and citizens through the reduced number of petitions and denunciations as result indicators. These indicators are appropriate given that they are good governance indicators. Nevertheless, it remains to be argued whether the reduced number of detected corruption cases indicates improvement of the prevention measures, or indicates the limited capacity of agencies involving in carrying out detection.

In the short and medium term, from the strategic point of view, good governance indicators should be used as stepping stones to measure the results of the preventive measures under the rubric of the AC Law. The indicators may focus on two dimensions of changes, the changing environment within a state management agency and the changing relationship between government agencies and society. The former may include indicators related to transparency within the work unit and the reduction of waste, while the latter may include changing the attitudes of officials based on the professional code of conduct and the reduction of transaction costs (in terms of time and money) for procedural matters.

Institutional Constraints. First, the construction investment sector is governed by a large number of laws and secondary legal documents issued by different state management agencies: the Laws on Land (2003), Construction (2004), Investment (2005), and Public Procurement (2005).¹⁷

¹⁷A list of crucial legal documents include: Law on Construction (2003); Law on Procurement (2005); Law on Investment (2005); Decree on the management of construction projects and investment projects (12/2009/NĐ-CP); Decree on the management of construction quality (99/2004/NĐ-CP) supplemented by Decree 49/2008/NĐ-CP; Decree on administrative fines in the area of planning and investment (53/2007/NĐ-CP); Regulations on the use of ODA (131/2006/NĐ-CP); Decree on the management of the expenditure of construction investment projects (99/2004/NĐ-CP); Guidelines on the implementation of the Law on Public Procurement and the selection of construction contractors under the Construction Law (58/2008/NĐ-CP); Regulations on templates for construction (731/2008/QĐ-BKH); Regulations on templates for consultancy

There is no one unified law on capital construction, although the National Assembly is discussing a law to amend all stipulations on capital construction. There remain conflicting content among these laws, creating loopholes which foster opportunities for waste or corruption.

Second, the scope of a capital construction project is broad, covering every stage from master planning for capital construction investment projects to individual project identification: feasibility studies, project formulation, appraisal and approval, public procurement, project implementation and control, risk management, closure and transfer of projects, final accounting, and operation and maintenance. In practice, corruption and waste may take place at any stage, e.g. many projects also include the land clearing and land compensation elements. At a general level the many stages involved further reinforces the need to apply a value-chain approach to identify key risks of corruption in the construction sector.

Thirdly and at the sector level the state budget for construction is allocated to transportation, irrigation, schools, hospitals, and cultural facilities. On the management side, there are two levels of analysis that deserve attention. On the macro structural level, SOEs still play an important role although the private sector is increasingly becoming involved. The involvement of SOEs, according to many informants, may create a stage of “conflict of interest” in the process of project management. Those subscribing to this view argue for expedition of the separation between SOEs and “owning ministries”. Government agencies are “developers”. The PMU system is core in the management of state-funded projects. State-affiliated agencies (SOEs, research institutes) and private enterprises provide various types of services. At a micro level, capital construction, as a result of management decentralization, falls under the jurisdiction of all ministries and localities, although with varying scope. Within each state management unit and level, the degree of decentralization also varied. Overall, the number of stakeholders is large and includes members of the government and non-government sectors: the investment decision maker (nguoì quyét ðinh ðau tu), the developer (chu ðau tu), PMUs, consultants (tu van) responsible for design, procurement, and monitoring, contractors and sub-contractors (nha thau chinh/phu), and end-users.

Problems related to conflicting legal documents as well as those related to the structure of SOEs and corporatization will need medium and long-term solutions. Problems related to management, however, may be tackled within the rubric of the PAR-MP. As the process is segmented, preventive measures through PAR measures seem crucial. Section 3.3 and Section 3.4 address transparency as a mechanism for reducing waste and discouraging corruption during each stage of the process.

Implementation Capacity. The first challenge is that neither national nor local steering committees on Anti-Corruption have systematically focused on the capital construction section. As capital construction is a cross-cutting management area, both central and local steering committees could play more of a role in coordinating planning and monitoring of the capital construction sector. Secondly, while the role of the National Steering Committee has been institutionalized, the role of local steering Committees needs further consolidation. This includes the provision of necessary resources for carrying out their assigned tasks and the consolidation of necessary coordination mechanisms with government agencies, the VFF, and elected bodies. Thirdly, GI’s

services (1583/2008/QĐ-BKH); & Regulations on templates for reporting and evaluation of the procurement files (1121/2008/QĐ-BKH).

monitoring system, although useful in tracking the implementation of the AC-Law in general, may not be sufficiently detailed to track the impact of detailed outputs at the local level, especially at the departmental level. In addition, ministerial and local units need to familiarize themselves with the data collection requirements and the tracking of indicators put forth by GI.

It is recommended that the system of steering committees be strengthened, especially in coordination with AC plans that are cross-sector and cross-level in nature. A more systematic role on the planning, coordinating, and monitoring of the linkage between PAR and AC implementation in capital construction can be used as a pilot area for further consolidation of the steering committees. The system of tracking results will need to be fine tuned to verify progress at the local level.

4.2. Asset Declaration in the Construction Sector: a learning cycle?

Global experience points to at least four factors for designing and enforcing an effective asset and income declaration. First, the number of officials required to declare must be kept selective and focused on the most corruption prone sectors and groups in order to keep it manageable. Second, verifications of declarations are necessary to affect the incentive framework of officials and organisations and to maintain credibility of the system. Third, once verification has been undertaken, the effectiveness depends critically on the probability of sanctions if officials fail to declare, wrongfully declare and sanctions if wealth cannot be attributed to official income. Fourth, public access to asset declarations files have been found to result in significantly lower corruption.¹⁸

The following assessment apply the first three factors to examine the effectiveness of asset declaration in the construction sector by posing these three questions,

- 1) Has the number of officials required to declare been kept selective and focused?
- 2) Have verifications taken place?
- 3) Have credible and proportionate sanctions been applied if a public servant a) fail to declare b) wrongfully declare c) cannot justify a sudden wealth increase

Asset declarations are not required to be made public. However, the concluding section will discuss the benefits of doing this on the configuration of incentives. The analysis will focus on the design of the asset declaration policy.

Legal and design analysis of the asset declaration. The GoV has moved swiftly to issue implementation guidelines. The most important ones for public servants in the construction sector includes¹⁹,

- Decree No. 37/2007/ND-CP on transparency of properties and incomes of public servants.
- Prime Minister Decision No. 85/2008/QĐ-TTg listing public servants required to declare properties and incomes in accordance with the article 6, point 11, of the Decree No. 37/2007/ND-CP

¹⁸Mukherjee, Ranjana & Gokcekus, Omer, 2006, "Officials' asset declaration laws: do they prevent corruption", Global Corruption Report, Berlin and London: Transparency International.

¹⁹In addition to these documents, the Circular 556/2007/TT-TTCTP and the inter-agency Circular 527/2007/TTLT/TTCTP-BNV-UBKTTW have been issued to regulate and guide implementation of asset declaration for candidates to and members of the National Assembly.

- Circular 2442/2007/TT-TTCP, issued by the GI, to guide the implementation of some provisions of the Decree No. 37/2007/ND-CP.

Targeting of most corruption prone sectors and positions. According to the legal framework – and as illustrated in the figure above – most public servants are required to declare assets. As reported by the Government Inspectorate, by December 12, 2008, about 395,000 public servants had made asset declarations - hardly a targeted approach. In a nutshell, the legal provisions do not specify a targeted approach.

Figure 6: Who will declare - A targeted approach to Asset Declaration?

| Groups requested to declare ²⁰ |
|--|
| <ul style="list-style-type: none"> • National Assembly full time candidates, • The Office of the National Assembly (ONA) officials similar to or higher than deputy head of divisions of Provincial & District People's Committee • ONA officials who are managing state budget, assets or directly contact and handle business of organisations and citizens |
| <ul style="list-style-type: none"> • People's Council full time candidates, • Office of the People's Council Officials similar to or higher than deputy head of divisions of Provincial & District People's Committee • Office of the People's Council officials who are managing state budget, assets or directly contact and handle business of organisations and citizens |
| <ul style="list-style-type: none"> • Office of the National President officials similar to or higher than deputy head of divisions of Provincial & District People's Committee • Office of the National President officials who are managing state budget, assets or directly contact and handle business of organisations and citizens |
| <ul style="list-style-type: none"> • Provincial & District-level People's Committees: Certain officials²¹ • Various officials in institutions and departments of communes, wards and townships such as secretaries and deputy secretaries of party committees; chairmen and vice-chairmen of the people's councils; chairmen, vice-chairmen and members of the people's committees; heads of public security services and chief military commanders of communes; officers in charge of land - construction and finance - accounting |
| <ul style="list-style-type: none"> • Police Force: Certain officials such as investigators |
| <ul style="list-style-type: none"> • Military Force: Certain Officials such as investigators and high-ranking officials |
| <ul style="list-style-type: none"> • State Hospitals and Research Institutes: Certain Officials |
| <ul style="list-style-type: none"> • Newspapers Using State Budget and State Assets: High Ranking Officials |
| <ul style="list-style-type: none"> • Kindergartens, Primary & Secondary School: High Ranking Officials |
| <ul style="list-style-type: none"> • Vocational Schools, Universities and Colleges: High Ranking Officials |
| <ul style="list-style-type: none"> • SOEs: High Ranking Officials |
| <ul style="list-style-type: none"> • Inspection & Investigative Agencies: Certain Officials |
| <ul style="list-style-type: none"> • Accountability Agencies such as the Court, the Procuracy and the State Audit: Judges, Court Clerks, State Auditors and Certain Officials |
| <ul style="list-style-type: none"> • Public Notary |
| <ul style="list-style-type: none"> • Officials in Budget Units and Property Units of State Administrative Agencies at all levels |
| <ul style="list-style-type: none"> • Party Agencies & Socio-political Organisations: Certain Positions |

Source: *The Law on Anti-Corruption 2005: Article 44, Decree 37 and its implementation circular and Interviews with Government Inspectorate*

²⁰ These categories of officials are based on Article 44 and Decree 37 and its implementation circular in the Law comprising 1) Officials holding the positions that are deputy head of divisions of District People's Committee and similar positions in agencies, organisations and units (including the Party, political-social organisations and others which use state budget) and positions at higher levels. b) A number of officials and public employees in communes, wards, district townships; persons managing state budget and properties or directly involved in handling affairs of agencies, organisations, units, individuals; c) Candidates for the National Assembly, People's Councils.

²¹ The term "Certain Officials" refer to Officials included in 1) & 2) in the above footnote

Verification of assets. According to the legal framework, verification is to take place through a complicated process of 5 major stages with involvement of many institutions. The first stage entails the request for verification. This request can only be triggered by either a clear and detailed denunciation or triggered by the Control Commission of the Party, or by Heads of administrative units, uncovering corruption behaviors. Secondly, after the submission of the request, the Party Bureaus, or Heads of administrative units will have to mandate verification. The third step is the actual verification, undertaken by the Control Commission of Party, or the Inspectorate, or the Unit of organisation and personnel. In the fourth step the institutions assigned to carry out the verification will present findings to the Party Bureau, or Heads of administrative units to make conclusive decisions. The fifth stage will involve a decision on the case, including possible publication of the case.

This verification process does not provide opportunities for regular scrutiny, e.g. spot check, of declarations, e.g. scrutiny will only be triggered by a specific decision to do so. Interviews undertaken by the Department of Organisation and Personnel (DOP) of the MoC indicated that the tool is more perceived as an internal administrative mechanism to be used when public servants are moving into new positions – in particular when being promoted.

While a specific request for verification is needed, the legal framework around the AC-Law does not encourage this. For instance, Decree No. 107/2006/ND-CP on responsibilities of heads of administrative units for corruption occurring in their units further seems to discourage scrutiny of verifications.

Sanctions for failure to declare, late or wrong declarations. Decree 37/2007 and circular 2442/2007 on asset declarations do not clearly specify sanctions for failure to declare and late or wrong declarations. However, Decree 37 recognizes the obligations of declarers of: (a) submitting declaration; (b) submitting declaration on time; (c) submitting a full declaration. Based on Article 8 of Government Decree 35 (17 March 2005), on disciplining of public employees and civil servants, those civil servants that fail to meet their obligations can be subject to six types of sanctions: reprimand, caution, wage reduction, demotion, removal from incumbent posts, and dismissal. There is, however, no clear linkage or reference made between the two policies.

These sanctions appear too vague and even lenient when the cost and benefits of rent-seeking are weigh against each other. Also, it is not clear whether findings could feed into the investigative and prosecutorial process of anti-corruption. Obviously, this could support the punitive aspect and serve as a deterrent factor.²² The legal provisions do not include the obligation of dishonest declarer to prove legality of sudden wealth increases.

Based on interviews with MoC no evidence of verified asset declaration could be established. Therefore, sanctions for dishonest declarations seem to be not just lenient, but very formal. Only when there are signs of corruption concluded by the Control Commission of the Party, Inspectorate, State Audit, or criminal investigation, then verification of asset declaration would be subject to verification.²³

²² Several countries – both OECD and developing countries - apply reversed burden of proof in wealth and asset declaration.

²³ The only case where the verification of the asset declaration has been used is the case of the Chief prosecutor of Ca Mau province. He hid assets, houses, with a value of billions VND.

4.2.1 Asset declarations in the Construction sector.

Achievements in compiling and filing asset declarations in MoC. MoC has issued relevant internal guidelines, e.g. No. 548/BXD-TCCB explaining in detail procedures for asset declaration and applicable forms to be used.

Based on these guidelines, three major groups of public servants are subject to declare assets and incomes. The *first group* is of the most high ranking officials of the Ministry such as the Minister, Vice-Ministers, Party Bureau Chief and officials. This group is under so called personnel management of the Secretariat of the Communist Party of Vietnam (CPV), or PolitBureau, (Trung uong quan ly). Asset declarations made by officials in this group will be verified only upon request from Central Party agencies. In this case, the Central Control commission of the Party is in charge of verifying asset declarations. The *second group* of public servants subject to asset declaration includes Heads of departments, Bureaus, Institutes, SOEs subordinated to the Ministry. The majority of these officials are CPV members. So, their asset declarations are subject to verification only upon a request decision made by the Party Bureau of the Ministry. The Control commission of the Ministry’s Party Bureau is in charge of conducting verifications. The *third group* consist of middle-rank officials e.g. in positions as financial officers. Declarations of these public servants are subject to be verified upon a request decision made by the Minister, and to be verified by the Ministry’s inspectorate, or may be by the DOP.

Figure 7: Asset Declaration in MOC

| | 2007 | 2008 |
|--|--|------|
| Number of officials obliged to declare | 2814 | 2613 |
| Number of officials declared in time | 2376 | 2613 |
| Number of officials in sub-units (e.g. SOEs, research institutes etc) having declaring | Above 2000 (exact figure not recorded) | 2351 |

Source: Report of MOC on the 2-year implementation of the AC-Law

It is commendable that the MoC track and report the figures referred to in Figure 7. All Asset Declaration forms are meticulously stored at the DOP. This department has carried out comparison between the asset declarations submitted in 2007 and 2008, respectively. No ‘unusual change’ in assets and incomes was identified in MoC. The Ministry has predominantly used asset declaration upon appoint of officials into new positions. In these cases, asset declarations were disclosed to employees at the unit to which the candidate is assigned. The information from the declaration will, according to DOP of the MoC, facilitate the assessment of the candidates’ integrity.

Challenges of Asset Declaration in the MOC. The identified challenges are very much a result of the perfunctory design. As indicated, no verification of asset declaration has been undertaken in MoC for the last two years and no corruption cases detected through the asset declaration. In theory this could point to the conclusion that asset declaration has served its prime objective , namely prevention. This study was not in a position to find evidence for or against this conclusion. The considerable efforts and time devoted to the asset declaration – reflected in Figure 7 – above should lead to the question whether the quite modest benefits of asset declaration justifies the substantial costs (e.g. time spent on recording and filing of asset declaration) of undertaking these,

Although one could argue that the fact that public officials have to declare deters corruption, even if there has been little verification

Recommendations & pointers. It is the hypothesis that the limited benefits produced by the asset declaration policy so far are due to imperfect design rather than enforcement per se. Although findings are based on a case study of the construction sector this would apply at a more general level. As a revision of the Decree 37/2007 is envisaged in 2010 under the action plan of the Anti-Corruption Strategy up to 2020, the government might want to consider the following recommendations,

- Target and reduce the number of officials obliged to declare asset
- Increase the risk of “getting caught” through randomized, independent spot-checks and verifications of AD
- Increase sanctions for a) failure to declare b) wrongfully declare c) cannot justify a sudden wealth increase; increase probability of sanctions and design a clear process for sanctions
- Anonymous denunciations with specific facts and evidence could be considered.
- To encourage civil society to provide information on assets of public servants – life style checks
- Make asset declaration public
- Simplify the complexity and high number of institutions involved in verification process. In parallel, introduction of income tax system would play very positive role for transparency of asset and incomes in the medium-term.

4.3. Transparency in Procurement in the construction sector

Legal Analysis of transparency requirements

In this section the requirements for transparency in procurement will be assessed from two angles: the disclosure of procurement information and the openness of procurement processes to scrutiny or oversight from outsiders.

Disclosure of Procurement Information

The Law on Anticorruption (2005) and the Law on Bidding (2005) are the core legal documents regulating the procurement information to be disclosed. Their provisions apply to all types of procurement, including the construction sector. The Law on Construction (2003) also refers to publicity of procurement, but its scope is much narrower than the other two laws. The Law on State Audit (2005) regulates publicity of audits, which include information on procurement processes. Overall, there are 15 different items that must be publicized, which can be clustered into: procurement regulations, procurement activities of projects, violations of procurement regulations, and reports and data on the procurement situation (Figure 8a).

Figure 8a: Procurement information that must be disclosed for the construction sector

| | Procurement information to be made public | Legal document |
|---|---|---------------------------------------|
| | PROCUREMENT REGULATIONS | |
| 1 | Legal documents on bidding | Law on Anticorruption, Law on Bidding |
| 2 | Competence and procedures to handle complaints and denunciations on bidding | Law on Anticorruption |
| | PROCUREMENT ACTIVITIES OF PROJECTS | |
| 3 | Bidding plan | Law on Anticorruption, Law on Bidding |

| | | |
|--|--|--|
| 4 | Notices of invitation for prequalification | Law on Anticorruption, Law on Bidding |
| 5 | Notices of invitation for open bidding | Law on Anticorruption, Law on Bidding |
| 6 | Results of prequalification | Law on Anticorruption, Law on Bidding |
| 7 | List of bidders invited to participate in bidding | Law on Anticorruption, Law on Bidding |
| 8 | Results of contractor selection | Law on Anticorruption, Law on Bidding, Law on Construction |
| VIOLATIONS OF PROCUREMENT REGULATIONS | | |
| 9 | Information on the handling of violations of Bidding Law | Law on Anticorruption, Law on Bidding |
| 10 | Information on individuals and organisations that violate Bidding Law | Law on Anticorruption, Law on Bidding |
| 11 | Information on contractors banned from participating in bidding | Law on Anticorruption |
| REPORTS AND DATA ON PROCUREMENT SITUATION | | |
| 12 | Review reports of MPI, ministries and localities on bidding work | Law on Anticorruption, Law on Investment |
| 13 | Systems of data information on bidding | Law on Anticorruption |
| 14 | Annual audit reports of the State Audit of Vietnam, which include information on bidding processes | Law on State Audit |
| 15 | Reports on outcomes of the implementation of the conclusions and proposals of the State Audit of Vietnam, which include information on bidding processes | Law on State Audit |

Source: Law on Anticorruption, Law on Bidding, Law on Construction, Law on State Audit, Law on Investment

The Law on Bidding requires publicizing procurement information in the daily Procurement Bulletin, the Procurement Website, and mass media. The Law on State Audit mandates the disclosure of audit information in the website and publications of the State Audit of Vietnam (SAV), and through announcements in the Official Gazette and mass-media. The right of organisations and individuals to request information on procurement is recognized in the Law on Anti-corruption, but not in the Law on Bidding.

In 2006 the legal framework of Vietnam was assessed vis-à-vis OECD-DAC standards on country procurement systems. The indicator measuring the procurement information to be disclosed and the forms of publicity received a very high rating (90%).

Oversight of Procurement Processes

The legal framework of Vietnam stipulates various mechanisms to oversee procurement activities in the construction sector (Figure 8b).

Figure 8b. Oversight mechanisms for procurement in the construction sector

| | Oversight institution | Oversight activities | Legal document |
|-------------------|-------------------------------|--|--|
| GOVERNMENT | | | |
| 1 | MPI Public Procurement Agency | <ul style="list-style-type: none"> Settle procurement petitions under its competence Assess and report situation on procurement activities nationwide Assume prime responsibility for, and coordinate with concerned agencies, in the examination and inspection of biddings nationwide Organize regular and extraordinary bidding examinations, for all government units and for a selection of investment projects | Law on Bidding Decree 58 |
| 2 | Bidding Inspectorate | <ul style="list-style-type: none"> Inspections of organizations and individuals involved in bidding activities | Law on Bidding |
| 3 | MOC Inspectorate | <ul style="list-style-type: none"> Inspect the implementation of regulations on construction Detect, prevent and deal with breaches of the construction regulations Recommend to competent authorities to deal with complaints and denunciations on construction. | Law on Construction |
| 4 | Government Inspectorate | <ul style="list-style-type: none"> Supervise the implementation of policies and laws Organize and guide the inspection of the AC-Law Build up data systems on corruption prevention and combat Settle complaints that were settled before by other government bodies and further lodged by complainants, settle complaints | AC-Law Law on Inspection Law on Complaints and Denunciations |

| | | | |
|--------------|--|--|---|
| | | affecting many localities, and supervise the observance of the law on complaints and denunciations by all state agencies | |
| 5 | Ministries, agencies and People's Committees of all levels | <ul style="list-style-type: none"> • Review and assess the situation on bidding activities under their areas of management • Conduct regular and extraordinary bidding examinations at the units under their management and for the projects that they decide • Settle complaints and denunciations | Law on Bidding Decree 58 Law on Complaints and Denunciations |
| 6 | Ministry of Public Security and Ministry of Defence | <ul style="list-style-type: none"> • Organize and direct the investigation of corruption-related crimes, including those on procurement | AC-Law |
| OTHER | | | |
| 7 | Advisory Council for Settling Bidding Petitions | <ul style="list-style-type: none"> • Advice competent persons on the settlement of bidding petitions that were previously unsatisfactorily settled by bid solicitors and investors. | Law on Bidding |
| 8 | State Audit of Vietnam | <ul style="list-style-type: none"> • Audit the use of public funds and the procurement processes. | AC-Law Law on State Audit |
| 9 | Civil society | <ul style="list-style-type: none"> • Community supervision of bidding activities • Lodge complaints, denunciations and petitions, including on procurement issues • Monitor the implementation of the AC-Law, including provisions on procurement • Report cases with signs of corruption, including procurement cases | AC-Law Law on Bidding Decree 58 Law on Inspection Law on Complaints and Denunciations |
| 10 | National Assembly & People's Councils | <ul style="list-style-type: none"> • Supervise the work on corruption prevention and combat, including the work on prevention and combat of corruption in procurement | AC-Law |
| 11 | Supreme People's Court | <ul style="list-style-type: none"> • Settle bidding petitions that were previously unsatisfactorily settled by the competent persons • Settle administrative complaints and denunciations that fall under its management • Settle bidding complaints and denunciations which were previously unsatisfactorily settled by the Government Inspectorate • Adjudicate corruption-related cases, including those on procurement | AC-Law Law on Bidding Law on Complaints and Denunciations |
| 12 | Supreme People's Procuracy | <ul style="list-style-type: none"> • Organize and direct the prosecution of corruption-related crimes, including those on procurement | AC-Law |

Source: AC-Law, Law on Bidding and its implementing Decree 58, Law on Construction, Law on State Audit, Law on Inspection, Law on Complaints and Denunciations

There are at least 12 different types of institutions that have a mandate to oversee procurement in the construction sector. Some of them are government agencies and others are institutions outside the government. Civil society is one of the oversight institutions outside the government. The Law on Bidding and its implementing Decree 58 recognise the oversight role of society on procurement through complaints, denunciations and petitions, and contemplate community supervision of bidding activities. The Law on Anticorruption assigns the different members of society (i.e. citizens, mass-organisations, business, business associations, and media) to oversee the implementation of the provisions of the Law - such as the provisions on disclosure of procurement information- and to report cases that show signs of corruption, including procurement cases.

Most of the oversight institutions listed in Figure 8b are general oversight institutions, but there are three oversight institutions that focus only on procurement issues, namely the Public Procurement Agency of Ministry of Planning and Investment (MPI), the Advisory Council for the Settlement of Bidding Petitions, and the Bidding Inspectorate.²⁴

The oversight activities envisaged in the legal framework of Vietnam allow for checks during the execution of procurement activities (e.g., through inspections, complaints, denunciations, and petitions) and for checks after the execution of procurement activities (e.g., through the audits by the SAV, the MPI bidding examinations of investment projects, and the government assessments on the situation of the bidding activities).

In a nutshell, the legal framework of Vietnam mandates many different institutions to oversee procurement processes, and stipulates a diverse and seemingly complete set of oversight mechanisms. However, one could raise questions about the effectiveness of each of the oversight mechanisms, and about the effectiveness of the overall institutional set-up for oversight of procurement processes. The multiplicity of oversight institutions creates the potential risk of duplication of tasks, and the necessity of coordination. The various regulations governing the settlement of petitions, complaints and denunciations on procurement illustrate the point above. There are four possible settlement systems: (a) settlement by the bid solicitor, the investor and the competent persons²⁵, with the assistance of the Advisory Council on Bidding Petitions (Law on Bidding); (b) settlement by MPI (Law on Bidding) (c) settlement by the various central and local

²⁴ **The Public Procurement Agency** (PPA) of MPI is responsible for the inspection and examination of bidding activities nationwide, the assessment of the situation of procurement activities nationwide based on the assessments from government agencies, and the settlement of procurement petitions under its competence. The bidding examinations must be undertaken regularly according to a plan and/or extraordinarily upon the occurrence of a problem or request, by decision of the competent person of the examining agency. The examinations are organized by MPI, but must be conducted by all ministries, agencies and People's Committees for a selection of investment projects that they decide.

The Advisory Council on Bidding Petitions is responsible for advising the competent persons on handling bidding petitions in cases when the bidder disagrees with the prior settlement by bid solicitors and investors. It is chaired by a representative from a state bidding regulatory agency and its members include representatives from competent persons and relevant professional organizations. If the bidder disagrees with the settlement by the competent persons, he/she has the right to initiate a lawsuit in the court.

The Bidding Inspectorate is an inspectorate with specialization in the field of bidding. It has the mandate to conduct inspections of organisations and individuals involved in bidding activities. The structural organization and activities of the Bidding Inspectorate are specified by the legal provisions on inspection.

²⁵ **Competent persons** are defined as the persons empowered to decide on projects under the provisions of law. With regard to projects with 30% or more of state capital contributed by state enterprises, except those funded with 100% state capital, competent persons are the Managing Boards or competent representatives of capital-contributing parties.

government bodies and the Government Inspectorate (Law on Complaints and Denunciations); and (d) settlement by the court (Law on Bidding, Law on Complaints and Denunciations). The division of responsibilities among the institutions under system (a) is clear. The linkage between systems (a) and (d) is clear as well. However, the forms of coordination of system (a) with systems (b) and (c) are not clearly stipulated in the laws, which opens the door to duplications among the three systems and makes complaint procedures ambiguous for bidders.

The 2006 OECD-DAC assessment of the legal framework of Vietnam on country procurement systems had one indicator on control and audit systems and another indicator on the complaints mechanism. None of the two indicators received a very satisfactory rating (20% and 40%, respectively). The key weaknesses highlighted in the OECD-DAC assessment were: (i) lack of internal audit mechanism in state agencies; (ii) lack of audits conducted on a regular basis; (iii) lack of finality of the decisions of the Advisory Council on Bidding Petitions because the aggrieved party can always go to the courts; and (iv) lack of mandate to post the decisions of the Advisory Council.

Decree 58, dated 5 May 2008, on the implementation of the Law on Bidding and the selection of construction constructors under the Construction Law, seemingly improves some of the weaknesses mentioned in the 2006 OECD-DAC assessment. The Decree mandates all ministries, agencies and People's Committees of all levels to conduct "bidding examinations" of projects. The "bidding examinations" must be done on a regular basis according to a plan and/or extraordinarily when there is problem or request, by decisions of a competent person of the examining agency. The content of the "bidding examinations" is specified in Decree 58. Based on that content, and considering that the "bidding examinations" are conducted by the state agency in which the project unit is located, one could argue that the "bidding examinations" are equivalent to "internal audits".

Regarding the OECD-DAC assessment, it should also be noted that the Advisory Council does not make decisions on petitions. Instead, it is in charge of making reports and advising the competent persons. Based on the reports of the Advisory Council, the competent persons will issue a decision to settle the petition of the bidder. Those decisions are valid legal documents. Furthermore, it is a subject of debate whether the possibility to sue to the court the decisions of the competent persons is a weakness or strength.

Finally, although the decisions of the Advisory Council are not explicitly required to be posted, the "information on the handling of violations of the Bidding Law" must be publicized. Logically, the decisions of the Advisory Council fall under that definition.

4.3.2 Implementation Analysis

Disclosure of Procurement Information

A review of the Procurement Bulletin – now called Procurement Review- and the Procurement Website suggests partial compliance with disclosure of procurement information in 2009 (Figure 9). Some procurement information is publicized (e.g. notices of invitations, legal documents), other information is publicized but seemingly incompletely (e.g. results of contractor selection, list of individuals and organisations that violate the bidding law) and some other information is rarely publicized (e.g. information of the handling of violations). Overall, bidding decisions seem to be less transparent than bidding invitations. But some progress can be noted when comparing 2008

and 2009.²⁶ Weaknesses in the posting of procurement information are both the responsibility of MPI, which is in charge of managing the Review and the Website, and bid solicitors, investors and competent persons, which are in charge of supplying MPI with the required information.

Figure 9: Posting of procurement information in the Procurement Review & Procurement Website, by type of information

| Procurement information to be made public | Posted in Procurement Review as of May 2009 | Posted in Procurement Website as of May 2009 |
|--|--|---|
| PROCUREMENT REGULATIONS | | |
| Legal documents on bidding | No | Yes |
| Competence and procedures to handle complaints and denunciations on bidding | No, only MPI hotline number | No |
| PROCUREMENT ACTIVITIES OF PROJECTS | | |
| Bidding plan | Yes, but not in all issues | Yes |
| Notices of invitation for prequalification | Yes | Yes |
| Notices of invitation for open bidding | Yes | Yes |
| Results of prequalification | No | No |
| List of bidders invited to participate in bidding | Yes, but not in all issues | Yes |
| Results of contractor selection | Yes | Yes, but seemingly incomplete |
| VIOLATIONS OF PROCUREMENT REGULATIONS | | |
| Information on the handling of violations of Bidding Law | No. Only selected examples are covered in-depth in some issues | No |
| Information on individuals and organisations that violate Bidding Law | No | Yes, but seemingly incomplete |
| Information on contractors banned from participating in bidding | No | Yes, but seemingly incomplete |
| REPORTS AND DATA ON PROCUREMENT SITUATION | | |
| Review reports of MPI, ministries and localities on bidding work | No | No. There is only a request to submit the reports |
| Systems of data information on bidding | No. There is no data on bidding implementation | No. There is no data on bidding implementation |
| Annual audit reports of the State Audit of Vietnam | Not applicable | Not applicable |
| Reports on outcomes of the implementation of the conclusions and proposals of the State Audit of Vietnam | Not applicable | Not applicable |

Source: Procurement Website (as of 18/5/2009) and Procurement Review (issues No. 90 dated 6/5/2009, No. 50 dated 11/3/2009 and No. 51 dated 12/3/2009)

The Procurement Review and the Website have limitations as sources of evidence on the implementation of the disclosure of procurement information, largely because they were not designed to serve that specific purpose. First, the Review and the Website do not provide an indication of the percentage of information that has been publicized in relation to all the information that is mandated to be publicized. Secondly, the Review and the Website only allow monitoring compliance at project, PMU, sector and province levels for some types of procurement information. The information in the Review is not synthesized by project and PMU, but classifies bidding invitations for three geographical groups (Hanoi, HCMC and other provinces) and for three sectors (construction, consulting and purchase of goods). The Website allows users to search bidding invitations and bidding plans by sector, name of bidding package, name of project, and name of the investor. Last but not least, not all the old data is publicly available. The website has a chronological search function, but the old information from the Bulletin is not publicly available yet. That data is stored electronically in MPI with special software. Encouragingly, MPI is planning to publicize online all the information that has been publicized in the Bulletin so that searches can be carried out on past information.

²⁶The improvements noted between the 2008 Procurement Review (issues no. 97 dated 14/5/2008 and no. 98 dated 15/5/2008) and the 2009 Procurement Review include: (1) results of contractor selection were not posted in 2008 but are posted in 2009; (2) notices of invitation for prequalification were not posted in 2008 but are posted in 2009.

Apart from the Procurement Review and the Procurement Website, there are other sources of evidence on the implementation of the disclosure of procurement information. Some examples of additional sources of evidence are provided below²⁷. These other sources of information allow monitoring compliance at project, PMU, sector and province levels. However, their coverage is often limited, and they are not always publicly available.

The reports of the Aligned Monitoring Tool (AMT) provide evidence on compliance at project level. The AMT reports, introduced in 2007, monitor quarterly project implementation and they include very detailed information on project procurement activities. Out of the 20 forms of the report, 5 forms are on procurement issues. One of the forms, for example, requires to fill-in information on bidding results by bidder, indicating the reasons of rejection of each bidder. At the moment, the AMT reports are only applied to Official Development Assistance (ODA) projects, but it is expected that in 2010 the application will start being extended to domestic funded projects. The AMT reports are public and at the end 2009 they are expected to be available in MPI's website, with tools that will allow search by project, sector and province. Key stakeholders are informed quarterly about compliance with the AMT reports by projects. Compliance is improving but it is still imperfect, especially in terms of the completeness of the required forms.

Another tool to monitor compliance at project level is the bidding examinations/audits, organised by the Public Procurement Agency (PPA) of MPI and conducted by ministries, agencies and People's Committees. Based on Decree 58, the bidding audits are supposed to include some information on the compliance by the project with the regulation on disclosure of procurement information. One key limitation with this monitoring tool is that the audits are conducted only for a very small selection of projects every year. Moreover, their findings have not been publicized so far, although MPI has recently committed to disclose the findings of the 2009 bidding audits.

Compliance at provincial and sector levels could be tracked through the assessments of ministries, agencies and People's Committees on the bidding situation; the auditing reports of the audits of agencies, units and organisations conducted by the SAV; and the "Agency Procurement Performance Indicators" (APPI).

The government assessments on the bidding situation are submitted to MPI by the 63 provinces and the 29 government agencies every year by March 31st. The assessments might provide some information on compliance with disclosure of information, but as they are not publicized, it is difficult to know whether that is indeed the case.

The focus of the SAV audits is on financial aspects. Procurement aspects are a small part of the audits and they are not covered in detail. The advantages are that the SAV audits are very comprehensive in terms of PMU coverage and that agency-specific audit information must be publicized. Decree 91, dated 18 August 2008, requires all audited agencies, organisations and units to publicize their auditing reports of audits and the auditing records.

²⁷ The examples below are just a description of the additional sources of evidence. Unfortunately, they are not accompanied by any evidence. Obtaining and analysing evidence from these sources is a very time-consuming exercise which could not be undertaken under the timeframe of this study.

The APPI are a set of indicators based on the OECD-DAC standards that help monitor procurement performance of individual government agencies. Some of the APPI indicators measure disclosure of procurement information. Thirty-two APPI indicators were piloted in Vietnam for one SOE (Electricity of Vietnam) and for one province (Ha Tay). The pilots assessed the procurement activities of fiscal year 2005, before the Law on Anticorruption and the Law on Bidding came into effect. Nevertheless, it is interesting to highlight that in neither of the two pilot agencies there was any data available to track the APPI indicators on “advertisement of bid notices” and “posting on the procurement website”.

Oversight of Procurement Processes There is also some available evidence on the implementation of the oversight mechanisms on procurement and their effectiveness. The paragraphs below provide information on the implementation of four key oversight mechanisms.

The hotline unit established by PPA of MPI is a good example of the implementation of the oversight role in relation to the handling of bidding petitions. It is also a good example of an oversight mechanism working quite effectively. The hotline unit is in charge of receiving and answering petitions on procurement. When a petition is received, the PPA promptly contacts provincial authorities to seek a reply, and in some cases the PPA sends inspectors to investigate. In almost all cases, a reply from local officials is received. Normally, officials at local levels correct their actions quickly and apologize. The hotline number is publicized in the Procurement Review. A selection of petitions and their settlement are publicized in-depth in the Procurement Review.

The PPA of MPI has also made some progress in organizing some bidding examinations of projects. Nine projects were examined in 2007 and 11 projects in 2008. In 2009, at least 14 projects are planned to be examined, depending on the number of available staff for undertaking the examinations. Most of these audits are for projects in the construction sector. The results of the annual government assessments on procurement and the petitions received through the hotline help determine the selection of projects to be audited. One of the first procurement audits that MPI organised received positive comments from international donors, indicating that the quality of the audits is not being undermined. However, the audits have not been publicized so far and therefore it is difficult to make a judgment of their quality. Overall, the implementation of the procurement audits seem to be on the good track, but it is still far from being a comprehensive oversight mechanism conducted by all ministries, agencies and People’s Committees on a regular basis. The availability of human resources seems to be a constraint for that.

The bidding inspectorate has also been operationalized. However, it has not been established as a separate inspectorate, but instead as part of the MPI Inspectorate. There is not even a separate unit on bidding within the MPI Inspectorate. The MPI Inspectorate has 5 units²⁸ () and inspectors with specialization on procurement are part of 3 of these units. Bidding inspections of projects are conducted during the execution of bidding activities and also ex-post.

There is room for improvement in the role of professional associations in overseeing procurement, as reflected in the role of the Vietnam Association of Construction Constructors (VCCA). The

²⁸ The 5 units of the MPI Inspectorate are: (1) Construction, transport, telecommunications, public works, water supply and drainage, housing and sanitary services, environment affairs, infrastructures of industrial parks, urban areas, export-processing zones, economic zones, hightech parks; (2) Industry, rural and agriculture development, commerce and services, tourism; (3) labor, culture, social, science, education, defense, national security, natural resources; (4) public administration examination, settlement of complaints and denunciations; (5) General affairs.

VCCA plays a role in training and raising awareness of contractors on procurement regulations. However, the VCCA does not play a role in overseeing procurement, due to the lack of access to information on procurement activities by the VCCA, and the lack of incentives of contractors to rely on associations, as they benefit from having direct relations with government agencies and procurement entities. The lack of authority of VCCA to grant procurement certificates to contractors further constrains the oversight role of the VCCA.

Regarding obstacles for the implementation, the lack of willingness to comply with the general bidding regulations does not seem to be an important factor. Almost all cases of misconduct in public procurement are the result of misinterpretations of the law or unqualified personnel. Moreover, the PPA of MPI receives every day several requests for clarifications on the application of the regulations, clearly signalling willingness to comply. However, conflicts of interest represent a threat to the implementation of the specific issue of procurement transparency, as project officials could obtain significant private gains by not disclosing procurement information. Other obstacles for the implementation include the awareness of government and project officials about their obligations, and the application of Information Technology.

4.3.3 Recommendations and pointers to improve the implementation of transparency

The review of the implementation suggests that a comprehensive and unified system of data and indicators to monitor compliance in procurement transparency is missing, especially for project level. There are data sources available, but they are fragmented across several sources, they often have a limited coverage, and they still need to be analysed and synthesized. ***There has been significant progress on disclosing some types of procurement information but the disclosure of other information such as bidding results is still incomplete.*** This conclusion is based on the clear, yet limited, evidence provided above. Some oversight mechanisms such as the MPI hotline unit seem to be playing their role effectively, but there is room for improvement of some specific aspects of other monitoring mechanisms such as the procurement audits and the professional associations. Project officials seem to be willing to comply with procurement regulations in general, but the implementation of the transparency regulations is constrained by conflicts of interest and partial awareness about the legal obligations.

There are several planned reforms that could help move forward the procurement transparency agenda (See annex 2 for an overview of planned reforms). Thereforms are expected to strengthen oversight of procurement, especially by civil society, and increase the disclosure of procurement information and facilitate their access. For example, the Construction Sector Transparency Initiative (2009-2011) will help develop a Multi-Stakeholder Group in charge of supervising construction projects, including procurement. The Group will be composed of relevant government agencies, the SAV, construction associations, other Civil Society Organisations (CSOs) and the private sector. The oversight role of civil society on procurement is also likely to be strengthened through new legislation on the submission and handling of denunciations and the protection and reward of whistleblowers, the development of an Early Warning System to detect corruption in investment projects. The forthcoming introduction of e-procurement, the development of a new law on access to information, the new regulations on the disclosure of the list of enterprises involved in corruption, the plan to establish regional bidding

centres for centralized procurement, etc. are all expected to bring gains in terms of transparency of procurement information and access to that information.

However, not all the reforms underway appear positive. The Law on Bidding has been proposed to be amended under the new Law on Amendment to a Number of Articles of Laws Relating to Capital Construction. This new Law was discussed in June 2009 in the National Assembly and is expected to be adopted by the National Assembly in October 2009. The proposed amendments delete the fixed threshold on direct contracting and give the Government the authority to decide upon the level of the threshold and its periodical review. The risk is that the Government could bow to existing pressures from procurement entities and bidders to further increase the current threshold. If the threshold increases, there will be more procurement through direct appointment and less procurement through competitive and transparent bidding. This could increase opportunities for corruption in bidding and hence (partly) offset the anti-corruption gains of increased transparency in competitive bidding.

A code of ethics for bidding is underway, but it might not suffice to resolve conflicts of interest in procurement. The code is expected to be introduced in 2009 and will have to be observed by all state agencies and bidding companies. The code is expected to raise the awareness among project officials about their obligations in relation to disclosing procurement information. However, it is not clear whether the code of ethics will suffice to mitigate the problem of conflicts of interest in the disclosure of procurement information. Reducing the incentives of civil servants for opaque procurement might require measures that go beyond a better understanding of legal obligations. Ensuring a high probability of sanctions in case of violations, and improving the merit-orientation and transparency in the recruitment and management of PMU officials are other policy measures that deserve consideration.

The reforms planned by the Government are mostly of a general nature. Based on the implementation analysis, targeted efforts seem to be necessary as well. Efforts should be targeted towards those types of information that are not being disclosed or are being partially disclosed; towards those oversight mechanisms that have not been implemented yet, that have been only partially implemented, or that have been implemented but are not being effective; and towards those projects, PMUs, sectors and provinces where procurement transparency is weaker. In order to target efforts, it is necessary to have a prior good understanding of the weaknesses. The analysis in this study has been only a very first step to understand the weaknesses. Much more analytical work needs to be done in a systematic and regular way. A better data and indicators system on procurement transparency could greatly facilitate the analytical work.

4.4. Transparency in the Management of Construction Investment Projects: Selected Aspects

Project management of capital construction projects is governed by a number of decrees. The management requirements also depend on whether projects are funded by the state budget, ODA, popular contributions, or private sources. The section focuses on state-funded projects and projects jointly funded by the state budget and popular contributions. Nationally, the state budget for construction goes to transportation, irrigation, schools, hospitals, and cultural facilities. The management of state-funded projects follows the existing legal framework, including the Law on Construction its secondary legal documents. The key stakeholders are the investment decision maker (nguoì quyét dinh dau tu), the developer (chu dau tu), PMUs, consultants responsible for

design, procurement, and monitoring (tu van), implementing contractors (nha thau), and end-users. The PMU system is the core of the management of state-funded projects. Nevertheless, there is no unified system on how to organize the PMU. At the central level, for example, MARD has set up three PMUs to run ODA projects and ten PMUs to run irrigation projects. For the Ministry of Transportation, prior to the PMU 18 scandal, the PMUs were granted comprehensive authority. After the scandal, the PMUs were placed under sub-ministerial units. At the local level, PMUs are under the jurisdiction of the developer, mostly assigned to government agencies at the departmental level (such as the Department of Construction, the Department of Transportation, and the Department of Agriculture and Rural Development) and the district and commune-level People's Committee.

4.4.1 Project Management and the AC-Law Transparency Framework

Potentially, each stage of the project management process has risks for waste or corruption. The list in Figure 1 focuses on areas of risk and is based on opinions gathered from relevant stakeholders at the central and local government levels, including those from the Government Inspectorate and selected provincial inspectorate units and the Inspectorate units of the Ministries and selected Departments of Planning and Investment, Construction, Transportation, and Agriculture and Rural Development. The list should be taken as a starting point for further discussion.

Figure 10: List of Risk Areas for Waste, Financial Malpractices, and Corruption

| Steps in Project Management | Risk of Waste, Financial Malpractices, and Corruption |
|--|--|
| Master Planning (Formulation, Appraisal, and Approval) | <ul style="list-style-type: none"> -Personal gain ahead of public good. -Limited number of stakeholders in the decision-making process. -End-users or affected parties not consulted - Uncontrollable master planning |
| Project Identification/ Formulation | <ul style="list-style-type: none"> -Personal gain ahead of public good. -Limited number of stakeholders in the decision-making process. -End-users or affected parties not consulted. |
| Technical scoping of a project and budget estimates | <ul style="list-style-type: none"> -State-regulated cost norms not appropriate -Inaccurate estimates; fluctuating market prices; consultants taking control -Design consultants including unnecessary design steps to gain commissions -Collusion between designers and appraisers. -Scoping of a project being biased in favor of particular bidders |
| Appraisal | <ul style="list-style-type: none"> -Appraisers not independent - Too much discretionary decision making power |
| Administrative procedures related to construction | <ul style="list-style-type: none"> -Despite attempts to reduce procedural requirements, complicated procedures remain, leading to informal licensing fees |
| Land Clearing and land relocation | <ul style="list-style-type: none"> - Local state capture of land - Inadequate existing legal framework for compensation prices |
| Procurement | <ul style="list-style-type: none"> - Collusion between the developer and the appraiser - Collusion between bidders to manipulate a higher price - Best value bidders do not win contracts. - Limited number of suppliers curbing competition - Long bidding process delaying the implementation |
| Implementation of project (i.e., management of quality, management of progress, management of construction volumes, management of labor safety, and management of the environment) | <ul style="list-style-type: none"> -Project management capacity of the PMU not meeting standard requirements. - Limited capacity of contractors; PMU not having methods for managing and sanctioning poor performance of contractors -Collusion between design consultants, implementing consultants, and evaluation/inspection consultants - Deliberate violations of the original design - Embezzlement of construction materials |
| Transfer of Projects to the developer and the investment decision-maker | <ul style="list-style-type: none"> - Discrepancy between the final product and the design - Financial fraud |

| | |
|--|--|
| | - Lack of transparency in technical and design evaluation prior to the acceptance of the project -Lack of evaluation after the project is put into use. |
| Auditing requirements before final accounting | -Financial irregularities taking place at any stage; end-of-the-project auditing not useful |
| Source: Review of legal framework and interviews with local informants | |

The AC Law has not yet generated secondary documents related to transparency. The AC-Law’s clauses on transparency are based on legal documents issued earlier. The sources of legal documents on transparency include Decision 192 (2004); Decision 80 of the Prime Minister on the promulgation of regulations on the monitoring of community investment (2005); and various legal documents on grassroots democracy in the work unit, the enterprise unit, and at the commune level (issued between 1998 and 2007). A summary of the stipulations is in Figure 11.

Figure 11: Transparency Requirements in the AC-Law

| |
|--|
| <p>Clause 12 Methods of Publicity These include announcement at the unit, posting at the unit’s office, announcement in writing to relevant stakeholders, distribution of prints, media announcements, and web pages</p> <p>Clause 14 Construction investment master planning projects need opinions from the people; Projects from the local budget have to be reviewed by the People’s Councils; Projects, after approval, have to be publicized for the people to inspect</p> <p>Clause 15 Transparency and Publicity of Finance and State Budget For capital construction projects, the content to be publicized includes the allocation of funds to projects, budget estimates and allocated budgets of projects, yearly reports on the project’s finances, and final accounting after the completion of the project</p> <p>Clause 16 Transparency and publicity in the mobilization and use of people’s contributions</p> <p>Clauses 31 and 32 Rights to ask for information by organizations and individuals</p> |
|--|

4.4.2. Transparency in the Management of Construction Investment Projects: The Cases of Da Nang and Bac Ninh

This section reviews the concretization of the principle of transparency as stated in Clauses 14 and 15. Clause 16 overlaps Clause 14’s requirement to publicize project information for the people to inspect. A useful nation-wide overview of the achievements and challenges of the capital construction sector can be found in the report submitted to the National Assembly by the Ministry of Planning and Investment in October 2008.²⁹ Da Nang and Bac Ninh have been selected for their “good governance” records. On the average, over the period from 2006 to 2008, Da Nang ranked “excellent” in the PCI, while Bac Ninh ranked “mid-high”. In Da Nang, the state budget for capital construction went to transportation, irrigation projects, schools, hospitals, and cultural projects. The city decentralizes projects under five billion VND to the district-level government. The city has a PMU system to manage projects. Key departments such as the Department of Construction and Department of Transportation have PMUs. At the district-level, the People’s Committee also set up a PMU to manage projects from the central government that it delegates to the district-level government. It is also common for an SOE construction company to be assigned to take charge of project management. A number of PMU’s consist of a unit responsible for land clearing.

²⁹See Bo Ke hoạch va Dau Tu, “Bao cao tom tat tinh hình thực hiện chính sách, pháp luật về đầu tư xây dựng cơ bản sử dụng vốn nhà nước ở các bộ, ngành, địa phương từ năm 2005 đến năm 2007 (bao cao tại kỳ họp thứ 4, Quốc hội khóa XII)”, (Summary report on the implementation of policies and laws on state-funded investment construction at ministries, sectors, and localities from 2005 to 2007 – a report to the fourth meeting of the National Assembly, Session XII), 29 October 2008.

Construction investment Master Planning and Public Opinion Gathering. In general, the formulation of master plans in capital construction in Vietnam is carried out by a limited number of stakeholders. Sectoral government agencies play the key role in master planning. Although the internal planning process has become increasingly transparent, it is fair to say that information sharing within the government system itself is not always extensive. Regarding information sharing with the stakeholders outside the government system, the Law on Construction (2004) and Decree 08 (2005) stipulate that when formulating detailed master plans, community participation is required. Nevertheless, the Law lacks details for implementation purposes. During the plan formulation period, Decree 08 merely requires that the People's Committee at the district level gathers opinions regarding detailed plans through representatives of residential units and the Commune-Level People's Committee while requiring the publicity of master plans after approval.³⁰

In practice, consultation with the public is limited, mostly taking place in areas deemed to affect the public, such as land. Master plans are in general publicized once they have been approved.³¹ Da Nang operates within this current legal framework but with a move to institutionalize a more transparent process. Its AC Plan has included the clarification of the process of master planning; there are measures to improve each stage of the operation. In approving the master plan, the key is to emphasize speediness. If there is a need to amend the files, the DoC invites the developer and consultants to discuss the issue. The collection of fees for appraisal follows the MOF and the People's Committee's regulations. In the area of selecting the site for the project, it is required that the completion time follows the request of the developer in cases where there is a need for resettlement. After the proposal is approved by the People's Committee of the City, it will, following the current requirement, be publicized in the area where the project will be implemented. In the process of publicizing the master plans, the DoC is also aimed at periodizing the time frame for the implementation of investment projects. The DoC has reported that this transparency move has helped reduce the scattered nature of the projects, identify projects that are not feasible, and amend mistakes in the process of coordinating different infrastructural projects. Overall, in the medium term, this process of transparency will help reduce waste.

On the management of construction investment, the emphasis goes to the approval of the estimated budget for design. On the management of quality, the DoC issues documents to guide the developer and the PMUs to follow Decree 209 and Decree 49 of the MoC on safety reviews and the quality of the project. The DoC also coordinated with the Bureau for Quality control at the MoC in carrying out unplanned visits. For the PMU, the key reform areas include the review of investment capital, approval of the estimated design budget, organization of the bidding process, and reducing costs.

Transparency in Land Clearing and Land Compensation. Transparency related to land has been emphasized. Da Nang has reportedly evacuated over 80,000 families during the past 10 years.

³⁰ Publicity is also required for various types of socio-economic development master plans unless they fall under the category of "state secrets".. See Government Decree 92 (2006) and Government Decree 04 (2008) amending Decree 92.

³¹ For a detailed discussion of the Vietnamese practices, see the excerpt of a paper commenting on the construction of the Reunification Park by Nguyen Ngoc Hieu published in the *Construction Contractors*, September 2007. ("Trich bai "Quy trinh quy hoach do thi va qua trinh r quyet dinhkiem soat phat trien nhin tu du an cai tao cong viec Thong Nhat", Tap Chi Nguoi Xay Dung, so thang 9, 2007).

The process has improved over time and is considered transparent. The number of petitions sent to the central level related to land clearing is small.³²

Review of Projects by People’s Councils. At the time of the review, the functions and responsibilities of people’s councils are stipulated in the Law on People’s Councils and People’s Committees (2003), National Assembly Standing Committee Resolution no. 753/2005/NQ-UBTVQH 11 dated 2 April 2005 on working regulations for People’s Councils, and the National Assembly Standing Committee Resolution 545/2007/NQ-UBTVQH 12 dated 11 December 2007 regulating the position, functions, tasks, jurisdiction, structure, and organization of the Office of the National Assembly deputy group in the provinces, and the Provincial-level People’s Council.

The work process for the People’s Councils to review master plans and capital construction projects is the legal appraisal (*tham tra*) period.³³ As required by the Law, the People’s Councils at all three levels appraise proposal documents (*to trinh, de an*) submitted by the People’s Committee at the same level. The Provincial People’s Council Standing Committee receives proposals from the People’s Committee and assigns work to committees. The committee will formulate a detailed appraisal plan and carry out the plan. The Committee will draft the report and debrief relevant stakeholders about it in order to solicit comments for amendment. At the commune level, the process of appraising the proposals follows a somewhat different order; the Standing Committee and deputy groups normally comment on the documents prior to finalization by the Commune-Level People’s Committee. For all three levels of the People’s Councils, in practice, there remain limitations on the implementation of appraisal work. First, it is not uncommon for the People’s Committee to submit the documents later than scheduled. Second, the content of the appraisal focuses mainly on the legal basis of the proposal, less on the results expected and the proposal’s short and long term impacts. It is also rare for the proposals presented by the People’s Committee to be rejected by appraisal reports. Finally, deputy groups do not play a key role in the process of appraisal although when the appraisal reports are presented, they may comment.

In Da Nang, the Party leadership plays an important role in buttressing the role of the elected bodies, especially the provincial committees, in making decisions on key projects. The Budget and Finance Committee regularly appraises and monitors the implementation of the People’s Council resolutions by state management agencies. At the level of deputy group and individual deputy, however, the level of pro-activeness in gathering information from voters, and in carrying out monitoring, remains moderate. In Bac Ninh, the Provincial People’s Council operated as regulated by Law in appraising the People’s Committee’s proposal on the allocation of fund to rural infrastructure and monitoring the pace of the project implementation.

Publicity of Approved Projects for People’s Auditing³⁴. The grassroots democracy framework at the commune level specifies how to publicize information about construction projects; the VFF and the People’s Inspectorate Unit play an important role in overseeing the implementation.

³²This finding is consistent with the analysis on Da Nang provided by the Vietnam Development Report 2005 “Governance”, Chapter 6 “Investment & Resettlement”

³³ This section is drawn from Thaveeporn Vasavakul, “Analysis of Vietnam’s Current Legal Framework for People’s Councils: A Perspective from Ninh Thuan,” Report Commissioned by Oxfam-GB, Hanoi, March 2009.

³⁴ People’s Auditing is *giam sat cong dong* in Vietnamese. The team thanks OSCAC, the Da Nang Steering Committee for Anti-Corruption, and the Bac Ninh Steering Committee for Anti-Corruption for arranging the trips.

For the monitoring of capital construction projects, there is an emphasis on people's auditing as seen in Prime Minister's Decision 80 promulgated in 2005. According to the Decision, the agencies to be audited are the investment decision maker (nguoi quyét dinh dau tu), the developer (chu dau tu), consultants, and evaluators of implementation. Projects to be audited by the community include state-funded projects, community-funded projects, as well as others. The purposes of the people's audit is to evaluate the appropriateness of the investment decision in relation to the master plans for development; to assess the compliance of the investment owner in the following areas: land use, detailed plan for the surface, architectural plan, construction, discharges, environment, compensation, land clearing, resettlement, and the progress of investment planning; and to identify negative impacts on the interests of the community and its environment. The level of monitoring varies according to the type of capital, whether the projects are state funded or community-funded. The implementing agencies are the Board for the monitoring of community construction. The commune Vietnam Fatherland Front will set up a board upon the community's request.

Despite the fact that Decision 80 was promulgated in 2005, there has not yet been a review of the implementation. The general impression is that it is not yet widely implemented, and if implemented, it is applied to projects with local contributions, not state-funded projects. Information gathered from field visits show that the urban area of Da Nang City has not yet systematically organized community monitoring. Nevertheless, when asked, the VFF members and members of the People's Inspectorate unit at the ward under study believed that they could fulfill most of the requirements in Decision 80. In Da Nang, so far, the hotline system and openness have allowed citizens to voice their opinions individually. Community monitoring in Bac Ninh, on the other hand, is more systematically developed. A close look at Nhan Thang commune, Gia Binh district, shows how a mature community monitoring system can contribute to the reduction of waste and opportunities for corruption practices. According to the People's Committee of Nhan Thang Commune, for the period from 01/01/2006 to 30/04/2009, the Board of Community Monitoring carried out 8 monitoring cases. All of the projects monitored received budgetary support from the government as well as popular contributions. Construction projects include a two-story school building, a hamlet cultural house, a cement road through a hamlet, and a VFF office at the commune level. The size of the planned investment capital was between 540 million VND and 4.3 billion VND. Local monitoring units have identified numerous ways in which the construction company and material suppliers collude during the construction process. The commune's records show that the commune saved between 3% and 57.7% of the planned budget.

Financial Transparency. MOF officials are of the opinion that the requirements stipulated in Clause 15 on financial transparency (allocation of funds to projects, budget estimates and allocated budget of projects, yearly reports on the project's finances, and final accounting after the completion of the project) are mostly met. Nevertheless, the overall tracking process is the responsibility of each individual ministry and province. Anti-Corruption reports on the two-year implementation (2006-2008) from Da Nang and Bac Ninh show that financial transparency requirements have been met.³⁵ The methods of publicity include the announcement of information during meetings of officials in the unit, as well as information sharing with people's councils.

³⁵ See Uy ban Nhan Dan Thanh pho Da Nang, "Bao cao so ket thuc hien Luat phong chong tham nhung" (Report on the implementation of the AC-Law), 4 July 2008, 13 pages; and the annex of Uy Ban Nhan Dan Tinh Bac Ninh, "Bao cao ve ket qua 2 nam thuc hien Luat phong chong tham nhung Tinh Bac Ninh" (Report on the results of the two-year implementation of the AC-Law in Bac Ninh).

Many provinces took the initiative of publicizing more detailed information by project beyond the requirements of Clause 16. Furthermore, at the central level, there are regulations in place on the allocation of investment budgets based on Decision 210 issued in 2006, which promotes transparency within the administrative system. The MOF has also taken the initiative to report information on disbursement by quarter and year to all ministries, a practice not previously carried out. Transparency in the disbursement rate allows ministries to assess the pace of implementation from a comparative perspective.

It is argued that to reinforce financial transparency, there is a need for the publicity of more detailed information, the strengthening of the role of the community in financial monitoring and the use of state or private audits on a quarterly basis instead of at the end of the project.

4.4.3. Challenges and Recommendations

Strengthening transparency in the context of the on-going PAR program is a means to reduce opportunities for corruption and waste. To improve the current system of transparency in the project management process, the following is recommended:

First, to strengthen the current regime required for transparency in order to increase its effectiveness in reducing opportunities for waste and corruption. Figure 12 summarizes the areas to be consolidated.

Figure 12: Strengthening the Current System of Transparency

| Areas currently requiring transparency | Additional Consolidating Measures |
|---|--|
| Construction investment, Master Planning and Public Opinion Gathering (including transparency in land clearing and land compensation) | - Content focusing on areas directly affecting the local community and the costing process being more transparent from the beginning |
| Review of Local Projects by the People's Councils | - A more systematic role for People's Councils at the stage of reviewing the projects for approval is needed. There is a need to switch from "legal verification (<i>tham tra</i>)" to assess the "impact on the voters." - Deputies necessarily receive information and share it with their constituencies. Inputs from voters may be collected to improve the quality of projects. - Transparency in the scoping process |
| Publicity of Approved Projects for People's Auditing | -Wide enforcement of the application of Decision 80, with priorities going to on-site and unplanned monitoring of the use of construction materials, the local environmental impact, and general designs within the local environment. |
| Financial Transparency | - Expansion of the content to be transparent and publicized. - Companies and citizens giving feedback on the pace and scope of administrative simplification in terms of cutting costs -Replace auditing at the end of the project with regular auditing. - Reinforcement of the implementation of Decision 80 on community monitoring, with the active participation of the VFF. |

Second, in the area of the legal framework, as the management framework has become more sophisticated, there is a need to amend the framework related to transparency.

Third, the Vietnamese government has decentralized project management to the developer, who in turn relies on the PMU to run projects. Consultants and contractors are also increasingly involved.

There is a need to strengthen the transparency responsibilities of all members involved in project management.

In sum, a medium-term strategy to prevent waste and corruption in the project management process includes the strengthening of the current regime required for transparency, the amendment of the legal framework related to transparency in the management process, and the application of the transparency principles to the work process of the developer, the PMUs, contractors, and consultants.

4.5 Roles & Responsibilities of the society

This section will look at two key actors of the plethora of different society institutions and organisations that could play role in the implementation of the AC-Law in the construction sector, associations and the media.

Decree 47/2007/ND-CP guiding the role of society in fighting and preventing corruption is the key framework for efforts to involve the media, civil society and the business sector in the law implementation. Decree 47 stipulates the rights and responsibilities of the VFF, the press, professional associations, people's inspectorate boards, and individual citizens in anti-corruption activities. The reference to professional associations is particularly important, an area that has not received much attention in the AC-Law – rather generally referred to in Article 87,2-4.

4.5.1. A brief case study of Vietnam Federation of Civil Engineering Associations

In the context of analyzing the AC-Law implementation in the construction sector, a closer look at the role of Vietnam Federation of Civil Engineering Associations (VFCEA & formerly the Vietnam Construction Association) seems warranted to gauge the effect of associations. The VFCEA is well-aware of the AC-Law and the scope it provides for involvement of professional and technical associations in integrity work.

The VFCEA is a non-profit umbrella organisation with 13 specialised member associations and 40 associations at the provincial and city levels. In the Vietnamese governance structure of state-society relations, the VFCEA refers to VUSTA.

The VFCEA has engaged in advocacy work for integrity in the construction sector since Le Kha Phieu's anti-corruption and anti-waste drive in the late 1990's. Among other things the VFCEA has published a list of 40-50 corruption-prone investment projects in the media during a 3-4 year period pre-dating the AC-Law approval in 2005. The publication of corruption-prone investment projects was done in a non-threatening way avoiding organisational and individual finger-pointing. Instead emphasis was placed on systemic and institutional challenge in construction projects e.g. ownership & governance structures of the SOEs. This practice of publicizing corruption-prone projects was paused due to a shortage of funds.

Both before and after the PMU 18 case, the VFCEA has raised issues about the institutional set-up of PMUs in construction projects. In particular the extent to which PMUs should be embedded into sector ministerial structures have been raised by the VFCEA. Its 2004 report "Chong That Thoat Trong Dau Tu Xay Dung – Nhin Tu Nhieuh Phia" was discussed in the National Assembly.

Eventually, its recommendations to establish more PMUs subject to stronger external scrutiny were dismissed by the Government.

Against this backdrop and within the framework of the AC Law and in particular Decree 47, it seems justified to involve the VFCEA and its professional associations in external scrutiny of public construction investment projects. This could be done through spot-checks of completed projects to see if technical contractual commitments by the outworker were honored, e.g. if the required, standard building material was actually used.

4.5.2. The Media's coverage of corruption in the construction sector

A glance at the institutional and legal media framework for integrity. During the recent 5-10 years the media have been encouraged by government to write more proactively about corruption and to publicize corruption cases as reported by the police, the procuracy and other government agencies. In this process, the media has increasingly assumed a supervisory role over the executive body of government. Journalists have also been encouraged to detect corruption cases on their own. And they have done so in a number of highly visible instances. Despite that challenges remain.

The legal framework provides opportunities and constraints for reporting on corruption in the construction sector. The Articles 9, 31 and 86 of the AC-Law provide the overall policy intent. In a nutshell, these articles are both facilitating and restrictive in nature. E.g. while article 86,3 states that “the Press agencies and reporters shall have the right to request competent agencies, organisations or individuals to supply information and/or documents related to corrupt acts” it is somewhat offset by the vagueness of article 9 stating that the press “bears responsibility for the contents of information they have reported”. The legal ambiguity is reinforced by Art. III.12.3 in Decree 47/2007/ND-CP as the definition of “state secret” remains nebulous. As such, key informants indicated that journalists and the media need protection from and approval by high-ranking officials if they want to pursue reporting on a big corruption case. In this process the media risks becoming an instrument in political battles. Reporting on petty corruption is, however, extensively supported.

In this context, the pending revision of the Press Law could offer an opportunity to protect better media reporting on corruption, while at the same time dissuading libel and defamation. Ideally, such dissuasion should rely on civil measures rather than criminal prosecution. However, in the current context the political consensus necessary for this reform does not yet exist, and the preparation of the Press Law was postponed.³⁶

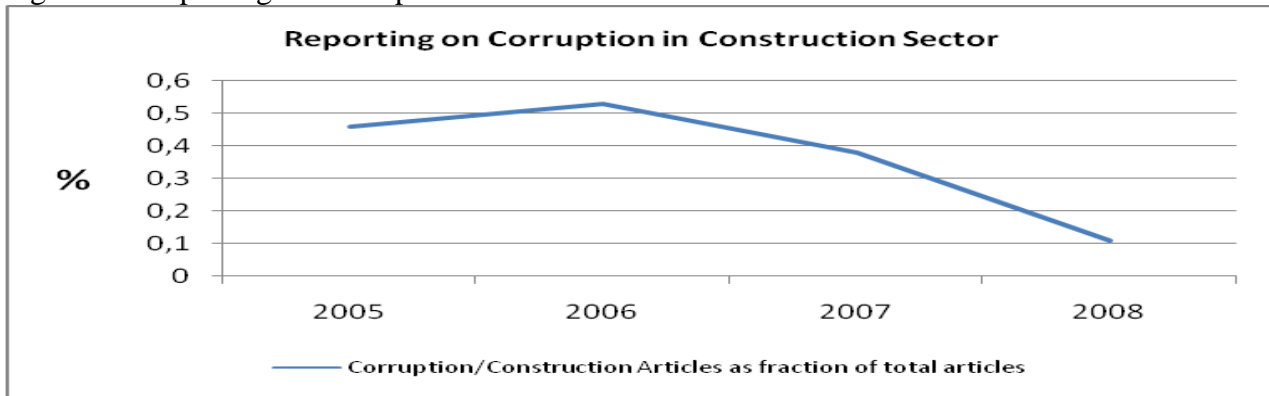
A glance at the quantitative coverage of corruption in the construction sector. In the general picture, the “construction & infrastructure sector” comes out as the second with 7% of all articles, only surpassed by “land”, in terms of corruption coverage in the media in an analysis undertaken by Mckinley/UNDP.³⁷

³⁶ This delay is a set-back, but the silver lining is that the government decided to discuss the matter further, rather than adopting a revised law that does not address any of the concerns.

³⁷ “Media & Corruption”, Catherine McKinley & UNDP Vietnam, January 2009, p. 20.

The above summarised analysis of the legal framework is reflected in a quantitative analysis of the media’s coverage of corruption in the construction sector. The analysis relies on a word search in a database consisting of more than one hundred newspapers and magazines. An article is counted as a “Construction/Corruption” article if it includes the term “construction” and one of the following terms “corruption”, “fraud”, “bribe” or “embezzlement”.

Figure 13: Reporting on Corruption in Construction Sector

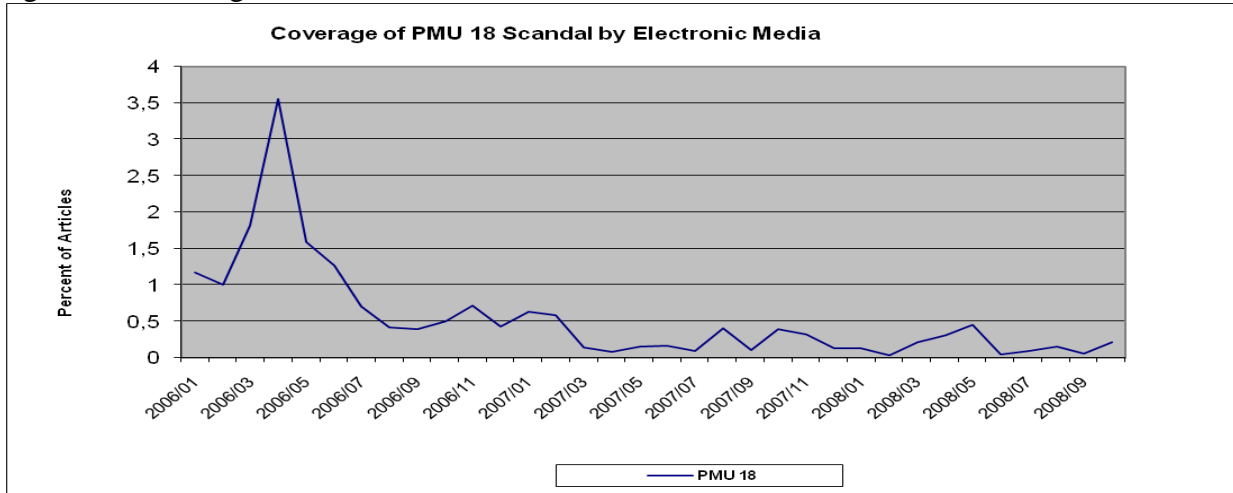


Source: Review of database of media articles

One would need a longer time series to make firm conclusions, yet a discernible trend emerges. The media’s coverage has dropped significantly since the “PMU 18” case in 2006. While some of the decline is explained by the fact that no major scandal has occurred, it is remarkable that the coverage in 2008 was far below the pre-“PMU 18” year in 2005. Also, the coverage started to decline much before the arrest of the two journalists in May 2008. In terms of the unbundling of corruption in the construction sector, the term “bribe” appears in double as many articles as “fraud”, “embezzlement” is not widely used in the media’s coverage of corruption in the construction sector.

As such, the AC-Law and Decree 47 do not appear to have either incited nor discouraged increased media coverage of corruption in the construction sector. The coverage of PMU 18 did, however, receive substantial media attention as the electronic search in two online newspapers, VietnamNet and Vietnam Express, highlights in figure 2. This even surpasses the coverage of the “Nam Cam” scandal, which peaked at 2.6% of all news paper articles in 2006. This also corresponds with interviewees suggesting that the state has allowed more media freedom during the last 10 years – the effect of the AC-Law in this regard is at best been a contributing, not attributing, factor.

Figure 14: Coverage of PMU 18 Scandal



Source: Review of database of media articles

4.6 Detection and Inspection of Corruption and Judicial Follow-up

4.6.1 Brief Context

Detection of corruption is covered under Chapter III of the AC-Law which provides that corruption is detected through: (i) internal inspection³⁸; (ii) auditing, inspection, investigation, supervision and trials³⁹; and (iii) complaint and denunciation⁴⁰.

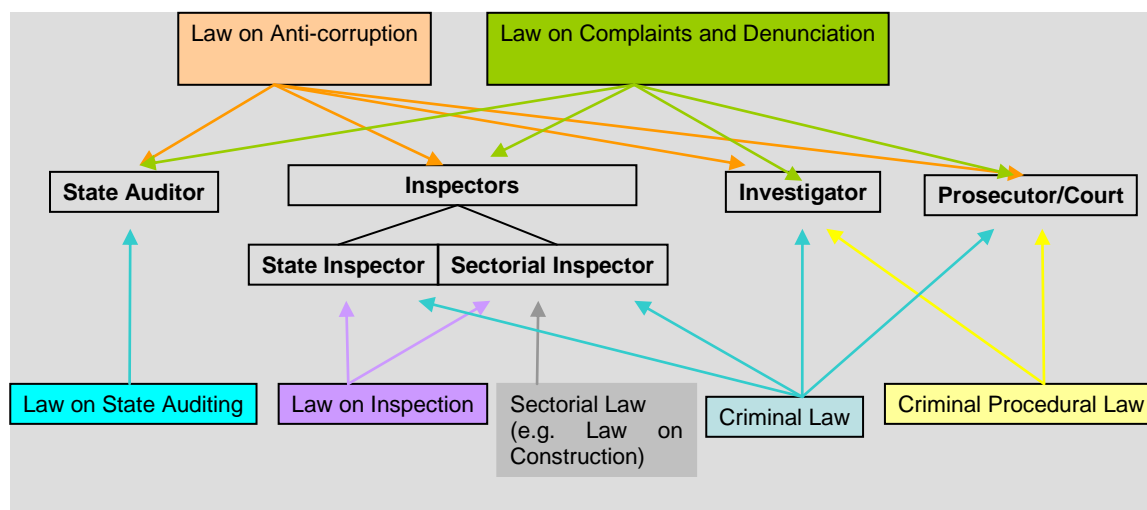
While there is no specific regulation guiding the implementation of this particular Chapter, in practice the detection and inspection are subject to various laws and regulations. For instance, inspection is subject to the Law on Inspection (LOI), auditing is governed by Law on State Auditing, investigation and trials are subject to the Law on Criminal Procedures, and complaints and denunciation are subject to the Law on Complaints and Denunciation (LOCD).

In addition to the above mentioned legislation, detection and inspection of corruption in the construction industry are also subject to a separate set of rules under the Law on Construction (LOC). For instance, Decree 46/2005/ND-CP regarding organisation and operation of construction inspection (Decree 46) provides important guidelines for construction inspectors.

It should also be noted that the number of organisations and personnel involved in the process is significant. For example, the LOI provides for three main types of inspectors: (i) inspectors by administrative levels, including government inspectors, provincial inspectors and district inspectors; (ii) sectoral inspectors, including inspectors of particular ministries and departments; and (iii) People's inspectors at grassroots level. The diagram below summarizes the relevant laws and organisations.

According to a report of the Government Inspectorate (GI)⁴¹, a total of 21,098 officials work on inspection, of which 8,002 are certified inspectors. According to a source from the MoC, there are more than 3,500 construction inspectors in Vietnam.

Figure 15: Relevant Laws and Authorities



³⁸ Chapter III, point 1, articles 59-61 of the LAC

³⁹ Chapter III, point 2, articles 62 & 63 of the LAC

⁴⁰ Chapter III, point 3, articles 64 – 67 of the LAC

⁴¹ Report of the Government Inspectorate dated 9 April 2009 regarding prevention and counter corruption.

In 2007 and 2008, 713 corruption cases have been settled by People's courts of all levels. There is no available statistic of the total number of corruption cases in construction sector. Meanwhile, the number of corruption cases in construction sector reported by relevant authorities is very modest. For instance, the GI detected only two cases in construction sector⁴² in the past two years. No corruption case was reported by the MoC.

According to a report from the Ministry of Police (MoP), average losses in capital construction account for between 10% and 20% of the total investment capital. Based on the State budget for investment in capital construction of 2007 (97,280 billion VND) and 2008 (110,050 billion VND), the losses from capital construction is estimated approximately 20,000 billion VND. It is not groundless to assume that part of the amount is involved in corruption. According to the report of the National Assembly's Supervision Delegation, out of 1,505 inspected projects, 176 projects violated regulations on the project evaluation, 415 projects violated survey and design, 198 projects violated bidding regulations, 802 projects violated the approved design, procurement, and management procedures, and 720 projects violated the regulations on hand-over and commissioning.

In summary, the detection and inspection of corruption is subject to many laws and regulations. Many different official and authorities are involved in the process depending on the nature of the activities. Despite the legal framework and substantial human resources available, the number of corruption cases which have been detected and investigated in the construction sector remains very low compared to the number of the violations. In the sections below, we discuss and analyze the AC-Law and the implementation of certain procedures to understand and explain this situation.

4.6.2 Detection of corruption through internal-inspection

Article 59 and 60 of the LAC requires that heads of Government managing authorities and organisations must regularly organise internal inspections. If they find any violations, the LAC requires that they must settle it in accordance with their authority or inform the inspection or investigation authorities for their follow up. Decree 107/2006/ND-CP dated 22 September 2006 regarding the responsibilities of the heads of organisations when corruption happens in their organisations (Decree 107) provides that depending on the seriousness of the detected corruption, the applicable punishments can be reprimand, warning, dismissal, or criminal charge.

In practice, government authorities, organisations, and enterprises do have annual inspection plan approved by their heads and they do carry out internal inspections in accordance with the plan. For example, 91 units under MOT's management reportedly carried out internal inspections between June 2006 and June 2008⁴³. The Ministry of Police reported that 2,247 entities under their management have undertaken internal inspections between 2006 and 2008⁴⁴. The MOC does not have specific data of the number of internal inspection by entities under their management, but the MOC inspectors claim to have carried out about 10 to 15 internal inspections in the past two

⁴² The case of VINACONEX 4 and the case of the Construction Corporation of Central Region.

⁴³ Official Letter No. 5224/BGTVT-TTr of the Ministry of Transportation regarding the report on the results of implementation of the LAC in two years (June 2006 – June 2008).

⁴⁴ Official Letter 285/BC-BCA dated 15 July 2008 regarding the report on the results of implementation of the LAC by the People's police forces in the past two years.

years⁴⁵. All the studied construction companies reported that they conduct internal financial reviews with no particular emphasis on corruption.

Internal inspections are quite effective in identifying financial waste and losses, especially in construction projects. According to inspectors of the MOC, they saved 25 billion VND in costs and collected approximately 10 billion VND from the inspected construction projects in the last two years⁴⁶. MOP's internal inspection of construction projects in 2006 and 2007 saved a total of 2,009 billion VND⁴⁷. However, the effect of internal inspection on detection of corruption is still limited. The number of corruption cases detected by internal inspections is very low. For instance, the MOC reported no corruption case from their internal inspections in the past two years⁴⁸. Construction companies in the study⁴⁹ also reported no corruption cases from their internal inspections. The MOT reported only 10 corruption cases from a total of 91 internal inspections over the last two years⁵⁰.

According to inspectors from MoC and MoT, it is “extremely difficult” to detect corruption during the inspections due to the following factors:

- Their main authority is to inspect the compliance of the internal rules and regulations governing the relevant industry (e.g. construction or transportation). During the inspections they look for violations of construction proceeding and accounting discrepancies. In the process, they may detect violations of the internal rules and regulations and uncover financial losses and wastes, but in most cases these are insufficient to establish grounds for accusation of corruption crimes. Since most corruption cases involve suspects that can cover up or withhold information, finding evidence of corruption requires investigation powers beyond the inspectors' authority.
- According to the AC-Law, when potential corruption violations are uncovered in an organisation, only the head of the organisation being investigated has the authority to refer the case to the competent authorities for further investigation or judicial follow up which constitutes an obvious conflict of interest. If the sectorial inspectors identify any signs of corruption, they can only report and recommend to the heads of their organisation to refer the case to the competent investigation authority for further investigation. This constitutes a conflict of interest. It is the sole discretion of the organisation to decide on the investigation and judicial follow up. Decree 107, which imposes the liability on the heads of organisations when corruption is found within their organisations, may create hesitation for the heads to decide on passing alleged corruption cases for further investigation. Meanwhile, there is no particular incentive or reward for them to advance the cases.
- There is no specific guidance or support from investigation authorities on how to establish evidence of corruption. For example, the chief inspector of MoC explained that despite the fact that they work closely and consult with the competent Police authority on a regular basis, they rarely find sufficient evidence to determine a corruption crime. In the past two

⁴⁵ Interview of MOC inspectors on May 12, 2009.

⁴⁶ Interviews of MOC inspectors on May 12, 2009.

⁴⁷ The SBV exchange rate as of May 14, 2009 was 17,650 VND = 1 USD.

⁴⁸ Interview of MOC inspectors on May 12, 2009.

⁴⁹ Hanoi General Corporation of Construction; Song Hong Corporation; Lilama; and Cavico.

⁵⁰ Official Letter No. 5224/BGTVT-TTr of the Ministry of Transportation regarding the report on the results of implementation of the LAC in two years (June 2006 – June 2008).

years, no corruption cases have been referred by the MOC to the Police authority for further investigation.

4.6.3 Detection of corruption through inspection, investigation, auditing, prosecution

Articles 62 and 63 of AC-Law provide that inspection and investigation authorities including the State Auditor, Prosecutor Office, and Courts shall detect corruption through inspection, investigation, auditing, prosecution and trials; in addition, the National Assembly and People's Councils at all levels have the responsibility to detect corruption through their supervision.

In practice, the above activities appear to be the most effective in detection of corruption. The number of reported corruption cases detected through these activities is much higher than internal inspection efforts. The figure below summarizes the number of corruption cases reported by the GI, auditors, investigation authorities, and courts in the past two years:

Figure 16: Corruption cases reportedly detected by GI, auditors, investigation and courts (2007 – 2008)⁵¹

| Number of cases | GI | State Auditor | Investigation | Court |
|---|-----|---------------|---------------|-------|
| Total Number of processed corruption cases | 07 | N/A | 724 | 713 |
| Number of processed corruption cases in construction sector | 02 | 16 | N/A | N/A |
| Number of the involving individuals | N/A | N/A | 1,609 | 1,655 |

The above statistics indicate:

- i. ***Investigation is most effective in detection of corruption.*** Investigators, however, are facing many challenges, which make their work less effective. One of the biggest challenges is to prove that there is corruption crime in order to recommend for introduction to the court of first instance. In most cases, it is almost impossible to secure evidence of some stipulated corruption behaviors such as receiving bribery or embezzlement of public property.⁵²
- ii. ***Inspection and auditing, similar to internal inspection, have limited affect on detection of corruption,*** although these activities are very effective in detecting defaults in management, accounting and implementation of relevant laws and regulations. In the past two years, the State Auditor has requested the refund of 6,766 billion VND to the State Budget and reduction of 3,715 billion VND in expenses of the State Budget; the Government Inspectorate has requested refund of 3,347 billion VND and US \$786,000 to the State Budget⁵³. Compared to the total State Budget for capital construction of the past two years (97,280 billion VND in 2007 & 101,050 billion VND in 2008) these numbers are not insignificant. However, as the statistics show, the reported number of detected

⁵¹ Official Letter 706/BC-TTTP issued by the Government Inspectorate dated 9 April 2009 regarding report on the results of two years implementing the AC-Law.

⁵² For example, in the well-known Pacific Consultants International (PCI) case, despite the fact that PCI, the Japanese contractor, confessed to the crime of bribing Mr. Huynh Ngoc Si, the Head of the Management Board of East-West Highway and Water Environment, US \$82,000, Mr. Si was investigated but not prosecuted for receiving or soliciting a bribe due to the lack of evidence. Meanwhile, the Japanese company was prosecuted in Japan for offering a bribe to Mr. Si. This is only one of many cases, where criminal evidence rules create challenges for investigators and prosecutors with time consuming and expensive proceedings.

⁵³ Official Letter 706/BC-TTTP dated 9 April 2009 regarding report on the results of two years implementing the LAC.

corruption cases is low. Based on discussions with inspectors⁵⁴, the poor performance and results are a consequence of these factors,

- ***Inspectors and auditors do not have authority to investigate or open case.*** Their authority is limited to detection of cases with signs of corruption, and referring them to the authority in charge of the sector or investigation authority for further review. However, it is not uncommon that the referred cases receive no follow up. For instance, of the seven cases that the GI has referred to the investigation authority, only one has been reported to have been investigated and prosecuted.
- ***The difference between the AC-Law and the Criminal Law in definition of corruption.*** In particular the AC-Law provides for twelve corruption behaviors⁵⁵, while the Criminal Law provides for only seven behaviors⁵⁶. The five missing behaviors in the Criminal Law include: (i) offering bribery or bribery brokerage by persons with position and power to settle affairs of agencies, organisations, units or localities to seek personal interests; (ii) taking advantage of the position and power to illegally use the State properties for personal interests; (iii) harassment for the purpose of personal interests; (iv) failure to perform tasks or official duties for the purpose of personal interests; (v) taking advantage of power and position to cover up law violators for personal interests; illegally hindering and interfering in the examination, inspection, auditing, investigation, prosecution, adjudication, or judgment enforcement for the purpose of personal interests. If the inspector uncovers any conduct similar to these five behaviors, the case will not be considered as a corruption case and not be processed by investigation authorities as a corruption case, but as some other crime.⁵⁷
- ***The lack of applicable incentives.*** According to Circular 04/2008/TT_BTC by the Ministry of Finance, inspection authorities are entitled to receive 30% of the amounts uncovered and refunded to the State budget. However, there are limits for the deducted amounts. In particular, the GI shall not collect more than 10 billion VND per year, ministerial inspectors and provincial inspectors shall not collect more than 2 billion VND and 1 billion VND, respectively. The State Auditor is entitled to 2% of amount recovered and refunded. The award monies go to the budget of the organisation. Incentives to individual inspector and auditor are very low. For instance, the material award to an inspector shall not be more than one month salary per case. The current average salary of inspector is around 3-4 million VND per month which compared to the default amount they uncover (e.g. the GI detected and recommended recollection of 3,347 billion VND and 786,000 US dollars), the award is very minor.

4.6.4 Denunciation

Section 3 of Chapter III (between Articles 64 and 67) of the AC-Law and Chapter V of Decree 120/2006/ND-CP guiding the implementation of a number of provisions under the AC-Law

⁵⁴Interviews of inspectors from MoC, MoT and GI.

⁵⁵Article 3 of the AC-Law

⁵⁶Articles 271 – 277 of the Criminal Law

⁵⁷For instance, in the well-known PMU18 case, the Director of PMU18, Mr. Bui Tien Dung, who spent almost one million US dollars on gambling activities, was actually not prosecuted for corruption crime, but for illegal gambling and offering bribes, of which the latter is not considered as corruption behavior under Criminal Law and is subject to different punishment framework. The investigator and prosecutor followed the Criminal Law and Criminal Procedural Law (not the AC Law) to prosecute Mr. Dung.

“Decree 120”) provide the rules for the denunciation of corruption. In general, these rules do not conflict with other relevant legislation. However, it should be noted that some of the provisions are unlikely to be enforced without amendment to other provisions of the AC-Law as well as other laws. For example, regarding the protection of denunciators or whistleblowers, Article 46 (1) of Decree 120 provides that if the bribe giver denounces the official who has received bribe from him, he will be returned the asset which has been used for the bribery. However, this provision does not protect the bribe giver from criminal charge under Article 289 of the Criminal Law.

Denunciations and complaints are usually not processed separately, because denunciations usually contain complaints about the decisions of administration or behaviors of officials. Therefore, there are no statistics on the total number of denunciations compared to complaints. For example, it is reported that in the past two years government authorities of all levels have received 402,074 letters of complaint and denunciation regarding 163,496 cases, of which 140,604 cases have been processed. Of these cases, the authorities claim only 19,178 denunciation cases were reported, of which 16,238 cases have been processed⁵⁸. The following figure summarizes the number of complaints and denunciations received and processed by the MoC, MoT, MoP and GI.

Figure 17: The number of complaints and denunciations (2007 – 2008)

| Number | MOC Jan 07 to June 08 | MOT June 06 to June 08 | MOP June 06 to June 08 | GI (Jan. 06 to Jan. 08) |
|---|-----------------------------|------------------------------|------------------------------|-------------------------------|
| Number of received complaints and denunciation | 2,591 | N/A | N/A | 108,386 |
| Number of received denunciations about corruption | N/A | 11 | 1,053 | N/A |
| Number of processed denunciation | N/A | 11 | 896 | 1,904 |
| Number of corruption cases detected through denunciation | 0 | 11 (denounced only) | 185 | N/A |
| Number of corrupt officials detected through complaint and denunciation | 0 | 02 (denounced only) | 273 | N/A |

The MoC received a total of 2,594 complaints and denunciation regarding 371 cases in 2007 and the first six month of 2008. They processed the 371 cases by issuing 111 “documents” to settle the cases, and did not detect any corruption cases⁵⁹. The Ministry of Transportation received and processed 11 denunciation letters about corruption in the past two years, and detected two cases with 18 government officials involved⁶⁰.

Through discussions with construction inspectors, some of the challenges relating to their authority to process and settle complaints and denunciations were identified. For example, according to the Law on Construction, inspectors of MoC or local departments of construction are only authorized to process complaints and denunciations about violation of the Law on Construction. If the denunciation does not fall under their jurisdiction, they must refer it to another authority. In fact, the MoC and the department of construction have referred many cases to other authorities. In particular, out 549 complaint and denunciation received by MoC, only 141

⁵⁸ Official Letter 706/BC-TTCP dated 9 April 2009 regarding the results of two years of implementation of the Law on Anti-corruption.

⁵⁹ Official Letter 52/BC-BXD of the Ministry of Construction dated 14 August 2008 regarding the report on the two years of implementation of the LAC.

⁶⁰ Official Letter No. 5224/BGTVT-TTr of the Ministry of Transportation regarding the report on the results of implementation of the LAC in two years (June 2006 – June 2008).

cases (~25%) belong to their authority. According to the MoC inspectors, many denunciations regarding land clearance or compensation issues are not considered within MoC's authority and they are typically referred to the local authority, e.g. the competent People's Committees, which usually are in conflict of interest with the denunciators.

The above information and data imply that:

- The number of denunciation cases compared to the total number of received complaints and denunciation seems to be very low. In the past two years, there were 19,178 denounced cases, equal to only 11% of the total number of complained and denounced cases (163,496 cases)⁶¹. The poor performance may be caused by the lack of incentives and protection for denunciators.
- The public lacks of knowledge or guidance on the authority of the government authorities in respect of processing denunciations, in the ambit of construction. Meanwhile, the authority of inspectors, who process the most denunciations, is limited.
- The monitoring system of complaints and denunciation needs to be redesigned to eliminate shortcomings. Complaints and denunciation need to be separate and classified by sector to produce and publish statistics that can be analyze to measure performance and enforcement.
- Complaints and denunciations should be submitted to an independent organisation as opposed to the organisations that govern the agencies that are being suspected of corruption behavior.

In conclusion, the enforcement of the AC-Law's provisions on detection of corruption in general and in the construction sector in particular, have been facing a number of challenges due to the limited power of the relevant authorities, the inconsistencies in a number of laws and regulations, the lack of clear and consistent guidelines and directives, the lack of incentives for good performance, accountability, and enforcement as well as the lack of independent review and monitoring systems.

Some Recommendations & Pointers for Reform

- Improve/expand the authority for inspection authorities, especially the sectorial and government inspectors, for instance, they should have the authority to investigate and open a case within specific guidelines and the support of independent governing agencies;
- Streamline the process by making the provisions and definitions relating to corruption behavior consistent between the AC-Law and the Criminal Code;
- Improve the denunciator/whistleblower mechanism to provide more protection and incentives;
- Improve the incentive framework for inspectors and auditors. For instance, the material reward to individual inspectors and auditors, who detected corruption cases, should be increased.
- Improve the monitoring (reporting) system of inspection, auditing, investigation complaint and denunciation in general and in construction sector particularly.

⁶¹Official Letter 706/BC-TTCP dated 9 April 2009 regarding the results of two years implementing the Law on Anticorruption.

5 Conclusion: pointers for the Government and the Donors

The GoV deserves all due credit for passing one of the most comprehensive and ambitious AC-Laws in Asia. This report has analysed efforts to “bring the law into life” (“dua phap luat vao cuoc song”) in the construction sector. Shaping the incentives and building capacity to enforce the AC-Law are crucial in this regard. A lot of progress can be noted in moving towards a more system and preventive approach to curbing corruption. However, the assessment of the implementation of the anti-corruption law in the construction sector points to several areas where actions are needed to boost the intended effects - most of these are pertinent at the general level and applicable to other sectors,

- *While the AC-Law is a sound instrument, corruption in the construction sector can only be curbed through a broader set of structural economic and governance reforms, e.g. increasing competition in the SOE sector to reduce the opportunities for collusion, and the governance set-up of construction projects, e.g. checks-and-balance on and the design of the PMUs. Also the case-studies of provincial efforts to implement the AC-Law highlighted the linkage between PAR and the AC-Law.*
- *There is a lack of coherent, yet simple, sector-specific system to track policy implementation of the AC-Law in the construction sector at the input, output and outcome level. The monitoring system should not be used as a mechanical check-list but as a part of a learning cycle – since no one really knows beforehand what will work and what will not work. This issue is a generic challenge of policy implementation in Vietnam. As a consequence, little is known about the extent and specific nature of corruption in the construction sector. In this context, strengthening general monitoring of governance & anti-corruption, e.g. through the VHLS, and specifically a dynamic value chain approach to identify the most corruption-prone risks in the project cycle of capital construction seem warranted.*
- *The provisions in the AC Law requiring public servants to declare their assets are facing difficulties in implementation due to the policy design – as indicated in a case study of the MoC. In a nutshell, too many officials are required to declare, verifications are not taking place and proportionate, credible sanctions are not applied. While this might seem like a missed opportunity, the GoV could also see it as a learning cycle. The findings of the challenges associated with asset declaration could feed into the revision of the decree 37/2007 planned in 2010.*
- *Vietnam has come a long way in improving the legal framework for transparency in procurement through the AC Law, its secondary legislation and other laws. However, the transparency provisions are only partially enforced. The oversight role of civil society on procurement, the planned introduction of e-procurement, the plan to establish regional bidding centres for centralised procurement, and reform of the handling of denunciations & the protection and reward of whistleblowers are entry points for enforcing the transparency requirements. However, in order to target efforts it is necessary to gain an understanding of the specific constraints. A better data and indicators system on procurement transparency could inform the specific action needed.*

- Society's role in spurring integrity in the construction sector should be strengthened. *The institutional and legal media framework for covering corruption has been strengthened with the AC-Law but ambiguities still exist. In particular the pending revision of the Press Law presents an opportunity to protect the right & responsibility of the media to report on corruption.* The current ambiguity in the legal framework is reflected in the empirics. Media coverage of corruption in the construction has dropped significantly since the PMU 18 scandal. *Increasing the involvement of professional and technical associations, e.g. in checking bidders compliance with using contractually committed building materials, should also be considered.*
- The framework for inspection, detection and judicial follow-up of corruption in the construction sector is complicated and subject to several general and sector-specific laws and implementation guidelines. While inspection has performed very well in identifying waste and inefficiency in construction investment projects, the number of detected corruption cases is insignificant compared to the detected defaults and losses in capital construction. *To strengthen the enforcement and deterrent effects of inspection, detection and judicial follow it might be considered to provide stronger independence to inspectors and auditors; to eliminate the inconsistencies between different laws (e.g. AC-Law and Criminal Law); to provide stronger incentives for good performance, accountability and enforcement; and to strengthening protection/incentives for denunciator/whistleblower*

Annex 1. Planned government reforms with impacts on the implementation of transparency in procurement in the construction sector

| Planned reform | Timing | Likely impacts on the implementation of transparency in procurement in the construction sector |
|---|---|---|
| Amendments of the Law on Bidding (as part of the new Law on Amendment to a Number of Articles of Laws Relating to Capital Construction) | Discussed in the May-June 2009 session of the NA | <ul style="list-style-type: none"> • Possible increase in the threshold for direct appointment, resulting in less procurement through competitive and transparent bidding. • Stricter management of direct appointment of contractors in procurement, resulting in fewer opportunities for corrupt and non-transparent direct appointments. |
| Introduction of e-procurement | Expected to be tested in September 2009 | <ul style="list-style-type: none"> • Further enhance transparency of procurement activities by PMUs (e.g. once the system is in place, nobody will be able to stop any bidder from buying bidding documents) |
| Plan on the establishment of regional bidding centers for centralized public procurement | Expected to be submitted to the PM for approval in December 2010 | <ul style="list-style-type: none"> • Facilitate the supply of procurement information of the region. • Facilitate the monitoring of procurement activity of the region. |
| Disclosure of the findings of the 2009 procurement audits conducted by the MPI Public Procurement Agency | Expected to be accomplished latest by May 2010 | <ul style="list-style-type: none"> • Strengthen ex-post transparency of procurement activities • Better monitor whether procurement information is being publicized • Strengthen the transparency of monitoring systems of procurement |
| Adoption of a code of ethics for bidding to be observed by all state agencies and bidding companies | Expected to be accomplished latest May 2010 | <ul style="list-style-type: none"> • Raise awareness among project officials about their obligations to disclose procurement information. • Raise awareness of bidders about the obligation of project officials to disclose information, and consequently increase the demand for disclosure of procurement information. • Partly mitigate conflict of interest of projects officials to disclose procurement information |
| Construction Sector Transparency Initiative (COST) | To be implemented during the period 2009-2011 | <ul style="list-style-type: none"> • Strengthen the legal framework in terms of the types of procurement information to be publicized and the forms of publication. • Create a Multi-Stakeholder Group in charge of supervising construction projects, including procurement. The Group will be composed of relevant government agencies, the SAV, construction associations, private sector and CSOs. • Pilot the above-mentioned new elements in some construction projects. |
| Regulations on disclosing the list of enterprises involved in corruption | Expected to be submitted to the Minister of MPI for approval in June 2010 | <ul style="list-style-type: none"> • Disclosure of the enterprises' names that are involved in corruption during the bidding processes |
| Development of Early Warning System to detect corruption in investment projects | It is part of the 2009-2013 Master Plan of the Government Inspectorate. | <ul style="list-style-type: none"> • Improved monitoring of corruption in procurement activities of investment projects |
| Development of Procedures for the Inspection of Investment Projects | It is part of the 2009-2013 Master Plan of the GI. | <ul style="list-style-type: none"> • Better inspection of procurement activities of investment projects |

| | | |
|---|--|--|
| Publication in MPI website of all information (including procurement) of the AMT reports on the implementation of ODA funded projects | Expected to be launched at the end of 2009 | <ul style="list-style-type: none"> • Strengthen transparency of the procurement activities of ODA projects • The information on procurement activities in the AMT reports can be compared to the information publicized in the Procurement Bulletin/Website, and hence better monitor disclosure of procurement information. |
| Extension of the application of the AMT reports to domestic funded projects | Expected to start in 2010 | <ul style="list-style-type: none"> • Strengthen monitoring of the procurement activities of domestic funded projects |
| New Law on Access to Information | Expected to be submitted to the NA for first reading in October 2009 | <ul style="list-style-type: none"> • Ensure the right of citizens to request all types of information, including procurement, and to receive promptly the information • Mandate regular and automatic publication in government websites of key public information, possibly including procurement • Create a well-functioning mechanism to monitor compliance with supply of information by government agencies. |
| New Law on Public Investment | Expected to be submitted to the NA in October 2010 | <ul style="list-style-type: none"> • Possibly strengthen the transparency of public investment, including procurement activities. • Possibly strengthen monitoring of public investment, including procurement activities |
| New Law on Denunciations | Expected to be submitted to the NA in October 2010 | <ul style="list-style-type: none"> • Facilitate the submission of denunciations on procurement and increase the effectiveness in the handling of those denunciations. This should result into a better monitoring of procurement activities through denunciations. |
| New Law on Witness Protection | Expected to be submitted to the NA in May 2011 | <ul style="list-style-type: none"> • Better protection of those who make denunciations on procurement, and hence creation of incentives to monitor procurement activities and make denunciations. |
| Regulation on protecting whistleblowers | Expect to be submitted to the Prime Minister for approval in June 2010 | <ul style="list-style-type: none"> • Better protection of those who make denunciations on procurement, and hence creation of incentives to monitor procurement activities and make denunciations. |
| Regulation on rewarding whistleblowers | Expected to be submitted to the prime minister for approval in June 2010 | <ul style="list-style-type: none"> • Reward of those who make denunciations on procurement, and hence creation of incentives to monitor procurement activities and make denunciations. |
| System of indicators to assess and measure corruption behaviours and anti-corruption activities | Expected to be submitted for approval by the GI in December 2010 | <ul style="list-style-type: none"> • Possibility of developing indicators on transparency of procurement activities to be computed over time. |

Source: Government Resolution 21, dated 12 May 2009, promulgating the National Anti-Corruption Strategy Towards 2020; Program Document of the World Bank 8th Poverty Reduction Support Credit; Government officials of MPI; and experts of World Bank Vietnam Office.