

# Review of the **Public Procurement Legal Framework in Lebanon**

Possibilities for Incorporating Environmental  
and Social Sustainability Criteria

# Table of Contents

<b>Foreward</b>	<b>3</b>
<b>This Report</b>	<b>4</b>
Content	6
The Team	6
Methodology	7
<b>Why Sustainable Public Procurement?</b>	<b>8</b>
International Awareness Changed the Patterns of Consumption	11
Public Sector is the Biggest Consumer	12
Importance to the Arab States	13
The Marrakech Process	13
Lebanon Joins the Marrakech Process	15
<b>Background and Overview</b>	<b>16</b>
The Lebanese Constitution	19
Laws Governing Public Procurement	20
Provisions Relating to Municipalities, Public Institutions, Security Forces and the Army	23
Laws of Sustainable Development	24
International Conventions	28
Observations on these Conventions	31
Draft Laws and Regulations	31
Current Bidding Documents and their Practical Implementation	34
Judicial Resolutions and Judgments	36
Impediments and Challenges	38
<b>Propositions</b>	<b>40</b>
Amendment of the Public Procurement Law	42
Council of Ministers Decision	43
Application of the Principles and Provisions Set Forth in the Environment Protection Law No.444/2002	44
Other Specifications and Criteria	44
<b>Summary</b>	<b>46</b>

# Foreward

---

To Our Dear Readers,

At a time when the world is opting for Sustainable Consumption and Production (SCP), the two conditions which are considered essential for preserving human living environment as well as its economic and social stability, and close to twenty years following the "Earth Summit", which is to be reconvened in June, 2012, in Brazil's capital, Rio de Janeiro, Lebanon, through its Ministry of Finance, represented by the Institut des Finances Basil Fuleihan (IoF), could not but grasp the opportunity to join the global initiative towards sustainable procurement in what came to be known as the Marrakech Process, to become the 7<sup>th</sup> among 14 countries in the world where the concept of Sustainable Procurement in Public Financial Management is being put to test.

The preservation of the environment and respecting the social standards of production and consumption, constitute today the pillars of a sustainable economy in a world committed to boycotting all that pollutes the environment (land, water, air) or endangers workers and work place. Consequently, numerous governments committed themselves to rectify their procedures of Public Procurement (PP) towards sustainability, especially that the governments are the largest purchaser in the local markets, and are hence capable of inciting a growth in production compatible with the needs of eco-friendly commodities and services.

But what is Sustainable Public Procurement (SPP)? And to what extent can the Lebanese laws move the economy towards sustainable production? What are the constituents of the local industries and Lebanese market and their future capabilities to satisfy public needs for sustainable goods and services? How can PP prompt clean production, create new work opportunities and assist in promoting sustainability? How does a SPP policy influence the reduction of poverty and take into consideration the needs of vulnerable groups?

These questions form the subject of two studies being undertaken by the IoF in compliance with the recommended methodology of the Marrakech process, which emanated from the "Earth Summit" to help countries achieve the SPP within the general framework of the reformation and modernization process being sought by the Ministry of Finance (MoF).

The present study is involved in the legal aspects of the subject and exhibits the receptivity of the Lebanese positive laws to the subject of sustainability. While the second study tries to explore the capabilities of the Lebanese market in this regard.

In adopting this initiative, the Institut des Finances Basil Fuleihan believes that the level of commitment, whether by individuals or groups, to the idea of sustainability reflects their concern to spread peace and prosperity for the common good of humanity, and as such, it urges the Lebanese social groups, economic institutes, corps of youth and particularly the civil social organizations, which have been active for years on these issues, to collaborate towards the achievement of these goals.

**Lamia Moubayed Bissat**

Head - Institut des Finances Basil Fuleihan

■ *The major causes of the continued deterioration of the global environment are the unsustainable patterns of consumption and production, particularly in industrialized countries, which is a matter of grave concern, aggravating poverty and imbalances.* ■

Agenda 21 (Chap. 4.3),  
Earth Summit, Rio 1992

# This Report

---

<b>Content</b>	<b>6</b>
<b>The Team</b>	<b>6</b>
<b>Methodology</b>	<b>7</b>





BOYU 劲 景 3in1

我们共同分享

电话 010-66188073  
北京博宇阳光  
太阳能设备有限公司

# This Report

## Content

**This report is the fruit of the cooperation between the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the Institut des Finances Basil Fuleihan - Lebanon which was established to help public purchasers and policy makers in developing countries understand how to address environmental, economic and social issues when buying goods and services used for their day-to-day activities. It is part of the efforts invested in many countries around the world to set up regulations pertaining to Sustainable Public Procurement (SPP) in pursuance of the "Marrakech Process". Lebanon, represented by the Institut des Finances Basil Fuleihan, was selected to join the Process and to be among the pioneer countries in the implementation of SPP.**

A definition of SPP and the Marrakech Process are dealt with in the opening chapter of this report. However, the main bulk of the report is concerned with the legal review of the country's procurement and sustainability laws that may offer a legal possibility for the adoption of SPP principles, in addition to the existing procurement practices and the legal adaptations given to them. For this purpose, various examples are presented as possible models to follow in the adoption and implementation of SPP laws. The report

also recommends a legal path for Lebanon in its endeavor to arrive at its SPP objectives.

This report will soon be followed by another complementary study "Market Readiness Analysis" designed to assess the readiness of the market and its capacity to respond to the government's initiative towards green economy. It provides information about the Lebanese market potentials and indicates which sectors are offering sustainable products and others which may be improved.

## The Team

Data collection, validation, and the drafting of the legal review were undertaken by the expert Judge Elie Maalouf during the month of January 2011 within the framework of implementing the first component of the Marrakech Process. It was reviewed by the members (listed below) of the Steering Committee of the Building Capacities for Sustainable Public Procurement Project:

- Mr. Farid Yaker, representing the United Nations Environment Programme (UNEP)
- Mrs. Jihan Saoud, representing the United Nations Development Programme (UNDP)
- Mrs. Lamia Moubayed Bissat and Mrs. Rana Rizkallah, from the Institut des Finances Basil Fuleihan
- Mrs. Lea Hakim and Mr. Jacques Charaoui representing the Lebanese Ministry of Finance (MoF)
- Mrs. Samar Malek representing the Lebanese Ministry of Environment (MoE)
- Mrs. Aline Saadeh representing the Office of the Minister of State for Administrative Development (OMSAR)
- Mr. Walid Halik and Mr. Khaled Bohsali representing the Lebanese Central Bank (BDL)
- Mr. Elie Massoud representing the Chamber of Commerce and Industry and Agriculture of Beirut and Mount Lebanon
- Mr. Sami Nawfal representing the Council for Development and Reconstruction (CDR)
- Mrs. Lena Dergham, representing the Lebanese Standards Institution (LIBNOR).

The first part of this report was prepared by the publication team at the Institut des Finances Basil Fuleihan and was overseen and expanded by Mrs. Lamia Moubayed Bissat, the Institute's Director.



---

# Methodology

The following methodology was adopted in the preparation of the legal review:

- Key practices in implementing SPP at various levels were explored, firstly, to enhance our knowledge of sustainable development and its relationship to government activities in general and to public procurement in particular, secondly, to increase our understanding of the circumstances leading to the adoption of the SPP policy and its adaptation to existing economic conditions and finally, the actual phases of implementation, all of which are necessary to avoid the imposition of laws that are impractical or whose implementation demands a gradual process.
- The experience of the French government was studied carefully due to the close liaison between Lebanese legislation and French methodology, on the one hand, and its significant SPP laws with their explicit and clear adoption of environmental, social and economic standards on the other. In addition, studying other experiences such as that of Switzerland, where the government, faced with delays in the issuance of drafted SPP laws, resorted to administrative decisions to speed up the process on the basis that the existing country's laws do not contradict or exclude SPP - would be a matter of utmost importance for Lebanon should the government face the same conditions in the issuance of a special SPP law.
- The Lebanese laws were reviewed in light of the above and according to the following categorization:
  - Laws pertaining to public procurement.
  - Laws pertaining to environmental, social and economic sustainability, as well as laws related to construction, taxation, and employment.
  - Other related ministerial decrees and decisions.

It is to be noted, however, that in each type of law reference is made to its main theme and to any feature of sustainability that it encompasses.

The review also covered the following:

- International treaties and conventions in terms of how they relate to SPP.
- The judicial provisions and rulings to determine how environmental laws in particular are being applied, as well as the judiciary's attitude towards procurement of this kind. In this regard, it was important to look into the decrees of the Court of Audit, the State Consultative Council, and the Legal Judiciary.
- Related current draft laws to analyze the extent to which they embrace SPP, so as to allow suggestions for adoption and/or amendments to meet this objective.
- Some public and private bidding documents related to the administration purchases were reviewed to examine the extent to which they take into consideration sustainability standard.
- Related United Nations reports and conventions.
- The principles approved by the Paris Declaration on Aid Effectiveness to Development, of 2 March 2005.
- The Lebanese Ministry of Finance's experience and the modernization projects that it is endeavoring to implement.

Throughout the above review, necessary attention was given to the challenges and impediments facing implementation in order to designate issues that can be dealt with legally and others that need to be tackled through other appropriate means.

# Why Sustainable Public Procurement?

---

<b>International Awareness Changed the Patterns of Consumption</b>	<b>11</b>
<b>Public Sector is the Biggest Consumer</b>	<b>12</b>
<b>Importance to the Arab States</b>	<b>13</b>
<b>The Marrakech Process</b>	<b>13</b>
<b>Lebanon Joins the Marrakech Process</b>	<b>15</b>





لا تشاء على الجسر الحجر  
NATURAL STONE BRIDGE

# Why Sustainable Public Procurement?

The increased awareness of international public opinion concerning the repercussions of human economic activity upon resources, environment, and quality of life has led to an evolution in the concept of development from a focus on material growth into a concept seeking a balance between environmental, economic and social systems which came to be known as Sustainable Development. This heightened sense of awareness has also led to the increase of initiatives bent on promoting green consumption and production, as well as the rejection of polluting goods and of production processes that do not respect employment conditions of health and safety as laid down by international conventions.

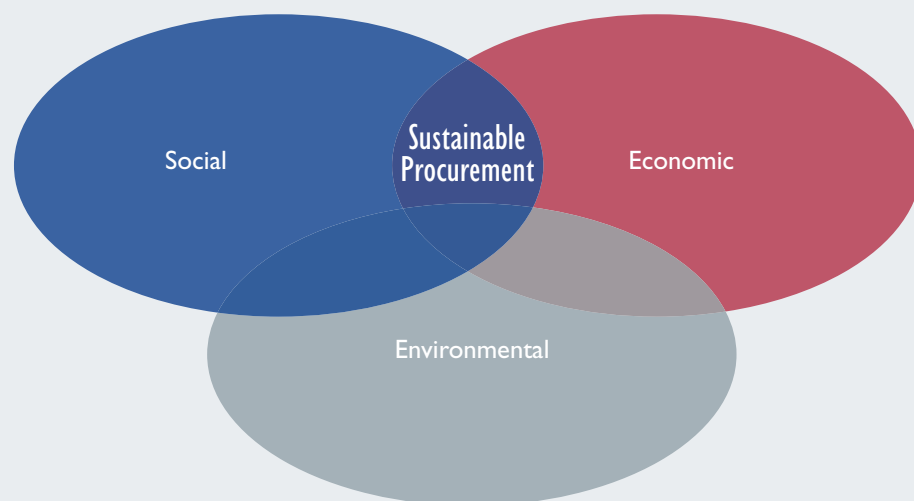
## What is Sustainable Procurement?

Sustainable Procurement is the process whereby organizations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis. It results in benefits not only to the organization, but also to society and the economy, whilst minimizing damage to the environment.

*(Source: Procuring the Future - the report of the UK Sustainable Procurement Task Force, June 2006)*

Sustainable Procurement seeks to achieve the appropriate balance between the three pillars of sustainable development i.e. economic, social and environmental.

- Economic factors include the costs of products and services over their entire life cycle, such as: acquisition, maintenance, operations and end-of-life management costs (including waste disposal) in line with good financial management.
- Social factors include social justice and equity, safety and security, human rights and employment conditions.
- Environmental factors include emissions to air, land and water, climate change, biodiversity, natural resource use and water scarcity over the whole product life cycle.

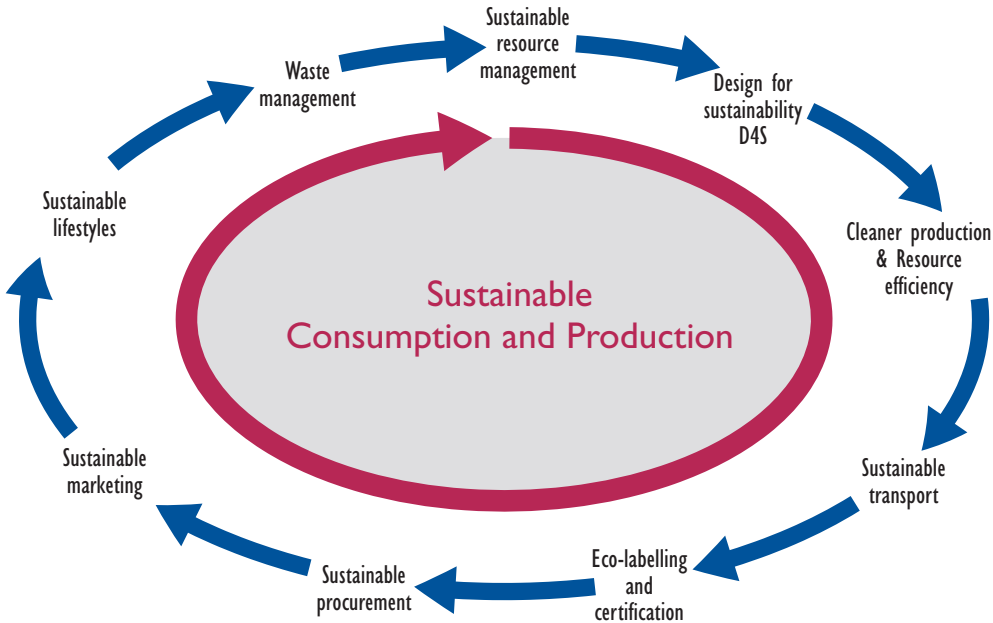


Source: The Institute for Sustainability;  
<http://bob.instituteforsustainability.org.uk/knowledgebank/retrofitguides/guide-4/Pages/Sustainable-procurement.aspx>

# International Awareness Changed the Patterns of Consumption

Standards of environmental protection and social equity were gradually being incorporated in the international system of consumption at both individuals and government levels, heading the United Nations, in the frame of a multilateral activities, to invest continuous efforts to encourage governments to embrace environmental and social equity standards when setting economic growth and development policies, an initiative which became known as agenda 21. Environmental awareness produced industries and services that cater for the needs of an environmentally enlightened customer. The

consumer led eco-friendly approach gave way to a growth in new industries, agriculture and touristic supply of clean products and services, and consequently to the demand of green certificates from international specialized institutions. Similarly, donor organizations became increasingly aware of the need to integrate environmental and social clauses in their funding. As a result it is accepted today, that countries around the world have the right to refuse the importation of goods and services should they lack environmental and social considerations.



Source: United Nations Environment Programme; Sustainable Consumption and Production Cycle [http://www.rona.unep.org/about\\_unep\\_rona/scp/scp-circle.html](http://www.rona.unep.org/about_unep_rona/scp/scp-circle.html)

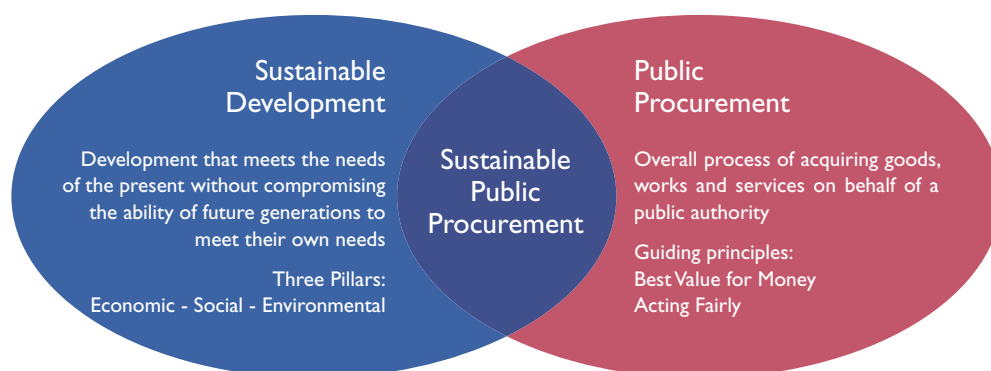
# Public Sector is the Biggest Consumer

Considering the size of the public sector in the economy, it was inevitable for many countries around the world to endorse green public procurement policies set up by the United Nations and developed during the course of their application on the United Nations procurement entities themselves.

Public spending contributes to a considerable share of the national GDP (it represents 8-30% of national GDP in some countries according to UNEP sources) and every purchase is an opportunity to drive markets towards innovation and sustainability. Through the adoption of sustainable procurement, governments

can set the role for the private sector and encourage the creation of new markets for sustainable products and deliver key policy objectives.

In terms of environment benefits SPP can help monitor the emissions of CO<sup>2</sup>, improve energy and water efficiency and support recycling. Positive social results include poverty reduction, improved equity and respect for core labor standards. And in the long term it can have positive effect on the economy through the generation of income, reduce costs and transfer of skills and technology.





## Importance to the Arab States

The per capita share of CO<sup>2</sup> emissions in the Arab and West Asia countries had risen from 6 to 7.2 tons between 1990 and 2003, whereas the world average is 3.9 tons. Several factors had led to this rise: the increase in the average population growth, and in the number of city dwellers, the lack of proper transportation management systems and the ageing of both public and private transportation means, in addition to the increase in the demand for energy supply, particularly since 1990. In addition, some of the regions in the Arab countries are considered to be among the most water-stressed regions in the world, where a decrease in per capita share

of fresh water is accompanied with a steady increase in demand. In the Gulf Cooperation Council states, for example, the per capita consumption of water is between 300-750/L/person/day, due to the fast economic, social and demographic growth. Furthermore, the capacity of the current waste management systems in dealing with the rate of waste creation is limited, leading in turn to an increase in sanitary, health and environmental problems. In addition, rapid industrialization and the production of metals, oil, and chemical products, lead to an increase of dangerous waste in the region, further amplifying the problem.

## The Marrakech Process

The Marrakech Process is a global multi-stake-holder process to support the implementation of Sustainable Consumption and Production (SCP) and to develop a Global Framework for Action on SCP, the so-called 10-Year Framework of Programmes on SCP (10YFP).

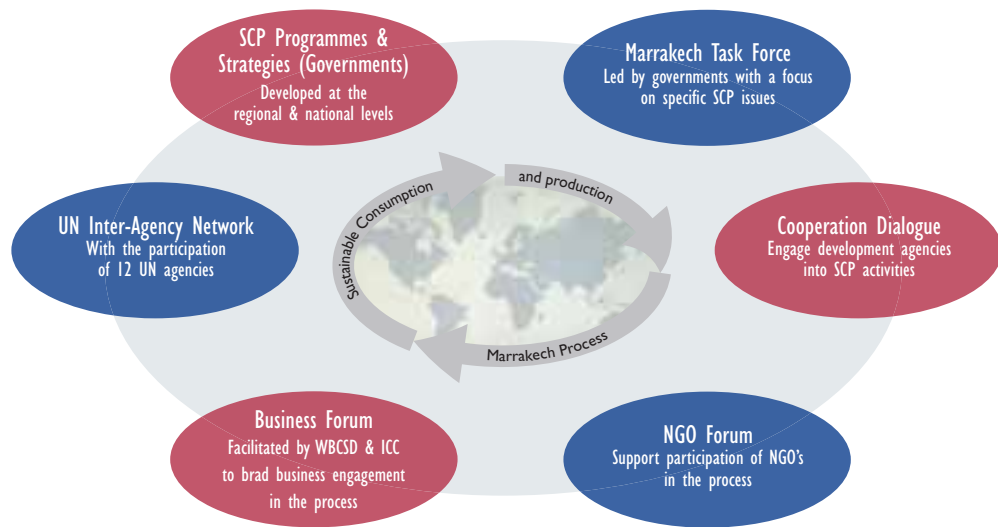
The Process responds to the call of the Johannesburg Plan of Implementation (World Summit on Sustainable Development 2002) to support the regional and national initiatives to accelerate the shift towards SCP patterns, thus de-linking economic growth from environmental degradation.

UNEP and UN DESA are the leading agencies of this global process, with an active participation of national governments (generally represented by national ministries of finance and/or ministries of environment), development agencies, business and industry, civil society and other stakeholders.

The first meeting devoted to developing the 10YFP took place in Marrakech, Morocco in June 2003, hence the name.

The Marrakech process aims:

- to assist countries in their efforts to green their economies,
- to help corporations develop greener business models,
- to encourage consumers to adopt more sustainable lifestyles.



Source: United Nations Environment Programme  
<http://www.unep.fr/scp/marrakech/about.htm>

In order to support the implementation of projects and capacity building, seven Marrakech Task Forces have been created as voluntary partnership initiatives with the participation of experts from developing and developed countries.

The Task Forces are supporting the implementation of SCP projects such as:

- eco-labeling in Africa,
- national action plans on SCP,
- developing tools and supporting capacity building in the areas of SPP,
- sustainable tourism projects,
- networks on product policy to encourage more innovation in product eco-design and performance,
- sharing best policy practices on energy efficiency in buildings, and
- promotion of sustainable lifestyles and education.



Source: United Nations Environment Programme

# Lebanon Joins the Marrakech Process

The Marrakech Task Force on Sustainable Public Procurement led by Switzerland from 2006 to May 2011 has developed an approach for implementing SPP in both developed and developing countries, known as the MTF Approach to SPP.

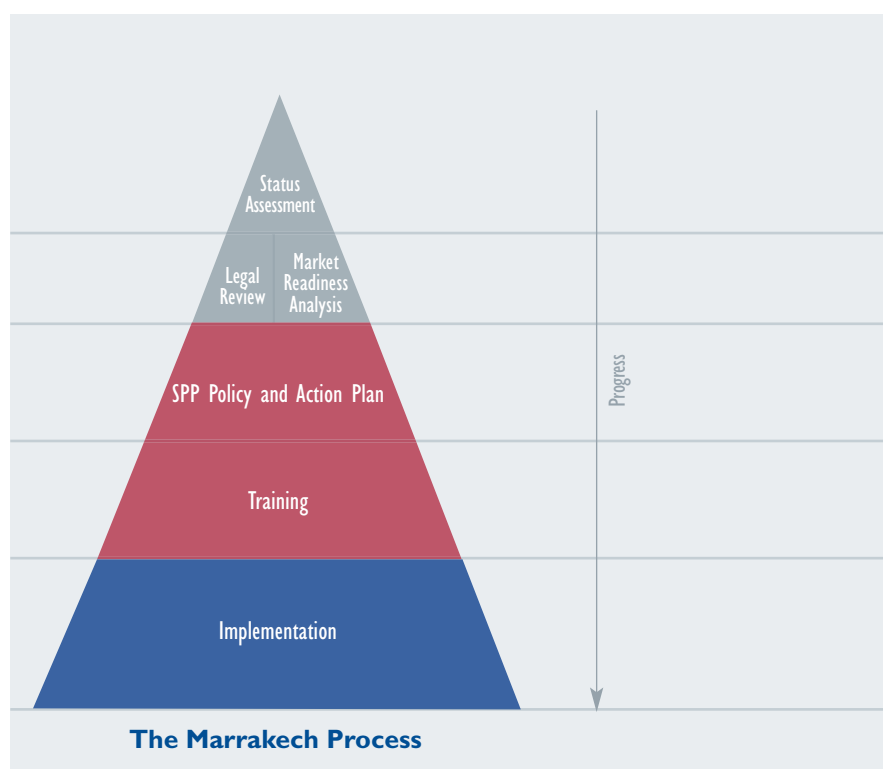
In 2008, the Swiss government and the United Nations Environment Programme (UNEP) designed a project to roll out this approach in 14 countries worldwide. This project, entitled Capacity Building for Sustainable Public Procurement in Developing Countries, is supported by the European Commission, Switzerland and the Organization of Franco-phone countries.

Lebanon joined, in 2009 through its Ministry of Finance represented by the Institut des Finances Basil Fuleihan, to become the seventh country where the Marrakech Process is being implemented alongside Chile, Colombia, Costa Rica, Tunisia, Uruguay, and the Mauritius Islands. It started with the implementation of the process, and provided financial and technical support for building capacities for SPP.

This activity falls in line with the orientations of the Lebanese Ministry of Finance aiming at increasing the efficiency of governmental expenses through the development of unified public procurement standard bidding documents, in addition to specialized training programs.

How does the approach work?

- First, pilot countries assess their procurement status through an online questionnaire (Status Assessment - <http://www.unep.fr/scp/marrakech/taskforces/procurement.ht>).
- Second, a review is undertaken to identify the legislative framework for procurement in the country and to analyze the possibilities for integrating social and environmental criteria into procurement activities.
- Third, a country-based market readiness analysis is carried out in order to define the existing productive capacities for sustainable products and services and the potential responsiveness of the market to SPP tenders.
- After successful completion of these three actions, pilot countries develop a country-based SPP Policy and Action Plan, including a capacity building programme for procurement officers. Experts from UNEP as well as the Marrakech Task Force will assist the pilot country in the implementation of its SPP policy during one year.



Source: United Nations Environment Programme  
<http://www.unep.fr/scp/marrakech/taskforces/procurement.htm>

# Background and Overview

---

<b>The Lebanese Constitution</b>	<b>19</b>
<b>Laws Governing Public Procurement</b>	<b>20</b>
<b>Provisions Relating to Municipalities, Public Institutions, Security Forces and the Army</b>	<b>23</b>
<b>Laws of Sustainable Development</b>	<b>24</b>
<b>International Conventions</b>	<b>28</b>
<b>Observations on these Conventions</b>	<b>31</b>
<b>Draft Laws and Regulations</b>	<b>31</b>
<b>Current Bidding Documents and their Practical Implementation</b>	<b>34</b>
<b>Judicial Resolutions and Judgments</b>	<b>36</b>
<b>Impediments and Challenges</b>	<b>38</b>





# Background and Overview

**This report falls within the context of the United Nations Environment Programme (UNEP) and the Marrakech Task Force on Sustainable Public Procurement. This initiative, led by Switzerland until May 2011, and then by the United Nations Environment Programme (UNEP), is part of the Marrakech Process which aims at encouraging the adoption of Sustainable Public Procurement policies by national governments including Lebanon which is affiliated to the Process through the Ministry of Finance represented by the Institut des Finances Basil Fuleihan (IoF).**

The aim of the Marrakech Task Force is to support the implementation of Sustainable Public Procurement policies by national governments based on international best practices and through a process of reviewing and amending key laws pertaining to sustainable procurement. This report, preceded by an interim report, outlines these findings and results.

While the ultimate goal is to bring to light environmental considerations alongside those of equity and justice, for it to be efficient, Sustainable Public Procurement must incorporate social and economic issues and not be confined solely to the environmental aspect, and as of such, considerations of the full life cycle of products and services, obtaining the best value-for-money, efficiency of the resources during production and consumption, poverty reduction, fairness in the distribution of resources, emission levels, impact on climate change, as well as the improvement of working conditions, the promotion of free trade, and the development of remote and rural areas must be taken into account within the context of SPP.

The existing Lebanese laws and the legal framework in which the public sector operates in Lebanon do not support explicitly Sustainable Public Procurement practices. This is partially due to the fact that procurement laws that were initially fashioned after French legal codes, do not include clear and straightforward procedures for practicing SPP, but rather limit the procurement process to

the principles of publicity, equal treatment and open and effective competition in public procurement biddings.

The current public procurement law is based on the notion of bidding and awarding the contract to the lowest bidder, while allowing in the award process, the adoption of a sets of criteria other than price alone. However, since legislation fails to specify these criteria and their applications, contracts are usually awarded purely by reference to price. The aforementioned demonstrates that while sustainability features are incorporated de jure in positive laws, they are in reality inadequate and insufficient. They reveal a lack of conceptual and organizational framework to facilitate implementation of the SPP concept, leaving the few present provisions inapplicable.

Yet, Lebanon has achieved remarkable progress in drafting environmental texts, and has signed and ratified a large body of international treaties and conventions which include environmental, social and economical clauses. But these clauses are seldom reflected in current practices which often overlook the environmental dimensions of public procurement.

In order to link current practices to international legal and regulatory SPP frameworks, clear SPP laws and regulations must be developed. However, laying a sound national legal framework must bear in mind the available capabilities: it must be phased and gradual (time frame and stages of application) to achieve the desired goal.

---

The following is the outline of our review of the Lebanese public procurement system's legal framework:

- The Lebanese Constitution.
  - Provisions governing public procurement in Lebanon.
  - Development and sustainability legislations.
  - International conventions.
  - Related draft legislations and regulations.
  - Current bidding documents and applied practices.
- Judicial resolutions and provisions.
  - Impediments and Challenges.
  - Propositions.

Our review is mainly concerned with the relevant laws and their key clauses, and any sustainability features stipulated in these laws. Similarly, only the most significant and relevant legislations and conventions will be mentioned.

## The Lebanese Constitution (Constitutional Law, dated 23/05/1926)

The Lebanese Constitution is the basic and supreme law of the country. It lays down the general principles and specifies the form of government, its powers and authority. The following passages in the Constitution are relevant to our present study:

- The preamble to the Constitution, amended in 1990, states that Lebanon is a founding and active member in the Arab League and abides by its covenants. It also states that Lebanon is a founding and active member of the United Nations, abiding by its Charter and by the Universal Declaration of Human Rights, and that the Lebanese State embodies these principles with no exceptions. Accordingly, all United Nations declarations and resolutions related to environment, labor, economy and law become binding upon Lebanon, including and not limited to Sustainable Public Procurement.
- The preamble also respects the principles of social justice and guarantees equal rights and obligations to all citizens, as well as the need to secure jobs, social protection and economic development for all citizens.
- The constitution's preamble further includes that the State should support and maintain a cultural, social and economic balanced regional development in Lebanon.

These are the only sustainability features in the text of the Constitution; as it does not include specific passages concerning the environment, neither detailed passages on equity at work and in providing healthcare.

# Laws Governing Public Procurement

There are a multitude of such laws, including legislations and regulations directly related to public procurement as well as other related topics. These laws are divided into legislations and regulations that affect public procurement either directly or indirectly; in addition to applicable regulations of the principal laws which enclose tender documents.

The fact that municipalities and autonomous public institutions follow different guidelines and regulations from the central public administration makes it difficult to encompass these antiquated laws that fail to cope with modern developments and business and market requirements. Therefore, the Lebanese government drafted two laws: the first, regulating public procurement, and the second,

establishing a Public Procurement Management agency. The implementation of these laws throughout the public sector as a whole would eliminate discrepancies between public administrations and municipalities.

Discussion of the provisions applied to all public administrations, and partially to autonomous public agencies and municipalities, will proceed from the Public Accounting Law and the Bidding System, among others. Provisions related solely to public autonomous agencies and municipalities will also be broken down according to the level of their significance within the procurement process. We find, however, passages on procurement in secondary provisions not directly related to procurement topic.

## General Provisions

### **The Public Accounting Law promulgated: Decree Law No.14969 dated 30/12/1963**

This law is considered as the principal public procurement legislation. It sets out the principles of public budget preparation, budget execution, submitting the final accounts for each financial year, and management of public funds. It also singles out a special chapter on the terms of Authorization of Expenditures and the issuing of payment orders. It also sets out the general regulatory framework and refers to regulatory texts for the implementation of the legislation itself.

Only public administrations and some large municipalities are bound by the provisions of this decree. This law regulates the following:

- The procurement process and the invitations to tender (ITT) as the fundamental principle and means for contracting.
- Provisions related to public bids.
- Tender documents: contract terms and conditions, specifications, and general requirements.
- The principles of the tendering process: publicity, equality and competition.
- Submission of bids.
- Awarding the contract to the lowest bidder or the best offer.
- Goods manufactured in Lebanon are given a 10% preference to foreign goods.

In the framework of sustainability, we note the following:

- Article 147, clause 6 there of, allows awarding the contract by mutual agreement if it relates "to works made by the needy and disabled licensed by the Ministry of Labor and the Ministry of Social Affairs provided that prices do not exceed market prices", such as to facilitate the transition to work of this category.



- This law permits the adoption of specifications other than the price to award the contract without mentioning the nature of these specifications, which could facilitate the introduction of sustainable procurement criteria.

The provisions of the Public Accounting Law related to public procurement set forth the principles of bids that were completed and applied to the utmost extent through jurisprudence by the Lebanese Court of Audit (Court of Accounts). These guiding principles provide for:

- **Publicity of proposed procurement contracts:** In terms of announcing the bid and its procedures of assignment and implementation.
- **Open and effective Competition:** In terms of paving the way for the largest number of bidders to participate in public procurement.
- **According equal and fair treatment** to suppliers and contractors bidding to do government work and not preferring any bidder to another by imposing biased or useless conditions.

These principles aim to obtain the best offers at the lowest prices without favoritism or ambiguity and thus require to be granted validity when setting forth other criteria such as environment and sustainable development.

#### **The Bidding System: Decree No. 2866 dated 16/12/1959**

Since its establishment in 1959, the Tenders Board has remained centralized in the office of the Central Inspection. The Tenders Board, in accordance with the provisions of this system, performs procurements related to all public administrations, with the exception of the Ministry of National Defense, the Internal Security Forces and the General Security Directorate. As for municipalities and public institutions, they have to adopt the

grounds provided by this system as long as it does not conflict with their own particular regulations.

It includes the setting of a Yearly Procurement Plan and the way it should be publicized; the assignment of evaluation committees, their mode of work and authority; and the procurement process: ITT, publishing a notice, receiving tenders, tender opening process, and contract awarding.

#### **Prequalification of Contractors : Decree No. 3688 dated 25/01/1966**

This decree determines the conditions and requirements for registration on the list of pre-qualified suppliers (competencies classification in order to participate in bids of public works and studies related to such works): roads, ports, airports, public buildings, water projects and electrical works. Classification in these categories is based on previously achieved works and years of experience only. This decree is still in effect despite the promulgation of Decree No. 9333 dated

26/12/2002 which sets new criteria and new grounds for qualification, based on previous work experience, human resources and organizational structure, equipment, financial situation and field inspection.

We note in this context the failure to address the sustainability criteria for the registration of contractors on the list of qualified potential suppliers; its addition could be requested in order to give potential suppliers additional qualification grades.

### **Disbarment from Participating in Public Bids: Decree Law No. 8117 dated 29/08/1967**

This law determines how to legally sanction contractors and suppliers with disqualification and disbarment from participation in procurements and public bids upon their violation of the terms agreed, which are currently related to technical and administrative conditions - and to which the environmental, social and economic conditions can be added.

### **Setting the Terms for Acceptance of Completed Public Works Contracts with Some Minor Flaws or Defects: Decree No. 14601 dated 30/05/1970**

This Decree, based on Articles 135 and 140 of Public Accounting Law, stipulates the terms of acceptance (reception) of completed public works projects with some minor flaws or defects in the provisional and final phases (including the retained deductions and penalties that apply).

### **Identifying National Goods Benefiting from Preference in Public Tenders: Decree No. 10515 dated 23/07/2003**

This decree determines the types of goods benefiting from national preference granted by law as compared to foreign goods in public bids, by a margin of 10%. This preference is granted to certain food and metal products, pesticides, pipes and other goods referred to in customs clauses. This decree did not mention environmental conditions or other specification related to sustainability.

## **Secondary Provisions**

### **Court of Audit: Legislative Decree No. 82 dated 16/09/1983**

The Court of Audit is responsible for checking the use of public funds and its compliance with existing laws and regulations and for prosecuting all government employees accused of violating these laws and regulations.

This legislative decree determines the authority and scope of work of the Court of Audit including its legal and financial Pre-Audit of public procurement of goods, works and services as well as its monitoring procedures, the depositing of requests, and the mechanism of studying them. In addition to this foremost function, the Court of Audit performs a Post-Audit of public procurement that involves evaluating all the financial transactions and their general results, and inspecting the accounts of the government and civil servants and the legality of all related actions.

### **Central Inspection: Decree 2460 dated 09/11/1959**

The fifth chapter of this decree stipulates the provisions pertaining to a main function of Central Inspection, namely, checking and supervising public tenders for works commissioned by all public agencies, with the exception of the army, and public and internal security forces. These tasks are performed by the Tenders Board.

### **General Budget and Annexed Budgets for 2001: Law No. 326 dated 28/06/2001/ Article 73**

This Article exempts autonomous public agencies from such a central audit and allows them to conduct their own internal audit and to request external audit from auditing and accounting bureaus. The Ministry of Finance and the Court of Audit conduct a post-audit of the accounts of these public agencies, which include the auditing of accounts pertaining to public procurement.

### **Penal Code: Legislative Decree No. 340/NI dated 01/03/1943**

This Code punishes by imprisonment and fine whoever commits a fraud in public procurement or in any material that was used, provided, installed, manufactured, or in any of the agreed-upon specifications. It also punishes whoever commits a fatal and serious error, or conspires to subvert the contracting process, or provides corrupted or invalid materials.

### **Stamp Duty: Legislative Decree No. 67 dated 05/08/1967**

Public bids are subject to both proportional and lump sum fees. This law, along with other tax laws such as the income tax, could play a role in granting exemptions that encourage sustainable industry. For example: An exemption from fees and taxes for a period of ten years upon the adoption of environmental specifications.

### **State Consultative Council: Decree Law No. 10434 dated 14/06/1975**

The State Consultative Council looks into the issues pertaining to contracts, public procurement or administrative privileges run by the public administrations or the parliament's administrative services to ensure the safeguarding of public interests. As of such, an injured party can request a formal review and make a complaint before the Council to demand the nullification of an administrative decision relating to a public bid, or for the purpose of claiming certain compensations. There is no current complaint system in

Lebanon that could be adopted for resolving disputes before they are transferred to the courts, such as competent bodies that could be referred to by the contractors. However, some bidding documents include a text that gives public officials the power to resolve disputes with contractors (for example the director general of roads and buildings). Should this solution fail, the supplier can refer to the Council whose provisions have accordingly become a considerable legislative reference for public contracts in Lebanon.

## Provisions Relating to Municipalities, Public Institutions, Security Forces and the Army

We have outlined above the various legal and regulatory texts governing public procurement which apply generally to the public administrations and to some autonomous public institutions, municipalities, the Army and the security forces. In addition to these provisions, the latter apply special provisions of which the most significant are:

### **Municipalities and Unions of Municipalities**

Large municipalities apply the Public Accounting Act by virtue of decrees to be implemented; whereas most of the municipalities apply decree 5595 dated 22/09/1982, which determines the principles of accounting for municipalities and unions of municipalities not subject to the Public Accounting Act.

This decree is similar to the Public Accounting Act to a large extent.

### **Public Autonomous Agencies**

Every public autonomous agency is subject to a special financial system that determines the principles of preparing and implementing its budget and the management of its funds. These articles are similar to a large extent to the Public Accounting Act.

### **The Army and Security Forces**

The Public Accounting Law stipulated special provisions applied to military administrations which enjoy a special status regarding the principles of contracting, and the bidding committees and documents. The latter we will be discussed here below.

# Laws of Sustainable Development

These laws address the environmental, social and economic aspects of development:

## Environmental Laws

Environmental laws and regulations are many and diversified, and thus cannot be detailed to the utmost extent, as some are relevant solely to the environment while others include provisions related to environmental issues.

Lebanon has witnessed an increasing legislative activity in that context, but its implementation remains inadequate. Yet on the other hand, these legislations are not put in effect in what relates to public procurement. These laws deal with land use, construction, transport, energy, industry, agriculture, water, sewerage and drainage systems, air, noise, soil, biodiversity, wastes, atmosphere, etc...

Enumerating all these laws is beyond the scope of our study. Hence, only main laws will be mentioned below:

### Principal Environmental Provisions

Environmental Protection Framework Law No. 444 dated 29/07/2002: It includes the fundamental principles on protecting the environment and establishes the following provisions, among others:

- The legal framework for the adoption of a national environmental protection policy for the purpose of preventing all forms of degradation and pollution, as well as promoting the sustainable use of natural resources.
- Environmental impact assessment (EIA) before the initiation of any kind of project that could negatively affect the environment.
- Environmental Management Plan (EMP): the application of a set of mitigation measures and the elimination of negative environmental impacts or mitigating them by acceptable local standards, if any, otherwise according to the United Nations' standards.
- Biodiversity: preserving species richness and variation of life forms within terrestrial, marine, and aquatic ecosystems.
- The right to have a stable and healthy environment and the duty of every citizen to ensure the protection of the environment.
- The precautionary principle, which requires the adoption of effective and appropriate measures based on scientific information and the best available clean technology designed to prevent any potential and unmitigable damage to the environment.
- The principle of preventing environmental damage.
- The "polluter - pays" principle (PPP), which stipulates that every individual or firm that pollutes must bear the financial consequences of their activities.
- The principle of preventing the degradation of natural resources.
- The principle of pollution control which aims to prevent pollution.
- The principle of relying on economic incentives as a tool to monitor and promote sustainable development practices.
- Evolving towards the use of alternative materials and renewable energy and the preservation of natural resources.



- Granting a customs reduction of 50% to whoever uses equipment and technologies that reduce pollution, processes and recycles wastes, in addition to any other incentives adopted through a Council of Ministers resolution.
- Pledging not to cause pollution, leakages or emissions of air pollutants.
- Protection of beaches and water resources.
- Developing a mechanism for making a list of all registered and allowed fertilizers and pesticides, as well as a list of hazardous wastes.
- Developing noise and sound pollution regulations.

In addition to this Law, we find other laws and ministerial decisions such as:

- Law No. 64 dated 12/08/1988 related to the protection of the environment against pollution from hazardous wastes and materials, which makes preserving the environment from pollution the responsibility of each physical or juridical person. It defines hazardous wastes, includes strict regulations of hazardous waste discharge and extracting energy from it, and forbids the import or possession of nuclear wastes, or wastes contaminated with radioactivity or that contain chemical materials that threaten public health and safety.
- Decision No. 52/I dated 29/08/1996 which determines the specifications of air, water and soil pollution reduction, including the specifications of domestic potable water and sanitation, liquid or solid waste burial techniques in surface water, as well as the maximum acceptable levels of air pollutants. It should be noted that determining such specifications is of paramount importance to sustainable procurement, as it is required to take these specifications in consideration when determining the required supplies or works.
- Decision No. 90/I dated 17/10/2000 which specifies the environmental requirements for delivering residential building permits the vicinity of rivers under the protection of the Ministry of Environment; Decision No. 8/I dated 30/1/2001 defines environmental limit values for stack emissions and effluent discharge from classified establishments and sewage water treatment plants; Decision No. 4/I dated 06/08/2005 which specifies the environmental requirements for licenses of establishing hot asphalt incinerators; Decision No. 106/I dated 08/07/2010 which specifies the environmental requirements for garment and textile industries building permits.
- Reducing air pollution resulting from the transport sector and encouraging the use of less polluting fuel, according to Law No. 341 dated 06/08/2001 which bans the import of polluting vehicles, and specifically bans the import of minivans operating on diesel engines. The law grants incentives for the renewal of vehicles, requires the mandatory use of catalytic converters on vehicle exhaust systems, and determines the acceptable specifications for the types of fuel used in motor vehicles and the acceptable emission level.
- The discharge of wastewater, regulated by Decree No. 2761 issued during the French mandate period (on 19/12/1933) which prohibits the discharge and/or storage of wastewater within the protection area of a potable water source, and determines the appropriate conditions and specifications of wastewater disposal systems.

### Other Branches of Law indirectly related to the environment

Articles addressing environmental preservation are included in various laws dealing with specific sectors influencing the environment in general. These laws are listed herebelow:

- **Construction Law No. 646 dated 11/12/2004** requires taking into account the building and demolishing stages of construction and the principles of environment protection and a few sustainability criteria. In addition to this basic law, there are Design Guidelines and Decrees that determine the drainage systems standards, as well as some environmental conditions. Yet, the Construction Law still ignores sustainable industry developments in building applications, and the environmentally sound practices in building design and construction.
- **Regulating Quarries and Crushers: Decree No. 8803 dated 04/10/2002** defines quarries and crushers and prohibits their setting neither on natural sites, natural reserves, regional and national parks, nor in the vicinity of rivers and streams. Exploitation of sand and stone quarries is subject to a prior authorization issued by the governor (the "Mouhafez"'s decision) based on the approval of the National Council for Quarries. This authorization imposes upon every exploiter to re-arrange and rehabilitate the quarries' sites that ceased to operate, in accordance with the maps, designs, conditions and time limits upon which the license was given.
- **Urban Planning Law: Legislative Decree No. 69 dated 09/09/1983** which regulates the designs and systems of towns and villages and the classification (zoning) of territories within the National Land Use Master Plan (Schéma Directeur d'Aménagement du Territoire Libanais), as well as the balance that must be maintained between the development of urban areas on one hand and the preservation of the natural sites, agricultural activities and forest areas on the other; In addition to the upholding of public health and traffic safety, esthetics and a whole sustainable living environment.
- **The Protection of Forests, Land, and Maritime Public Properties as provided in the Forest Protection Code No. 558 dated 24/07/1996** the public properties and provisions thereto (Decision No. 144/S dated 06/10/1925) and the Regulation on the Occupancy of Maritime Public Properties: Decree No. 4810 dated 24/06/1966.
- **Regulation of the Electricity Sector as per Law No. 462 dated 02/09/2002** which deals with the electricity production by renewable resources, and regulates the water sector under Law No. 221 dated 29/05/2000 which considers the protection and development of natural water resources within the framework of safeguarding the environment and nature.
- **Lebanese Standards and Specifications Law dated 07/23/1962** which gives the Lebanese Standards Institution (LIBNOR) the sole right to develop such standards and specifications and authorizes the government to give any of these standards and specifications the binding capacity and therefore the imposition of environmental standards.
- Identifying the criteria that should be fulfilled in an investment project in order to benefit from the **Law on the Promotion of Investments in Lebanon, issued by Decree No. 9311 dated 21/12/2002** which sets incentives for specific criteria, including socio-economic impact of the Investment Project, the project's impact on environment and sustainability of natural resources.

## Social and Economic Laws

Legal texts pertaining to social justice are included in a number of laws and regulations:

- **Rights of People with Disabilities (PWD) Law 220/2000** issued on 29/05/2000 which requires securing a convenient environment for the disabled including the rehabilitation of buildings, public departments, sidewalks, public roads, gardens, and public utilities. It also grants them the right to work like any other member of the community through the Government's commitment to provide help in entering the labor market based on the principle of equality and equal opportunities. The law 220/2000 introduced a quota of 3% of employment that has to be respected in both public and private sectors.
- **Labor Law** dated 23/09/1946 and its amendments which prohibit the employment of youth under the age of thirteen in industrial projects and in exhausting works or those deemed hazardous to health. It also prohibits the employment of youth in hazardous work under the age of sixteen, in addition to determining the cases in which the employment of women is prohibited and in stating the working hours, the number of leaves and holidays.
- **Social Security Law** dated 26/9/1963 and its amendments which defines the social, familial and health rights of workers and employees. It also states in Article 65 thereof the need to obtain a quitclaim from the Social Security that confirms the enterprise's provision of its workers' rights before participating in public bids.
- **Development of Specific Lebanese Areas**  
The Income Tax Act works on developing specific regions (zones) determined by the Council of Ministers through the granting of certain tax exemptions and the establishing of new industries.

These various laws were neither sufficient nor assertive in many environmental and social issues, such as the extraction of sand and rocks, the mandatory installation of drainage systems to buildings and the prevention of noise pollution. Even the issue of classified institutions and how to control them is flawed. Moreover, the principles and provisions at the environmental and social level suffer from the lack of or poor application, such as the rehabilitation of quarries and rock crushers sites, the monitoring of tree logging, the wages of workers with special needs, ensuring the salaries and rights of workers and their paid leaves as well as regulating the employment of youth. Therefore the problem is twofold: it is legal on one hand, and related to application and practice on the other.

A law for sustainable public procurement in this context may constitute an incentive to abide by other environmental, social and health laws, and may also serve as a compliance regulator for these laws, if the Government decides to contract only with suppliers who meet these requirements.

# International Conventions

Lebanon exhibits considerable enthusiasm for signing international agreements and conventions, related to environmental sustainability, social equity and workers' rights, especially vulnerable groups, the enumeration of which goes beyond the scope of this review. Below, we provide a brief overview of a number of important international conventions in certain key fields:

## Environmental Conventions

Lebanon has adopted and signed several international conventions that aim to protect the environment, prevent the pollution of water, air and soil, maintain atmospheric pollution at a low, prevent desertification and monitor agricultural production, as per the following:

- Protection of the Mediterranean waters from pollution caused by discharges from rivers, coastal plants and ships. Among these conventions, we mention the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources (LBS Protocol), adopted in Athens, Greece, on 17/05/1980, the Protocol of the International Convention for the Prevention of Oil Pollution from Ships dated 17/02/1978, the Amendments of the Convention for Protecting the Mediterranean from Pollution approved under Law no. 34 dated 16/10/2008, the International Convention on Civil Liability for Oil Pollution Damage (CLC Protocol), dated 29/11/1969, the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties dated 29/11/1969, the Convention on the Protection of the Mediterranean Sea Against Pollution and the two Protocols attached thereto, the International Convention on Oil Pollution Preparedness, Response and Cooperation dated 30/11/1990, the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources adopted in Athens on 17/05/1980, the Protocol Concerning Mediterranean Specially Protected Areas (SPA Protocol), adopted in Geneva on 03/04/1982 and the International Convention for the Control and Management of Ships' Ballast Water and Sediments of 2004 dated 13/02/2004.
- Protection of the Ozone Layer in accordance with the Vienna Convention for the Protection of the Ozone Layer dated 22/03/1985, the Montreal Protocol on Substances that Deplete the Ozone Layer adopted on 16/09/1987 approved by Law no. 253 dated 22/07/1993 and allowing the government to ratify the Copenhagen Amendment related to the Montreal Protocol on Ozone Layer Protection by Law no. 120 dated 25/10/1999 and the Beijing Amendment (1999).
- Conservation of Biodiversity in accordance with the Cartagena Protocol on Biosafety (CPB) and the Convention on Biological Diversity dated 05/06/1992.
- United Nations Framework Convention on Climate Change dated 05/06/1992 and the Kyoto Protocol annexed to the Convention as of 11/12/1997.
- Preventing desertification through the ratification of the United Nations Convention to Combat Desertification signed in Paris on 15/10/1994, by developing strategies to improve land productivity and rehabilitation and to conserve land and water resources and to manage them sustainably.

- Protection of public and environmental health from persistent organic pollutants (POP): according to the Stockholm Convention on Persistent Organic Pollutants adopted in Stockholm on 22/05/2001, the Rotterdam Convention adopted on 10/9/1998 for the application of the Prior and Informed Consent Procedure to Certain Hazardous Chemicals and Pesticides Circulated in International Commerce (PIC), the Basel Convention, adopted in 1989, with the purpose of the Control of the Trans-boundary Movement of Hazardous Wastes and border clearance, the Rio Declaration on Environment and Development and Agenda 21, the Convention on the Regulation of Mineral Oils Transit across the Lebanese Territories dated 07/08/1962 and Convention no. 136 relating to Prevention of Hazardous Poisoning Resulting from Fuel dated 23/06/1971.
- The IAEA Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 26/10/1979, the Treaty on the Prohibition and Eradication of Biological and Toxic Weapons, the Convention on Assistance in Case of a Nuclear Accident or Radioactive Outbreak dated 26/09/1986.
- Convention for the Protection of the World Cultural and Natural Heritage adopted in Paris on 23/11/1972 and ratified by Lebanon in 1990.
- Improving the quality of agricultural production in accordance with the agreement concluded with the Food and Agricultural Organization of the United Nations (FAO) to implement the project of developing the agricultural sector in the greenhouses of Lebanon as of 10/01/2001 in order to create job opportunities and an appropriate income for small-scale farmers as well as to ensure good agricultural production and a technical cooperation agreement in the area of protected cultivation dated 06/08/2001.

## Social and Economic Conventions

In addition to domestic laws, Lebanon became engaged in several humanitarian and economic agreements after having ratified various conventions, such as International Labor Organization (ILO) core conventions:

- Determination of working hours, work shifts and holidays, as per the Agreement of the Determination of Working Hours in Industrial Installations as stated in Convention C1 of 29/10/1919, the Special Convention on Paid Annual Leaves C52 of 24/06/1936, the Convention on Weekly Leave in Trade and Offices C106 of 26/06/1957, the Convention C14 on Weekly Leave in Industrial Establishments, and the Convention C81 on Labor Inspection in Industry and Trade.
- Conventions on youth and women labor: C90 of 10/7/1948 on Night Work of Young Persons in Industry, C45 on the Employment of Women in Underground Mining Labor, C89 on the Night Work of Women in Industry (amended in 1948), Convention on the Rights of the Child dated 20/11/1989 and C182 of 17/06/1999 on Prohibiting the Worst Forms of Child Labor and the Measures to Achieve Abolition of Child Labor.



- Prohibition of labor discrimination based on race, color, sex, religion, political opinion, national origin or social origin: C111 of 25/06/1958, Convention on the Eradication of all Forms of Discrimination Against Women ratified by the UN General Assembly on 18/12/1979.
- C115 concerning the Protection of Workers from Ionizing Radiation of 22/06/1960, C139 on the Prevention and Control of Occupational Hazards Resulting from Carcinogenic Materials and Factors dated 05/06/1974, and the recommendations of ILOC170 on the Safety in Utilizing Chemical Materials at Work dated 25/06/1990.
- C142 on vocational orientation and vocational training in human resources development dated 23/06/1975, C159: Vocational Qualification and Laborers - People with Disabilities.
- Prohibition of forced labor in accordance with C29 of 22/06/1930 and C105 of 25/06/1957.
- Protection of the rights of the handicapped through the Convention on the Rights of Disabled Persons authorized by virtue of decree 1052 of 24/11/2007, and the optional protocol of the Convention on the Rights of Disabled Persons.
- Protection of salaries and wages: C95 of 01/07/1949, C100 of 29/07/1951 on Labor Gender Equality in Terms of Wages and Salaries for an Equal Value Labor, C26 on making ways for Determining the Minimum Salary and Wage, and C131 of 22/06/1970 on determining the Minimum Wages with a Special Indication to Developing Countries.
- International Convention on the Eradication of all Forms of Racial Discrimination law 44 of 24/06/1971.
- ILO C174 on the Prevention of Large Industrial Accidents adopted in 1993 and the framework Agreement for Assistance in the Domain of Civilian Protection.
- Prevention of deception and fraud in accordance with the Additional Act of Stockholm of 14/7/1967 and the Madrid Agreement for Repression of False or Deceptive Indication of Source on Goods dated 14/4/1981.

## Observations on these Conventions

- It appears that Lebanon has ratified most of the core conventions on the environment, labor and social justice. Nevertheless, they were not effectively and correctly implemented.
- The conventions legally ratified by the Parliament have a higher ranking than the legislative law i.e., ordinary laws are considered automatically amended by the ratified conventions, and wherever such laws entail a social, economic or environmental flaw or discrimination, then such discrimination is deemed null and void by the conventions that are contradictory to the law.
- Signatory members are bound to take all the appropriate measures to ensure the fulfillment of the obligations arising out of these conventions. In fact many conventions require legislation in order to incorporate these obligations into domestic law and practice, including the abrogation of all contrary legislative provisions. However, this legislative work has not been done despite the time elapsed since the ratification by Lebanon of these conventions.
- Yet, these conventions have a beneficial effect on domestic legislations and general concepts as well as a good and efficient implementation in several instances.

## Draft Laws and Regulations

In its attempt to modernize its legislation, the Lebanese government prepared a draft law on public procurement and another law allowing the establishment of the Public Procurement Management agency. However, these two laws have not been promulgated yet, despite the necessity and urgency of their issuance, namely, in respect to the bidding law superseding the articles on public bids mentioned in the Public Accounting Act, and otherwise for the establishing of new rules that are not initially available.

In addition to the two laws, five Model National Bidding Documents were drafted by the Ministry of Finance represented by the Institut des Finances Basil Fuleihan.

Concerning these two laws and the bidding documents, we outline the following:

### **Public Procurement Draft-Law**

This draft law - targeting only public procurement of supplies, works and services - provides the legal framework for the bidding process: prequalification documents, invitation to prequalification, receipt of prequalification applications, evaluation of applications, determining applicants which are not qualified, subcontracting and collusions. The draft law describes the mechanism and conditions of contracting and adds new ways unknown so far, such as receiving performance guarantees

from the successful bidder; the procedure for cancelling contracts and revocation of bids, settlement of the contract value, and the dispute resolution procedure.

Concerning sustainability, the following is mentioned in article 13 of the draft law:

“The contracting authority may utilize public procurement as a means to achieve national objectives such as stimulating innovation, backing small and medium enterprises, supporting regional and rural development, and

realizing social objectives and environmental protection. The frameworks and implementation mechanisms are determined by virtue of decrees adopted by the Council of Ministers. The draft law enables sustainable procurement but requires setting a regulatory framework to its implementation by the Council of Ministers. In addition to that, this text did not describe in detail how to integrate environmental criteria sustainable procurement in bidding conditions. It merely gave the possibility of it being carried out without requiring or encouraging the adoption of sustainable procurement practices. At this point it can be said that specific environmental criteria should be adopted whenever possible, in order to make non-sustainable procurement the exception rather than the general rule. On the other hand, Article 42 of the draft law authorizes bidding award by mutual agreement in the procurement of goods and works made by disabled persons registered

according to the rules, which facilitates working with this group without having to comply with additional conditions. It is also possible to have the contractors utilize a certain number of disabled persons in the works they can perform on the condition that they represent a certain percentage of the total number of workers and employees. Article 74 of the law defined the contents of the bidding documents but it did not explicitly mention any environmental or social conditions that may be required as specifications in such documents or as qualifications that may be required from the bidders. In what relates to subcontracting and dividing bids, the text provides guidelines under Articles 9, 10 and 11 without making an obligation of bidding on the basis of lots (sections or parts of a single bid) when this is possible, whilst preserving the mode of contracting so as to enable the participation of small and medium enterprises.

### **Public Procurement Management Draft-Law**

This draft law establishes a central agency which manages public procurement and operates under the name of "The Public Procurement Management". Its authority encompasses public administrations, municipalities, unions of municipalities, and autonomous public agencies. Its mission is to propose public procurement texts, prepare bidding documents, train competent personnel for conducting public procurement, manage the bidding operations, and provide feedback on objections within ten days.

The positive aspect in creating such an agency consists in unifying and streamlining the procedures applicable to all the procurement of public entities, thus facilitating the proce-

dures that may be adopted for reaching the required sustainability goal.

This draft law did not mention any obligation to be assumed by this agency regarding sustainable procurement. It is understood that such procurement calls for a monitoring body that undertakes the task of monitoring, contract managing, and assisting in the setting of criteria as well as providing progress reports. It is possible to give such a task to this agency in order for it to ensure a better implementation of SPP upon the adoption of such a law. These two draft laws constitute a positive step in the field of public procurement. Yet, it will be useful to incorporate better sustainability terms and conditions in both of them.

### **Model National Bidding Documents**

These model bidding documents are designed to unify the implementation and effectuate the needed reform, in order to enhance oversight controls, streamline procedures, and promote transparency and prompt work delivery. These model bidding documents are related to the procurement of goods, works and consultancy services: three of them are designed for large bids and the remaining two are simplified for small bids.

In what relates to sustainability, we point out the environmental, social and labor conditions but without further detailing or binding provisions, in these bidding documents, within the terms of prequalifying suppliers, which leaves to the administration the freedom of their enforcement.

Moreover, these bidding documents mention the obligation of complying as much as possible with environmental conditions upon submitting copies of the offer, and refer to which kind of paper may be utilized, and state the obligation of indicating the levels of quality and environmental performance required in technical specifications.

In the public works' bidding document, the contractor is required to adopt all necessary measures for environmental protection at the work site and adjacent premises, and to avoid jeopardizing persons or disturbing them or causing damage to their property due to pollution, noise or other matters that may result of the work method, and to ensure the safety of all activities on the work site, in compliance with all applicable laws and special conditions of safety, health, labor and environment detailed in the contract documents.

These model bidding documents allow the introduction of the necessary environmental and social conditions, but these provisions are neither binding nor set forth in the documents, and they are still to be adopted among public administrations, autonomous agencies and municipalities.

# Current Bidding Documents and their Practical Implementation

The Public Accounting Law requires the adoption of general and special bidding documents; the general documents contain common provisions for the same type of procurement, and the special documents are proper to a specific single bid.

## General Bidding Documents

The following general bidding documents were drafted:

- The tender and general provisions document imposed on public works contractors issued on 20/05/1942:

This document specifies the terms and conditions applicable to public works procurement. It is an old antiquated booklet seldom used and which does not fulfill the upcoming and detailed needs of public procurement. Moreover, it includes some specifications and administrative conditions such as the mode of submitting bids or proposals and guarantees, as well as the mechanism of executing public works and setting prices.

Concerning sustainability, we notice that this document provides for the following:

- Limiting the work schedule to the regular work shift applicable as per the type of work in the place of its execution (Article 11).
- Presenting records to the administration proving that all workers employed under the contract have been paid wages in accordance with the laws currently in effect (Article 15).
- Insuring workers against occupational hazards (Article 16).
- The public administrative bidding document for the procurement of Army goods certified by Decree No. 11574 of 30/12/1968 which comprises contract award, contract execution, special bids, funding and settlement of expenses.
- The public administrative bidding document for the procurement of Army works certified by Decree No. 11573 of 30/12/1968 which comprises the mode of contracting, the execution of works and the settlement of expenses.
- The public administrative bidding document for the procurement of Internal Security Forces (ISF) goods and the bidding regulation certified by Decree No. 2868 of 16/4/1980 which comprises the drafting of the contract between the administration and the supplier, the contractual deadlines, prices, the conditions of participations in bids, the contract award, the contract execution, the contract cancellation, the revocation of the contractor and the settlement of the contract value.

These bidding documents are distinguished by lengthy provisions that explain the rules of bidding and contracting, its principles, the rights of the administration and the contractor, and among these provisions we mention the following:

- The obligation of the contractor to inform the administration of his workers, his need of labor force and all the information that concern the unemployed seeking employment.
- The contractor should meet all job applicants recommended by the administration.
- Complying with labor legislation and its regulation related to the institution's employees.
- Minimum wage is the lowest wage allowed, and this applies to all workers.
- Presentation of all necessary documents to verify that the payrolls were correctly calculated.

Along with these bidding documents, there are general bidding documents for some public institutions such as the Cooperative of civil servants.

### Special bidding documents

Every administration prepares a special bidding document that includes conditions for each type of procurement, which differs from those of other administrations, although the contents of most bidding documents are similar. Notable is the excessive detailing found within their provisions, which makes general bidding documents superfluous.

These bidding documents determine the administrative and technical conditions of the required specifications. We do not notice however explicit sustainability conditions. They do not hint at environmental conditions or aim to support economic development and growth, despite the fact that these documents state at times conditions related to the work of employees such as work time, respect of official minimum wages and compliance with social security provisions.

Based on the aforementioned, we notice in some of these bidding documents (what concerns us in our research) the following:

- The characteristics of required goods which are not related to the performance of the good or the work during its lifecycle: for example, the vehicle is described by the year of manufacture, motor capacity and number of passengers, irrespective of its fuel efficiency and emission of Carbon Dioxide, and without including preferential criteria in the Terms Of Reference (TOR).
- Preparing specifications for public works are set to determine the required work, the measurements, and the required materials and do not give any condition or arrangement relating, for example, to the provision of energy (isolation of buildings) the source of pebbles (not being from illegal quarries and crushers) and the source of wood (legal or illegal forests).
- The bidding process is based on awarding the contract to the lowest bidder. It does not take into account preferential criteria such as clean production and the prohibition of the use of environmentally-hazardous chemicals.
- These bidding documents do not express the intent to support medium and small enterprises. As a matter of fact, SMEs are sidelined by procurement authorities under the argument that they are unable to execute large contracts. For example, in the case of roads asphaltting, the special bidding documents impose on the contractor the execution of all the works for public administrations in a margin of two or three years at the amount of one or two billion Lebanese Pounds, which makes it impossible for Small and Medium Enterprises to participate in such bids
- We notice that some bidding documents at the Ministries of Finance and Agriculture and the Lebanese University contain some concessions in the execution of large contracts that allow several contractors to participate in the execution of segments of one large project.
- We also notice that all bidding documents deem mandatory the contractor's registration at the tax authority and the presentation of a quitclaim from the National Social Security Fund. However, this procedure is insufficient as the contractor could have been employing undeclared workers.

The bidding documents impose on the contractors ensuring public safety as the work



- proceeds, such as preventing the disruption of traffic flow, and erecting temporary warning signs of traffic changes, etc.

In the bidding documents of cleaning works in public administrations, there are no laws

- imposing the usage of non-chemical and environment-friendly materials, but only an explanation of the conditions and deadlines.

There are no conditions within the bidding documents imposing the utilization of recycled

- paper or paper which can be recycled.

Some bidding documents refer to international standards for the required materials or

- goods, such as adopting the French Specifications AFNOR or the US Specifications AASHTO for asphaltting works and materials for installations.

Some bidding documents mention environmental considerations, such as the bidding documents of the Ministry of Public Works related to the asphaltting of roads, and which prohibit cutting down trees unless by knowledge and approval of the administration. It also states that the contractor should comply with all environmental laws and regulations, should adopt environmental protection measures (soil, water and air) from pollutants, and should provide secure waste disposal locations

## Judicial Resolutions and Judgments

In addition to the above-mentioned administrative practices, the judiciary further sanctifies and consecrates laws and general principles and fills legislative gaps, through interpretative judgments aimed at realizing the public interest. Therefore, how does the Lebanese judiciary consider sustainability? Will such judicial authority be implemented in public procurement, or will its view remain “conservative”, limited to the implementation of fundamental principles alongside the principle of equality, thus rejecting any other criteria or specifications and considering them in violation of such principles? We shall summarize the facts as follows.

The **Court of Audit** did not have the opportunity to issue sufficient jurisprudence on the issue of sustainability in public procurement because public administrations did not significantly adopt this matter in order for the financial judiciary to take notice of it. Despite that, the court's preliminary inspection of public bids and its consultancy opinions show the availability of specific conditions related to sustainability, among which: the refusal to approve any public contracts should quitclaims from the National Social Security Fund not be submitted, as well as the court's approval of the contract if directly concluded in a public bid which grants contractors the

right to participate in segments and parts (lots) of the entire bid, thus providing the possibility for the participation of Small and Medium Enterprises. However the Court of Audit did not approve dividing bids in all cases (Opinion No. 39/2002 of April 2, 2002).

In several cases, the Court of Audit refused to overstress the qualifications that should be available in the contractors for participating in the bidding, such as imposing on the contractors the ownership of an asphalt mixer and the execution of previous works for an amount exceeding the estimated value for the current work.

Notable here is the consultative opinion of the Court of Audit, authorizing the increase of the contract value, thus enabling the contractor to cover the additional increase in minimum wages (Opinion No. 17/92 of July 9, 1992). Whereas the court did not authorize

single sourcing procurement with consumer cooperatives for supplying the materials required from governmental hospitals despite the cooperative character of these consumer entities (Opinion No. 47 of May 31, 1983).

The **Committee of Legislation and Consultations** at the Ministry of Justice pointed out, in its written argument no. 1720/89 of 30/11/1999, to the provisions related to the waste disposal included in the Environment Protection Law against pollution from hazardous wastes and hazardous materials, issued by virtue of Law No. 64/88 of 12/08/1988.

As for the Legal Judiciary, it issued judgments aiming at the preservation of the environment such as punishing the tree cutters and the polluters. In one case for instance the accused was convicted of a felony act for shipping to Lebanon poisonous chemical substances which are hazardous to public health, while being quite aware of their harmful nature (Penal Court of Mount Lebanon Judgment No. 97 of 15/04/1997).

We also note a verdict that obliged a company, which had obtained an electric power generation concession, to compensate for damages caused by polluting gaseous emissions (Single Judgment No. 224 issued in Beirut on 31/01/1955). In other judgments, some enterprises were suspended for their pollution of the air, and penal orders were issued imposing sanctions against the air polluters for damaging the environment.

In the case of dense dust emission from the chimneys of one of the factories, the judiciary considered that it was normal for smoke and dust to emanate from factories and chimneys. The question was to what extent these emanations exceeded the legally acceptable level according to approved standard measurements, and this matter required specific expertise. This decision reveals the difficulty of verifying environmental violations, given the high expertise that is needed for uncovering complex technical affairs.

**The Labor Arbitral Councils** issued decisions protecting the rights of workers in terms of wages earned, indemnities and holidays - award of the Labor Arbitral Council in Mount Lebanon of 15/04/2002 and award of the Arbitral Labor Council in North Lebanon No. 1 of 14/01/1992.

The State Consultative Council also proceeded to protect the environment by dismissing the appeal to abrogate the quarries and crushers regulating decree, on the ground of its impacts on public safety, public health, the environment, geological balances and ground-water (Decision No. 381 of 13/11/2002). Moreover, the Council sought in more than one decision to ensure the implementation of this decree and considered as illegal the sand and gravel quarries and crushers operating without license (Decision No. 25 of 13/10/1999).

In other matters, the State Consultative Council decided to compensate the citizens affected by the activities of public works contractors as a result of the collapse of soil during the works, and to prohibit the use of explosives in the quarry to prevent causing damages to neighboring estates. The State Consultative Council held the Municipality responsible for damages caused by illegally trashed waste, such as trashed municipality vehicles and private vehicles that might catch fire.

In the light of the aforementioned, Lebanese jurisprudence does not address the entire abovementioned concepts of sustainability and environmental principles despite the increasing number of these judgments and opinions. We do not find explicit efforts which urge the respect of environmental considerations in

the public sector and the contracts concluded by the administration with the private sector. We also notice the scarcity of provisions on air preservation, polluting elements, warming factors, air safety, and water resources. Nonetheless, this lack could allow further jurisprudence able to close the legal loopholes and compensate for the flaws. However,

this effort should be based on the important international conventions that Lebanon ratified, and it is expected in the future that the judiciary further elaborates the concept of environmental preservation and sustainability with the development of legislative activity in this framework.

## Impediments and Challenges

The obstacles hindering the implementation of sustainable procurement and the challenges that should be overcome are as follows:

- Non-issuance of draft laws regulating public procurement in Lebanon, despite the aging of such draft laws prepared in this framework which has a negative repercussion at all levels including sustainability.
  - Lack of willingness of the political and administrative leadership to adopt sustainable public procurement.
  - Difficulty to include all aspects of sustainability into one bid, especially that sustainability has environmental, social and economic dimensions.
  - The high up-front purchase price of sustainable goods compared to ordinary goods, although sustainable goods cost less over their lifetime, and carry lower disposal cost.
- 
- The multiplicity of laws and the absence of one unified law governing the entire public sector call for the examination of the various procurement laws applied by ministries, public institutions and municipalities in order to decide what is appropriate concerning them, i.e. the amendment of a specific law without amending the other leads to the modernization of a sector and the negligence of another.
  - Drafting legal texts without being able to pass and enforce them, turns these laws into a dead letter without effect and this is noticeable in the available environmental laws and the mentioned conditions related thereof in the bidding documents for example, as well as the laws on labor and disabled persons.

- The right of men and women to a sound environment and social justice should be guaranteed by the constitution and be mandatory in the Lebanese Constitution itself, similarly to the German Constitution which provides for the necessity to protect the flora and fauna resources with adequate legislation. Needless to mention also the difficulties and complications resulting from the arduousness of amendment that requires specific majorities from the Parliament and the Council of Ministers, and which are hard to achieve.
- Non-issuance of comprehensive legislations that regulate the environmental, labor, and economic sectors and specifically all the industrial and agricultural sectors, and the non-completion of some of them such as the implementation decrees of Environmental Protection Framework Law No. 444/2002 and upon which are based several practical applications, such as the list of projects whose environmental impact should be considered as well as their cost charges, among others.

- The adoption of social and environmental criteria in industries, services and constructions could lead to exclude disqualified contractors from Public Procurement, and thus to the deterioration of the economic situation to a certain extent.
- Lack of a general framework governing public procurement where each administration has its own procurement methods and bidding documents, which leads to a disparity in implementing the best practices in public procurement and in the procurement of similar goods or works at different prices and non-compatible specifications.
- Inadequate monitoring and managing of public procurement by one specific administration makes the modernization process more difficult.
- The absence of procurement officer related jobs in public administrations and of skilled procurement officials, and the commissioning of the task to administrative officials performing ordinary administrative tasks.

# Propositions

---

<b>Amendment of the Public Procurement Law</b>	<b>42</b>
<b>Council of Ministers Decision</b>	<b>43</b>
<b>Application of the Principles and Provisions Set Forth in the Environment Protection Law No.444/2002</b>	<b>44</b>
<b>Other Specifications and Criteria</b>	<b>45</b>







# Propositions

**Laying sound legal framework for implementing Sustainable Public Procurement (SPP) in Lebanon should start with developing new texts and/or amending exiting legislation to adapt it to SPP policy. It comes to revitalizing existing legislation, much-neglected or not fully implemented by public administrations. It must be pointed out also that it is possible to initiate public procurement for environmental purposes only, and not just include environmental issues in day-to-day procurement. This would pave the way for environmental procurement, and thus the Government would lead the private sector by example in promoting issues like reforestation, combating desertification or creating biodiversity.**

Mindful of the above-mentioned considerations, the following summary propositions can be made:

## Amendment of the Public Procurement Law

In order to incorporate the concept of sustainable procurement therein, the modernization of the law can be achieved in one of three ways:

- either through the amendment of the current Public Accounting Law,
- or by setting a special provision for sustainable procurement,
- or through the introduction of some required amendments to the draft law currently proposed to the Parliament.

The required amendments could be patterned after the French Procurement Code, in order to suit the following:

- In the needs assessment phase, it is mandatory to identify the required needs of the administration clearly and accurately, taking into account the environmental sustainability criteria.
- Defining the technical specifications of the required goods and works can be done by imposing pre-determined criteria previously identified by national or international organizations. Technical specifications can also be determined on the basis of performance in the bidding documents on the condition that it takes into account environmental criteria whenever it's possible.
- These specifications should not turn into unjustified barriers preventing the participation of qualified persons to the bids.
- It is mandatory - whenever possible - to set standards and specifications which allow persons with disabilities to participate in public bids.
- The rights of workers and employees should be respected by all participants in the execution of public bids.
- In order to ensure the widest competition and allow the participation of Small and Medium Enterprises - and with the exception of cases where it is not possible to split the contract into lots - the administration should conduct its procurement on the basis of lots (units or groups). To this end, the administration chooses the number of lots and the conditions of participation in each of them and awards the contract on the basis of each lot. The administration

can consider one bid without dividing it into lots when division would reduce competition or when it is not technically possible or that it would impact on the quality of the work required, or make it more expensive.

- Terms of Reference (TORs) could include social or economic criteria that may ensure sustainable development, social justice, economic development and environmental protection.
- Competition can be limited in some projects - or parts of them - to physically impaired persons, social assistance institutions or institutions in which a large proportion of disabled persons work and

whose condition prevents them from working normally.

- It is possible to grant incentives that ensure the above-mentioned goals, including pre-payment at a certain percentage, and reduction of the work performance guarantee (bond).
- Upon evaluating the financial proposals one must take into account the lifecycle cost of the goods and their maintenance costs.
- The competent administration must justify why environmental, social and economic criteria were not incorporated in the bidding documents, even if it is not bound by these criteria.

## Council of Ministers Decision

While waiting for the issuance of new laws and amendments, a decision could be adopted by the Council of Ministers, and be inspired by the Swiss experience: hindered by the absence of laws, it did not find any legal impediment to prevent the adoption of sustainable procurement, a situation similar to that in Lebanon. The wording of such a decision or circular could include the following:

- Environmental, social and economic criteria can be inserted (without obligation) in the TORs, upon setting the specifications of required goods or works, provided that it does not lead to a breach of equality between the bidders such as requesting a certain type or "brand".
- Potential government suppliers or contractors should respect the environmental, social and economic conditions contained in various laws and regulations, and

especially:

- The right of disabled persons to work.
- The Workers' rights as well as health and social working conditions.
- Preservation of the environment from pollution, and non-use of materials from illegal sources such as chopped trees and rocks extracted contrary to law.
- Splitting contracts on into several lots whenever possible.

In all cases, decrees issued by the Council of Ministers should clarify any detail that cannot be encompassed by law such as:

- Determining the percentage of preference given to proposals compliant with the required environmental and social conditions.
- Setting environmental criteria and specifications.
- Identifying cases that should meet the three environmental, social and economic criteria.
- Determining the possibility of splitting contracts into lots to allow the participation of Small and Medium Enterprises.
- Identifying the cases in which ignoring sustainability provisions is justified.

# Application of the Principles and Provisions Set Forth in the Environment Protection Law No.444/2002

This could be achieved via their adoption in public procurement through:

- Conducting an environmental study for the projects to be implemented, especially large-scale projects that have a significant environmental impact in terms of strategic environmental assessment and environmental impact assessment.
- Developing a legal mechanism to control environmental pollution and to identify the competence of the administration to this effect.
- Developing mechanisms to involve citizens, stakeholders and experts with environmental issues and ways of disseminating environmental information, as well as the successful implementation of the legislation and the achievement of its objectives.
- Preventing any project execution before committing to environmental standards.
- The application of fines and penalties.

## Other Specifications and Criteria

- Issuance of decrees defining environmental specifications and criteria and committing public administrations to adopt them. Such work can be done through the Lebanese Standards Institution (LIBNOR), based on the norms and standards such as ISO standards (e.g. ISO 14001 Environmental Systems Handbook). It is obvious that it is of legal and practical importance to insert pre-defined and pre-tested specifications in a clear manner in the bidding document.

- Implement the conventions ratified by Lebanon in view of their legal utility and commitment, thus in environmental, social and cultural domains, through the issuance of national legislation set out in these conventions and granting them their executive extent.
- Strict monitoring of the implementation of social security law, labor law and the law of the rights of disabled persons and other social laws.
- Developing economic and financial incentives such as tax exemptions for clean productions and for the contractors/suppliers committed to employ marginalized groups of people, in addition to rewarding contractors/suppliers who are committed to these principles with and favoring them over other bidders.

- Issuing a decree by the Council of Ministers which requires public administrations and institutions, as well as municipalities to adopt sustainability criteria in official buildings seeking to reduce carbon emissions, save energy and reduce maintenance costs, according to explicit criteria upon which buildings are evaluated. It is possible to this effect to resort to international standards adopted by other countries, such as the LEED rating system, adopted by the United States Green Building Council (USGBC). LEED is a recognized system for certifying high-performance green buildings that are less costly to operate

and maintain and have a reduced environmental footprint. It is based on allocating points to the building as a means of measuring its green levels. For instance, efficiency in energy consumption is given 17 points, sustainable sites are awarded 14 points, the efficient use of water is granted 5 points, and sources materials are granted 13 points whereas the points granted to the quality and integrity of the domestic environment of the building reach 15 points. As for the processes of innovation in design, they shall be granted 5 points, and after assessing the points of each side by the Evaluation Committee, it is calculated and the sum of points reflects the estimation of LEED and the building classification. Thus, the building that achieves a score of 39 points gets a Gold rating, and this classification means that the building achieves effects on the environment by at least 50% compared to a similar traditional building. As for the building that achieves a score of 52 points, it shall obtain the platinum rating and this rating means that the building is achieving a reduction in environmental impacts by 70% at least. Furthermore, there are international standards concerned with the concepts of sustainability in buildings such as the ISO 15392 and 21929.

That application on buildings will lead to rapid and concrete results in the framework of energy consumption (shading devices for windows and isolation for walls) and the provision of space utilization (the use of partitions made of wood or glass) and the reduction of carbon emissions, which entail an economic saving in the long term.

- Mainstreaming the use of alternative energy (concentrated solar energy) in military and civil public places where there are workers at night, for example, the imposition of photovoltaic systems and energy efficient lights in the barracks of the army and internal security forces.
  - Work on the application of modern legislation and the adoption of sustainable procurement per stages, i.e. scheduling its implementation into three stages, or more, according to market situation and the possibilities available for this application without economic disruption.
  - In order to apply the above principles, it is mandatory to establish a national agency entrusted with the responsibility of managing public sustainable procurement and monitoring its application throughout the administrations, and involved in proposing laws and regulations related thereto, on condition that the ministries of environment, finance, labor, economy and the Court of Audit are represented in this agency.
- 
- Providing audit and oversight control of public procurement by associating it to the results achieved thereof, whereby it is associated between the general financial strategy and the procurement (what has been procured how in what way and how it was managed after purchase, and at what cost). This would lead to effective and equitable public services with acceptable environmental, social and economic impacts, whilst placing a special emphasis on whole life-cycle costing, and operational costs.
- 
- Amending the laws related to organizational structures and to the general cadre of public administrations, in order to create a procurement coordinator job within this structure and utilize the required Human Resources skills and experience for each of the procurement levels with an appropriate salary scale.

A photograph of a coastal cityscape with a beach and ocean, overlaid with a teal gradient. The city buildings are visible in the background, and the ocean waves are in the foreground. The word "Conclusion" is written in white text on the left side of the image.

# Conclusion

---







# Conclusion

**The adoption by the Lebanese government of sustainable procurement policies is a pivotal shift in the Lebanese system creating new level of aspirations and investments that were not previously reckoned.**

The study and analysis of the Lebanese laws and the recount of the relevant international conventions demonstrate that the Lebanese system of legislation is not void from the fundamentals of sustainability in its three dimensions; however, the main problem lies in the proper application of the texts. The situation is even exacerbated when we impose new specifications and principles while having to respect the traditional principles of public procurement wherein equality and fair competition for all, plays a major role.

In any event, a close scrutiny and projection of the long-term costs demonstrates the negative effects of purchasing which excludes environmental and socio-economic dimensions of sustainability, and the resulting huge cost that far exceeds the increase associated with the adoption of SPP policies.

Proceeding from and building on the international initiatives and conventions related to development and environment and the implementation of the Agenda 21, requires the imposition of legal and actual measures to prevent pollution and harm to environment, water, soil, health, forest air and biodiversity, as well as, abolishing unemployment, protecting the unprivileged groups and ensuring economic development.

There is no doubt that the achievement of the foregoing objectives necessitate concerted efforts, the implementation of laws and improvement of laws to eliminate any gaps that may lead to abuses and, in addition, specifying the most effective means of achieving sustainability; all of which falls within the responsibility of the concerned ministries, in particular ministries of environment and finance, which should initiate the suggestions for approval by the Council of Ministers and eventually by the Parliament. Evidently, all this demands vigorous activities which ought to be commenced.

However, it must be emphasized that laws, while taking into consideration a certain reality aim at improving it and developing a clear mechanisms to achieve specific targets. Hence, there is a need to set-up laws that encourage sustainable production to provide what is needed without any violation to the economy. In addition, laws are to be accompanied by informing all concerned parties that sustainable production, contrary to common believe, does result in savings, development and growth.

---

The attempt to establish a sustainability process could be associated with tax exemptions and other incentives, making it necessary to examine a large and coherent body of legislation, proceeding from the social, environmental and economic standards, in order to describe sustainability in tangible measures and thus facilitate its integration in public procurement especially during the phase of tender evaluation.

In general, modern concepts precede the laws, which eventually must follow suit. Yet, before that occurs, the overseers of the law such as judges and administrative officials has a great responsibility of expanding its implementation within a framework that safeguards public interest without contradicting explicit provisions.

From a technically legal standpoint, it was evident that the application of sustainability necessitates a legal option; compulsion or choice. In other words, should the administration be compelled to implement the principles of sustainability in all its purchase or alternatively be only urged to do so. Furthermore, particular and not all dimensions of sustainability may be only adopted in certain purchases (e.g. the environmental but not economic). The new Law must, therefore, stipulate the option or combination of options that is to be followed.

With regard to decentralization, the application of sustainability should extend to include public institutions and municipalities as decentralized entities can boast of a high percentage of public procurement and, as such, have a direct impact on the environmental health, economic, and social conditions. Hence, legislation should take into consideration the status of these entities to ensure their compliance with green procurement.

Finally, there are many challenges and impediments facing the implementation of SPP, not least of which is the tardiness in adopting the legislation that governs this sector, which is still pending despite the passage of years of preparation. Nevertheless, the anticipated benefit from sustainability will press on forward to overcome all impediments attempting to find appropriate solutions to the legislations at all levels, commencing by the formulation of laws and concluding with administrative circulars and decisions to achieve the desired objectives.