



Public procurement as a driver of transition

Final report of the ISC Natural
Stone Pilot Programme

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Annex

The following documents are available at <https://www.imvoconvenanten.nl/en/trustone>:

- TruStone Initiative (2021) Handreiking maatschappelijk verantwoord inkopen natuursteen (Dutch only)
- Association for Stimulating Know-how (2020) Study of natural stone sector: Sandstone (Rajasthan) & black granite (Telangana)
- Independent risk analysis (2021) Social conditions in the natural stone sector in China



Foreword

Foreword

For the past four years, parties involved in the natural stone sector in the Netherlands and Flanders have been working to make the ISC Natural Stone Pilot Programme a success. The programme proved to be a steep learning curve for everyone involved and it had a positive impact on and changed the relationships and interdependencies between the various stakeholders.

The task that we embarked on in 2017 emerged from the negotiations concerning a multi-stakeholder IRBC agreement on natural stone underway at that time. That task was described as follows:
These pilot projects are meant to address three aspects of the Agreement and to deliver a case study or best practice that stakeholders can continue to build on. The three aspects are:

1. Sustainable procurement
2. Due diligence
3. Child labour-free production.

The Netherlands Enterprise Agency (RVO) awarded funding for the project from its Fund against Child Labour (FBK). The funding was subject to an additional task:

The results of the pilot projects must be adapted as much as possible into specific and reusable tools and resources, and the knowledge gained must be shared, including, and in particular, with other sectors that are pursuing sustainable procurement and child labour-free production through IRBC agreements.

All parties showed great willingness to cooperate and learn, and the project team managed to engage with most of the parties, and certainly the relevant ones, involved in public procurement in the natural stone supply chain and to bring them to the negotiating table. In addition, suppliers that have no connection with public procurement but do business with the construction sector, the kitchen industry or the consumer market also participated and contributed.

From the start of the project, the parties engaged in the IRBC agreement negotiations – and later, the TruStone Initiative Steering Committee – received regular reports. That was also the case for the RVO, which received reports on the budget expenditure as well. Such

reporting ensured transparency in project monitoring and allowed the stakeholders to both commit to and monitor the programme.

This report is the result of four years of cooperation. Much has been learned and set in motion. None of this would have been possible without the dedication, perseverance, curiosity and hospitality of all the contributing participants. I would like to thank a number of parties/people in particular:

Prof. Chris Jansen of VU Amsterdam, who led the expertise sessions with government authorities; the participating Dutch and Flemish authorities, trade unions and NGOs that sent representatives to these expertise sessions;

the suppliers in China and India that welcomed us and made it possible to gain the necessary expertise;

the companies in the Netherlands and Flanders that cooperated, invested their time, and helped to enable the missions to China and India;

NGOs Aravali in India and Arisa in the Netherlands, which contributed their knowledge and networks; the parties that participated in the India and China working groups (companies, government authorities and NGOs);

Liesbeth Unger (HumanRights@Work) for her commitment to due diligence and the ISC Natural Stone Team;

Myrthe Vogel at VU Amsterdam (now employed by the Ministry of the Interior) for her tireless efforts to monitor the procurement procedures, advise on procurement law and contribute to the reports;

Nikolai Bloem of the Social and Economic Council for his diligence and dedication as project secretary;

the TruStone Initiative Steering Committee for their trust and feedback;

and finally, Corina Kerkmans of the RVO, who acted as a sparring partner and liaison for the Fund against Child Labour.

Vlijmen, October 2021

Michiel Soeters
Project Manager



Final Report

1 Introduction

The pilot programme 'International Social Criteria for Natural Stone' was launched in July 2017. International Social Criteria (ISC) are intended to promote international labour standards, including the fight against forced labour, slavery, child labour and discrimination. When government authorities apply criteria for international social conditions in contracts for the supply of products, services and works, they help to ban malpractices of this kind in the procurement supply chain. Specifically, companies should comply with ISC by performing due diligence in accordance with the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines).

At the time, Dutch and Flemish industry organisations, trade unions, NGOs and government authorities were negotiating a multi-stakeholder agreement on International Responsible Business Conduct (IRBC) in the natural stone sector. The aim of the negotiating parties was to implement the process of due diligence in accordance with OECD Guidelines. Broad implementation of due diligence helps to improve the supply chain.

The negotiating parties observed that commercial enterprises that were already applying the international guidelines were not being rewarded for these efforts in procurement procedures. Contracts were almost always awarded to the lowest bid, hampering the broader introduction of due diligence.

The parties consequently commissioned a project team under the leadership of Soeters Management to set up a pilot programme. The main question to be addressed in the programme was how sustainable public procurement can encourage companies to contribute actively to reducing IRBC risks in the supply chain, in particular the risk of child labour. While the answer to this question was to be sought in the natural stone sector, it also needed to be adapted to suit other sectors where possible.






The project team broke down the main question into three sub-questions:

1. What is the legislative scope for imposing IRBC criteria in public procurement procedures?
2. How can criteria imposed in public procurement procedures realistically and effectively contribute to due diligence by

companies?

3. How can criteria imposed in public procurement procedures realistically and effectively contribute to improvements in the natural stone supply chains?

The logbook in Appendix 1 lists all of the project team’s activities. The table below shows the various components of the programme:

Theory of change		Subsidiary pilots	Actions
Contracting authorities apply ISC 		ISC subsidiary pilot: Which criteria are possible?	<ul style="list-style-type: none"> - ISC expertise sessions for contracting authorities - Monitoring of pilot procurement procedures - Knowledge team called in to support contracting authorities
Due diligence by companies 		Due diligence subsidiary pilot: Which criteria are realistic and effective?	<ul style="list-style-type: none"> - Due diligence workshops for companies - Dialogue meetings between companies and contracting authorities - Research on supply chain transparency in China
Impact on the ground		Impact subsidiary pilot: Which criteria are realistic and effective?	<ul style="list-style-type: none"> - Stakeholder dialogue with parties in India

This report describes the quest undertaken by the project team over the past four years in cooperation with a large number of contracting authorities, companies and other parties and stakeholders in the supply chain. It addresses the dilemmas involved, the new issues that arose, and the lessons learned.

1 The role of the public procurement process

The project team based its work on the theory of change that underpins the policy on IRBC multi-stakeholder agreements. In brief, the theory of change asserts that broad implementation of due diligence leads to improvements in supply chains. Additionally, the assumption is that applying International Social Criteria (ISC) is conducive to the broad implementation of due diligence. This assumption stems from the national government's policy, which considers due diligence as instrumental to implementing ISC. The IRBC agreement in the natural stone sector - the TruStone Initiative - also requires local authorities to apply ISC.

The story does not end there, however. Other factors in the procurement process can also influence undesirable situations in the supply chain. The project team has also identified these factors, basing its research on an ILO study¹ and assessing the outcomes in discussion with procurement officers and suppliers.

First of all, a stable and predictable context in which suppliers can operate requires clearly defined contract provisions. While most contracts stipulate the basics (product/quantity/price/quality/lead time), they often do not specify who is responsible for covering the cost of product changes. Financial risks that accompany changes and investments can therefore be passed on to suppliers at the front end of the supply chain, resulting in financial losses and possible consequences for workers.

Second, transparent technical specifications allow suppliers to make the right product in one go, avoiding costly failures at the expense of margins and, consequently, of working conditions. Vague or incomplete specifications may lead to unnecessary trial runs and sampling. Firm agreements regarding any failure costs resulting from vague or incomplete specifications should be part of every contract.

Third, realistic lead times play an important role in promoting compliance with criteria for social conditions. Unrealistic lead times and fines for late delivery can result in overtime for workers and/or outsourcing, with less regard for compliance with criteria for social conditions. The process of sampling and approval, for example, may

¹ ILO (2017) *Purchasing practices and working conditions in global supply chains*, in: INWORK Issue Brief No. 10

affect the total throughput time, even when the procurement concerns natural stone, and suppliers then have less time than they actually need to deliver the volume and quality requested.

Fourth, realistic prices are the key to avoiding a 'race to the bottom'. In some production countries, competition between suppliers is so fierce that they are forced to slash their prices. Rising costs, for example owing to an increase in the statutory minimum wage, may even result in products being sold below cost, a situation detrimental to the stability of the suppliers' companies and, consequently, to their employees' social welfare.

2 Applying ISC

2.1 Scope for applying ISC

The project team, procurement lawyers from VU Amsterdam and specialists from national and local government together explored the legal scope for applying ISC. Their unanimous conclusion was that the law offers scope to apply ISC in different ways in the procurement process.¹ Strikingly, the fear of overstepping legal boundaries still leads to reticence on the part of contracting authorities in some cases, even though the application of ISC has so far never resulted in legal proceedings or questions from contractors.

To capitalise on the available legal scope, it is important to involve a procurement lawyer with knowledge of ISC in the preparatory phase of a procurement procedure.

In the case of procurement for the supply of products, services and works greater than or equal to the European procurement thresholds, ISC are mandatory for procurement officers acting on behalf of the Dutch national government if the procedure involves one of the ten risk categories. This line of action is the bare minimum, however. To begin with, there is scope to include ISC in other ways, notably in selection and award criteria. Second, local authorities can take the same approach as the national government.

The success of applying ISC depends on having a clear-cut, precise description of the relevant obligations and expectations in advance, and sound and transparent assessment afterwards.

The remaining question for the project team is the following. Government authorities that do not have a self-imposed policy obligation still regard the application of International Social Criteria as a 'choice', one that is often made in advance for individual contracts. As a result, the authorities can also choose, prior to the contract award, to prioritise the theme 'circularity' over ISC and other sustainable public procurement (SPP) themes, for example. This means that contracting authorities first prioritise risks and then work on making improvements (by setting due diligence requirements). It is then possible that a contracting authority and the suppliers it has engaged to deliver natural stone for a town square contribute to circularity - which may not be the

¹It goes without saying that the basic principles of procurement law must be respected in the design and implementation of the procurement procedure. Although this report has been compiled with the greatest possible care, it does not claim to provide detailed advice on the exact scope that procurement law offers in a specific procurement procedure and the best way to take advantage of that scope in that particular context. You should therefore always consult a procurement lawyer if you wish to follow the guidelines in this report in your own contract.

most serious IRBC risk in that supply chain - while another, more relevant IRBC risk persists that has serious and irreversible consequences, for example child labour. This practice may be at odds with the OECD Guidelines. Their proper application requires prioritisation of this kind to be preceded by a thorough risk analysis. The outcomes of this assessment then determine which risks will be addressed. The severity and likelihood of the risks are the determining factors. Contracting authorities often do not base their choices on a risk analysis, however. Given all this, it is advisable to stipulate due diligence as a criterion in every procurement procedure. The outcomes of the risk analysis can then be used to determine whether the relevant parties will take action based on social criteria or on another theme, for example circularity.

2.2 Policy on applying ISC

In theory, there is enough scope to ensure that the application of ISC supports the implementation of due diligence. There is legal scope for applying ISC, and yet in practice, this scope is often left unused. Policy could be designed to address the gap between theory and practice more specifically and deliberately.

Suppliers should apply ISC by performing due diligence. At the start of the pilot programme, however, there were few actual examples of ISC being applied effectively. Where ISC were included as a contract provision, they were often not enforced. In other situations, where various award criteria were included in a most economically advantageous tender (MEAT) or a best price-quality ratio (BPQR) procedure, the ISC requirement accounted for only a small percentage of the total award criteria. Companies that acted responsibly and conducted due diligence were adversely affected and often lost out when it came to the contract award.

The project team organised dialogue meetings between companies and contracting authorities to investigate what obstacles contracting authorities face and what is needed to remove them. A report on these meetings can be found in Appendix 3.

Trade-off between price, quality and impact

Price does not appear to be an obstacle. Contracting authorities stated that if applying ISC leads to higher prices, that is not in itself a problem. Public administrators, project managers and procurement officers regard social conditions as a vitally important factor in the supply chain, and they understand that improving social conditions often comes at a price.

Of course, this does not mean that contracting authorities will automatically choose the bid that will have the biggest positive impact on the supply chain. The final choice is always a trade-off between price, quality and impact on the supply chain.

Need for certainty

One significant obstacle, however, is that the concept of due diligence does not always satisfy a contracting authority's need for certainty. Due diligence cannot guarantee that nothing will ever go wrong again in the supply chain, but it can guarantee that problems will be resolved sooner and more effectively. Many government authorities aim to procure natural stone that is entirely free of IRBC risks. Public administrators are particularly afraid of the damage their reputations could suffer if it turns out that child labour was involved in producing the natural stone used in a public building or a square.

That is why in some cases, they ask for guarantees, often in the form of a quality mark or a certification. There is, however, no guarantee that the quarrying and processing of natural stone will be free from IRBC risks, not even with certification. What contracting authorities should aim for is to get companies to contribute to improvements in international supply chains. It is important for companies to demonstrate that they have gone through a due diligence process with the necessary care and have addressed risks to the best of their ability.

Due diligence is a process that can be introduced and improved in stages, something that contracting authorities should take into account. The municipality of The Hague, for example, has adopted a longer-term policy focusing on the application of ISC. The requirements are being tightened up step by step. A policy of this kind considers market trends and developments and, at the same time, sends an important message to the market that due diligence is the standard.

Some contracting authorities seek certainty in one or more Sustainable Development Goals (SDGs). The indicators underpinning the SDGs form the assessment framework by which they evaluate their suppliers' efforts with regard to international RBC. Efforts promoting SDGs and the process of due diligence can certainly be mutually reinforcing. What is important in this regard is for due diligence to serve as a basic prerequisite for an effective, efficient and coherent contribution to achieving the SDGs.²

In other cases, contracting authorities seek certainty by avoiding natural stone imported from outside Europe. Their rationale is that natural stone sourced in Europe will have been quarried and processed under favourable conditions, making it a safe choice. But their reasoning is incorrect. First of all, such avoidance is at odds with international rules on protectionism. Second, avoidance has its limits because the European demand for natural stone exceeds the supply. Third, avoidance is undesirable because it does not encourage improvements in the supply chain and may even lead to a deterioration of conditions in the relevant countries. Fourth, Europe is not

² SER (2019) *Kansen pakken en risico's beheersen, over de samenhang tussen de SDG's en IMVO*

exempt from IRBC risks.

Organisational obstacles

The second significant obstacle to applying ISC is related to organisational embeddedness.

In many cases, the problem starts in the design stage. Procurement officers have reported that by the time they begin preparing a public procurement procedure, key decisions have sometimes already been made. For example, the architect may have specified a particular type of natural stone from a specific quarry or area. If the project involves the refurbishment of an historic building, that may be Belgian bluestone, but it may also be natural stone from a quarry (region) where child labour or other IRBC risks are known to exist.

A broad or functional description is preferable for an effective invitation to tender. It is then easier for suppliers to set themselves apart in terms of due diligence than when they are asked to deliver a specific type of stone from a specific region. For example, the municipality of Amsterdam invited tenders in which it asked for natural stone that would meet certain aesthetic criteria.

Good intentions often fail in the implementation phase. The project team monitored a number of procurement procedures. The following section describes the lessons learned from these case studies.

Rewarding early adopters?

The parties to the TruStone Initiative aspired to do more than simply remove obstacles for contracting authorities. They also considered whether it would be possible and desirable to reward the early adopters among the companies. They have already answered their own question to some extent in adopting the TruStone assessment framework.³ They do not want companies that score higher in the independent secretariat's assessment to be awarded more points in the procurement procedure. Although the assessment framework is designed to be as objective as possible, assessment always involves a certain degree of subjectivity.

The project team sees rewarding participation in a collective as a good alternative. When companies join a collective that is based on the OECD Guidelines, they are likely to be performing due diligence properly and are also likely to have more impact in the supply chain because they have joined forces for that purpose. The TruStone Initiative is a good example of this.

The Dutch Public Procurement Act does not permit the use of 'whitelists'

³ SER / Internationaal MVO (2020) *Stakeholders werken aan een verantwoorde natuursteensector*; beoordelingskader.

or 'blacklists'. Contracting authorities must as a matter of principle offer companies that perform to the same standard an equal chance of winning the contract. Participation in a multi-stakeholder agreement cannot therefore be made a strict requirement in itself. However, the invitation to tender can adopt some or all of the provisions of the agreement as requirements, with participation in the agreement serving as evidence that these requirements have been met. A contracting authority may also opt to reward 'participation in an IRBC agreement or equivalent initiative' in its selection criteria.⁴

2.3 **ISC practices in the pilot procurement procedures**

In the course of the pilot project, the participating contracting authorities were interviewed about how they put ISC into effect, who and what they need to do so, and what challenges and opportunities they see going forward. During these interviews, the project team noted a number of things in particular.⁵

Contract management is labour-intensive and often depends (too) heavily on individual employees.

The purpose of applying ISC is to encourage companies to perform due diligence and in doing so to push through improvements in the supply chain. For the contracting authority, the action required to do this centres on contract management. After all, the extent to which the due diligence process has been performed properly is determined wholly or largely after the contract has been signed.⁶

It is worth noting that ISC contract management is usually not part of regular contract management. In many cases, it is not the regular contract manager who is responsible for ISC contract management, but the employee (often a procurement officer) who made the case for adding ISC as a contract provision earlier in the procurement procedure.

It proved challenging in all cases to acquire specific information on risks in the relevant supply chain and measures to address them. Contract management is thus time-consuming and requires considerable perseverance. For example, contracting authorities are almost always

⁴ Requirements and criteria must be reasonably related to the object of the contract. It is therefore of relevance that the contracting authority's requirements have some connection with the products or services that it is purchasing, and to the relevant supply chain. This offers scope for rewarding participation in IRBC agreements, but it would be advisable for public authorities to consult a procurement lawyer when drafting the relevant requirements and criteria.

⁵ Ten contracting authorities participated in the pilot project, with a total of 13 procurement procedures. Appendix 2 lists them all. Monitoring involved reviewing the documents related to these procurements and interviewing relevant employees (usually procurement officers and contract managers) during or after the contract phase. Where an interview was not possible, monitoring involved reviewing the documents and contact with employees prior to the procurement procedure.

⁶ At present, ISC are usually included in the contract provisions (in line with the national government's ISC policy). If the contracting authority opts to apply an award or selection criterion on top of ISC (for example, by requiring bidders to perform a risk analysis or by rewarding proof of participation in a multi-stakeholder sector initiative, such as the IRBC agreement), assessment takes place during the procurement procedure.

obliged to request risk analyses and improvement plans multiple times. Moreover, in addition to the general requirements and criteria, they must often specify in more detail what they expect of contractors. That may involve designing forms and scheduling additional meetings.

The time spent on these activities is usually not factored into the organisation and staffing. As a result, contract management is often a task that an employee does 'on the side' because they feel a strong sense of motivation. This is consistent with a more general impression that ISC often have yet to be embedded in mainstream organisational processes and systems, and that their application therefore depends heavily on individuals and their personal motivation. In most cases, management and administrative officials also show little interest in ISC application and results and in communicating about these matters externally. The focus is usually on whether ISC are included in the procurement criteria and/or the contract.

Results: Specific risks and improvement measures are not readily addressed in individual contract management, but there are other positive effects (especially in the relationship with the overarching level)

Inspired by the national government's ISC policy, the vast majority of pilot projects required contractors to complete part or all of a due diligence process after the contract award.⁷ In all cases, contractors were also obliged to submit a risk analysis; in many cases, they were also asked to submit an action or improvement plan. A final report was also required in a few instances, but in the majority of the pilot projects it had been decided in advance not to require a final report owing to the short duration of the contract (often involving delivery within only a few months).⁸

A risk analysis and/or action plan was actually submitted in one third of the pilot projects. There was only one pilot in which an improvement plan was submitted. Final reports were not submitted, even in the few cases where they had been requested.⁹

In one case, failure to submit an action plan led to exclusion from the procurement procedure. In this pilot project, the action plan was one of the award criteria and had to be submitted during the procurement procedure itself. In addition, inclusion of ISC requirements led in some cases to companies joining the TruStone IRBC agreement, which also requires risk analyses and improvement plans to be submitted.

⁷ In such cases, a contract provision was inserted that was similar to the standard texts used under the national ISC policy.

⁸ Like the risk analysis and the improvement plan, the final report is part of the due diligence process outlined in the OECD Guidelines and adopted by the national government in its ISC policy. Most municipalities opt to adopt the national government's standard policy texts, but do not require companies to adhere to every element of this process in every project. The final report is often omitted, especially when the relevant contract is of short duration.

⁹ Parties participating in the TruStone Initiative must, however, submit an annual report.

The risk analyses that contracting authorities receive always provide a broad description of IRBC risks and are therefore not particularly geared towards social risks. In the latter case, the assessment is often limited to a description of general risks in the sector or the country of origin. It is, however, worth noting that several contracting authorities observed an improvement in the quality of the risk analyses when a relationship was sought with a broader context, for example when a contracting authority set the same ISC requirements in successive procurement procedures, when multiple contracting authorities set the same requirements, or when contractors joined the TruStone Initiative.

In almost all procurement procedures in which a dialogue took place, contracting authorities indicate that both they and the contractors gained more awareness, knowledge and understanding of the subject matter.

Urgent need for specific tools and external information and support, especially when it comes to assessing the risk analyses and improvement plans submitted

There is a marked need for practical customised support, first of all with respect to the inclusion of ISC in actual procurement procedures (what criteria are appropriate and meaningful within the context of a specified contract; how do we gradually raise the level of ambition in our requirements; and how do we communicate precisely what we expect from contractors?), and second with regard to performing and assessing the subsequent due diligence process (e.g. what should a risk analysis look like, when is it good enough and what do we do if it is not?).

Beyond external support, contracting authorities also stated, without exception, that they need specific and practical tools that can be applied immediately in their procurement procedures. Such tools should, in particular, help them to 1) clarify to contractors in advance what is expected of them and 2) evaluate the information provided by contractors. The information and tools now available are often considered too general in nature. Tools and support should therefore help them to adapt the general information and tools (e.g. standard texts, due diligence obligations and general knowledge of IRBC risks) to suit the own procurement process.¹⁰

In addition to support from the ISC Natural Stone Team (TIN) and the TruStone Initiative (including assessment by the TruStone secretariat, which is managed by the SER), the interviewees listed the national government's standard policy texts, the website of the Dutch Public Procurement Expertise Centre (PIANOO), sector-specific reports published by NGOs, such as 'The Dark Sites of Granite' by LIW (now Arisa), and the forms made available by the TIN and others (e.g. PIANOO's ISC Academy) as sources and tools that they currently used. They also referred to the

¹⁰ The ISC Natural Stone and TruStone team addressed this need during the pilot project.

RBC Risk Checker, cooperation with other contracting authorities and dialogue with the market (e.g. in a market consultation).¹¹

In almost all interviews, moreover, contracting authorities stressed the need for a central, external assessment, for example by the independent TruStone secretariat or through the use of a quality mark.

Uniform requirements in accordance with national policy, but organisation of ISC fragmented and differs from one contracting authority to another

Nearly all contracting authorities adhere to the national government's ISC policy in the requirements they set and in their own ISC policy (where such exists).¹² They therefore take due diligence as their starting point and often use the national government's standard texts, occasionally adapting them to their own specific context.¹³ This makes it easier for contracting authorities to share best practices, to learn from one another and even to join forces. It also ensures that the market has a better idea of where it stands, since different contracting authorities make the same demands.

The manner in which ISC are embedded in a contracting authority's organisation and policy is fragmented and varies considerably from one contracting authority to the next, however. Whether ISC are applied, by whom, and to what extent they are addressed in policy and the wider organisation are matters that often appear to have arisen organically. A broader structure for applying and monitoring ISC is often (but not always) absent, so that there is no place to embed the knowledge and experience gained, for example in the pilot projects, more broadly in policy and in the organisation.

The contracting authorities differ considerably in terms of the following: the product groups in which ISC are applied; the way in which the relevant practice was established; the extent to which it is based on policy; the extent to which there is an overarching level of coordination and sharing in practice and policy; the way in which the responsibility for ISC integration and contract management is assigned (formal agreements are rare); and finally, who takes on the responsibility for this theme.

¹¹ In the meantime, TruStone has developed additional tools, including Guides to the various steps of the due diligence process and Thematic Guides to such risks as low wages and child labour. Some of these tools are only or will only be available to affiliated companies and contracting authorities. Others are or will be publicly available on the TruStone website: www.trustone.nl.

¹² This policy assumes a contract provision that expects contractors to perform due diligence after a contract has been signed, in line with the OECD Guidelines. For standard texts and more information see the PIANOo website www.pianoo.nl/nl/themas/maatschappelijk-verantwoord-inkopen-duurzaam-inkopen/mvi-themas/internationale-sociale-2

¹³ Very often, contracting authorities opt not to require contractors to perform all the elements of the due diligence process stipulated in the national policy. For example, a contracting authority may only require a risk analysis, or a risk analysis and improvement plan, but no public final report. One common reason for this exemption is that it is often deemed impractical to require contractors to go through the entire process when the contract is for a short-term project.

Nevertheless, the participating contracting authorities all agree that their immediate reason for applying ISC when contracting for the supply of natural stone was the launch of the TruStone Initiative and the pilot programme, in some cases following criticism on the part of NGOs and political and/or government pressure.

Capacity is a more serious problem than budget in applying ISC

Although budgetary constraints were mentioned in some cases as an obstacle to taking ISC further (e.g. a lack of funding to contract external expertise or guidance), finances were usually not seen as a significant impediment. Even with a limited budget, it is often possible to hire external expertise or offer contractors an allowance to get their due diligence process on track (e.g. by including it as a provisional item in the contract).

More often, the contracting authorities cited a capacity shortage as an obstacle to implementing ISC properly. This is clearly related to the fact that the theme of ISC is generally not structurally embedded in the organisation and its policy, so that the associated responsibility is often not assigned in any official way to one or more members of staff.

Scheduling and short-term contracts curtail scope for due diligence

One factor frequently cited as curtailing the scope for integrating and implementing ISC is project scheduling (often including the supply of natural stone), with schedules often being drawn up in advance. Many interviewees gave one or more examples (related and unrelated to natural stone procurement) in which the inclusion of ISC was only possible if it did not require extra time, owing to scheduling considerations. As a result, ISC were not included in these cases, or they were included in a watered-down form. For example, in the case of short-term contracts, they often have little choice but to limit their demands to only a few elements of the due diligence process (e.g. only a risk analysis), as the short time frame of the contract does not allow for more than that. Sometimes they are able to follow up this demand with a more ambitious requirement in a subsequent contract.

It also happens that the time set aside for the due diligence process in fact turns out to be too short to undertake all the steps stipulated in the contract (in part because contractors frequently require additional explanation and encouragement).

So there is an obvious tension between short-term contracts (i.e. the majority of natural stone supplies) on the one hand and the aim of encouraging contractors to undertake a long-term process of due diligence on the other. The contract duration is often too short for contractors to complete all the elements of the due diligence process. Contracting authorities believe that the solution lies in asking contractors to join an overarching alliance, such as the TruStone Initiative. Some procurement procedures set participation in such alliances as a minimum requirement,

or reward participation as a selection or award criterion. Doing so ensures that, beyond the (often time-limited) context of the contract, contractors will eventually have to complete all the various steps of the due diligence process.¹⁴

Poor supply chain transparency and product traceability

Another frequently reported problem is the lack of transparency in the supply chain and, consequently, the poor traceability of products. Contracting authorities say that they are unable to establish with any certainty whether a product has actually been sourced from the quarry and factory identified by the contractor. In some cases, contractors report that they are unable to answer questions raised by contracting authorities because they themselves do not have enough information on the supply chain. This is less of a problem for small-scale suppliers, especially if they have built up long-term relationships with their supply chain partners.

Lack of verification and assessment tools

Related to the foregoing, and also in a broader sense, virtually all contracting authorities cite as a problem the lack of verification/assessment tools for determining the accuracy of the information submitted by contractors.

At the same time, contracting authorities that are (nevertheless) bold enough to enter into discussion and continue to ask critical questions often manage to obtain more and different information than they had anticipated. While objective verification is certainly important, it seems that boldness, a willingness to engage in dialogue and time to do so are also crucial.

Commitment on the part of administrative officials and management to the due diligence approach (instead of expecting a firm guarantee)

Interviewees mention political pressure, mandate and commitment by both public administrators and management as relevant factors for taking ISC forward. It is important here to have a commitment to and a mandate for the due diligence approach and therefore not to expect procurement officers and contractors to guarantee that the supply chain is without risk (e.g. by avoiding certain countries of origin). After all, the due diligence process starts by acknowledging that risks exist and then acting to mitigate and prevent them. Political pressure, for example because NGOs have drawn attention to ISC risks in a specific supply chain, often appears to be a necessary factor in creating the internal scope to apply ISC (and to do so seriously).

Relationship between public administration and implementation

Another important factor mentioned was the relationship between public

¹⁴ A vital part of the TruStone Initiative is the independent secretariat, managed by the SER, which assesses and supports companies' due diligence process.

administration and the implementation of ISC. Many interviewees felt that there is room there for improvement, for example by specifying the goals set for ISC at the administrative and policymaking levels. At present, ISC goals are often still vague (more so than for other SPP objectives) and therefore offer inadequate guidance and support. Other factors mentioned include the importance of awareness and guidance at the level between public administration/policymaking and implementation, i.e. the management level, which often lags behind.

Relationship between individual contract and overarching level

Another relevant relationship that interviewees identify in various ways is that between the individual contract on the one hand and the collective, overarching level on the other. In the majority of cases where the application of ISC had a positive effect on contractor behaviour, some sort of relationship was sought with that overarching level.

Examples of how contracting authorities seek to establish this relationship include:

1. having different contracting authorities set the same requirements and, when working with the same contractor, acting in close cooperation in the dialogue with that contractor during the due diligence process;
2. requiring that the contractor join the TruStone Initiative and/or attend the expertise sessions during the pilot project (e.g. by including these actions as a requirement or award or selection criterion);
3. communicating a long-term strategy to the market that makes clear that ISC will be included in similar contracts for a longer period of time (possibly with increasingly ambitious aims). This gives contractors a better idea of where they stand and makes it worth their while to invest in integrating due diligence into their business operations.

Network

All participating contracting authorities mentioned the network of fellow contracting authorities, independent experts and companies established by the TIN and TruStone and the expertise sessions organised as part of this network as an important catalyst for applying and implementing ISC. The network is a source of knowledge and best practices and a place in which they can spar with others and with one another about the best approach. In addition, the network also appears to function as a support system that encourages procurement officers, contract managers and policy officials – who often work in isolation – to explore and experiment.

3 **Contributing effectively to improvements in the supply chain**

Sometimes all an importer needs to do to make an impact is to leverage their influence on a supplier. Occasionally, a small investment can also be very effective, for example hiring a translator to help migrant workers apply for government or other benefits or insurance. Many problems are more complex, however, and require a long-term, regional approach involving various stakeholders. In such cases, a single procurement procedure - certainly one of limited duration - can do no more than initiate that approach. It was partly in this light that one of the questions raised during dialogue meetings was how - subject to the criterion of proportionality - contracting authorities can effectively help to make improvements.

The project team, contracting authorities, companies and other parties paid a working visit to China and engaged in a stakeholder dialogue with exporters from India to explore how contracting authorities and companies can contribute effectively to impact. Reports on the working visits are provided in Appendices 4 and 5. In the following, the project team offers two more general suggestions for contributing effectively to impact in the supply chain when applying ISC.

First of all, the project team advocates awarding more points in procurement procedures to importers who are in closer touch with their sources. Specifically, this means rewarding efforts to shorten supply chains by skipping or removing certain links. Many importers maintain good relationships with an agent or with factories in countries of origin. It is relatively common for IRBC risks to occur farther down in the supply chain, however, for example in and around quarries or cobble yards. The fewer links there are between the risk and the importer, the more effective an approach can be. The supplier must run risks and invest in relationships farther down in the supply chain.

In the second place, the project team is now convinced that dialogue is the best way to learn about the risks that occur in different parts of the production process and what efforts can be made to improve matters.

Dialogue makes it possible to better understand a country's culture and context and thus to better understand why risks occur and how they can be managed. Interviewees cited the example of how policies aimed

at limiting overtime for social welfare reasons can backfire and result in employees leaving the company. Quarries and factories are often closed for several months a year due to weather conditions. Employees often want to work overtime in the remaining months to earn more for themselves and their families.

Bilateral dialogue between importer and supplier can therefore be valuable. Collective dialogue may even be more productive. One of the outcomes of collective dialogue between TruStone companies and companies that export from Rajasthan, India (see Appendix 6) was that many of the risks associated with sandstone mining and processing, such as low wages, forced labour and child labour, are closely related to the informal circuit of mostly migrant workers prevalent in the region. Transparency in this case can only be improved and risks reduced through collective and regional action and, for example, by ensuring that everyone has proof of identity and a bank account.

In order to effectively contribute to improvements, it is therefore advisable for procurement procedures to encourage importers involved to enter into bilateral and/or collective dialogue, rather than to immediately focus on specific outcomes. The project team realises that this can be difficult for contracting authorities. Specific tips, such as those listed in the guidance made available at www.trustone.nl will not always suffice. Results may be disappointing.

The project team recommends that contracting authorities should therefore always offer public accountability. Clear public communication - what did you do, how did you go about it, who did you involve, why did you do it that way, what did it yield, what did we learn - shows that the contracting authority, acting in partnership with the supplier, which in turn acts in partnership with stakeholders in the supply chain, has assumed responsibility and is prepared to learn from both successes and setbacks.

4 Embedding the lessons learned

The final question the project team considered was how to embed the lessons learned in the natural stone and other sectors.

For this purpose, the team initiated a dialogue in 2021 between various policy ministries (Interior, Foreign Affairs, Economic Affairs and Climate Policy), the Dutch Public Procurement Expertise Centre (PIANOO), the Netherlands Enterprise Agency (RVO) and the project management.

As recent years have shown, the ISC Natural Stone Team (TIN) has turned out to be the engine of the flywheel, prompting municipal authorities to incorporate ISC into their requirements when inviting tenders for the supply of natural stone. Thanks to the support of the TIN, particularly in the preparatory and contracting phases, ISC were successfully applied in various direct natural stone procurement procedures and in works involving natural stone. A further important success factor is that the TIN and the TruStone Initiative have established a relationship between the individual contract (which in the case of natural stone is often also a short-term contract) and the overarching level (where there is more time and scope for long-term development).¹ An awareness of this relationship makes it possible for contracting authorities and companies to engage in a learning process and to learn from one another over a longer period of time, beyond the context of a single contract.

Discussions with representatives of other product categories indicate support for making the ISC Natural Stone Team's approach available to them.

The dialogue with ministries and implementing organisations has led to the establishment of an ISC Support Centre within the Dutch Public Procurement Expertise Centre (PIANOO), as an extension of the existing ISC Academy. The Support Centre is open to all contracting authorities in the Netherlands. It will offer the same kind of support as the ISC Natural Stone Team provided in recent years, specifically legal advice in preparing procurement procedures, as well as expertise and capacity in assessing tenders and in assisting the project team during the contract phase as it engages in dialogue about the due diligence

¹ It was possible to achieve this overarching level because, first of all, different contracting authorities opted for a similar approach and therefore learned from one another's experiences through the TIN and, second, because contracting authorities and companies were able to make use of the (overarching) support and assessment of the TruStone secretariat during the due diligence process. This made it possible for the contracting authorities and companies to engage in a continuous learning process and to learn from one another, including in the longer term and beyond the context of a single contract.

process and present or future measures.

The ISC Support Centre will seek close cooperation with existing multi-stakeholder agreements and initiatives in various product categories. The aim is to have fully integrated the support centre into the PIANOo organisation by the end of 2022.

It should be noted that financing to set up the support centre in 2022 and for its long-term operation has yet to be finalised.

5 Conclusions and recommendations

5.1 Final considerations

The Netherlands has been actively exploring the path to 'sustainable natural stone' since the early years of the present century. Initially, there was the Working Group on Sustainable Natural Stone, an informal multi-stakeholder initiative. This was later superseded by the IRBC Agreement under the aegis of the SER. That process ultimately led to the TruStone Initiative, whose participants include the Dutch and Flemish governments, Dutch and Flemish NGOs, and the Dutch and Flemish natural stone sectors.

If we have learned one thing in the past 20 years, it is that conventional 'transactional' thinking is not enough to achieve goals associated with International Social Criteria. Although it makes sense to make these goals part of the public procurement process, it is clear that procurement teams and market parties need more knowledge and a different sort of process to achieve them. So, yes, ISC are in line with procurement law, but their application requires a fundamentally different approach. This picture was reinforced during the pilot projects that were carried out in recent years. At the same time, all parties in the natural stone supply chain have become aware that a 'transitional' mindset and actions must be given equal weight alongside a transactional approach.

The transactional approach focuses on eliminating risk by means of contracts and certification, requirements and evidence and commercial interests that do not always stand to benefit from transparency. It is about eliminating risk and its basic motivation is 'certainty'.

When the aim is to mitigate social risks in international supply chains, then the idea is not only to set requirements for the product itself, but also for the way in which people manufacture it. If we, as a 'procurement party' acting across national and cultural boundaries, want people in the supply chain to change their behaviour in the long term, then we must support and promote transition.

Transition means change. Psychology teaches us that people may want to change, but do not want to *be* changed. Transition thus requires us to consider culture, language, historical connotations and the very human tendency to resist when people feel they are being ignored.

They feel ignored and neglected if the 'pain' of having to let go of familiar customs and habits is unacknowledged and if they do not feel a sense of ownership over the reality they inhabit. This goes for all the parties (people) in the supply chain, not just those in the countries of origin.

The transitional approach involves prioritising the human relationship and engaging in dialogue. That means not basing our thinking and actions on excluding risk but rather on including it. It means acknowledging, articulating what is there and jointly seeking a solution – or accepting the risk. And that requires us (the ones who procure and import) to step out of our comfort zone, take an interest in the other and earn their trust.

The people in the supply chain whom we (the procuring party) are asking to change can only truly support and embark on lasting change when they feel acknowledged and heard (and therefore feel psychologically safe). It should be noted that transition is not a unilateral process; it also means that we must be prepared to change. In other words, parties on the demand side must also be willing to change. Only then will a genuine transition come about and will supply chain partners work together towards lasting change.¹

International agreements and legislation create the frameworks and generate the momentum for change, but relying solely on these instruments is not enough. First of all, they are only effective when the parties who do the actual work are willing and able to implement them and second, such frameworks are not based on trust but on 'certainty'. There is a tendency among parties in the supply chain to probe the boundaries of the permissible. As a result, these frameworks are primarily 'transactional' and ignore the human relationship necessary to achieve a lasting transition. They provide a framework, but do not automatically lead to change.

The main conclusion that we have drawn from the natural stone pilot projects is therefore that we must pursue a policy focusing on 'transition' if we are to truly address risks related to International Social Criteria:

- One crucial condition is to take 'due diligence' as the starting point - and that is the current policy - and not to exclude risks in advance

¹ There may also come a point where it is no longer possible to include risks. According to the OECD Guidelines, a company may disengage with a supplier as a last resort after attempts at risk mitigation have failed or where the company deems risk mitigation not feasible or the adverse impact unacceptable.

by requiring certification or by enforcing a zero-tolerance policy. In many cases, it will be necessary to relate the individual contract to the overarching level, especially for short-term contracts.

- An additional important success factor is that the TIN and TruStone have created a relationship between the individual contract (which in the case of natural stone is often also a short-term contract) and the overarching level (where there is more time and scope for long-term development). An awareness of this relationship makes it possible for contracting authorities and companies to engage in a learning process and to learn from one another over a longer period of time, beyond the context of a single contract.

A transition cannot happen without an underlying transaction. Incidentally, there are certainly improvements to be made in the design of the transaction as well, by introducing measures in the procurement process to prevent pressure 'farther down' in the chain; see Chapter 1.

5.2 **Recommendations for national government**

Using public procurement to drive transition in the supply chain requires the national government to:

1. continue and reinforce the current policy that takes due diligence as the starting point, the first step towards acknowledging and including risks. The due diligence process calls for dialogue throughout the supply chain about risks, causes and the possibility of mitigation. Due diligence is the rule and not simply one option in a menu.
2. commit to using dialogue as a structural element of IRBC policy and to applying International Social Criteria. To do that, it must:
 - take control to facilitate the dialogue;
 - invest in learning about dialogue and in leadership development to create psychological safety in that dialogue;
 - invest in improving knowledge about due diligence and dialogue in a multi-stakeholder context (government, knowledge institutes, parties to the agreement, NGOs and the business community);
 - promote dialogue at various levels: at the overarching level of agreements, at the level of individual companies and their suppliers, and within the context of procurement procedures.
3. make an active effort to share knowledge about specific supply chains and to make sector-specific expertise available on due diligence, dialogue and proactive support for the same when

assisting contracting authorities in applying international RBC and ISC.

4. commit to providing pertinent, practical (and therefore, where necessary, sector-specific) knowledge, guidelines and tools so as to assist procurement officers and contract managers in performing due diligence in the context of a contract *and*, also in that context, to help them establish a meaningful and realistic relationship with overarching levels, such as multi-stakeholder agreement structures.
5. to structurally embed the lessons learned in the pilot projects. A support centre will be set up for this purpose in the autumn of 2021 as part of PIANOo. This ISC Support Centre will be an extension of the ISC Academy and will therefore combine the aims referred to above. As yet, however, there is no funding available to make this service centre a permanent part of PIANOo's operations beyond the pilot phase.
6. invest in structural networking, especially for contract managers.
7. beyond procurement officers and contract managers, inform commissioning bodies and public administrators about the transitional IRBC and ISC policy and good practices and encourage them to identify specific objectives for ISC and to monitor the results and share them transparently.

5.3 **Recommendations for contracting authorities**

Using public procurement to drive transition in the supply chain requires contracting authorities to:

1. actively inform all employees involved in public procurement about the transitional policy on International Social Criteria and the training and support available, and to see that they are trained to make the right choices and take steps to prevent operational and financial 'pressure' in the supply chain when preparing and organising a procurement procedure.
2. use the due diligence process as the starting point, regardless of country of origin. After all, the risk of undesirable (social) situations exists in the European Union too. This also means that

the solution is not to simply avoid supplies of natural stone from 'traditional' risk countries and only source 'European'.

3. ensure organisation-wide embeddedness, standardised processes and systems, and a policy of and commitment to due diligence at administrative and management levels. What is also relevant here is to set more specific goals for applying and monitoring ISC at those levels.
4. make time, expertise, tools and hands-on support available with a view to assisting contract managers in obtaining and assessing actual risk analyses and action plans. This means, among other things, that capacity must be freed up for contract management and monitoring and that ISC contract management must be taken into account in advance when scheduling the timetable for the procurement procedure.
5. set realistic goals appropriate to the context of the specific contract and to trends and developments in the relevant market (e.g. by organising sector-specific market consultations). This means managing expectations regarding results within the context of short-term contracts, and identifying achievable steps in that context. It also means having an overarching long-term strategy that is communicated to the market and that gradually (in successive procurement procedures) requires the market to make the same or an incrementally greater effort in terms of ISC and due diligence, for example by first requiring only a risk analysis and subsequent discussion and then, in the following contract, also requiring an action plan and a public report on the risks identified and measures adopted.
6. reinforce the relationship between individual contracts and the overarching level, for example in the form of collective initiatives such as IRBC agreements. To this end, determine what can be done at which level to encourage due diligence and establish a clear relationship between the two levels, so that they are mutually reinforcing. It is possible to create a relationship between individual contracts and the overarching level by, for example, rewarding suppliers for participating in an IRBC agreement, aligning contract provisions with that agreement's requirements and criteria, seeking to partner with other

contracting authorities in adopting the same requirements, and potentially joining forces in assessing the due diligence process, but also by having the organisation define a long-term strategy for successive contracts that is then communicated clearly to the market.

7. not pursue procurement in countries where there is 'no' or 'less' risk (disengagement), as this would only perpetuate or even amplify risks. Instead, focus on supply chain transparency (how is the supply chain structured and what risks are associated with the various links in the chain) and on achieving practical and realistic improvements within it. Communicate this approach and its purpose to the market in no uncertain terms.
8. link any targets related to the Sustainable Development Goals (SDGs) with due diligence results without making the SDGs a substitute for due diligence. This also means that instead of focusing on a single SDG prior to a procurement procedure, due diligence is taken as the starting point, potentially contributing to progress on several SDGs.
9. ensure that contracting authorities always account publicly for their actions. Clear public communication - what did you do, how did you go about it, who did you involve, why did you do it that way, what did it yield, what did we learn - shows that the contracting authority, acting in partnership with the supplier, which in turn acts in partnership with stakeholders in the supply chain, has assumed responsibility and is prepared to learn from both successes and setbacks.

5.4 Recommendations for procurement procedures

In addition to the recommendations for procurement policy listed in section 5.3, the following recommendations and guidelines regarding the transitional approach to ISC pertain to the procurement procedure itself²:

Preparation:

- Decide in advance who will perform the assessment or the contract management and involve this employee in preparing the

² See www.trustone.nl for the guidance for purchasers, with more specific instructions and example texts.

documents.

- Only include requirements that you can and wish to enforce in the contract phase.
- Gain an initial understanding of the supply chain, the main risks in that chain and the extent to which the market is already working to improve matters. Do this by, for example, consulting the secretariat of an IRBC agreement, NGOs, the RBC Risk Checker and other contracting authorities, and ideally engage in discussions with the market beforehand (e.g. in a market consultation) about the way in which ISC risks in the supply chain are dealt with and what follow-up steps would be feasible during the term of the contract.
- If an International RBC agreement has been concluded in the sector, the secretariat can give you a good idea of the stage participating companies have reached and what a contracting authority can expect from the market parties.
- Do not ask for a no-risk guarantee, but insist on transparency and due diligence, regardless of the product's origin. Use the national government's standard texts, if necessary adapting them to the lead time and scope of the contract in question.
- In the context of the specific contract, determine which ISC and due diligence expectations are feasible (for both the contractor and the procurement officer/contract manager) and, where possible, relate this individual contract to the overarching level. You can do this, for example, by rewarding suppliers for participating in an IRBC agreement or aligning with that agreement's requirements and criteria, by seeking to partner with other contracting authorities in adopting the same requirements, and potentially joining forces in assessing the due diligence process or by defining a long-term strategy for successive contracts that you then communicate clearly to the market.
- Be clear and consistent in communicating to the market that you are applying ISC and for what purpose. For example, besides adding a relevant clause to contracts, include an explanatory note in your procurement documents and integrate the theme into other communication efforts, such as your market consultations.
- Make a conscious decision about how to include ISC in your procurement procedures. Performance criteria (contract provisions) are a good way to specify requirements that must be met and assessed after the contract is signed, during the term of the contract. This gives the winning contractor and you more time for implementation, but does not reward early adopters by giving them a better chance of securing the contract during the procurement procedure. If you wish to reward early adopters, you can choose to

include ISC in your award or selection criteria in addition to a performance condition.

Selection:

- Various selection criteria, grounds for exclusion and eligibility requirements can be used to help manage the due diligence process in business operations and compliance with international social and environmental standards in the supply chain.³ In this phase, selection criteria are a particularly good way of rewarding companies for the way in which they have performed due diligence in their business operations. To assess the quality of that performance, you can incorporate some or all items in the description and checklist on the SER website into your selection criteria.⁴
- The Dutch Procurement Act does not permit the use of 'whitelists' or 'blacklists'. As a matter of principle, you must offer companies that perform to the same standard an equal chance of winning the contract. Participation in a multi-stakeholder agreement cannot be set as a strict prerequisite in itself, in other words. However, some or all of the provisions of the agreement can be adopted as requirements, with participation in the agreement serving as evidence that these requirements have been met. You may also opt to reward 'participation in an IRBC agreement or equivalent initiative' in your selection criteria.

Award:

- Award criteria can also be used to reward companies that deal properly with transparency and ISC risk management in the product supply chain. The default award criterion is best price-quality ratio (BPQR), unless a contracting authority explains in the procurement document why the award will be based on the lowest price or the lowest estimated cost based on a cost-effectiveness analysis. Subsidiary award criteria should be defined in the case of BPQR. You can use subsidiary award criteria to promote ISC as well. For example, you can reward parties that get high marks for ISC by offering them a better chance of winning the contract. As with selection criteria, in this phase you should only require what suppliers can realistically do at the time and you must also be prepared to prioritise the subsidiary award criterion to the necessary

³ It goes without saying that the principles and basic premises of procurement law must be taken into account when defining requirements and criteria. Although this report has been prepared with the greatest possible care, it does not lend itself to detailed advice about the exact scope that procurement law offers in a specific procurement procedure and the best way to leverage that scope in a specific context. You should therefore always consult a procurement lawyer before applying the recommendations made in this report in your own contract.

⁴ See IRBC risk management | SER and Checklist items | SER

degree. You can do this, for example, by requiring suppliers to submit an initial risk analysis of some or all of their product supply chain and/or a due diligence action plan and assessing its quality, if necessary with the assistance of an external expert or NGO. Here, too, you can borrow from the description and checklist on the SER website.⁵ What is realistic depends as well on how mature the relevant market is and on the time available for parties to do what is required of them.

- An important aspect of BPQR is for quality and price to be well balanced. There are no legal rules regarding the relative weight that a contracting authority must assign to the various criteria. It is therefore permissible to prioritise social criteria over the price criterion, for example a ratio of 80/20. Even so, the criteria themselves and the weighting factors assigned to each must be clear in advance and be in reasonable proportion to the object of the contract. It is advisable in that context to clarify in advance that ISC are an important part of the contract (and, if such exists, the policy).

Performance criteria / contract provisions

- Draw attention to ISC in regular communication with the contractor, for example during a kick-off meeting.
- Use the standard texts included as appendices in the guidance for procurement officers (if necessary adapted to the context of your contract during the preparation phase) and refer to the due diligence guidance for companies at <https://www.pianoo.nl/nl/document/14142/handreiking-due-diligence-voor-bedrijven>.
- Where appropriate, incorporate award and/or selection criteria into the contract provisions. For example, if a supplier has submitted an action plan during the award phase, stipulate in the contract that this plan must be implemented.
- Specify what is expected from contractors, for instance by sharing an example of a risk analysis and action plan and citing examples of possible risks and improvement measures. Make use of external expertise, for example provided by an NGO and the secretariat of an IRBC agreement, or of the information on due diligence available on the PIANOo⁶ and SER⁷ websites.
- Using a form/list of specific questions for the risk analysis and action plan helps to streamline the approach. If necessary, ask an IRBC agreement secretariat or PIANOo about available tools.
- The obligations included in this context are firm contractual obligations. They should therefore also be incorporated as such as KPIs in your contract management system, with appropriate action

⁵ See IRBC risk management | SER and Checklist items | SER

⁶ Fase 3: Uitvoeren inkoopopdracht internationale sociale voorwaarden | PIANOo Dutch Public Procurement Expertise Centre

⁷ IRBC risk management | SER and Checklist items | SER

being taken in the event of non-compliance.

- A penalty clause or a bank guarantee can be a powerful motivator.
- Ensure that you have some knowledge of the supply chain and the specific risks in the relevant country of origin; if necessary, seek advice from an IRBC agreement secretariat, an NGO, the RBC Risk Checker, other contracting authorities, and the market itself. Consider identifying the main risks that have been identified and that the contractor must in any event address in the documents or during a kick-off meeting.
- Do not blindly trust a certification or an audit report but talk to the supplier, ask questions and require them to submit their own risk analysis. The certification can form part of the risk analysis.
- Where appropriate, seek guidance from an external expert when conducting the due diligence dialogue and share lessons learned with colleagues and other contracting authorities.

See www.trustone.nl for the guidance for procurement officers, with more specific instructions and example texts.



Appendices

Log book

Start of project

In the first phase of the project, the project partners drafted the project plan and applied for funding from the Fund against Child Labour (FBK).

The funding application was submitted on 28 June 2017.

The funding decision was issued on 19 September 2017, under number FBK 17 SP1.

The project commenced on 1 September 2017.

Meetings

- Expertise session 1 (Rabobank Utrecht) on 7 December 2017
- Contribution to the PIANOo SPP Conference on 14 December 2017
- Expertise session 2 (RVO Utrecht) on 1 February 2018
- Expertise session 3 (RVO Utrecht) on 13 March 2018
- Due Diligence Workshop on 23 March 2018
- Dialogue session 1 (Vught) on 6 July 2018
- Working group 'ISC Natural Stone Team' (TIN) established 24 October 2018
- Expertise session 4 (Amersfoort) on 9 November 2018
- Dialogue session 2 (Amersfoort) on 9 November 2018
- Contribution to PIANOo SPP conference on 6 December 2018
- Start of working group on China on 5 April 2019
- Start of working group on India on 5 April 2019
- Dialogue sessions with India (online) - April and May 2021

Research trips

- Carrières du Hainaut (Belgium) on 22 April 2019
- China - 7-15 November 2019
- India - 1-7 March 2020

External research

- Research on India by ASK - December 2019 - February 2020
- Research on China by independent research organisation - February 2020 - July 2020

Reports

The following reports were submitted to the steering committee and the funding body with a view to tracking the progress of the pilot projects (in terms of content and financially):

- Progress reports
 - No 1 - 20 October 2017
 - No 2 - 12 December 2017
 - No 3 - 23 April 2018
 - No 4 - 5 December 2018
 - No 5 - 27 March 2019

- No 6 - 25 May 2020
 - Annual reports
 - November 2018 – annual report sent to RVO and steering committee
 - November 2019 – annual report sent to RVO and steering committee
 - Final report
 - October 2020 – preliminary findings; replaces annual report
 - October 2021 – final report, 'Public procurement as a driver of transition'

List of pilot project public procurement procedures

ISC were incorporated into the following public procurement procedures. The ISC Natural Stone Team (TIN) provided support in about half of these procedures.

Contracting authority	Year	Project	Supply / Works	Procurement procedure	Type of requirement / criterion
Breda	2018	Wilhelminastraat redevelopment	Supply	MPT	CS
Leusden	2018	Leusden town centre	Works, construction team	MPT	IC
The Hague*	2019	The Hague World Forum	Supply	MPT	IC (notional discount of 50k)
The Hague*	2019	Another component of the same project	Supply	MPT	IC, idem
Amsterdam I	2017	Amstel railway station forecourt	Works	EP Public Proc	EIS
Amsterdam II	2018	De Nes redesign	Works	EP Public Proc	CS
Amsterdam III ROK	2020	Citywide procurement of natural stone, ROK	Supply (ROK)	EP Competitive with Neg, ROK	CS + t&c mini-competition
Rotterdam	2019	Seating units on Coolsingel	Supply	MPT	CS
Leiden*	2019	Rapid transit City centre route	Supply	MPT	CS
Groningen*	2019	Grote Markt	Works, construction team	MPT	IC
Groningen*	2021	New bus route-Turfsingel bus stops	Works		EIS and CS
Venlo*	2020	Keulsepoort redevelopment	Supply	Nat PP	CS
Nijmegen*	2021	Top of Burchtstraat (Hoogstraat)	Works	MPT	IC and CS & market consultation

Legend:

MPT = Multiple Private Tenders

EP Public Proc = EU Procurement via Public Procurement

EP Competitive with Neg. = EP Competitive Procedure with Negotiation

Nat PP = National procurement procedure

ROK = National Guidelines for the design of works

CS = conventional specifications

IC = integrated contract

* = TIN deployed

Lessons learned during the dialogue session between companies and contracting authorities

A dialogue session was organised in November 2018 between Dutch and Flemish suppliers of natural stone and contracting authorities. The session took place as part of the Natural Stone Sustainable Public Procurement (SPP) pilot projects. The participants discussed what they needed as a group to improve social conditions in the natural stone supply chain.

The discussions revealed that there is no 'holy grail'. Both contracting authorities and suppliers see the process of improving social conditions in the supply chain as a learning process that requires constant effort and the capacity to learn. It would be going too far to report the dialogue results in detail, given that the process of the dialogue itself, developing a common language, and building trust are at least as important as the actual outcome. We have therefore chosen ten relevant points from those raised during the dialogue and intend to use them as a springboard for the follow-up. And there will certainly be a follow-up - the parties were far from finished talking.

1. Companies should know where their products come from and address risks to the best of their ability

Within the context of International Responsible Business Conduct (International RBC), due diligence refers to an ongoing process in which companies identify, prevent and reduce the actual and potential adverse impact of their own activities or business relationships in the production or supply chain and account for how they deal with that adverse impact (and risks thereof). The term 'adverse impact' refers to such issues as child labour, exploitation of employees or environmental damage in which buyers in the Netherlands are implicated through their international supply chains.

In performing due diligence, the emphasis is therefore not on the risks posed to the company itself but on the rights of stakeholders and the actual and potential adverse impact on them. Examples of stakeholders are company employees, workers employed at production sites, the

environment, and local communities.

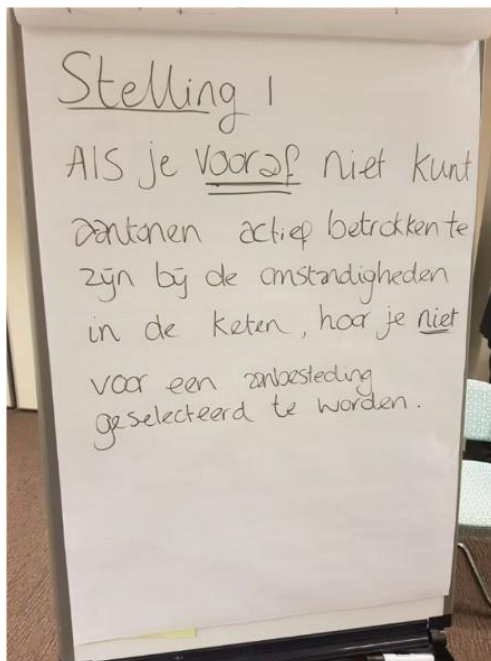
2. Due diligence is context-specific

Both companies and contracting authorities wondered whether it was not possible to agree on a single standard for due diligence. Companies, however, differ in terms of size, the nature of the product they sell or their role in the supply chain. Accordingly, there is no universal, one-size-fits-all format for due diligence. Due diligence is a context-specific process, in other words.

Nevertheless, there are guides, a due diligence template for companies, standard texts for specifications and a 'roadmap' for contracting authorities. These are currently being trialled as part of the pilot programme. Such tools may in any event lead to more uniformity in applying the International Social Criteria (ISC).

3. Contracting authorities and their suppliers share responsibility for the supply chain

Companies are responsible for conditions in the supply chain, but so are contracting authorities.



Public authorities are prominent buyers of natural stone, and it is therefore very important that they practise Sustainable Public Procurement. Public authorities can do this by applying ISC in the procurement of natural stone. In reality, contracting authorities do not always apply ISC or do not apply them in full when procuring natural stone. They often award contracts to the lowest bidder. Companies therefore have little incentive to work towards improving social conditions in the supply chain.

At present, the national government is applying international social Criteria as special terms and conditions of performance. This is the minimum, however, and scope remains for including ISC in the selection and award criteria as well. That also applies in the case of local authorities.

4. Contracting authorities need to show backbone

Many government authorities aim to procure natural stone that is entirely free of IRBC risks. Public administrators are particularly afraid of the damage reputations will suffer if it turns out that child labour was involved in producing the natural stone used in a public building or square. There is, however, no guarantee that natural stone will be free from IRBC risks, not even with certification.

It is important for companies to demonstrate that they have gone through a due diligence process with the necessary care, have prioritised their risks in dialogue with their stakeholders, and have addressed prioritised risks to the best of their ability. Contracting authorities need to show backbone when firm guarantees cannot be provided. One suggestion was that the contracting authority should not select the supplier with the lowest risk, but rather the supplier that presented the most ambitious improvement plan.

5. Contracting authorities should not only ask for action on ISC but also enforce their demand

To ensure that companies that do business responsibly are also rewarded for their efforts in procurement procedures, it is important that ISC should play a role, preferably as early as the tendering or award stage. Contracting authorities should not only ask companies to take action on ISC, as this can lead to 'theoretical sales pitches' or 'castles in the air'. They must also check during the contract period that the supplier is in fact living up to the agreements made. Procurement officers should discuss roles and responsibilities with the contract

manager in advance, so that international social criteria are also properly safeguarded during contract performance.

6. Contracting authorities can outsource verification

Many contracting authorities struggle with verification in the procurement phase and monitoring during the contract phase. Participants observe that national, provincial and local authorities lack the capacity and knowledge to be able to assess and verify everything themselves. Specifically in the case of natural stone, they have limited knowledge of the supply chains and associated risks.

It is particularly difficult in the procurement phase to make a quick assessment based on external information, and in the contract phase – depending on the scope of the work or the supply – the time available to fulfil and review contractual obligations may be limited.

Verification and audits can also be outsourced to organisations – such as Electronic Watch in the electronics sector – or carried out jointly by several contracting authorities, as is done in Sweden. There may be a role here for the ISC Natural Stone Team, set up within the framework of the pilot project. That role will be examined in the months ahead.

7. Do not pass on the cost of changes to the supply chain

The public procurement market for (works using) natural stone has been subject to fierce competition over the past ten years owing to dwindling demand and limited budgets. This has led to government authorities wanting to buy natural stone as cheaply as possible and suppliers vying to win contracts, sometimes by submitting unrealistic bids.

The ensuing price war had its biggest impact lower down in the supply chain. There are two dimensions to this 'race to the bottom': on the one hand, the impact on bidders that feel forced to offer an unrealistic price, resulting in the loss of expertise and jobs in the Netherlands, and, on the other hand, the shifting of adverse impacts to earlier links in the chain. In the case of the natural stone supply chain, those links can be found mainly in Asia.

Clearly defined contractual terms and efforts to firm up partnerships and alliances as much as possible can result in a stable and predictable context in which suppliers can operate.

Transparent technical specifications allow suppliers to make the right product in one go, avoiding costly failures at the expense of margins and, consequently, of working conditions. Firm agreements regarding any failure costs resulting from vague or incomplete specifications should be part of every contract.

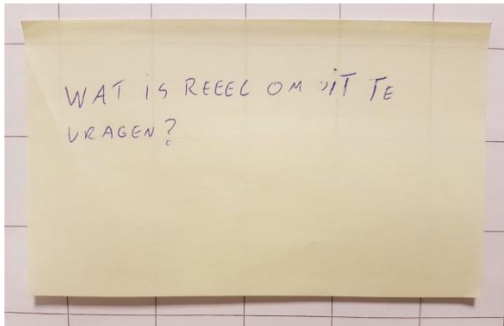
Timely procurement and realistic lead times, where there is enough scope for sampling without adding extra pressure, can help prevent excessive overtime for workers. If the specifications are altered nevertheless, there must be firm agreements with suppliers about which party is to bear the cost of the changes and about amended lead times and sampling. There is also a need for clear agreements with suppliers regarding either compensation for any increase in costs during the contract term, or a sufficient margin to cover this.

Participants noted that it is not so difficult to agree on the basic principles, but actually making the arrangements and agreeing on how the costs are to be shared will be difficult. Asking critical questions will be a good place to start, in any event.

8. The implementation of due diligence involves a learning process

Participants pointed out a number of difficulties in performing due diligence:

- In quarries, it is often difficult, amidst all the rubble and blocks of stone, to tell where one company begins and another ends.
- The trading companies are the most important link in the chain for foreign customers. They have an export licence and employ English-speaking staff who maintain contacts with foreign customers, so they are the channel for most exports.
- Large orders are often split between several factories. Many factories depend entirely on these trading companies, and factories are often pitted against each other to gain a price advantage.
- Many natural stone suppliers buy natural stone from European importers. Various importers are reluctant to disclose their suppliers for reasons of competition.



That is why actually performing due diligence often involves a learning process. Both companies and contracting authorities are advised to bear in mind that the introduction of due diligence will take some time. Some municipal authorities do that by increasing their requirements gradually with each new procurement procedure.

9. Leave high-risk countries or help to make improvements?

Contracting authorities or suppliers would sometimes prefer to avoid importing natural stone from outside Europe. Their rationale is that natural stone sourced in Europe will have been produced under favourable conditions, making it a safe choice. Several arguments can be made against this line of reasoning. First of all, such avoidance is at odds with international rules on protectionism. Second, avoidance has its limits because the demand for natural stone exceeds the supply in Europe. Third, avoidance is undesirable because it does not encourage improvements in the supply chain and may even lead to a deterioration of conditions in the relevant countries.

The due diligence process allows companies to take a structured approach to addressing the risks of adverse impacts on human rights, working conditions, the environment and other areas and to help make improvements in the supply chain in this way. It is therefore generally in the interests of workers and other stakeholders for the commercial relationship to continue when serious risks come to light.

If the relevant risks are serious and would have irreversible consequences, the relationship can be suspended temporarily while mitigation efforts are under way. The final resort would be to end the relationship if attempts at risk mitigation have failed or where risk mitigation is deemed not feasible. Participants pointed out that when companies are deciding whether to end a commercial relationship, they should bear in mind the possible adverse socio-economic impacts (e.g. job losses) of doing so.

Concluding remarks

The dialogue session showed that it is useful for stakeholders to talk to one another beyond any specific procurement procedures and projects, to invest time in understanding one another and to seek common denominators and a basis for new approaches. The fact that a number of large municipalities and relevant suppliers attended the session also says a great deal about their willingness to enter into dialogue.

The pilot programme will continue by pursuing initiatives aimed at supporting both contracting authorities and companies and by further promoting dialogue. A pilot project will also be launched in a production country, the aim of which is to learn together and to track the process all the way back to the quarry and processing site, as well as to investigate and discuss what parties, as responsible actors, can do to improve and monitor the on-site situation.

Lessons learned during the working visit to China

A working group on China was set up in 2018. The participating companies and organisations are listed in Appendix 7. The aim of the working group was for both companies and contracting authorities to learn what can realistically be expected of the former's due diligence efforts in China and how these expectations can be incorporated into public procurement specifications. A delegation from the working group, consisting of representatives of natural stone suppliers and contracting authorities, visited quarries and factories in Shandong and Fujian in November 2019. After the visit, an independent research organisation performed a risk analysis. Its report can be found on the TruStone website.

1. Growing interest in RBC in China

An in-depth dialogue session regarding the situation in China took place at the Netherlands Embassy in Beijing. The Deputy Ambassador and one of the Embassy's economic experts held extensive talks with the delegation, which also included a Chinese representative from a natural stone company and a Chinese expert on the natural stone industry. The discussion focused on the trends and developments that are rapidly transforming the natural stone sector in China.

The dialogue session revealed that, in general, interest in Responsible Business Conduct (RBC) has increased in China in recent years. New legislation and regulations have been adopted relevant to RBC, for example in such areas as labour law, environmental protection and social welfare provisions. Nevertheless, neither regulations nor practices are always in line with international standards as laid down in the ILO conventions. In addition, the application, scope and enforcement of RBC rules and policies can vary greatly from region to region. Implementation of RBC is generally further advanced in the more developed areas of China, such as Shandong and Fujian, than in the western part of the country. The information furnished by the Embassy was corroborated and expanded upon several times in discussions and observations that took place throughout the delegation's stay in China.

2. Enforcement of environmental regulations is very strict and at times inconsistent

A few years ago, the Chinese national government decreed that all natural stone companies must have a licence to operate. To obtain that

licence, companies must meet strict safety and environmental standards. Many existing companies failed to obtain the licence, and it is also very difficult for new companies to qualify. Several sources reported unlicensed businesses that were suddenly closed down (see illustration 1). Whether the law is enforced and how strictly appears to depend on local and/or provincial authorities.

Factory owners told us that environmental considerations are not the only factor. Provincial authorities are also focused on the added value (i.e. tax revenues) associated with regional economic activity. The natural stone industry is rapidly losing out to high-tech knowledge work in that respect. The authorities are not always transparent or consistent in their actions, leading to considerable uncertainty for the owners and employees of production sites.



Illustration 1 – A closed quarry near Jinjiang in Fujian Province

3. Trading companies are a key factor

The trading companies are the most important link in the supply chain for many foreign customers. Such companies have an export licence and employ English-speaking staff, making them the obvious channel for most exports. They play a key role in the supply chain. They place orders from foreign customers with production companies. They often place larger orders with a few different factories, which in turn process stone from several different quarries. In addition to a sales team, trading companies employ inspectors who check the quality of the finished product in the factories.

4. Factories are often attentive to safety and the environment

The trading companies need factories to do the processing. There are many thousands of factories in the Xiamen region. Blocks of natural stone are cut into slabs there, or in some cases turned into finished products, such as tombstones or kitchen countertops. The factories sell products destined for the domestic market themselves, but exports are usually handled by the trading companies. Large factories, however, often have their own export licence and do not work through a trading company in that case. The delegation visited various factories and found that they had modern equipment (illustration 2), were very attentive to employee safety and dust control (using water and fogging systems, fans and water walls), and used recycled water, sometimes with the help of a modern waste water treatment system.



Illustration 2 – A factory that saws blocks of stone into slabs

5. The quarries that the delegation visited use modern equipment

There are thousands of quarries in China supplying natural stone in a wide variety of colours and textures (see illustration 3). They are usually located well away from urban areas. Quarries in the Fujian region, however, were often situated close to urban centres and many have been shut down by government order in recent years.

Most quarries, certainly the very large ones, have several quarrying companies operating side by side. These companies often own or operate part of the quarry. Many quarries are located in regions where winters can be harsh and operations are only possible for a certain period of the year. The quarries that the delegation visited were

industrial-scale operations (surface mining) using modern equipment, where workers tended to wear protective clothing (helmets, safety shoes).



Illustration 3 – A quarry in Shandong

6. Brokers account for some of the trade

As our delegation found out, there are brokers in the quarries who approach delegations from the West hoping to act as their agents. The advantage is that a broker not only arranges the purchase but also the transport and export. The disadvantage is that it is more difficult to trace the origin of the stone. Brokers are not tied to any particular quarry and can source stone from anywhere. They may be reluctant to reveal their sources.

7. Trade in natural stone marketplaces is often not transparent

Natural stone markets selling blocks, slabs and finished products can be found in various regions of China. The largest markets are in Xiamen and environs. There are hundreds of shops there, ranging from small to

very large, that sell semi-finished (slabs) or finished stone products. Some quarries in the interior rent shop premises there to sell their stone. In other cases, however, the products may also be supplied by agents or come from outside China, making it difficult to establish where the stone has been quarried and processed.

There are also block markets near the natural stone markets that sell raw material from all over the world (see illustration 4). These are often located in or near ports to make shipping relatively easy to arrange. The blocks are offered for sale by brokers. Based on discussions during its visit, the delegation's impression is that even when brokers know where the stone was quarried, they are not always prepared to reveal the source.



Illustration 4 – A stone block market in Shuitou

8. The best way to take responsibility is to enter into partnership with suppliers

To truly assume responsibility for conditions in the supply chain as laid down in the UN and OECD international guidelines, companies are advised to enter into a long-term partnership with a trading company, factory or possibly a quarry. This approach offers the clearest path towards analysing the supply chain and contributing to improvements. The delegation found that once a relationship of trust has been established with a Chinese partner, few subjects are taboo. That is a good basis for performing a proper risk analysis and drawing up a plan for possible improvements.

It is more difficult to assume responsibility for what happens in the supply chain when procuring natural stone from a block or stone market such

as those that the delegation visited in Fujian Province (near Jinjiang and Xiamen). In the best-case scenario, suppliers will know where the block has been sawn and machined, but they are unlikely to know where it was quarried.

9. Employees are an important source of information

It is important to involve workers as well. Employees in Chinese natural stone factories often do specialised work that they have learned on the job. They are generally highly skilled and often proud of what they produce. Owners and managers reported that employees often suggest solutions to specific problems on the shop floor.

In the companies (both quarries and processing factories) that the delegation visited, both announced and unannounced, it found that employees generally used PPE appropriate to the work they were doing. Even so, there is room for improvement, e.g. in terms of hearing protection or safety shoes. Workers also said that they were sometimes required to wear protective equipment that was unnecessary for the type of work they were doing (e.g. hearing protection in a quiet part of the factory). This can have a counterproductive effect in the long run, with workers becoming less willing to comply with other rules as well.

Conversations with employees revealed that the average age of the workforce in processing factories and quarries is rising, as young people are increasingly less inclined to go into this line of work. In addition, many companies have been forced to relocate (due to government intervention), forcing employees to move with them. Not all employees wish to do so, however, resulting in a shortage of experienced and skilled workers.

10. Dialogue is of vital importance

To contribute to improvements in the supply chain, it is better to engage in dialogue and pursue a targeted approach than to simply tick off a list of standard solutions. Employees reported that certification bodies often work with a standard list of protective measures that may or may not be appropriate to their specific job. Dialogue is therefore the best way to learn about the risks that do or do not occur in different parts of the production process.

Dialogue also makes it possible to better understand a country's culture and context and thus to better understand why risks occur and how they can be managed. Interviewees cited the example of how policies aimed at limiting overtime for social welfare reasons can backfire and result in employees leaving the company. Quarries and factories are often closed for several months a year due to the weather. Employees often want to

work overtime in the remaining months to earn more for themselves and their families.

During the site visits, the Chinese hosts seemed more than willing to talk to the delegation and to show how things were done in their company. It became clear that it pays to discuss matters with an open mind and in a spirit of enquiry, and to focus on the relationship. That may then create scope for both critical questions and a dialogue about social issues and opportunities for improvement.

Conclusion

Below is a summary of the main lessons learned:

- The best way to gain an understanding of the supply chain is to cooperate with local processing companies and/or quarry owners. Brokers will not offer any insight into the supply chain;
- Chinese business culture prioritises relationships. Importers that invest in a long-term relationship with their Chinese partners will have the clearest picture of the supply chain and enough leverage to support or promote positive change;
- The natural stone industry in China has undergone rapid changes in recent years, as we saw with our own eyes. Environmental considerations have been especially critical, but such considerations also have a knock-on effect on working conditions;
- There are various social risks in the Chinese natural stone industry and – more broadly – in Chinese society. These risks are often present far beyond the industry. They are associated with the vast streams of migrants who travel around China looking for work, with a different attitude towards working time, and with legislation that is poorly enforced, if at all.

The following recommendations can be made with regard to public procurement of natural stone from China by Dutch and Flemish authorities:

- It is an illusion to think that natural stone imported from China can be guaranteed not to involve any social risks;
- In public procurement procedures, a supplier's demonstrable relationship with the Chinese party that has quarried and/or processed the natural stone should be an important weighting factor, the point being that unless the supplier invests in that relationship, it will have no insight into the social conditions at the quarry and processing site;
- Unlike the situation in India, for example, it will not always be possible to have local NGOs verify the information provided by the supplier.

Lessons learned during the working visit to India

A working group on India was set up in 2018. The participating companies and organisations are listed in Appendix 7. The aim of the working group was for both companies and contracting authorities to learn how to seek and support cooperation with stakeholders in India and how to deal with this in public procurement specifications. A delegation from the working group, consisting of representatives of natural stone suppliers and contracting authorities, travelled to India in early March 2020 to engage in dialogue with local stakeholders, i.e. the owners/managers of production sites, worker representatives, NGOs and local authorities.

Prior to this visit, the Association for Stimulating Know-how (ASK), an independent research organisation, analysed the risks associated with the quarrying and processing of black granite in Telangana and sandstone in Rajasthan. Its risk analysis report can be found on the TruStone website. ASK presented its research report in Khammam, in the state of Telangana, and the participants engaged in a dialogue about the findings. The dialogue was meant to foster better mutual understanding and to explore opportunities to work together on addressing the identified risks. The threat of COVID prevented a second dialogue meeting and field visit to Rajasthan. That dialogue took place online at a later date. The report can be found in Appendix 6.

1. Temporary workers are poorly paid

Many owners or managers of production sites, quarries and factories stated during the dialogue session that labourers are well paid, partly because the work calls for special skills and there is a shortage of labourers to do the physically demanding tasks. ASK's report confirms that this is indeed often the case in Telangana for workers who have a permanent employment contract and the necessary skills. The picture is otherwise, however, for temporary workers or helpers, according to the report. These categories of labourers are often not paid the minimum wage.

Another problem raised by the report is that workers are not paid, or not paid in full, for working overtime. What they do receive in overtime pay is often no more than their regular wages.

The third problem identified by the researchers is that wage payments are delayed. Migrant workers may have to wait up to two weeks after completing their work before they receive their wages. Employers or contractors do this to prevent the labourers from leaving.

2. Circumstances of migrants are worrying

According to ASK's report, temporary labourers – many of them migrants – are not given a letter of appointment and contract specifying the nature of the work they are to perform and the pay they are to receive. The absence of such documentation weakens the position of temporary labourers in the event of a conflict. It also means that temporary labourers are in a weak bargaining position with any subsequent employer, since they have no proof of their experience or of the size of their previous wage packet.

In most cases, quarry owners furnish migrants with housing and contractors provide their meals. The housing leaves much to be desired. The units are small and unsanitary and offer no privacy.

3. Young people do physically demanding work

According to the report, child labour (under 15 years of age) is not prevalent in granite quarrying and processing. The argument is that the work is too arduous for children to do. Local communities are furthermore increasingly aware of the importance of education for children. The authorities are also taking more frequent action to enforce the relevant rules.

It is more common for children (specifically migrant children) under 15 years of age to work in sandstone processing. They are often employed to collect waste materials and make cobble stones.

Children between the ages of 15 and 17 work at both granite and sandstone production sites, a practice prohibited by Indian law.

4. Health and safety precautions are inadequate

According to the report, workers at production sites run a considerable risk of accidents and work-related illness, including silicosis. Yet many production sites do not have a health and safety policy in place. Workers do not receive training. Personal protective equipment is often not available or not used.



5. There is a shared interest in improvement

During the dialogue session in Khammam, it became clear that Indian suppliers realise how much the continuity of their company depends on their making structural improvements. The local youth no longer wish to work in the quarries and factories. The work is often arduous, especially the exhausting conditions – i.e. the high temperatures – for much of the year. As a result, production sites increasingly rely on migrants, often from impoverished regions in northern India. Migrants who are badly paid or have to work in poor conditions will not return, inevitably leading to a labour shortage.

At the same time, the customers in the West are under pressure to meet consumer expectations and government demands. Many of these demands are laid down in international guidelines. Accordingly, companies must know where their materials come from, identify the risks involved and do their best to reduce those risks.

Contracting authorities face the same expectations and are subject to the same guidelines. The public and the media increasingly ask critical questions about the origin of materials used in public works projects.

6. Improvement requires cooperation

Indian companies are certainly willing to work on making improvements. For example, one of the suppliers said it had

guaranteed access to care for employees and their families. Another is actively helping to ensure that employees' children attend school. But Indian companies cannot make improvements on their own or across the board. Higher taxes and electricity rates, among other things, have increased the cost of natural stone quarrying and processing. At the same time, the arrival of new, rival materials is driving down the price of natural stone.

Suppliers and customers need each other to achieve improvements. As one of the participants noted: 'If you don't take responsibility, you're not in a position to ask questions.' That certainly also applies to contracting authorities, such as municipalities. Their procurement practices, for example tight lead times or late changes to orders, can put pressure on the front end of the supply chain, leading, for example, to overtime work or cost-cutting on working conditions.

7. Problems are not always complex or costly

According to the international guidelines, companies should first address the problems that are most serious and most likely to arise. For small companies in particular, this may mean dealing with very complex problems such as child labour, which they cannot resolve on their own. The solution may then be to cooperate with other companies or with local parties.

On the other hand, there are many improvements that can be made at relatively short notice. The dialogue session raised a number of suggestions in that regard. One was related to the fact that migrants often do not know the language or cannot read or write at all. By providing translations of contracts or instructions or by helping migrants to apply for insurance or public welfare schemes, foreign companies can make a big difference without raising the cost price permanently.

Participants also emphasised the importance of realistic lead times and long-term customer-supplier relationships.

8. Knowledge is divided among different stakeholders

Examining why problems arise and monitoring progress on improvements involves consulting different sources and speaking to different stakeholders. As became clear during the dialogue session, that is true for problems related to the status of migrant workers, for

example.

At many production sites, the operational responsibility for recruiting labourers lies with the contractors, who do this at the request of the owner or managers of the quarries and factories. As a result, owners are unacquainted with the migrant workers that they employ and often do not know exactly what agreements contractors have made with them. Customers must therefore see that a proper monitoring system is in place that ensures that contractors also respect the agreements (i.e. migrant workers' rights under Indian law) between migrant workers and a supplier.

9. Local parties can support improvement efforts

Local parties such as trade unions are familiar with the local situation and can help in addressing sector-wide risks, for example. Companies that seek to cooperate with local parties should obtain information about them in advance, however. It may also be difficult for trade unions to speak to employers in the sector. That is why the delegation had separate meetings with trade unions in Telangana.

Local trade unions know a lot about the working conditions and employment terms at production sites. A more obvious party in migrant-related issues is a local NGO, since migrants rarely join a union.

Parties to the TruStone Initiative can help companies connect with local parties. The Consulate of the Netherlands and the Netherlands Business Support Offices (NBSO) can also lend assistance. Representatives from the consulate in Bangalore and the NBSO in Hyderabad attended the dialogue session.

10. Continue the conversation

The dialogue session helped increase the parties' awareness and knowledge of the risks in the sector, their responsibility for such value-chain risks, and what they can do to make improvements. This marked the first step towards cooperating on improvements. In the year ahead, participating Dutch and Flemish companies will follow up on the conclusions presented in the final report.

Indian suppliers asked for another stakeholder dialogue session to be organised next year. This will help keep the topic on the agenda and achieve structural improvements.

It is now up to individual companies to continue the conversation. The TruStone Initiative can help companies connect with local parties or – while respecting competition law – other companies operating in the same region.



Conclusion

The dialogue session in Khammam and the discussions with trade unions and local NGOs produced many valuable insights. The most important ones were:

- The key word is 'partnership'. The path to improvement involves investing in a long-term relationship with a party in India;
- What is paramount is the relationship with the supplier and it pays to invest time and effort in that relationship. Suppliers are not interested in customers that 'shop around' for the lowest price without any prospect of future business;
- India's (post-colonial) culture and structure have produced a highly complex society in which 'yes' may well mean 'yes' but is not experienced or supported as such by all the local parties. That is why mutual understanding and trust depend on the Dutch or Belgian importer spending time with and investing in their relationship with local parties;
- There was much appreciation for the fact that parties had been brought together. As the Indian parties emphasised, the dialogue must not be a one-off exercise;

- Migrant workers are most at risk, a conclusion confirmed by the ASK report. Here again, a good relationship with local partners is the only way to learn about migrant workers' situation, employment terms and working conditions.

When it comes to public procurement, there are a few lessons to be learned from the visit to India and the preceding ASK survey:

- It is an illusion to think that natural stone imported from India can be guaranteed not to involve any social risks;
- In public procurement procedures, a supplier's demonstrable relationship with the Indian party that has quarried and/or processed the natural stone should be an important weighting factor, the point being that unless the supplier invests in that relationship, it will have no insight into the social conditions at the quarry and processing site;
- It is possible, but not always easy, for NGOs and trade unions in India (e.g. through ARISA) to verify the information provided by the supplier;
- Dialogue with suppliers/importers in the Netherlands and Belgium about social conditions is recommended in the design and preparation phase (and is not contrary to procurement law).

Lessons learned from the dialogue sessions with suppliers in Rajasthan

A series of three meetings moderated by Soeters Management and ARAVALI and held in April and May 2021 had the parties and companies involved in the TruStone Initiative engage in an open and constructive dialogue with suppliers from Rajasthan. During these sessions, the parties shared challenges, good practices and lessons learned and identified practical solutions meant to make sandstone production in Rajasthan more responsible.

1. Initiatives are well received

Much is changing in India. Only a few years ago, child labour was not perceived as a problem. But that is now changing, owing in part to pressure from the West. Local communities are growing more aware that children have a right to education. The Indian government has drafted a national action plan to combat child labour. Local businesses too are increasingly taking action on social issues. Exporters, for example, cooperate with the association of cobble yards.

Social conditions are improving, one step at a time:

- Schools receive support and more children attend school;
- Personal protective equipment (PPE) is available at many sites;
- Factories, production sites and even some quarries are taking steps to reduce the risk of silicosis.

But major challenges remain:

- Child labour does occur, but not to any great extent and certainly not at the production sites operated by export companies. In some cases, cobblestones are produced by labourers working in their own yards. Their children are about and sometimes help them. It is a difficult situation to monitor.
- Several reports mention forced labour as a risk. Proper record-keeping is virtually non-existent, especially in stone quarries. But records provide transparency with regard to wage payments and advances and make it possible to estimate the magnitude of the problem.
- Quarry and cobble yard workers often go unregistered and many do not have identity cards. They may therefore not be eligible for insurance or public welfare schemes.

Export companies are urging importers to keep up the pressure. It is very important for (European) importers to make demands regarding social conditions and progress monitoring.

2. Small share, huge impact

Of the natural stone quarried in India, most is destined for the domestic market – more than 90% for some varieties of stone. This does not mean that Western initiatives have only a minor impact, however. The margins on natural stone meant for the export market are much higher than on natural stone for the domestic market. If Western customers insist on acceptable social conditions, it matters a great deal to Indian suppliers.

3. The dialogue sessions offered participants new insights and information

To address risks effectively, we need to know their causes. By asking local businesses and workers about their worries and challenges at the start of each dialogue session, and by taking the time to understand one another properly, the participants gained a much better understanding of the underlying causes of problems.

Many of the risks associated with sandstone mining and processing, including low wages, forced labour and child labour, are closely related to the informal network of mostly migrant workers widespread in that region. Workers in many quarries and cobble yards are paid in cash. Work that quarry owners outsource to home workers is also paid in cash. As a result, it is difficult to form a clear picture of the labourers who produce the cobblestones and their working conditions. One important step would be to ensure that all employees have a bank account.

4. Collective effort gets us further than bilateral contact alone

Companies can reduce risks in bilateral contact with their supplier, but a collective approach is often more effective, especially when the problems are complex in nature.

Structural improvements in transparency and risk mitigation can only be achieved through collective and regional action and, for example, by ensuring that everyone has proof of identity and a bank account.

5. Dialogue is essential for prioritising risks

International guidelines require importers to contribute to risk

mitigation. If there are too many risks to tackle at once, then they can prioritise certain ones, but only after engaging in dialogue with stakeholders.

When it comes to health and safety, for example, the European perspective often prioritises the availability and use of personal protective equipment (PPE). Employees in India see that differently. As we found out during the dialogue sessions, what is more important to their sense of health and safety is to have separate sanitary facilities for men and women and shaded areas in which to rest.

6. Dialogue is part of a phased and continuous approach

A phased approach to improvement is advisable, consisting of the following steps: 1) Build trust; 2) Engage in dialogue about responsible business conduct; 3) Involve external parties.

One way to start is to share and discuss a code of conduct with the supplier's management. Dialogue, however, is not about going through a checklist, but about listening to and trying to understand one another.

Audits can also be helpful in achieving impact, but they are only part of the process and can never replace dialogue.

It is important not to put pressure on suppliers at the same time by imposing tight delivery deadlines.

7. It is perfectly possible to have a dialogue online

The COVID pandemic ruled out visits to production countries and we were forced to hold dialogue sessions online. Although face-to-face contact is still preferable, the online dialogue sessions went very well and had the advantage of easy accessibility.

Conclusion

Indian suppliers, and especially exporters, are willing to work towards improvements on social issues. Exporters appreciate it when European importers stipulate social conditions because it allows them to put more pressure on the front end of the supply chain. It is important to have an open and constructive dialogue about the underlying causes of problems and to decide together which actions have priority. In addition, dialogue offers the opportunity to share knowledge and, if necessary, contribute to improvements. For example, European importers are knowledgeable about health and safety and

administrative processes, information that can help Indian producers achieve structural improvements.

List of stakeholders

The pilot programme involved a number of working groups. Below, we list the participating contracting authorities, companies and organisations. Thanks are also due to Professor Chris Jansen (VU Amsterdam), Corina Kerkmans (RVO), Martha Vermolen (SER), and the many representatives of companies and contracting authorities who participated actively in the expertise sessions, workshops and dialogue sessions.

Project team

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ISC Natural Stone Team (TIN)

Contracting authorities:

- Municipality of Amsterdam
- Municipality of The Hague
- Municipality of Rotterdam

Advisor:

- HumanRights@Work

Subsidiary project in China

Contracting authorities:

- Municipality of The Hague
- Municipality of Rotterdam
- Central Government Real Estate Agency

Companies:

- Van den Ban BV
- Hoogenberg Natuursteen
- Tuinmaterialen Meynen BVBA

TruStone representative:

- SER

Advisors:

- HumanRights@Work

- Soeters Management BV

Subsidiary project in India

Contracting authorities:

- Municipality of Amsterdam
- Municipality of Leuven
- Dutch Ministry of Foreign Affairs

Companies:

- Arte di Granito
- Brachot group
- Den Hollandsche Gedenktekens
- Jetstone
- Kerasom BV
- Maris Natuursteen BV
- Marshalls NV
- Michel Oprey & Beisterveld BV

TruStone representatives:

- Arisa
- Febenat
- SER

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