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Procurement Oversight and Monitoring—
a means for efficient project implementation
and use of the UNCITRAL Model Law

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Procurement & Infrastructure Development

Model laws

- [UNCITRAL Model Law on Public Procurement \(2011\)](#)
 - [Guide to Enactment \(2012\)](#)
 - [Guidance on Procurement Regulations \(2013\)](#)
 - [Glossary \(2013\)](#)
- [UNCITRAL Model Law on Procurement of Goods, Construction and Services \(1994\)](#)
- [UNCITRAL Model Law on Procurement of Goods and Construction \(1993\)](#)

Legislative guides and recommendations

- [UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects \(2000\)](#)

Model provisions

- [UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects \(2003\)](#)

Explanatory texts

- [UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works \(1987\)](#)

Effective Monitoring and Oversight: Critical Role for Effective Use of the UNCITRAL Model Law

Oversight measures in the Model Law

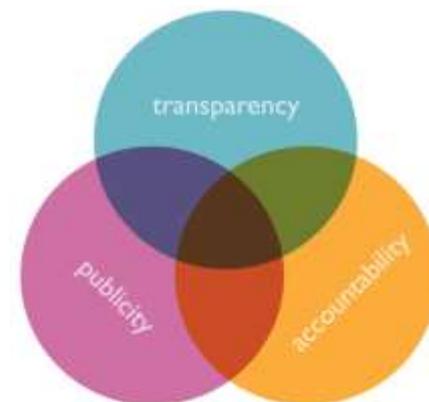
- Key feature of an effective procurement system
- Involves monitoring and enforcement
 - Reviewing and challenging decisions of the procuring entity
 - Audits
 - Investigations
 - Sanctions mechanisms



Effective Monitoring and Oversight: Critical Role for Effective Use of the UNCITRAL Model Law

Oversight as a key element of accountability

- Procurement involves discretion
- Traditional: centralized systems, prior approvals
- Modern approach: after the fact audit
- Transparency and internal records to allow decisions to be assessed

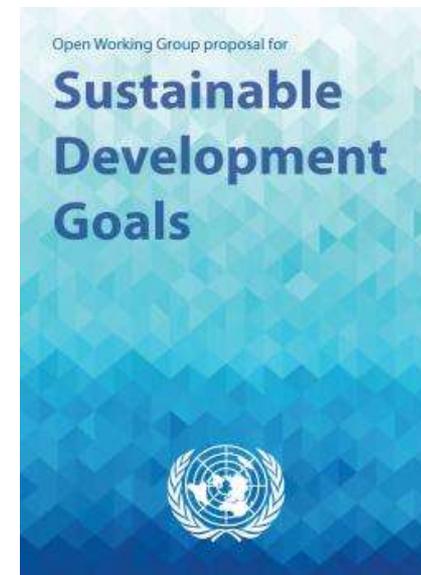


- Model Law requires up-to-date record
- States appear to create record ex post facto
- Oversight and data-gathering role sub-optimal
- Impact on decision-taking – risk aversion?

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Other reasons why monitoring and oversight are important

- Public confidence in system
- Supplier confidence in system
- Deterrent effect –
 - Procuring entities
 - Suppliers
- Systemic corruption = 20-30% of procurement wasted (World Bank Institute)
- 80% of waste is inefficiency, not corruption (CONSIP study)



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Why do we want challenge procedures?

- UN Convention against Corruption requires effective review mechanism
- Self-policing and self-enforcing law?
- For all breaches, or only intentional ones?



Scope of provisions in the Model Law

- ANY supplier (potential or actual)
- Can challenge ANY decision or action of the procuring entity
- On the basis of non-compliance with rules and procedures
- Chapter VIII of the Model Law



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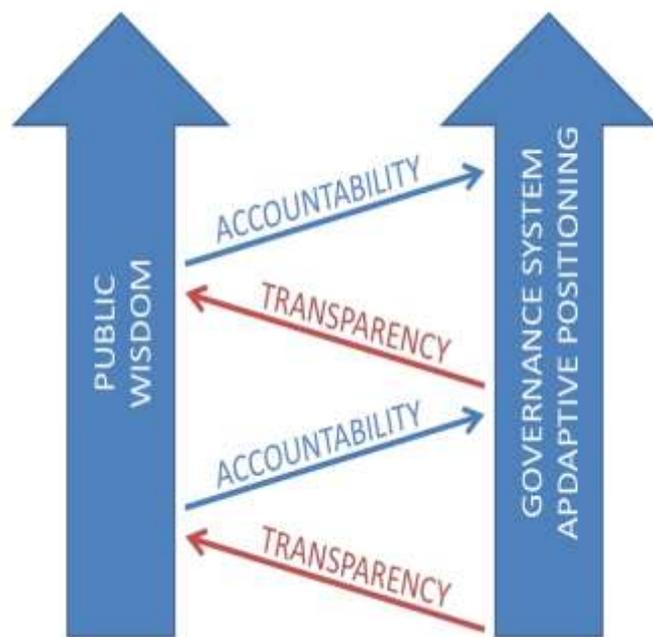
Model Law provisions

- 3 fora:
 - Optional peer review mechanism
 - Independent review body
 - Court proceduresSupported by “standstill” provisions, rule on documents
- Main aim: corrective action; rapid results
- Broad range of relief (including financial compensation)
- Default rule: suspension, public notice of results
- Issues: too many/too few hearings
- Can review mechanism fulfil its role?



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Key role of transparency



- Supports procurement objectives (accountability, objectivity, competition, value for money, integrity)
- Pre-requisite for accountability
- Vital role in fighting corruption
- Allows objectives to reinforce each other

- Allows civil society to monitor
 - compliance with rules and procedures
 - compliance with the objectives of the system

- Issue: resources for civil society?

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Key role of transparency throughout procurement cycle



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Key role of transparency



- Importance of cooperation among organizations
- Procurement – WTO, EC, SIGMA, World Bank, EBRD, other regional development banks, OSCE, UNCITRAL
- Anti-corruption – UNODC, OSCE, UNCITRAL
- With national agencies and NGOs – e.g. competition authorities



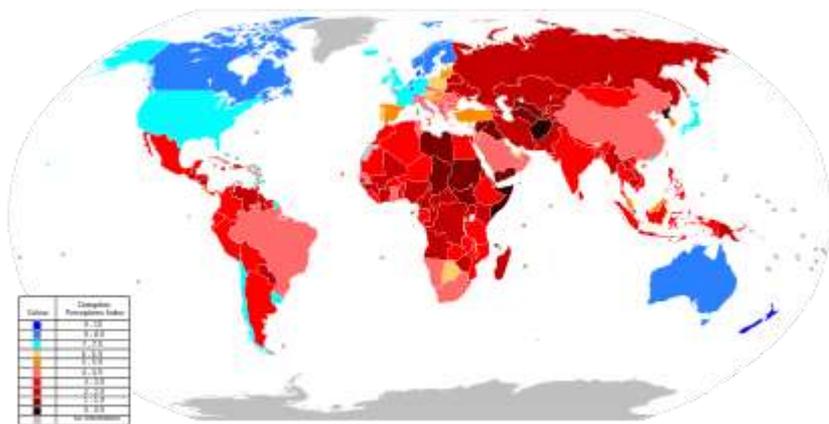
The World Bank



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Data issues – UNCITRAL provisions

- Requirement for record (art 25)
 - Disclosure of contents of record (art 25)
 - Protection of confidential information (art 24)
-
- OECD – limited data-gathering in practice



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Issues addressed in the Guide to Enactment

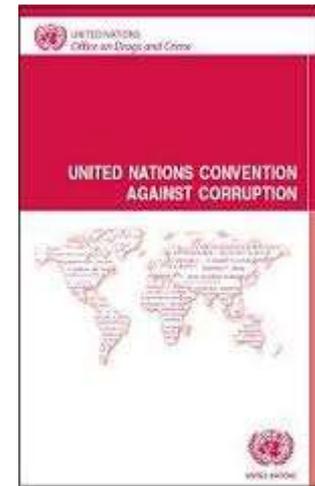
- Audit and investigations
- Sanctions (including debarment)
 - Not in Model Law
 - Additional guidance on suspension and debarment, sanctions procedures – possible new topic?
 - UNCITRAL experience in dispute resolution



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Enforcement – sanctions procedures

- Procurement officials/procuring entity
 - Breach of code of conduct
 - Conflicts of interest
 - Breaches of the rules on advertising and other transparency measures
 -
 - “effective, proportionate and dissuasive” sanctions –
 - a baseline requirement of UNCAC



Effective Monitoring and Oversight: Critical Role for Effective Use of the UNCITRAL Model Law

[For more information](#)

Website:

http://www.uncitral.org/uncitral/uncitral_texts/procurement_infrastructure.html

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THANK YOU

