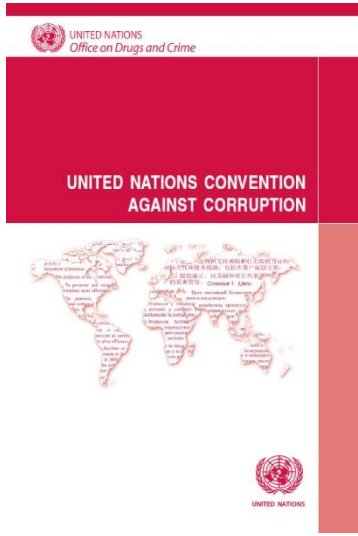
ACINET's regional conference on "National Anti-Corruption Strategies and the Roles of National Stakeholders"
Sana'a (Yemen), 26-27 July 2010

Implementation of article 9 UNCAC: the contribution of electronic public procurement



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UNODC
United Nations Office on Drugs and Crime

UNCAC

United Nations Convention against Corruption (UNCAC):

- Adopted 31 October 2003, entered into force 14 December 2005
- Currently has 146 State parties (including EU)
- Members of POGAR and of UNCAC: Algeria, Bahrain (s), Comoros (s), Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Qatar, Saudi Arabia (s), Syria (s), Tunisia, United Arab Emirates, Yemen.

Structure of the Convention: four main parts

- Prevention , Criminalization, Asset Recovery, International Cooperation

UNCAC provisions' have different levels of obligation

- Mandatory provisions , e.g. "each State party shall adopt": duty to legislate
- Measures that States parties must consider applying, e.g. "shall consider adopting" or "shall endeavour to"
- Optional measures, e.g. "may adopt"

Article 5. Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the **rule of law, proper management of public affairs and public property, integrity, transparency and accountability**.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 9 (1). Public procurement

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on **transparency, competition and objective criteria in decision-making**, that are **effective, inter alia, in preventing corruption**. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:

(a) The **public distribution of information relating to procurement procedures and contracts**, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;

Article 9 (1). Public procurement (cont.)

(b) The **establishment, in advance, of conditions for participation**, including selection and award criteria and tendering rules, and their **publication**;

(c) The **use of objective and predetermined criteria for public procurement decisions**, in order to facilitate the subsequent verification of the correct application of the rules or procedures;

(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as **declaration of interest** in particular public procurements, **screening procedures and training requirements**.

COSP Resolution 3/2: Preventive Measures

Adopted at the third session of the Conference of UNCAC State Parties in Doha, Qatar, in November 2009.

- […] 11. Calls upon States parties to promote the business community's engagement in the prevention of corruption by, inter alia, developing **initiatives to promote and implement public procurement reform,** working with the business community to address practices that generate vulnerability to corruption and identifying elements of optimal self-regulation in the private sector;
- 12. Encourages interested States parties, representatives of private sector entities and relevant international organizations to consult and collaborate with each other in order to **share best practices for the alignment of systems of public procurement with the requirements of article 9 of the Convention**;
- 13. Invites States parties, where appropriate, to **consider the use of computerized systems** to govern public procurement and to track and identify suspect cases, and to consider, in accordance with the fundamental principles of their legal systems, the adoption and use of procedures to prohibit private sector entities involved in corrupt contracting practices from future participation in public tenders; […]

Public procurement general goals

- Public procurement constitutes a very significant share of the economy, especially in developing countries
- Need to implement a system aimed at **preventing corruption AND improving competition**
- Both goals are necessary to reduce waste and improve market efficiency, thus helping economic development
- Corruption and bid-rigging are sources of diseconomies in the procurement process.

Key elements for UNCAC art. 9(1) implementation

- **General inspiring principles:**
  - Transparency
  - Competition
  - Objective decision-making criteria
- **Detailed provisions:**
  - Timely and effective public distribution of procurement information;
  - Establishment in advance and availability of conditions for participation;
  - Establishment in advance and availability of selection criteria;
  - Effective system of review and appeal;
  - Special rules for staff of procurement entities (selection, training, declaration of interest, etc.)
- **Key steps:**
  - Analysis of existing laws and practice;
  - Legislative reform;
  - Process re-engineering in light of best practices;
  - Considering opportunities provided by new technologies (may require more legislative reform).

Benefits of e-procurement: transparency

- **Transparency:** possibility to disseminate information on general procurement process and on specific exercises.
  - Such information may be made available on a single portal.
  - It can cover details such as the award, the use of exceptional procedures, etc.
  - Possible to publish in advance procurement plans, so that providers may act accordingly.
  - Particularly important for major infrastructure projects.
- **Outcome:**
  - Broader and easier participation of business in public procurement and therefore more competition;
  - Increased control over procurement procedures by business and civil society.

Benefits of e-procurement: efficiency

- **Information management improvement:**
  - All information exchanged automatically documented and recorded.
    - Automatic complete record of all relevant events of the case.
    - Ready and complete collection of evidence enables faster case review, auditing and investigation.
  - Verification of identity and credentials of staff of the procuring entities and of third parties (as economically convenient).
    - Effectively control access to information.

- **Opportunity to re-engineer all phases of the procurement chain:**
  - planning, budgeting, selection of the procurement method;
  - request for tenders, evaluation, adjudication;
  - contract management, payments.

Benefits of e-procurement against traditional methods

- **Advantages compared to existing procedures:**
  - **Better dissemination of information**
  - Possibility of faster interaction with tenderers: e.g., sharing of information provided in reply to a question by a tenderer.
  - Possibility to verify third parties' qualifications (including management of subcontractors).
  - **Preventive measures**
  - Personal contacts that might expose to undue influence avoided.
  - Changes in tender conditions are documented.
  - Possibility to monitor constantly procurement exercises and look for indicators of abnormal transactions.
- **Access to procurement techniques not available with traditional means:**
  - Electronic Reverse Auctions.
  - Dynamic Framework Agreements.

E-procurement implementation: fundamental notions

- Many benefits arise from the implementation of the process **inside the procuring entity**, not outside.
- However, some steps may be easier to implement; progressive roll out of a comprehensive system is possible.
- From the technical standpoint, the implementation of a closed procurement system might be easier to manage that the interaction with third parties in an open environment.
- Need to review legislation on procurement and to adopt enabling legislation on electronic communications (including electronic signatures).
- **Need to avoid solutions with technical requirements not proportionate to economic and ICT reality, thus resulting in excessive costs for the procuring entity AND for business.**

Procurement implementation: reference texts

- **Policy/guidance:**
  - World Bank (http://go.worldbank.org/MGUN6DPWV0)
  - United Nations Procurement Capacity Development Center (http://www.unpcdc.org)
  - OECD (http://www.oecd.org/topic/0,3373,en_2649_34135_1_1_1_1_37447,00.html):
    - Recommendation on Enhancing Integrity in Public Procurement
    - Enhancing Integrity in Public Procurement: a Checklist/Toolbox
    - Guidelines for Fighting Bid Rigging in Public Procurement

E-procurement implementation: reference texts

- **Policy/guidance:**
  - Multilateral Development Banks E-GP (http://www.mdbegp.org/www/eGPInteractiveus/tabid/69/language/en-US/Default.aspx)
- **Legislative models:**
  - UNCITRAL Model Law on Procurement of Goods, Construction and Services (revised 2011, contains general rules and specific rules for e-procurement)
  - UNCITRAL Model Laws on electronic commerce and electronic signatures and UN Electronic Communications Convention (http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce.html)

Current status in the region

Voluntary self-assessment of the implementation of UNCAC (2007-2009):

- Fully compliant with art. 9(1) UNCAC: Algeria, Egypt, Morocco and Tunisia.
- Partly compliant: Jordan and Yemen.
- Other States did not participate in the exercise.
- Exercise did not focus on electronic components of procurement systems (not mentioned in UNCAC text).

Case study of e-procurement implementation

- **Albanian electronic system for public procurement**:
  - All public tenders advertised on-line in a single portal since 2007;
    - allows also for free download of all related documents;
  - As of 1 January 2009, all public procurement (including local government) over 3000 Euros are processed electronically for advertisement of tender, submission and notice of award or cancellation.

- **Economic results:**
  - The average number of tenderers participating in an exercise tripled in four years
    - more competition = better quality of procured good at lower price
  - The average cost of a procurement exercise decreased of 15%
    - savings for procuring entities
  - The number of business using electronic means doubled in one year
    - trailing effect for wider ICT use in business sector.

Case study of e-procurement implementation

Key lessons learned:

- Existing ICT infrastructure not decisive: business will adjust;
- Adopt practical approach and build on quick wins;
- Political will single most important factor.

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