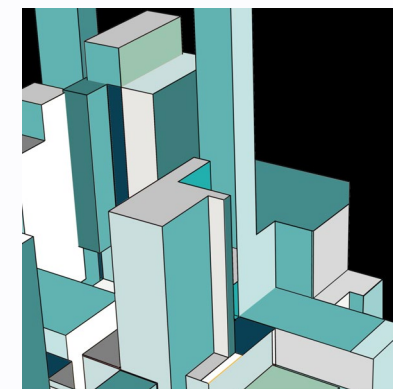

**PUBLIC PROCUREMENT DIMENSIONS OF
MODERNIZING AND HARMONIZING THE
INTERNATIONAL COMMERCIAL LAW FRAMEWORK
IN THE AfCFTA**

Caroline Nicholas and Benjamin Herisset
UNCITRAL Secretariat

3 November 2022
Stellenbosch, South Africa



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What does UNCITRAL do?

- ✔ **Harmonize and modernize the law of international trade (B2B, B2G transactions)**

Harmonization = application of same principles, main procedures
Without identical detailed rules (cf unification as in a treaty)

- ✔ **Trade & infrastructure development to promote growth and SDGs**
- ✔ **International good governance agenda**



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Why harmonize?

Different legal systems raise barriers to cross-border trade

- ⊘ Unfamiliarity
- ⊘ Lack of legal certainty
- ⊘ Lack of trust

Disincentivize cross-border trade, thanks to

- ⊘ Increased transaction costs (eg legal)
- ⊘ Collecting information
- ⊘ Travel, time, etc

Particular burden for MSMEs



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Why do Procurement and PPPs matter?

Worldwide, USD \$14 trillion market (OCPS); \$1 of every \$6 or \$7 expended in commercial activity (World Bank)
Up to 20% GDP and 50% + government expenditure (OECD)

Critical role of infrastructure development to enable growth and promote SDGs - the African Continental Free Trade Area, one of the biggest projects on the continent currently, cannot succeed without adequate infrastructure:

“infrastructure financing for us, going forward, should ... be a public-private partnership, with increased participation of the private sector.”

(Kingsley Ighobor, President of the African Development Bank (AfDB), October 2022)

Delivery of services to citizens

Very little cross-border procurement – potential for better value for money and improved outcomes

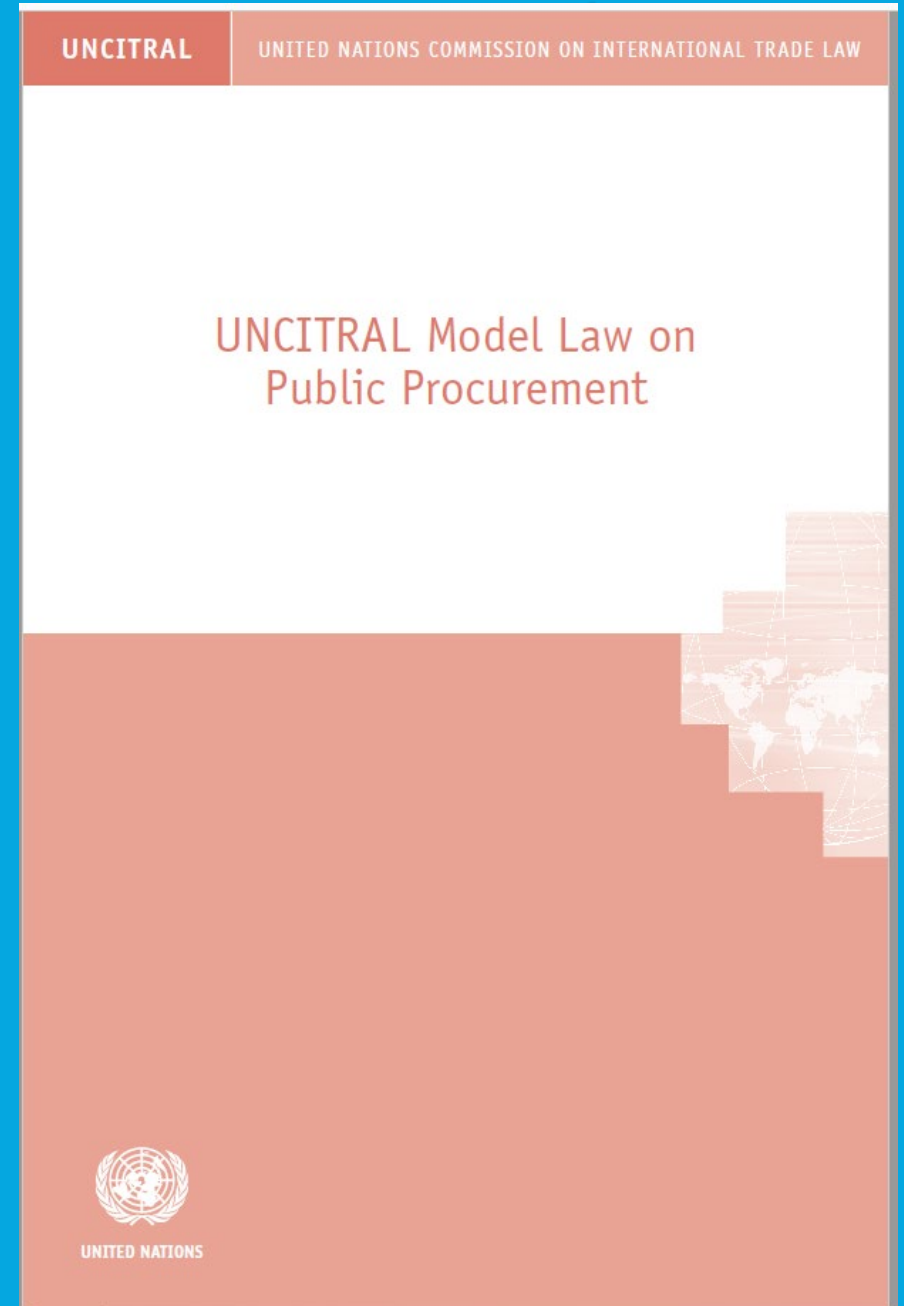
UNCITRAL Model Law on Public Procurement (2011) and Guide to Enactment (2012)

A model & implementation guidance for national procurement legislation

Widely used in Africa & beyond

Compatible with main international instruments on public procurement

Developed in intergovernmental forum



UNITED NATIONS CONVENTION AGAINST CORRUPTION



There is a good basis for harmonization

- UNCAC article 9 requires
 - “appropriate systems of procurement, based on **transparency, competition and objective criteria** in decision-making, that are effective, inter alia, in **preventing** corruption”
- All “international texts” on Public Procurement focus on transparency, competition and objective criteria in decision-making
- Differences less in procedures than scope and details
 - e.g they have different objectives (free trade/WTO, single market/EU, loan considerations/IFIs)
- UNCITRAL Model Law on Public Procurement: needs of a *national system*

UNCITRAL Legislative Guide on Public-Private Partnerships

UNCITRAL Model Legislative Provisions on Public-Private Partnerships



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Harmonization of PPPs at sub-regional levels in Africa

- ✓ CEMAC (Cameroun, Central African Republic, Congo, Gabon, Equatorial Guinea and Tchad) – drafting of PPP & public procurement strategies and directives - *on going*
- ✓ UEMOA (Benin, Burkina Faso, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal and Togo) – *past attempt revived*
- ✓ ECOWAS (Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Mali, Liberia, Niger, Nigeria, Senegal, Sierra Leone, and Togo) - *regional framework to encourage public-private partnerships – on going*
- ✓ African Legal Support Facility (all States) - *Provides advisory and capacity building assistance for complex commercial transactions relating to extractives and natural resources, infrastructure, Public-Private Partnerships (PPP) to enable countries derive maximum benefits from such contracts and to avoid contracts that lead to unsustainable debt*



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Public procurement or PPP?

- ✔ The choice between those 2 modes of delivery is often under-considered in legal systems
- ✔ Clarity needed about which rules apply; procedural similarities between PP and PPPs should not blur the distinction
- ✔ Strong justification is needed for PPPs (avoid procedural arbitrage)
- ✔ Interest of international investors is in larger contracts; for PPPs, clear information on service component vital



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The question for discussion ...

Would there be benefits in including public procurement in AfCFTA?



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Thank you!

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