



# Key findings of the initial desk review on existing measures, practices and experiences

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# 1. Ratification of UNCAC in general

- In nine years as many as 165 ratifications
- Normal ratification fast, in approx. 2-4 years
- Amendments mostly to criminalization and law enforcement (Ch. III), international cooperation (Ch. IV) and asset recovery (Ch. V)
- Preventive measures (Ch. II) have usually not been considered to require special legal reforms



# 1. Ratification of UNCAC in general (cont.)

- Difficult to implement to law preventive and proactive measures (various fields of law, policies, codes of conduct, social strategies) instead of clear repressive and reactive measures (criminal law)
- Difficult to implement measures outside the public sector (civil society, NGOs, community-based organizations, mass media)



## 2. Transparency in public administration (Art. 10)

- Art. 10 requires active public reporting to enhance transparency
- Rather new legal development
- Various good examples, such as:
  - Open meetings legislation
  - Periodic public reporting
  - E-government
  - Economic information on elections, political parties and candidates
  - Asset declarations



### 3. Right of access to official information (Art. 13)

- Classical issue; right protected by the constitutions of some 60 countries and increasing
- Scope of bodies covered is increasing to cover all with a “public function” (Art. 2)
- Scope of information that can be withheld from the public is decreasing, for example “documents under preparation” and “trade secrets” open gradually
- Process to obtain information can and should many times be made faster, easier and cheaper



## 4. Rights and reputations of others and other grounds for restrictions (Art. 13)

- Freedom of expression is the main rule if the the “chilling effect” is taken seriously
- Restrictions
  - Must be provided by law;
  - Must serve a legitimate aim; and
  - Must be necessary in a democratic society
- Both criminal and civil liability are allowed; the necessity of the sanctions and remedies is decisive



## 4. Rights and reputations of others and other grounds for restrictions (Art. 13) (cont.)

- Privacy, honour and reputation should not be protected if a journalist
  - Exposes suspected crime or another issue of public concern committed by a public official or public figure;
  - Follows the standard of “reasonable publication”; and
  - Acts “in good faith”
- Proof of truth
  - Should be a complete defence; and
  - The burden of proof should not be on the accused journalist



## 4. Rights and reputations of others and other grounds for restrictions (Art. 13) (cont.)

- Expressing opinions should not be a crime
- Public bodies do not enjoy “honour” or “privacy” according to international law
- National security or ordre public can be used to restrict freedom of expression only with same limitations as rights and reputations
- In conclusion, the classical problems of defamation law still remains



## 5. The anonymity of sources (Art. 13 and 33)

- Granting of anonymity may be the only way of getting information
- Modern case-law holds that anonymity can be a part of freedom of expression of the source
- Anonymity protects also the journalist from seizure of his/her working tools (computer, mobile phone, etc.)
- Disclosure should only be ordered by court and restricted to key witnesses and serious crimes



## 6. Witness protection (Art. 32)

- Appropriate protection of testifying witnesses is mandatory according to Art. 32
- Similar as in conventions concerning organized crime
- Esp. civil law countries are often still lacking human and economic resources and legal mechanisms
- Physical protection as witness protection programs are rare outside USA
- Anonymity of witness can be in conflict with a fair trial



## 7. Protection of whistle-blowers (Art. 33)

- Non-mandatory article
- Some good examples esp. from common law systems
- Some civil law systems (e.g. Sweden) are at the moment reforming law
- Requires rethinking in administrative law, labor law, procedural law and even criminal law
- Close connection to Art. 13 and access to information



## 8. Licensing and pre-censoring of media (Art. 13)

- The “watch-dog” function of free media
- Licensing of media is allowed if the regulatory powers are free from political and economic interference
- Injunctions against media exceptionally
- Financial independence of the media
  - Procedures for State funding and State advertisement
  - Corporal takeovers and antitrust legislation
- Self-censorship of the media

**Thank you for your attention!**