Warsaw, 5 November 2013

**The negative impact of corruption on the enjoyment of human rights**

1.The Government of Poland recognizes the adverse impact corruption may have on various aspects of public life, including the mechanisms of human rights protection. It also acknowledges the importance of adopting measures specifically designed to prevent the occurrence of this phenomenon at all levels.

Poland is a party to numerous international treaties dealing with corruption, the most significant of those being:

* UN Convention against Corruption (ratified on 15 September 2006)
* UN Convention against Transnational Organized Crime (ratified on 12 November 2001)
* CoE Criminal Law Convention on Corruption (ratified on 11 December 2002)
* CoE Civil Law Convention on Corruption (ratified on 11 September 2002)
* EU Convention against Corruption involving Officials (ratified on 25 January 2005)
* OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (ratified on 20 December 2000)

In a broader context it should be noted that the protection of human rights in the context of fighting corruption is an multi-faceted issue. One of its key features is the general transparency and integrity of the political system, which affects the human rights standards. However it is easier to restore public trust when transparency and integrity is tested and confirmed by external, non-governmental body. Therefore the external evaluations, carried out by various international organization, are of the utmost importance in this context. Firstly, because the public generally trusts more in the external controlling rather than in governmental self-control. Secondly, because an outside view helps governments understand the shortcomings of their system.

Poland plays an active role in the work of several international bodies dedicated to the fight against corruption. In the course of the II Meeting of the Implementation Review Group (IRG) it was decided that in late 2013 Poland will undergo a comprehensive review of its implementation of Chapters III and IV of the UN Convention Against Corruption. The evaluation team will be composed of the UNODC experts alongside representatives of Serbia and Mauritius. On the side of the Polish Government the process is coordinated by the Ministry of Justice.

The Ministry of Justice closely cooperates with other external evaluating bodies, such as The Group of the States Against Corruption of the Council of Europe (GRECO) and OECD Working Group on Bribery in International Business Transactions. In 2013 GRECO published a report from the Fourth Evaluation Round in which Poland took part. The latest review round focused on the issue of corruption prevention in respect of Members of Parliament, judges and prosecutors. As regards the OECD, the Working Group assessed the process of Poland’s implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2001 and in 2006. Poland recognizes the importance of disseminating the recommendations made by external evaluators, their implementation and sharing information with the public, which may be of crucial value for maintaining confidence in public institutions.

Furthermore, the Ministry of Justice became the first institution in Poland to introduce an internal anticorruption system. The system of social responsibility and preventing corruption aims at raising the level of confidence in the Ministry’s due and impartial decision processes and governance abilities. A dedicated contact point was established to report any instances of corrupt activity involving the employees of the Ministry of Justice.

On its end, the Ministry of Interior together with law enforcement agencies and other stakeholders responsible for combating and preventing corruption has been working on a draft document entitled *“The Government Anticorruption Programme for the years 2013-2018”*. This document has been prepared with the consideration of experiences gained during an implementation of *“The Anticorruption Strategy for the years 2002-2009”* and conclusions pertaining to reasons and consequences of corruption in Poland. The document aims at strengthening efforts and intensifying activities related to counteracting and combating corruption which have been undertaken by the Republic of Poland so far. The Programme sets out a main objective, detailed goals (i.e. strengthening the preventive and educational anticorruption measures and strengthening the fight against corruption), numerous tasks and actions dedicated to the public administration. Implementation and evaluation mechanisms have been established as well. The primary objective is to reduce the level of corruption in Poland, amongst other things through strengthening the preventive and educational anticorruption measures in society/public administration and the fight against corruption. With regard to the preventive and educational anticorruption measures, crucial actions will be concentrated on preventing corruption. The main emphasis will be put on strengthening the internal anticorruption mechanisms in public administration, forming anticorruption attitudes in society, increasing public participation in preventing and combating corruption. Strengthening cooperation between civil society/NGOs and public administration as well as the promotion ethical attitudes in private sector are to be considered among other key issues. The Programme presents corruption as a pathology, not acceptable in a democratic country. With regard to combating corruption, actions will be concentrated on improving anticorruption structures and mechanisms in law enforcement agencies, cooperating and coordinating between law enforcement agencies and judiciary authorities, improving legal solutions, in order to combat corruption in a more efficient manner, fulfilling international commitments and effectively prosecuting corruption. The Programme will come into effect at four levels. The first level will be represented by institutional coordinators appointed in all ministries and institutions involved in the Programme, the second – nineteen working groups which will be responsible for implementing particular tasks, the third - an interdepartmental team which will be established by the Prime Minister, and the fourth level – the Cabinet which will examine and adopt a report on implementation of the Programme. Within the Programme, such issues, among others, will be analyzed: financial disclosure statements; financing of political parties; immunities; protection of whistleblowers; corruption in private sector; transparency, competition and objectivity in a process of public procurement; counteraction of corruption in sport; transparency of standards in implementing right of access to public information.

2.a) In 2006 a specialized law enforcement agency, the Central Anti-Corruption Bureau (pol. Centralne Biuro Antykorupcyjne - CBA), was established to tackle the issue of corruption in the area of public governance and economy, especially within the ranks of public and territorial self-government administration. The agency is also tasked with protecting the economic affairs of the state.

All law enforcement agencies in Poland are required to operate in a way guaranteeing highest compliance with human rights standards, an obligation stemming from Article 30 of the Polish Constitution. In case of the CBA, this requirement is further strengthened by more specific provisions. Under Art. 14 par. 4 of the *Central Anti-Corruption Bureau Law* agency personnel is to “carry out all duties with respect to human dignity and ensuring compliance with, and protection of, human rights regardless of one’s nationality, ethnicity, social status, political or religious believes or outlook”.

b) The Ombudsman is the primary Polish authority safeguarding human and civic freedoms and rights specified in the Constitution and other legal acts. In her activities, the Ombudsman is independent from other state authorities. It’s broad mandate, although not containing an explicit reference, includes all issues related to protection of ‘freedoms and rights’ and there is nothing excluding the Ombudsman’s involvement in anticorruption activities.

c) No data

3.Independently of the policy measures adopted by the Polish government, a range of legal instruments exists dedicated to preventing and persecuting cases of corruption. Corruption has been criminalized under various provisions of the Criminal Code, ranging from corruption in public administration to such activities in business and commerce. In addition, Art. 1 of the *Central Anticorruption Bureau Law* contains a comprehensive definition of the crime.

Furthermore one of the best practical tools is the so-called “impunity provision”. Article 229.6 of Poland’s Penal Code contains an “impunity” provision, which, subject to conditions such as reveling of all essential details and cooperation with the authorities in subsequent proceedings against any accomplices, allows a perpetrator to automatically avoid punishment by notifying the authorities of the offence before they independently learn of the bribe through other sources. The “impunity” provision applies to the bribery of domestic and foreign public officials. This provision has been the underpinning of the successful detection and prosecution of cases of passive bribery of Polish public officials. It is broadly considered as a very efficient mean of breaking the solidarity between a corrupted official and a bribe payer, which is a fundamental issue in counteracting corruption. Due to this the “impunity provision” can be an incentive to comply with the rule of law standards, by revealing the fact of bribery. On the other hand, it can also help better tailor the criminal liability of the perpetrator, in line with his or her attitude after an offence is committed. It seems to be one of the factors allowing to take the perpetrator’s attitude into account when imposing penalty, which surely corresponds with the fundamental rights protection principles.

4.The catalogue of human rights affected by corruption in Poland has not yet been assessed by the Ministry of Justice.

5.The Human Rights Council, given the exceptionally broad mandate of the institution, is in a unique position to spearhead facilitating an international debate on the negative impact of corruption on the enjoyment of human rights. Poland, being one of the States supporting Resolution 23/9, perceives the process initiated by the Council’s Advisory Committee as the most appropriate way to conduct a comprehensive review of the issue in question. The final report should not only identify areas where corruption affects human rights most but also, more importantly, point to particular violations of the human rights law. It should adopt an action-oriented approach by, among others, proposing concrete solutions and designing best practices.

6. In the future it may be advisable to employ the Council’s special procedure to the task of drafting a set of best international practices such as a guideline for States, concerning the implementation of human rights-oriented national anticorruption policies. This theme could be furthermore included in the Universal Periodic Review, which would allow to gather comprehensive information and exchange best practices among States.

7.Once the Council’s Advisory Panel delivers the commissioned report it would be perhaps beneficial to consider involving the Office of the High Commissioner for Human Rights in any future initiatives regarding the adverse impact of corruption on human rights.

Poland would also suggest that any future action should be aimed at facilitating discussions on the subject-matter at a regional level. Certain best practices or policy guidelines developed regionally might be more efficient as they can take into account the local specificity of corruption.

Poland notes with satisfaction the Council’s initiative to explore the overlap between corruption and human rights. The UN is undoubtedly the best-suited framework to carry out a comprehensive research of this matter. Given the existence of regional anticorruption mechanisms it may also consider evaluating relevant local practices and including the most appropriate ones in tailoring more universal solutions.