**THE NEGATIVE IMPACT OF CORRUPTION ON THE ENJOYMENT OF HUMAN RIGHTS**

**QUESTIONNAIRE**

As part of the consultations undertaken by the Human Rights Council Advisory Committee with **States**, with a view to preparing a research-based report on the issue of the negative impact of corruption on the enjoyment of human rights, and to making recommendations on how the Council and its subsidiary bodies should consider this issue, pursuant to Council resolution 23/9.

**Background**

In its resolution 23/9, the Human Rights Council took note of the summary report of the Human Rights Council panel discussion on the negative impact of corruption on the enjoyment of human rights held during the 22nd session of the Human Rights Council (A/HRC/23/26). In the same resolution, the Council requested the Advisory Committee to submit to it a research-based report on the issue of the negative impact of corruption on the enjoyment of human rights and to make recommendations on how the Council and its subsidiary bodies should consider this issue.

At its eleventh session in August 2013, the Advisory Committee constituted a drafting group and prepared questionnaires for dissemination to Member States, relevant international and regional organizations dealing with the issue of corruption, in particular the United Nations Office on Drugs and Crime, the International Anti-Corruption Academy and the Office of the High Commissioner for Human Rights, as well as national human rights institutions, civil society and relevant academic institutions. The drafting group of the Advisory Committee is tasked with drafting a preliminary research-based report for the twelfth session of the Advisory Committee (February 2014).

1. **How do you deal with corruption in your country? Do you have a policy to combat corruption (specific fields and specific categories)?**

*Note: The Irish legislation listed below is available at* [*http://www.irishstatutebook.ie*](http://www.irishstatutebook.ie) *. The texts of an individual Act including any amendments which may have been made, can be viewed by clicking on “legislation directory entry” at top of page, after selecting the particular statute to view.*

The main criminal offences relating to corruption can be found in the statutes which collectively make up Prevention of Corruption Acts 1889 to 2010. They include laws enacted by the UK parliament prior to the establishment of the independent Irish State in 1922. The relevant statutes are:

The Public Bodies Corrupt Practices Act 1889

<http://www.irishstatutebook.ie/1889/en/act/pub/0069/print.html>

The Prevention of Corruption Act 1906

<http://www.irishstatutebook.ie/1906/en/act/pub/0034/print.html>

The Prevention of Corruption Act 1916

<http://www.irishstatutebook.ie/1916/en/act/pub/0064/print.html>

Section 38 of the Ethics in Public Office Act 1995

<http://www.irishstatutebook.ie/1995/en/act/pub/0022/sec0038.html#sec38>

The Prevention of Corruption (Amendment) Act 2001 <http://www.irishstatutebook.ie/2001/en/act/pub/0027/index.html>

Part 5 of the Proceeds of Crime (Amendment) Act 2005

<http://www.irishstatutebook.ie/2005/en/act/pub/0001/print.html#part5>

The Prevention of Corruption (Amendment) Act 2010 <http://www.irishstatutebook.ie/2010/en/act/pub/0033/index.html>

A new consolidated Criminal Justice (Corruption) Bill is currently being formally drafted by parliamentary counsel to replace the Prevention of Corruption Acts 1889 to 2010. It reflects a commitment by the Government to strengthening and consolidating corruption legislation. The General Scheme of the Criminal Justice (Corruption) Bill 2012 is available at [Criminal Justice (Corruption) Bill 2012 - General Scheme](http://www.justice.ie/en/JELR/Pages/WP12000178)  The Scheme has its origins in the Programme for Government, which was published when the current Government commenced its term of office in 2011, and which contained a commitment to “enact a new consolidated and reformed anti-corruption law to punish white collar crime and end the impunity from consequences for corporate behaviour that threatens the economy”. This Scheme provides for a consolidated corruption statute to replace and reform the provisions of the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, section 38 of the Ethics in Public office Act 1995, Part 5 of the Proceeds of Crime (Amendment) Act 2005, the Prevention of Corruption (Amendment) Act 2001, and the Prevention of Corruption (Amendment) Act 2010. The Scheme also aims to amend relevant provisions in other legislation such as the reference to corrupt conduct in section 16B of the proceeds of Crime Act 1996 and the confidential reporting of corruption and malpractice provisions in section 124 of the Garda Síochána Act 2005. Within the Scheme, it is intended to clarify and strengthen the main corruption offences as well as other reforms, including, to provide greater clarity regarding trading in influence offences and to provide for the specific liability of companies for the corrupt acts of their officers and employees. It strengthens the penalties for corruption, reflecting the damage it can do to society and the economy. To ensure that public officials who breach the public’s trust through corruption are no longer able to abuse their position, this scheme empowers courts to remove such officials from office and to bar them from holding office in the future.

Some of the provisions of the Scheme are particularly relevant in tackling corruption, given the generally secret nature of the corrupt bargain at the heart of the offence. So, for instance there is a presumption of corruption enrichment, which applies in cases where an Irish public official is prosecuted for a relevant offence (including foreign bribery), and if the official enjoys a lifestyle disproportionate to their official income etc, it will be presumed that their wealth derives from bribery. The scheme aims to extend to trials for all criminal offences the power of a judge to order transcripts, recordings, diagrams and summaries of evidence to be given to juries to assist them in their deliberations where appropriate. This can be especially helpful in complex white-collar crime trials.

The Scheme also provides for comprehensive whistleblower protection for those reporting corruption offences, reflecting the provisions of the Prevention of Corruption (Amendment) Act 2010. Of particular note is that in respect of suspected corruption taking place abroad, the Scheme replicates the provisions of the Prevention of Corruption (Amendment) Act 2010, by again making special provision, enabling reports to be made to diplomatic or consular officers or members of law enforcement officers in that state. The whistleblowers abroad are thus offered the same protections afforded to persons making reports of suspected corruption offences within the State. (In this regard, note that there is a comprehensive legislative measure currently before the Irish Parliament concerned with protecting whistleblowers – the Protected Disclosure in the Public Interest Bill 2011.

Also of particular relevance is the Criminal Justice Act 2011. A key objective of this Act is to facilitate the more effective investigation of white collar crime and to reduce associated delays. The Act provides for new procedures to facilitate police access to essential information and documentation to assist in current and future investigations of white collar crime. The Act is targeted at specified serious and complex offences (“relevant offences”) attracting a penalty of at least 5 years imprisonment, including offences in the areas of banking and finance, company law, money laundering, fraud and corruption. Key provisions of the Act include:

* A new power for the Garda Síochána (Irish police) to apply to court for an order to require any person with relevant information to produce documents, answer questions and provide information for the purposes of the investigation of relevant offences. Failure to comply with such an order will be an offence.

* A new offence relating to failure to report information to the Gardaí which could prevent the commission of white collar crime or assist the Gardaí in an investigation into white collar crime.

1. **a) Is there an anti-corruption agency in your country? If so, does it address the negative impacts of corruption on human rights in its work? Can you cite some examples to this effect?**

There are a number of different bodies engaged in (inter alia) combating corruption. The Standards in Public Office Commission (SIPO), the Director of Corporate Enforcement, the Ombudsman, the Garda Ombudsman (responsibility for the Police) the Garda Bureau of Fraud Investigation and the Money Laundering Investigation Unit of An Garda Síochána. All these bodies are independent and are funded to enable them to carry out their roles.

**b) Are there national human rights institutions in your country? If so, are they mandated to deal with corruption?**

Ireland’s NHRI is the Irish Human Rights and Equality Commission (IHREC) (www.ihrec.ie/). IHREC is accredited with ‘A’ status. Although not specifically mandated to deal with corruption, as other bodies in Ireland has responsibility for that remit, IHREC’s mandate is to promote and protect the human rights of everyone in Ireland. This can clearly encompass corruption where it has an impact on human rights. For example, in June 2012, the Human Rights Commission published observations on draft ‘whistleblower’ legislation, Protected Disclosures in the Public Interest Bill 2012. (<http://www.ihrc.ie/publications/list/ihrc-observations-on-the-protected-disclosures-in/>) .

The human rights that the IHREC is mandated to promote and protect are the rights, liberties and freedoms guaranteed under the Irish Constitution and under international agreements, treaties and conventions to which Ireland is a party.

**с) Do your anti-corruption agency and national human rights institutions cooperate in tackling corruption? If so, what mechanisms exist to promote cooperation between the respective institutions?**

The agencies listed in the response to Question 2 are in contact with a wide variety of organisations in fulfilling their remit. Where relevant, carrying out their statutory functions would involve communication and cooperation with other relevant agencies - for instance the Standards in Public Office Commission is required to conduct whatever enquiries are necessary to enable it to carry out its statutory functions and, of course, the Garda bodies would be in touch with a wide variety of groups in order to fulfil their role.

In line with the Paris Principles, the Human Rights Commission is independent in the operation of its functions, which includes, but is not limited to being independent of Government.

The mechanism of agreeing a Memorandum of Understanding to formalise cooperation with other agencies is available to the Human Rights Commission and will be available to the new amalgamated Irish Human Rights and Equality Commission.

1. **Which measures have been adopted in your country that take into account the negative impact of corruption on the enjoyment of human rights? What are the best practices and what are the challenges in this respect?**

Ireland ratified the UN Convention Against Corruption in November 2011.

In recognition of the negative impact of corruption and other infringements on human rights, Ireland has been proactive in promoting EU-wide discussion of possible methods to map, monitor and address adherence to the rule of law across the EU, as well as looking at ways in which EU member states could raise awareness of fundamental rights and the benefits of adherence to the rule of law as one of the European Union’s fundamental values. Ireland is currently engaged in a voluntary pilot exercise with the EU Agency for Fundamental Rights and other member states to explore the development of indicators to map the rule of law in various specific areas.

1. **In your country, which are the human rights that are most affected by corruption? What specific negative impact can corruption have on the enjoyment of human rights by vulnerable groups such as women, children, elderly, persons with disabilities, indigenous people and others?**

Corruption can potentially have a negative impact on the human rights of all residents of Ireland, depending on the particular manifestation of corruption. In general, a negative perception of a country’s adherence to the rule of law can have a devastating effect in terms of business, trade and the trust that is essential in international relations.

1. **What measures can be taken by the Human Rights Council and its subsidiary bodies or by States to combat corruption with specific consideration regarding the negative impact of corruption on the enjoyment of human rights?**
2. **How can the United Nations human rights mechanisms be utilized for anti-corruption efforts? What other institutional mechanisms could be used to integrate a human rights-based approach in combating corruption or vice-versa at both, the international and national level?**
3. **Are there any other observations or suggestions you wish to provide regarding the topic?**

National Human Rights Institutions (NHRIs) and regional networks of NHRIs are well placed to see the implications of corruption for human rights, the Rule of Law and for democracy and economic freedom, and to work together and with national governments for improved governance and improved functioning of public institutions and the market. For example, the European Union is embarked on a debate about the possible need for a mechanism or method of better safeguarding fundamental values, in particular the rule of law and the fundamental rights of persons in the Union and to counter extreme forms of intolerance, such as racism, anti-Semitism, xenophobia and homophobia. This entails developing an agreed understanding of what any initiative in this area would entail, including of the problems to be addressed, as well as questions of methodology and indicators; making full use of existing mechanisms such as the UN UPR process and cooperating with other relevant EU and international bodies in order to avoid overlaps; considering the full range of possible models, stressing the need for approaches that could be accepted by all Member States by consensus; and ensuring that any future initiative in this area that might be agreed would apply in a transparent manner, on the basis of evidence objectively compiled, compared and analysed and on the basis of equality of treatment as between all Member States. European NHRIs should be actively involved in this debate and in looking at how such a mechanism should function, consideration of what precisely should be measured and how, and performance indicators in that regard.