

Transparency International Global Corruption Report 2006

Country Report - Ireland

Conventions:

- Council of Europe Civil Law Convention on Corruption (signed November 1999; not yet ratified)
- Council of Europe Criminal Law Convention on Corruption (ratified October 2003; Additional Protocol ratified July 2005)
- OECD Anti-Bribery Convention (ratified September 2003)
- UN Convention against Corruption (signed December 2003; not yet ratified)
- UN Convention against Transnational Organized Crime (signed December 2000; not yet ratified)

Legal and institutional changes

- The Proceeds of Crime Act was ratified in January 2005 to amend the 2001 Prevention of Corruption (Amendment) Act and increases the powers of investigation of the Criminal Assets Bureau (see below).
- The Commissions of Investigation Act in July 2004 provides for the creation of Commissions of Investigation that will investigate 'matters of significant public concern', including corruption. One of the main reasons for the legislation was to provide an alternative mechanism to the Tribunal of Inquiry for investigating matters of public concern (see below).
- The Central Bank and Financial Services Authority of Ireland Act, passed in July 2004, complements the Central Bank and Financial Services Authority of Ireland Act in 2003. It provides for the establishment of an independent Financial Services Ombudsman to deal with consumer complaints against financial institutions and provides for greater transparency and accountability in the financial sector.
- The Public Service Management (Recruitment and Appointments) Act of October 2004 reforms the recruitment process in the civil service and other public bodies under its remit for the first time since 1926. It replaces the Civil Service and Local Appointments Commission with two new bodies: the Commission for Public Service Appointments (CPSA) and the Public Appointments Service. The CPSA publishes codes of practice for recruitment to a number of public service bodies and grants licences to some of them to recruit on their own behalf, allowing for more flexible and locally focused hiring arrangements. Concerns have been raised that the relocation of recruitment might 'facilitate a culture of local favouritism in appointments to departments located outside Dublin' and politicise appointments in the civil service.¹
- The Garda Síochána (Police Service) Bill 2004 has passed the upper house of parliament and is likely to come into effect before the summer 2005 legislative

¹ Dáil Debate Vol. 578, No. 2 (21 January 2004) Joan Burton, TD.
See debates.oireachtas.ie/Xml/29/DAL20040121.PDF

recess.² It provides for the establishment of the three-person, independent Garda Síochána Ombudsman Commission for the purposes of ensuring openness, transparency and accountability in the way complaints against the police are investigated (see below).

- A Civil Service Code of Standards and Behaviour for Ireland's 30,000 civil servants was published in December 2004. It places in a single document matters related to the principles of integrity, impartiality, effectiveness, equity and accountability. The Civil Service code establishes a 12-month moratorium and an outside appointments board to address possible conflicts of interest when civil servants take positions in the private sector; advises civil servants how to deal with gifts received; and prohibits civil servants from engaging in outside business or activities that would conflict with the interests of their departments, or abuse their official positions to benefit themselves or others.
- An Irish chapter of Transparency International was launched in December 2004, reflecting increased concern about corruption following a series of legislative changes and a string of parliamentary, tribunal, civil society and international reports on corruption.
- An independent organisation, the Centre for Public Inquiry, was established in February 2005 with a brief to investigate into matters of public importance within Irish political, public and corporate life and to heighten public awareness of the need for whistleblower protective legislation. The centre has high-profile directors, including former high court judge Feargus Flood, and generous funding from Irish American charitable foundation Atlantic Philanthropies. Leading political figures have expressed reservations about the Centre's broad terms of reference, particularly its lack of accountability for the focus and direction of potential investigations.

Reform of the Tribunals

The Houses of the Oireachtas (parliament) established the Mahon Tribunal (formerly the Flood Tribunal) in 1997 to investigate allegations of corruption involving political and business interests in the planning process.³ Its work has been frustrated and constrained by the archaic structures it must work within, and the persistent non-cooperation of key witnesses.

Justice Mahon acknowledged this non-cooperation by his use of discretion in granting costs to witnesses who, though involved in corruption, had chosen to cooperate with the tribunal. In the absence of whistleblower legislation,³ this was interpreted as a 'whistleblower's charter'.⁴ Over the last year, the media estimate that €25 million in applications for costs have been refused with just €200,000 awarded. As further

² Minister for Justice, Equality and Law Reform, Michael McDowell, Address at the Graduation Ceremony in the Garda College, Templemore. 28 April 2005.
www.justice.ie/80256E01003A02CF/vWeb/pcJUSQ6BVKH8-ga

³ See *Global Corruption Report 2005*.

³ See below: 'Whistleblower protection still elusive'.

⁴ *Irish Times* (Ireland), 1 July 2004.

evidence of the constraints of the Tribunal of Inquiry method, eight legal challenges have been filed against the process. These have proved time-consuming and disruptive.

In a climate of mounting criticism, the difficulties of the Tribunal Acts have finally been addressed and their investigative powers strengthened. The Commissions of Investigation, established under a 2004 Act, will have powers to compel witnesses to give evidence, search premises and remove documents. This entirely new body will operate alongside the Tribunals. A Commission of Investigation will primarily be a private investigation process designed to encourage cooperation by moving away from the adversarial approach that applies within the courts and Tribunals. There is a lower likelihood of a need for legal representation. A Commission established under this act must submit a report on its findings and be timely and cost effective. In April 2005, the first Commission of Investigation was established, with Barrister Patrick MacEntee in the chair, to investigate alleged collusion in the Dublin and Monaghan bombings of 1974.

The Tribunal of Inquiry into Certain Planning Matters and Payments Act 2004 removes the obligation of the Tribunal to inquire into every matter before it. The Tribunal now has power of discretion over what it will investigate. Its final report has been given a deadline of 31 March 2007. If it is not met, the Tribunal will continue to work but barristers' fees will drop from €2,500 a day to €900.

The far-reaching Proceeds of Crime (Amendment) Act 2005 eliminates existing legislative difficulties that require that a specific instance of corruption must be linked to a specific payment and a specific favour. The act increases the powers of the Criminal Assets Bureau (CAB), which now requires a lower burden of proof to confiscate the assets of corrupt individuals and seize a gift suspected of being a bribe

The two acts not only challenge the lengthy, costly and complex nature of the Tribunals, they eliminate the need for the Tribunal Inquiry method altogether. These departures are overdue, but represent a closing of the stable door after the horses have bolted.

Even the sternest critics of the Tribunals acknowledge their catalytic role in focusing cultural change in Irish society toward corruption since they began in 1997. Although no individual has successfully been convicted on corruption charges arising from the Tribunals, George Redmond, the former assistant city and county manager for Dublin, will face new corruption charges in December 2005.⁵ Former minister Ray Burke was convicted for making false tax returns identified by the Tribunal and began a six-month jail sentence in January 2005.

Morris Report points to need for further police reforms

The Morris Tribunal issued a damning report into corruption in the Donegal An Garda Síochána (police) in July 2004. The government dismissed a superintendent and a chief superintendent resigned after the Tribunal found they had been motivated by career ambition to plant ammunition and hoax explosives. The report cited 17 members of the Donegal force for varying degrees of culpability ranging from gross negligence to being uncooperative. The report highlighted failures in management, accountability and standards.

⁵ See *Global Corruption Report 2005*

As the Mahon Tribunal also experienced, the principal obstacle to the Morris Tribunal was the culture of non-cooperation in the Garda Síochána, which the Justice Minister described as a 'hedgehog culture'.⁶ Gardaí primarily feel loyalty to their colleagues, rather than the law, and cooperation is withheld from disciplinary investigations and Tribunals.

The Garda Bill was initiated in February 2004 and is anticipated to pass before the summer 2005 legislative recess. It will replace all acts pertaining to the police since 1924 and is the first serious effort in the history of the state to reform policing structures. Though long overdue, however, many regard the bill as a missed opportunity to engage in a broader and deeper reform programme.

The bill proposes the creation of an independent Police Ombudsman Commission to replace the highly inadequate Police Complaints Board. The Commission will investigate public complaints against members of the Garda, initiate investigations in matters in the public interest and examine Garda practices, policies and procedures. Legal experts branded a proposal to establish a hybrid between an Ombudsman and a Commission as 'misconceived'.⁷ This departure from the Ombudsman model as adopted in Northern Ireland to a multi-member model 'will detract from its capacity to take a robust and decisive approach to the investigation of complaints against Gardaí and public concerns about policing'.⁸ This is evident from structural weaknesses of the Ombudsman Commission, specifically the absence of specificity in qualifications for appointment and the fact that appointments will be made by the government rather than through open competition.

The Garda Bill was subsequently amended to provide for the establishment of an independent civilian inspectorate that will provide advice and support to the ministry, audit management systems and introduce international standards, practice and performance benchmarks. The fact that the inspectorate answers directly to the Minister for Justice drew particular criticism from the Garda Representative Association and the opposition that it was 'using the excuse of the report of the Morris Tribunal' to get 'a hands-on approach'.⁹ The proposals do not allow inspectorate reports to be publicly available as is the case in the UK. Nor do they provide for the Garda Commissioner to be directly accountable to the Dáil on operational policing matters.

The Morris Tribunal hopes to deliver a second report on its findings before June 2005. In an attempt to speed up proceedings, it introduced a five-point ruling that banned oral objections and applications, and limited cross-examination. However, a number of obstacles could potentially prevent the work of the Tribunal. In March 2005, it cancelled planned public sittings in Donegal when a key witness, Frank McBrearty, refused to cooperate after he was denied free legal representation.¹⁰ The issue of costs is now before the European parliament.

There was a sinister development in January 2005 when a key witness for the Tribunal had tapes stolen during a robbery at her home. No other items were taken. Reflecting the general loss of faith in Donegal's police, the witness has taken High Court proceedings to have Garda from outside the county investigate the case. This had not

⁶ *Irish Times* (Ireland) 16 July 2004.

⁷ Professor Dermot Walsh, 'The Proposed Garda Síochána Ombudsman Commission: a Critique', in *Irish Criminal Law Journal* (2004) Volume 14, No. 1.

⁸ *Ibid.*

⁹ *Irish Times* (Ireland), 6 August 2004.

¹⁰ *Irish Times* (Ireland), 22 March 2005.

been resolved at the time of writing. It remains to be seen if the Tribunal will report as expediently or comprehensively as it hopes.

Whistleblower protection still elusive

The systemic nature of corruption within the police force and planning process, as the Morris and Mahon Tribunals have identified, warrants the introduction of whistleblower legislation more than ever.

Despite momentous change with the Irish statute books since 1995 and various Tribunals of Inquiry and parliamentary investigations, whistleblower legislation remains elusive. It has been on legislative books since March 1999. Six years later the initiator of the bill concluded: "This bill probably holds some form of parliamentary record as the longest-standing bill on the Dáil's order paper."¹¹

Following a lengthy investigation, three reports were published in 2004 regarding financial malpractice at the National Irish Bank Limited, National Irish Bank Financial Services Limited (NIB) and Allied Irish Bank (AIB).¹² These incidents involved complicity in widespread tax evasion at the NIB and the AIB's failure to comply regulatory obligations over a period of eight years. Although these episodes were not directly corrupt, they served to illustrate the systematic culture of non-compliance that dominated all sectors of Irish life in the 1980s and 1990s. As with the Mahon and Morris Tribunals, the NIB Report cited frustration regarding a lack of full co-operation.¹³ Acknowledging this, the Irish Financial Services Regulatory Authority has advocated a change in cultural practice regarding hostile attitudes to whistleblowing. "Staff members of financial institutions should not feel that they have to go to outside agencies in order to raise issues of importance to that institution," said chief executive Liam O'Reilly in January 2005. "They should feel comfortable raising issues up the line. Those who wish to raise such issues should not be held responsible for the issue they are highlighting, simply because they have raised the matter."¹⁴ Whistleblower legislation is vital to combat an ingrained cultural acceptance of corruption in Ireland.

Further Reading

Neil Collins and Mary O'Shea, 'Political Corruption in Ireland', in M. J. Bull and J. L. Newell (eds.), *Corruption in Contemporary Politics* (Basingstoke: Palgrave-Macmillan, 2003)

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Paul Cullen, *With a Little Help from my Friends: Planning Corruption in Ireland* (Dublin: Gill and Macmillan, 2003)

Justice Feargus M. Flood. The Second Interim Report of the Tribunal of Inquiry into Certain Planning Matters and Payments. (Dublin: Government Stationery Office, 2002), www.flood-tribunal.ie

¹¹ *Irish Times* (Ireland), 25 April 2005.

¹² The Irish Financial Services Regulatory Authority Interim Report (July 2004) and Final Report (December 2004) into the affairs of Allied Irish Bank (AIB); High Court Inspectors Report into the affairs of National Irish Bank Limited and National Irish Bank Financial Services Limited (July 2004)

¹³ *Irish Times* (Ireland), 31 July 2004.

¹⁴ www.ifsra.ie

Colm McCarthy, 'Corruption in Public Office in Ireland: Policy Design as a Countermeasure,' in Economic and Social Research Institute, *Quarterly Economic Commentary* (2003), www.esri.ie/pdf/QEC1003SA_McCarthy.pdf

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Gary Murphy, 'Payments for No Political Response? Political Corruption and Tribunals of Inquiry in Ireland, 1991-2003', in John Garrard and James Newell (eds) *Scandals in Past and Contemporary Politics*, (Manchester: Manchester University Press, 2005)

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