



**Preliminary comments on steps needed for ratification and full
implementation of the
United Nations Convention against Corruption**

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1. This document is a response to a request by the Department of Justice, Equality and Law Reform to Transparency International Ireland for its comments on the ratification and implementation of the United Nations Convention against Corruption (UNCAC) in Ireland.
2. TI Ireland recognises that some of the legislative and administrative measures proposed in this document will necessarily fall within the remit of Government departments other than the Department of Justice, Equality and Law Reform and requests that such departments are advised of TI Ireland's comments.
3. These comments should not be read as a complete and exhaustive assessment of the legislative, institutional and administrative measures required and implicit in the ratification of UNCAC.
4. Much of the legislative and administrative framework for the ratification of UNCAC is already in place. However due to the limitations posed by time and resources, this document does not detail the many legal and institutional reforms designed to prevent and combat corruption implemented by successive Governments over time.

1. Importance and Benefits of UNCAC¹

5. The United Nations Convention against Corruption is the first global convention which sets common standards aimed at combating corruption in government, politics, and business both at a national and international level.
6. It is a result of the acknowledgement amongst governments, business and civil society worldwide that corruption poses a barrier to sustainable development, fair trade and sustainable commerce, the realisation of human rights and democracy, and international security.
7. The main benefits of UNCAC include:
 - a. An asset recovery framework elaborated for the first time on a global basis, north and south.
 - b. International cooperation framework improved for mutual law enforcement assistance, notably in extradition and investigations.
 - c. Extensive coverage of ways, means and standards for preventive measures for public and private sectors.
8. Additional benefits include
 - d. Recognition of the role of the private sector and of private sector ("private-to-private") corruption as part of the problem.
 - e. Requirements to provide for effective, proportionate and dissuasive civil, administrative or criminal penalties for the private sector; requirement that States establish accounting and auditing standards for private sector and eliminate tax deductibility of bribes (Art.12)
 - f. Recognition of role of civil society in fighting corruption and need for access to information (Art.13)
 - g. Requirement of liability of legal persons i.e. companies (Art.26)
 - h. Recognition of need for long statutes of limitations (Art.29)
 - i. Recognition of the need to protect witnesses, reporting persons and victims of corruption (Arts.32, 33)
 - j. Recognition of the right of entities or persons who have suffered damages from corruption, to initiate legal proceedings for compensation. (Art.35)
 - k. Recognition of the need for information exchange and technical and financial assistance, and of the special needs of developing countries in this regard (Arts. 60, 61, 62)

¹ Gillian Dell – www.u4.no

2. Main weaknesses

9. The main weaknesses of UNCAC include:
 - a. No concrete provisions on a monitoring mechanism
 - b. Current lack of resources for implementation
 - c. Many provisions non-mandatory, creating risk of failure to develop common standards e.g. political party funding, private sector corruption, whistleblower protection
 - d. Lack of mandatory requirement of nationality jurisdiction
 - e. Very limited coverage of officials of international organisations

3. Ratification

10. The United Nations Convention against Corruption (UNCAC) entered into force on the 14th December 2005. UNCAC has 140 signatories and, to date 70 ratifications.
11. Ireland signed UNCAC in December 2003. It has yet to ratify UNCAC.
12. TI Ireland urges the Irish Government to ratify UNCAC at the earliest opportunity. Ireland should be seen to live up to its international commitments on corruption and demonstrate its commitment to combat corruption at home. Early ratification will signal Ireland's intent to play a full role in the fight against corruption worldwide.
13. TI Ireland is not aware of any legal barriers which may prevent the ratification of UNCAC subject to the introduction of legislation to give effect to UNCAC under Irish law.

4. Implementation

Forthcoming Legislation

14. Legislative changes will have to be made in order to ratify and fully implement UNCAC. Some changes are expected to be made with the enactment of the Criminal Justice (UN Convention against Corruption) Bill, which will allow for ratification of UNCAC (to be published in 2007); the Criminal Justice (Miscellaneous Provisions) Act 2006, the Criminal Justice (Mutual Assistance) Bill 2005 and the implementation of the EU Third Directive on Money Laundering under the Criminal Justice (Money Laundering Bill).
15. The Department of Justice, Equality and Law Reform has announced that a Criminal Justice (Miscellaneous Provisions) Bill 2006 is to be drafted to address concerns raised by the OECD First Evaluation Report into the implementation of the OECD Convention on Combating Bribery in International Business Transactions. No date has been set for the publication of this Bill.
16. TI Ireland's concerns about current legislative weaknesses in relation to the foreign bribery offence are contained in its 2006 report on the implementation of the OECD Convention on Combating Bribery (see Annex I). We do not have any concerns to raise at this time on legislative limitations, other than those highlighted in the aforementioned report and by the OECD Examination Team (2002), the GRECO Evaluation Team (2003 and 2005), and the Financial Action Task Force report (2006).
17. TI Ireland requests clarification on when the Criminal Justice (Miscellaneous Provisions) Bill is expected to be published.
18. TI Ireland urges the Department of Justice, Equality and Law Reform to expedite the drafting and passage of all relevant legislation to facilitate early ratification of UNCAC.

Outstanding Legislation

Whistleblower Protection

Relevant Articles include but not restricted to Article 13.2 and Article 33 - Protection of reporting persons.

19. Whilst whistleblower protection provisions under UNCAC are not strictly binding on State Parties, it is clear that full implementation is reliant on the introduction of comprehensive legal safeguards for whistleblowers. TI Ireland has yet to be convinced that the sectoral approach to whistleblower protection announced by the Minister for Enterprise, Trade and Employment in March 2006 will satisfy the terms of Article 13.2 or Article 33 of UNCAC. TI Ireland is also doubtful that such an approach will provide the legal safeguards necessary to protect those who wish to expose malfeasance in good faith.
20. No timeframe has been announced for the amendment of the statute book to provide legal safeguards for whistleblowers. Individuals will continue to be exposed to prosecution for disclosing information of public importance until either all pertinent legislation is amended to provide such defence under law, or legislation is introduced to provide for the protection of individuals who disclose information on corruption and other forms of wrongdoing in good faith.

21. TI Ireland recommends that the Irish Government reconsiders the adoption of an overarching legislative instrument to provide blanket protection for whistleblowers as has been implemented in New Zealand and the United Kingdom.

Press Freedom

Relevant Articles include but not restricted to Article 13 - Participation of society especially

Article 13 (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

- (i) For respect of the rights or reputations of others;*
- (ii) For the protection of national security or ordre public or of public health or morals.”*

22. In furtherance to Article 13 1 (d) TI Ireland calls on the Irish Government to:

- a. Safeguard freedom of expression and freedom of the press and broadcast media to publish and disseminate information of public importance without hindrance. Bearing in mind Article 13 1 (d) (i), TI Ireland recognises the need to respect the reputation of others and calls for proportionate safeguards for the general public against unnecessary intrusion by the press.
- b. TI Ireland expresses its concern with Section 13 of the Privacy Bill which provides for the granting of a court injunction, upon application, to an individual which prevents publication of information relating to that individual. Such an injunction can remain sealed from public view if so directed by the court. TI Ireland believes that the Privacy Bill as drafted is a disproportionate response to the needs of individuals to deter unwarranted intrusion by the press. Furthermore it believes that the passage of the Privacy Bill as drafted will ultimately deter the exposure of corruption in Ireland and be inconsistent with the spirit of UNCAC as upheld in its entirety, and specifically in Article 13 (a) and Article 60 (a)

Legislation needed to Enforce Anti-Corruption Law, Domestic and Foreign Corruption

Relevant Articles include but not restricted to Arts 15 – Bribery of national public officials et seq, including Art. 16 – Bribery of foreign public officials and officials of public international organizations and, Article 36 - Specialized authorities.

Specialised authorities

23. Enabling legislation to allow the Standards in Public Office Commission (SIPO) appoint an Inquiry Officer to undertake preliminary inquiries into breaches of the Ethics and Electoral Acts without a prior complaint, would partly meet the terms specified under Article 36, by further channelling expertise and resources in the enforcement of the Ethics and Electoral Acts through a single agency which already has an established record of policing this legislation. The SIPO has proven its competence in overseeing this legislation and its role as watchdog could be greatly enhanced by the extension of its powers to initiate preliminary investigations into breaches of these Acts without a prior complaint.
24. The prevention and detection of corruption could also be further facilitated by the extension of SIPO's clear jurisdiction over the enforcement of the Ethics Acts, the Local

Government Act 2001, and the Planning and Development Act 2000 to elected representatives and staff of local authorities. It is not clear at present who has power of investigation and case preparation for corruption in local government.

25. An Garda Síochána's Bureau for Fraud Investigation (GBFI) is charged with investigating breaches of the Prevention of Corruption Acts and related statute (including but not limited to the Theft and Fraud Offences Acts).
26. This notwithstanding, the GBFI does not appear to have a specialised unit dedicated to the detection and investigation of offences specifically defined as corruption under Article 16 of UNCAC and section 2.1 (b) of the Prevention of Corruption Amendment Act 2001.
27. According to Transparency International's report on the implementation of the OECD Anti-Bribery Convention, "It is very difficult to bring foreign bribery prosecutions because they are expensive, time-consuming, and require specialised staffing. Such staff includes forensic accountants, anti-money laundering experts, and lawyers experienced with mutual legal assistance procedures for obtaining evidence from abroad. Marshalling the needed resources is particularly difficult where responsibility for foreign bribery prosecutions is decentralised. Local prosecutors swamped with large caseloads are understandably reluctant to take on foreign bribery prosecutions."²
28. TI Ireland therefore recommends that the Irish Government:
 - a. Establishes a specialised Garda Anti-Corruption Unit with adequate staffing and resources, tasked with detecting and investigating complaints made under the Prevention of Corruption Acts and related statute. This unit would also be granted the responsibility and resources to investigate allegations of bribery by Irish persons of foreign public officials overseas. This unit in collaboration with Garda Headquarters should regularly communicate its intention to enforce domestic and foreign bribery laws through the media and other forums. This message is particularly important to ensure that lack of enforcement is not interpreted as tolerance of domestic and foreign bribery. It is also important that an Garda Síochána notifies the public and media of foreign bribery investigations or prosecutions that have been initiated. It should also report at least annually on the number of foreign bribery prosecutions and investigations underway (See paragraph 37.b).

See also below on Reporting Channels.

Integrity and Independence of the Judiciary

Relevant Articles include but not restricted to Article 11.1

29. TI Ireland recommends that the Irish Government
 - a. Introduces legislation governing the appointment and oversight of members of the judiciary. The introduction of a Judicial Council Bill which provides for an independent Judicial Council, with powers to independently oversee the appointment of, inform, advise and discipline members of the judiciary would be a welcome development.

² Gillian Dell and Fritz Heimann – Transparency International report on implementation of the OECD Convention, June 2006

Cooling off periods for members of Government and other office holders

Relevant Articles include but not restricted to Art 12.2(e) – Private Sector

30. Specific moratoriums are defined for senior civil servants wishing to take up employment in the private sector under the Codes of Conduct for Civil Servants (Section 20. Acceptance of outside appointments and of consultancy engagement following resignation or retirement). This however does not extend to either members of the Oireachtas or Ministers who are bound by the Codes of Conduct Office Holders (Section 2.2.4. Business and other interests).
31. TI Ireland recommends that:
 - a. Consideration be given to the introduction of specified “cooling off periods” for members of Government and other office holders such as the Chair of the Public Accounts and other Oireachtas Committees.
 - b. Introduce a statutory code of conduct for staff across the public service in line with the civil service and local authorities codes to prevent conflict of interests.
 - c. Introduce restrictions on the employment of selected former office holders, members of the civil service, public service and local authorities for a defined period. This could be enforced by the Office of the Director of Corporate Enforcement.

Recovery of Property

Relevant Articles include but not restricted to Article 53 - Measures for direct recovery of property

32. TI Ireland requests clarification on existing measures to allow for the freezing and repatriation of stolen property to another State Party.

Administrative Changes

Public reporting and participation of society and the private sector

Relevant Articles include but not necessarily restricted to: Article 10 – Public Reporting, Article 13 - Participation of society, Article 12 - Private sector, Article 39 - Cooperation between national authorities and the private sector.

33. Many of the steps needed to be taken to meet Article 39.1 have been highlighted in the last Financial Action Task Force report on money laundering and terrorist finance³. TI Ireland makes no further recommendations here on requirements to inform business of their responsibilities surrounding money laundering offences.
34. A number of Government departments and public bodies have a collective role to play in ensuring the full implementation of Article 13. Relevant departments and bodies include but are not restricted to:
 - Department of the Communications, Marine and Natural Resources
 - Department of Enterprise, Trade and Employment
 - Department of Environment, Heritage and Local Government
 - Department of Finance
 - Department of Foreign Affairs
 - Department of Justice, Equality and Law Reform
 - Irish Aid (formerly Development Cooperation Ireland)

 - Central Bank
 - Comptroller and Auditor General
 - Company Registration Office
 - Enterprise Ireland
 - Financial Regulator
 - Forfás
 - Garda Síochána
 - Garda Ombudsman Commission
 - Garda Inspectorate
 - Information Commissioner and Ombudsman
 - Industrial Development Agency
 - Local authorities
 - Office of the Director of Corporate Enforcement
 - Revenue Commissioners
 - Standards in Public Office Commission
35. Each body will have a key role to play in promoting zero-tolerance of corruption with both internal and external stakeholders, training staff, and promoting public reporting of corruption offences, both domestic and foreign, to those lead agencies responsible for disseminating and collecting information on corruption.

³ FATF Report on Ireland, February 2006

36. A number of civil society and business organisations should be willing to cooperate with Government departments and public bodies in this effort. These include but are not restricted to:

- Dóchas and member organisations
- Irish Business and Employers Confederation
- Irish Export Association
- Irish Small and Medium Enterprise Association
- Trade unions including public sector unions
- TASC
- Transparency International Ireland
- The Wheel and member organisations

37. TI Ireland recommends that the Irish Government:

- a. Increases public and business awareness and understanding of the costs of and law relating to corruption in Ireland and that foreign bribery is a crime. It should do this through public information initiatives including websites directed at the general public and civil society in Ireland, Irish business engaged in international trade, commercial attachés and other diplomatic representatives stationed abroad, prosecutors, the media, and civil society.
- b. In pursuit of the aims outlined in paragraphs 28a, 35 and 47b in accordance with Article 61 of UNCAC, should provide for separate annual Garda statistics on the Foreign Bribery Offence under the Fraud Headline Offence (Group 9).
- c. Should actively consult with external governments, civil society, and business in the implementation of UNCAC. Consultation processes should include both public hearings and informal meetings. Such processes can be led by any state organisation or unit in consultation with key stakeholders outlined in this document under paragraphs 34, 36 and 38.
- d. Instructs its embassies abroad to record reports received by Irish nationals or local citizens and to notify any aforementioned anti-corruption body, the Department of Foreign Affairs and domestic prosecutor's office of any plausible complaints or media reports concerning corrupt acts by companies based in their countries.
- e. Establishes a readily-accessible reporting system for domestic and foreign corruption, extortion and bribery complaints. Possible elements include a website and hotline providing a public and corporate contact point for the reporting of corruption allegations (anonymous or otherwise), together with information on aspects of bribery and other corruption offences.

38. In accordance with *Article 5 - Preventive anti-corruption policies and practices* and *Article 6 - Preventive anti-corruption body or bodies*, TI Ireland also recommends that the Irish Government:

a. Considers the feasibility of establishing an independent statutory agency responsible for the implementation of the functions identified in paragraphs 37, 47 and, in collaboration with the Irish Aid Governance Unit, paragraph 41.

Or

b. Establishes a specialised and well resourced unit within the appropriate Government department, possibly the Department of Enterprise, Trade and Employment, for this purpose. See paragraph 47 (UNCAC Monitoring).

c. Establishes a standing interdepartmental committee to monitor and promote the implementation of coherent policy across Government on the prevention and prosecution of domestic and foreign corruption, to oversee and monitor information and education initiatives.

d. Facilitates an inter-sectoral forum comprising members of the aforementioned state bodies, nominees from civil society and business in order to encourage learning, information exchange and dialogue on domestic and international corruption. The forums should meet periodically, accept, record and publicise written as well as verbal submissions, liaise with any Garda anti-corruption unit, evaluate implementation of the UN and other related conventions on corruption and bribery, based on its deliberations and issue its findings and formal recommendations to the relevant minister, relevant Oireachtas committees and other bodies.

e. Provides adequate staffing and resources for the effective operation of the systems identified above and widely and repeatedly publicises their presence and function.

Training and Technical Assistance

In furtherance of the terms of Article 6 (2), Article 60 and Article 61 of UNCAC

39. TI Ireland recommends that:

Domestic efforts

- a. Training should be afforded in anti-corruption awareness, control, prevention, detection, prosecution and policy design to staff from across the public and civil service.
- b. A skills audit / self assessment should be conducted across the civil and public service to assess relevant technical, strategic, policy making and legislative skills sets in, but not limited to:
 - Preventing and detecting corruption in politics and campaign financing
 - Preventing and detecting corruption in licencing
 - Preventing and detecting corruption in procurement
 - Preventing and detecting corruption in the private sector
 - Providing access to information
 - Public information/education delivery
 - Conflict of interest management

- Public sector management and governance
 - Judicial ethics and training
 - Election monitoring
 - Use of technology and public sector modernisation in fighting corruption
 - Investigation and prosecution of money laundering
 - Investigation and prosecution of bribery (foreign and domestic)
 - Mutual legal assistance
 - Freezing and seizure of corrupt assets
 - Governance and anti-corruption in international development
- c. The Irish Government should inform the United Nations Office on Drugs and Crime of available resources and consult with both business and civil society organisations to address any perceived gaps in technical or strategic expertise in areas such as:
- Anti-corruption research and education
 - Anti-corruption policy and tool design
 - Corruption measurement
 - Investigative journalism
 - Promotion of democratic standards and human rights
 - Civil society training and capacity building
 - Corporate governance and management
 - Forensic accounting
 - Auditing

Technical assistance

40. TI Ireland welcomes the Government's announcement of plans to establish a Governance Unit within Irish Aid to develop and advise on policy on governance and anti-corruption in aid and development, and monitor related developments. TI Ireland awaits further details on financing, staffing and competence of this unit. TI Ireland strongly recommends that the Irish Aid Governance Unit is fully informed of relevant initiatives led by other government departments and plays a central role in designing and promoting both related public and corporate information programmes.

41. TI Ireland further recommends that the Irish Government:

- a. Increases assistance for UNCAC implementation and supports efforts to coordinate UNCAC-related technical assistance.
- b. Mainstreams UNCAC into the Government's policy and strategy on governance in aid and development.
- c. Supports and engages with the Utstein Resource Centre. This resource centre is funded and accessed by the staff of the UK's Department for International Development, and the Canadian, Norwegian, Swedish, and German government aid agencies. It provides free online training and a helpdesk is serviced by Transparency International in Berlin. This offers advice on request for member agency staff only. A website (www.u4.no) provides information on related issues for the public and professionals.
- d. Considers supporting and raises awareness of business and civil society compliance and education programmes. Irish Aid will provide funding for the launch of TI Ireland's anti-corruption executive education programme for 2007. The programme will open with a series of workshops for the business and development community during 2007.

- e. Supports and raises awareness of initiatives such as the Extractive Industries Transparency Initiative (EITI). EITI is a programme designed to promote transparency and accountability in governments' collection and management of revenues from their natural resource sectors. EITI signatories pledge to publish revenues gained from mining and processing thus allowing their citizens a greater opportunity to hold their governments to account. The Irish Government should examine ways in which it may engage or provide technical or financial support to the EITI. Further information is available at www.eitransparency.org.

Public Procurement

Relevant Articles include but not restricted to Article 9 - Public procurement and management of public finances

- 42. TI Ireland would be grateful for further clarification on proposals for a National Operations Unit to manage public procurement.

3. Monitoring

International Monitoring

43. An international monitoring mechanism is essential if the aims of UNCAC are to be achieved. Experience with other anti-corruption conventions has demonstrated the importance of a systematic monitoring process to ensure timely and effective implementation by national governments. UNCAC provides for a Conference of the States Parties to the Convention (CSP) which has broad responsibilities to promote and review its implementation, including establishing “any appropriate mechanism or body to assist in the effective implementation of the Convention”. The first meeting of the CSP will be held in December of 2006.⁴

44. TI Ireland:

- a. Calls on the Irish Government to lend vocal and substantive support for an international monitoring system. Transparency International’s full recommendations on the purpose, background and form of such a system accompanies this commentary.
- b. Requests that the Department of Justice, Equality and Law Reform includes two delegates from civil society as per its letter of 24 August 2006 as part of Ireland’s official delegation to the CSP. In the event that this is not possible, TI Ireland and Dóchas request the assistance of the Department of Justice, Equality and Law Reform in sourcing financial support to attend both the CSP and a civil society meeting immediately preceding the Conference.

National Monitoring System

45. In furtherance of the aims of UNCAC, a national monitoring mechanism is essential in order to build momentum for the Convention’s full implementation in Ireland.

46. A number of administrative solutions are available to Government which would assist in monitoring implementation and enforcement.

47. TI Ireland recommends that the Irish Government:

- a. Publishes separate annual Garda statistics on the Foreign Bribery Offence under the Fraud Headline Offence (Group 9). See paragraph 37.b.
- b. Provides for formal inter-departmental liaison and an inter-sectoral forum to oversee all initiatives aimed at fighting domestic and foreign corruption. See paragraphs 38.c and 38.d.
- c. Establishes a statutory anti-corruption agency or anti-corruption coordination unit within the relevant Government department to coordinate information programmes, information retrieval, media monitoring, monitoring available Garda records and statistics, assess Government, business and civil society efforts to fight corruption and evaluate implementation of UNCAC. Its findings should be

⁴ Transparency International Report on UNCAC Monitoring, 2006

made available to any anti-corruption inter-sectoral forum. See paragraphs 38.a and 38.b.

- d. Establishes an Garda Anti-Corruption Unit. See paragraph 28.a.

48. TI Ireland also recommends that:

- a. The Standards in Public Office Commission remains cognisant of the terms of UNCAC in issuing its annual report on compliance with the Ethics and Electoral Acts.