

Submission to the United Nations Universal Periodic Review

Twelfth Session of the Working Group on the UPR
Human Rights Council
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Executive Summary

The following submission by Transparency International (TI) Ireland to the Universal Periodic Review focuses on a number of overlapping issues related to human rights and good governance. It highlights the unique relationship between the two, in that good governance leads to better fulfilment of human rights and many of the tools for promoting good governance are human rights in themselves.

By preventing corruption, human rights can be fulfilled. With adequate **access to information** and **whistleblower protection**, citizens have the ability to hold their governments to account, to ensure that public funds are being devoted to the best interest of the public, and to expose or prevent risky activity in the private sector that could harm the general public.

The right to access and share information is a fundamental human right in itself, as demonstrated in various international conventions: not least under Article 19 of the Universal Declaration of Human Rights. Those who blow the whistle on corrupt or reckless behaviour should not have to sacrifice their human rights in return.

The following submission highlights a number of inadequacies in the mechanisms and legal frameworks for both these issues. Most importantly, Ireland needs to make the ratification of the United Nations Convention against Corruption and the Council of Europe Convention on Access to Official Documents a key priority. It needs to adopt a single, comprehensive whistleblower protection law, and urgently needs to introduce a freedom of information regime that proactively shares official information with the public.

I. Background and Framework

TI Ireland carries out a range of initiatives to fight corruption and promote good governance in Ireland. It will soon launch Ireland's first advocacy and legal advice centre for citizens and workers reporting wrongdoing. The organisation has produced a number of publications on

corruption and governance in Ireland, including the 2009 National Integrity Systems Country Study and a 2010 report on whistleblower protection in Ireland titled 'An Alternative to Silence'. TI Ireland also engages in international conventions work, by contributing to TI's UNCAC advocacy and contributing to TI's annual Progress Report on the Enforcement of the OECD Anti-Bribery Convention.

II. Promotion and Protection of Human Rights on the ground

A. Cooperation with human rights mechanisms

The ratification and effective implementation of anti-corruption and access to information conventions can greatly contribute to the fulfilment of human rights. Implementation and enforcement of the UN Convention against Corruption is essential in preventing, detecting and fighting corruption, and as such preventing violations of human rights that may result from corruption. Moreover, Articles 32 and 33 of the UN against Corruption underline the need to protect the rights of whistleblowers and witnesses of corruption. The right to access information, in addition to being a human right itself as reflected by Article 19 of the UDHR and International Covenant on Civil and Political Rights, is instrumental in preventing and detecting corruption and any human rights violations that may result from corrupt behaviour.

Ireland has signed but still not ratified the UN Convention against Corruption. It has neither signed nor ratified the COE Convention on Access to Official Documents. It is a State Party to the OECD Anti-Bribery Convention, though its efforts to implement this Convention have been limited to date.

While the Prevention of Corruption (Amendment) Act 2010 does provide for legal safeguards for whistleblowers reporting concerns of corruption, there is no protection for anyone reporting concerns in Ireland's business or banking sector. Offences such as insider dealing or bank overcharging cannot be reported without exposing the whistleblower to dismissal or other disciplinary or legal action: all a violation of basic whistleblower rights. Reckless lending by banks, a root cause of Ireland's economic collapse, can also remain hidden owing to the Irish Government's refusal to protect workers who voice their concerns in good faith.

B. Implementation of International Human Rights Obligations

The administration of justice and the rule of law and right to work and to just and favourable conditions of work

The lack of any comprehensive whistleblower protection in Ireland should be a major concern for human rights defenders. Those who report in good faith corruption or concerns in the public interest should not have their rights compromised or violated as a result of their decision to follow their conscience. Currently, whistleblowers are exposed to disciplinary or legal action by their employers as a result of their decision to report misconduct.

Whistleblower protection is also necessary for safeguarding human rights, as this is often a way of reporting corruption that violates the right of people to adequate healthcare, education, or the means to live a life of dignity.

A study published by TI Ireland in 2010 found that six out of ten of Ireland's leading companies were found to have whistleblower policies, yet one company spokesperson revealed that their whistleblower 'hotline' was used 'very rarely if at all'. The study also quotes a Dublin Chamber of Commerce finding that only 36 per cent of Irish companies encourage whistleblowing in the workplace compared to 89 per cent of their counterparts in the United Kingdom. In some areas where formal provision of protections has been made, it is not clear how they will work in practice. Some provisions, could deter whistleblowing altogether. The 'ought to know' clause in the Health Act for instance places an unfair and unbalanced legal onus on the whistleblower. Whistleblower codes and guidance throughout the public service are virtually non-existent. Whistleblower systems in An Garda Síochána (the Irish Police) for example provide for a 'confidential recipient' for disclosures from members of the service. Yet as of March 2009, only three reports had been made to the responsible official. In addition no 'helpline' or guidance exists for members of the force.

People across the public and private sectors can face legal and disciplinary action for honestly reporting concerns to their employers or the authorities. Whistleblowers are also exposed to informal sanctions such as loss of responsibility, transfer to remote work locations, or the loss of bonuses and privileges. There is no legal safeguard for employees in the banking sector, while the only state agencies that provide blanket guarantees to whistleblowers is FÁS (the national training and employment agency) and the National Assets Management Agency. At the moment, there is only a piecemeal approach with no single, comprehensive law for protection. As safeguards are included only in individual pieces of legislation, this creates confusion and inconsistency across the Irish workforce.

Freedom of religion or belief, association, and peaceful assembly and the right to participate in public and political life

The right to access to information is a very effective means of preventing corruption and in holding governments to account for their delivery of public services. Since 2003 the Irish Government has actively curtailed access to official information. The Freedom of Information (FOI) Act has been weakened by the introduction of fees for access to non-personal information and charges of €150 for appeals. The fees which are amongst the highest in the world, have led to a dramatic fall in the number of requests for information from both the media and general public. These fees and cost of appeals have proved to be prohibitive for both media and citizens in fulfilling their right to public information. It is also worth noting the exclusion of An Garda Síochána from the list of institutions covered by the FOI Act. The omission of Ireland's police service from the list of bodies covered by FOI is believed to make it unique among industrialised democracies.

The Information Commissioner found that since the introduction of fees, the overall usage of the Act declined by over 50 per cent, requests for non-personal information declined by 75 per cent, requests from journalists down 83 per cent while businesses were 53 per cent less likely to use the Act.

The Irish Government's determination to stem individual and group rights to official information has posed a significant barrier to meaningful participation in public life. Moreover, it has prevented the public from judging the performance of its representatives and facilitated the abuse of power by hidden networks of politicians and their clients in the banking and business community. Such illicit networks encouraged an unsustainable pro-cyclical economic policy in Ireland and discouraged the regulation of a banking sector that

imploded in 2008 leaving the Irish public to pick up the cost. It is possible that had whistleblower protections and access to information provisions been in place, the reckless and sometimes illegal behaviour in Ireland's banking sector would have been exposed before it was too late. The social and economic consequences of secrecy and conflicted decision-making will be borne by generations of Irish people.

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

While the Irish Government has introduced limited whistleblower protections under specific items of legislation, it has committed itself to leaving certain sectors and their workers unprotected. This has included most sectors within business and banking. Most employees within the public sector are not entitled to report concerns about waste, while their ability to report ethical concerns are restricted to specific offences and office holders. This is compounded by an Official Secrets Act that makes it an offence to share information that a Minister unilaterally decides should be a secret.

IV. KEY NATIONAL PRIORITIES

1. Ireland should introduce an overarching whistleblower charter that protects all workers (not just employees) against any form of reprisal for having honestly raised a concern in the public interest. This includes, but should not be restricted to, criminal offences. The United Kingdom introduced such legislation in 1997 and it has worked without legal mishap there since then. There is no reason why such legislation could not work in a legal system that is almost identical to its British counterpart. Further detailed recommendations on whistleblower legislation can be found in the Transparency International draft recommendations on whistleblower legislation.
2. Ireland should also introduce a radically overhauled freedom of information regime that proactively releases and shares official information to the public. This would require all publicly funded bodies to file all information, not officially deemed classified, on an online document registry. Any information otherwise released through a freedom of information request would also be posted on this registry. In addition, fees should only be charged to cover the cost of photocopying and postage (where required). The Official Secrets Act should also be revised so as only to cover information directly related to national security. The Information Commissioner and Ombudsman should have automatic right to review the application of the Official Secrets Act to any official information and provide for its release where the information does not threaten national or human security.
3. Ireland should make the ratification of the United Nations Convention against Corruption and the Council of Europe Convention on Access to Official Documents a key priority.

APPENDIX

References

Transparency International Ireland (2010), 'An Alternative to Silence – Whistleblower Protection in Ireland'

http://www.transparency.ie/Files/2010_Alternative_to_Silence_Ireland_v1.pdf

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Transparency International (2009) Draft Principles for Whistleblower Legislation:

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