



The ESC Rights Initiative

Dedicated to Strengthening Constitutional Protection of Economic, Social & Cultural Rights

Submission to the Department of Justice, Equality and Law Reform

Universal Periodic Review

October 2015

EXECUTIVE SUMMARY

This submission focuses on the Universal Periodic Review in relation to Ireland's commitment to and protection of economic, social and cultural rights.

BACKGROUND

1. The ESC Rights Initiative is a coalition of civil society organisations supporting strengthened economic, social and cultural rights protection in the Irish Constitution.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The adoption and implementation of economic, social and cultural rights in Ireland

2. Ireland is a signatory of the International Covenants on Civil and Political and on Economic, Social and Cultural Rights. Civil and political rights have been wholeheartedly adopted in Ireland's constitution, are fully justiciable and have been robustly defended by the courts. In contrast, most economic, social and cultural rights are constitutionally expressed as *directive principles* rather than a right that can be vindicated through the courts. Because they are stated as principles for the guidance of government there is no binding duty on the state to realise these principles. This is an anomaly because it counters the intended indivisibility of the two sets of rights.

The moral and social rationale for a strengthened economic, social and cultural rights regime

3. Economic, social and cultural rights play a fundamental role in the creation of a more just, inclusive and socially sustainable society underpinning the democratic principles of social justice and participation. A robust ESC rights regime puts in place a social floor that protects citizens from poverty, guarantees accommodation, facilitates access to education and health and elevates the position of minorities experiencing inequalities. A constitutional regime that includes ESC rights contributes to ensuring a strong social inclusion/equality dimension to policy making, a fairer allocation of resources and an accessible and affordable judicial process of redress for citizens.

4. Economic, social and cultural rights assume a particular importance in times of austerity and cut-backs in public services. Under the International Covenant on Economic, Social and Cultural Rights the reversal of progressive realisation is prohibited unless a state proves that any retrogressive measures have only been introduced after the most careful consideration of alternatives. This safeguards less well-off and marginalised people who tend to be disproportionately affected by economic downturns, as happened during the recent recession, as highlighted in the *Mission to Ireland Report of the Independent Expert on the Question of Human Rights and Extreme Poverty*¹.

Incorporation of ESC rights into law

5. In 1996, the *Report of the Review Group on the Constitution* recommended against the inclusion of any new social rights in the constitution. No subsequent attempts were made to review this position despite precedents in other countries, most notably South Africa.

6. In 2014, the Constitutional Convention carefully examined constitutional protection of ESC rights and concluded in their Eighth Report of the Convention on the Constitution in March of 2014² that in principle the constitution should be amended to strengthen the protection of economic, social and cultural rights. Although Government gave an undertaking to respond to the recommendations of the Constitutional Convention within 4 months no response on this recommendation has been forthcoming to date.

7. In May 2015, a private member's bill aimed at implementing the main recommendation of the Constitutional Convention was introduced to the Dáil for a second stage reading. Deputy Sean Sherlock, Minister of State, Department of Foreign Affairs asked the house to reject the bill. The bill was duly rejected on a government majority vote.

8. In June of 2015, Ireland made its 3rd report to the UN Committee on Economic, Social and Cultural Rights (CESCR). Ireland was represented by a high level delegation headed by Minister Sherlock.

9. In its *Concluding Observations on the Third Periodic Report of Ireland* the committee expressed its regrets that '*despite its previous recommendation (E/C.12/1/Add.77, para 23), no steps have been taken to incorporate the Covenant in domestic law and that the state party does not intend to do so.*' Minister Sherlock explained later on radio that the decision not to incorporate the International Covenant was a government cabinet decision.

10. The CESCR committee again recommended incorporation of the Covenant in domestic law:

'The Committee reiterates its recommendation that the state party take all appropriate measures to ensure the direct applicability of the Covenant provisions, including through incorporation of the Covenant in its domestic legal order, and enhance training for judges, lawyers and public officials. The Committee draws the State party's attention to its General Comment No.9 (1998) on the domestic application of the Covenant'³.

CONCLUSION

11. The development of human rights protection in Ireland has been severely impeded by the weakness of ESC rights protection in the constitution. This has resulted in an imbalanced human rights framework whereby citizens cannot adequately pursue their civil and political rights by virtue of being unable to exercise their economic, social and cultural rights. The situation of disadvantaged people, who do not have the resources and are likely to find it difficult to access legal supports, is a good example of how this imbalance plays out. In addition, the comparative weakness of ESC rights protection has undoubtedly hindered the development of a more equitable society in Ireland. For instance, it is unlikely that current levels of material deprivation⁴ (30.5%) and child poverty (12% in consistent poverty) would have emerged if ESC rights were more strongly protected by the constitution.

RECOMMENDATION

- Incorporate the International Covenant on Economic, Social and Cultural Rights into domestic law.

Contact details



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¹Report of Magdalena Sepulveda Carmona A/HRC/17/34/Add.2

² Eight Report of the Convention on the Constitution – Economic, Social and Cultural Rights, <https://www.constitution.ie/AttachmentDownload.ashx?mid=5333bbe7-a9b8-e311-a7ce-005056a32ee4>

³ E/C.12/IRL/CO/3

⁴ EU SILC 2013