



The ESC Rights Initiative

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

A Manifesto Priority for Political Parties: Strengthening Economic, Social and Cultural Rights Irish General Election 2016

Economic, social and cultural rights are fundamental human rights. Such rights include ensuring that citizens are protected from poverty and have a right to access education and health. They belong to everyone. The protection of these rights is necessary to ensure a life of dignity. The Irish Government committed to uphold these rights when it ratified the International Covenant on Economic, Social and Cultural Rights in 1989. However, Ireland has been consistently criticised by the UN Committee on Economic, Social and Cultural Rights for its failure to incorporate the Covenant into domestic law. In its concluding observations of 19th June 2015:

'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'

The Irish Constitutional Convention also carefully examined constitutional protection of ESC Rights. In its Eighth Report, published in March of 2014, the Convention stated that 85% of its membership agreed in principle that Bunreacht na hEireann should be amended to strengthen the protection of Economic, Social and Cultural Rights.

The constitutional strengthening of ESC Rights would bring balance to existing civil and political rights protection in the Constitution, which are justiciable. Thus achieving the intended indivisibility between civil and political rights and economic, social and cultural rights.

The ESC Rights Initiative calls on political parties to support the recommendation of the UN Committee on Economic, Social and Cultural Rights that Ireland incorporate the Covenant in domestic law, and the Constitutional Convention conclusion 'that the constitution be amended to strengthen the protection of Economic, Social and Cultural Rights', by inserting a commitment to this end as a priority item in their election manifesto for government.

Why are Economic, Social and Cultural Rights important?

The adoption of justiciable ESC rights in the Constitution should be a priority of a democratic and progressive government. Economic, social and cultural rights play a fundamental role in the creation of a more just, inclusive and socially sustainable society. The International Covenant on Economic, Social and Cultural Rights (1966) gives substance to rights outlined in the 1948 Universal Declaration on Human Rights. These international instruments are an expression of universal values that respect the dignity and human rights of all people. ESC Rights thus underpin and complement principles of social justice and democracy.

How can economic, social and cultural rights be strengthened?

In Ireland, 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 for government there is no binding duty on the state to realise these principles. In contrast, civil and political rights cannot be withdrawn because they are expressed as *justiciable rights* in the Constitution and can be vindicated through the Courts. This is an anomaly because it counters the intended indivisibility of the two sets of rights. Therefore, economic, social and cultural rights should be given equivalent justiciable expression in the Constitution.

How would constitutionalised contribute to social justice and equality for all?

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 would ensure 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.

What is the duty on the state if these rights are constitutionalised and made justiciable?

Signatories of the human rights covenants are expected to *progressively realise* these rights. It is not intended that all of the enumerated rights be realised immediately but that a systematic approach to gradually realising these rights is undertaken by government. Incorporating ESC rights in the Constitution would ensure that government priorities take into account these obligations in developing policies on housing and homelessness, poverty and social inclusion, income and employment rights, health and education.

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.

The ESC Rights Initiative is a coalition of civil society organisations that support strengthened economic, social and cultural rights protection in the Irish Constitution. The ESC Rights Initiative successfully campaigned for the inclusion of economic, social and cultural rights as an agenda item of the [Constitutional Convention](#). Following a comprehensive examination, the Convention [recommended](#) a strengthened constitutional framework in its [2014 report to government](#) (LINK). This recommendation has yet to be responded to or acted upon by government. Contact: escrightsinitiative@gmail.com