



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

Economic, social and cultural (ESC) rights are fundamental human rights. Such rights include the right of everyone to education, adequate housing, the highest attainable standard of health and the right to an adequate standard of living. The protection of these rights is necessary to ensure a life of dignity.

Civil, political, economic, social and cultural rights are all equal in importance and none can be fully enjoyed without the other. In Ireland, civil and political rights are protected in the Constitution but economic, social and cultural rights are largely unprotected, thus civil and political rights are legally enforceable through the courts, while economic, social and cultural rights are not.

The ESC Rights Initiative calls on political parties to include ESC rights as a priority item in their election manifesto and commit to:

- 1. Respond positively to the decision of the Constitutional Convention that Bunreacht na hÉireann should be amended to strengthen the protection of economic, social and cultural rights.**
 - 2. Support the recommendation of the UN Committee on Economic, Social and Cultural Rights that Ireland incorporate the Covenant in domestic law.**
 - 3. Progress towards a referendum on ESC rights during the lifetime of the next Government.**
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Economic, social and cultural rights in Ireland

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'

There is a growing, worldwide, recognition and acceptance of the need to protect ESC rights like housing, health, education and an adequate standard of living. 133 countries enshrine the right to healthcare and 106 constitutions protect the right to work. Of the 28 EU member states, 26 make some form of constitutional provision for ESC rights. But, Ireland continues to fall behind in the protection of these fundamental human rights.

In 2014, the Government-established Constitutional Convention carefully examined constitutional protection of ESC rights and voted overwhelmingly – 85 percent agreed in principle – that Bunreacht na hÉireann should be amended to strengthen the protection of economic, social and cultural rights.

Why are Economic, Social and Cultural Rights important?

The adoption of legally enforceable 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.

How can economic, social and cultural rights be strengthened?

To date, the state has failed to incorporate these basic human rights such as housing, health, education and just conditions of work into Irish law. Economic social and cultural rights could be strengthened by making them legally enforceable through the courts.

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

A constitutional regime that includes ESC rights could help to ensure a fairer allocation of resources and an accessible and affordable judicial process of redress for citizens in areas such as education, health, protection from poverty and accommodation. Constitutionalising ESC rights can help to guide government planning, encourage evidence-based decision-making regarding the allocation of resources, and help to shape law and policy on relevant issues. Constitutional protection of ESC rights would bring Ireland in line with a growing trend among many countries to constitutionalise these rights.

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

Signatories of the International Covenant on Economic, Social and Cultural Rights are obliged to *progressively realise* these rights. Ireland made this commitment when it ratified the Covenant in 1989. States are not expected to fully implement all of the rights in the Covenant immediately. Rather, they are required to adopt a systematic approach to realising these rights as quickly as they possibly can.

Economic, social and cultural rights assume a particular importance in times of austerity and cutbacks in public services. Under the International Covenant on Economic, Social and Cultural Rights the reversal of *progressive realisation* is prohibited unless the state (i.e. government) can prove that any retrogressive measures have only been introduced after the most careful consideration of alternatives. This obligation can help to safeguard the most marginalised who are often disproportionately affected by economic downturns, including state responses to such, 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. This recommendation has yet to be responded to or acted upon by government.*

Contact details

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