

BRINGING ESC RIGHTS HOME

IRELAND AND THE
OPTIONAL PROTOCOL
TO THE
INTERNATIONAL
COVENANT ON
ECONOMIC, SOCIAL
AND CULTURAL
RIGHTS

AMNESTY
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TABLE OF CONTENTS

Section 1:	Introduction	2
Section 2:	An Overview of Economic, Social and Cultural Rights	4
Section 3:	The OP ICESCR	6
Section 4:	What the OP ICESCR provides for	7
Section 5:	Competence of the UN Committee on Economic, Social and Cultural Rights to make recommendations	13
Section 6:	Ratifying the OP ICESCR	16
Section 7:	How is the OP ICESCR relevant to Government departments?	17
Section 8:	Why should Ireland ratify the OP ICESCR?	22
Section 9:	The content of the rights in the ICESCR	24
Section 10:	Domestic remedies for ESC rights violations in Ireland	26
Section 11:	Conclusions and Recommendations	32

Section 1: Introduction

“[The Optional Protocol] reaffirms the equal importance of economic, social and cultural rights with civil and political rights ... [it] represents a veritable milestone in the international human rights system”.

Navanethem Pillay, UN High Commissioner for Human Rights¹

Strengthening the protection of economic, social and cultural (ESC) rights is a global priority for Amnesty International (AI). As part of this work AI is promoting wide state ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP ICESCR).

This paper is the second in our series of three publications entitled *Bringing ESC Rights Home*, aimed at strengthening the protection of ESC rights in Ireland. The first, entitled *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*, was published in May 2014. It is designed to guide law and policy makers in Ireland, in considering how the legal enforceability of ESC rights can be strengthened, particularly in light of the Constitutional Convention recommendation on ESC rights.² The third, to be published later this year is designed to provide the Government with guidance on its ESC rights obligations when making budgetary decisions and allocating resources.

The adoption and coming into force of the OP ICESCR is a major step in addressing the historical imbalance in the protection and recognition of civil and political rights and ESC rights.

The OP ICESCR provides people with a remedy if their ESC rights are not upheld at the national level. The right to a remedy is a fundamental concept of human rights law.³ Often there is a misconception that a remedy merely means monetary damages but there are many forms of remedies including restitution, rehabilitation, satisfaction and guarantees of non-repetition.⁴

It is important to recognise however, that the OP ICESCR does not create any additional rights or duties to those contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Ireland in 1989.

Ireland has signed up to similar complaints procedures under the International Covenant on Civil and Political Rights (ICCPR) and other treaties at both an international and regional level.⁵ There is no compelling reason why such a complaints procedure should not also be made available for people in Ireland when it comes to ESC rights.

Ratifying the OP ICESCR is an opportunity for States to stand true to what they emphasised in the 1993 Vienna Declaration and Programme for Action. Namely that all human rights are indivisible and interconnected and must be promoted and protected equally and that they must be treated “in a fair and equal manner, on the same footing, and with the same emphasis”.⁶

The OP ICESCR is important for civil society as it provides both a procedure to seek justice for victims and an avenue by which ESC rights failings more generally can be addressed. In so doing it provides an important tool for society to determine if ESC rights related concerns amount to human rights violations.

The OP ICESCR can also help to create greater accountability in the delivery and progressive realisation of ESC rights.

Accountability should not be understood in the narrow sense of ‘blame’. While an important element of accountability is the availability of remedies and redress when something goes wrong, accountability should also be understood in a broader sense. As has been noted in the context of the right to health, “[i]t is a process that helps to identify what works, so it can be repeated, and what does not, so it can be revised”.⁷ The OP ICESCR should therefore be seen as a tool for civil society but also for the Government to guide it in its delivery of ESC rights.

Ireland signed the OP ICESCR on 23 March 2012 but has not yet ratified it.

In its 2014 National Interim Report under the Universal Periodic Review by the UN Human Rights Council,⁸ the Irish State noted that certain steps would have to be taken prior to ratification:

“Ireland has always been clear that treaty ratification is considered as something which should only be done after wide-ranging examination of all the issues and appropriate consultation with relevant Departments. As such, in order to lay out clearly the necessary steps to be taken to facilitate ratification, it is necessary to conduct a screening of obligations to be assumed under the Optional Protocol and to hold comprehensive and thorough consultations with all Government Departments”.⁹

Amnesty International Ireland urges the relevant Government departments to start this inter-departmental process as a vital step towards ratification of the OP ICESCR.

This paper is intended to help inform departments in this process. It provides information on the contents of the OP ICESCR; how the OP ICESCR is relevant to individual Government departments; reasons why Ireland should ratify the OP ICESCR; provision for ESC rights in Irish law and policy; existing domestic accountability mechanisms which can help in the promotion and protection of ESC rights; ratifications to date and steps taken by other States to ratify the OP ICESCR. The document concludes with a number of recommendations.

Section 2:

An Overview of Economic, Social and Cultural Rights

ESC rights are those human rights relating to issues such as healthcare, education, access to housing, food, clothing and water, sanitation, social security, the workplace, family life and participation in cultural life.

ESC rights and human rights law more broadly are outcomes focused, but are also concerned with the process by which these outcomes are achieved. For example, ESC rights require the Government to take steps, over time, to deliver on those outcomes identified in international law. They do not specify the specific policies which must be pursued to deliver on these rights but they require that the Government adopts appropriate processes for planning and decision making and that decisions are made in a transparent and participatory manner, using reliable evidence.

Ireland has legal obligations to uphold ESC rights because it has ratified treaties which protect these rights.¹⁰

Detailed information on Ireland's legal obligations regarding ESC rights can be found in AI Ireland's 2014 publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.¹¹

International protection was given to ESC rights in the Universal Declaration of Human Rights (UDHR) in 1948. Previous to this, labour rights had already gained protection in the International Labour Organisation (ILO) Conventions.

In 1966, ESC rights were given specific binding legal protection in the ICESCR. This is now the main United Nations human rights treaty which protects these rights. Together with the ICCPR and the UDHR, it forms the International Bill of Human Rights. Ireland signed the ICESCR in 1973 and ratified it in 1989, thereby agreeing to be legally bound by its provisions.

The ICESCR protects the following ESC rights:

Economic Rights

- The right of everyone to the opportunity to gain their living by freely chosen or accepted work and to just and favourable conditions of work
- The right of everyone to form trade unions, join a trade union of her/his choice and the right to strike

Social Rights

- The right to social security
- Protection and assistance of the family
- The right of everyone to an adequate standard of living for them and their family, including food, clothing and housing, water and sanitation,¹² the continuous improvement of living conditions and the right to be free from hunger

- The right of everyone to the highest attainable standard of physical and mental health
- The right of everyone to education

Cultural Rights

- The right of everyone to take part in cultural life, to enjoy the benefits of scientific progress, to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he/she is the author

The UN Committee on Economic, Social and Cultural Rights (CESCR) is mandated to oversee States Parties' compliance with the provisions of the ICESCR. It examines periodic reports submitted by States and thereupon makes concluding observations and recommendations to States.¹³ The CESCR also issues General Comments on particular themes or rights as protected in the ICESCR - for example on the rights to health, housing, education, work, food, water, social security and cultural rights¹⁴ and has also issued General Comments on the overarching obligations of States arising under the ICESCR.¹⁵

The meaning of ESC rights is therefore not limited to the wording of the provisions in the ICESCR itself but is given further definition in the General Comments of the CESCR, and in the CESCR's consideration of States' periodic reports. Complaints decided by the CESCR under the OP ICESCR can also help to clarify the content and parameters of the rights and obligations in the ICESCR.



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Section 3:

The OP ICESCR

The OP ICESCR is a legal instrument which creates three additional procedures for CESCR to monitor State compliance with the ICESCR. These are a **communications procedure**, an **inter-State procedure** and an **inquiries procedure**. These procedures are outlined below.

The OP ICESCR was adopted by the UN General Assembly in 2008 and entered into force on 5 May 2013, following its ratification by 10 UN Member States.

Ireland signed the Optional Protocol on 23 March 2012 but has not yet ratified it. This means that the Optional Protocol is not yet enforceable in Ireland.

However by signing the Optional Protocol the State has undertaken certain obligations:

“The signature is significant because it is evidence of the intention of government to take steps towards ratification of the treaty. According to Article 18 of the Vienna Convention on the Law of Treaties, signature creates the obligation to refrain in good faith from acts that would defeat the object and purpose of the Optional Protocol of the ICESCR in the period between signature and ratification.”

International NGO Coalition for OP-ICESCR, *A Toolkit for Action, Booklet 2: Overview: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (New York: 2011), p 11.

As noted above, Ireland has already agreed to be bound by similar UN complaints mechanisms to allow for complaints about violations of civil and political rights, torture, discrimination against women and discrimination on racial grounds.¹⁶ Although there are some technical innovations (see further below), the OP ICESCR does not create any type of mechanism substantially different to those which Ireland has already agreed to be bound by under other human rights treaties.

Section 4:

What the OP ICESCR provides for

1) The communications procedure (Article 2)



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Once a State has ratified it, the OP ICESCR allows **individuals and groups of individuals from that State** to send a communication to the CESCR if they believe that their rights under the ICESCR have been violated and **if they have exhausted all remedies in their own country.**¹⁷

Upon the examination of a communication, the CESCR makes its findings and can make recommendations to the State.

The State concerned is made aware, on a confidential basis, of any communication received by the CESCR. The State Party has six months to submit written explanations or statements clarifying the matter and the remedy, if any, that may have been provided (Article 6 OP ICESCR).¹⁸

SECTION

4

Friendly settlement (Article 7 OP ICESCR):

Under Article 7, the Committee shall facilitate a friendly settlement between the author(s) of a communication and the State Party. A settlement can only be reached on the basis of the respect for the obligations set forth in the ICESCR. If a friendly settlement is reached this closes consideration of the communication.

This is the first time that a provision for friendly settlement has been included in a UN complaints procedure.



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Interim measures (Article 5 OP ICESCR):

At any time after the receipt of a communication and before a decision on the merits has been reached, the CESCR may request that the State Party takes interim measures as may be necessary in exceptional circumstances, to avoid irreparable damage to the victim or victims of the alleged violation. Such a request does not imply a decision on the admissibility or merits of the communication.

Admissibility (Article 3 OP ICESCR)

Any communication must be deemed admissible by CESCR before it can consider it in detail and make its findings.

A number of criteria as set out in Article 3 of the OP ICESCR, must be met in order for a communication to be deemed admissible by the CESCR.

These include:

- The need to exhaust domestic remedies;
- The requirement to submit the communication within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;
- The subject of the communication must not have occurred before OP ICESCR entered into force in the State Party concerned unless those facts continued after that date;
- The same matter must not have already been examined by the CESCR, or have been, or is at that point being, examined under another procedure of international investigation or settlement;
- The communication must not be incompatible with the provisions of the ICESCR;
- The communication must not be manifestly ill-founded. It will also not be admissible if it is not sufficiently substantiated or if it is exclusively based on reports disseminated by mass media;
- It must not be an abuse of the right to submit a communication;
- The communication must not be anonymous and must be made in writing.

Clear disadvantage (Article 4 OP ICESCR)

Article 4 of the Optional Protocol provides that:

“The Committee may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.”

This is a provision which does not exist in other complaints mechanisms similar to the OP ICESCR. It has been noted that “Article 4 was added to dispel fears that the CESCR might one day be swamped with cases”.¹⁹ Article 4 was proposed during the drafting process of the OP ICESCR as a means by which the CESCR could decline to deal with communications which did not raise issues of clear disadvantage, if as has been noted, “the caseload [of the CESCR] became too unwieldy, allowing the [CESCR] to focus on more important claims”.²⁰

However, it was envisaged by a then member of the CESCR that this exception will only be applied in exceptional circumstances and does not form part of the admissibility criteria.²¹ The civil society organisation ESCR-Net has emphasised that the ‘clear disadvantage’ or ‘issue of general importance’ criteria should not form part of the initial admissibility stage. It has noted that “[o]nly if it is necessary due to caseload should the [CESCR] request additional information from Claimants regarding the particular disadvantage suffered or whether the communication involves a serious issue of general importance”.²²

It has also emphasised that “it is not for State parties to invoke Article 4 as grounds for the [CESCR] to decline to consider a communication. Within a progressive interpretation, the [CESCR] should clarify that in the normal functioning of the Communications procedure, Article 4 does not constitute an additional requirement to be satisfied by the authors of communications”.²³

Transmission of communication (Article 6)/Examination of communications (Article 8)

Articles 6 and 8 of the OP ICESCR provide that:

When a communication is found to be admissible, the CESCR will send this to the State Party concerned. It is given six months to provide a written explanation or clarification of the matter and any remedy that may have been provided (Article 6 OP ICESCR).

The CESCR will then consider the communication on its merits (substance/facts). This takes place in a closed meeting of the CESCR (Article 8(2) OP ICESCR).

The CESCR will examine the communication and the submission of the State and any other relevant documentation such as “from other United Nations bodies, specialised agencies, funds, programmes and mechanism, and other international organisations, including from regional human rights systems, and any observations or comments by the State Party concerned” (Article 8(3) OP ICESCR).

Importantly, the examination by the CESCR is a measured process. The CESCR must consider the **reasonableness of the steps taken** by the State Party to implement the rights in the ICESCR and must **bear in mind that the State Party may adopt a range of possible policy measures** for the implementation of the rights in the ICESCR (Article 8(4) OP ICESCR).

The need to consider the reasonableness of the steps taken is similar to the reasonableness approach adopted by the South African Constitutional Court, where the Court considers whether the State has adopted reasonable measures to meet its obligations²⁴ – a similar approach to the process of judicial review in common law jurisdictions including Ireland.²⁵ The reasonableness approach is discussed in more detail in chapter 3 of AI Ireland’s publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.²⁶

Next steps/follow-up to the views of the CESCR (Article 9)

Article 9 of the OP ICESCR provides that:

After it has examined a communication, the CESCR will send its views along with recommendations (if any) to the parties concerned (Article 9(1) OP ICESCR).

The State Party must give due consideration to the views of the CESCR and any recommendations, and must submit a written response to CESCR within six months, including information on any action taken in light of the views and recommendations of the CESCR (Article 9(2) OP ICESCR).

The CESCR may invite the State Party to submit additional information on any measures it has taken in response to the CESCR’s views or recommendations. Such information may, as deemed appropriate by the CESCR, be provided in the State Party’s periodic reports (Article 9(3) OP ICESCR).

This is the first time that a follow-up procedure is included expressly in the text of an Optional Protocol, building on the existing practices of other UN human rights committees.²⁷

2) The inter-State procedure (Article 10)

Article 10 of the OP ICESCR allows the CESCR to examine **inter-State complaints** when one State Party considers that another State Party is not fulfilling its obligations under the ICESCR. This procedure does not automatically become binding on the State by ratifying the OP ICESCR. The State Party may agree to be bound by the procedure by making an additional declaration recognising the competence of the CESCR to examine such complaints (Article 10(1)).

Article 10 of the OP ICESCR provides that:

If a State Party believes that another State Party is not fulfilling its obligations under the ICESCR, it may bring this to the attention of that State Party and inform the CESCR. The State Party which is the subject of the complaint must provide an explanation within three months (Article 10(a)).

If the States Parties do not settle the matter within six months after the initial communication, then the matter may be referred to the CESCR by either State Party (Article 10(b)).

The CESCR will only deal with the matter if all domestic remedies have been exhausted, unless the application of these remedies is unreasonably prolonged (Article 10(c)).
The CESCR shall make its services available with a view to reaching a friendly settlement (Article 10(d)).

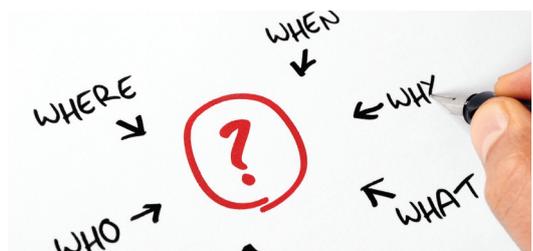
The CESCR will hold a closed session when considering the matter. It may call on the States Parties to provide relevant information (Article 10(e) and 10(f)).
The States Parties have the right to be represented when the matter is being considered by the CESCR and to make a submission orally and/or in writing (10(g)).

The CESCR prepares a report. If a friendly settlement has been reached, the report will only outline a brief statement of the facts and the solution reached (Article 10(h)(i)).
If a friendly settlement was not reached, the report will set out the facts and attach the written submissions and record of the oral submissions made by the States Parties (Article 10(h)(ii)).
The CESCR may also communicate any views it may have on the matter. These views are only shared with the States Parties concerned and are not made publicly available (Article 10(h)(ii)).

The inter-State procedure is also available under other UN human rights treaties, but it is very rarely used by States Parties, largely due to the delicate political relationships between states.

3) The inquiries procedure (Article 11)

Article 11 of the OP ICESCR mandates the CESCR to conduct inquiries if it has received reliable information of grave and systematic violations by a State Party of the rights in the ICESCR. This procedure does not automatically become binding on the State by ratifying the OP ICESCR. The State Party may agree to be bound by the procedure by making an additional declaration recognising the competence of the CESCR to conduct such inquiries (Article 11(1)).



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Unlike the communications procedure, the inquiries procedure does not require a complaint for the CESCR to initiate proceedings.²⁸

Article 11 of the OP ICESCR provides that:

If the CESCR receives reliable information which indicates grave or systematic violations by a State Party of the rights in the ICESCR, the CESCR shall invite the State Party to cooperate in the examination of the information and to submit observations regarding the information concerned (Article 11(2)).

Taking into account any observations it may receive from the State Party together with any other reliable information available to it, the CESCR may designate one or more of its members to conduct an inquiry and to report urgently to the CESCR. Where warranted and with the consent of the State Party, the inquiry may include a visit to the State Party concerned (Article 11(3)).

An inquiry is carried out confidentially and the cooperation of the State Party is sought at all stages (Article 11(4)).

After examining the findings of the inquiry, the CESCR will transmit these findings to the State Party together with any comments and recommendations (Article 11(5)).

The State Party is given six months to submit its observations to the CESCR (Article 11(6)).

After proceedings of an inquiry have been completed, the CESCR may, after consulting with the State Party, decide to include a summary account of the results of the proceedings in its annual report (Article 11(7)).

Any State Party that has made a declaration allowing for the CESCR to conduct inquiries may withdraw this declaration, at any time, by notifying the UN Secretary General (Article 11(8)).

Section 5:

Competence of the UN Committee on Economic, Social and Cultural Rights to make recommendations

In its decisions (referred to as views) the CESCR determines whether a violation of ESC rights has occurred. It is important to recognise that in terms of remedies the CESCR makes recommendations rather than legally binding judgments on the State. The recommendations aim to assist the State in resolving the manner in which it is fulfilling its obligations with respect to the individual's ESC rights. The case law of the CESCR will also help define best practice in meeting the obligations of the State concerned and other States.

While the CESCR does not make legally binding judgments, the State is expected to observe CESCR's decisions and to remedy the situation as part of its general ICESCR obligations.²⁹ As noted above, according to the OP ICESCR, “[t]he State shall give due consideration to the views of the Committee together with its recommendations ... and shall submit to the Committee, within six months, a written response, including information on any action taken in light of the views and recommendations of the Committee”.³⁰ This is similar to the Optional Protocol under the ICCPR which Ireland has ratified.

Although the State is expected to observe decisions by the CESCR, the nature of these decisions should alleviate any concern about the imposition of international adjudication in discussions about ratification of the OP ICESCR.

How might communications be assessed by the UN Committee on Economic, Social and Cultural Rights?

A situation affecting an individual's ESC rights does not necessarily mean that there has been a violation of the human rights obligations of the State Party. At the time of writing, the CESCR has not yet made any decision on a communication. This section considers some of the obligations of the State in respect of ESC rights and outlines how the CESCR may consider these obligations in the assessment of any communications.

The obligations to respect, protect and fulfil ESC rights

The three main obligations of States under human rights law are characterised as the obligations to **respect**, **protect** and **fulfil** human rights:

- Depending on the nature of the communication, the CESCR may focus on the State Party's obligation to respect ESC rights. The obligation to **respect** means that the State must not interfere directly or indirectly with the enjoyment of rights. For example the State must not carry out forced evictions without due process of law or providing alternative accommodation. (The right to an adequate standard of living, including adequate housing, Article 11 ICESCR).

- If relevant to the communication at hand, the CESCR may also consider the obligation to protect ESC rights. The obligation to **protect** requires the State to prevent, investigate, punish and ensure redress for harm caused by abuses of human rights by third parties, such as private individuals, commercial enterprises or other non-state actors. For example, the State must regulate and monitor the treatment of workers by their employers. (The right to just and favourable conditions of work, Article 7 ICESCR).
- A communication may also centre on the obligation of the State Party to fulfil ESC rights. The obligation to **fulfil** requires the State to take steps towards the full realisation of ESC rights. Article 2(1) of the ICESCR places a duty on the State to “take steps ... to the *maximum of its available resources*, with a view to *achieving progressively* the full realisation of the rights recognised in the present Covenant *by all appropriate means*”.³¹
- Article 2(1) of the ICESCR recognises that the majority of ESC rights will not be fully achievable overnight and that States do not have an infinite amount of resources. However, States are obliged to take steps, to the maximum of their available resources, towards the full realisation of these rights. This may require the State to adopt legislative, administrative, budgetary, judicial and other measures to achieve this aim. It is important to note that the adoption of such measures is not limited to the obligation to fulfil but may also be necessary in order for the State to meet its obligation to respect and protect human rights. For example, the State should give recognition to the right to health (Article 12 ICESCR) in the national and political legal system and adopt a national health strategy with a detailed plan for realising the right to health.

In the negotiation of the OP ICESCR, considerable attention was given to the assessment of the steps taken by States to fulfil their obligations under the ICESCR.

The CESCR prepared a statement to outline the approach it would take to the communications process under the OP ICESCR. The CESCR noted that when considering a communication which alleges a failure of the State to take steps to the maximum available resources, it would examine the legislative and other measures taken by the State. When assessing whether these measures are “adequate” or “reasonable” the CESCR would take into account inter alia:

- The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of ESC rights;
- Whether the State Party exercised its discretion in a non-discriminatory and non-arbitrary manner;
- Whether the State Party’s decision regarding the allocation of available resources is in accordance with international human rights standards;
- Where several policy options are available, whether the State Party adopts the option that least restricts the rights in the ICESCR;

- The time frame in which the steps were taken;
- Whether the steps have taken into account the precarious situation of disadvantaged and marginalised individuals or groups and, whether the State Party prioritised grave situations or situations of risk.³²

Minimum core obligations

The State also has a number of immediate obligations under the ICESCR which are not subject to progressive realisation. These are known as “**minimum core obligations**”. This means that the State must ensure at the very least, the minimum essential levels of each right. In the context of the right to health for example, the minimum core obligations include the provision of essential primary healthcare; access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalised groups; and the provision of essential drugs as from time to time defined under the WHO Action Programme on Essential Drugs.³³

As regards minimum core obligations, the CESCR has made clear that “[i]n order for a State party to be able to attribute its failure to meet its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.³⁴

Retrogressive measures

A State Party should not take any **retrogressive measures** (steps back) in achieving the full realisation of the rights in the ICESCR, for example by massively reducing investment in education, health services or social security.³⁵

Circumstances which may impact upon the availability of resources, such as where a State faces economic recession,³⁶ may justify some retrogressive measures.³⁷ However, the burden of proof³⁸ rests with the State to show that:

- Such measures have been given the most careful consideration;
- The measures are fully justified by reference to the totality of the rights in the ICESCR;
- The maximum available resources have been used before resorting to such measures. This includes resources available within the State and those available through international assistance and co-operation.³⁹

The State’s obligations under the ICESCR are discussed further in chapter 1 of AI Ireland’s publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.

Section 6:

Ratifying the OP ICESCR

Ratifications to date

To date, 15 States⁴⁰ have ratified the OP ICESCR, including seven European States. These seven are Spain, Portugal, Slovakia, Montenegro, Bosnia and Herzegovina, Belgium and Finland.

A further 30 States, including Ireland, have signed the OP ICESCR but have not yet ratified it.⁴¹

Steps towards ratification

The first step towards ratification normally involves a procedure of consultation between relevant Government departments in order to lay out the implications of ratification and any issues arising in departments.

Such a consultation procedure should have clear timelines and be transparent. Information relevant to the procedure should also be accessible for civil society. This has not been the case in other ratification processes that Ireland has undertaken. The OP ICESCR provides an opportunity to establish an example of good practice for the State's approach to ratification of international treaties.

In some States, such as Uruguay, civil society organisations have organised seminars, attended by relevant departmental and parliamentary representatives, members of the judiciary and NGOs in order to provide further information on the OP ICESCR and to aid the move towards ratification. Other steps prior to referral to parliament have varied from State to State. These may also depend on the legal system operating in the State.

It is important to note that there are no procedural requirements for ratifying the OP ICESCR. It does not require the establishment of new mechanisms or bodies. All procedural obligations are contained in the ICESCR, which the Irish State has already ratified.

Section 7:

How is the OP ICESCR relevant to Government departments?

As stated previously, a decision by the Irish Government to ratify the OP ICESCR will require an inter-departmental consultation process. Therefore, departments must be aware of how the OP ICESCR is relevant to them. Issues over which departments have a mandate could be examined by the CESCR.

Department	Specific Rights in the ICESCR	Relevance to Department
Department of Foreign Affairs and Trade	Article 2(1) of the ICESCR places an obligation on states "to take steps, individually and through international assistance and cooperation , especially economic and technical, to the maximum available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant".	<p>The Department of Foreign Affairs and Trade leads on the process of ratification for the OP ICESCR. It is also responsible for preparing periodic reports under the ICESCR.</p> <p>The Department would also likely lead on coordinating Ireland's representations to CESCR in its consideration of any communications against Ireland.</p>
Department of Children and Youth Affairs	<p>The ICESCR requires the State to take certain measures on behalf of children, in particular Article 10 (3) which requires the State to take special measures of protection and assistance on behalf of children and young persons without any discrimination for reasons of parentage or other conditions. It also requires the State to protect children and young persons from economic and social exploitation. Article 12(2) (a) which protects the right to health, obliges the State to take steps necessary for the healthy development of the child.</p> <p>More broadly, any relevant ESC rights would apply to the Department when delivering on policies relating to children.</p>	<p>The ICESCR is relevant to the Department of Children and Youth Affairs, particularly when carrying out its mandate to ensure the harmonisation of policy and provision across Government and with a range of stakeholders to improve outcomes for children, young persons and families.</p> <p>Also relevant is the quality of any domestic complaints mechanisms and remedies it oversees relevant to ESC rights of the child.</p> <p>It is also noteworthy that there is some overlap between the OP ICESCR and the Third Optional Protocol to the Convention on the Rights of the Child (OP CRC) which provides for a communications procedure. The CRC protects a comprehensive range of ESC rights. Ireland has yet to sign and ratify the OP CRC.</p>
Department of the Environment, Community and Local Government	Article 11 of the ICESCR protects the right of everyone to an adequate standard of living for her/himself and her/his family.	A number of issues managed by the Department of the Environment, Community and Local Government would be relevant in determining how Ireland is delivering on its

Department	Specific Rights in the ICESCR	Relevance to Department
<i>continued</i>	<p>This includes adequate housing and the continuous improvement of living conditions. The right to water also forms part of the right to an adequate standard of living.</p> <p>Article 12 of the ICESCR protects the right to health which includes a number of underlying determinants of health, such as access to clean water and sanitation, housing and a healthy environment.</p>	<p>obligations under the right to adequate housing.</p> <p>These include: legal security of tenure; availability of services and facilities; and affordability, habitability and accessibility of housing. The right to health may also be relevant when it comes to housing as housing forms part of the underlying determinants of health.</p> <p>Moreover, issues such as the availability, quality and affordability of water are all relevant in determining how Ireland is delivering on its obligations arising from the right to an adequate standard of living. The right to health may also be relevant in this regard as access to water and sanitation form part of the underlying determinants of health.</p> <p>Also relevant is the quality of any domestic complaints mechanisms and remedies it oversees relevant to ESC rights, such as housing.</p>
Department of Education	<p>The right to education is protected under Articles 13 and 14 of the ICESCR.</p>	<p>Issues which the Department of Education manages, such as availability of compulsory free primary school education and the availability and equal accessibility of secondary and higher education, would be relevant in determining how Ireland is delivering on its obligations under the right to education.</p> <p>Also relevant is the quality of any domestic complaints mechanisms and remedies it oversees relevant to the right to education.</p>

Department	Specific Rights in the ICESCR	Relevance to Department
Department of Health	The right to the highest attainable standard of physical and mental health is protected under Article 12 of the ICESCR.	<p>Issues which the Department of Health manages such as physical accessibility and affordability of health facilities, goods and services without discrimination, would be relevant in determining how Ireland is delivering on its obligations under the right health.</p> <p>Also relevant is the quality of any domestic complaints mechanisms and remedies it oversees relevant to the right to health.</p>
Department of Finance	Article 2(1) of the ICESCR places an obligation on States “to take steps , individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources , with a view to achieving progressively the full realisation of the rights recognized in the present Covenant”.	<p>Specific issues which the Department of Finance manages, including tax policy, budgetary policy and international cooperation with financial institutions, would be relevant in determining how Ireland is delivering on its obligations under the ICESCR.</p> <p>As noted above, decisions around the allocation of resources will be taken into account by the CESCRC when assessing communications.</p>
Department of Social Protection	Articles 9 and 10 of the ICESCR recognise a number of rights such as the right of everyone to social security . This includes: social insurance; protection and assistance to be accorded to the family; protection to be accorded to mothers before and after childbirth including paid leave or adequate social security benefits; and special measures of assistance and protection to be taken on behalf of all children.	<p>Issues which the Department of Social Protection manages including supports for jobseekers, children and families, persons with illness or disability, retired and older persons and persons affected by death and bereavement, would be relevant in determining how Ireland is delivering on its ICESCR obligations.</p> <p>As noted above, decisions around the allocation of resources will be taken into account by the CESCRC when assessing communications.</p> <p>Also relevant is the quality of any domestic complaints mechanisms and remedies it oversees relevant to ESC rights, such as social security.</p>
Department of Jobs, Enterprise and Innovation	Articles 6, 7 and 8 of the ICESCR recognise the right to work; the right to the enjoyment of just and favourable conditions of work ; the right of everyone to form trade unions ; and the right to strike .	Issues which the Department of Jobs, Enterprise and Innovation manage would be relevant in determining how Ireland is delivering on its obligations under the right work.

Department	Specific Rights in the ICESCR	Relevance to Department
<i>continued</i>		<p>These issues include: availability of services to assist and support individuals in finding available employment; accessibility of the labour market for everyone without discrimination; accessibility of information on the means of gaining access to employment; and the ability of trade unions to function freely without limitations other than those prescribed by law.</p> <p>Also relevant is the quality of any domestic complaints mechanisms and remedies it oversees relevant to ESC rights, such as employment rights.</p>
Department of Public Expenditure and Reform	Article 2(1) of the ICESCR places an obligation on states “ to take steps , individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources , with a view to achieving progressively the full realisation of the rights recognized in the present Covenant”.	Issues which the Department of Public Expenditure and Reform manages including allocation and expenditure of resources and international cooperation with financial institutions, would be relevant in determining how Ireland is delivering on its obligations under the ICESCR.
Department of Justice and Equality	Article 2(1) of the ICESCR requires states to take steps, subject to maximum available resources , with a view to progressively realising the rights in the ICESCR. States must do so by all appropriate means, including in particular the adoption of legislative measures.	The OP ICESCR requires all domestic remedies to be exhausted before a complaint is admissible. While the ICESCR has not been incorporated into Irish law, a number of remedies do exist in Ireland which cover certain aspects of ESC rights. These include: administrative remedies such as the Office of the Ombudsman; the new Irish Human Rights and Equality Commission, and quasi-judicial remedies such as the Equality Tribunal. These are outlined further below. However, these remedies do not cover the full scope of ESC rights as protected under the ICESCR. The State has a responsibility to ensure the existence of effective remedies at a domestic level.

Department	Specific Rights in the ICESCR	Relevance to Department
<i>continued</i>		<p>The Department of Justice and Equality should therefore ensure the creation of a strong mandate on ESC rights and the provision of sufficient resources for the new Irish Human Rights and Equality Commission.</p> <p>Sufficient resources must also be given to the Equality Tribunal in its new form when its functions are brought under the auspices of the Workplace Relations Commission. The Office of the Ombudsman should also be given the mandate and resources to consider human rights elements in her/his recommendations.</p>

Section 8:

Why should Ireland ratify the OP ICESCR?

“[The Optional Protocol] will make it possible for the Committee to assist States and other stakeholders to get to the root causes of violations of economic, social and cultural rights.”

Navanethem Pillay, UN High Commissioner for Human Rights⁴²



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Moreover, States have signed up to the ICESCR voluntarily and should be prepared to be examined on their obligations.

As has been noted:

“Governments who have ratified the ICESCR presumptively should be willing to accept review of its policies if their own citizens complain they are not living up to their treaty obligations. Those who already take these rights seriously should ratify as a model to encourage others to follow suit”.⁴³

Reasons to ratify:

- 1) Being bound by an international mechanism can help to achieve greater **accountability, transparency and provide guidance for the Government** in decisions around the allocation of resources. Accountability does not necessarily mean condemnation of the State by the CESC. Rather it provides individuals and groups of individuals with the opportunity to understand how the Government has fulfilled its human rights obligations. The Government has the opportunity to explain what it has done and why. Where mistakes have taken place, accountability requires redress. Accountability “is a process that helps to identify what works, so it can be repeated, and what does not, so it can be revised”.⁴⁴
- 2) Case law from the CESC will help individual Government departments to better understand **principles of ESC rights** such as “maximum available resources”, “progressive realisation” or “reasonableness”, and will help departments to better understand the **meaning and content of ESC rights** in an Irish context.⁴⁵ Greater engagement with the CESC will also assist departments when providing information for periodic reports to the CESC.
- 3) Ratification will help to **achieve greater protection and promotion of ESC rights** in Ireland. It can do so directly by providing an avenue for redress for individuals and indirectly by improving greater awareness and understanding of ESC rights within the Government.
- 4) The requirement to exhaust all domestic remedies in Article 3 of the OP ICESCR provides an incentive for Ireland to **strengthen national mechanisms** for the enforcement of ESC rights.⁴⁶ This can be achieved in various ways for example by making these rights legally enforceable in legislation and the Constitution; by giving the new Irish Human Rights and Equality Commission a strong mandate on ESC rights; and by giving the Ombudsman the mandate and resources to consider human rights elements in her/his recommendations.

- 5) The OP ICESCR provides a way of **empowering civil society and victims of human rights violations**. It helps to interpret the law through the lives and experiences of individuals and groups of individuals. It allows them to have their voices heard by bringing issues to the fore that may otherwise be neglected by the State.
- 6) At an international level, in its pledges and commitments made as part of its campaign for election to the UN Human Rights Council, Ireland declared itself “strongly committed to the full promotion of human rights in both its domestic and foreign policies”.⁴⁷ Ireland has advocated for ESC rights and has stated the need to strengthen ESC rights “as an indispensable dimension in the full enjoyment of human rights”.⁴⁸ However, this has not been translated into action at a national level. Ratifying the OP ICESCR would be an important step in strengthening the protection of ESC rights in Ireland and would confirm that Ireland **places equal importance on ensuring the enjoyment of all human rights civil, political, economic, social and cultural**.
- 7) **Ireland is already a party to the ICESCR**, which establishes Ireland’s substantive obligations on ESC rights. The OP ICESCR is a procedural instrument which does not introduce any new substantive obligations by which Ireland is not already bound.⁴⁹ Ireland would not be taking on any new human rights duties by ratifying the OP ICESCR.
- 8) As noted above, Ireland is **already bound by similar communications procedures** at an international level.⁵⁰ The OP ICESCR is not substantially different to these mechanisms. Moreover, at a regional level Ireland has ratified the European Social Charter and has accepted its collective complaints mechanism. This allows the European Committee of Social Rights to consider collective complaints on Ireland’s obligations under the Charter.⁵¹
- 9) It is highly unlikely that ratification of the OP ICESCR will result in any flood of complaints being made to the CESCR. As highlighted above, strict admissibility criteria must be met in order for a communication to be considered including that domestic remedies must have been exhausted. Moreover, the number of **complaints made against Ireland under other international communications procedures have been low to date** and provides an indication of what might be expected under the Optional Protocol.

Communications against Ireland to date under other communications procedures:

Since Ireland ratified the Optional Protocol to the ICCPR in 1989, the UN Human Rights Committee has examined five communications alleging violations of the rights in the ICCPR by the State. Four of these communications were deemed inadmissible and one was considered on its merits, finding a violation (*Kavanagh v Ireland*, 1998).

To date, no communications against Ireland have been examined by the respective Committees under the Convention on the Elimination of all Forms of Racial Discrimination (CERD); Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); Convention against Torture (CAT).

Section 9:

The content of the rights in the ICESCR

It is important that Government departments understand the relevance to them of the rights in the ICESCR. A summary of these rights is provided in the table below. The meaning of these rights has been further defined and is well established by CESCR in its General Comments and by the relevant UN Special Rapporteurs. Links to the relevant documents are provided.

Articles 6 and 7

The Right to Work and Just and Favourable Conditions of Work

- Everyone has the right to gain his living by work which s/he freely chooses or accepts;
- The State has an obligation to take steps to fully realise this right. This includes but is not limited to technical and vocational guidance and training programmes and policies to achieve steady economic, social and cultural development.
- Everyone has the right to fair wages and equal remuneration for work of equal value without distinction of any kind;
- A decent living for themselves and their families;
- Safe and healthy working conditions;
- Equal opportunity of promotion;
- Rest leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Further elaboration: CESCR General Comment No. 18.

Article 8

The Right to Form and Join Trade Unions

- Everyone has the right to form trade unions and join the trade union of her/his choice.
- No restrictions can be placed on the exercise of this right except as set out in law and which are necessary in a democratic society in the interests of national security or public order for the protection of the rights and freedoms of others;
- Trade unions have the right to function freely without limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order for the protection of the rights and freedoms of others;
- Everyone has the right to strike, in conformity with the laws of the country;
- Lawful restrictions may be imposed on the exercise of these rights by members of the armed forces or the police or of the administration of the State.

Article 9

The Right to Social Security

- Everyone has the right to social security including social insurance.

Further elaboration: CESCR General Comment No. 19.

Article 10

Protection of the Family

- The widest possible protection and assistance should be given to the family which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children;
- Marriage must be entered into with free consent;
- Special protection should be given to mothers during a reasonable period before and after childbirth. During this period working mothers should be given paid leave or leave with adequate social security benefits;
- Special measures of protection and assistance should be taken on behalf of all children and young persons, without discrimination of parentage or other conditions. They should be protected from economic and social exploitation. Their employment in work harmful or dangerous to their morals, development health or life should be punishable by law;
- States should set age limits below which the paid employment of child labour is prohibited and punishable.

Article 11

The Right to an Adequate Standard of living

- Everyone has the right to an adequate standard of living for herself/himself and her/his family. This includes:
 - Adequate food;
 - Adequate clothing;
 - Adequate housing; and
 - The right to the continuous improvement of living conditions.

Further elaboration: CESCR General Comment No. 15, CESCR General Comment No. 12, CESCR General Comment No. 7, CESCR General Comment No. 4. Reports of UN Special Rapporteurs: on adequate housing; extreme poverty and human rights; adequate food; water and sanitation.

Article 13 and Article 14

The Right to Education

- Primary education shall be compulsory and available free for all;
- Secondary education in its different forms, including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- Higher education shall be equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved;
- The State shall respect the liberty of parents, and where applicable legal guardians to choose for their children schools other than those established by the public authorities, which conform to a minimum education standard as may be laid down or approved by the State, and to ensure the religious and moral education of their children in conformity with their own convictions;
- Individuals and bodies have the liberty to establish and direct educational institutions so long as they conform to certain minimum standards as laid down by the State.

Further elaboration: CESCR General Comment No. 13, CESCR General Comment No. 11. Reports of the UN Special Rapporteur on the right to education.

Article 12

The Right to the Highest Attainable Standard of Physical and Mental Health

The steps to be taken to realise the full enjoyment of this right include but are not limited to:

- The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- The improvement of all aspects of environmental and industrial hygiene;
- The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Further elaboration: CESCR General Comment No. 14. Reports of the UN Special Rapporteur on the right to the highest attainable standard of physical and mental health.

Article 15

Cultural Rights

Everyone has the right to:

- Take part in cultural life;
- Enjoy the benefits of scientific progress and its applications;
- Benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he/she is the author;

The steps to be taken by States Parties to achieve the full realisation of this right includes those steps necessary for the conservation, development and diffusion of science and culture.

States Parties undertake to respect the freedom indispensable for scientific research and creative activity. States Parties also recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Further elaboration: CESCR General Comment No. 21, CESCR General Comment No. 17. Reports of the UN Special Rapporteur in the field of cultural rights.

Section 10:

Domestic remedies for ESC rights violations in Ireland

In order for a communication to be admissible under the OP ICESCR, all domestic remedies must have been exhausted unless they can be shown to be unavailable or futile. Remedies can take different forms including but not limited to administrative, quasi-judicial and judicial. The following section considers what kind of remedies currently exist in Ireland. While the section shows that there is some provision of domestic remedies, questions arise over the adequacy of these remedies. While strengthening the domestic protection of ESC rights is not a prerequisite for ratifying the OP ICESCR, it would provide a more robust system of protection for these rights at a national level, leaving a communication under the Optional Protocol as a last measure, as intended.

Judicial remedies

The Constitution of Ireland

The Irish Constitution does not make explicit provision for the majority of ESC rights. However, ESC rights are not foreign to Ireland and some limited protection is given to these rights through direct and indirect protection and also the Directive Principles of Social Policy (Directive Principles) contained in Article 45 of the Constitution.

Direct Protection

Apart from certain protections afforded to property rights,⁵² the right to primary education is the only ESC right which is given direct protection in the Irish Constitution.

The Irish Supreme Court has taken a conservative position regarding the State's obligations under the education provisions particularly when faced with making orders which would require the State to expend resources.

This is discussed in detail in chapter 3 of AI Ireland's publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.⁵³

The Directive Principles of Social Policy

The Directive Principles are contained in Article 45 of the Constitution. It lays out guiding principles for the State in promoting the welfare of the people in the socio-economic field.⁵⁴ The Directive Principles are not enforceable before the Irish courts and "are intended for the general guidance of the Oireachtas".⁵⁵

In a number of cases the courts took the approach that the principles in Article 45 were excluded from judicial consideration.⁵⁶

While there are some occasional examples of the High Court using Article 45 to interpret other rights in the Constitution,⁵⁷ overall the Irish courts have taken a minimalist approach, compared to other jurisdictions such as India, where the Directive Principles in the Indian Constitution have been central to the case law of the Supreme Court.⁵⁸

Indirect Protection

The Irish courts have recognised a number of unenumerated rights in the Constitution, arising from Article 40.3, in which the State guarantees to respect, defend and vindicate the personal rights of ‘citizens’.⁵⁹ These rights, while not explicitly mentioned in the Constitution, nonetheless place a number of duties on the State. For example, the Supreme Court has held that the unenumerated right to bodily integrity includes a duty on the State to protect individuals from dangers to health.⁶⁰ The Court has also held that there is a hierarchy of constitutional rights including the right to life, followed by the right to health and the right to the integrity of one’s dwelling house.⁶¹

The Supreme Court has also observed that in certain cases “the normal discretion of the Oireachtas in the distribution or spending of public monies could be constrained by a constitutional obligation to provide shelter and maintenance for those with exceptional needs”.⁶² The right to earn a livelihood has been recognised by the High Court, on the basis of the Directive Principles.⁶³ The Supreme Court later accepted that the right to work is an unenumerated right in the Constitution.⁶⁴

A number of other rights in the Constitution have also been interpreted to include ESC rights elements. For example, on the right to life, the High Court stated that the right to life “necessarily implies the right ... to maintain that life at a proper human standard in matters of food, clothing and habitation”.⁶⁵

The European Convention on Human Rights Act 2003

The European Convention on Human Rights Act 2003 incorporated the European Convention on Human Rights (ECHR) into Irish law and it can now be relied on in cases before the Irish courts. While the ECHR Act deals primarily with civil and political rights, there is nonetheless potential to apply it in ESC rights related cases.

For example, an important way in which aspects of the right to housing have been addressed by the courts in Ireland is through the ECHR Act 2003, as seen in the *Donegan and Gallagher* cases.⁶⁶ Here the Supreme Court found that Section 62 of the Housing Act 1966 (which allows for the summary eviction of local authority tenants in the District Court) was incompatible with Article 8 of the ECHR (right to private and family life) and Article 6 (right to a fair hearing).

A more detailed analysis of these is provided in chapters 1 and 5 of AI Ireland's publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.

ESC rights in legislation

While not framed in rights language, a range of legislation exists in Ireland on ESC rights related areas such as health and housing. Legal frameworks also cover areas such as social security, work (employment) and equality.

The rights to health and housing are elaborated as illustrative examples in chapter 5 of AI Ireland's publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*. The publication outlines the core components of these rights. It examines how these are being delivered by the Government, the remedies that are available, gaps in protection and impacts. It notes that there is no explicit protection of ESC rights in legislation and the remedies available are limited.⁶⁷

Explicit provision for ESC rights in the Irish Constitution is very limited and the courts, particularly the Supreme Court, have been conservative in the adjudication of these rights. Unenumerated rights recognised by the Supreme Court have included certain ESC rights related elements. In February 2014, the Constitutional Convention recommended that the protection of ESC rights in Bunreacht na hÉireann be strengthened.

While it is not a precondition for ratification of the OP ICESCR, stronger constitutional and legislative protection of ESC rights in Ireland would be a significant step in strengthening the domestic accountability framework for these rights, leaving a communication under the OP ICESCR as a last resort.

Other remedies

There are number of administrative and quasi-judicial mechanisms and structures in place in Ireland which play an important accountability role at a national level. The most comprehensive of these is the Irish Human Rights Commission (IHRC) which is soon to be merged with the Equality Authority to form a new Irish Human Rights and Equality Commission. Other structures, such as the Office of the Ombudsman, the Ombudsman for Children's Office, the Equality Tribunal and other bodies, are also relevant.

The Irish Human Rights Commission

The IHRC has a number of statutory powers, including the power to carry out enquiries into human rights concerns. In a number of its enquiries the IHRC has highlighted the State's obligations at both an international and regional level in relation to a range of ESC rights. These include the right to social security and the obligation of non-discrimination,⁶⁸ the rights to health and to education of persons with disabilities and the core elements of some of those rights including accountability and access to remedies.⁶⁹ Upon the findings of an enquiry the IHRC may make recommendations to the State. However, these are not legally binding.

The IHRC also has the power to provide legal assistance and in its Annual Report 2012, it outlined a number of cases involving ESC rights where it had granted legal assistance. This includes cases related to housing issues, including eviction of a person with an intellectual disability from local authority housing; eviction from local authority housing without an independent hearing; housing needs of a lone parent and her children who were members of the Traveller community; and living conditions of a lone parent and her children in local authority housing.⁷⁰

Moreover, the IHRC has noted a sharp rise in communications it has received relating to ESC rights, with ESC rights communications being almost on par with civil and political rights communications.⁷¹ Issues raised in communications have included access to healthcare, education, housing, social welfare and employment rights.⁷² The IHRC may make recommendations to the State but these are not legally binding.

In 2011, the Government announced that the IHRC and the Equality Authority⁷³ will be merged into a new body, the Irish Human Rights and Equality Commission.⁷⁴ The Bill to give statutory effect to this merger to mandate the IHREC was published on 21 March 2014. When publishing the Bill, the then Minister for Justice and Equality commented that the merge is "designed to strengthen and enhance Ireland's institutions for protection of equality and human rights".⁷⁵ The Bill was passed by the Oireachtas on 11 July 2014.

**The Office
of the
Ombudsman**

The Ombudsman has the statutory power to investigate claims of maladministration in public bodies and make recommendations. Over 180 public bodies fall under the Ombudsman's remit.⁷⁶ These include all Government departments, local authorities and the HSE (and public hospitals and health agencies providing services on behalf of the HSE).

The Ombudsman can examine complaints relating to local authorities, for example on decisions regarding the allocation of social housing or grants and loans relating to housing.⁷⁷ The Ombudsman may also investigate insurability and entitlement to benefit under the Social Welfare Acts.

While the recommendations made by the Ombudsman are not legally binding they are of highly persuasive value and have led to changes in Government policy including policies which deal with ESC rights related issues.⁷⁸ The former Ombudsman has highlighted the effective role that the Office can play with regard to addressing matters relating to ESC rights. In particular, she highlighted the ability of the Ombudsman to work pragmatically and flexibly through the making of recommendations, many of which are aimed at improving procedures and systems.⁷⁹

**The
Ombudsman
for Children's
Office**

The Ombudsman for Children's Office is mandated to promote the rights and welfare of children. The Act establishing the Office⁸⁰ makes specific reference to the Convention on the Rights of the Children (CRC) which protects a range of ESC rights.

The Ombudsman has a number of functions including: the investigation of complaints against public bodies, schools and voluntary hospitals, (complaints may be made by or on behalf of children); the provision of advice to the Government on the development and co-ordination of policy relating to children; provision of information and promote awareness on matters relating to the rights and welfare of children (including the provisions of the CRC); encouraging the development of policies, practice and procedures to promote children's rights and welfare; highlighting issues relating to the rights and welfare of children that are of concern to children; monitor and review the operation of legislation relating to the rights and welfare of children.

The Ombudsman for Children works on a number of ESC rights related areas such as health, social care, housing and education.⁸¹

The Equality Tribunal

The Equality Tribunal is a quasi-judicial body which investigates and mediates complaints of discrimination in relation to employment and to access to goods and services, disposal of property and some elements of education. The Equality Tribunal also has the remit to investigate complaints on the ground of gender under the Pensions Acts 1990-2009, where an employer does not comply with the principle of equal treatment regarding occupational benefit and pension schemes. The decisions of the Equality Tribunal are binding and it may award redress.

While the Tribunal's work is based on equality and does not consider broader human rights standards, its work nonetheless provides for accountability on issues relevant to ESC rights related areas such as non-discrimination with regard to the right to work including equal pay and working conditions covered by the Employment Equality Acts 1998-2011 and protected under Article 7 of the ICESCR.

The roles of the IHRC, Office of the Ombudsman and the Equality Tribunal are discussed further in chapter 5 of AI's publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*. A number of other relevant bodies and mechanisms also exist in Ireland relating to areas such as work, social security, cultural rights, and the rights of persons with disabilities. These are outlined in Ireland's updated common core document which forms part of the reports of States Parties to the UN treaty bodies.⁸²

As outlined, many of these bodies and mechanisms deal with ESC rights related matters. However, the majority do not monitor compliance with the ICESCR itself. The Irish Human Rights Commission is an exception in this regard.

These bodies should be provided with the capacity to draw on international standards to inform their work and decisions. This would help in strengthening the domestic accountability framework in the State. These mechanisms should be complemented by judicial remedies, which should be available as a last resort domestically.

As with civil and political rights, people in Ireland should have access to further accountability process in the international system where domestic remedies have been exhausted. Ireland has been bound by the Optional Protocol to the ICCPR since 1990. It has also ratified the European Social Charter (Revised) and the Protocol allowing for collective complaints to be made to the Committee on Social Rights.⁸³ There is no reason why similar standards cannot be applied to ESC rights as protected in the ICESCR.

Section 11:

Conclusions and Recommendations

Conclusions

Ireland has long demonstrated its support for ESC rights at an international level, but the same commitment is not shown at a national level.

Ireland vowed to uphold ESC rights when it ratified the ICESCR in 1989. However, the majority of ESC rights have never been given recognition in Irish law, meaning that they are not enforceable by people in Ireland and there are few remedies available if these rights are not upheld. The right to a remedy is a fundamental concept of human rights law. Ratifying the OP ICESCR would give people access to an international remedy by allowing them to submit communications to the CESC.

Ireland signed the OP ICESCR on 23 March 2012, but more than two years on, the Government has given no indication of when it will ratify the OP ICESCR, despite continuing to voice strong support for ESC rights at an international level.

As noted, Ireland is already a party to UN complaints mechanisms to allow for complaints about violations of civil and political rights, torture, discrimination against women and discrimination on racial grounds. To be consistent, and in line with the internationally recognised principle of indivisibility of rights, it is essential that Ireland also permits complaints in relation to ESC rights. Moreover, as outlined above, the CESC adopts a measured process when considering whether the State has upheld its ESC rights obligations. Its purpose is not to condemn States but rather to offer constructive recommendations and its expert views to assist the State in better implementing its obligations.

Barriers to ratification include common misconceptions about ESC rights such as concerns about resources. A number of these misconceptions are outlined and refuted in chapter 2 of AI Ireland's publication, *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*.⁸⁴

In its pledges and commitments made as part of its candidature to the UN Human Rights Council in 2012, Ireland noted that the OP ICESCR "is in keeping with the spirit of the many independent complaints, monitoring and inspection bodies that are currently in place in Ireland" and that signing the OP ICESCR had given Ireland the opportunity to affirm its "determination to achieve full respect for human rights in practice".⁸⁵

At an international level, Ireland has also emphasised the need to strengthen ESC rights "as an indispensable dimension in the full enjoyment of human rights".⁸⁶ Ratifying the OP ICESCR would demonstrate the Irish State's true commitment to strengthening protection of these rights. It would be a critical step towards the equal protection of all human rights in Ireland.

Recommendations

- 1) The State should take concrete steps towards the ratification of the OP ICESCR.
- 2) As a first step towards ratification, the Department of Foreign Affairs and Trade should initiate an inter-departmental consultation process to engage all relevant Government departments. This consultation should have clear timeframes, operate in a transparent manner and be open to input from external expertise.
- 3) When ratifying the OP ICESCR Ireland should opt in to both the inquiry and inter-State procedures under the Protocol, as it has done when becoming a State Party to other international human rights treaties.
- 4) At the upcoming examination of Ireland's Third Periodic Report under the ICESCR in 2015, the State should provide an update on the inter-departmental consultation process, challenges and difficulties arising from this process and any further steps taken towards ratification of the OP ICESCR.
- 5) As previously recommended by AI Ireland, the State must ensure that there are adequate remedies available for people when their ESC rights are violated. This includes access to effective remedies at both a national and international level.
- 6) In order to provide for remedies at a national level, the Constitution should be amended to give greater protection to ESC rights. In that regard, the Government should make a commitment to hold a referendum on ESC rights in due course. It is important to note however that strengthening constitutional protection of ESC rights is not a prerequisite for ratifying the OP ICESCR.
- 7) As a first step, the Government should accept the Constitutional Convention's recommendation on giving greater protection to ESC rights in the Constitution. It should engage robustly on the issue of constitutional ESC rights and should ensure full transparency and clear timelines in any measures adopted to take this matter forward.
- 8) ESC rights related legislation should also be framed in rights language, guided by the provisions of the ICESCR, the General Comments of the CESCR and the work of other relevant UN procedures.
- 9) The Irish Human Rights and Equality Commission must be given sufficient funding and an appropriate mandate to allow it to effectively promote and protect ESC rights.
- 10) The Office of the Ombudsman should be given the mandate and resources to consider human rights elements in her/his recommendations.

- 11) Sufficient resources must be given to the Equality Tribunal in its new form when its functions are brought under the auspices of the Workplace Relations Commission.
- 12) There should be increased dialogue on ESC rights and human rights more broadly between Government departments. This would help to ensure a full understanding of the nature of duties arising from human rights law. This in turn would assist the State in its reporting to UN treaty bodies and in considering ratification of treaties and Optional Protocols. It would also assist Government departments should any communications relating to Ireland be made to the CESCR under the OP ICESCR once ratified by the State.
- 13) All civil servants should engage in human rights training to ensure a full understanding of human rights and the State's obligations as they relate to their specific responsibilities.
- 14) A central inter-departmental mechanism should be established to review and report on the implementation of international recommendations on human rights including ESC rights.

- ¹ Statement by Navanethem Pillay, UN High Commissioner for Human Rights, Signing Ceremony for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, UN Treaty Event (New York), 24 September 2009.
- ² In February 2014 85 per cent of the Constitutional Convention members voted in favour of strengthening the protection of ESC rights in the Irish Constitution.
- ³ See Article 8 Universal Declaration of Human Rights.
- ⁴ Restitution- re-establishing a situation that existed before the violation took place. For example, if legislation or policy has been introduced to limit access to healthcare restitution would require them to be amended or reversed.
- Rehabilitation-this may include medical and psychological care and legal and social services.
- Satisfaction and guarantees of non-repetition- these may include but are not limited to: full and public disclosure of the truth; an apology and acknowledgment of the facts and responsibility; a judicial decision and judicial or administrative sanctions against those responsible for the violation; training for government ministers, civil services and other relevant persons for example health workers if the right to health has been violated; introduction of legislation; monitoring and enforcement mechanisms; better planning, budgeting and policy formulation; actions plans, benchmarks and clear timelines for achievement.
- For a detailed outline of what these remedies encompass in the context of the right to health see Potts, H. Dr., Accountability and the right to the highest attainable standard of health (Human Rights Centre, University of Essex, 2007), pp 28-29.
- ⁵ Convention on the Elimination of all Forms of Racial Discrimination; Convention on the Elimination of all Forms of Discrimination against Women; Convention against Torture. See also European Social Charter (Revised) and Charter of Fundamental Rights of the European Union.
- ⁶ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para 5 <<http://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>> (date accessed: 14 April 2014).
- ⁷ Supra note 4 at 2.
- ⁸ The Universal Periodic Review (UPR) is a peer review process which involves a periodic review of the human rights records of all UN Member States. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and for other States to engage in an interactive dialogue with the State under review.
- ⁹ Universal Periodic Review, Ireland, National Interim Report, March 2014, para 107.4.
- ¹⁰ European Social Charter (Revised) 1996 (ratified by Ireland in 2000) and the International Covenant on Economic, Social and Cultural Rights 1966 (ratified by Ireland in 1989). See also Charter of Fundamental Rights of the European Union. ESC rights are also protected in other international human rights treaties which Ireland has ratified such as the Convention on the Rights of the Child (CRC), the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) and its complaints procedure, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its complaints procedure. Ireland has signed and promised to ratify shortly, the UN Convention on the Rights of Persons with Disabilities (CRPD) which also protects ESC rights. The CRC and CRPD both have complaints procedures to which Ireland has not yet signed up.
- ¹¹ Amnesty International Ireland, Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland (2014).
- <https://www.amnesty.ie/sites/default/files/news/2012/04/AI_ESC_Rights_Report.pdf> (date accessed: 19 June 2014).
- ¹² The UN Committee on Economic, Social and Cultural Rights has interpreted Article 11 (right to an adequate standard of living) to include the right to water and also sanitation. See in particular UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water (Articles 11 and 12 of the Covenant), UN Doc E/C.12/2002/11. In 2010 the UN General Assembly passed a resolution specifically recognising “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life an all human rights”, UN General Assembly on 28 July 2010, 64/292. The human right to water and sanitation, UN Doc A/RES/64/292.
- ¹³ Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Ireland, E/C.12/1/Add.77, 5 June 2002, Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, Ireland, E/C.12/1/Add.35, 14 May 1999.
- ¹⁴ See for example General Comment No. 14 (the right to health), General Comments No. 4 and No. 7 (the right to adequate housing/forced evictions), General Comment No. 12 (the right to adequate food), General Comment No.13 (the right to education), General Comment No. 15 (the right to water), General Comments No. 21 and No. 17 (cultural rights), General Comment No.18 (the right to work), General Comment No.19 (the right to social security)., This is a non-exhaustive list. For an exhaustive list of all General Comments by the UN Committee on Economic, Social and Cultural Rights see the OHCHR website at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11>(date accessed: 19 June 2014)
- ¹⁵ These include General Comment No. 3 (The nature of States Parties obligations (Article 2, para 1)), General Comment No. 9 (The domestic application of the Covenant) and General Comment No. 20 (Non-discrimination in economic, social and cultural rights).
- ¹⁶ See Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) 1966 (acceded to by Ireland in 1989); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984 (ratified by Ireland in 2002); Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1999 (ratified by Ireland in 2000); Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1966 (ratified by Ireland in 2000).
- ¹⁷ Complainants must have used all available legal processes in their own country and failed to obtain an effective remedy for the violation. However this rule does not apply when the domestic remedies are unreasonably prolonged. Also, if a domestic remedy is ineffective it is unlikely that the CESCER would require the complainants to use that remedy before making a complaint to the CESCER. See International NGO Coalition for OP-ICESCR, A Toolkit for Action, Booklet 2: Overview: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (New York: 2011), p 3.

- ¹⁸ Unless the CESCR considers a communication inadmissible without reference to the State Party concerned (Article 6 (1)).
- ¹⁹ Riedel, E. "New Bearings in Social Rights? The Communications Procedures under the ICESCR" Fastenrath, U. et al., ed., From Bilateralism to Community Interest: Essays in Honour of Bruno Simma (Oxford: Oxford University Press, 2011), 574 at 581.
- ²⁰ ESCR Net, Claiming ESCR at the UN: A manual on utilizing the OP-ICESCR in strategic litigation, (2014) p 37
<<http://www.escr-net.org/sites/default/files/ESCR-NET-OP-Manual-FINAL.pdf>> (date accessed: 9 July 2014).
- ²¹ Supra note 19.
- ²² Supra note 20 at 37.
- ²³ Ibid.
- ²⁴ See for example *Mazibuko v City of Johannesburg & Others*, Case CCT 39/09, [2009] ZACC 28, where the South African Constitutional Court stated that "ordinarily it is institutionally inappropriate for a court to determine precisely what the achievement of any particular social and economic right entails and what steps government should take to ensure the progressive realisation of the right." The Court stated that, the positive obligations imposed upon government by the constitutional social and economic rights will be enforced by courts in at least the following ways: (a) where government takes no steps to realise the rights; (b) where the government's adopted measures are unreasonable; and (c) where the government fails to give effect to its duty under the obligation of progressive realization to continually review its policies to ensure that the achievement of the right is progressively realised. See also *Government of the Republic of South Africa and Others v Grootboom*, 2001 (1) SA 46 (CC).
- ²⁵ Judicial review is the process by which the High Court can review public decisions made by administrative bodies and the lower courts. The Court normally focusses on the lawfulness and fairness of the decision-making process rather than the merits of the case.
- ²⁶ Supra note 11.
- ²⁷ Supra note 17 at 5. It has been noted that follow-up procedures "constitute an incentive for States promptly to adopt measures aimed at giving effect to the Committee's views, a way for States to report publicly on those measures, a source of best practices by States on their implementation of Committee's views and therefore a crucial element in making the complaints system more effective". See Open-Ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Elements for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Third Session, E/CN.4/2006/WG.23/2, November 30, 2005.
- ²⁸ Supra note 16 at 8.
- ²⁹ While States sign up in principle to observe the CESCR's views and recommendations, in case of non-compliance the OP ICESCR does not provide for an enforcement mechanism or for sanctions.
- ³⁰ Article 9(2) OP ICESCR.
- ³¹ Article 2 of the ICESCR:
Article 2
- (1) Each party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant, by all appropriate means, including particularly the adoption of legislative measures.
 - (2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - (3) Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.
- ³² See UN Committee on Economic, Social and Cultural Rights, 38th Session, An evaluation of the obligation to take Steps to the 'maximum of available resources' under an Optional Protocol to the Covenant, E/CN.12/2007/1 of 10 May 2007.
- ³³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12), UN. Doc. E/C.12/2000/4, (2000), para 43.
- ³⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations (Article 2, para 1), UN Doc. E/1991/23, (1990), para 10. This was reiterated in supra note 32 at 6.
- ³⁵ As an example, a rise in university tuition fees, jeopardising access to university education for marginalised and disadvantaged individuals and groups, has been identified by the CESCR as a regressive measures in achieving the full enjoyment of the right to education under Article 13 of the ICESCR. See UN Committee on Economic, Social and Cultural Rights, Concluding Observations, Spain, 6 June 2012, U.N. Doc. E/C.12/ESP/CO/5, para 28.
- ³⁶ See for example, CESCR Concluding Observations, Jordan, 1 September 2000, E/C.12/1/Add.46, para 27; CESCR Concluding Observations, Mongolia, 1 September 2000, E/C.12/1/Add.47, para 10; CESCR Concluding Observations regarding El Salvador, 27 June 2007, E/C.12/SLV/CO/2, para 8.
- ³⁷ Supra note 32 at 10.
- ³⁸ Ibid at 9.
- ³⁹ Supra note 34 at 9.

- ⁴⁰ Spain, Portugal, Slovakia, Montenegro, Bosnia and Herzegovina, Finland, Belgium, Uruguay, Mongolia, Ecuador, El Salvador, Bolivia (Plurinational State of), Argentina, Gabon, Cape Verde.
- ⁴¹ For a full list see the UN website at: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en> (date accessed: 18 June 2014).
- ⁴² Press release OHCHR, Pillay hails new step in protection of economic, social and cultural rights (Geneva, 6 May 2013).
- ⁴³ Simmons, B., "Should States Ratify the Protocol? Process and Consequences of the Optional Protocol of the ICESCR" 27(1) *Nordisk Tidsskrift for Menneskerettigheter: Nordic Journal of Human Rights*, 64 at 65.
- ⁴⁴ *Supra* note 4 at 2.
- ⁴⁵ *Supra* note 17 at 2.
- ⁴⁶ *Ibid.*
- ⁴⁷ Letter dated 13 April 2012 from the Permanent Representative of Ireland to the United Nations addressed to the President of the General Assembly, UN Doc. A/67/80, 16 April 2012 <<https://www.dfa.ie/media/dfa/alldfawebstemedial/ourrolesandpolicies/pledges-and-commitments-during-election-to-hrc.pdf>> (date accessed: 30 May 2014).
- ⁴⁸ Address by Minister Creighton, then Minister for European Affairs of Ireland to the UN Human Rights Council, Geneva, 29 February 2012 <<https://www.dfa.ie/news-and-media/speeches/speeches-archive/2012/february/minister-creighton-un-human-rights-council/>> (date accessed: 25 June 2014).
- ⁴⁹ Evju, S., "Should Norway Ratify the Optional Protocol to the ICESCR?-That is the Question" 27(1) *Nordisk Tidsskrift for Menneskerettigheter: Nordic Journal of Human Rights*, 82 at 87.
- ⁵⁰ Convention on the Elimination of all Forms of Racial Discrimination (CERD); Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); Convention against Torture (CAT); International Covenant on Civil and Political Rights (ICCPR).
- ⁵¹ For further information on the collective complaints procedures see the Council of Europe website at: <http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter_en.asp#Une_procedure_de_reclamations_collectives> (date accessed: 18 June 2014). See also the Charter of Fundamental Rights of the European Union.
- ⁵² See *supra* note 11 at chapter 3.
- ⁵³ *Ibid.*
- ⁵⁴ It deals with issues such as the right to earn a livelihood, the distribution of the ownership and control of material resources to subserve the common good, ownership and control of essential commodities, economic security, conduct of private enterprise to ensure protection against unjust exploitation, safeguarding the economic interests of the weaker sections of the community, "support of the infirm, the widow, the orphan, and the aged", protection of health and protection against entering into unsuitable work due to economic necessity.
- ⁵⁵ Article 45 says that "[t]he principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution." For full text of Article 45 see: <http://www.constitution.org/cons/ireland/constitution_ireland-en.htm> (date accessed: 28 April 2014).
- ⁵⁶ Hogan G. W., Whyte, G. F., J M Kelly: *The Irish Constitution*, 4th ed. (Dublin: Tottel Publishing, 2006), p 2079. See for example, *Buckley v Attorney General* [1950] IR 57, *Byrne v Ireland* [1972] IR 241, *O' Brien v Manufacturing Engineering Co Ltd* [1973] IR 334.
- ⁵⁷ *Murtagh Properties v Cleary* [1972] IR 330, *Rogers v ITGWU* [1978] ILRM 5.
- ⁵⁸ Irish Human Rights Commission, *Making Economic, Social and Cultural Rights Effective: An IHRC Discussion Document*, (Dublin: 2005), p 112. For example see *Paschim Banga Khet Majoor Samity and others v State of West Bengal and another* (1996) 4 SCC 37, AIR 1996 Supreme Court 2426, June 5, 1996. For summary of case see the ESCR-net website at: <<http://www.escr-net.org/docs/i/401236>> (date accessed: 22 April 2014).
- ⁵⁹ 40.3.1 "The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen." Note that the courts have interpreted these rights as applying not just to Irish citizens but to residents of the State more generally.
- ⁶⁰ *Ryan v Attorney General* [1965] IR 24 at 348.
- ⁶¹ In re Article 26 and the Health (Amendment) (No.2) Bill 2004, [2005] IESC 7.
- ⁶² *Ibid* para 34.
- ⁶³ *Murtagh Properties v Cleary* [1972] IR 330.
- ⁶⁴ *Murphy v Stewart* [1973] IR 97. This was accepted by Walsh J. with whom O'Dálaigh CJ and Budd J agreed. This was obiter as the point was not the main issue in the case.
- ⁶⁵ *G v An Bord Uchtála* [1980] IR 32 at 69.
- ⁶⁶ *Donegan v Dublin City Council, Ireland and the Attorney General and Dublin City Council v. Gallagher* [2012] IESC 18.
- ⁶⁷ *Supra* note 11 at chapter 5.

- ⁶⁸ Irish Human Rights Commission, Enquiry 2005-2007, The Self-Employed And the Old Age Contributory Pension: Report of an Enquiry into the Impact of Certain Provisions of Social Welfare Legislation on the Self-Employed <<http://www.ihrc.ie/download/pdf/pensionenquiry.pdf>> (date accessed: 21 March 2014).
- ⁶⁹ Irish Human Rights Commission, Enquiry 2008-2010, Enquiry Report on the Human Rights Issues Arising from the Operation of a Residential and Day Care Centre for Persons with a Severe to Profound Intellectual Disability <<http://www.ihrc.ie/download/pdf/reporte3.pdf>> (date accessed: 21 March 2014).
- ⁷⁰ Irish Human Rights Commission, Annual Report 2012, (Dublin: 2013), p 33-35, p 39.
- ⁷¹ In 2012 the IHRC received 212 communications relating to civil and political rights and 203 relating to ESC rights.
- ⁷² Supra note 70 at 32.
- ⁷³ The functions of the Equality Authority include the provision of information on equality legislation, keeping equality legislation under review and proposing amendments.
- ⁷⁴ Heads of the Irish Human Rights and Equality Commission Bill 2012 <<http://www.justice.ie/en/JELR/20120605HeadsOfIHRECBill.pdf/Files/20120605HeadsOfIHRECBill.pdf>> (date accessed; 11 March 2014).
- ⁷⁵ Department of Justice and Equality, "Press Release: Shatter publishes the Irish Human Rights and Equality Commission Bill 2014" (21 March 2014) <<http://www.justice.ie/en/JELR/Pages/PR14000083>> (date accessed: 21 March 2014).
- ⁷⁶ Ombudsman (Amendment) Act 2012.
- ⁷⁷ For example the Housing Adaptation Grant for People with Disabilities, Housing Aid for Older People and Mobility Aid Grants.
- ⁷⁸ Press release by the Office of the Ombudsman, "HSE changes policy following Ombudsman Investigation" <<https://www.ombudsman.gov.ie/en/News/Media-Releases/2014-Media-Releases/HSE-changes-policy-following-Ombudsman-investigation.html>> (date accessed: 25 June 2014).
- ⁷⁹ Address by Ms Emily O' Reilly (Ombudsman and Information Commissioner) at Comhairle National Conference, The Challenges- who is excluded <<http://archive.ombudsman.gov.ie/en/SpeechesArticlesandPresentations/Ombudsmansspeeches/Name,2168,en.htm>> (date accessed: 21 March 2014).
- ⁸⁰ Ombudsman for Children Act 2002.
- ⁸¹ See Ombudsman for Children's Office website at: <<http://www.oco.ie/policy/areas-of-work/>> (date accessed: 15 July 2014).
- ⁸² Common core document forming part of the reports of States parties: Ireland, UN Doc. HRI/CORE/IRL/2014 (2014). <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI%2fCORE%2fIRL%2f2014&Lang=en> (date accessed: 11 April 2014).
- ⁸³ For further information see the Council of Europe website at: <http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/aboutcharter_EN.asp> (date accessed (11 March 2014).
- ⁸⁴ Supra note 11 at chapter 2.
- ⁸⁵ Supra note 47.
- ⁸⁶ Supra note 48.

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Amnesty International Ireland
Seán MacBride House
48 Fleet Street
Dublin 2
01 8638300

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