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Constitutional Convention,  
Secretariat,  
16 Parnell Square East,  
Dublin 1.

1 July 2013

Dear Chairman,

This submission is made by Amnesty International Ireland as part of our wider work to advance human rights such as health, housing and other economic, social and cultural rights in Ireland.

Ireland committed to upholding these rights when it ratified the International Covenant on Economic, Social and Cultural Rights in 1989.

The Constitutional Convention presents a unique opportunity to consider how Ireland can meet its international human rights obligations and make all human rights, civil and political as well as economic, social and cultural, real for people in this country.

We call on the members of the Constitutional Convention to include the constitutional protection of economic, social and cultural rights as an additional issue on their agenda, to be examined in the final week of the Convention, and thereupon to recommend to the Government that these rights be given constitutional protection.

Yours sincerely,



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Colm O' Gorman  
Executive Director



## **Amnesty International Ireland Submission to the Constitutional Convention on Economic, Social and Cultural Rights**

1. This submission is made by Amnesty International Ireland. It is made as part of our wider work to advance economic, social and cultural (ESC) rights in Ireland, including advocating for the explicit legal recognition of these rights in Bunreacht na hÉireann. This submission is an overview of the main issues relevant to ESC rights in Ireland and will be elaborated upon in a further submission to be made in September. Amnesty International has also contributed to a group submission made to the Constitutional Convention by a number of civil society organisations.<sup>1</sup>

2. Amnesty International Ireland (AI) is the country's largest human rights organisation with more than 15,000 members and supporters. We are part of a global movement of more than 3.2 million people working in more than 150 countries around the world. We are independent of any political ideology, economic interest or religion. Our sole concern is the protection of the fundamental human rights guaranteed to each one of us by the Universal Declaration of Human Rights.

3. All states, including Ireland, must respect, protect and fulfil all human rights to which they have committed when signing and ratifying human rights treaties. By signing a treaty a state agrees to refrain from acts that would defeat the purpose of the treaty, with a view to taking the necessary steps to ratifying it. When it ratifies a treaty, a state agrees to be legally bound by the provisions of that treaty.

4. Ireland ratified the International Covenant on Economic, Social and Cultural rights in 1989. But these rights remain largely unprotected in Irish law, and have never been incorporated into Bunreacht na hÉireann.

5. There is both public interest and political support for the examination of these rights by the Constitutional Convention. Enshrining these rights in the Constitution would help Ireland to meet its legal obligations under international human rights law. It would also bring the Constitution in line with the growing trend among many countries, which have recently revised their Constitutions and recognised ESC rights as legally enforceable. Most importantly, it would provide constitutional status and protection for rights that affect every single person living in Ireland at some point of their lives.

6. The protection of ESC rights has never been more important than at this moment in time. The impact of the global economic and financial crisis on Ireland, including in particular the threat to ESC rights has been severe and has come increasingly under the international spotlight.

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<sup>1</sup> "A call for the examination of economic, social and cultural rights in Ireland".

7. During her visit to Ireland in 2011, the UN Special Rapporteur on Extreme Poverty and Human Rights expressed her concern that "Ireland's economic and financial crises have wrought havoc on the country, with grave implications for the Irish people". The Independent Expert stated that she saw the crisis as providing "an opportunity for Ireland to put human rights at the heart of the recovery, and to meet some of its long-standing social goals". She called on the Government "to ensure that all rights protected under international human rights treaties, in particular economic, social and cultural rights, are given full effect in domestic law."<sup>2</sup>

**8. Amnesty International Ireland urges the members of the Constitutional Convention to include the constitutional protection of economic, social and cultural rights as an additional issue on their agenda, to be examined in the final week of the Convention, and thereupon to recommend to the Government that these rights be given constitutional protection.**

**This submission covers the following issues:**

- A) What are ESC rights?
- B) Why is now the right time to enshrine these rights in the Constitution?
- C) How are ESC rights currently referenced in the Constitution?
- D) How can ESC rights be incorporated?
- E) Misconceptions relating to ESC rights

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<sup>2</sup> Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, A/HRC/17/34/Add.2.

## **A) What are Economic, Social and Cultural Rights (ESC rights)?**

1. ESC rights are those human rights relating broadly to health care, education, access to housing, food, clothing and water, education, social security, the workplace, family life and participation in cultural life. Specific international protection was first accorded to ESC rights in the Universal Declaration of Human Rights (UDHR), 1948.

2. Under international human rights law, the primary United Nations human rights treaty which protects ESC rights is the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. Together with the International Covenant on Civil and Political Rights (ICCPR) and the UDHR, it forms the International Bill of Human Rights.

3. Ireland signed the ICESCR in 1973 and ratified it in 1989, thereby agreeing to be bound by its provisions. ESC rights are also protected in a number of other international human rights and regional treaties to which Ireland is a State Party (i.e. has ratified). These include, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the European Social Charter (revised). ESC rights are also protected in the Convention on the Rights of Persons with Disabilities, which Ireland has signed and has promised to ratify shortly.

4. All human rights are “indivisible, interdependent, inter-related and of equal importance for human dignity.”<sup>3</sup> In other words, all human rights are equally important and none can be fully enjoyed without the other. For example the civil right to privacy cannot be fully enjoyed without the social right to housing. Equally, freedom of movement (civil right) is a necessary precondition to exercise the right to vote (political right) or the right to work (economic right).

ICESCR protects the following 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 ones choice and the right to strike
- 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, 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 to everyone to education; and
- The right of everyone to take part in cultural life, to enjoy the benefits of scientific progress, to benefit from the protect of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

5. The ICESCR also states that these rights are guaranteed to all without discrimination of any kind such as ‘race’, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This list is not

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<sup>3</sup> Vienna Declaration and Programme for Action, adopted by the World Conference on Human Rights in Vienna (25 June 1993): Universal Declaration of Human Rights Preamble.

exhaustive and discrimination is also forbidden on other grounds, including disability, sexual orientation or gender identity, marital or family status, or socio-economic status.

6. Further details on the content of the rights protected by the ICESCR and the corresponding duties of States Parties have been clearly laid out in General Comments issued by the Committee on Economic, Social and Cultural Rights, the UN body tasked with overseeing the implementation of the ICESCR. The Committee is made up of independent experts from and elected by UN Member States. States report to the Committee on a periodic basis, outlining the progress made in advancing ESC rights at a national level. The rights and corresponding obligations under the ICESCR have also been elaborated by UN Special Rapporteurs and Independent Experts, such as the Special Rapporteur on the right to the health.<sup>4</sup>

### **An example of further elaboration of economic, social and cultural rights**

#### **The right to the highest attainable standard of physical and mental health**

The right to health is protected under Article 12 of the ICESCR and has been further elaborated by the Committee on Economic, Social and Cultural rights in its General Comment No. 14. The Committee made clear that **the right to health does not mean the right to be healthy**. Rather, the right to health includes both freedoms and entitlements for the rights bearer and places a number of obligations on the State. These include:

**Availability:** Health facilities, goods, services and programmes must be available in sufficient quantity within the State party.

**Accessibility:** Health facilities, goods and services have to be accessible to all without discrimination. This includes physical, economical and information accessibility

**Acceptability:** Health facilities, goods and services must be respectful of medical ethics, of culture, sensitive to life-style requirements, designed to respect confidentiality and to improve the health status of those concerned.

**Quality:** Health facilities, goods and services must be medically appropriate and of good quality.

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<sup>4</sup> For Example the report of the Special Rapporteur on the right to health, to the Human Rights Council (Main Focus: Health systems and the right to the highest attainable standard of health), 2008, UN Doc. A/HRC/7/11.

- **What are states obliged to do under the ICESCR?**

7. The Committee on Economic, Social and Cultural Rights has noted that the implementation of the ICESCR does not require any particular form of government or economic system, as long as it is democratic and that all human rights are thereby respected.<sup>5</sup>

8. International human rights law places an obligation on states to progressively realise ESC rights. This means it recognises that certain elements of ESC rights may not become reality overnight and will take time to realise, depending on the availability of resources. However, states are required to use the maximum available resources to move as swiftly as possible towards the full realisation of these rights.<sup>6</sup>

9. States should undertake ‘all appropriate means, including particularly the adoption of legislative measures’ (Article 2(1)), in order to meet their obligations under the ICESCR. The Committee has noted that **“in many instances legislation is highly desirable and in some cases may even be indispensable”**.<sup>7</sup> However, this is not the only duty of State Parties and they may also need to adopt other appropriate measures in order to meet their obligations.<sup>8</sup>

10. The level of fulfilment of any right will be determined by the economic conditions prevailing in a particular state. However, the Committee has underlined the fact that even in times of economic recession, vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.<sup>9</sup>

11. States also have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the rights in the Covenant, for example essential primary health care and the most basic forms of education. The Committee has noted that any assessment as to whether a State has discharged its minimum core obligation must take account of resource constraints applying within the country concerned.<sup>10</sup>

**Measures which Ireland should adopt to adequately protect economic, social and cultural rights include but are not limited to the following:**

- 1) Enshrine economic, social and cultural rights in the Irish Constitution.
- 2) Adopt legislation based on the rights protected by the ICESCR. For example, any law or policy adopted on health care must be based on the right to health.
- 3) Ratify the Optional Protocol to the ICESCR to allow individual complaints to be made to the UN Committee on Economic, Social and Cultural Rights. Ireland signed the Optional Protocol in 2012 but has not yet ratified it.

<sup>5</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3, The nature of states parties obligations (Art.2, para.1), 1990, UN Doc. E/1991/23, para 8.

<sup>6</sup> States also have a number of immediate core obligations to meet, including delivering a minimum level of the rights protected by the Covenant and ensuring that nobody is discriminated against in the protection of these rights.

<sup>7</sup> *Supra* note 5, para 3.

<sup>8</sup> *Ibid*, paras 5 and 7. This may include the provision of judicial remedies, and the adoption of administrative, financial, education and social measures.

<sup>9</sup> *Ibid*, para 12.

<sup>10</sup> *Supra* note 5, para. 10.

## **B) Why is now the right time to enshrine these rights in the Constitution?**

12. There is widespread support for the constitutional protection of ESC rights and for the Constitutional Convention to examine this issue.

- **Public support**

13. Polling carried out by Red C in April 2012, commissioned by AI, identified that 84 per cent of people believe that if the Irish Government commits to protect a human right internationally, it should have to ensure it protects that right in Ireland for all those living here regardless of the person's background. More than four in five people (81 per cent) specifically agreed that the Constitutional Convention should look at how the Constitution protects rights like the right of access to healthcare, while 78 per cent supported an examination of the right to housing.<sup>11</sup>

- **Equality and human rights organisations**

14. In June 2012, twenty of Ireland's leading equality and human rights organisations called for the Constitutional Convention to examine human rights, for the Government to engage in a consultation process with civil society regarding the Convention, and to support the inclusion of economic, social and cultural rights on its agenda. Many of those groups are now involved in broader campaigning for constitutional protection of ESC rights, including through submissions to the Convention.

15. The Irish Human Rights Commission has also stated that the lack of justiciable ESC rights in the Constitution and legislation means that there are gaps in protection for these rights.<sup>12</sup>

- **Political support**

16. At a public seminar, 'Pursuing Constitutional Protection of Economic, Social and Cultural Rights - Identifying Allies and Opportunities', March 2013, organised by a group of civil society actors including AI, support for ESC rights was expressed by the following parties:

- **The Labour Party** expressed its support, through the leader of their delegation to the Constitutional Convention Senator Ivana Bacik, for the Convention to examine ESC rights.
- While raising questions about the practicality of enshrining ESC rights in the Constitution, Jerry Buttimer TD expressed **Fine Gael's** support for the Convention to examine these rights.
- **Fianna Fáil** also supported the examination of these rights by the Convention through Senator Averil Power.
- **Sinn Féin** also committed support for the Convention to examine ESC rights through their Constitutional Convention delegate Caoimhghín Ó Caoláin.

17. Political support for ESC rights has also been expressed on other occasions:

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<sup>11</sup> Polling was conducted under the RED Express methodology. 1,005 interviews were conducted by phone. Quotas were set and final data weighted to ensure the sample was representative of the total Irish population aged 18+.

<sup>12</sup> Irish Human Rights Commission, Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland, March 2011.

- The **Labour Party** proposed a Bill, the Twenty- First Amendment of the Constitution (No.3) Bill, <sup>13</sup> which sought to recognise ESC rights in the Constitution. These included the right to earn a livelihood and to reasonable conditions of employment, the right to adequate healthcare, and the right to an adequate standard of living, including adequate housing. Both **Labour Party** and **Fine Gael** members of the current Cabinet voted in favour of this Bill.
- Apart from Senator Averil Power referred to above, **Fianna Fáil** supported the consideration of ESC rights by the Constitutional Convention in summer 2012, when Micheál Martin TD highlighted the potential for the Convention to address other issues, including human rights, and asked whether when “in the existing Constitution we have universal access to primary education, ... have we ever considered that in regard to health?”
- In response to Government’s Proposals on the Constitutional Convention, March 2012, **Sinn Féin** called for the Convention to have the mandate to consider the broadest possible scope of matters, including in particular the need for express guarantees of economic and social rights.
- In its Constitutional Convention submission in March 2012, the **Technical Group** called for a full review of the fundamental rights enumerated in the Constitution with a view to ensuring the human rights compliance of the Constitution, and for specific attention to be paid to the commitments made by the State in ratifying the International Covenant on Economic, Social and Cultural Rights.
- **The Programme for Government 2011-2015** includes many provisions relevant to the ICESCR. These include, equality and non-discrimination, health, housing, education, social protection including the tackling of poverty, the protection of the most vulnerable, culture and language. However policies of individual governments are not enough. The long-term and sustainable protection of ESC rights must be ensured. Enshrining these rights in the Constitution is a vital way to achieve such protection.

### **C) How are ESC rights currently referenced in the Constitution?**

18. The Irish Constitution includes many sections guaranteeing civil and political rights, such as the right to freedom of expression (Article 40.6.1 (i)) and freedom of peaceful assembly (Article 40. 6.1. (ii)).

19. However, it does not offer similar guarantees in relation to ESC rights. The Directive Principles of Social Policy (Article 45) make provision for a right to a livelihood, protection of the vulnerable and an obligation of the State towards the health of people living in Ireland. However, this Article also provides that the Directive Principles “*shall not [...] be cognisable by any Court under any of the provisions of this Constitution*”, meaning that they are guiding principles only and are not enforceable by law.

20. While the Constitution does offer some protection in relation to private property in Article 43.2.2 (which can be limited for the exigencies of the common

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<sup>13</sup> Twenty-First Amendment to the Constitution (No.3) Bill, 1999 [PMB], available at: <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/1999/5799/default.htm>



good), and primary education in Article 42.4, it does not guarantee most of the rights included in the ICESCR.

21. The provisions of the ICESCR have never been incorporated into Irish law, meaning that the Covenant does not have legal effect in Ireland. People in Ireland have no recourse to the courts or other bodies if their ESC rights are violated, meaning that their basic rights such as healthcare and housing, necessary to live a life of dignity, are not enforceable.

22. The failure to protect ESC rights in the Constitution has been raised on a number of occasions at both a national and international level.

- A) In 1996, the **Constitution Review Group** concluded “rights expressly protected by the Constitution are, by contemporary standards, incomplete” and that “Articles 40-44 contain flaws and are in need of revision”.
- B) In the 1998 **Belfast / Good Friday Agreement**, the Irish Government agreed to take steps to further strengthen the protection of human rights in its jurisdiction, bringing forward measures to strengthen and underpin the constitutional protection of human rights. This included drawing on international legal instruments in the field of human rights.
- C) In 2002, the **UN Committee on Economic, Social and Cultural Rights**, in examining Ireland’s compliance with the Covenant, noted ‘with regret that, despite its previous recommendations in 1999, no steps have been taken to incorporate or reflect the Covenant in domestic legislation, and that the State [P]arty could not provide information on case law in which the Covenant and its rights were invoked before the courts.’<sup>14</sup>

It stated; ‘[a]ffirming that all economic, social and cultural rights are justiciable, the Committee reiterates its previous recommendation and **strongly recommends that the State [P]arty incorporate economic, social and cultural rights in the proposed amendments to the Constitution**, as well as in other domestic legislation. The Committee points out that, irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under an obligation to comply with it and to give it full effect in the domestic legal order.’<sup>15</sup>

In 2004, the Ninth Progress Report of the **All Party Oireachtas Committee on the Constitution**, made a commitment to a further investigation of whether the Constitution should include justiciable socio-economic rights, means that these rights are enforceable by courts and other bodies.<sup>16</sup> This has not happened.

- D) In 2005, the **Irish Human Rights Commission** has expressed its serious concern at “[t]he continuing failure of the Irish Government to give domestic effect to international human rights treaties”.<sup>17</sup> As noted above, the Commission has also raised its concern that the lack of justiciable ESC rights

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<sup>14</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Ireland, UN Doc E/C.12/1/Add.7, 5 June 2002, para 12.

<sup>15</sup> *Ibid*, para 23.

<sup>16</sup> For example administrative tribunals, international judicial and quasi-judicial bodies.

<sup>17</sup> Irish Human Rights Commission, Making Economic, Social and Cultural Rights Effective: An IHRC Discussion Document, Dublin, IHRC, 2005, pp 121-122.

in the Constitution and legislation means that there are gaps in the protection for these rights.<sup>18</sup>

- E) In 2011, during Ireland's examination under the **UN Universal Periodic Review** mechanism, a number of UN Member States made recommendations on ESC rights, including to take measures required to respect ESC rights, to consider incorporating the rights to health and housing and to sign and ratify the Optional Protocol to the ICESCR.<sup>19</sup>

23. The Constitutional Convention can play a crucial role in moving the agenda on ESC rights forward, helping to ensure that these rights become a reality for all people in Ireland.

#### **D) How can ESC rights be incorporated into the Irish Constitution?**

24. There are a number of ways in which ESC rights could be provided for in the Constitution.

- i. Individual articles could be inserted into the Constitution, protecting some or all of the rights provided for in the ICESCR, in the same way as articles 42 and 43 provide for education and private property.<sup>20</sup>
- ii. Article 40 could be amended to include ESC rights as personal rights under the Constitution.
- iii. Article 29, which covers the application of international agreements in domestic law, could be amended to make international human rights treaties, like the ICESCR, part of domestic law.
- iv. A Bill of Rights could be created as an addendum to the Constitution rather than an amendment or addition to the existing articles.
- v. The Constitutional Convention can avail of the great wealth of expertise available to it as to the ways in which constitutional protection of ESC rights could be achieved in Bunreacht na hÉireann.

#### **E) Misconceptions relating to ESC rights**

25. There are a number of misconceptions relating to ESC rights and why they are not suitable for constitutional incorporation. All of these have been firmly refuted at national, regional and international level. The most common are outlined below.

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<sup>18</sup> Supra note 12.

<sup>19</sup> Report of the Working Group on the Universal Periodic Review, Ireland, UN Doc A/HRC/19/9, 21 December 2011, para 106.18 and 107.4.

<sup>20</sup> For example, the South African Constitution includes a number of provisions protecting economic, social and cultural rights such as the right to housing, health care, food, water, social security, and culture. E.g. Article 26 reads;

1. Everyone has the right to have access to adequate housing.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

The Finnish Constitution protects a number economic, social and cultural rights in section 9 which reads; 'Everyone shall be guaranteed by an act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider. The public authorities shall guarantee for everyone, as provided in more detail by an act, adequate social, health and medical services and promote the health of the population'.

Others will be elaborated in AI's submission to the Constitutional Convention in September.

**ESC rights are non justiciable because they are only aspirations and not legal rights that can be enforced by courts**

26. It is widely acknowledged that civil and political rights are justiciable, meaning that they are enforceable by courts and other bodies<sup>21</sup>. However, some still claim that ESC rights are political aims and aspirations rather than enforceable rights. The UN Committee on Economic, Social and Cultural Rights has emphasised that '[t]his discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions'. It noted that "[w]hile the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the vast majority of systems, be considered to possess at least some significant justiciable dimensions."<sup>22</sup>

27. Decisions of courts in countries around the world covering all ESC rights demonstrate that these rights are justiciable.<sup>23</sup> Judicial review of ESC rights can be seen in an increasing number of countries including but not limited to: Germany, Finland, Portugal, Latvia, South Africa, India, Colombia and Mexico. Furthermore, complaints procedures for ESC rights have been developed at the international and regional level, including the Collective Complaints Procedure under the European Social Charter to which Ireland is a State Party and the Optional Protocol to the ICESCR, which Ireland has signed. Regional and domestic courts have adjudicated cases related to ESC rights as a result of which a body of case law has emerged.<sup>24</sup> This clearly demonstrates the justiciability of ESC rights.

**ESC rights are a matter of public policy and resource allocation. Enshrining them in the Constitution for the Courts to adjudicate on would violate the separation of powers doctrine.**

28. A range of States have set up procedures that allow for the adjudication of ESC rights before the courts. This has not affected the competency of other public bodies. Where national courts have ordered a specific programme or policy to be implemented, the orders have recognised that the competence and authority to devise the appropriate response rests with the government, provided that the policy is in compliance with the ICESCR.<sup>25</sup> In reviewing compliance, a court will consider whether the State has fulfilled its obligation to ensure fundamental human rights rather than whether more favourable measures should have been adopted.<sup>26</sup>

29. On the allocation of resources, as stated by the Committee on Economic, Social and Cultural Rights, 'while the respective competencies of the various branches

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<sup>21</sup> For example administrative tribunals, international judicial and quasi-judicial bodies.

<sup>22</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 9, Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/1998/24, para 10.

<sup>23</sup> Office of the UN High Commissioner for Human Rights, Fact Sheet: *Frequently Asked Questions on Economic, Social and Cultural Rights*, UN Geneva, 2008, p. 30.

<sup>24</sup> International NGO Coalition for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, A Toolkit for Action Booklet 3, *Why Should States Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights?*, p.6. Examples of case law include *Soobramoney v Minister for Health KwaZulu Natal* (1998 (1) SA 765, CC) (on the right to health), *The Government of the Republic of South Africa and others v Irene Grootbroom and others*, 2001(1) SA 46 (CC) October 4, 2000 (right to housing), Human Rights Committee decision in *F.H.Zwaan-de Vries the Netherlands*, Communication No. 182/1984 (9 April 1987), U.N. Doc Supp. No. 40 (A/42/40) at 160 (1987) (discrimination between married men and women in access to unemployment benefits).

<sup>25</sup> *Ibid*, p. 7.

<sup>26</sup> For example, *V v Resident Municipality X and Bern Canton Government Council (Constitutional Complaint)*, October 27, 1995. The Swiss Federal Court said that it lacked the 'competence to set priorities in allocating resources' but would intervene if the legislative framework failed to ensure constitutional entitlements.

of government must be respected,...courts are generally already involved in a considerable range of matters which have important resource implications'.<sup>27</sup> An example is legal aid, which requires significant financial investment.<sup>28</sup>

### **ESC rights are too vague to be adjudicated**

30. Some argue that ESC rights are 'too vaguely worded' for judges to decide on whether a violation has occurred. However as noted above, the Committee on Economic, Social Rights in its General Comments, the UN Special Rapporteurs, as well as national and regional case law, have clearly outlined the nature, content and scope of ESC rights and of States' obligations.<sup>29</sup> Moreover, as noted by the UN Office of the High Commissioner for Human Rights, 'judges have already dealt ably with questions of what constitutes torture, a fair trial or arbitrary or unlawful interference with privacy. Filling in the gaps in legislation is a clear function of the judiciary, not only in human rights law but in any area of law.'<sup>30</sup>

### **Conclusion**

**Amnesty International Ireland calls on the Constitutional Convention to examine economic, social and cultural rights and to recommend to the Government their constitutional protection.**

31. Without access to a potential remedy, ESC rights are of little value to people in this country. Ireland vowed to respect, protect and fulfil these rights when it ratified the ICESCR almost 25 years ago. The continuing lack of recognition of ESC rights in Irish law calls that commitment into question.

32. At a time when people in Ireland, especially the most vulnerable, are suffering the harsh consequences of financial instability and the economic crisis, the protection of ESC rights has never been so crucial.

33. Promises to achieve the enjoyment of these rights must go beyond the programmes of individual governments and they must be granted long-term legal protection.

34. It is time the Constitution safeguards, civil and political as well as economic, social and cultural without distinction, to reflect the universality and indivisibility of all human rights.

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<sup>27</sup> *Supra* note 16, para 10.

<sup>28</sup> For example, *Airey v Ireland* [1979] 2 EHRR 305.

<sup>29</sup> *Supra* note 24, p. 6.

<sup>30</sup> *Supra* note 23, p. 30.