



ESC Rights Initiative

Conference

Making Economic, Social and Cultural Rights Meaningful

29 March 2017, 10.30am-3.30pm, Oak Room, Mansion House, Dawson Street, Dublin 2.

1. About the Economic, Social and Cultural Rights Initiative (ESCRI)

The Economic, Social and Cultural Rights Initiative (ESCRI) is a coalition of over 60 civil society organisations that support strengthening the protection of economic, social and cultural rights in the Irish Constitution.

The ESCRI believes that the constitutional strengthening of ESC Rights would bring balance to existing civil and political rights protection in the Constitution, which are justiciable, thus achieving the intended indivisibility between civil and political rights and economic, social and cultural rights. ESC rights are fundamental human rights. They belong to everyone in Ireland. The Irish Government committed to uphold them when it ratified the International Covenant of Economic, Social and Cultural Rights in 1989. The protection of these rights is necessary to ensure a life of dignity.

The ESC Rights Initiative successfully campaigned for the inclusion of economic, social and cultural rights as an agenda item of the Constitutional Convention. Following a comprehensive examination, the Convention recommended a strengthened constitutional framework in its 2014 report to government. In its response to the report the government did not indicate whether it accepts or rejects the recommendation and has indicated that it would refer it to an Oireachtas Committee.

Members of the ESC Rights Initiative include: Age Action, All Together in Dignity, Community Action Network, Community Law and Mediation, Focus Ireland, Irish Council for Civil Liberties, Mercy Law Resource Centre



2. Overview of event

In order to advance our objectives, the ESCRI will hold a high-level event entitled *Making Economic, Social and Cultural Rights Meaningful* on 29th March 2017. This event, made possible with funding from the Irish Human Rights and Equality Commission, will bring together politicians, the legal profession and civil society to consider enforceability and accountability mechanisms for ESC rights at national, regional and international level and the need to enhance the protection thereof. The event will consider why enforceable ESC rights are important and the real and practical difference this could make to individuals and groups in Ireland.

Drawing on the recent findings of the European Committee of Social Rights against Ireland, discussions will consider the accountability mechanisms already available, how these can be utilised and how accountability can be strengthened.

3. Aims and Objectives

The event will bring together a range of stakeholders to discuss how enforceable ESC rights such as housing and health would impact upon individuals and groups in Ireland, drawing on experiences from other European States where ESC rights have been given legal protection.

The main aim of the event is to enhance the understanding of ESC rights among politicians, law and policy makers and other relevant stakeholders and to promote discussion on how the protection of ESC rights can be advanced in Ireland.

The objectives are:

- To bring together law and policy makers, politicians, members of the legal profession, civil society and other stakeholders to discuss enforceability and accountability on ESC rights, how this can be advanced in Ireland and the difference it would make in practical terms.
- To achieve greater understanding of ESC rights among participants.
- To create political debate and a willingness amongst law and policy makers to advance the strengthening of ESC rights in Ireland.

4. Format of the event

The structure of the event will take the form of a keynote address, followed by three expert panel discussions:

Keynote - Jamie Burton- Public Lawyer Doughty Street Chambers

Panel 1 – The extent of the obligation

Panel 2 - What would enforceable economic, social and cultural rights mean?

Panel 3 – Where we are and where do we go from here

Closing Remarks- Michael Farrell

Panel 1

The extent of the obligation

Timing: 11:30am to 12:30pm

Chair: Anastasia Crickley

Panellists: Dr Helen Johnston Senior Policy Analyst, National Economic and Social Council (NESC)
Colin Harvey - Professor of Human Rights Law, School of Law, Queen's University
Gerry Whyte – Professor of Law, Trinity College Dublin

This panel is asked to consider the extent of a State's obligations under the International Covenant on Economic, Social and Cultural Rights, how these obligations have been interpreted in other jurisdictions and how a balance can be achieved in the separation of powers between the different branches of government.

Common concerns relating to enforceable ESC rights include the potential budgetary implications that such rights could have. In fact, human rights and budgets are firmly linked. Human rights can and should influence the budgetary process. The panel will address the economics of ESC rights and how a State's human rights obligations can, in fact, be a useful tool in the budgetary process

providing a robust framework when difficult decisions need to be made around the allocation of resources.

Guiding Questions for Panel Discussion:

These questions have been shared with the chair and will help to guide the panel discussion:

- What obligations rest on the State under international and European law?
- What obligations would rest on the State if ESC rights were given explicit protection in Irish law?
- What do ESC rights look like in States that have protected them? (Constitution, legislation etc)
- There is a fear of people running to the courts if ESC rights were made enforceable in Ireland. How have ESC rights been adjudicated upon in other States and what checks and balances have been put in place?
- Resource constraints are often a concern of Government. How can such constraints be reconciled with a State's ESC rights obligations?
- What implications would enforceable ESC rights have on budgetary policy?
- Are human rights/economic, social and cultural rights currently reflected in Government policy?
- How can and should a rights based approach to Government policy be strengthened?
- The *Programme for a Partnership Government* states that "we will develop the process of budget and policy proofing as a means of advancing equality, reducing poverty and strengthening economic and social rights". To what extent has this materialised and would enforceable ESC rights make a difference?
- What key learnings should the Government take from the economic crisis, in order to ensure a fairer, more equal and sustainable society into the future?

Each panellist is asked to prepare a short ten minute input. We are requesting that speakers do not use PowerPoint. As we will publish a report on the event, an outline of your input (main points, structure) or speaking note would assist us greatly. However, if not possible we will have note-takers on the day to capture the main points raised.

Guiding Points for Speaker Presentations:

Gerry Whyte:

- What obligations rest on the State under international and European law?
- What obligations would rest on the State if ESC rights were given explicit protection in Irish law?
- How can the Separation of Powers Doctrine be reconciled with ESC rights?

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- What do ESC rights look like in States that have protected them? (Constitution, legislation etc)
- There is a fear of people running to the courts if ESC rights were made enforceable in Ireland. How have ESC rights been adjudicated upon in other States and what checks and balances have been put in place?

Colin Harvey:

- Resource constraints are often a concern of Government. How can such constraints be reconciled with a State's ESC rights obligations?
- What implications would enforceable ESC rights have on budgetary policy?
- How can ESC rights inform and guide budgetary policy?
- What would a human rights based approach to budgeting look like in practice?

Helen Johnston:

- Are human rights/economic, social and cultural rights currently reflected in Government policy?
- How can and should a rights based approach to Government policy be strengthened?
- The *Programme for a Partnership Government* states that "we will develop the process of budget and policy proofing as a means of advancing equality, reducing poverty and strengthening economic and social rights". To what extent has this materialised and would enforceable ESC rights make a difference?
- What key learnings should the Government take from the economic crisis, in order to ensure a fairer, more equal and sustainable society into the future?

Panel 2

What would enforceable economic, social and cultural rights mean in practice?

Timing: 1.00pm to 2.15pm

Chair: Dr Liam Thornton, School of Law, UCD

Panellists: Siobhan Curran, Pavee Point Traveller and Roma Centre
Eoin Carroll, Jesuit Centre for Faith and Justice
Dr Austin O'Carroll
Debbie Mulhall, Dolphin House Community Development Association and founding member of Rialto Rights in Action

This panel will provide an opportunity to explore what exactly protecting ESC rights would mean in practice. The speakers will put ESC rights in the context of real life and give everyday examples of how the protection of these rights would affect the lives of people, particularly those at the margins of our society, for the better.

Panellists will speak about the right to culture, the right to health and the right to housing. The discussion will focus on how ESC rights would serve to protect vulnerable groups in Irish society, including those who are homeless, children, travellers, and those experiencing poverty. Panellists will explore what these rights would actually mean in practice.

Guiding Questions for Panel Discussion:

These questions have been shared with the chair and will help to guide the panel discussion:

- How would the protection of ESC rights improve the lives of Travellers and Roma?
- How would the protection of ESC rights improve the lives of people who are homeless or facing homelessness?
- How would the protection of ESC rights help those experiencing poverty?
- Could these protections be put in place in other ways other than by protecting ESC rights?
- What does **not** having enforceable ESC Rights mean to you and to your community?
- What is your experience of living without enforceable ESC Rights?
- What is your experience of attempting to claim your rights and what have you learned from it?

Each panellist is asked to prepare a short ten minute input. We are requesting that speakers do not use PowerPoint. As we will publish a report on the event, an outline of your input (main points, structure) or speaking note would assist us greatly. However, if not possible we will have note-takers on the day to capture the main points raised.

Guiding Points for Speaker Presentations:

Siobhan Curran, Pavee Point:

- What is the experience of Pavee Point in working with Travellers and Roma people in relation to asserting and/or enforcing their cultural rights?
- What particular protections are provided in ICESCR for Travellers and Roma? Why is this necessary?

- In what ways are Travellers and Roma people’s cultural and other rights not being protected?
- How would the protection of ESC rights help Travellers and Roma in their lives? Please give practical examples of this.

Eoin Carroll, Jesuit Centre for Faith and Justice:

- What is the experience of the Jesuit Centre in working with people who are homeless or facing homelessness and the asserting of their rights in relation to housing?
- What particular protections are provided in ICESCR in relation to housing? Why is this necessary?
- In what ways are the rights of people who are homeless or facing homelessness not being protected in respect of their housing?
- How would the protection of the right to housing help people who are homeless or facing homelessness in their lives? Please give practical examples of this.

Dr Austin O’Carroll:

- What is your experience of working with people who are experiencing poverty in relation to difficulties in accessing health and medical care?
- What particular protections are provided in ICESCR in relation to health? Why is this necessary?
- In what ways are the rights of people who are experiencing poverty not being protected in relation to their health?
- How would the protection of the right to health help people who are experiencing poverty in their lives? Please give practical examples of this.

Debbie Mulhall:

- What does **not** having enforceable ESC Rights mean to you and to your community?
- What is your experience of living without enforceable ESC Rights?
- What is your experience of attempting to claim your rights and what have you learned from it?

Panel 3

Where We Are and Where We Go from Here

Timing: 2:15pm to 3:15pm

Chair: Cecilia Forrestal, Community Action Network

Panellists: Mary Murphy, Maynooth University and IHREC

Eilis Barry, CEO, FLAC

Dr Padraic Kenna, Lecturer, Department of Law, NUI Galway

This panel will explore how we can meaningfully progress towards the realisation of ESC rights in Ireland. In particular, panellists will suggest mechanisms and strategies to trigger the implementation of ESC rights in a manner that allays the concerns of the State and citizens alike.

This panel will interrogate the potential of human rights instruments and European laws and Directives, which Ireland has ratified or is bound by, to deliver on economic, social and cultural rights. It will comment on the apparent failure of the legislature to sufficiently impact on poverty, inequality and social, political, economic and cultural exclusion alongside the reluctance of the state to integrate economic, social and cultural rights instruments into domestic law, despite the constant urgings of UN examining committees.

The panel will outline Ireland's human rights obligations regionally and internationally. It will point to articles in the Irish Constitution that guarantee economic, social and cultural rights as well as identifying deficits in such constitutional protection. It will also demonstrate how legislative change can strengthen human rights protection and promote equalities of outcome for marginalised or disadvantaged groups.

The panel will consider current accountability mechanisms in Ireland, including IHREC and the Office of the Ombudsman, as well as their limitations in addressing complaints regarding ESC rights. The

panel will suggest 'next steps' towards an equitable, enforceable and accountable ESC rights framework.

Guiding Questions for Panel Discussion:

These questions have been shared with the chair and will help to guide the panel discussion:

- What international instruments can be currently utilised to protect ESC rights in Ireland?
- What existing national laws can be used to protect ESC rights?
- Do mechanisms exist for the political and administrative state to adequately address poverty, social exclusion and discrimination?
- Why is the State reluctant to enumerate ESC rights in Irish law?
- How effective are current accountability mechanisms?
- Where do we go from here?

Each panellist is asked to prepare a short ten minute input. We are requesting that speakers do not use PowerPoint. As we will publish a report on the event, an outline of your input (main points, structure) or speaking note would assist us greatly. However, if not possible we will have note-takers on the day to capture the main points raised.

Guiding Points for Speaker Presentations:

Eilis Barry:

- What existing national laws can be used to protect ESC rights?
- Is there an inequality of protection for ESC rights in current law? (ie. are some ESC rights adequately protected while others are not?)
- What are the limitations of using current laws?

Dr Mary Murphy:

- What are the current accountability mechanisms for ESC rights in Ireland?
- How effective are they?
- What is the potential of the Irish Human Rights and Equality Act to bring about a more robust implementation of ESCR including vigorous application of the Public Sector Duty?

- How can the State use the tax and welfare system to realise ESC rights of citizens, and those without citizenship?
- Why do you believe that the State has been unwilling, thus far, to enumerate ESC rights?

Padraic Kenna:

- How can we use international and European instruments to protect ESC rights in Ireland?
- Are certain ESC more easily protected in this manner than others?
- What do you think campaigners and politicians need to do to secure protection for ESC rights?

Draft programme outline

- 10.30am** Registration & Tea/Coffee
- 10.45am** Welcome by ESC Rights Initiative
- 11.00am** Key note address Jamie Burton
- 11.30am** Panel 1 – The extent of the obligation
- 12.30pm** Lunch
- 1.00pm** Panel 2 - What would enforceable economic, social and cultural rights mean?
- 2.15pm** Panel 3 – Where we are and where do we go from here
- 3.15pm** Closing address Michael Farrell
- 3.30pm** Close and thank you ESC Rights Initiative