

UPR Factsheet 3: Protection of Economic, Social & Cultural Rights in Ireland

FLAC is an independent human rights organisation based in Dublin, Ireland which is dedicated to the realisation of equal access to justice for all.

We promote the use of law as a tool for social change and the right of equal access to justice, with a focus on economic, social and cultural rights and on protecting marginalised and disadvantaged groups. To this end we formulate policy and law reform proposals, principally in our core areas of social welfare law, personal debt law, consumer credit law and civil legal aid. As an Independent Law Centre, we take a small number of public interest cases each year. We advance the use of law in the public interest, particularly through our [PILA project](#). Finally, we deliver confidential and free basic legal information and advice to the public, both directly and in cooperation with key partners.

1. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Following its first UPR examination, Ireland partially accepted a recommendation (107.4) to sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR). In a welcome move, Ireland signed the OP-ICESCR on 23 March 2012. However, no steps have been taken towards ratification since then. In particular, Ireland has failed to initiate an inter-departmental consultation which is typically the first step towards ratification of an international human rights instrument.

In June 2015, the UN Committee on Economic, Social and Cultural Rights recommended that Ireland ratify the OP-ICESCR.

Recommendation:

1.1 Ratify the Optional Protocol to the International Covenant on Economic, Social & Cultural Rights.

2. Incorporation of Economic, Social and Cultural Rights into Domestic Law

In Ireland, while civil and political rights are justiciable, both the legislature and the judiciary have traditionally taken a conservative position on the justiciability of economic, social and cultural rights, arguing that it may have cost implications and that judicial enforceability would interfere with the separation of powers.

During Ireland's first UPR examination, it was recommended that the State incorporate the right to health and housing into domestic law (107.4). The UN Committee on Economic, Social and Cultural Rights has also called on Ireland to incorporate the International Covenant on Economic, Social and Cultural Rights into its domestic legal order.

In February 2014, the Government-established Constitutional Convention – which was tasked with discussing proposed amendments to the Irish Constitution – considered the inclusion of economic, social and cultural rights. It voted in favour of inserting into the Constitution a provision that *‘the State shall progressively realise ESC rights, subject to maximum available resources and that this duty is cognisable by the Courts’*. Despite the Convention’s terms of reference requiring a response from the Government within four months of receiving the Convention’s report, a formal response was delayed until January 2016. In its official response, the Government failed to indicate whether it accepted the Convention’s recommendation, referring it instead to an Oireachtas (parliamentary) Committee for further consideration. Details on this process have yet to be made available.

Recommendation:

1.2 Ensure the direct applicability of the International Covenant on Economic, Social & Cultural Rights, including through incorporation into domestic law.

3. Human Rights and Budgeting

Following the Memoranda of Understanding with the ‘Troika’ of the European Commission, International Monetary Fund and European Central Bank in 2010, Ireland introduced a range of austerity measures through successive budgets.

As documented by the Committee on Economic, Social and Cultural Rights, austerity measures have had and continue to have a significant adverse impact on the whole population. Many of these regressive measures were adopted without thorough assessment of their impact, particularly on vulnerable and marginalised groups. While the Department of Social Protection does carry out a social impact assessment of measures relevant to it, such assessments should be undertaken more extensively, across all Departments, and should incorporate a human rights and equality analysis.

During Ireland’s first UPR examination, it was recommended that the necessary steps be taken to ensure that the current economic crisis did not erode human rights (107.18) and that economic measures did not disproportionately impact upon the elderly (106.35). Additionally, the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Rights of the Child and former UN Independent Expert on the question of human rights and extreme poverty Magdalena Sepúlveda Carmona have all recommended that Ireland consider instituting human rights assessments in its budgetary processes.

Recommendations:

1.3 Undertake human rights and equality impact assessments on all proposed budgetary measures in all Government departments;

1.4 Put in place measures to ensure that the rights of disadvantaged and marginalised individuals and groups are not disproportionately affected by budgetary measures.