



**AN BILLE UM AN gCEATHRÚ LEASÚ IS TRÍOCHA AR AN
mBUNREACTH (CEARTA EACNAMAÍOCHA,
SÓISIALACHA AGUS CULTÚIR), 2014**
**THIRTY-FOURTH AMENDMENT OF THE CONSTITUTION
(ECONOMIC, SOCIAL AND CULTURAL RIGHTS) BILL 2014**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to amend Article 45 of the Constitution by adding to the end of that Article a provision, contained in the Schedule, that the State shall progressively realise, subject to its maximum available resources and without discrimination, the rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), and that this duty be cognisable by the courts.

Background

Ireland ratified the ICESCR in 1989. The ICESCR is the United Nations human rights treaty that protects economic, social and cultural (ESC) rights. Part II of the ICESCR defines the general nature of states parties' obligations under the treaty. Part III enumerates the specific substantive rights protected by the treaty.

Article 45 of the Constitution states that principles of social policy set forth in that Article are intended for the general guidance of the Oireachtas and shall not be cognisable by the Courts.

Article 29.5.6^o of the Constitution states that no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas. Ireland has not incorporated the ICESCR into either domestic Irish law or the Constitution.

The United Nations Committee on Economic, Social and Cultural Rights (CESCR) is the body of 18 independent experts that monitors implementation of the ICESCR by its States Parties. The CESCR publishes interpretation of the provisions of the ICESCR, known as 'General Comments'. In General Comment 9 the CESCR stated that it strongly encourages formal adoption or incorporation of the ICESCR in national law. Also in General Comment 9, the CESCR stated that there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions.

The CESCR considered Ireland's periodic reports on the implementation of the ICESCR in 1999 and 2002. In each of its concluding observations on Ireland's reports, the CESCR stated that it regretted that the ICESCR had not been fully incorporated or reflected in domestic legislation, and recommended that Ireland

incorporate ESC rights in to the Constitution, as well as in other domestic legislation.

In February 2014 85% of the members of the Constitutional Convention voted in favour of amending the Constitution to strengthen the protection of ESC rights. A majority of the Convention voted for a Constitutional provision that: the State shall progressively realise ESC rights, subject to maximum available resources and that this duty is cognisable by the Courts“. The Convention also voted on whether specific additional rights should be enumerated in the Constitution. The Convention voted for, *inter alia*, that all the rights contained in the ICESCR be enumerated with the Constitution. This Bill is intended to give effect to that determination.

Provisions of the Bill

Section 1 amends the introductory text of Article 45 of the Constitution by inserting a new paragraph, the text of which is set out in the Schedule to the Bill.

Section 2 is a standard provision relating to the citation of the Bill and the amendment.

The schedule sets out the proposed amendment.

Nollaig, 2014.