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International Covenant on Economic, Social and Cultural Rights (ICESCR), 4th Periodic Report for Ireland 2020

Comments on the [first draft of the report](#)

[Dr Liam Thornton](#)

A. Introduction

1. I welcome the opportunity to comment upon the Department of Foreign Affairs and Trade (DFAT) first draft of Ireland's fourth periodic report to the UN Committee on Economic, Social and Cultural Rights (CESCR). It is regrettable that a more extensive consultation could not be conducted due to the Covid-19 crisis. It is essential that DFAT conduct a more substantive engagement, including through technological means, with all individuals and civil society organisations in the State on Ireland's fourth periodic review to CESCR prior to the submission of the final report to CESCR.
2. These comments are focused on suggestions for ensuring content is factual, while also noting some omissions of significant relevance from the draft report. The basis for the comments on the first draft rely on the Concluding Observations from CESCR for Ireland in 2015, as well as further Concluding Observations from other UN human rights treaty bodies post 2015. These comments relate exclusively to two key themes: the domestic application of ICESCR, and economic and social rights of persons seeking asylum.

B. Domestic Application of ICESCR

3. CESCR's [2015 Concluding Observations](#) recommended (i) that ICESCR be incorporated into the Irish domestic legal order and (ii) training be extended to judges, lawyers and state officials. No information is provided in the first draft report on compliance with this recommendation.
4. The second draft of the report should include a table of domestic legislation which Ireland assess as being relevant to each particular right protected under ICESCR. This should, at a minimum, include information on **headline legislative and non-legislative measures** within the fields of social welfare law; education law; housing and property law; disability rights law; asylum and protection law (socio-economic rights aspects); civil legal aid and health law.

For example:

Article of ICESCR	Domestic Implementation Measure (Select)
Article 9: Social Security and Social Insurance	Social Welfare Acts (as consolidated), protecting inter alia, social assistance (non-contributory) and social security (contributory) payments in fields such as

	unemployment, one parent families, child benefit, disability allowances <i>etc.</i>
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5. The first draft should provide information to CESCR on progress, or lack thereof, relating to the Government and Oireachtas consideration of the Constitutional Convention's [recommendations on constitutional protection](#) of economic, social and cultural rights. The referral of this report to an Oireachtas Committee on [14 January 2016](#), and lack of progress on consideration of this report's recommendations must be explained. Since the Constitutional Convention report, attempts to constitutionalise [economic and social rights](#), a [right to housing](#) and a [right to healthcare](#), have all been opposed by previous governments.

C. The Economic and Social Rights of Asylum Seekers in Ireland

6. As a preliminary matter, CESCR should be informed within the first draft: (i) of the placement of the system of direct provision on [a legislative footing](#); (ii) of the existence of the [Inter-Departmental Committee](#) examining the system of direct provision, [who delivered](#) their report to the Minister for Justice and Equality some time ago. (iii) Information on the [Dr Catherine Day advisory group](#) on direct provision, should also be provided. Positive enhancements to rights for persons in the asylum system since last CESCR examination, should be noted e.g. some access to further education and university, in particular Irish University's [sanctuary scholarship schemes](#); provision of a right for some persons seeking asylum to access the labour market.
7. The first draft of the report does not contain necessary essential information for the CESCR to conduct a substantive evaluation of Ireland's progress towards compliance with ICESCR in this arena however. Three areas of particular note include: weekly payments (daily expenses allowance) to asylum seekers; housing and asylum seekers; and entitlement to access the labour market.
8. **Daily Expenses Allowance/Direct Provision Allowance:** The first draft of the report provides information on increases to weekly payments for asylum seekers without context. CESCR in 2015 expressed concern with asylum seekers lack of access to social security payments. the rate of social assistance have nevertheless been [described as "paltry"](#) by Mr. Justice Max Barret, judge of the Irish High Court. The information provided at para 132 of the [first draft](#) must provide accurate information to CESCR on payment rates in comparison with other persons who rely on welfare. Given that social assistance rates under Irish welfare law, are viewed as the absolutely minimum level of rates for subsistence existence in Ireland, an explanation must be provided to CESCR as to why asylum seekers rates, even accepting accommodation and food may be provided, differ so substantially *vis-à-vis* other persons in receipt of welfare. A more accurate table should be included, such as:

Since March 2019	Single person seeking asylum	Person over 25 sole income social assistance*	Family (2adults +2 children under 12) seeking asylum	Family (2a+2c under 12)*
Weekly Payment	€38.80	€201.00	€137.20	€407.70
Child Benefit (Monthly)	Not entitled under law	Not applicable	Not entitled under law	€280.00
Housing	<i>Provided + food</i>	Up to €430 per month*		Up to €1,275 per month*

*Assuming the single person is 25 years and older, living in Dublin, entitled to supplementary welfare allowance (individual rate) and entitled to Housing Assistance Payment (HAP) for shared accommodation. Assuming the family is living in Dublin, entitled to supplementary welfare allowance (individual rate + dependent adult + child supplement), and are entitled to HAP. Please note outside of Dublin city centre, HAP payments may be lesser. There is also a discretion to pay up to 20% more than the maximum HAP rate in specified circumstances. HAP is paid to a landlord and not to an individual. An individual/family entitled to HAP will have to make a contribution towards the rent which is based on household income, see [here](#).

9. **Housing and Asylum Seekers:** CESCER 2015 Observations required Ireland to “improve living conditions” and ensure full protection of economic and social rights for asylum seekers. This must now be examined in light of the Committee on the Elimination of Racial Discrimination’s 2019 requirements on Ireland to “...develop an alternative reception model and take concrete steps to phase out the direct provision system.” The first draft of the report needs to explain to CESCER whether recommendations from [CERD 2019](#) and Prof. Geoffrey Shannon, former Special Rapporteur for Children (2011 and 2018), on the abolition of direct provision will be considered. The first draft contains no information at all on the fact that significant numbers of asylum seekers (at least until the Covid-19 crisis), had been accommodated outside the system of direct provision accommodation. No information has been provided to CESCER that will enable adequate assessment of whether emergency accommodation for persons seeking asylum meets Ireland’s freely accepted international obligations under CESCER (see [here](#) for further information on this shadow system).
10. **Access to the labour market for persons seeking asylum:** The first draft should inform CESCER of the extension of freedom to enter the labour market for certain asylum applicants in Ireland under the [2018 Reception Regulations](#). Please provide CESCER with statistics on numbers persons seeking asylum who have been granted permission to enter the labour market, and numbers of persons who have exercised this permission (latest statistics I could access [here](#)). Consideration should also be provided to explaining the limitations on access to the labour market for asylum seekers, in particular as regards exclusion of persons subject to [a potential ‘Dublin transfer’ under EU law](#).
11. Should any further information on these comments be needed, please do not hesitate to contact me. I wish DFAT well in finalising the report to CESCER and again express my hope that a more substantive societal engagement process on this report will occur.

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Please note this submission is in a personal capacity and views expressed may not reflect views of my employer or any organisation I have a governance role in.