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## **An Comhchoiste um Chomhionannas Inscne**

Tuarascáil Eatramhach maidir le hAthrú a dhéanamh ar an mBunreacht  
Iúil 2022

## **Joint Committee on Gender Equality**

Interim report on Constitutional Change  
July 2022



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## Membership of the Joint Committee on Gender Equality



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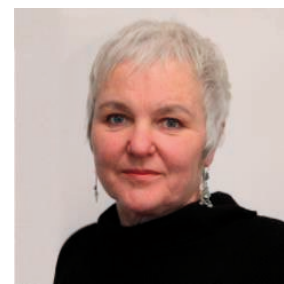
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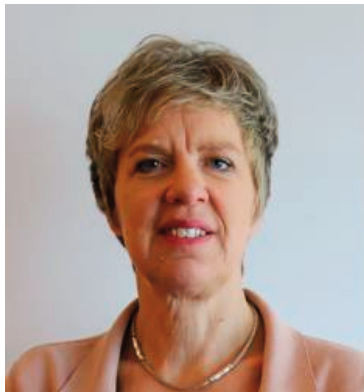
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<sup>1</sup> Appointed by Order of the Dáil of 12 July 2022.

## Cathaoirleach's Foreword



The remit of the Joint Committee on Gender Equality is to consider the 45 recommendations contained in the Report of the Citizens' Assembly on Gender Equality, together with the response of the Government to each such recommendation, having regard to the open letter to the Oireachtas contained in that Report.

On behalf of the Committee, I would like to express my deep appreciation for the immense commitment and major public service given by the citizens who took part in the Citizens' Assembly. Their hard work and engagement in this deliberative democracy process has produced a comprehensive set of recommendations, and it is the aim and intention of this Committee to focus on their implementation.

The Committee's work on the full set of recommendations of the Citizens' Assembly is ongoing and hearings will continue through Autumn 2022 to enable consideration of all 45 recommendations under a number of different headings. The Committee is due to publish its final report on all recommendations in December 2022.

At the outset it was, however, agreed by the Committee to prioritise consideration of recommendations 1 to 3 on the Constitution, which relate to Articles 40.1 and 41 of the Constitution. It has long been agreed that the way in which women and mothers are referred to in Article 41 is based on outdated gender stereotypes and should have no place in a constitutional text. In addition, the definition of family in the same Article has long been criticised for being insufficiently inclusive of diverse family forms in contemporary Ireland.

**The Committee therefore recommends that a constitutional referendum be held in 2023 to give effect to the Citizens' Assembly recommendations on constitutional change.**

Building on the Citizens' Assembly's recommendations, the Committee has engaged both in private and public with academics, government ministers and officials, civil society organisations and those with lived experiences, to discuss and develop an appropriate form of wording to replace the current Article 41; and indeed to establish how the three recommendations of the Assembly on constitutional change might best be implemented.

This interim report sets out the substantive issues discussed at the Committee's hearings on the topic, and presents various options for constitutional text which could form the basis of amendments to give effect to the recommendations of the Citizens' Assembly.

Several alternative options for wording are set out in the report. The Committee has sought the response of the Government on the proposals put forward, and now seeks the views of interested stakeholders, citizens, and members of the public on these options. We will be publishing a Final Report at the conclusion of our term as a Committee and will return then to the question of constitutional change.

Through this process and our ongoing work, we look forward to contributing to the strengthening of gender equality norms and policies generally; and to the early holding of the necessary referendum on Articles 40.1 and 41.

As Cathaoirleach of the Committee, I would like to thank Members for their input and their commitment in bringing forward this important report. On behalf of the Committee, I would also like to express my sincere gratitude to all the groups and individuals that came before the Committee to give evidence in person or remotely, and to all those who provided written submissions. The expertise and experience of stakeholders was critical to the development of this report and we thank you all for your valuable input.



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Ivana Bacik T.D.

Cathaoirleach

## Recommendations

1. The Committee recommends that a constitutional referendum be held in 2023 to give effect to the Citizens' Assembly recommendations on constitutional change.
2. Based on the hearings conducted and the information provided to the Committee, and to give effect to this central recommendation, the Committee recommends that the Government proceed to do the necessary preparatory work and that a decision is made upon the wording for a constitutional referendum to be put to the people in 2023 to amend Article 40.1 and Article 41.
3. Various options for appropriate wordings are suggested within the body of this report.

### Recommendations 1 to 3 of the Citizens' Assembly on Gender Equality

1. Article 40.1 of the Constitution should be amended to refer explicitly to gender equality and non-discrimination.
2. Article 41 of the Constitution should be amended so that it would protect family life, with the protection afforded to the family not limited to the marital family.
3. Article 41.2 of the Constitution should be deleted and replaced with language that is not gender specific and obliges the State to take reasonable measures to support care within the home and wider community.

## Stakeholder Engagement

The Joint Committee held four meetings on recommendations 1 to 3 of the Citizens' Assembly on Gender Equality. All meetings were held in public session, with the exception of the meeting that took place on 24 February which was held in private session. The engagements took place as follows:

Date	Stakeholder
24 February 2022	Dr Tom Hickey – Lecturer in Constitutional Law and Theory, Law School of Law and Government, Dublin City University  Dr Laura Cahillane – Senior Lecturer, School of Law, University of Limerick

Date	Stakeholder
3 March 2022	Dr Catherine Day – Chairperson to the Citizens' Assembly on Gender Equality  Dr Mary Clare O'Sullivan – Secretariat to the Citizens' Assembly on Gender Equality  Ms Lorraine Kavanagh - Secretariat to the Citizens' Assembly on Gender Equality

Date	Stakeholder
10 March 2022	Ms Orla O'Connor – Director, National Women's Council of Ireland  Ms Jennifer McCarthy Flynn – Head of Policy, National Women's Council of Ireland  Ms Sinéad Gibney – Chief Commissioner, Irish Human Rights and Equality Commission

Dr Salome Mbugua – Commission Member, Irish Human Rights and Equality Commission

Professor Caroline Fennell – Commission Member, Irish Human Rights and Equality Commission

Ms Saoirse Brady – Head of Legal, Policy and Public Affairs, Children's Rights Alliance

Ms Karen Kiernan – Chief Executive Officer, One Family

Date	Stakeholder
24 March 2022	Minister for Children, Disability, Integration and Youth, Mr Roderic O'Gorman, T.D.  Ms Jane Ann Duffy – Principal Officer, Department of Children, Equality, Disability, Integration and Youth

## Chapter 1 – Article 40

### ARTICLE 40

1 All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

### Recommendation one of the report of the Citizens' Assembly:

**Article 40.1 of the Constitution should be amended to refer explicitly to gender equality and non-discrimination**

At the private meeting held on the 24<sup>th</sup> February, in which Dr Tom Hickey and Dr Laura Cahillane gave evidence, the Committee heard:

- Some concern around the phrasing which would suggest that Article 40.1 would be amended specifically to refer to gender equality, potentially over other grounds of equality; If the Constitution were to be amended in this way care would need to be taken to ensure that it does not give rise to excluding other grounds of discrimination.
- However, attention was drawn to the fact that the Citizens' Assembly had noted the presence of the principle of gender equality in many Constitutions around the world<sup>2</sup> and felt strongly that it should be included in our Constitution.
- In light of the will of the citizens, it was queried if there may be potential to make a minimal amendment to Article 40.1 using the wording contained in Article 3 of the Irish Free State Constitution<sup>3</sup> – **“Every person, without distinction of sex”**, substituting **“sex”** for **“gender”**.
- In response, witnesses indicated that this might be a sensible approach taking into account that wholesale amendment of the Article is outside of the remit of the Committee but that the above suggestion of wording could work with the removal of **“human persons”** and insertion of **“without distinction of gender”**.

At the meeting held on the 3<sup>rd</sup> March, in which Dr Catherine Day, Chair to the Citizens' Assembly appeared before the Committee alongside Dr Mary Clare O'Sullivan and Lorraine

<sup>2</sup> In evidence given by Dr Catherine Day at the meeting on the 10<sup>th</sup> March, it was advised that some 80% of Constitutions contain similar measures

<sup>3</sup> [Constitution of the Irish Free State \(Saorstát Éireann\) Act, 1922, Schedule 1 \(irishstatutebook.ie\)](http://www.irishstatutebook.ie/1922/act_1/schedule_1/)

Kavanagh, Secretariat to the Citizens' Assembly, members questioned the reasoning behind the location of this amendment. It was queried whether:

- such an amendment might have the effect of creating a hierarchy of rights, or if the pure principle of equality in Article 41 would be enough to guarantee the right?
- there may be other grounds of discrimination also worthy of consideration for inclusion in a more expanded equality guarantee, and if this arose at the Assembly?

In response Dr Day outlined that:

- As the Article states “**all citizens shall, as human persons, be held equal before the law**”, it seemed to be the natural locus. That said, she would not insist that it had to be there.
- There was much discussion at the Assembly about discrimination and its multiple forms. There are different kinds of minorities, who already suffer from the inequalities of gender, multiplied by other inequalities. That is why the recommendation is to insert something that refers to gender equality and **non-discrimination more generally**, which would cover all of that. Thus, according to Dr Day the recommendation of the Citizens' Assembly is not referring to non-discrimination on the basis of gender alone. The citizens wanted to pare down the recommendation to the essence of what they would like to see in a future legal text.

At the meeting of 10<sup>th</sup> March in which representatives of One Family, the Irish Human Rights and Equality Commission (IHREC), the National Women's Council (NWC) and the Children's Rights Alliance, appeared before the Committee, the following views were shared by IHREC representatives:

- There remains uncertainty about the principles governing the application of Article 40.1. This uncertainty affects the extent to which Article 40.1 is effective in practice in ensuring equality before the law and in combating discrimination under the law.
- Professor Fennell shared the belief that is not necessary to put the term “**direct or indirect discrimination**” in the Constitution. The danger in terms of the Constitution is that if a certain number of things are listed, then something will be forgotten that ultimately may become very significant. The argument could also be made that it should just be non-discrimination that is included, and it could be queried why gender equality should be specified.
- Professor Fennell further articulated the view that the equality guarantee in Article 40.1 should be simple and clear, and all the additional language that is there should come out.

- In response to a query about the role of citizens and the role of person versus citizens, Professor Fennell stated that in her view, the term “**citizens**” should be removed and replaced with the term “**all persons**”.

## Recommendations for Article 40.1

Based on the hearings conducted and the information provided to the Committee, the Committee recommends that the Government proceeds to do the necessary preparatory work and that a decision is made upon the wording for a constitutional referendum to be put to the people in 2023 to amend Article 40.1.

Various options are suggested below as to how that may be done.

### *Suggested Option 1*

Delete Article 40.1 in its entirety –

“All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.”

and replace with –

“All persons shall, without distinction of sex or gender, be held equal before the law.

The State in its enactments shall have due regard to the principles of equality and non-discrimination.”

Current text of Article 40.1	Suggested Option 1
All citizens shall, as human persons, be held equal before the law.	All persons shall, without distinction of sex or gender, be held equal before the law.
This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.	The State in its enactments shall have due regard to the principles of equality and non-discrimination.

***Suggested Option 2***

Delete Article 40.1 in its entirety –

“All citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.”

and replace with –

“All persons shall be held equal before the law without discrimination on any ground such as gender, race, colour, national, ethnic or social origin, association with a national minority, sexual orientation, language, religion or belief, political or any other opinion, property, birth, disability, age, or other status.”

Current text of Article 40.1	Suggested Option 2
All citizens shall, as human persons, be held equal before the law.	All persons shall be held equal before the law without discrimination on any ground such as gender, race, colour, national, ethnic or social origin, association with a national minority, sexual orientation, language, religion or belief, political or any other opinion, property, birth, disability, age, or other status.
This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.	

## Chapter 2 – Article 41

### ARTICLE 41

- 1**      **1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.**

**2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.**
- 2**      **1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.**

**2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.**
- 3**      **1° The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.**

**2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that –**

  - i    there is no reasonable prospect of a reconciliation between the spouses,**
  - ii   such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any**

children of either or both of them and any other person prescribed by law, and

iii any further conditions prescribed by law are complied with.

3° Provision may be made by law for the recognition under the law of the State of a dissolution of marriage granted under the civil law of another state.

4 Marriage may be contracted in accordance with law by two persons without distinction as to their sex.

### **Recommendation two of the report of the Citizens' Assembly:**

**Article 41 of the Constitution should be amended so that it would protect private and family life, with the protection afforded to the family not limited to the marital family.**

The Committee heard that the citizens were very clear in their desire to change the narrow, outdated, and exclusionary definition of the family in Article 41, with 98.9% voting in favour of recommendation two: "Article 41 of the Constitution should be amended so that it would protect private and family life, with the protection afforded to the family not limited to the marital family".

The Committee also heard about some of the impacts this narrow definition has had in legislation, social policy and the courts, in areas from adoption and family law through to social protection policy.

At the private meeting of 24<sup>th</sup> February, discussion took place about the inter-connection and interaction between the Constitution and existing Equality legislation, which includes "Family Status" as a protected ground. Consideration was given to the extent to which meaningful protection for all families could be afforded through both legislation and the Constitution.

The new constitutional amendment on the Rights of the Child was also discussed, along with the dynamic between that new provision and the definitions in Article 41.

It was noted that these are areas that could be constructively examined over the next few months as part of preparation for any referendum next year.

- The Committee heard that the Citizens' Assembly expressed clear dissatisfaction with the language in the first section of Article 41 which suggests that the family is an institution existing prior and superior to the State. The objective of the Citizens' Assembly was to prompt a move away from that political ethos and ensure wider and more inclusive protections for "private and family life" to reflect a more modern way of thinking about the family.
- Some witnesses noted it would be difficult to achieve the aim of recommendation two without a full re-write of Article 41. The will of the citizens is the removal of the "natural law" language, but it is unclear how to affect the recommendations without a fundamental amendment.
- A suggestion was made around the possibility of inserting a clause into the current Article 41: "this shall not be taken as to be specific to the marital family". However, this would necessitate removal of the phrase, "marriage, on which the family is founded", from 41.3 in order to make the insertion practicable.
- Dr Tom Hickey appended an alternative wording for Article 41 to his opening statement to the Committee:

#### THE FAMILY – ARTICLE 41 (alternative wording)

1. The State recognises the family as the fundamental unit group of society and as a moral institution possessing inherent dignity and value.
2. Everyone has the right to respect for their private and family life.
3. 1. Everyone of marriageable age has the right to marry.  
2. Marriage may be contracted in accordance with law by two persons without distinction as to their sex.
4. The State shall not interfere with the exercise of these rights except such as is in accordance with the law and is necessary in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health, or for the protection of the rights and freedoms of others.

- It was agreed that minimalist intervention is preferable – language must be compatible with existing constitutional language.
- It appears that the most minimalist intervention would be the insertion of "**Nothing in this provision should be taken to be specific to the marital family**" and removal of reference to marriage from 41.3: "**Marriage, on which...**". However, it was pointed

out that while this would have the effect of respecting the second limb of recommendation two of the Citizens' Assembly, it would ignore the first limb; Citizens' Assembly members had initiated the change to include "**respect for private and family life**".

- Another potential amendment suggested was to amend 41.3.1, "**the state pledges itself to guard with special care private and family life**" and add "**which includes but is not limited to, the marital family**" in order to provide protection to the non-marital family without removing the protections afforded to the marital family.

During the meeting held on the 10<sup>th</sup> March, the groups represented shared the following views in respect of potential amendments:

- NWCI recommend that constitutional recognition and protection be afforded to all families that involve a relationship of caring and interdependence. Transposition of Article 8 of the European Convention on Human Rights (ECHR) could afford recognition of family rights and privacy to all. The ECHR has established that it is not confined solely to families based on marriage and may encompass other relationships.
- Professor Fennell pointed out that while there may seem to be a case for removing much of the language on family altogether, in terms of an actual effective referendum that would pose challenges. The easier route would be to go along the lines of the ECHR and international definitions. That said, the ECHR is also a document of its time and this should be an opportunity to have a fresher and cleaner take on a modern Ireland, and err more on the side of modern language and shorter, clearer concepts.

### ARTICLE 8 of the ECHR

#### Right to respect for private and family life

1. **Everyone has the right to respect for his private and family life, his home and his correspondence.**
2. **There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.**

- IHREC say there is clear support for a broader, more progressive understanding of what constitutes a family in Irish law. Notes that Article 41.3.1 obliges the State to **“guard with special care the institution of marriage, on which the family is founded”**, and that the Supreme Court has interpreted references to the family in Article 41 as the family founded on marriage. In more recent judgments, there has been a different tone from the Supreme Court regarding this legal point. IHREC recommend that Article 41, including Article 41.3.1°, be amended to recognise the broader conception of family life recognised in international human rights law.
- One Family believe that current constitutional wording of Article 41.3 could be enhanced by the addition of or replacement with ECHR wording to afford recognition of family rights and privacy to everyone without undermining the current recognition of marriage. To this end, One Family have shared the below proposal with the Committee with regard to how incorporation of Article 8 of the ECHR into Article 41 of the Constitution could work:

#### THE FAMILY – ARTICLE 41 (alternative wording)

1. 1° Everyone has the right to respect for their private and family life, their home and their correspondence.  
  
2° There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
2. The State recognises that care provided by the home, family and community gives society a support without which the common good cannot be achieved.
3. 1° The State pledges itself to guard with special care the institution of Marriage<sup>4</sup>.

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<sup>4</sup> One Family written submission to the JCGE p.2; wording drafted by Judy Walsh of UCD.

- The Children's Rights Alliance shared their concern around the fact that while we have had the children's referendum, we have not seen the interplay between the two provisions, that is, between the family and the children's rights provisions within the Constitution.
- It is important to look at the definition in a broader fashion, for example in the case of who cares for a child. From the child's perspective, that may include aunts, uncles and siblings. There are 3,000 young carers in Ireland, and they need to be reflected in this too. Considering the broader definition used by the ECHR and remembering that Ireland must be in compliance with the ECHR, it would be remiss to not take guidance from it when looking at the wording for Article 41.
- This view was echoed by Sinéad Gibney of IHREC who tied this back to the point that family does not exist because people are married; family exists because of the ties people have and the activities they do. In this way, the ECHR definition provides a good basis.

The Committee discussed the question, relevant also to discussion of Article 41.2, of positivist statements or otherwise on gender and care; how they are framed and their relative importance. How much will be gained from the inclusion of a positivist statement in practical constitutional terms in a way that reflects an obligation in respect of legislation and the courts in real terms, versus making a more neutral statement, within and under which legislation is possible, that is compatible with the rest of the Constitution? It was made clear by Dr Catherine Day that the citizens actively chose to place an obligation on the State, rather than simple recognition.

- The Children's Rights Alliance agree that simplicity is key in this amendment. There is a need to be mindful of what effect this may have in the future and to keep it open for more things to be considered as society changes. This has been the difficulty with the provisions to date, rooted in what was contemporary society at the time, and so future proofing the wording is vital.
- One Family advise that the wording proposed is drawn from the ECHR and so has been tested in legislation but perhaps not in the Constitution.
- It was made clear by Dr Catherine Day that the citizens actively chose to place an obligation on the State and not just simple recognition.

### Recommendation three of the report of the Citizens' Assembly:

**Article 41.2 of the Constitution should be deleted and replaced with language that is not gender specific and obliges the State to take reasonable measures to support care within the home and wider community**

At the private meeting on the 24<sup>th</sup> February, the Committee heard that:

- Members of the Citizens' Assembly were clear that Article 41.2 should be deleted and replaced with a clause which would ensure that there is an obligation on the State to take reasonable measures to support care within the home and wider community.
- The current wording "**endeavour to ensure**" does not confer significant obligation on the State. The suggested amendment does not explicitly state that the Government must provide financial supports, the Government can argue that the provision of existing social welfare supports represent a reasonable level of support. However, it would also leave it open to a carer to challenge this in the Courts and therefore it provides a mandate for the Courts to decide on what is or is not a reasonable level of support.

During the meeting on the 10<sup>th</sup> March, Members sought Dr Day's views on the nuance behind the words "**reasonable measures**" and she provided the following explanation:

- Citizens learned that the clause was never successfully actioned in court in favour of women. Those who defended it stated that it was there to ensure women could stay in the home, but there were many women who could not. Members of the Citizens' Assembly wanted a more robust text and the advice from the legal experts was that "**reasonable measures**" would provide a basis for action in the courts.
- This wording is in the Constitutions of other countries and they seem to be able to make it actionable and enforceable. The citizens wanted it to be actionable while bearing in mind the many claims on the State for resources and that it has to be reasonable. Those words were chosen very carefully after a lot of debate.
- It was, however, pointed out that the existing language has impacted and helped shape legislation and social policy, particularly when combined with the clause on the marital definition of the family. Article 41 was one of the justifications used to support the introduction of the marriage bar. It is also reflected in the 'breadwinner' model of the social protection system and, in this context, it was notable that "full time availability" for work was made a condition for social welfare access in respect of unmarried lone parents but not in respect of spouses.

At the meeting on the 10<sup>th</sup> March the NWCI shared the view that it is clear that the citizens wanted the Article amended rather than deleted, which is important as it shows recognition of the value and importance of care. NWCI proposed the following wording:

**“the State recognizes that care provided by the home, family and community gives society a support without which the common good cannot be achieved”**

The following questions were put to the witnesses by members:

- The Citizens’ Assembly recommended that the wording should include an obligation on the State to take reasonable measures to support care within the home and wider community. Is that an essential component of any amendment to Article 41.2?
- What should come out of Article 41 if we delete the language that is sexist and currently gender-specific and use a formula involving care?
- What else should come out? In particular, should we delete all reference to marriage and the special position of marriage given that, as pointed out by the Children’s Rights Alliance in particular, it is at odds with what is said in Article 42A?
- Should the protection for the family be deleted, or should the definition of family be expanded? The point was made that Article 41 is titled “The Family” so must be kept as that.
- Should there be a full rewrite or is it more politically and legally robust to make the more minimalist three-pronged changes to Article 41 and Article 40.1 as suggested by the Citizens’ Assembly?

In response the NWCI stated that:

- the wording they have proposed arises from the wishes of the Citizens’ Assembly alongside extensive consultation of members, which is why it refers to “**home**”, “**family**” and “**community**” – recognition of care in the broader sense and in particular, important in terms of the consultation carried out with disabled women’s organisations.
- The NWCI are unsure if it should amount to full review of the Article. From a policy perspective this probably represents the easiest route but from a political perspective, the Committee needs to be careful about how it would be viewed by citizens. Perhaps it would be a more effective referendum to focus on Article 41.2 and expand the definition of family.

## Recommendations for Article 41

Based on the hearings conducted and the information provided to the Committee, the Committee recommends that the Government proceeds to do the necessary preparatory work and that a decision is made upon the wording for a constitutional referendum to be put to the people in 2023 to amend Article 41.

Various options are suggested below as to how that may be done.

## Recommendations for Article 41.1

### *Suggested Option 1*

Delete 41.1 in its entirety –

“1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.”

And replace with the following text, following Article 8 of the ECHER –

“1° Everyone has the right to respect for their private and family life, their home and their correspondence.

2° There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Current text of Article 41.1	Suggested Option 1
1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.	1° Everyone has the right to respect for their private and family life, their home and their correspondence.
2° The State, therefore, guarantees to protect the Family in its constitution and	2° There shall be no interference by a public authority with the exercise of this right

authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### ***Suggested Option 2***

Delete 41.1 in its entirety –

“1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.”

And replace with the following text, amending Article 8 of the ECHER to remove “or the economic well-being of the country” –

“1° Everyone has the right to respect for their private and family life, their home and their correspondence.

2° There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Current text of Article 41.1	Suggested Option 2
1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.	1° Everyone has the right to respect for their private and family life, their home and their correspondence.
2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.	2° There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

## Recommendations for Article 41.2

### *Suggested Option 1*

Delete 41.2 in its entirety –

“1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.”

And replace with –

“1° In particular, the State recognises the right to respect for private and family life.

2° The State shall, therefore, meet its obligation to take reasonable measures to support care within and outside of the home.”

Current text of Article 41.2	Suggested Option 1
1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.	1° In particular, the State recognises the right to respect for private and family life.
2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.	2° The State shall, therefore, meet its obligation to take reasonable measures to support care within and outside of the home.

### **Suggested Option 2**

Delete 41.2 in its entirety –

“1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

And replace with –

“1° The State recognises that care provided by the home, family and community gives society a support without which the common good cannot be achieved.

2° The State therefore recognises that all persons have the right to affordable, dignified care appropriate to need and shall guarantee this right and the right to a decent standard of living for all carers through its laws, policies and the prioritisation of resources.”

Current text of Article 41.2	Suggested Option 2
1° In particular, the State recognises that by her life within the home, woman gives to the	1° The State recognises that care provided by the home, family and community gives

State a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

society a support without which the common good cannot be achieved.

2° The State therefore recognises that all persons have the right to affordable, dignified care appropriate to need and shall guarantee this right and the right to a decent standard of living for all carers through its laws, policies and the prioritisation of resources.

### **Suggested Option 3**

Delete 41.2 in its entirety –

“1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.”

And replace with –

“1° The State recognises that care in the home, family and community gives society a support without which the common good cannot be achieved.

2° The State shall, therefore, take reasonable measures to support care within and outside of the home”

#### **Current text of Article 41.2**

1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

#### **Suggested Option 3**

1° The State recognises that care in the home, family and community gives society a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

2° The State shall, therefore, take reasonable measures to support care within and outside of the home.

## Recommendations for Article 41.3 and Article 41.4

### *Suggested Option 1*

Delete Article 41.3.1 –

“1° The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

And replace with –

“The State pledges itself to guard with special care the family, including but not limited to the marital family.”

Retain Article 41.3.2, Article 41.3.3 and Article 41.4 without change –

Current text of Article 41.3 and 41.4	Suggested Option 1
3.1° The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.	3.1° The State pledges itself to guard with special care the family, including but not limited to the marital family.
3.2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that – <ul style="list-style-type: none"> <li>i there is no reasonable prospect of a reconciliation between the spouses,</li> <li>ii such provision as the Court considers proper having regard</li> </ul>	3.2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that – <ul style="list-style-type: none"> <li>i there is no reasonable prospect of a reconciliation between the spouses,</li> <li>ii such provision as the Court considers proper having regard to the circumstances exists or will be</li> </ul>

<p>to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and</p> <p>iii any further conditions prescribed by law are complied with.</p>	<p>made for the spouses, any children of either or both of them and any other person prescribed by law, and</p> <p>iii any further conditions prescribed by law are complied with.</p>
<p>3.3° Provision may be made by law for the recognition under the law of the State of a dissolution of marriage granted under the civil law of another state.</p>	<p>3.3° Provision may be made by law for the recognition under the law of the State of a dissolution of marriage granted under the civil law of another state.</p>
<p>4. Marriage may be contracted in accordance with law by two persons without distinction as to their sex.</p>	<p>4. Marriage may be contracted in accordance with law by two persons without distinction as to their sex.</p>

### **Suggested Option 2**

Delete Article 41.3 and article 41.4 in their entirety –

“3.1° The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

3.2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that –

- i there is no reasonable prospect of a reconciliation between the spouses,
- ii such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
- iii any further conditions prescribed by law are complied with.

3.3° Provision may be made by law for the recognition under the law of the State of a dissolution of marriage granted under the civil law of another state.”

4. Marriage may be contracted in accordance with law by two persons without distinction as to their sex”

And replace with –

“3.1° Marriage may be contracted in accordance with law by two persons without distinction as to their sex.

3.2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that –

- i there is no reasonable prospect of a reconciliation between the spouses,
- ii such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
- iii any further conditions prescribed by law are complied with.

3.3° Provision may be made by law for the recognition under the law of the State of a dissolution of marriage granted under the civil law of another state.”

Current text of Article 41.3 and 41.4	Suggested Option 2
3.1° The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.	3.1° Marriage may be contracted in accordance with law by two persons without distinction as to their sex.
3.2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that –	3.2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that –
<ul style="list-style-type: none"> <li>i there is no reasonable prospect of a reconciliation between the spouses,</li> </ul>	<ul style="list-style-type: none"> <li>i there is no reasonable prospect of a reconciliation between the spouses,</li> </ul>

- ii such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
- iii any further conditions prescribed by law are complied with.

3.3° Provision may be made by law for the recognition under the law of the State of a dissolution of marriage granted under the civil law of another state.

4. Marriage may be contracted in accordance with law by two persons without distinction as to their sex.

- ii such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
- iii any further conditions prescribed by law are complied with.

3.3° Provision may be made by law for the recognition under the law of the State of a dissolution of marriage granted under the civil law of another state.

## Appendix – Terms of Reference

That, notwithstanding anything in Standing Orders—

(1) a Special Committee consisting of nine members of Dáil Éireann be appointed, to be joined with a Special Committee to be appointed by Seanad Éireann, to form the Joint Committee on Gender Equality;

(2) the Joint Committee shall consider the recommendations contained in the Report of the Citizens' Assembly on Gender Equality, together with the response of the Government to each such recommendation, having regard to the open letter to the Oireachtas contained in that report;

(3) members of either House, not being members of the Joint Committee, may attend and take part in proceedings of the Joint Committee, or any sub-Committee thereof, but without having a right to vote or to move motions or amendments, save where they attend, pursuant to Standing Orders, as a substitute for an absent member (or for a substitute not in attendance);

(4) the Joint Committee shall report to both Houses of the Oireachtas on the matters contained in paragraph (2) within nine months of the first public meeting of the Joint Committee;

(5) the quorum of the Joint Committee shall be four, at least one of whom shall be a member of Dáil Éireann, and one a member of Seanad Éireann;

(6) the member of Dáil Éireann nominated by the Labour Party to serve on the Joint Committee shall be Cathaoirleach; and

(7) the Joint Committee shall have the powers defined in paragraphs (1), (2), (3), (4), (5), (9) and (10) of Standing Order 96.









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