



National Women's  
Council of Ireland

Comhairle Náisiúnta  
na mBan in Éirinn

**Submission to the All-Party Oireachtas**

**Committee on the Constitution**

**The Family**

**February 2005**

## **What is the National Women's Council of Ireland?**

The National Women's Council of Ireland - Comhairle Naisiunta na mBan - is the national umbrella organisation for women's groups and organisations. Its membership is diverse and includes national, regional and local organisations, single issue groups and service providers, trade unions, community development organisations and women's groups.

The National Women's Council of Ireland, formerly known as the Council for the Status of Women, was founded in 1973 by seventeen women's organisations to monitor the implementation of the First Commission on the Status of Women. The Council now has one hundred and sixty member groups representing three hundred and fifty thousand women.

Working as the national representative organization of women in Ireland, our mission is to achieve women's equality, empowering women to work together, while recognising and mobilising difference, in order to remove structural political, economic, social/cultural and effective inequalities.

## ***How should the family be defined?***

### **The Concept of the Family in the Ireland of Today**

The NWCI advocate using the definition of family as outlined by the United Nations. The technical definition of the family used by the UN is:

*“Any combination of two or more persons who are bound together by ties of mutual consent, birth and/or adoption or placement and who, together, assume responsibility for, inter alia, the care and maintenance of group members, the addition of new members through procreation or adoption, the socialisation of children, and the social control of members.”*

### **The Family and the United Nations**

Article 16.3 of the Universal Declaration of Human Rights states that:

*“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”*

The recognition of the family as the natural and fundamental group unit of society is also contained in the International Covenant on Economic Social and Cultural Rights (Article 10) and in the International Covenant on Civil and Political Rights (Article 23). Ireland is a party to both of these International Treaties and thus under international law is bound to abide by them.

It is to be noted that these Conventions, although recognising the right to marry, do not expressly restrict the understanding of family to that of the family based upon marriage. The United Nations itself accepts that the concept of family is not restricted to that of the traditional family based upon marriage. One of the Principles underlying the United Nations International Year of the Family 1994 was as follows:

*“Families assume diverse forms and functions from one country to another, and within each national society. These express the diversity of individual preferences and societal conditions. Consequently, the International Year of the Family encompasses and addresses the needs of all families.”*

The Irish Constitution, on the other hand, through the provisions of Article 41, recognises the family as the natural, primary and fundamental unit of society only in so far as it is based upon marriage:

*“...that the family referred to in Article 41 is the family which is founded on the institution of marriage and, in the context of the Article, marriage means valid marriage under the law for the time being in force in the State.”*

per Mr. Justice Henchy in *The State (Nicolaou) -v- An Bord Uchtala* [1966] IR 567.

This restricted view of the family has already placed Ireland in breach of its international human rights obligations. In the case of *Johnston and Others -v- Ireland* (1987) 9 EHRR 203, the European Court of Human Rights found that the inferior position at law of the Applicant, who was a non-marital child, violated the guarantee under Article 8 of the European Convention of Human Rights to respect for family life. Many of the inequalities faced by a non-marital child were rectified by the Status of Children Act 1987. In the case of *Keegan -v-Ireland* (1994) 18 EHRR 342 the European Court of Human Rights held that the Applicant's right to respect for his family life had been violated when he, as a natural father, had no right to be appointed guardian and thus to have had a role in the adoption proceedings concerning his child.

In order to comply with international human rights requirements, and to reflect the reality of family diversity in the Constitution must therefore have due regard to the rights and concerns of all families.

### ***Should gay couples be allowed to marry?***

The NWCi believes the Constitution should explicitly recognise gay and lesbian partnerships as family units and the subsequent recognition of the necessity to provide rights for gay and lesbian couples. Under Irish law same sex couples, and indeed non-married heterosexual couples do not have the same rights as married couples. This has the potential for discrimination of same sex couples, e.g. in the area of property rights, inheritance and the rights of partners in emergency situations. (Equality Authority (2000): Partnership Rights of Same Sex Couples).

Recognition has been forthcoming from many European countries through Domestic Partnership laws which allow gay and lesbian couples many of the rights which are enjoyed by married people. Examples of European countries which provide for domestic partnerships are Denmark, Norway, Sweden and the Netherlands. Debate on this issue has also taken place in the legislatures of the Czech Republic and Spain. In addition, Australia and New Zealand recognise lesbian and gay partnerships for the purpose of immigration. In the United States of America many cities and private companies also recognise lesbian and gay partnerships.

***Is the Constitution's reference to 'woman's life within the home' a dated one that should be changed?***

The Constitution should not ascribe gendered roles to either women or men, therefore it is the view of the NWCi that this reference should be removed.

*“Despite amendment over the years, the Constitution has not kept pace with social change and still bears the imprint of the period at which it was originally drafted. One of the ways in which this manifests itself is in its reference to women in certain roles, and its correlative lack of reference to men in these roles. Specific mention is made of the role of women in the home and as mothers (Article 40.3.3 and 41.2.1 & 2). Nowhere in the Constitution is the word ‘father’ to be found; nor is the role of men in the domestic sphere specifically addressed. Furthermore, it is clear from the tenor of the relevant constitutional provisions that it is in their role as wives and mothers that women are especially valued.”*

*(from Connelly, Alpha in Gender and the Law in Ireland, ed. Connelly, Alpha. Oak Tree Press : Dublin 1993)*

It is abundantly clear that society should value the care work which predominately women perform. The Irish Government has signed up to commitments under the Convention on the Elimination of Discrimination Against Women and under the 10 critical areas of the Beijing Platform for Action. The patriarchal assignment of women to perform certain roles within family and within society has not been to the advantage of women and has undermined the progression of equality for women.

Even the current Irish Constitution, which expressly recognises that “*by her life within the home, woman gives to the State a support without which the common good cannot be achieved*”, did not give any substantive rights to women. For example in the case of *L -v- L* [1992] 2IR 101 the Supreme Court held that only a married woman who made monetary contributions to the acquisition of the family home could have an intrinsic property right. It is only through breaking down stereotypes that the value of women and the work they do will be recognised by Irish society.