

March 2022

**National Women's Council
Statement to the
Joint Oireachtas Committee
on Gender Equality**

**Recommendations 1-3 of the
Citizens' Assembly on
Gender Equality**

Introduction

Founded in 1973, the National Women's Council (NWC) is the leading national women's membership organisation. We represent and derive our mandate from our membership, which includes over 190 groups and organisations from a diversity of backgrounds, sectors and locations across Ireland. Guided by our **Strategic Plan 2021-2024, No Woman Left Behind**, our mission is to lead and to be a catalyst for change in the achievement of equality for women. Our vision is of an Ireland and of a world where women can achieve their full potential and there is full equality for women.

NWC welcomes the establishment of this Joint Oireachtas Committee and the commitment of all the women and men here today to implement the recommendations of the Citizens' Assembly. NWC looks forward to engaging and supporting the work as it progresses.

Today our presentation is focused on the recommendations for Constitutional reform that the Citizens have made and how NWC believes they can be advanced. Given the breadth of the members of NWC views and perspectives, we would welcome the opportunity of also discussing our views on the full set of recommendations as you progress your work.

Art 40.1 Gender and non-discrimination

NWC commends the Citizens for their radical recommendation that **Article 40.1 of the Constitution, that 'All citizens shall as human persons be held equal before the law', should be amended to refer explicitly to gender equality and non-discrimination.** Including principles of gender equality and non-discrimination in constitutions carries both symbolic and practical weight. The Constitution is a foundational document which sets out our priorities, values and goals as a society. The Citizens are clear that Ireland today is not a gender equal society and have given a clear recommendation that they wish for Ireland's Constitution to be explicit in recognising gender equality and non-discrimination

Explicitly referring to gender equality and non-discrimination in the Constitution can be more than a statement of aspiration and can provide a legal foundation for citizens to advance

gender equality and combat discriminatory laws. It could provide the legislative underpinning for policies that result in transformational change, such as gender budgeting. For example, **Article 7(2) of the Austrian Constitution** includes a commitment to gender equality and to eliminating existing inequalities which supported the implementation of gender budgeting as a tool for delivering gender equality.

Recognising both gender equality and non-discrimination is crucial. We know that women are not a homogenous group. Rather, gender intersects with disability, race, ethnic minority status, family status, age, sexual orientation, gender identity and so on, to shape women's experiences. The Citizens' Assembly heard from Traveller women, migrant women, disabled women, lone parents and young and older women about the reality of intersectional inequalities for women and it's important that our Constitution reflects this reality. Ireland has obligations to recognise the reality of intersectional discriminations and equalities including **Article 2 of the Convention on the Elimination of Discrimination Against Women (CEDAW)** which requires State parties to 'legally recognise intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them'.¹

Around 80% of the constitutions around the world contain provisions in relation to equality and non-discrimination so Ireland is an outlier in this regard.² IHREC has recommended that it is necessary to include an explicit provision on gender equality in the Constitution in order to advance gender equality. As set out in NWC's recent submission on the review of our equality legislation, **the Equal Status Acts 2000-2018 and Employment Equality Acts 1998-2015**, CEDAW requires States to 'embody the principle of the equality of men and women in their national constitutions or other appropriate legislation'.³ Although provision may be made for gender equality in legislation and policy, this is significantly strengthened through Constitutional law which can provide an important level of protection when political administrations change.⁴

¹ CEDAW (2010) General Recommendation No. 28 on the core obligations of States parties under article 2, para. 18.

² <https://www.cambridge.org/core/journals/politics-and-gender/article/abs/where-do-women-stand-new-evidence-on-the-presence-and-absence-of-gender-equality-in-the-worlds-constitutions/79D677171422A49D369D4B5EEE2C625F>

³ NWC (2021). Submission on the review of the Equality Acts.

⁴ <https://www.cambridge.org/core/journals/politics-and-gender/article/abs/where-do-women-stand-new-evidence-on-the-presence-and-absence-of-gender-equality-in-the-worlds-constitutions/79D677171422A49D369D4B5EEE2C625F>

Recommendation

- **Amend Article 40.1 of the Constitution to refer explicitly to gender equality and non-discrimination**

Art 41 Recognising the diversity of families

Moving to recommendation 2 of the Citizens' Assembly, that **"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"**.

As recognised by the Citizens' Assembly, the definition of family within the Constitution is based on a narrow and outdated understanding of the family that prioritises heterosexual, married families and fails to recognise and protect the diverse range of family forms that exist in modern Ireland. It denies protection to and has been used to discriminate against lone parents, unmarried parents and their children, LGBTQ+ parents and non-biological parents.

Limiting Constitutional protection to the married family discriminates against lone and unmarried parents and other 'non-traditional' family forms and is not in line with current international best practice or Ireland's own policy and legislation. Through their discussions, the Citizens confirmed that they wanted the Constitution to continue to protect private and family life and that this should include forms of family life beyond the marital family.

NWC recommends that Constitutional recognition and protection should 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 everyone. The European Court of Human Rights has established that is not confined solely to families based on marriage and may encompass other relationships.

Recommendation

- **Amend the Constitution to ensure a broad and inclusive understanding of the family based on relationships of care and interdependence**

Art 41.2 ‘Women in the home’

NWC really welcomes recommendation 3 – **“that 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”**.

This recommendation speaks to many of the issues that NWC and our members have sought to have addressed over many years.

In our presentation to the Citizens’ Assembly, NWC outlined that the Article is problematic in several ways:

- It is outdated and does not encompass the variety and diversity of experiences which women have – as employees, as carers, as employers – in modern Ireland
- It does not recognise the work which men currently do as carers. Nor does it recognise that men have duties and responsibilities to be carers.
- It does not recognise the range of different types of care: in the community as well as with family members and friends
- It includes a definition of family which does not reflect the reality of families in Ireland nor the diversity of family life. It presumes a male breadwinner, two parent household where ‘woman’ stays at home and does not consider the reality of lone parents, LGBTQI+ families, or blended families.

It is clear from the discussions, the citizens had that they agreed that Article 41.2 of Ireland’s Constitution, which refers to a woman’s ‘life in the home’ and ‘duties in the home’, is sexist and discriminatory.

It's also clear that the Citizens' Assembly wanted the Article to be amended rather than deleted and this is extremely important because it shows that they recognise the value and importance of care. Amending Art 41.2 provides an opportunity to recognise care in a more gender neutral and inclusive way.

The recommendation to replace Art 41.2 rather than a straightforward deletion recapitulates the decisions of previous debates on this article. When the members of the 2013 Constitutional Convention voted to express their view, 88% choose to amend or modify rather than a straight deletion.⁵ In 2017 The UN Committee for the Elimination of Discrimination Against Women (CEDAW), also recommended that the male-oriented language be replaced with gender-sensitive language to convey the concept of gender equality more clearly.⁶ The recommendation by the Citizen's Assembly should now be progressed and – Art 41.2 must be replaced.

Proposal for an inclusive definition of care

The second really important element of the Citizens' Assembly recommendation is the citizens very clear direction that the State should take “reasonable measures to support care within the home and wider community”.

NWC's understanding of care is broad and acknowledges that across the lifespan, we all both give and receive care, and that this is a deeply fulfilling and necessary human experience. As the pandemic has highlighted, care is the very foundation of a functioning economy and society.

NWC's feminist analysis of care includes not only the perspectives of the women who provide care but also the women who need supports, including older people and disabled people. For disabled people, care must be understood as an independent right to support, autonomy and

⁵ In 1996 Constitution Review Group, 1997 First progress report of the All-Party Oireachtas Committee on the Constitution, 2006 Tenth Progress Report of the All-Party Oireachtas Committee on the Constitution, 2013 the Constitutional Convention, 2016 Government Task Force - all of whom except the 2nd Commission on the Status of Women in 1993 recommended that the article be amended or replaced to recognise some form of care.

⁶ Committee on the Elimination of Discrimination against Women (2017). Concluding observations on the combined sixth and seventh periodic reports of Ireland. CEDAW/C/IRL/CO/6-7.

a fully realised life and it is important that the Committee consults with disabled people and Disabled Person's Organisations as a key stakeholder.

Our understanding of care encompasses quality, public early education and school aged childcare services. It includes quality, public social care services, including personal assistance supports to enable disabled people to live lives of their choosing and homecare and other supports for older people. Increasingly, we understand that care also includes care for the world we live in and the need for investment in care jobs as part of a transition to a greener economy. Valuing care means having decent pay and working conditions for workers in the sector, including the many migrant workers on whom the sector is dependent. It means having a social welfare system that ensures an adequate standard of living and supports people in and out of work and unpaid care. It includes supporting women and men to combine unpaid care with paid employment, including when they are parenting alone, through provision of better, paid parental leave and family friendly and flexible work practices. Valuing care means addressing the huge unmet need for support experienced by disabled and older people as well as children with additional support needs.

Some of those issues will be dealt with in later sessions by this Committee but the point I want to make regarding the wording of a new article is that it needs to be inclusive in its recognition of care. It should:

- Assert that caring for each other, and care work, is essential for the good of everyone in our society
- Be gender neutral, to recognise the care roles of both women and men
- Recognise the right to receive support and/or care to live with autonomy and dignity
- Recognise care work done inside the home, in families as well as within the broader community

NWC proposes the following inclusive statement about the importance of care and care work done by both women and men in Irish society for consideration by the Oireachtas Committee on Gender Equality:

“The State recognises that care provided by the home, family and community gives society a support without which the common good cannot be achieved”⁷

Recognising care in this way gives recognition to the valuable work done by thousands of women and men, every day in Ireland. It invites men to take on more responsibility and enjoy the often-rewarding work of care. It extends the definition of care to include care outside the home and in the community. It confirms that the State will seek to support care and the needs of those who require support or care.

Recommendation

- **Hold a referendum on Article 41.2 to replace the Article with an inclusive and gender-neutral acknowledgement of the value of care**

Conclusion:

The Citizens Assembly voted by an overwhelming majority for constitutional change in these three areas. They listened to the evidence, they discussed the issues and they have made a clear set of recommendations. They expressed the desire for radical, not incremental change. They called for urgency. We ask the Committee to bear that in mind today and as you continue with your deliberations over the coming months, and we urge the Committee to put in place a plan to achieve the Constitutional change desired by Irish society.

For further information on this submission please contact Jennifer McCarthy Flynn, Head of Policy at NWC - jennifermf@nwci.ie

⁷ The NWCI commissioned a barrister and lecturer in Constitutional Law, Dr. Alan Brady to produce a comprehensive legal analysis of changes in the Constitution which would benefit women, including amending this article. The full document is available at <http://bit.ly/nwci-constitution>