

SUBMISSION



# BUNREACT NA hÉIREANN CONSTITUTION OF IRELAND



## Family, Care and Gender Equality



Men's  
Development  
Network

Men's Development Network Policy  
Submission to Inter-Departmental  
Committee on Referendums on  
Family, Care and Gender Equality

# **Men's Development Network Policy Submission to Inter-Departmental Committee on Referendums on Family, Care and Gender Equality**

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## **Section I – Introduction**

As a national organisation which advocates for transforming masculinities, a feminist and intersectional approach to advance the changing of norms and behaviours and to promote gender equality,<sup>1</sup> Men's Development Network welcome the opportunity to provide a written submission to the Inter-Departmental Committee, chaired by the Department of Children, Equality, Disability, Integration and Youth, in relation to the 'Request for Submissions: Referendums on Family, Care, and Gender Equality.

Búnreacht na hÉireann was drafted and ratified in 1937 and replaced the 1922 Constitution of the Irish Free State. The 1937 Constitution has been amended by public referendum, with the most recent referendum in 2019 on the dissolution of marriage constituting the 38<sup>th</sup> Amendment of the Constitution.<sup>2</sup>

From a social approach the interpretation of a national Constitution, this document reflects the foundational principles upon which a state is based, as well as the shared identity civic vision and commonly held values within society.<sup>3</sup>

A normative approach to Constitutional Law also recognises that norms are central to constitutional order, and that these norms are a '*set of rules, doctrines and practices that structure political decision-making*.'<sup>4</sup> Such norms are common, recognisable<sup>5</sup> and such conventions establish the equilibria of mutual expectations among political actors and institutions.<sup>6</sup> From a legal positivist approach, such norms play a central role within constitutional order.<sup>7</sup>

Given the significant transformation of Irish society within recent years alone, Men's Development Network is supportive spaces for reflection on whether the Irish Constitution has kept pace with recent changes in Irish society and to make amendments as is necessary and appropriate. Although Men's Development Network is broadly supportive of amending Article 41.3.1<sup>o</sup> to ensure constitutional protections are afforded to all families in Irish society, for the purposes of this submission, our focus centres on amendments to Articles 40.1 and 41.2 of the Constitution.

## **Section II – Constitutional Enshrinement of Principles of Equality and Non-Discrimination**

Article 40.1. currently reads: *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.*

The existing equality guarantee within the Constitution has been characterised by its absence of effectiveness due to lack of clarity.<sup>8</sup> Although Article 40.1.'s equality provision has been described in its interpretation and application by courts as "[M]oving towards its natural place as the cornerstone of Irish Human Rights Jurisprudence",<sup>9</sup> precedents established in *Quinn's Supermarket*<sup>10</sup> v AG and

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<sup>1</sup> For further information, see: <<https://mensnetwork.ie/>> accessed May 18<sup>th</sup>, 2022.

<sup>2</sup> Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Act 2019 <<https://www.irishstatutebook.ie/eli/2019/ca/38/enacted/en/html>> accessed May 15<sup>th</sup>, 2023.

<sup>3</sup> Nora Hedling, 'The Fundamentals of a Constitution' (IDEA, 2017) <<https://www.idea.int/sites/default/files/publications/the-fundamentals-of-a-constitution.pdf>> accessed April 30<sup>th</sup>, 2023.

<sup>4</sup> Sanford Levinson and Jack M. Balkin, '*Democracy and Dysfunction*' (2019) at page 21.

<sup>5</sup> Ashraf Ahmed, 'A Theory of Constitutional Norms', *Michigan Law Review*, (2022) V.120 Iss.7 at page 1362.

<sup>6</sup> Adrian Vermeule, 'Conventions of Agency Independence', 113 *Colum. L. Rev* 1164, 1193 (2013)

<sup>7</sup> HLA Hart, *The Concept of Law* (3<sup>rd</sup> Edn, 2012)

<sup>8</sup> <[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_gender\\_equality/submissions/2022/2022-03-10\\_opening-statement-sinead-gibney-commission-member-irish-human-rights-and-equality-commission\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_gender_equality/submissions/2022/2022-03-10_opening-statement-sinead-gibney-commission-member-irish-human-rights-and-equality-commission_en.pdf)> accessed April 27<sup>th</sup>, 2023.

<sup>9</sup> Dewhurst, 'The Recent Developments of the Irish Equality Guarantee by the Superior Courts', *The Bar Review*, (2012), Vol. 17, Iss. 5.

<sup>10</sup> [1972] I.R. 1

*Brennan v AG*<sup>11</sup> also demonstrate the principle is not an absolute guarantee of equality, which clearly requires consideration. In light of the findings of the Citizen’s Assembly on Gender Equality, it is now an appropriate time to make explicit amendment in accordance with modern values.<sup>12</sup>

The final report of the Joint Oireachtas Committee on Gender Equality proposed the following wording for an amended Article 40.1: *All citizens shall, as human persons without distinction as to sex, be held equal before the law. The State shall in its enactments have due regard to the principles of equality and non-discrimination.*<sup>13</sup>

Considerations must be given in relation to whether this wording is inclusive of providing equality for persons of all gender identities and this is relevant not only insofar as the Constitution keeping pace with societal developments. Findings from the United Nations Independent Expert on Sexual Orientation and Gender Identities 2021 report to the UN General Assembly on the Law of Inclusion and Practices of Exclusion require due consideration.<sup>14</sup> The Yogyakarta Principles on Sexual Orientation and Gender Identity, is one of the first and most authoritative human rights standards on sexual orientation and gender identity. Despite its non-binding nature, Principle 2(A) provides that states *should embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions.*<sup>15</sup> Men’s Development Network thus urge serious consideration is given to whether the proposed language of the Oireachtas Committee is adequately inclusive in its wording as it unintendedly runs the risk of excluding classes of persons from the guarantee of equality, non-discrimination and constitutionally reinforces rigid gender norms through the inclusion of the term ‘sex’ as opposed to gender identity.

### **Section III – ‘Sharing Caring’**

Article 41.2.1° provides: *“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.”*

Article 41.2.2° provides *“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”.*

The above provisions constitutionally enshrine harmful gender stereotypes on the role of women in care and the non-role of men in care and require replacement with more gender-neutral language which continues to recognise the state’s role in supporting care. In our April 2022 submission to the Joint Oireachtas Committee on Gender Equality, Men’s Development Network submitted:

*“MDN advocate that Article 41.2 of the Constitution should be deleted and replaced with language that is not gender specific, which obliges the State to take reasonable measures to support care within the home and wider community. Article 41.2 in its language is not supportive of a gender equal society and constitutionally enshrines harmful gender norms of stereotyping on (a) the role of women and (b) the ‘non-role’ men in relation to the home and caring roles. The role of the state in supporting caring roles within the home and wider*

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<sup>11</sup> [1983] I.L.R.M. 449.

<sup>12</sup> Supranote 11.

<sup>13</sup> ‘Unfinished Democracy: Achieving Gender Equality’ (2022) 33/GE/03 at page 38 <[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_gender\\_equality/reports/2022/2022-12-15\\_final-report-on-unfinished-democracy-achieving-gender-equality\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_gender_equality/reports/2022/2022-12-15_final-report-on-unfinished-democracy-achieving-gender-equality_en.pdf)> accessed May 17<sup>th</sup>, 2023.

<sup>14</sup> ‘Reports on Gender: The Law of Inclusion & Practices of Exclusion’ (UNGA 2021) <[https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/IESOGI/Reports\\_on\\_Gender\\_Final\\_Summary.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/IESOGI/Reports_on_Gender_Final_Summary.pdf)> accessed May 17<sup>th</sup>, 2023.

<sup>15</sup> ‘Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity’ (2006) <[http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)> at Principle 2(A).

*community is vital and an amended Article 41.2. must express this using non-gender specific language.*"<sup>16</sup>

The word 'care' is one which covers a broad spectrum of activities carried out by a diverse range of people under a wide variety of circumstances. We all have a relational and shifting identification with care, as 'care requirements stretch across a person's life course and caring arrangements are fluid and complex' (Garrett 2018, p. 156). Over the course of our lives we will care for others and be cared for and similarly care is not always a one way activity and instead can be reciprocal. Care is delivered formally and informally, sometimes in exchange for money and more frequently as part of interdependent relations of kinship.

Care is an inevitability; it is woven deep into the fabric of our existence as we will all give and receive care at numerous points in our lives. As inherently vulnerable interdependent beings we will both give and receive care over the course of our lives. The oft quoted maxim of John Donne that no man is an island is particularly apt regarding our requirements to give and receive care throughout our life course. Citizenship in most countries is defined by 'a concept of the person that centres on the economic, political and cultural actor in the public sphere' (Lynch 2010, p. 3). It is the actions of the person in the public sphere while working and paying taxes and being involved in public life that is seen as being of primary importance. Yet none of this is conceivable or even possible without the crucial practices of care which most often happen in the home and behind the scenes of social visibility. Acts of care demonstrate how we as humans are relational beings who are entirely dependent on each other.

The prevailing conception of the individual under rational choice theory sees the individual as a calculating maximiser of utility and similarly posits dependency as a dirty word. Yet it is a plain and simple fact that across our life courses there will be prolonged periods where we are entirely dependent on others for our quotidian needs. When we are children we need care, to be socialized and taught the ways of the world, to learn how to speak and how to interact with others. We will all go through periods of illness or incapacity where we will need the care of others, and if we are lucky enough to live to old age we will all require care to survive and thrive.

Under capitalist systems, care work has often been characterised as unproductive and thus is underpaid if done for money and unpaid if done in the home for family. Care in these terms is often relegated to being below other forms of waged work, it is something that happens once the 'real' ie paid work has been completed. In these and in many other terms care work is fundamentally under-valued. Similarly, the provision of care has become an industry in and of itself where profits are extracted from the processes of meeting people's most basic and intrinsic needs. The Care Collective write of how the communal bonds of care have slowly been replaced by 'individualised notions of resilience, wellness and self-improvement, promoted through a ballooning 'self-care' industry which relegates care to something we are supposed to buy for ourselves on a personal basis' (2020, p. 2). In these terms people need to pay others to care for their children or elderly relatives yet this can engender profound inequalities as care can be expensive and so unaffordable for many.

Care work which is predominantly done by women in the private domain of the home has historically allowed men to exercise control in the public realms of commerce, politics and wider culture. While recent decades have seen a marked increase in women's participation in waged labour outside the home, more often than not, this is carried out alongside their domestic responsibilities. There is a need for waged work to be de-centred and for practices of care to be brought in from the margins of social life to its very core.

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<sup>16</sup> 'MDN Submission to the Oireachtas Joint Committee on Gender Equality with Reference to the Recommendations of the Citizens' Assembly on Gender Equality' (2022) <<https://mensnetwork.ie/wp-content/uploads/Written-Submission-by-Mens-Development-Network-to-the-Joint-Oireachtas-Committee-on-Gender-Equality.pdf>> at page 5.

The first and most obvious outcome of the poor distribution of care is that of the inequalities in public life. The European Institute for Gender Equality gives an annual report which scores EU member states to see how far they are from reaching gender equality. The index uses a scale of 1 to 100 where 1 denotes total inequality and 100 denotes full equality. The scores are compiled based on metrics in 6 core domains namely work, money, knowledge, time, power and health. The most recent report from 2021 showed that Ireland ranks highly overall in gender equality with a creditable score of 73.1 which places it 7th overall and 5.1 points above the EU average which stands at 68. Despite this relatively high position overall the area where Ireland scores particularly low is that of equality of access to power and political decision making with women accounting for a mere 26% of ministers, 27% of members of parliament and 25% share of regional assemblies. McGing and White note how the selection process for picking electoral candidates ‘favours well-networked individuals, usually with local political experience and a history of party activism’ (2012, p. 10) while also noting how, due to the ‘persistent sexual division of care in Irish society women are less likely to possess these types of capital to the same extent as men’ (2012, p. 5).

Care is fundamental to the working of all societies, a briefing paper published by Oxfam in 2020 estimated the global monetary value of unpaid care at \$10.8 trillion annually. This figure uses minimum wage rates and accounts for hours spent caring in a conservative fashion which means that in reality the figure should be significantly higher. In the UK the Institute for Public Policy Research places the annual figure for unpaid household and care work there at £451 billion. These figures are based solely on wage rates and do not take account of other network effects which give further monetary value to the practice of care. These monetary gifts of free care are described by Skeggs as being crucial to capital as without it there would be ‘significant problems and costs reproducing, servicing and sustaining the future, present and ex-workforce’ (Skeggs 2014, p. 12).

Care is difficult to measure and as such is not frequently enumerated in official statistics with the outcome being that it is typically undercounted and by extension undervalued. However, global studies from the ILO highlight that women perform three-quarters of unpaid care work around the world, an average of 3.2 times more care work than men per day.<sup>17</sup> The ESRI and IHREC report, ‘Caring and Unpaid Work in Ireland’ noted that on average, the time spent on care per week by men was 10.7 hours less than the average hours spent on care by women.<sup>18</sup> Caring and housework do not have public prominence because it is work which is predominantly carried out behind the scenes of public life in the private realm of the home. As care work is unpaid there are no requirements to count the hours completed and so it leaves no records of hours carried out or taxes paid. Similarly care, unlike much paid work does not operate only within bounded hours during which care takes place (Oakley 1974).

The final report of the Joint Oireachtas Committee on Gender Equality proposed the following wording for amended Articles Article 41.2.1° and Article 41.2.2°:

*1° The State recognises that care within and outside the home and Family gives to the State a support without which the common good cannot be achieved.*

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<sup>17</sup> ‘Care Work and Care Jobs for the Future of Decent Work’ (ILO, 2018)

<[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_633135.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf)> accessed May 17<sup>th</sup>, 2023 at page xxix.

<sup>18</sup> Helen Russell, Raffaele Grotti, Frances McGinnity *et al.*, ‘Caring and Unpaid Work in Ireland’ (IHREC, ESRI, 2019) <[https://www.ihrec.ie/app/uploads/2019/07/Caring-and-Unpaid-Work-in-Ireland\\_Final.pdf](https://www.ihrec.ie/app/uploads/2019/07/Caring-and-Unpaid-Work-in-Ireland_Final.pdf)> at page 68.

*2° The State shall, therefore, take reasonable measures to support care within and outside the home and Family.*<sup>19</sup>

Based on our policy submissions, our support of the Equimundo-led MenCare Initiative,<sup>20</sup> and our participation in IHREC's 2022 Conference on 'sharing caring' roles and how care is a gender equality issue,<sup>21</sup> Men's Development Network support the amendments proposed by the Joint Oireachtas Committee and will advocate for public support for the amendments.

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<sup>19</sup> 'Unfinished Democracy: Achieving Gender Equality' (2022) 33/GE/03 at page 39

<[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_gender\\_equality/reports/2022/2022-12-15\\_final-report-on-unfinished-democracy-achieving-gender-equality\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_gender_equality/reports/2022/2022-12-15_final-report-on-unfinished-democracy-achieving-gender-equality_en.pdf)> accessed May 17<sup>th</sup>, 2023.

<sup>20</sup> <<https://men-care.org/>> accessed May 17<sup>th</sup>, 2023.

<sup>21</sup> <<https://mensnetwork.ie/sharing-caring/>> accessed May 17<sup>th</sup>, 2023.