



Second Report of the Convention on the Constitution

- (i) Amending the clause on the role of women in the home and encouraging greater participation of women in public life; and**
- (ii) Increasing the participation of women in politics.**

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1. Chairman's Introduction

Introduction

On the weekend of 16th and 17th February, 2013, the Convention on the Constitution held its second plenary meeting to discuss issues in the terms of reference set out in the Resolution of the Houses of the Oireachtas (Appendix A).

Background

Membership of the Constitutional Convention comprises 66 citizens, 33 parliamentarians and an independent Chairman. The 66 citizens were selected randomly by a polling company using the electoral register and on the basis of groups representative of Irish society and generally balanced in terms of gender, age, region, social class and occupational status.

Political parties and groups in the Dáil and Seanad nominated representatives on the basis of their relative strengths in the Oireachtas. Political parties represented in the Northern Ireland Assembly were invited to nominate one representative each.

The Convention has been asked to complete its work within 12 months of its first plenary meeting.

The Government has committed to responding to the various recommendations of the Constitutional Convention within four months of the publication of its reports and will arrange a full debate in the Houses of the Oireachtas in each case.

In the event that the Government accepts a recommendation that the Constitution be amended, it will include a timeframe for the holding of a referendum.

Second plenary meeting

The purpose of this meeting was to consider:

- (i) Amending the clause on the role of women in the home and encouraging greater participation of women in public life; and
- (ii) Increasing the participation of women in politics.

Over two days, the Convention considered submissions made by members of the public and heard presentations from a wide range of experienced academics, political scientists, legal experts and advocacy groups. It also held a large interactive panel discussion with a number of interest groups and academics. An important feature of the Convention's working arrangements is that members also spent considerable time in small roundtable discussions, teasing out the detail of the two issues. The outcome of these discussions was then reported back to the full Convention so that all members got the benefit of group deliberations at individual tables.

Recommendations

The results of the ballots on the two main questions were as follows:

(a) Amending the clause on the role of women in the home

A majority of the Convention members favoured a change to the Constitution to amend the clause and, if making such a change, a majority recommended that it should be gender-neutral to include other carers in the home and that it should also include carers beyond the home. The Convention also recommended that the State should offer a “reasonable level of support” to ensure that carers ‘shall not be obliged by economic necessity to engage in labour’.

(b) Encouraging greater participation of women in public life and increasing the participation of women in politics

A majority of the Convention members recommended that the Constitution should be amended to include an explicit provision on gender equality. The question of a constitutional provision to enhance participation in public life and in politics was narrowly defeated but a significant majority recommended more government action in this area.

A number of related issues arose during the course of their deliberations and the Convention also chose to make a number of other recommendations which they would like the government to consider. Details of the ballot results are set out in Chapter 2 of this report.

This report will be laid in the library in the Houses of the Oireachtas and I look forward to the government response within 4 months.

Acknowledgements:

I would firstly like to congratulate all members of the Convention for their hard work and obvious commitment to the task at hand. The quality of the discussions and the spirit in which they engaged with each other was the foundation for the success of the weekend. I am also grateful to those members of the public who sent submissions to the Convention or who watched the proceedings online.

I would like to thank the Academic and Legal Team, led by Prof. David Farrell, for assembling our advisory panel of experts and for their advice and support in advance of, and during, the meeting. Other members of the team include Dr. Jane Suiter, Dr. Clodagh Harris, Lia O’Hegarty SC and Dr. Eoin O’Malley.

The Convention members were deeply impressed by the presentations of Professors Gerry Whyte, Siobhan Mullally, Yvonne Galligan and Gail McElroy who willingly shared an impressive depth of knowledge in clear and concise language. Their wisdom forms an important part of this report. I would also like to thank the National Womens’ Council of

Ireland, Women for Election and the 50/50 Group who took the time to make presentations to the Convention and give us the benefit of their views and experience. The additional members of the panel discussion, National Women's Council of Ireland, The 50/50 Group, Women for Election, Curam, Union of Students in Ireland and the UCD Women Graduates Association should also be congratulated for capturing the views of a broad spectrum of public opinion on the two matters under consideration.

We should also acknowledge the significant contribution made by the facilitators and notetakers at the meeting, each of whom had a difficult job to do in a demanding environment.

I would like to record my gratitude to Matthew Ryan and his team at the Grand Hotel in Malahide for helping to make the event everything we were hoping it would be.

Members of the interim Steering Group also deserve great credit for their contribution to the preparation for the first weekend. The overwhelmingly positive feedback from members is a testament to their judgment and hard work.

Tom Arnold
Chairman

2. Convention recommendations

2.1 Amending the clause on the role of women in the home.

Article 41.2 of the Constitution

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.

41.2.2° 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.

	Yes	No	No opinion
Should the clause (art. 41.2) be left as it is?	11%	88%	1%

	Delete	Amend/Modify	No opinion
If the clause (art. 41.2) were to be changed would you delete it or amend/modify it in some way?	12%	88%	0%

In the event that the Convention supports change, what change or changes would you support?	Yes	No	No opinion
Make it gender-neutral to include other carers in the home	98%	2%	0%
Do you want to include carers beyond the home?	62%	31%	7%

Noting that Art.41.2.2 says 'The State shall, ... 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', what level of obligation should be placed on the State (on a scale of 1-5) ?	
1 - Endeavour to support	20%
2	4%
3 - Provide a reasonable level of support	35%
4	12%
5 – Shall support	30%

Voting on the first issue – relating to the clause on the role of women in the home (article 41.2) – followed three stages. The first vote was on the question of whether to leave the clause as it is. As Table 1 shows, the greater majority of members (88 percent) voted against leaving the clause as it is.

The second vote, then, was on the question of whether to delete the clause altogether or amend or modify it in some way, with the same proportion (88 percent) voting for modification.

Reflecting the main issues that emerged in the discussions, the final part of the ballot then offered three sets of amendments that the members were invited to vote on. The clearest majority (a virtual majority of 98 percent of the members) supported the motion that the clause should be amended to be gender-neutral to include others carers in the home. There was a narrower majority (62 percent) in favour of the clause being amended to include carers beyond the home.

Finally, the members voted on the issue of what level of obligation should be placed on the state to ensure that mothers (or more widely carers) 'shall not be obliged by economic necessity to engage in labour'. The five options they were invited to locate themselves on ranged from the position that the State should 'endeavour to support' (option 1; which attracted 20 percent support) through to the position that the State 'shall support' (option 5, attracting 30 percent support). The average position held on this 5-point scale was 3.22, indicating that the Convention as a whole favoured a reasonable level of State support.

2.2 Increasing the participation of women in politics and encouraging greater participation of women in public life.

	Yes	No	No opinion
Noting that Article 40 provides that ‘all citizens shall, as human persons, be held equal before the law’, should the Constitution be amended to include an explicit provision on gender equality?	62%	37%	1%

	Yes	No	No opinion
Should the Constitution place a duty on the State to take positive action to enhance women’s participation in politics and public life?	49%	50%	1%

	Yes	No	No opinion
Leaving aside the Constitution, would you like to see more government action to encourage greater participation of women in politics and public life?	97%	3%	0%

	Yes	No	No opinion
Should the text of the Constitution be amended to include gender-inclusive language?	89%	9%	1%

The second topic for discussion during this weekend was the issue of encouraging greater participation of women in public life and increasing the participation of women in politics. Reflecting the discussions throughout the weekend, four questions were posed on this ballot.

First, the members voted on whether the Constitution should be amended to include an explicit provision on gender equality – with a clear majority (62 percent) voting in favour. The members were next asked if the Constitution should ‘place a duty on the State to take positive action to enhance women’s participation’. Opinion was evenly divided on this, with 50 percent rejecting the proposal, 49 percent supporting it and 1 percent expressing no opinion. On that basis the motion was narrowly defeated.

It is clear that Convention members favoured non-constitutional routes to encouraging the greater participation of women, as reflected in the third part of the ballot paper. An overwhelming majority of the members (97 percent) supported the motion that there should be 'more government action' in this area.

A final question on whether to amend the text of the entire Constitution to include 'gender-inclusive' language also received widespread support – 89 percent voting in favour.

3. Convention Programme

Members of the Convention agreed to consider the matters in accordance with the schedule set out below. The Convention firstly heard from academic and legal experts in the field followed by presentations from advocacy and civil society groups. Roundtable discussions and plenary sessions on the emerging themes completed the programme, to ensure that the members, having received sufficient information, had the opportunity to discuss every aspect of the subject.

Saturday

9.30 a.m. Welcome by Chair

Amending the clause on the Role of Women in the Home

9.45 a.m. Advisory Panel presentations – Prof. Gerry Whyte and Prof. Siobhan Mullally

10.20 a.m. Q&A

10.30 a.m. Presentation by Orla O'Connor and Frances Byrne (*National Women's Council of Ireland*)

10.40 a.m. Presentation by Áine Uí Ghiollagáin, (*Cúram*)

10.50 a.m. Advisory Panel summary

11.10 a.m. Roundtable Discussion

1.30 p.m. Plenary session - participants to hear the emerging themes from the discussion at other tables

Encouraging greater participation of women in public life and increasing the participation of women in politics

2.15 p.m. Introduction of Advisory panel – Prof. Yvonne Galligan and Prof. Gail McElroy

2.20 p.m. Advisory Panel presentations

2.50 p.m. Q&A

3.00 p.m. Presentations by Eoin Murray, (*National Women's Council of Ireland*), Fiona Buckley, (*The 50/50 Group*) and Niamh Gallagher, (*Women for Election*)

3.35 p.m. Roundtable Discussion

4.50 p.m. Plenary session - participants to hear the emerging themes from the discussion at other tables

5.30 p.m. Chair concludes proceedings for evening.

Sunday

10 a.m. Roundtable preparation for panel discussion and review of draft ballot papers

10.20 a.m. Plenary - sign-off of ballot papers

10.30 a.m. Q&A with a panel of representatives from the National Women's Council of Ireland, The 50/50 Group, Women for Election, Curam, Union of Students in Ireland, UCD Women Graduates Association and the 4 members of the Advisory Panel.

11.45 a.m. Voting

4. Amending the clause on the role of women in the home

4.1 Presentation by Prof. Gerry Whyte, Trinity College Dublin

Introduction

Article 41.2 of the Constitution 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.

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.

While this provision may have reflected majority contemporary opinion in 1937, even then it provoked controversy and according to Hogan, the Constitution's treatment of women in this and other provisions "was the single biggest policy issue which dominated much of the debate at the time both inside and outside the Dáil." (**The Origins of the Irish Constitution, 1928-1941**, p.520).

In particular, concern was expressed that Article 41.2, read together with Article 40.1 and Article 45.2, would be relied on by the State to justify gender discrimination in employment. While Article 41.2 does not appear to have ever been cited explicitly by either the Oireachtas or the courts to justify such gender discrimination, it undoubtedly reflected a system of values that permitted such discrimination until the process of securing gender equality in employment began in the 1970s.

Article 41.2 in litigation

Article 41.2 has featured in litigation in relation to two topics, gender discrimination and recognising work done in the home.

a) Gender discrimination

Article 41.2 has been cited by the courts on four occasions, twice successfully, to justify gender discrimination.

In two cases, *Dennehy v Minister for Social Welfare* (1984) and *Lowth v Minister for Social Welfare* (1994 and 1998), Article 41.2 was relied on successfully to support the conclusion that the preferential treatment of deserted wives for the purposes of social security was not contrary to the guarantee of equality in Article 40.1. However in *de Búrca v. Attorney General* (1976) Chief Justice O'Higgins won no support from other members of the Supreme Court for his argument that Article 41.2 justified the exemption of women from jury service while in *O'G v. Attorney General* (1985), the High Court dismissed the Attorney General's argument that Article 41.2 permitted the State to discriminate against widowers in relation to eligibility to adopt.

b) Recognising work in the home

In *L v. L* (1989) Judge Barr in the High Court argued that Article 41.2 obliged the courts to have regard to work done as a home maker in calculating a wife's share in the matrimonial home. However this was rejected on appeal by the Supreme Court who held that it was a matter for the Oireachtas to set out any legal principles for determining shares in the matrimonial home. Chief Justice Finlay did, however, indicate that where a husband was capable of making proper provision for his wife within the home, the amount of maintenance payable by him should be set at a level so as to avoid the wife having to work outside the home because of economic necessity.

In *DT v CT*, (2002) Article 41.2.1^o was cited by two members of the Supreme Court, Judges Denham and Murray, in support of the view that, in deciding whether proper provision had been made for a spouse for the purposes of the divorce jurisdiction in Article 41.3.2^o, regard had to be had to the work of a spouse caring for dependants, the family and the home.

In *Sinnott v. Ireland* (2001), Judge Denham made the following interesting observation about the meaning of Article 41.2 in contemporary Ireland:

'Article 41.2 does not assign women to a domestic role. Article 41.2 recognises the significant role played by wives and mothers in the home. This recognition and acknowledgement does not exclude women and mothers from other roles and activities. It is a recognition of the work performed by women in the home. The work is recognised because it has immense benefit for society. This recognition must be construed harmoniously with other Articles of the Constitution when a combination of Articles fall to be analysed.'

One final point worth noting here is that both Judge Walsh and Judge McCarthy speculated that Article 41.2 could apply to unmarried mothers, while in *DT v CT* (2002), Judge Murray sought to extend Article 41.2 to cover fathers, saying

'the Constitution ... is to be interpreted as a contemporary document. The duties and obligations of spouses are mutual and, without elaborating further since nothing turns on the point in this case, it seems to me that [the Constitution] implicitly recognises similarly the value of a man's contribution in the home as a parent.'

Potential applications of Article 41.2.2?

Some might consider Article 41.2.2 as a basis for obliging the State to improve financial support for mothers in the home through the tax and social welfare system and in 1987, the late Supreme Court judge Brian Walsh expressed astonishment at the fact that what he called "this protective guarantee" had not, to that date, been invoked in litigation. However the obligation imposed on the State by Article 41.2.2 to endeavour to ensure that mothers are not obliged to work outside the home through economic necessity has been described

as a “duty of imperfect obligation” and is certainly not as onerous as other constitutional duties imposed on the State.

Given, moreover, that tax and social welfare matters directly affect public expenditure, and that decisions on public expenditure are regarded as the preserve of the Oireachtas and the executive, it is unlikely that the courts would use Article 41.2.2 to impose additional financial obligations on the State to support mothers in the home.

Recommendations for reform

Three different reports have made recommendations for reform in relation to Article 41.2.

The Report of Second Commission on the Status of Women in 1993 called for the deletion of the provision. Two subsequent reports called for its modification. Thus the Constitution Review Group Report in 1996 considered that the Constitution should recognise the significant contribution made to society by the many people who care for children, elderly relatives and others in their homes and so recommended that Article 41.2 be retained in a revised gender neutral form. The Review Group suggested the following wording:

The State recognises that home and family life gives to society a support without which the common good cannot be achieved. The State shall endeavour to support persons caring for others within the home.

A year later, a majority of the All-Party Committee on the Constitution, in the First Progress Report, agreed with the position adopted by the Constitution Review Group, though it altered the Review Group’s recommended wording slightly to read:

The State recognises that family life gives to society a support without which the common good cannot be achieved. The State shall endeavour to support persons caring for others within the home.

4.2 Presentation by Prof. Siobhan Mullally, UCC

Article 41.2 of the Constitution

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.

41.2.2° 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.

Historical context

A commitment to the ideal of ‘separate spheres’, premised on the complementarity of gender roles and a presumption of natural sex differences between women and men is given legal recognition in the language of Article 41.2. [1]

The inclusion of the reference to women’s role in the home in the Constitution reflects the influence of Catholic social teaching. In his comments on a draft text of the Constitution, Archbishop John Charles McQuaid noted that: [2]

Nothing will change in law and fact of nature that woman’s natural sphere is in the home.[‘Rights of Women’.

The Women’s Graduates Association led the opposition to the draft Constitution. Hanna Sheehy-Skeffington, a leading feminist activist and a pacifist who had supported DeValera in the civil war, was one of the most vocal opponents. The 1916 Proclamation, she argued, had given Irish women “equal citizenship, equal rights and equal opportunities”. [3] Subsequent constitutions had “filched these” or “smothered them in mere empty formulae.” [4] John A. Costello, a former Attorney General, expressed concern that the language used in Article 41.2 could exclude women’s life outside the home from constitutional protection. [5]

Opposition to the language of Article 41.2, however, was rejected as “anti-Catholic” and as lacking respect for the Church teachings on, “the position, the sphere, the duties of women.” [6]

Against Reform: On Women in the Home

Women have traditionally taken primary responsibility for care work in the home and for caring roles, including caring for children, the elderly, persons with disabilities and others. Women continue to take most responsibility for care work. Traditionally, care work in the home has been undervalued. It is largely unpaid and has often remained invisible with little official recognition of its significance to the everyday functioning of society.

Article 41.2 can be read as recognition of the distinct role played by many women in the home and a positive valuation of the care work that women have traditionally undertaken. Although gender roles have changed in contemporary Ireland, women continue to account for the majority of homemakers and carers working full-time in the home. Women continue to take on primary responsibility for care work, both in the home and in the wider community: [7]

- 47% of people in employment are women;
- 55% of women are in employment;
- Just over half of women with children are in employment. Three-quarters of men with children are in employment;
- 61% of Carers are women;
- Women provide two-thirds (66%) of all care hours; and
- 86% of child-care is carried out by women.

These statistics reflect wider trends internationally. According to the International Labour Organisation, at least 52.6 million women and men over the age of 15 are engaged in domestic work as their main occupation. Women comprise 83% of the total domestic workers worldwide. [8] Due to the largely unregulated and hidden nature of domestic work, the total number of domestic workers may be in the region of 100 million, significantly higher than the ILO figures.

On recognising the wider value of care to Irish society

As Joan Tronto reminds us, 'Care is not a parochial concern of women, a type of secondary moral question, or the work of the least well off in society.' [9] It is a 'central concern of human life', one that is founded in the inevitable vulnerability of the human condition. [10]

It is important to safeguard against the isolated individualism of contemporary societies, and to recognise the value of care work and the contribution made by carers to the well being of Irish society. Recognising care as a core constitutional value is an important statement of our commitment to supporting care work and the roles of carers, which are often unpaid.

Dr Olivia Smith in her essay on the 'Right to Care' has noted that the human need to receive care is universal. As Smith also notes: [11]

'The need to be enabled and supported in the performance of care work is important to the carer, but also to the recipient of care'.

Care work contributes to developing and supporting the autonomy and dignity of the person receiving care. Supporting the work of the carer requires community support. Care is a public good. It supports the maintenance of a cohesive society, and the production of 'healthy, well-functioning citizens and workers.' [12]

How the household functions, divisions of labour and availability of support to ensure the smooth completion of care-taking tasks, shapes the operation of the public sphere in ways that have often remained invisible or unacknowledged. In most societies, the provision of care labour in the domestic sphere is not yet fully recognised by states as a public good that requires state support and resourcing.

A 'Protective Guarantee': Recognising the Value of Women's Care work?

Traditionally, care work has been undervalued and care work within the home remains largely unpaid. Article 41.2 can be read as an attempt to remedy that lack of recognition. This was the argument made by Justice Susan Denham (as she then was) in her judgment in the *Sinnott* case. She argued: [13]

“Article 41.2 does not assign women to a domestic role. Article 41.2 recognises the significant role played by wives and mothers in the home. This recognition and acknowledgement does not exclude women and mothers from other roles and activities. It is a recognition of the work performed by women in the home. The work is recognised because it has immense benefit for society. This recognition must be construed harmoniously with other Articles of the Constitution when a combination of Articles fall to be analysed. “

Kathy Sinnott was seeking recognition of her role as a carer within the family, caring for her son who had severe disabilities. She argued that the State's failure to protect her son's rights also breached her constitutional rights as the primary carer within the family. Chief Justice Keane, giving judgment on behalf of the majority of the Supreme Court, rejected her arguments, however. He concluded that while her position evoked “respect, admiration and compassion”, these were not grounds in law for any award of damages.

Although it has been suggested by some (including Justice Denham), that Article 41.2 could provide support for a rights claim arising from women's contribution to care work, to date this interpretation of the Constitution has been rejected by the Irish courts.

In the case of *L v. L* [14] the Supreme Court rejected a claim by a married woman that was based specifically on Article 41.2. The Supreme Court held that even though she had worked exclusively within the home throughout her marriage she was not entitled to a 50% interest in the family home and Article 41.2 could not support her claim.

THE NEED FOR REFORM: GENDER, WOMEN AND STEREOTYPES

Article 41.2's specific reference to the role of women in the home, and to mothers' 'duties in the home', has given rise to criticism, both during the drafting process of the Constitution itself and more recently in debates on the necessity of constitutional reform. The constitutional text does not assign roles or societal functions in this way to other private individuals. It is specifically women and mothers who are selected to fulfil specific roles and to discharge specific functions in society.

At the time of drafting, and in 2013, concern has been expressed that the specific role assigned exclusively to women by Article 41.2 does not take account of the wide variety of roles and experiences of women – as employees, as carers, as employers, as public, political figures.

Article 41.2 does not refer to or acknowledge the roles played by men and by fathers in the home and in families. The National Women's Council of Ireland, in its submission to the Constitutional Convention, has pointed out that the current wording of Article 41.2 does not

recognise the work that men currently do as carers, and neither does it recognise that men have duties and responsibilities as carers.

In *DT v CT*, Judge Murray suggested that Article 41.2 could be interpreted as covering fathers' roles: [15]

'the Constitution ... is to be interpreted as a contemporary document. The duties and obligations of spouses are mutual and, without elaborating further since nothing turns on the point in this case, it seems to me that [the Constitution] implicitly recognises similarly the value of a man's contribution in the home as a parent.'

The Irish Human Rights Commission has argued that Article 41.2 of the Constitution is based on: [16]

[...] a stereotypical view of the social roles of women as homemakers and mothers. It retains 'a biological determinism' that is, in their view, 'offensive to women and ascribes to them a limited and dependent role.'

On the value of care outside of 'the home'

Article 41.2, as currently drafted, does not recognise or value caring roles that are undertaken outside of the home - in communities, neighbourhoods and the wider society. As such it fails to fully recognise the value of care to Irish society. The right to 'private and family life' protected by Article 8 of the European Convention on Human Rights covers a wider range of activities and of human interaction than found in the wording of Article 41.2. Removing the reference to the home would reflect this wider protection given to 'private and family life'.

Observations of international human rights bodies

Article 41.2 of the Constitution has attracted repeated criticism from international human rights bodies.

The UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) expressed concern at: [17]

[...] the persistence of traditional stereotypical views of the social roles and responsibilities of women and men in the family and in society at large which are reflected in article 41.2 of the Constitution and its male-oriented language, as recognized by the All-Party Oireachtas Committee on the Constitution, in women's educational choices and employment patterns, and in women's low participation in political and public life.

The Committee called on the Government to consider replacing the language of Article 41.2 with 'gender-sensitive' language to convey the concept of gender equality more clearly. The UN Human Rights Committee concluded that Article 41.2: [18]

[...] perpetuates traditional attitudes toward the restricted role of women in public life, in society and in the family', in breach of the State's obligations under Articles 3 (equality

between women and men), 25 (equality in public life) and 26 (equality before the law) of the International Covenant on Civil and Political Rights.

The UN Human Rights Committee recommended that Ireland take steps to move to a gender-neutral wording of Article 41.2.

Recommendations for reform

In 1993 the report of the Second Commission on the Status of Women recommended that Article 41.2 should be deleted. [19]

The Constitution Review Group has recommended that Article 41 should be replaced with a gender neutral provision that specifically recognises the value of caring work in our society, but removes the stereotyping of such roles that arises from the language currently used. The revised provision proposed by the Review Group is: [20]

The State recognises that home and family life give society a support without which the common good cannot be achieved. The State shall endeavour to support persons caring for others within the home.

In their submission to the Constitutional Convention, the National Women's Council of Ireland have argued that this revised wording does not adequately recognise the role of carers and care work that takes place outside of the home, in community and society more generally. Removing the reference to 'the home', they suggest, would address this limitation and give greater recognition to the value of care in Irish society.

The Irish Human Rights Commission has expressed the view that Article 41.2 is in violation of Articles 2 and 5 of the UN Convention on the Elimination of All Forms of Discrimination Against Women, and should be amended.

4.3 Convention discussion

Having heard the views of experts and of representatives from advocacy groups, the convention members had detailed small-group discussions about the matters raised. At the end of their discussions, the main points were noted and gathered together on powerpoint slides to inform the open plenary discussions that followed.

A large majority of members were in favour of keeping but amending Article 41. There appeared to be large support for changing the wording of Article 41.2 to render the article gender neutral. Removing the words 'women' and 'mothers', and replacing them with references to 'carers', 'persons' or other such descriptions could achieve this. The reasoning given for amending the article was that it gave a sexist or stereotypical view of women, and did not give recognition to modern 21st century families, where caring in the home is increasingly shared by mothers and fathers, grandparents and others. Some suggested changing the phrasing to caring 'in the community', but most were in favour of keeping reference to the home. The reasoning given for not abolishing the article totally was that it was felt by members that it was important to give recognition to the important role of caring and carers in the home. Several members said that the article was the only reference in the Constitution to this caring role.

There were mixed opinions regarding the phrase 'endeavour to ensure', with some members concerned that changing it to 'shall ensure' would impose unreasonable financial burdens on the state. It was put forward by some members that a clearer definition was needed of words and phrases such as 'marriage', 'families', 'duties' and 'common good'. For example, it was argued, separated, divorced, single-parent, and non-married couples and families are not included in the meaning of marriage in Article 41. One possible suggestion was 'people living together as the family unit'.

Some expressed dissatisfaction with the negative connotation given in Article 41.2.2^o to women working outside the home, suggesting a more positive formulation would be better.

A minority view was that the Article should be abolished, as it has no place in a modern 21st century Ireland. That the Article should be kept unchanged was another minority view. The reasoning for this was that women do in fact have a unique role in terms of childbearing and childrearing that cannot be replaced.

A small number of members raised questions about the implications with regard to the family court. One member, for instance, posed the question as whether the reference to the woman and mothers was the reason for fathers having difficulties in the family court, while another asked whether women who work outside the home have fewer rights in the courts than a woman who does not work outside the home.

5. Increasing the participation of women in politics and encouraging greater participation of women in public life

5.1 Presentation by Prof. Yvonne Galligan (Annex 1 to this presentation is set out in Appendix D)

Background

Apart from providing for women's equal right to citizenship (Article 9), to vote and stand for election (Article 16), the 1937 Constitution is silent on women's participation in public life. Article 40.1, which provides that "all citizens shall, as human persons, be held equal before the law" has been interpreted by the Supreme Court as including gender equality. In terms of specific reference to women, Article 41.2.1 and 41.2.2 single out women's family role for mention. The policy and practical effect of this provision was to interpret women's citizenship as being one of engagement in the private sphere of home and family life. The silence of the rest of the Constitution on civic participation more generally means that the basic context for shaping women's engagement in public life is absent.

Given this gap, encouraging the greater participation of women in public life is a matter for civil society organisations, political parties, and government.

Since the 1970s, women have sought to be included in public decision-making, and especially in political life. Various women's organisations have campaigned on this issue, from the Women's Political Association in the 1970s and 1980s, to the National Women's Council of Ireland and associated women's groups today. The State has played a role in encouraging women's public participation, though its efforts have not resulted in gender equality in decision-making. Parties, too, have sought to address the absence of women from political life, again with only modest results. A sketch of some of these issues can be found in the Annex at the end of this briefing paper.

Much attention by government to women's participation on state boards has brought women's membership up to 35%. But that figure has remained static for some years now.

In terms of economic decision-making, for a long time women had no say in key economic decision-making forums – and today there is one woman among the 10 Directors of the Central Bank. While there is a strong pool of women at middle grades in the Civil Service, at present only 18% Secretary Generals are women.

These are examples of high-level decision-making that can seem remote from the lives of ordinary people. So, one would expect that women would be more visible at local level, engaging in issues that affect them and their communities. But, women comprise only 16% of local councillors, 26% County Enterprise Board members; and 34% of VEC board members (CSO 2011). Yet, women's participation in voluntary associations equals that of men (European Commission 2010).

The background to the introduction of quota legislation, passed in 2012, is likely to be the subject of a number of submissions to the Convention. The 2009 Report of a sub-committee of the Joint Committee on Justice, Equality, Defence, and Women's Rights (the Bacik Report)

laid the basis for subsequent legislative proposals in this area. Its recommendations sparked an extensive and comprehensive public and political debate, eventually culminating in the section 6 provisions of the Electoral Amendment (Political Funding) Act, 2012 legalising and enforcing candidate gender quotas.

This brief review of women's participation in public and political life indicates that there is scope to consider amendments to the Constitution.

The two potential questions to be asked are:

Should Article 40.1 of the Constitution be amended to include an additional section naming gender equality as a fundamental right?

Should the Constitution be amended to include a provision that allows for special positive action measures to be taken to redress gender imbalances in public and political life?

Each will now be considered in turn.

Should Article 40.1 of the Constitution be amended to include an additional section naming gender equality as a fundamental right?

Advantages:

Insertion of a clause of this kind would provide recognition of gender equality as a fundamental principle in the Constitution

Gender equality is a fundamental democratic principle, and recognised as such in a range of constitutions, treaties and legal texts. It is embedded in Article 40.1 which states that "all citizens shall, as human persons, be held equal before the law". By identifying gender equality as a specific right in the Constitution, the document would recognise equality of the sexes as a basic principle of law and policy. It would give a constitutional basis to policies effecting the equal visibility, participation and empowerment of both women and men in all aspects of public and private life.

It would bring the Constitution closer to a founding value of the European Union

Gender equality in a European context dates from the 1957 treaty of Rome that provided for equal pay between women and men. Article 23 of the European Charter of Fundamental Rights and Freedoms stipulates that equality between women and men must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Amending the Constitution to include a positive statement on gender equality would bring the Constitution closer to the EU founding value of equality between women and men more generally. The EU's gender strategy targets women's public participation as a key area of action. Article 23 of the Charter of Fundamental Rights and Freedoms is concerned with this issue in the areas of EU competence. Bringing this idea into the Irish Constitution would be in keeping, and indeed extend, the aspiration that women and men have equal opportunities to participate in public life. It would recognise that gender equality is a value that underpins the country's laws.

It would require all laws and policies to consider the implications for gender equality

Gender mainstreaming – ie the incorporation of a gender perspective in all laws and policies and consideration of the differential impact on women and men of the policy in question – is an important tool in supporting women’s equal participation with men in political and public life. Inserting a positive statement on gender equality would ensure that this practice was an integral part of all laws and policies from the outset, thereby making them more effective and responsive to the needs and interests of women and men.

Disadvantages

The Constitution gives sufficient recognition to gender equality

There is no need for a provision stating that women and men are equal. The Constitution already upholds this principle through Article 40.1.

It would be a policy constraint on the government of the day

There is sufficient gender mainstreaming taking place in policy-making, and sufficient evaluations of policy effectiveness. This is an embedded routine part of the policy process and does not require a Constitutional commitment. It would be an unnecessary policy constraint on government. Indeed, each memorandum to Cabinet has a gender-proofing clause, and has had so for some time. So the government, at the apex of public decision-making, already imposes this obligation on itself.

It could give rise to unforeseen costs in interpreting the provision

A provision stating a positive commitment to gender equality could make a future demand on public purse that might be considered costly and unaffordable. This could follow on from a judicial interpretation of the provision.

Should the Constitution be amended to include a provision that allows for special positive action measures to be taken to redress gender imbalances in public and political life?

Advantages

The law at present confines gender equality as meaning 40%, when equality is 50%.

The gender quota law is an effort to take reasonable positive measures to increase women’s political representation. This is currently set at 40% maximum for both genders, while the population consists of equal numbers of women and men. A constitutional provision allowing for special positive measures to be taken to redress under-representation of either gender could provide a framework for laws and policies that seek to go beyond 40% gender balance.

The need for gender equality in decision-making is not confined to politics

The current quota law applies only to parties at election time. It does not address the wider issues of gender imbalances in decision-making, such as women’s participation on State boards, at senior levels of the Civil Service, in national delegations abroad, in local elections, and their participation in regional and local public decision-making forums. A provision of this kind would extend the special measures from national politics to the many other decision-making sites in which women’s lives and interests are affected.

Such a provision would make Ireland a global leader on this issue

While there is a growing tendency around the world to introduce special measures such as quotas to address the under-representation of women in political life, States seldom extend this principle to other arenas, though the Greek constitution is a case in point. While there are moves to tackle women's under-representation on corporate boards, and preferential consideration of women in employment interviews is also known, these policies exist as stand-alone provisions. A general Constitutional commitment to actively addressing women's under-representation in all public and political spheres would bring Ireland to the fore as the 'gold standard' example for gender equality.

It is the only way to ensure women's full public and political participation as equal citizens with men

The quota law will not address gender inequalities in representation at sub-national level, in all its aspects. Yet, many decisions that affect the lives of women and men differentially are taken by boards, committees, forums locally. A constitutional requirement to include women with men in equal measure would change the political culture and public discourse to becoming more inclusive of all citizens and their diverse interests, needs and viewpoints.

Disadvantages

The incorporation of a 'special measures' provision into the Constitution is not necessary

On the other hand, one could equally well argue that it is not necessary to provide for this in the Constitution. We have plenty of safeguards in place without recourse to constitutional measures. What is required is more on-the-ground commitment to including women in public affairs.

Inserting a measure of this kind into the Constitution would make decision-making unworkable

The demands a special measures provision would place on the functioning of decision-making bodies at all levels in the State would be overwhelming. A board without its complement of equal numbers of women and men would not be able to take decisions, and its functioning would be undermined as a consequence. This measure, from a practical point of view, would bring all decision-making to a grinding halt while women were found to fill vacancies.

Not sufficient women can be found, and those willing to serve would be overworked

There is a shortage of women with the required skills and experience available and willing to take on public decision-making positions. Training interested women in to decision-making will take time, and in the meantime, women who already participate in public life will become overburdened. Many women already carry a double burden (at least) – that of work and family responsibilities – and it is unfair to ask them to stretch themselves further in the name of a Constitutional provision.

The real problem preventing women from becoming more active in public affairs is the absence of childcare.

For women to take part in public affairs, a good childcare system needs to be put in place. A Constitutional provision for quotas will not change the gender imbalance in decision-making if women still carry out the bulk of childcare (and elder care) work.

5.2 Presentation by Prof. Gail McElroy

I: Introduction

In the 2011 Irish general election, 25 female TDs were elected to Dáil Éireann, a slight increase on the 22 elected in 2007. By international standards, the percentage of Irish female representatives (15%) is rather low and only a handful of other EU countries have fewer women elected to their national parliaments (Hungary, Romania, Cyprus and Malta). Furthermore, there has been no breakthrough in representation at the local level, with just 16 per cent of the seats in the city and county council elections of 2009 being won by women.

Interestingly, there has been no major increase in female representation in Ireland in the past two decades, despite very significant social change and increased female labour force participation.¹ Other European countries, which in the past have had similarly low levels of female representation, have overtaken Ireland in recent years. For instance, in 1992 there were 60 women (9% of the total) in the UK House of Commons but there are now 143 (22%), while 27 per cent of those elected to the French Parliament in 2012 were women, up from eleven per cent in 1997.

II: Why are the numbers of women TDs so low?

There are a whole variety of different reasons put forward as to why there may be so few women elected to public office in Ireland.

1) **Women run for the wrong parties:** Women generally run for the smaller parties, which by definition are less successful in elections. For example, in 2011 the Labour Party and Sinn Féin had the highest number of female candidates amongst their ranks, at 25 and 20 per cent respectively. Women comprised only 15 per cent of candidates for both Fianna Fáil and Fine Gael.

2) **Incumbency Advantage:** Most sitting TDs are men and incumbents have rather high re-election rates in the Republic of Ireland. Parties naturally want to nominate incumbents given their good chances of winning. It is not about the sex of the candidate per se, just their incumbency status.

3) **Parties don't nominate women.** Related to point 2, but this argument also further suggests that parties systematically discriminate (either consciously or unconsciously) against women when it comes to nominating candidates for election. For instance, recruitment at the local level may happen in rather male environs such as GAA clubs. The argument is that women are not seen as viable candidates by parties and are less visible to party selectors overall. This argument does not fully explain however, why Ireland is so low in international rankings, as this is not an exclusively Irish problem.

4) **Women don't come forward:** International research on the decision to run for office does indicate that women rule themselves out of the political game more frequently than men. There is a gender gap in levels of political ambition. Women are much less likely to see themselves as qualified to run (even when by objective standards they are). The reasons for this are complex, in part it may be socialization or it may be that women are more risk

adverse than men. Women are more likely than men to perceive the electoral environment as highly competitive and biased against female candidates. Though again, lower levels of political ambition are not peculiar to Irish women and do not in themselves explain our particularly low rates of female participation.

5) ***The voters are to blame:*** Conventional wisdom, often repeated in the Irish media, is that Irish voters won't vote for women or Irish women won't vote for female candidates. However, there is no systematic evidence to support this popular claim. Research on Ireland can find no evidence that women candidates are disadvantaged by their gender. This conclusion reflects research in other advanced industrialized democracies (e.g. the USA, Canada, the UK) where it has been established that, if anything, women candidates actually have an advantage with voters. There may be a very small number of voters who do prefer candidates of one gender but this is relatively balanced between the sexes. There is very little indication that gender is a deciding factor when Irish people cast their ballots.

6) ***Irish Culture is paternalistic and traditional.*** This is an idea put forth largely by outside observers but also highlighted by the "50:50 Group" in their submission to the Convention. It doesn't take account of the sea change in Irish society in recent decades. It also does not adequately explain the increase in numbers of women members of parliament in countries with very similar cultures and traditions, such as Spain. 2 Women across the world are typically still responsible for the majority of childcare and household tasks and this in itself does act as an obstacle to running for office, but it is not a peculiarly Irish phenomenon.

7) ***Irish political life is not compatible with family life.*** Being a TD is more than a full time job, work-life balance is hard to establish, the hours are long and the demands on one's time are many. Irish voters expect their TDs to be personally available to answer their demands. On the other hand, political life is demanding almost everywhere and the need to cultivate a personal vote and keep constituents onside is not exclusive to the Irish system.

8) ***Lack of gender quotas.*** Most of the countries with high numbers of women in their national parliaments have quotas of one form or another (17 of the top 20 ranked countries internationally). Undoubtedly, the introduction of quotas goes some way in explaining the rapid increases in women's representation in nations such as Rwanda. But the effectiveness of quotas varies quite dramatically. In Scandinavian countries the surge in women elected to public office predated the introduction of quotas (and indeed in Scandinavia, quotas are still largely voluntary, implemented at party level)

9) ***Nature of the Electoral System?*** Generally proportional representation (PR) systems are viewed as being kind to women candidates. However, the Single Transferable Vote (STV), with its emphasis on cultivating a personal vote, may be off putting to women. In the Republic of Ireland, elections are much more candidate centred than in other European PR systems and this aspect of campaigns may be particularly unattractive to women (see point 4 above).

International research indicates that women react more negatively to campaigning elements such as having to raise their own money and going door to door to meet constituents. The personal element of the Irish electoral system may be a particular

deterrent to women coming forward. The submission to the constitutional convention by Mr. Diarmuid Lynch (Dec 24 2012) makes specific reference to the nature of the STV as an obstacle to greater participation by women in Irish political life.

III Does it Matter?

Does it really matter that TDs are not a microcosm of society in terms of things like gender, class or age? Public opinion research has found that Irish voters generally seem to think having more women (and young people) in the Dáil would be a good thing. However, they don't seem to care too much whether their own constituency TDs are of the same gender as them. Nonetheless, the majority of the submissions to the Constitutional Convention (as of the 11th of February) on the topic of Women in Politics do call for action.

Arguments in favour of the adoption of electoral/constitutional quotas:

- i) Female TDs may better understand the needs of women constituents.
- ii) Female TDs may be better able to communicate with women voters.
- iii) More women in parliament will generate greater trust in the quality of our democracy. Research generally finds that the greater the representation of women in parliament, the lower the level of corruption.
- iv) More women in positions of political power may inspire other women and influence younger women through a role model effect.
- v) Actively encouraging women to participate in politics will lead to a bigger pool of potential candidates, this will lead to an overall improvement in the quality of our elected representatives.
- vi) More women in parliament will lead to a different more consensual (friendly) style of politics and the introduction of new and different types of legislation.

Arguments against gender quotas:

- i) Most women TDs don't see themselves as representing women, they are party people, first and foremost.
- ii) There really is no such thing as women's interests; women are too diverse to be considered as a group.
- iii) Why should gender be privileged over other identities such as ethnicity or age?
- iv) Liberal democracies such as ours are about the rights of citizens as individuals not as members of particular groups.
- v) The policy is discriminatory and undermines the principle of merit.

vi) The proportion of women in the Dáil will increase over time in a natural, incremental fashion.

vii) Quotas do not deal with the real causes of women's underrepresentation (e.g. the burden of child care) and these should be addressed more directly.

Constitutions and the Role of Women in Politics

Constitutionally defined gender quotas, or constitutional references to the role of women in political life, are unusual in Europe. France and Serbia are among the very few countries that reference women as elected officials in their constitutions.

And no European constitution currently makes a provision for reserving a set number of parliamentary seats for women, a practice that has recently been introduced in some African and Asian countries e.g. Rwanda, Pakistan. Many constitutions do, however, have an explicit clause that prohibits discrimination on the grounds of gender (and race etc.)

Examples of constitutions with clauses on Women in Political Life

i) In 2008, a review of the French constitution of 1958 was undertaken, with the goal of modernizing France's political institutions. Amongst several other changes, Article 1 of the Preamble of the constitution was amended to include the phrase: "Statutes shall promote equal access by women and men to elective offices and posts as well as to positions of professional and social responsibility".

ii) The Serbia constitution of 2006 specifies that:

The State shall guarantee the equality of women and men and develop equal opportunities policy. Art 15. In the National Assembly, equality and representation of different genders and members of national minorities shall be provided, in accordance with Law. Art 100.

iii) While the Greek Constitution of 1975 explicitly prohibits gender discrimination in article 4(2), Article 116(2) of the constitution specifies that:

'Positive measures aiming at promoting equality between men and women do not constitute discrimination on grounds of sex. The State shall take measures to eliminate inequalities existing in practice, in particular those detrimental to women.'

This article is generally interpreted as obliging the legislature (and other state bodies) to take positive measures in favour of the promotion of women, where they are underrepresented.

The Irish constitution (Art. 16.1.1) does make a particular reference to the fact that no one should be excluded from running for Dáil Éireann on the basis of gender: "Every citizen without distinction of sex who has reached the age of twenty-one years, and who is not placed under disability or incapacity by this Constitution or by law, shall be eligible for membership of Dáil Éireann".

iv) An example of a very specific reserved seat provision is provided by the Rwandan constitution of 2003:

..24 seats (of 80) in the Chamber of Deputies [are] reserved for women. Two from each province and the City of Kigali. Art 76:2

As of the 31 December 2012, there were 45 women (and 35 men) in Rwanda's national assembly.

5.3 Convention discussion

For the session on greater participation of women in public life, three main questions were put to members: should gender equality be enshrined in the Constitution? Should the constitution be amended to include a provision that allows for special positive action measures to redress gender imbalances in public life? Should the Constitution be amended by a general statement on positive action or by specifying gender quotas in the Constitution?

Regarding the first question, the main argument in favour was that recognising gender rights in the Constitution would be a positive step, which would show a commitment to diversity. In addition, it would be a useful tool to get women involved in politics. The main arguments against enshrining gender equality in the Constitution were that there was already a general provision for equality in the Constitution; that it would go against the 'gender neutral' aims of proposed reforms to Article 41 discussed in the morning session and would be a redundant question in a few years (though it was not clarified why this would be). One member said it was a 'leading' question.

The second question saw more voices and arguments against the proposition than in favour. The principal argument against amending the Constitution for the purposes mentioned above was that, while this was a worthy aim, the Constitution was not the vehicle for such a reform: legislation and changing social and cultural attitudes would be more effective means. Education was needed, it was argued, and various social and cultural reasons were put forward for the lack of women participating in public life. Examples given were lack of affordable childcare facilities, biased selection procedures for election candidates, and traditional attitudes regarding the woman's role as a childminder. Even with a Constitutional amendment, these barriers would still remain. In addition, constitutional action would be too rigid and specific. Some said more investigation needed to be done as to why there are so few women in politics. Another point of view was that most other countries are not at parity in male/female representation in their national parliaments, so it is not solely an Irish problem.

The question of whether to amend the Constitution with a general statement or with quotas elicited a variety of responses. An argument in favour of the former was that it would be more flexible and would allow more room to manoeuvre. Similar opinions as those for question two were expressed – policy and legislative changes were a better way of establishing quotas than Constitutional means. It was felt by some that, even with quotas,

the same problems and disincentives would remain. It was argued that selection procedures for candidates for elections need to change, as there are inbuilt advantages for men. There were some voices in favour of quotas, with the reason being that there were so few women in public office that the issue needed to be forced. Others, however, had problems with the 'compulsion' feature of quotas.

It was suggested that references to 'he' in the Constitution should be made gender neutral or even gender inclusive.

Appendix A: Convention on the Constitution Terms of Reference

<p>“Go gceadaíonn Dáil Éireann:</p> <p>Coinbhinsiún ar an mBunreacht a ghairm chun breithniú a dhéanamh ar na nithe seo a leanas agus chun cibé moltaí a dhéanamh is cuí leis agus chun tuairisciú do Thithe an Oireachtais:</p> <p>(i) téarma oifige na hUachtaránachta a laghdú go cúig bliana agus é a chur ar comhfhad leis na toghcháin áitiúla agus leis na toghcháin don Eoraip;</p> <p>(ii) an aois vótála a laghdú go 17 mbliana;</p> <p>(iii) an córas toghcháin don Dáil a athbhreithniú;</p> <p>(iv) an ceart a thabhairt do shaoránaigh a bhfuil cónaí orthu lasmuigh den Stát chun vótáil i dtoghcháin Uachtaráin in ambasáidí de chuid na hÉireann, nó ar shlí eile;</p> <p>(v) foráil maidir le pósadh comhghnéis;</p> <p>(vi) leasú a dhéanamh ar an gclásal i dtaobh ról na mban sa teaghlach agus rannpháirteachas níos mó ag mná sa saol poiblí a spreagadh;</p> <p>(vii) rannpháirteachas na mban sa pholaitíocht a mhéadú;</p> <p>(viii) an cion arb é diamhaslú é a bhaint as an mBunreacht; agus</p> <p>(ix) tar éis na tuarascálacha thuas a chríochnú, cibé leasuithe iomchuí eile ar an mBunreacht a bheidh molta aige; agus</p> <p>go dtugann sí dá haire:</p> <p>— gur 100 duine mar a leanas a bheidh i gcomhaltas an Choinbhinsiúin:</p> <p>— Cathaoirleach a bheidh le ceapadh ag an Rialtas;</p> <p>— 66 shaoránach atá i dteideal vótáil i reifreann, arna roghnú go hamasach sa chaoi go mbeidh siad</p>	<p>That Dáil Éireann:</p> <p>approves the calling of a Convention on the Constitution to consider the following matters and to make such recommendations as it sees fit and report to the Houses of the Oireachtas:</p> <p>(i) reducing the Presidential term of office to five years and aligning it with the local and European elections;</p> <p>(ii) reducing the voting age to 17;</p> <p>(iii) review of the Dáil electoral system;</p> <p>(iv) giving citizens resident outside the State the right to vote in Presidential elections at Irish embassies, or otherwise;</p> <p>(v) provision for same-sex marriage;</p> <p>(vi) amending the clause on the role of women in the home and encouraging greater participation of women in public life;</p> <p>(vii) increasing the participation of women in politics;</p> <p>(viii) removal of the offence of blasphemy from the Constitution; and</p> <p>(ix) following completion of the above reports, such other relevant constitutional amendments that may be recommended by it; and</p> <p>notes that:</p> <p>— membership of the Convention will consist of 100 persons as follows:</p> <p>— a Chairperson to be appointed by the Government;</p> <p>— 66 citizens entitled to vote at a referendum,</p>
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<p>ionadaitheach do shochaí na hÉireann i gcoitinne;</p> <p>— comhalta de Thionól Thuaisceart Éireann as gach páirtí de na páirtithe polaitíochta sa Tionól a ghlacfaidh le cuireadh ón Rialtas; agus</p> <p>— comhaltaí de thithe an Oireachtais, chun ionadaíocht neamhchlaonta a dhéanamh ar na Tithe;</p> <p>— féadfar ionadaithe a cheapadh faoi réir na gcritéar roghnóireachta thuas, agus beidh na hionadaithe sin in ann páirt a ghlacadh sna himeachtaí agus vótáil faoina n-ainm féin;</p> <p>— comhaontóidh an Coinbhinsiún a rialacha nóis imeachta féin d'fhonn a ghnó a sheoladh go héifeachtach ar shlí a bheidh chomh heacnamúil agus is féidir;</p> <p>— beidh aird chúig ag an gCoinbhinsiún ar Chomhaontú Aoine an Chéasta agus ar Chomhaontú Chill Rímhinn;</p> <p>— tráth nach déanaí ná dhá mhí tar éis dháta na chéad éisteachta poiblí a thionólfadh an Coinbhinsiún tabharfaidh an Coinbhinsiún tuarascáil do Thithe an Oireachtais agus déanfaidh sé moltaí dóibh ar gach ceann de na nithe atá leagtha amach ag (i) agus (ii) thuas;</p> <p>- tuairisceoidh an Coinbhinsiún do Thithe an Oireachtais agus déanfaidh sé moltaí dóibh ar gach ní eile a luaithe a bheidh a phléití críochnaithe aige agus, in aon chás, tráth nach déanaí ná bliain amháin ó dháta na chéad éisteachta poiblí;</p> <p>— féadfaidh an Coinbhinsiún aighneachtaí a iarraidh agus glacadh leo ó chomhlachtaí leasmhara agus lorgóidh sé cibé comhairle shaineolaíoch is dóigh leis is inmhianaithe;</p> <p>— déanfar gach ní a bheidh os comhair an Choinbhinsiúin a chinneadh trí thromlach de vótaí na gcomhaltaí a bheidh i láthair agus a vótálfadh, seachas an Cathaoirleach a mbeidh vóta cinniúna aige nó aici i gcás comhionannas</p>	<p>randomly selected so as to be broadly representative of Irish society;</p> <p>— a member of the Northern Ireland Assembly from each of the political parties in the Assembly which accepts an invitation from the Government; and</p> <p>— members of the Houses of the Oireachtas, so as to be impartially representative of the Houses;</p> <p>— substitutes may be appointed subject to the selection criteria above, who will be entitled to contribute to the proceedings and vote in their own name;</p> <p>— the Convention will agree its own rules of procedure for the effective conduct of its business in as economical manner as possible;</p> <p>— the Convention will have appropriate regard to the Good Friday Agreement and the St. Andrews Agreement;</p> <p>— not later than two months from the date of the first public hearing held by the Convention, the Convention will make a report and recommendation to the Houses of the Oireachtas on each of the matters set out at (i) and (ii) above;</p> <p>— the Convention will report and make recommendations to the Houses of the Oireachtas on each remaining matter as soon as it has completed its deliberations, but in any event not later than one year from the date of the first public hearing;</p> <p>— the Convention may invite and accept submissions from interested bodies and will seek such expert advice as it considers desirable;</p> <p>— all matters before the Convention will be determined by a majority of the votes of members present and voting, other than the Chairperson who will have a casting vote in the case of an equality of votes; and</p>
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<p>vótaí; agus</p> <p>— tabharfaidh an Rialtas freagra san Oireachtas laistigh de cheithre mhí ar gach moladh a dhéanfaidh an Coinbhinsiún agus, má tá sé chun glacadh leis an moladh, cuirfidh sé an creat ama in iúl ar lena linn atá sé ag brath aon reifreann gaolmhar a sheoladh.</p>	<p>— the Government will provide in the Oireachtas a response to each recommendation of the Convention within four months and, if accepting the recommendation, will indicate the timeframe it envisages for the holding of any related referendum.”</p>
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Appendix B: Rules and procedures

1. Timing, Frequency and Openness of meetings

Meetings of the Convention will generally take place in a hotel at weekends (Saturdays and Sundays) during 2013. At least one meeting will be held outside Dublin. It is proposed to hold one meeting per month, with the exception of July and August. Members of the public will not have access to the meetings but the plenary sessions will be streamed live at www.constitution.ie.

2. Role and duties of the Chairperson

The Chairperson shall be the sole judge of order and shall be responsible for the smooth running of the Convention in accordance with these rules and the terms of the Resolution of the Houses of the Oireachtas of 10 July, 2012. He shall engage such support services as are necessary for the effective administration of the forum and, from time to time, make such recommendations to the Convention on the management of business as he sees fit.

3. Work Programme

The work programme shall be agreed by the Convention on foot of a proposal by the Chairman. The programme shall be reviewed regularly but any subsequent changes shall only take effect with the agreement of the Convention.

4. Steering Group

A Steering Group shall be established to support the Convention in the efficient and effective discharge of its role and functions. In practice, the Group shall assist with planning and operational issues associated with the work programme. The Steering Group shall consist of the Chairperson and representatives from the political parties, the public members and such other representatives as the Convention sees fit.

5. Debates/speaking arrangements

The format and structure of speaking arrangements shall be agreed in advance and as a general principle, all contributions by members should be brief, respectful and non-repetitive. Any member wishing to speak should indicate and will be called upon by the Chairperson, who will endeavour to ensure fairness in the allocation of speaking time to all members. In an effort to make most efficient use of time in plenary session, members are encouraged to use the opportunity of roundtable discussions to express their views, ask further questions of the experts and deliberate with one another. These discussions can be reflected in a brief report to the plenary session.

6. Tabling and Circulation of Papers

All documents received by the Convention secretariat shall be made available to all members of the Convention via the www.constitution.ie website. Alternative arrangements will be made for those members who are not in a position to access the site. Deadlines for receipt of submissions and circulation of documents in advance of plenary meetings should be agreed by the Convention.

7. Presentations to the Convention

Following receipt of submissions on any matter, the Convention may choose to hear oral presentations from any representative group or individual to assist in its deliberations. For the efficient administration of the process, the Steering Group may wish to make recommendations in relation to the selection of interested bodies to present to the Convention. Invitations shall be issued by the Chairperson on behalf of the Convention.

8. Voting

Votes, if required, shall be by secret ballot of the members present and voting. Votes shall be overseen by the Chair with the support of at least 2 members of the Convention.

9. Advisory Panel

The Convention shall establish an advisory panel of academics, constitutional lawyers and others with demonstrated expertise, for access to such expert advice as it considers desirable. The process for selection and appointment of any such advisers shall be agreed by the Convention, on the advice of the Steering Committee.

10. Irish language facilities

A simultaneous translation service from Irish into English will be available for all plenary sessions of the forum.

11. Press and Communications

Authorised members of the media shall be permitted to attend plenary sessions of the Convention, subject to such terms and conditions as may be laid down by the Convention. As a general principle, the Chairperson shall act as spokesperson in relation to administrative or procedural matters.

12. Reports

Reports of the Convention shall be published as soon as practicable after a decision has been reached at each meeting. It shall be possible to finalise the detail of the content of each report other than in plenary session, subject to the agreement of the Convention.

13. Review of Procedures

The Chairperson shall consult with members of the Convention and other interested parties and conduct such reviews of the procedures and administration of the Convention as he sees fit.

14. Convention secretariat

The Chairperson shall have direction and control over the staff of the secretariat and other supports and resources available, subject to the wishes of the Convention.

Appendix C: Reference material: Role of Women – Prof. Siobhan Mullally

- 1 See: S. Mullally *Gender Culture and Human Rights: Reclaiming Universalism* (Hart: Oxford, 2006) ch.7
- 2 John Charles McQuaid Papers, Section 5, File 48, Dublin Diocesan Archives
- 3 See: Election manifesto of Hannah Sheehy Skeffington, 1943, cited in M Luddy *Hannah Sheehy Skeffington* (Dublin, Historical Association of Ireland, 1995), p.50.
- 4 Ibid.
- 5 *Dáil Debates*, vol. 68, col.1856, 4th June 1937
- 6 *Irish Press* 17 Dec. 1937.
- 7 These statistics are cited in National Women’s Council of Ireland *Submission to the Constitutional Convention* (2013) p. 6
- 8 International Labour Office, Domestic Work Policy Brief 5: Coverage of domestic workers by key working conditions laws
http://www.ilo.org/travail/whatwedo/publications/WCMS_157509/lang--en/index.htm
accessed 27 November 2012 (Hereafter ILO Policy Brief 5).
- 9 J C. Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care* (New York: Routledge, 1993), p. 180.
- 10 See generally, M Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ (2008) 20(1) *Yale Journal of Law and Feminism*
- 11 O Smith ‘How Far From a ‘Right to Care’? Reconciling Care Work and Labour Market Work in Ireland’ (2012) 47 (1) *JUR* 143 *Irish Jurist*, p.174
- 12 *Ibid.* p.167
- 13 [2001] 2 IR 545, at p. 665.
- 14 [1992] 2 IR 77
- 15 (2002)
- 16 Irish Human Rights Commission, *Submission to the UN Committee on the Elimination of All Forms of Discrimination Against Women in respect of Ireland’s Combined Fourth and Fifth Periodic Reports under the UN Convention on the Elimination of All Forms of Discrimination Against Women*, p.2
- 17 Committee on the Elimination of All Forms of Discrimination Against Women, *Concluding Observations on Ireland’s Combined Fourth and Fifth Reports*, 22 July 2005, UN Doc. CEDAW/C/IRL/CO/4-5, para.24
- 18 Human Rights Committee *Concluding Observations on Ireland’s Third Periodic Report* 30 July 2008, UN Doc. CCPR/C/IRL/CO/3, para.10
- 19 Report of the Second Commission on the Status of Women (Government Publications 1993), p. 27. The Second Commission on the Status of Women was established in 1990 to consider and make recommendations on the means, administrative and legislative, by which women will be able to participate on equal terms and conditions with men in economic, social, political and cultural life and, to this end, to consider the efficacy and feasibility of positive action measures.
- 20 Report of the Constitution Review Group (Dublin: Government Publications, 1996), at pp.333-334.
- 21 Irish Human Rights Commission, *Submission to the UN Committee on the Elimination of All Forms of Discrimination Against Women in respect of Ireland’s Combined Fourth and Fifth Periodic Reports under the UN Convention on the Elimination of All Forms of Discrimination Against Women*, p.2

Appendix D: Reference material: Role of Women in Public Life and in Politics - Further information and resources

Electoral Amendment (Political Funding) Act 2012, at <http://www.irishstatutebook.ie/2012/en/act/pub/0036/index.html>

Charter of Fundamental Rights of the European Union, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>

Women and Men in Ireland 2011, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>

International Covenant on Civil and Political Rights: Third Report by Ireland, at <http://www.dfa.ie/uploads/documents/Political%20Division/iccprfinalpdf.pdf>

The Development of Mechanisms to Monitor Progress in Achieving Gender Equality in Ireland, at <http://www.ria.irlgov.ie/en/JELR/Achieving%20gender%20equality.pdf/Files/Achieving%20gender%20equality.pdf>

Second Commission on the Status of Women (Politics and Public life section), at http://books.google.co.uk/books?id=qZ6W1LilyYYC&pg=PA254&lpg=PA254&dq=Second+commission+on+the+status+of+women+report%2Bireland+1993&source=bl&ots=Fy0ioGyp2D&sig=xhaq_Xd_33D5VzfWca46PrT7EP8&hl=en&sa=X&ei=FWcWUbSaAsWHhQegtYC4DA&ved=0CDsQ6AEwAg#v=onepage&q=Second%20commission%20on%20the%20status%20of%20women%20report%2Bireland%201993&f=false

The women's liberation movement, at <http://www.scoilnet.ie/womeninhistory/content/unit6/lberation.html>

European Commission: Representation in Ireland, at http://ec.europa.eu/ireland/ireland_in_the_eu/impact_of_eu_on_irish_women/index_en.htm

Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, Women's Participation in Politics (the Bacik Report), at http://www.oireachtas.ie/documents/committees30thdail/j-justiceedwr/reports_2008/20091105.pdf

McNamara, Maedhbh and Mooney, Paschal (2000) *Women in Parliament: Ireland 1918-2000*, Dublin: Wolfhound Press.

Annex 1 – Prof. Yvonne Galligan’s presentation

Women’s participation in public life: A brief summary of developments since 1970

In past decades, women’s public and political participation and representation was given varied attention. Legislative reform began to flow from the late 1960s onwards, prompted in part by Supreme Court interpretation of the Constitution as containing ‘unenumerated’ individual rights. This Annex provides a very brief summary of some of the main milestones along the way. It concentrates in particular on government, party and official efforts to engage women more fully in public life.

The women’s liberation movement manifesto in 1971 identified the main discriminations against women in Ireland and brought five demands to the public arena: equal pay, equality before the law, equal education, legalising contraception, and justice for deserted wives, unmarried mothers and widows. This was to set a legislative reform agenda for the following decades.

In parallel, the Commission on the Status of Women chaired by Dr. Thekla Beere (former Secretary of the Department of Transport and Power female) was established in 1970 and asked to examine and report on the status of women in Irish Society, to make recommendations on the steps necessary to ensure the participation of women on equal terms and conditions with men in the political, social, cultural and economic life of the country and to indicate the implications generally – including the estimated cost of such recommendations.

The Commission first issued an interim report on equal pay, with particular reference to the public sector (1971). Its final report identified 49 specific policy reforms and a further 17 suggestions on the removal of discrimination against women.

Women’s participation in politics and public life was addressed in the Commission report. It was concerned with the small number of women on the boards of state companies and public bodies. Women’s absence from the judiciary, the Seanad, the Cabinet and the low representation of women in the Dail were other areas identified in the report as requiring attention. The Report also recommended that the government recognise and finance a body representative of women’s interests. This body became today’s National Women’s Council of Ireland.

The Commission on the Status of Women Report was the first official recognition of the importance of women’s participation in public and political life. The matter has been subject to successive reports, efforts and initiatives since that time.

In 1973, the Women’s Political Association (previously the Women’s Representative Association) sought to raise awareness of the importance of having more women in political and public life. Through the 1970s and early 1980s it supported women running for election with some success.

A wide range of women-centred organisations focused on securing women’s rights and services for women from this time. These included the National Association of Irish Widows (founded in 1967), Action Information Motivation (AIM), Cherish and Women’s Aid.

The new wave of women's campaigning organisations came into existence alongside the well-established Irish Countrywomen's Association and Irish Housewives Association. In political life, women's organisations developed in political parties. The Labour Party's National Women's Committee (today Labour Women) was created in 1971. It gave evidence to the Commission on the Status of Women, and began to campaign within the party for the selection of more women candidates. Led by the efforts of Eileen Desmond, Evelyn Owens, Niamh Bhreathnach and others by 1985, the party had agreed a 25% candidate gender quota for the local elections, and in 1991 it adopted more formally a 20% gender quota for all party officer positions and candidates. It raised the quota to 25% shortly thereafter. The quota was not binding, and operated as a target than as an enforceable provision.

Fine Gael was the beneficiary of women's political mobilisation in the 1970s, drawing many prominent women of the time – Gemma Hussey, Nuala Fennell and Monica Barnes among them – into the party as TDs and Senators. The party established a women's group in 1985 to encourage women to stand for election, and held a range of events to that end.

Within Fianna Fail, a Women's Consultative Committee was established in 1981, comprising the party's female parliamentarians and executive members led by Mary O'Rourke and Eileen Lemass. In 1985 it became the National Women's Forum. It carried out a range of activities that sought to encourage and prepare more women for public office, and bring women's perspectives to bear on policy issues.

Thus, during the 1970s and 1980s, the main political parties at the time were responding to women's demands for greater political representation. Their responses were shaped by each party's internal culture and political ideology. However, women's participation in political and public life was not greatly enhanced by their efforts.

Pressure on government from the Council for the Status of Women to review progress on women's economic, social and political standing led to the Second Commission on the Status of Women being established in 1990. Its remit included to consider and make recommendations on the means, administrative and legislative, by which women will be able to participate on equal terms and conditions with men in economic, social, political and cultural life, and, to this end, to consider the efficacy and feasibility of positive action measures.

Reporting in 1993, this Commission made over 200 recommendations for policy reform. Concluding an analysis of the constitutional and legal status of women, the Report recommended the deletion of Article 41.2.2 and the insertion of a new equal rights article prohibiting all forms of sex-based discrimination, direct and indirect.

The Report of the Second Commission was highly critical of the lack of progress on women's participation in political and public life. It recommended the adoption of a 40% candidate gender quota by parties, the application of a 40% gender quota to State Board appointments, and a proposal that the Seanad electoral system be modified to ensure the election of equal numbers of women and men to that body. It also suggested that if women's representation in political life had not improved in ten years, that legislative proposals for gender quotas ought to be tabled by the relevant minister.

A review of the implementation of the Second Commission's recommendations, taken in 2000, reiterated the call for a constitutional amendment inserting a new equal rights article into the Constitution. It noted that the 1996 Constitution Review Group report had made a similar recommendation, suggesting that an addition to Article 40.1 be included as follows: *No person shall be unfairly discriminated against, directly or indirectly, on any ground such as sex, race, age, disability, sexual orientation, colour, language, culture, religion, political or other opinion, national, social or ethnic origin, membership of the Travelling community, property, birth or other status.*

This was put forward as a general anti-discrimination article to recognise the equal citizenship of all individuals living in the State.

Subsequent developments in practice and law gave effect to measures addressing women's relative exclusion from public and political life. From having no women in the judiciary in 1971, 27% of judges today are women. In the civil service, 39% of Assistant Principal posts and 31% of Principal Officer positions are held by women, indicating a strong pool of women available for recruitment to more senior positions. In 2011, women's employment rate was 56%, compared to 34% in 1973. These figures indicate more generally that today women are being integrated into the economic, political, and decision-making life of Ireland.

Attention to the gender balance on State boards and committees was intensified from 2002, with an instruction for Ministers to take action where the 40% gender balance was not being achieved. In 2005, women constituted 35% of the total membership of State boards. That indicator has not improved: in 2011, women still constituted 35% of total board membership.

The National Development Plan Equality for Women measure provided funding to political parties to adopt and implement action plans supporting women's participation in political life. Four parties designed projects that were funded under this measure – Fianna Fail, Fine Gael, Labour and Sinn Fein. Fianna Fail set a target of having women comprise one third of party general and local election candidates by 2014, and committed to a review of candidate selection procedures to facilitate this ambition. Fianna Fail also changed its internal rules on elections to the party executive body to secure equality between women and men in the 20 ordinary member seats. These changes were highly contested at successive party Ard Fheiseanna.

Labour, too, had a lively quota debate stemming from 2005 when an internal Commission chaired by Ivana Bacik recommended that a 30% candidate gender quota be adopted for local, national and European elections.

Fine Gael sought to increase women's participation in the party and provided training for women seeking to run for election. Selection conventions for the 2004 town councils were instructed to select at least one women candidate, and this directive was carried into the 2009 local elections. The party leadership efforts in 2010 to extend the quota to apply to general elections met with vocal resistance from members of the parliamentary party, among others, and was dropped.

The 2011 general election had political reform as one of its core themes. A core part of that debate was women's public and political engagement, and ways in which this could be supported. The culmination of this extensive public debate was the passing of the Electoral (Amendment) (Political Funding) Act 2012, which also provided for candidate gender quotas.