

**Treoir Response to**  
**The All-Party Oireachtas Committee on the Constitution (APOCC)**  
**Tenth Progress Report**  
**The Family**

**Treoir** is the national federation of services for unmarried parents and their children. With 34 member agencies nationally, it represents a wide variety of opinion on issues affecting unmarried parents and their children.

In its submission to the APOCC Treoir made various recommendations to place the rights of children at the centre of the Irish Constitution and to equalise the rights of all parents.

It was with great disappointment, then, that Treoir read the Tenth Progress Report of the APOCC. Despite the acknowledgement within the Report that demography and ethos of family life has changed significantly since the Constitution was accepted in Ireland, and its recognition that the Constitution serves our society less well than it formerly did, it refuses to address these changes to bring the Irish Constitution in line with current family life on the basis that a referendum would be “divisive” and “would not necessarily be passed”.

Every process of change must begin at some point. The Committee clearly felt that that point was not now.

While Treoir did not make a recommendation regarding family definition the two recommendations concerning families were:

1. “Treoir recommends the protection of family life in all of its forms based on Article 8 of the European Convention on Human Rights which reads:  
*‘Everyone has the right to respect for his private and family life, his home and his correspondence’*  
Treoir further recommends the inclusion of a protection for those rights within the Constitution.”

And

2. “Treoir recommends that parental rights, if enumerated in the Irish Constitution, apply equally to all parents, mothers and fathers, married or unmarried, and be subject to the principle that children’s rights are paramount.”

Treoir’s recommendation that the rights of all parents be applied equally under the Irish Constitution means that all parents, be they married, unmarried and/or

cohabiting, would have equal status in the eyes of the State. There would not be an inequality whereby families other than those based on marriage would simply have legislative provision and families based on marriage would have constitutional protection.

### **Children**

The Committee's recommendation regarding children states

“All children, irrespective of birth, gender, race or religion, are equal before the law. In all cases where the welfare of the child so requires, regard shall be had to the best interest of that child”.

While stating that all children should have equal rights and that these rights should be expressed in unambiguous terms the Committee then weakens this proposal by stating that “regard shall be had to the best interest” of children. The Committee seems anxious to preserve appropriate parental authority. In some small number of cases it has been shown that the superior rights of parents under the present Constitution works to the detriment of children. As stated above, Treoir emphatically recommends that the rights of children are placed at the centre of the Irish Constitution, and given the paramount status they deserve.

Currently the Constitution has family based rights and it is very weak on children's rights. Given the Kilkenny Report, the Constitution Review Group Report (1996) and the UNCROc (which is not even mentioned in the Report) there is much support for constitutional change. And without constitutional change children's rights will not be protected.

We reiterate here Treoir's recommendation:

“The enumeration of children's rights within the Irish Constitution using both the United Nations Convention on the Rights of the Child and the European Convention on Human Rights as a framework. Further, children's rights should be paramount notwithstanding any other article in the Constitution”.

### **Birth fathers**

In the Report the Committee recommends that birth fathers should not have constitutional rights as such vis-à-vis their children. They argue that should the section they recommend on the equality of rights of all children above be inserted into Article 41 then a child would have a constitutional right to the company and care of her / his father through legislation. Again the Committee is recommending a double standard of recognising fathers' rights through legislation but not through the Irish Constitution. Treoir is very clear that parental rights of all parents should apply equally to all parents.

**Lone parents**

In the section of the report on lone parents the Committee recommends that lone parent families will not have specific constitutional protection for their family life. Given that one third of all births per year are outside marriage, and therefore outside of the protection of the Irish Constitution, this is untenable.

The committee argues that the proposed new Article on children will have the effect of enhancing their position generally. As it stands unmarried mothers have weaker protection under the Irish Constitution due to their rights emanating from their personal rights rather than from family rights. The Committee is very clear in its intention not to bring every family to the level of respect and protection of families based on marriage. Given the international recognition of the forward looking Irish Equality Acts 2000 – 2004 this is a complete contradiction in government policy.

**Conclusion**

The Report of the APOCC represents a retrograde step in Irish social policy. In 1996 The Constitution Review Group then stated the need to "...put into the Constitution an express obligation to treat the best interests of the child as a paramount consideration in any actions relating to children". It also stated that children's rights should be enumerated within the Constitution, and recommended that families other than those based on marriage while no being protected should at least be treated with respect.

As is well documented, Ireland is changing, family life is changing, the treatment of children is changing. We need our Constitution to reflect that. It is unacceptable that the Irish Constitution, the set of principles under which we operate, discriminates against unmarried families, including their children.

This Report is deeply flawed in its research and deeply flawed in its proposals. It is weak, ambiguous and indecisive.

Treoir

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