

# Article 41 13<sup>th</sup> February 2021

## 1<sup>st</sup> Video

**Catherine Day:** Good morning and welcome everybody. Today marks a turning point in the work of our Assembly. We're now moving from discussion to preparing decisions on what we want to recommend to the Oireachtas. As we complete our mandate. Today we're going to focus on our constitution and in particular on article 41 on the family. As you all know the constitution is the highest law in the land and it's the framework under which the Oireachtas, the government and the courts all work and it also defines our rights as citizens and our responsibilities as citizens. We know that our constitution was written in the 1930s, in 1937. A very different time for a very different Ireland. Since then, Ireland has gone through very significant change, opening up to the outside world, taking different views on many social questions and setting different expectations of what we want government and the institutions of our state to do. Probably nothing exemplifies the changes of the past 84 years more than article 41 and I very much doubt whether such an article would be acclaimed in a referendum today. It has been criticised over many years including by Irish and international human rights organizations and, as you know, the Convention on the Constitution as long ago as 2013 already called for an amendment to the constitution to change what we all call the woman in the home clause. Today we're going to start work by asking you to discuss article 41.2. The famous woman in the home clause. What we want to know is whether you feel it should be kept as it is, so no change to the constitution, should it be simply deleted, taken out of the constitution or should it be replaced by something else and the discussions that you will have with your fellow members on this today should help you decide how you will vote on this in April. Today I repeat what we hope to agree is the wording of the question on the ballot paper on this issue. Once we have agreed on the ballot paper in article 41.2 we'll then move on to looking at two questions relating to how our constitution treats the family and I'll come back to that a bit later. So during the plenary sessions we will ask you to indicate your preferences on the questions that we've put to you today through the Zoom poll and, as I said, we'll do the icebreaker in just a few moments. That'll be a bit of fun to start off the day. So around quarter past 10 you'll go into the breakout groups as usual and you will discuss two questions. First of all you'll discuss whether you want to retain, delete or delete and replace article 41.2. I hope you've been thinking about this question over the last week since you received our draft ballot papers and our videos and I hope that you're ready now to tease this out in discussion with other members. Remember, you don't have to decide on your view today. You're just deciding on the questions and we will be asking you to decide whether you agree the text of the question that should be on the ballot paper when you come to vote in April. You have around 40 minutes to discuss the first proposed question for the ballot paper. So by 5 to 11 you should be ready to come back to the plenary session and to indicate whether you agree with question 1 for the proposed ballot paper.

Now listening to me you may be asking yourselves well what happens if we have questions or if you want to propose to change the wording of the questions and here I'd like to propose two different avenues. If you have factual questions, you know, is this right or wrong, could we do this or could we do that? You should ask these questions immediately while the breakout group is going on. There will be an extra person whom I'm calling a question recorder in the breakout group with you today and they will identify themselves at the start of the meeting and their only job is to take your questions and send them to me and I will be in a group with a panel of lawyers to answer any legal

questions that you have or if you have any other questions about how this will work today, I will try with the help of the secretariat to get back to you very quickly. So after answering question one you will go back to your breakout groups and discuss question two and then you will come back to plenary at around 10 to 12. Now this will be the opportunity to raise any outstanding questions. If in one or more groups everybody wants to raise questions then we will discuss that in plenary and to make it slightly easier for you this time we're not asking you to nominate a rapporteur. The facilitator in the group will be the person who will report on your questions and if there are any calls for changing the way the question is formulated, we'll discuss that at this stage and if we need to do a quick test about how much support there is for one or the other change that somebody might want we will again use the poll function and you'll be glad, I think, that by the time we get to the lunch break at around 12:15, and as I said in my video we're asking you to have a slightly shorter lunch break of just one hour this time around because we need a little bit more time because we're reaching the decision making stage. So please stay connected during lunch time or reconnect by 10 past one. After lunch we will be back in plenary at a quarter past one and we'll answer any questions that we didn't manage to complete before the lunch break. So then around 25 to 2 we're going to take the poll on question number two and this will be on the question that you've already received or on a revised version of that question if a majority has indicated a wish for change. So this is kind of where we need to improvise and having listened to you and what you want then to make sure that the questions reflect as far as possible your combined wishes.

At around quarter to two you'll be back in your breakout groups and then you'll be discussing the part of article 41 that relates to the family. Now as you know the courts have interpreted the family as the way it's written in article 41 as meaning the married family and this also then has an impact on a range of government policies. Now actually since almost this day last year we have heard presentations calling for this definition to be changed and those who want it to be changed, want it to encompass the reality of today's family, which I think we all know from our daily lives the family today is a much broader definition than just the married family. So you'll have around 50 minutes to discuss questions three and four and to indicate whether you want those questions to be on the ballot paper in April.

Then at 25 to three we'll be back in plenary again to discuss any issues you may have on questions three and four and then we'll do the Zoom poll on whether you agree that questions three and four should be on the ballot paper in April.

I hope all of this is clear but if you have any questions about the process please just raise them in the breakout group with the questions recorder and then we'll come back and try to answer them to you. Now I also want to repeat my call for everyone to bring a spirit of compromise to the meeting. I'm sure there are issues on which you'll hold strong views and if you do please express them, but if others in the group don't share your views please don't monopolise the short discussion time and please also accept that if your suggestions don't gather majority support we would have to follow the wishes of the majority. For those of you who've been with us since the beginning you would probably remember that in January 2020 when we were in Dublin Castle we adopted the principles that have guided our work ever since and today I just want to ask you to especially respect our principles of equality of voice, respect for each other's views and collegiality so that we can continue to work in a spirit of friendship as we begin to map out what we will have on the ballot papers when you will vote in April. You've all done a huge amount of work over the past year and we're enormously grateful for the amount of personal time that you've invested in this exercise and I know that it hasn't been easy for many of you to give up so much time, not only on the Saturdays, but also

in the preparation. But I hope all of that and your commitment to the work of the Assembly will enable us to reach a clear outcome by the end of the day.

So in order to get down to work quickly we're now going to have our icebreaker poll and that will get you used to how you're going to indicate your preferences. So maybe this little poll that we've devised will also help us to find out a little bit more about ourselves as a group and I just want to say before we start nobody can see your answers except you. We're not going to rush through these. It's not because the questions matter at all as you'll see in a moment, it's just because it's a practice run and we want you to be comfortable about using the poll when your answers will matter more later in the day. So I'm hoping now that you're going to see the first question coming up and it's a very simple question. "Do you have a pet?" So there you answer either yes or no. I have no pets, not even a goldfish or a canary so I would answer no on this question. So please now be careful. Once you click submit - so what you need to do is click either yes or no. Do you have a pet or you don't have a pet and then when you're ready and you're happy that you've clicked the right button then you click submit. You can't change your answer once you've clicked submit so once you've clicked just check and make sure that it is the answer you want to give. So off you go. Click yes or no now. We'll wait a minute to give everybody time to do that and then we'll see. I think we'll see the results immediately, won't we?

OK so let's have a look at the results. How many of us have pets and how many don't? Oh, it's almost even. 56 to 44. I'm with the minority on this one. OK, next question. "Which of these three types of music do you prefer?" and the options are country and western, classical or pop. And if you like more than one, you can only have one choice here. It's just for fun, so me I would pick classical music. So take your time. Click whichever button is your most favourite and then when you're sure you've clicked the right button just click submit.

OK and here come the results. It's great you get to know the answers almost immediately. OK so pop is the winner, 49%. Country and western, 19, and classical 31%. So that's a good spread. Here is the next question we'll be along in a moment and this time we're going to give you four options and we're asking "Which is the thing that you're most looking forward to once the Covid restrictions end?" Are you looking most looking forward to going to the pub or to go into a restaurant, going on holiday or seeing family and friends? I think I'd like several of those, but you have to choose only one. And some people may say they want to see less of their family after the lockdown. So again make your choice and then check it before you click submit.

OK so if everybody's had time to make their choice, let's see what is the most popular. Oh look at that. That's great, that shows Ireland at its best I think. Family and friends are the things that are most important to us and going to the pub only 10%. Going to a restaurant 8%. That's very interesting.

So now we know where we'll all be headed when the restrictions are lifted and I know we're all looking forward to that day, but the most important thing is that we all get to that day and that we're able to enjoy it when we do. OK so now you've seen how it works. It's not at all difficult. I think it's very simple and we'll put it to work on more serious questions a bit later in the day. So we're now going to send you as usual into the breakout groups and you're going to discuss question one and again I just want to remind you you're not answering the question today. You don't have to give your views, but what we're asking you to decide in your groups is are these the right questions? Are these the questions that you want to vote on in April? You have 40 minutes to discuss this question one and then you'll come back to the plenary session. So we'll put you in the breakout groups now and I look forward to seeing you in around 40 minutes time.

## 2<sup>nd</sup> Video

**Catherine Day:** If there are any questions or outstanding issues that came up in your discussions, so I'm going to go through the nine facilitators very quickly and then if there are questions we'll try to deal with them very quickly. We've been answering some individual questions and I see and some questions are coming up more than once so let's hear from the facilitators. Can I hear from group one, please? Are there any outstanding questions?

**Facilitator 1:** There was not so much an outstanding question. There's an issue that if option C is taken, what would be the Assembly's role in having the text of any new legislation agreed? There was a question submitted and the response that came back raised that.

**Catherine Day:** I can answer that question very quickly because the Assembly will have no role in drafting legislation. What we do is you will be sending recommendations to the Oireachtas and it will be for them to formulate, with the help of the attorney general and with the agreement of the government, they will decide what is the wording that would go to a referendum. So what you need to be thinking about is how can you send a clear message to the Oireachtas on what you want to see changed if you want change, but you will not be coming back and you will not be consulted on the actual wording of what goes to a referendum except that you will then have a vote and so you'll be able to vote and see coming through all the machinery, hopefully something very close to what you recommended. Was there anything else from group one?

**Facilitator 1:** No that was it, thank you very much.

**Catherine Day:** Thank you. Ok, thanks a lot. Group two?

**Facilitator 2:** Thank you, Chair. The citizens of the group also had a similar question that the citizens in room one asked there and in relation to the legal questions, those have been sent on.

**Catherine Day:** Ok, thank you very much. Group three?

**Facilitator 3:** Yes, Chair. There was one question from group three and this is the terminology used: instead of option C, could the replacement be inserted into the section of the constitution on guiding principles?

**Catherine Day:** I think the answer to that is yes it could. I will check this and we'll maybe ask one of our legal experts to come on in a moment, but my understanding is that you could put the same provision into article 45. It would then serve as guidance to the government, but it would not be interpreted by the courts because they do not have a role in terms of interpreting article 45, but maybe Tom or Laura could you just come on and clarify that?

**Laura Cahillane:** Sure, I can answer that, Catherine, and it's not that the courts don't have a role in interpreting article 45. It's just that you can't assert rights on the basis of article 45. So if you wanted to put it into article 45, it would be having very much an aspirational effect. So you're saying to the Oireachtas when you are passing legislation you should take notice of this, but a person can't then go to court and say I have a right to something on the basis of article 45.

**Catherine Day:** Thanks very much, Laura. That's very clear, I think. Can we move to group four?

**Facilitator 4:** Yes, Chair. Thank you. We didn't have so many questions other than, I think, the citizens in group four suggested that the third option on the ballot paper be expanded to include not just gender neutral, but also definite state obligations to support carers and to expand the definition of carers to non-family carers. Also, if yes to option C, whether or not the Assembly could introduce legislation or recommend that legislation be introduced to give respite to carers?

**Catherine Day:** Ok thank you very much. I think there it sounds more like writing legislation because the more detail you try to put into the constitution, the more rigid it becomes and in fact what we are doing now is trying to change rigid definitions that have become outdated in the view of many, but we'll take that that view on board as well. Thank you very much. Group five, please?

**Facilitator 5:** Thanks, Chair. The citizens in group five didn't have any questions at this time.

**Catherine Day:** Thank you very much. Group six?

**Facilitator 6:** Thank you, Chair. We had two questions which was sent on to the panel and one was 'who has the authority of the working of the legislation?' and I think you've already addressed that and two: 'if we make the recommendation to delete and replace do we get an opportunity to request that the government commit to provide support and care?'. So there are two questions and we have put them forward. Thank you.

**Catherine Day:** On the second question, today we're just focusing on the constitution because we're trying to establish our way of working, but in March and in April we will be looking at a lot more detailed recommendations which we would propose to the government to make through legislation or through policy and I think a lot of those issues would be better dealt with in legislation and in policy. So, you know, this is not the only time we have to discuss issues like care inside and outside the home, respite care, etc. All of that will come in the next two meetings. Thank you Group seven, please?

**Facilitator 7:** Thank you. Earlier on in the discussion a question was put forward to the advisory group and just in relation to question B, if something was deleted and not replaced does this create a vacuum and the answer that was received back was no a vacuum is not created so the citizens just had a follow-up question in relation to this: if there is no vacuum created from deleting article 41.2, what is the benefit to replacing this with something else?

**Catherine Day:** Laura, I think you covered that a little bit in your video so maybe I'll ask you to come in on this again, please?

**Laura Cahillane:** That's kind of a tricky one actually because it would depend on how you decided to replace the article and so it's quite possible that if you simply replaced it with something that recognised care with the gender-neutral language, it's quite possible it wouldn't have any difference. And then what's there at the moment, if you did want to create some sort of concrete right arising out of it, you would have to have more prescriptive language and involving some sort of a duty on the government.

**Catherine Day:** Thanks very much, Laura. Group 8, please?

**Facilitator 8:** Morning, Chair. We had a couple of questions, the citizens had a couple of questions. They've been forwarded on to the legal team. One thing that came up, it's really a question for the Chair rather than the legal team: if the citizens vote to delete and change the wording of the constitution, is there a time frame for this process to take place and possibly leading to a referendum? Is there an agreed time frame that the chair has agreed with the government?

**Catherine Day:** No, there is no agreed time frame. What the government has committed to do is to give a reaction to each recommendation that this Assembly will make and, as you know, the Convention on the Constitution already recommended to amend the women in the home clause and that was never followed through with a referendum because it was never possible to agree in government what should be put in its place, but as I've said to you before, this Assembly has the power of persuasion and that is what we are doing when we will be formulating recommendations back to the Oireachtas, but you have not been elected so you cannot replace the elected government. What you can do is send them strong messages and clear messages and I think the fact that Ireland has acted upon recommendations mostly from previous assemblies should also encourage you to be clear.

**Facilitator 8:** That's super. Thank you.

**Catherine Day:** Thank you, and Group nine, please?

**Facilitator 9:** There were no particular questions arising, Chair and there was a broad discussion again in the context of the information that Laura just shared there so it was more about what were the texts or what were the impact of the change in text if option C was adapted.

**Catherine Day:** OK, well thank you all for that feedback. That's very helpful and it's interesting to see that some groups had similar questions. So I hope with the clarifications that we've given you, I'd like now to check if you feel ready to answer question one as it was set out in the paper that you received. So, Lena, could you put the wording up on the screen, please? So what we want to hear from you now is do you think are you happy that this would be the question that we would ask you to vote on in April? So this would be the question that would be on the ballot paper in April. I think you should be ready to give us your reactions on this now. Can you please now, Darren, let's go to the poll and can you please tell us your answer. OK, everybody has indicated their preference so can we see the results now, please? OK, that's a very clear, large number of votes in favour of yes. This is the right question. 12% obviously have doubts or different reasons so that's fine. We register that and we will move on now to question two. This time you're being asked whether you agree that the two options we have suggested to you should be on the ballot paper in April and you have 45 minutes for this question so we're going to put you back in the breakout groups and I'll see you again in 45 minutes and if there are questions from groups please send them to us. We'll try to reply quickly to you and if there are questions to be discussed by the whole Assembly then we'll take them when you come back in 45 minutes time. Thanks a million. See you later.

## 3<sup>rd</sup> Video

**Catherine Day:** Welcome back, everybody. I can see that you're all getting now really to the heart of the matter because what we're getting now is quite a lot of questions coming. Expressed in different words, but all trying to get to the same point. So I thought maybe I would start by trying to deal with the main question that's coming through. Then I'll hear from the facilitators if there are other questions and then I'll make a proposal to you. So a lot of people are asking, well what's the real difference between - we're on question two now and maybe we need to keep in mind all the time that this is not about drafting the language of the way the question would be put in a referendum. That's not our job. That's for the attorney general, the government, the Oireachtas, but what we are trying to word clearly is the option that you would like to vote on in April that sends the clearest possible expression of your wishes back to the government and the Oireachtas. Now I'm going to give you my non-lawyer explanation of the difference between option A and B and then we are going to ask one of our lawyers to come in and also explain the difference to you. So option A is about expressing our values. A constitution should mainly be about broad general principles and in option A what we are asking the government to do is to replace the language of article 41.2 first of all with language that is not gender specific and secondly that would recognise the principle of valuing and sharing care. That would be a value that we as a society want to have in our constitution. That would be for the government to decide how to implement it and it would not be enforceable by the courts so it stays at the level of a principle. Option B tries to be a little bit stronger in that it repeats the fact that we want the language to be not gender specific and that we would like the principles to be there, but then we are giving a strong push to the government to ensure that these principles come through when they are making laws, when they are looking at social welfare payments, etc. So that there would be some rule for the courts there, but they would have to interpret it. Now what I want you to think about while I just ask the facilitators to tell us if there are any other questions is what - I'm sorry - before I ask for our legal advisor to intervene. What I'm getting from a lot of the questions is that at least some of you would like the wording of option B to be stronger. That you would like to send a message, that you want to make it binding on the government, that they would have to take these principles into account and so what I want you to think about is that what you want? If it is, we could do a zoom poll and you can say who wants that and who wants stronger language and who doesn't and we could then, over lunch, we could draft a revised version of option B if that is what you're asking for. So while you think about that let me ask Conor Murphy to come in now and just explain the difference between option A and option B in legal terms based on the text that you have had to consider and then I'll hear from the facilitators and then we'll ask you whether you want to strengthen the language in option B or not. So, Conor could you just explain the legal distinctions between the way the options A and B are currently set out, please?

**Conor O'Mahony:** Thanks, Catherine. I think, as Catherine said, the wording of the draft ballot questions, a ballot question is a little different to a constitutional provision. So, you know, you don't have all the exact detail there of what it might look like, but in broad terms option A, as Catherine said, option A is about really giving an instruction to the government and to the Oireachtas and more or less leaving it in that corner. So under option A there would be very little scope, if any scope, for the courts to come in after the event and review whatever the government or the Oireachtas had done in this space and seek to change that. Whereas under option B, option B is trying to send a stronger message that this isn't just a set of principles that should be considered by the government or the Oireachtas. It's something that they're obliged to adhere to in their policy making or their law making and there would be some role for the courts, potentially, if the government or the

Oireachtas failed to fully give effect to the provision that the courts might potentially come in and have some role in correcting that failure, but exactly how much power the courts would have there's still a spectrum, I suppose, there where the courts could have maybe only very little power to correct government failures or, depending on the wording, they could have stronger powers.

**Catherine Day:** Thanks very much, Conor and sorry for changing your name. OK, so I'm now going to ask the facilitators just to tell us if there are any other questions and then I'll come back to the main question that I see coming through from the different messages we're getting. So could we hear from the facilitator for group one, please?

**Facilitator 1:** Thank you, Chair. There were a couple of issues that the citizens in room one wanted to bring forward. The first point was there were concerns that the Assembly wouldn't sufficiently influence what might go forward into legislation or constitutional change and there was the phrase "box ticking" was a phrase that came up and also concerns that the government ignored recommendations from the Convention on the Constitution in 2013 on elements of this topic so there was a concern about that. The second point was a divided topic in the room and it goes to the wording of B and that there was a proposal from some of the members that some reference would be included to a duty of care by the state and this was not unanimous and there were questions as well as perhaps if there were legal clarity about what duty of care really meant in that context, that that might help inform a future decision on that wording.

**Catherine Day:** Thank you very much and then group two, please?

**Facilitator 2:** Good afternoon, Chair. The citizens group, the big issue is the commitment of what exactly that meant so you've addressed some of that moments ago and the other issue was in relation to the phrase "gender specific" and whether that was just male and female or does it include non-binary.

**Catherine Day:** Could one of our lawyers just respond on that point very quickly when we say not gender specific I think we're trying to get away from the binary definition but could we...

**Conor O'Mahony:** I think the fact that it says non-gender specific, that's the point. If it said "gender-specific" that question might arise, but because it says non-gender-specific I think that, exactly as you say Catherine, takes you away from any binary gender framing.

**Catherine Day:** OK, thank you. Was that it from group two?

**Facilitator 2:** Yes, thank you.

**Catherine Day:** Thank you very much. Group three?

**Facilitator 3:** Yes, Chair. You've addressed the question that this group had in your response to the principle question that was asked. The citizens in this group just have two suggested amendments to the wording of what's being proposed. The first suggested amendment is to include after "valuing and sharing care provided by the home family and community" and this was a suggestion that was made in the National Women's Council submission. So that's the first suggested amendment. The second suggested amendment would come after at the end of the wording in option B. So at the very end what would be inserted is "for all people in our society" and the reason for this stems from the fact that the citizens wanted to avoid this subsection being understood as family specific as coming within article 41 as a whole.

**Catherine Day:** Thank you very much. Group four, please?



**Facilitator 4:** Thank you, Chair and we had a number of questions from the citizens in group four. The first is the procedural question that they wanted to ask before they were polled on this ballot question and that is if it is the case that you want amendments to the wording of the ballot question is it the case that you need to vote no? And then on the legal side there was a number of questions and the first I think has been answered and dealt around whether or not the second option is strong enough. They wanted to see it stronger and rather than policies reflecting the principles they would like a positive obligation on the state to deliver the principles. And the second question is because the word 'family' is not included in the question, does that mean that it encompasses all carers and not just family carers? And the third question, and I appreciate what has been said and that this isn't wording that will be in a referendum, but given that what it has said is the principle of valuing and sharing care and is this sufficient to create rights for carers and those who need care such as rights to housing, income, etc.?

**Catherine Day:** OK, well maybe just to focus on that last question. We must all bear in mind all the time that our terms of reference are anything to do with gender equality. So wider issues like rights to housing or other rights, they're not part of our mandate. So we should stick to the already broad terms of reference that we have. So just to make that clarification. Thanks very much group four. Was that it from you?

**Facilitator 4:** Yes, that's it.

**Catherine Day:** OK, thanks very much. Then group five, please?

**Facilitator 5:** Thank you, Chair. The citizens in room five had two specific questions. Why would we specify that the state is committed to ensuring that its policies reflect this one principle? Surely it beholds the state that its policies reflect all principles of the constitution. And the second question was: what's the legal effect of saying 'ensure' as opposed to 'endeavour'? Does using the word 'ensure' conflict with the powers of the Oireachtas? And then they just have one comment. They felt that the questions were confusing.

**Catherine Day:** OK we'll bear that in mind for the future and does any of our legal team just want to respond on the 'ensure' versus 'endeavour'? Do they have in practical life much difference?

**Conor O'Mahony:** I think that kind of 'endeavour' is usually weaker, Catherine. I think it leaves more flexibility if you're to 'endeavour' to something you're aiming towards it, but you're not compelled to actually achieve it. Whereas 'ensure' is more about actually making sure it happens. It would usually be seen as being a stronger standard.

**Catherine Day:** OK, thanks very much. Then we'll move to group six, please.

**Facilitator 6:** Thank you. So we had one legal question that we sent through and the legal question was: the wording in option B "commit the state" does this mean the state is legally committed to act on it? So we've sent that question through. They also have two questions they want to put through to yourself in the plenary question. One: what is the time frame on the recommendations sent back by the citizens that they have been acknowledged, read and understood? And question two: When voting is done in April, how long is the response time for the government to start taking actions on the recommendations? They were the questions we have, thank you.

**Catherine Day:** OK, well maybe I'll deal with those together immediately now. There is no time frame. The government has not committed to say that within three months or six months they will react, but I think they will find time later this year, I would imagine, to go through the recommendations and give whatever reaction they're going to make, but they have not taken the

commitment to do it with any time frame and also bear in mind that there could be quite a time frame difference between, let's say the government decides to take on board a certain number of recommendations, depending on how they would be implemented if some of them require a referendum that might take longer. If some of them require a law change or just a change in policy so the time frame for implementing different recommendations would be different, but the only commitment that we have is that the government will react to each of the recommendations. After that they, understandably enough I think, have not tied their hands in advance because they don't know what you're going to recommend.

**Facilitator 6:** OK, thank you very much for that.

**Catherine Day:** Thank you. Let's hear from group seven, please.

**Facilitator 7:** Thank you, Chair and group seven just had a question which was sent to the advisory group on the wording of option B on the principle of valuing and sharing care and the citizens just wanted a greater definition or clarity on the point of sharing care and what that means.

**Catherine Day:** OK, thanks very much. Group eight?

**Facilitator 8:** Good afternoon, Chair. Group eight had a very similar question to a lot of the others. What does it mean that the state commits to ensuring that its policies reflects this principle? I think that's been dealt with or will be dealt with in the poll and the second question they had, briefly, was: who drafted the two options?

**Catherine Day:** OK and I can take responsibility for that. Having had a lot of discussion within the Secretariat and with our legal advisors what we also looked at was the way in which the questions were phrased in previous Assemblies because some of you are lawyers, but most of us are not and we're not engaged here in drafting either a question for a referendum or legislation so we tried on the basis of looking at the feedback from all of the breakout group discussions. We tried to pick out what we thought would represent a reasonable way of expressing the views that were coming from, sorry, reasonable way of expressing what was coming from the feedback groups, but I take responsibility for the drafting of the questions and that very neatly allows me actually to go on to say that I think what we're doing now is exactly what the Assembly should be doing and I think it's my role with the help of the Secretariat to try to extract the essence of what you were saying to us and then to play it back to you and if what we play back to you understandably doesn't exactly hit the right spot then you should do exactly what you're doing now which is to tell us how you want it to be changed and, as I say, this is you know we're innovating for this is the first time that we do this as a group and I think it's working pretty well. So what I would like to do now is the following: to ask you to, not to put on the screen now but I'll ask for it in a minute to go on the screen. I'm, as I said, I'm taking from a lot of the discussion that some of you would like option B to be worded differently so that it is it requires a stronger commitment from the state if it accepts it. That the state would be more bound by it. So what I'd like to do since we would need a little bit of time to get the right balance in how we would word a revised version, I'd like to just ask you am I correctly understanding what some of you would like. So let's put the question up on the screen and see would you be happy to answer, sorry, to answer this question with yes or no. OK well then maybe take it off the screen for the moment, somebody obviously wants to come in.

**Pamela Kearney:** I'm very sorry.

**Catherine Day:** Who is coming in? Pamela, OK.

**Pamela Kearney:** I'm sorry. In Dr. Cahillane's video she did state that she felt that if it was a more strongly worded question the state might, the government might refuse to actually implement the changes due to the costs, you know, if we shall engage and I'm just wondering is there a balance there in the wording that would be advisable? Would that be an issue before we voted on the change?

**Catherine Day:** OK. Laura, would you like to come back in on that point, please?

**Laura Cahillane:** Sure. I suppose that's just the point that when these recommendations came initially from the constitutional convention they were considered by a Department of Justice task force and that task force, its main concern was that trying to create a very concrete duty in article 41.2 could potentially cost the state a lot of money and that's very much a sort of a policy consideration. That's the sort of thing that governments are concerned with because normally the government is the one who has responsibility for the budgets of the state. So for that reason the Department of Justice was not willing to look at that as a potential option because they didn't want to tie the hands of the government in relation to potential costs because of the fact that they wouldn't know what the costs involved would be and that was something that the Oireachtas was very concerned with as well when the question arose as to what should be done with the referendum, whether it should be simple deletion or whether it should be delete and replace. So that's certainly something to be concerned about, but you as the citizens do certainly still have the choice. Do you want to give that message to the government that you would like that a potential strong replacement option be put into the constitution?

**Pamela Kearney:** Thank you.

**Catherine Day:** OK, thanks very much. So let's come back and look at the question and see whether this is a question that would be helpful in the light of our discussion or not. So can we have the question up on the screen again, please? OK, thank you. I think everybody has indicated their preference so can we see the results now, please? OK, 71% say yes so 29% say no. OK, well look I see in the chat function that some people are asking for an option C and you know if that's what the majority want we can have that. I would just make this comment that on constitutional questions it's usually better to have a straightforward yes or no answer because if you have three options the votes tend to get spread and then obviously have less impact and again if you look at the Convention on the Constitution they had some, I can't remember the numbers exactly, but something like 86% said that the woman in the home clause should be amended, but then when they looked at more options as to how it should be amended the voting was much diluted in fact away from the 86% as people chose different options. So what I think we'll do now is we will break for lunch. We will try to, we will not only try, we will come back with a reformulated option B and we can have a look again at the questions and if, having seen that, people still want to have three options rather than two then we can look at that as well, but at least let's have a look and see, with the help of our legal team, how we would reformulate option B in the light of the discussion and the views that you have expressed. So we'll break for lunch now. We'd ask you to stay connected and just turn off your mics, but also if you can't do that for any reason then please be back at ten past one and we'll start again at a quarter past one. So take a break, clear your heads, have something to eat and we'll see you back ready for more action, more decisions at a quarter past one and thanks very much. I think it's been a very fruitful morning so job well done so far. Thanks everybody.

**Catherine Day:** Now, we've been working over lunch with our legal team and hopefully we've come up with solutions that will strike the right balance between all your various views and comments. I know that some of you have come up with specific suggestions in terms of wording and you can

imagine that all the input doesn't necessarily agree one with the other and so what we've tried to do is to come up with wording that we believe represents a fair compromise and that I hope you can support. Now before we go into explaining all of that, I want to apologise to group nine. I'm sorry. In my enthusiasm, I didn't call on you to report, but we have been in touch with you over lunch and we've got your questions and we fed them back into the discussion, but please accept my apologies. I'll try not to miss anybody out again. So let's now take you through what we would like to suggest for your consideration. Just before lunch we had the additional poll and 71% of you expressed a preference to introduce an option B with a stronger obligation on the state and that means that 29% of you didn't favour that option for whatever reason. I don't know. Maybe they were concerned over the potential costs or the degree of obligation and if your preference is to stay at the level of principle you can then vote for option A in April. We've also made some very small changes to option A that I'll explain in a moment, but what we have now come up with is the following and if we could put the wording up on the screen please, Lena, I think and then leave it there people will have time to think about it while I take you through it. So first of all to explain what we are suggesting to do in option A. Some of you were wondering what does the word, when we have the principle of valuing and we had "sharing" care in the version that we were discussing earlier on. We're proposing to take out the word 'sharing' because it was causing confusion and instead to replace it with the word 'supporting' and the reason for this is that the word supporting recognises that carers don't just need recognition, but they also need support. It's still more of a symbolic recognition of the need for support and it would not place an actionable commitment on the state to provide it. We've also suggested to put in the words 'within the home and the wider community' and again based on your feedback so that if you choose option A, you would be also expressing your wish to give recognition to care beyond the family. So those are just two small changes that we would suggest to option A. Now then option B. As you see, we have revised quite a lot and we have also added the words 'within the home and the community' so that would be the same in both options, but the big change to option B is now that the word 'oblige' is much stronger than the previous language in option B and you might be interested to know that the phrase "reasonable measures to support care" actually comes from the constitution of South Africa and it's seen as a model of good practice in the area. It would allow the courts to review the reasonableness of government policy, but the courts would not be able to make policy themselves. But what they could do if they felt the government was not respecting this kind of an obligation then they would send the government back to the drawing board. So this revised version of option B would give you the option to signal that you want to place a stronger obligation on the state and maybe, just again, to point out that if you feel that's too strong you shouldn't necessarily vote now in our poll. This is just to give an option to members who want that in the final vote in April, but you would still have the option to vote for option A in April if you believe that option B is too strong. So what I would now suggest is take a minute or two to think about it. I hope that you will recognize that we have made a lot of effort to try to marry up all the different contributions that you made during the morning. Maybe it's not as you would write it, but I do think that now we have two options which really do reflect the views that you have expressed and I hope that in the spirit of compromise that I was asking you to show earlier on that you would feel happy now to go ahead and choose whether these are the two options that should be on the ballot paper in April. If anybody has a really particular problem maybe type your name in the chat function and I'll give you the floor very briefly, but we do have to be mindful of time and I think that we do also, you know, we can't now have a repeat of the discussion we had this morning, but just if anybody has any really major problems with the way in which we've presented the alternatives and interpreted what you're telling us you want, maybe just very quickly signal that and then in a couple of minutes I'll ask you to actually choose on these. Colette, have you got sound again? Can you hear us? OK, we'll try to get you back.

OK, all right well look having had the chance now to think about that and to weigh it up in the light of the discussion that we had this morning, could we now ask you to indicate via the Zoom poll whether you agree that question two as you now see it the revised version of question two that that should appear on the ballot paper in April? So the poll question will come up now and like you've done already today we'll ask you to choose between yes or no.

So let's see what the outcome is.

Oh my goodness. I think that's very convincing. Well look, thanks very much and in particular what I'm very happy about is that it's your input that has shaped the questions. As I keep saying the Secretariat and I are here to facilitate your work, but you are the people who are making the decisions and I think you've just proved that again by refining and elaborating and making more clear your choices and that's really what this is all about. So we will move on now from that. One thing I would like to say is that on the whole question of care and caring, a lot of more detailed questions came up and we'll come back to those when we're looking at other recommendations you will be deciding on in March and April. So today we're just trying to settle the question of what you will vote on as regards changing the constitution in April. Then we'll move on to a lot of other questions about caring when we look at the other recommendations that you'll be making. So again thank you all very much, including for your willingness to accommodate each other's points of view and work with us to try to get the outcome as clear and as reflective as possible of the overall mood and wishes of the Assembly. So I think it's been a very good start in our work and I appreciate that. We will now put you back in your breakout groups for the last time today. You'll have around 50 minutes and you're going to be discussing questions three and four and the same rules as before. You're not answering the questions today. Today you're telling us whether you feel these are the right questions. These are the questions that should be on the ballot paper in April and remember that in April you will only vote on question four if a majority indicates yes to question three and if this happens then we will need now to agree on question four which will be to follow on if the majority vote yes to question three. So I hope that's clear and we will see you back again at about twenty five to three and as last time when you come back I will check with the facilitators if there are any questions or any issues arising from your discussions, but if you have questions that pop up in your group like you did this morning, please email them to us through the question responder in your group and we try to answer detailed questions as much as possible. If there are one or two questions that are coming up across the groups then I'll address them when you come back in plenary at twenty five to three.

## 4<sup>th</sup> Video

**Catherine Day:** We've had quite a few questions coming from the different groups so what I'm going to do this time is I'm going to hear from each facilitator in turn and I'm going to start with group nine just to make sure that I don't leave anybody out this time around. I think you will see that several groups have a similar question so I'll try to give an answer to that and bring in the lawyers and we'll take stock at that stage where we are. So can I hear now from each facilitator in turn, starting first with group nine, please?

**Facilitator 9:** Thank you, Chair. Actually all of the questions from the room were answered by the expert group so we have nothing to further add. Thank you very much.

**Catherine Day:** OK, thanks very much. Group 8? Hi, Group 8 are you with us?

**Facilitator 8:** Right yep, sorry I didn't realize we were going in reverse order. OK, good afternoon, Chair. Now the citizens at table 8 have one or two feedback items which they'd like to put back. They would like to know in question three why is the phrase "however it might be understood" used instead of a definition for the family and now the other piece of feedback; all the citizens agreed they felt that the poll after lunch should have been allocated time to discuss the new proposed wording and the citizens would like reassurance that this will not happen again and this is a feedback from the citizens. So they were the main two points. They felt time should have been allocated to have a breakout discussion for maybe five or ten minutes and then come back. The fact that it was just put up on a screen and then they had to take a poll on it they didn't like that and they would like a reassurance that that wouldn't happen again, that things wouldn't be rushed.

**Catherine Day:** OK let me deal with that point now. I'll deal with the other point later. I did say that please take a bit of time to think about it and then nobody was typing their name into the chat function so I probably wrongly assumed that people were happy and I certainly will take that feedback on board and we'll try to structure it in future so that there's always a bit, let's say more time than I perhaps left this time around, but I just assumed that when nobody had typed in any question that there weren't any so apologies if I misunderstood that. We'll come back on the other point in a moment and I'll come down to group seven, please.

**Facilitator 7:** Chair, the citizens from room seven just had a comment to make and there was just concern from the citizens in relation to article 41.3.1 and the reference to the institution of marriage on which the family is founded and the citizens felt that if the definition of family is to be redefined then this would conflict with this article.

**Catherine Day:** Thank you. Group six.

**Facilitator 6:** Thank you and we had one question which we fed to the lawyers and we got we got an answer, thank you very much. They have two points of feedback for yourselves and to remove questions, sorry feedback number one: to remove terminology in the constitution that a family is founded upon the word marriage the state pledges itself to guard with special care efforts family to protect itself against attack. Question two was that they need the wording of all members of the family unit to have shared and equal rights. That's it, thank you.

**Catherine Day:** Thank you very much and Group five?

**Facilitator 5:** Thank you, Chair and we just had one question which was fed back to the experts and it has been answered so we're fine, thank you.

**Catherine Day:** Thank you very much. Group four?

**Facilitator 4:** Thank you, Chair. The citizens in group four were almost unanimous that the fourth question should have come before the third question and because they felt that they were unprepared to answer the third question without a good definition of the family and they did have a number of questions some of which were answered by the legal representatives and the first question that, they had a number that weren't answered as well, and the first is: can we give advice on the types of expansion of the definition and so rather than just saying it should be expanded can we elaborate on that? And then the meaning of the constitution. What is the meaning of the constitutional status and protection and what would the implications be? The another question is what are the consequences of deleting the reference to the recognition and protection of the family as opposed to expanding the definition and also what are the implications for non-blood relationship families and in expanding the definition of the family and also if we deleted article 41.3.1 would that open the scope for non-marital, non-blood family and they also noted that there's no option to leave the family undefined within the constitution and some of the citizens preferred that that would be the case that that would be there. Some also expressed concern that if we were to expand the definition of a family then there would need to be certain protections for spouses and children regarding inheritance and succession. Yeah I think that's about it.

**Catherine Day:** OK thank you very much. I'll just say to our legal panel that they might be preparing their answers on a couple of those points. I'll bring them in shortly. We'll go next to group three, please.

**Facilitator 3:** Yes, Chair. You mentioned the experience of the South African constitution in terms of using 'obliges' in the constitution and the citizens were wondering would they be able to be provided with more details on the context of this before the voting in April and then the citizens at table or group three had three other questions. So one citizen wanted to know the legal implications of using, and I quote "the family however it might be understood" in brackets in the text of the constitution. The next question is in terms of the description of the family is "antecedent to positive law". Why was this included in the constitution and what would be the consequences of removing this particular phrase "antecedent to positive law"? And finally there was a submission by one family group that looked at article 8 of the European Convention of Human Rights. Could the citizens be provided with the text of article 8 of European Convention on Human rights and could the citizens discuss the possibility of inserting this into article 41 of the constitution?

**Catherine Day:** Thank you very much. This brings us next to group two, please.

**Facilitator 2:** Good afternoon, Chair. The citizens at table two had a number of queries or comments. There was discussion in relation to the wording of understood, definition, considered, defined, configured in relation to family and whether there's any implications in terms of that, in terms of the voting. In particular to try and get as much clarity as possible. The next one was in relation to having the family in the constitution. What are the implications of having it in and not having it in and what are the advantages/disadvantages? Somewhat linked to that was whether there was other countries that don't have family mentioned in the constitution, of what does that impact, what does that do? One of the citizens inquired: would a single household be included as a family?

**Catherine Day:** Does that mean one person living on their own?

**Facilitator 2:** Yes. Another issue was two citizens asked that they could see the notes of the other groups before they would vote and then a question or an observation that was previously raised was

the sequencing of questions in terms of four before three and I think that was the main points hopefully from table two.

**Catherine Day:** Thank you very much and now we come to table one, please.

**Facilitator 1:** Thank you, Chair. The citizens in room one were unanimous in saying yes to both parts of question three and question four. In the discussion around the definition of the family, and everybody recognized how difficult a job that would be, there were a number of recommendations. There was a recommendation that perhaps that it be defined as a unit would be a civil union, different from and alongside a marriage that is traditionally interpreted, but that would be all inclusive including, for instance, other polynomials, polygamous units that may exist. A further point that was discussed for consideration and might be considered is that the constitution focus on the individual as a mechanism for capturing as a catch-all for defining what might be applied to the family. So those are the contributions from room one.

**Catherine Day:** Thank you very much. OK now I'm going to ask various of our legal experts to come in on a quite a number of these questions because I think it's important that everybody feels their questions were answered. I mean some of these questions there isn't a yes or no easy answer, but we'll ask the lawyers to explain the context, but let me just make a couple of comments first of all. One group was asking could they see the notes of the other groups. First of all we wouldn't be able to do that today and it would mean we would have to, you know, come back another day to all these questions which is something to weigh up, but what I think we're doing now you've heard the report from each of the groups and I want to tackle first of all a number of questions that have come up across the different groups and I hope in that way perhaps then you will know what has been discussed in the different groups and that you won't feel you need to plough through - there might be 20 or 30 pages of notes per group so you'd have to go through a lot in order to get a sense of the discussion and I think we can give you a good sense of what has been discussed in the different groups without having to get you to go through the notes. We can always send on the notes afterwards if you want to have them to think about between now and voting in April and that's a possibility as well. I think one of the biggest questions that has come up for all of you is what is the definition of the family? Is there a standard definition of family somewhere that would help us and I think if you just think about the journey that Ireland has travelled from 1937, when they only imagined a married family, to where we are today and how much the broadened the understanding of family has changed to go from divorced and reconstituted families to same-sex families to single-parent families. You can see maybe the danger of trying to tie us down in something as unwieldy as a constitution to any particular definition. So what I have learned from the lawyers is that some constitutions do refer to the family and some don't, but most of those that do refer to the family do not define it and that at least allows then the understanding of family to evolve as in the real world different family compositions happen. So you'll hear from the lawyers in a moment, but the advice is not to have a definition of family, but rather to leave it up to the judges. If you do mention the word family in the constitution then to leave it up to the judges to decide on the basis of the case in front of them, is this a family or not, and somebody asked in one group they asked about what about, for example, care for the elderly and you know, for example, if you had say two siblings caring for an elderly parent, is that a family or is that not a family? So again the dangers of trying to define family in the constitution I think are perhaps what we have to pay attention to. The reason why we're discussing this now is because our constitution links the word family and marriage together and gives you a very narrow definition of what is a family. So what we're trying to get at in the questions that we're asking you today is: do you think that one way or another we need to get away from that link in our constitution between family and marriage? I'm going to ask now the and that's - sorry.



That's what we meant as well, and again, we are not drafting language for the constitution and we're not drafting the question for a referendum. We're just asking what do you want to vote on in April so as to send your clear message back to the Oireachtas. So when we put in the draft question, however it might be understood, what we meant by that was just saying: do you want a very broad understanding of family to be reflected and not defined? So can I now ask our various legal experts, all of whom have been busy replying to your questions, just to come in on the different questions that came from the different groups and try to help the citizens understand what would be the best way to resolve the dilemmas and the questions that they have raised? I don't know who'd like to go first on this. Maybe, Conor, you were talking about how other constitutions deal with family so maybe I could bring you in first.

**Conor O'Mahony:** Yeah, so on that point, and I know one of the questions that came up at one point, somebody asked the question: what about the option of leaving the family undefined, is that option available? And yes is the simple answer to that. It is possible to leave the definition of family open and where that is the approach that's taken, what judges tend to do is to look at form of, is that their family by virtue of form or is there a family by virtue of function? So a form of family would be, for example, where there is a marriage then obviously that fulfils a family form, but function would be a more flexible idea that a judge could look at a particular group of people and say "well are they fulfilling the functions of a family even though they might not fit into the normal form?". So that would be one way of doing that and quite a common way. On the question of leaving it out and so if you take say within Europe or the Council of Europe states, 47, and about two thirds of those states have the family in the constitution. About one-third don't. If you don't have the family in the constitution, what that means is that some of the ways in which people might use family rights to potentially challenge legislation or government policy which has a negative impact on their family life, it would be harder to bring those kinds of challenges because you wouldn't have a constitutional provision which you could rely on for that purpose, but it should be said it wouldn't be impossible because even if you didn't have it in the constitution there would still be international human rights conventions that were subscribed to like the European Convention on Human Rights which protects the right to family life. So taking it out of the constitution wouldn't mean there would be no protection, but it would mean it would take away an important form of protection that's there at the moment.

**Laura Cahillane:** There were a good few questions from Group four actually.

**Catherine Day:** Please, Laura.

**Laura Cahillane:** Do they want to just reiterate the questions because we didn't necessarily write them all down?

**Catherine Day:** OK, Group four facilitator could you just repeat their questions, please?

**Facilitator 4:** Yes, of course. Just a moment. Let me get them there. OK, so the first question is: what is the meaning of special constitutional status and protection and what would the implications be, the same implications of it, and the implications of removing it? Next question is: what are the consequences of deleting the reference to recognition and protection of family as opposed to expanding the definition? And next question.

**Tom Hickey:** Might we address those ones just now, because.

**Facilitator 4:** Of course, yeah.

**Tom Hickey:** Laura, would you like to seen as... So I suppose, excuse me, I interrupted a bit there, but just Conor has just kind of given an answer to that question, I think. You know, what is the relevance of giving quote “special constitutional status and recognition to the family”? Well, it just means that the state can't interfere with family, certain kinds of family decisions in certain contexts or makes it more difficult to do so. So in other words what Conor said in response to an earlier question, I think applies to those two questions actually.

**Catherine Day:** Thank you. Oran or Fergus, do you want to come in on any of this?

**Tom Hickey:** I interrupted Hugh there. He had two questions asked and I think they're now answered hopefully so.

**Facilitator 4:** OK, I can go on and so the next one is: what are the implications for non-blood relationship families in expanding the definition of family? And the last one is: if we deleted article 41.3.1 would that open the scope for non-marital, non-blood families?

**Tom Hickey:** If any of the other lawyers would like to come in on those questions?

**Conor O'Mahony:** Yeah I mean I might quickly. I think if you expand the definition of family then families which are not based on blood tie potentially could come within the scope of the protection of article 41. You know, at the moment it's really defined as one particular form of family. If you leave it open-ended in the way I described earlier than a broader range of family forms, including for example, where you have what's called a social parent who isn't genetically related to a child for example, but is performing a parenting role might then benefit from the protection of article 41 in that way. So that would be the implication there and, sorry what was the second part of that?

**Oran Doyle:** I can come in on the last question if you want.

**Facilitator 4:** Yeah, so the last question is very similar. So if we deleted article 41.3.1 would that open the scope for non-marital, non-blood families?

**Oran Doyle:** So if you've deleted article 41.3.1 in its entirety, it might have knock-on effects on other provisions that deal with marriage such as the same-sex marriage provision and the divorce provisions, but if you were trying to broaden the definition of family in general one thing that you would probably do perhaps with others is to delete the words in 41.3.1 “on which the family is founded”. So you would separate the protection of marriage from the definition of the family and if you did that that would be this sort of broadening, non-defined family that would be open to judicial interpretation that was spoken about in answer to some of the earlier questions. If my colleagues are happy with that.

**Fergus Ryan:** Could I come in there on a broader and another question.

**Catherine Day:** Please, Fergus. Yes.

**Fergus Ryan:** Which I think is related and that is there may be a view that it's an either/or, but it can be both. You can actually have constitutional provisions that protect marriage that provide protection for the status of marriage and also that provide separately for the protection of families, however defined, in in a broader sense and so it isn't necessarily the case that protecting marriage and protecting the family are mutually exclusive. You can do both in the same constitution and you can protect the broader family while also providing specific protection for marriage as well. How that would work in practice is, you know, it would take a longer time to explain, but I don't know if the other lawyers agree with me, but I don't think they're mutually exclusive. I think you can protect both.

**Tom Hickey:** Siobhán Airey, I think asked a follow-up question. What are the implications of according the family's special constitutional status and protection, but how would that affect non-marital families? Well, if the situation were to remain as is, namely that only marital families were protected under article 41, well then non-marital families simply wouldn't enjoy that decision-making authority etc. that marital families do. Right, so I hope that answers that question and others asked about the language inalienable, antecedent etc. I can't exactly recall that question, but somebody asked.

**Catherine Day:** Did that come from Group three, I think, Aoife.

**Facilitator 3:** Yes.

**Catherine Day:** Could you just repeat the question, please?

**Facilitator 3:** Yeah I can absolutely. In respect of the description of the family's antecedent to positive law, why was that initially put into the constitution in your view and what are the consequences or what would be the consequences of removing this particular phrase "antecedent to positive law and superior to positive law"?

**Oran Doyle:** So the language that "antecedent positive law" language very much comes from papal encyclicals written by the pope about ten years before the constitution was enacted and it reflects a theory of the world, if you want, where first of all you have families and they come before the state. So they are antecedent to the state and the state is there to serve families. So that's the sort of philosophy behind it. At this stage I think it may in the past have had implications in relation to decision-making authority and the relationship between families and the state, but that's now dealt with very specifically in article 42A of the constitution that was put in in an amendment in 2012. So at this stage it's hard to see what the implications would be of removing that language. I think there might be slight implications, but it's the sort of things that lawyers should, you know, would argue about forever and probably not that much turns on it. That would be my reading of it.

**Catherine Day:** OK. Thanks for all those answers. I think the questions were very good and shows that citizens really have got to the heart of the issues and I think the answers hopefully were helpful. What I'm going to suggest now is that we'll take a short break. We will have a look at the wording of the questions in the light of the questions you've put and the answers you've had. We will try to bring you back at a quarter past three, because we need a little bit of time just to look at the wording. At a quarter past three we'll put whatever suggestions we have to revise the wording up on the screen and we'll explain why we propose to change it. We would then put you back into your breakout groups for 10 minutes to discuss that and then we'd bring you back and see are you ready to take the final poll and say do you agree that the revised question or questions are the right ones or not and I hope that that would be the best way to try to make sure everybody has had time to think about the questions, time to discuss them and also that we will still be able to finish, if not exactly at the time that we had initially signalled, then very close to it, because I'm sure lots of you have other arrangements for later in the day. So we'll break now if that's OK with everybody and we'll bring you back at a quarter past three and we'll show you whatever new wording we have managed to hammer out by then. OK. So see you at a quarter past three. Thanks.

#### **After Break**

**Catherine Day:** As I said this morning, you know, since we're moving to a new phase and we have to experiment a little bit and thank you for bearing with us as we needed a bit of time for consultation.

So we have had a quick chat with the legal team and I think we have reformulated both question three and four in a way that I hope will reflect to the largest extent possible the different views that you were sending to us through your questions and through the facilitators. So I'm going to ask Lena to put them up on the screen now and then I will explain to you the thinking behind the reformulation. First of all we've tried to make the questions as clear as possible and you can see here that question three would now be very short. Simply, the question is: Should the constitution continue to provide recognition for the family? So that's the first question we propose to you and then the second question, it is partly based on article 8 of the European Convention on Human Rights and I'm just going to read you the first sentence of the European Convention on Human Rights. It's very short and simple. It says: Everyone has the right to respect for his private and family life, his home and his correspondence. So we drew some inspiration from that and we thought the best way to frame the question reflecting all your discussion was to ask: Should the constitution protect private and family life, including forms of family life beyond the marital family? We've phrased it in this way because the advice from the legal team is that you should avoid trying to pin down a definition of family. That should be allowed to evolve over time and as cases come up which may involve different compositions of family. So I'm now going to ask Conor O'Mahony to come back in and just to give you a little bit more background on the legal thinking that has led us to propose these two, I think now more clear and straightforward, questions for your consideration. So, Conor, could we bring you in first, please and then any other of the legal team who wants to add something?

**Conor O'Mahony:** Sure. Thanks, Catherine. Question three is really just an in-principle question. So even if you vote yes to question three, you're not voting to keep article 41 exactly as it is. It's just the idea of, in principle, do you think the family should have constitutional recognition and that's a kind of a yes/no question. So then if you vote yes, that obviously raises the question of what form that should take, but even if you vote no to question three, even if you thought that the constitution shouldn't include any recognition of the family anymore, you should still vote on question four, because you'd have to think "well what if what if you lose that vote" as it were in question three and there is to be still something in the constitution, you should also vote on question four to indicate what you think that should look like. So question four then essentially is just asking the question: do we want to continue with the current position where only the marital family is recognized? If that's what you think, you would vote no to question four, but if you think that the constitution should protect other family forms and not just the traditional marital family, you should vote yes to question four and the way it's structured is to leave that definition based on our earlier discussion. Leave that open to evolution over time. So rather than pinning down a specific definition in the text of the constitution which then might need to be revisited in other referendums...

**Catherine Day:** Oh, Conor, you've gone on mute.

**Conor O'Mahony:** Yeah, sorry somebody hit mute on me there accidentally. Anyway, I'm back. So if you go for this approach in question four, what you're doing is you're leaving it open for this to evolve in the future. So rather than pinning down a definition which might need to be revisited then in later referendums, if people want to expand it, you leave it open to evolution over time and essentially if there were disputes it would be for courts to decide on a case-by-case basis whether a particular group of people met the definition of family life and the European Court of Human Rights has an extensive body of cases in which they've shown how that could be done and that could obviously help to inform any Irish case law in the future. So that's basically it. We got, there was a question popped up there in the chat: What's the risk of taking it out completely? And that goes back to something that came up earlier on. If you take it, so let's say if you vote no to question three.

If you say the constitution shouldn't continue to protect, provide recognition for the family. Basically what you're then saying is that you're giving more discretion to the Oireachtas or to the government to formulate laws or policies which might have an impact on the family and you're taking away some of the possibility that might be there for citizens to challenge those laws or policies by reference to family rights is the simple answer to that.

**Catherine Day:** OK. Anybody else from the legal team want to come in and add a comment?

**Tom Hickey:** Just I might, Catherine, if I may and perhaps even just seeing as Conor has given such a good account of things there. Do you think, Conor, it's worth mentioning 42 and 42A and that?

**Conor O'Mahony:** Yeah, sorry. Thanks, Tom. That's a good point. So the answer I just gave about the risk of taking it out which is kind of I suppose slightly in the abstract, but within our particular constitutional framework, in our particular constitutional history, I guess, there is kind of three constitutional provisions that are taken as a package, if I could put it that way. Article 41 of the family runs very directly into article 42 on education which refers back to the idea of the family and then children, again, builds further on that so those three provisions at the moment on family, education, and children are kind of a package at the moment and if you took article 41 out completely lock, stock and barrel and that would raise questions which people like us would have to wrestle with around what that meant for article 42 on education and article 42A on children.

**Oran Doyle:** I might come in quickly. So there's another question in the chat or an explanation of the question about what was the implication in question three of removing "given special constitutional status and protection" and I think we think not much. That in a way that was saying the same thing twice. That if you recognize it in the constitution, that is the special constitutional status so the earlier version was just a bit too wordy and we've made it shorter.

**Laura Cahillane:** Just on Siobhán Airey's question there as well. Recognition of care/carers is covered and marital/non-marital family is covered with this proposal. So yeah the questions that you were voting on earlier on are solely just to do with the particular part of article 41 that deals with the woman in the home or that so-called provision whereas these questions in particular are looking at the idea of the family within the constitution more generally. So you can treat them as two separate issues.

**Catherine Day:** OK. So thanks very much. Now what I'm going to do is, it is now 15:24 and what I'd like to do is to put you back into the breakout groups for 10 minutes to have a quick discussion among yourselves as to whether you are happy with these two questions. We'll bring you back after 10 minutes and then I will ask you whether you're ready to agree to these questions or not. My hope would be that we have found a good balance here that reflects the different discussions, but if not then we won't be able to conclude today and we'll have to postpone to another day, but take 10 minutes to discuss in the groups. We'll bring you back then and I'll then ask you the question whether you're ready to take the Zoom poll on things or not to the questions recorders. Excuse me. Just bear with me a moment, please. OK, yes and the Secretariat's just telling me here that obviously you don't have the wording at the moment, but it will be sent to each of the groups so you'll be able to write it down and look at it and discuss it and we'll bring you back in 10 minutes and then you'll tell us what you want to do next. OK, so we'll see you in 10 minutes. Thanks very much.

#### **After BG Groups**

**Catherine Day:** OK, welcome back everybody. I hope it was helpful to have a few minutes to consider the revised proposed ballot paper. Maybe I should just say you probably have the feeling

that we've been trying to move at a certain pace today and that's certainly true because as I said at the beginning of the pressure and the constraints of working online, but it's also because we actually are discussing very important questions today, but a very limited number of questions and in March and April we will have to discuss a significantly bigger number of recommendations with you and I think you can see each time that it takes quite a lot of time to go into the breakout groups, back to the plenary, back again. So what I'm trying to do is to manage the time efficiently, because I do think that everybody wants to finish up in April and not to have this running on considerably longer, but again these are all the kind of questions that we can discuss with you in the light of today's experience and I'll mention that in my summing up conclusions at the end, but just to explain why I've been trying to find the right balance between keeping you moving, but giving you enough time to discuss and if you feel we haven't got the balance quite right then you can tell us that and we'll see how we might adjust. What I'd like to do now is to hear quickly from each of the breakout groups. So can I hear from each of the facilitators and then I'll let you know what I think we should do next. So can we hear from group one, please? Is there anything to report?

**Facilitator 1:** Thank you, Chair. In relation to question three, there was unanimous agreement that that question would stand. There were a number of issues in relation to question four and two clarifications were forwarded to the expert group around the use of the phrase "private life" and what implications there would be for a definition of family life in this revised one. Overall, however, there was a sense that people haven't had an opportunity to really consider these issues in the absence of answers to those questions and they would like to see the revised drafts. There was a request that the revised drafts be emailed to everybody as well as an email of the revised question two from this morning and so there wasn't a definitive view in relation to question four.

**Catherine Day:** OK. Thanks very much. Well this question of what do we mean by private life has come up in another group as well. So, Fergus, could I bring you in from the legal team, please, just to address that question and then we'll move on to the other groups.

**Fergus Ryan:** Yes, thanks. There's an argument potentially that one doesn't need the word "private" and in this context, because privacy, the right to privacy is already protected by the constitution by article 40.3 and, however, because the words are grouped together in the article 8 of the European Convention on Human Rights, we felt it made sense to include here. Privacy is effectively, protects, I suppose, the individual from unreasonable intervention by the state in things that are not the state's business. So it's the right to be let alone. That there are certain parts of our life that we're entitled to make decisions about ourselves without undue state interference. It is important to note that the right to privacy is not absolute. It doesn't mean the state cannot intervene in appropriate cases such as, for instance, in incidents of domestic violence and so on, but I suppose the inclusion of the word "privacy" broadens the scope of the protection to include, I suppose you know, people in a single person household, for instance. But it isn't technically necessary because there is already protection for privacy both in the European Convention on Human Rights and also implicitly in the constitution. It's one of the unremunerated rights that's protected by article 40.3. I don't know if that answers the question or?

**Catherine Day:** I hope so. Thanks very much, Seamus. Can I move on to Group two now, please?

**Facilitator 2:** Thanks very much, Chair. In relation to question three, the group felt that the wording was clear, simple and straightforward and acknowledge the work done. So thanks for that. In relation to question four, a number of the citizens were happy with the wording. One citizen made the following suggestion. It was in relation to the inclusion of the phrase "marital family". So the

suggestion was that the words would be changed to “including all forms of family life” and then omit “beyond the marital family”.

**Catherine Day:** Thank you very much. Group three, please.

**Facilitator 3:** Yes. Group three were broadly in agreement that they were happy with the text of both questions. One citizen had reservations about question three because they wanted to have protection for everybody rather than just the family, but that was one citizen and who had a general reservation. One comment was that they would like this more simple and clear language in the questions to be continued to be used going forward. They appreciated that.

**Catherine Day:** Thank you very much. Group four.

**Facilitator 4:** Yes thank you, Chair. Our group also had a question about private life, but that I think has now been answered and they also had a question in relation to question three. They said: is question three effectively that nothing changes, that the position will stay the same as it is right now and is recognition under question three to be the same as it is under article 41.1.1? And just a general comment in relation to the schedule for today, they said that they found it, at least some of the citizens, that they found it quite intense and perhaps for the days where there's more on the agenda that perhaps it should be spread out over two days.

**Catherine Day:** OK thanks very much. I think that's a question we'll come back to so I won't answer it now. Can we hear from Group four, please?

**Conor O'Mahony:** Sorry, Catherine, before we do maybe just to very briefly mention on that question about the nothing changing. Question three. Just to be clear, if you vote yes to question three to continue to keep protection for the family in the constitution, that's only in principle. It would only be the case that nothing would change if you voted yes to question three, but then followed that up by voting no to question four. If you voted yes to both questions then you wouldn't be continuing the current position if that makes sense.

**Catherine Day:** Thanks, Conor. OK, Group four, please.

**Facilitator 5:** I think we're on Group five, Chair.

**Catherine Day:** I'm sorry, Group five.

**Facilitator 5:** No problem. Group five were unanimously in favour of the wording of both questions, but they have a proposal for the Assembly. They proposed that this Assembly examined article 42 as it impacts gender equality in Ireland by giving effect to the policies of article 41.

**Catherine Day:** Could we just get a quick reaction from the lawyers on whether article 42 does have gender implications or not, please?

**Conor O'Mahony:** I personally don't think it does. If you look at the language of article 42, it uses the words parents, it uses the word children, it uses the word family. It doesn't have any gendered language in article 42 at all and there's no judgments of the courts which have ever implied any gender implications flowing from any of the provisions in article 42.

**Catherine Day:** OK, thanks very much.

**Tom Hickey:** I agree with that very much, yeah.

**Catherine Day:** OK, thank you. So now I'm on Group six, am I? I'm getting a bit lost.

**Facilitator 6:** You are, thank you.

**Catherine Day:** Thank you.

**Facilitator 6:** No problem at all. On both questions we had a full consensus and everybody was in agreement on both questions so we had nothing, thank you.

**Catherine Day:** OK, thank you very much. Group seven.

**Facilitator 7:** Thank you, Chair. The citizens were happy with the revised questions in room seven and they felt questions were clear and concise. There was a question on the private life and so that was already answered and there was just one more question on how could the family be protected from state interference?

**Catherine Day:** Again, do the lawyers want to react quickly on that?

**Oran Doyle:** I can answer that. So that's currently dealt with under article 42A of the constitution which sets out when parents fail on their duty to children or their responsibility to children when the state can intervene. So that will just continue as it is.

**Catherine Day:** OK, thank you very much. We're now going to hear from Group eight if my calculation is right.

**Facilitator 8:** Yep, the citizens in group eight broadly agreed with the new sentences, new questions and there was one query regarding private life, but that has been dealt with already. Apart from that everything was perfect, thank you.

**Catherine Day:** OK, thank you very much and Group nine, please. Hello, Group nine?

**Facilitator 9:** Pardon me. The members in group nine were happy with question four. In relation to question three, what just came up in conversation was that in the first iteration of the question it finished with "and given constitutional status and protection" and what was being asked here by the members was that should that line be added to the end or integrated into the new iteration of question three and if not, why not?

**Catherine Day:** OK, back to the lawyers again. I think, though the fact that you would recognise the family in the constitution of itself gives that protection and the feeling was we didn't need to add the extra words, but let's hear it from the lawyers rather than me.

**Tom Hickey:** I might just repeat, endorse what Catherine just said. I'm responsible for the initial draft and meant nothing by it other than what was already earlier in the sentence, namely recognise, recognise and protect. So it is of no legal consequence that I can see and I think the fellow lawyers agree with me on that point.

**Laura Cahillane:** Yeah, it's implicit. Protection is implicit by recognition so yeah. That's perfect.

**Catherine Day:** OK just bear with me now for a minute, please. I just need to regroup before I make a next proposal.

**Laura Cahillane:** Oran, I don't know do you want to come back to Elizabeth's question there about state interference, but essentially it's already covered by the privacy aspects in the constitution already and changing the definition of the family wouldn't impact on the laws that are already there.



**Oran Doyle:** Yes, yeah the threshold for state intervention is set already for privacy rights for individuals and in article 42A for families and set reasonably high in Ireland. You might think it should be changed, but nothing we're doing here will change that one way or the other.

**Conor O'Mahony:** Yeah, I was just typing an answer into the chat essentially saying exactly that.

**Fergus Ryan:** Can I come back to one question that was asked earlier about the wording of question four? Around using all forms beyond the marital family. So one could certainly just say all forms of families, but given the fact that the constitution currently is confined to the family based on marriage, I think there may be some merit in actually spelling out the fact that we're moving beyond the marital family and that I think is the reason for actually specifically referring to going beyond the marital family because we're making it clear that we're going beyond what is the confined understanding.

**Catherine Day:** OK, now what I would like to suggest is the following: having listened to the reports from the different groups, quite a number of groups are happy with the revised wording and thank you for that. I think everybody is more or less content with question three and a couple of groups still have questions about question four. So what I'd like to do is the following: I think you all feel ready now to give your view on question three so I'd like to put that up on the screen, please. The revised wording of question three and then to ask you are you ready to say yes or no to the fact that this is now the question you would like to vote on in April. So we'll take a poll on this one and then I'll come back on question four. OK so now you can see it. It's very short. "Should the constitution continue to provide recognition for the family?" Then it will be up to the government, the Oireachtas, the attorney general to figure out exactly how to do that. So the wording would not be the same as it presently is, but that's not our job to write the actual wording of the referendum or of the future constitution. So can I ask you now we'll put up the poll and can I ask you to say yes or no. Are you happy that this would be the question that would be on the ballot paper on which you will vote in April? OK, so I think everybody has indicated their preference. Can we see the answer, please? Gosh. OK, I think that's quite emphatic. Now I think, trying to be fair to everybody, what I would like to do next is ask you are you ready to take a position on question four. If you answer yes, we would then poll you on question four. If you say no, we'll stop the meeting here and we'll have to see how we deal with question four at another time. Probably we would send you the question through SurveyMonkey, giving you a bit more time just to think about it, but can, you know just to be fair, ask you are you ready now to. We put up another poll question which is: are you ready to move to question four or not. OK, so I'm told everybody has replied so let's see what the, how that turns out. OK well I think that's fairly clear so in that case we will now put question four to you and see do you agree it or not. So the poll is going to come up again like all the others and you're going to be asked do you agree with revised question 4 being included on the ballot paper in which you will vote in April. OK, so I think you've all been very quick on that one too, so let's see what the outcome is. OK, thank you very much. That's very clear. Well I think congratulations are in order. Thank you all very much. I know it's been an intense day. I know it's asked a lot of you. It's a very different way of working compared to what we've done up to now. Up to now we've been listening, debating, wide ranging. Now we're coming to the point where we have to narrow down what it is you want to reflect back to the Oireachtas as we conclude our work and I really think it's what really encourages me and I'm so happy about today is that we have tried to frame questions for you. You have then taken them over, you have broken them down, you have got to the core of what it is that you wanted to send as your message to the Oireachtas and I think we've come out with recommendations on the constitution which are extremely clear, which can be understood by everybody and which sent very powerful messages back to the Oireachtas.

So really congratulations and well done and I'm very happy that we can now have these questions as the first part of our recommendations that we are going to be sending to the Oireachtas after you have voted in April. I think it's a very important stage that we've reached, that we are clear on the questions that you want to vote on in April, on the woman in the home clause and then now this afternoon that with your help we have refined two questions that you will vote on in April on the family. I think this has been, you know, really big progress and I'm delighted with it.

I want to mention that as you had asked we will hold two evening meetings on the 22nd and 23rd of February. It will be the same meeting so you can come to one or the other and I hope as many as possible will be able to tune in. We will record them so that for anybody who isn't able to watch to join us live on each day you'll be able to watch it afterwards on video, but what I'd like to do in those evening sessions is to hear back from you. Your feedback about today. What we should do differently. Do you need more time? Should we go for slightly longer? Somebody said maybe we should have two days. You know, I'd like to hear your views on that. Probably today was what I would call legally heavy in that we're trying to look at, you know, the most important piece of law we have in the country. We're trying to see where it should be changed and I think you've given very clear responses to that. From now on we'll be talking more about the other three areas under which I'd like to group the recommendations which are the laws that we have, whether we want them changed or we want new laws. The policies that we have and then also to see are there things that we would like to recommend to our fellow citizens in terms of attitude and behaviour. All of these will then make up the final recommendations. So if as many of you as possible can join us on either the 22nd or the 23rd of February, the Secretariat will send you the details, that would be great. Our next formal meeting is on Saturday the 13th of March and again we will send you out a draft ballot paper which will draw on the feedback that we've had from the discussion groups, the feedback that is in the surveys and always relating it back to our terms of reference which are the Oireachtas resolution. So we will continue with the work. It is demanding, but I think hopefully you can all see where we're getting to now as a result of all the work that you've already done. Please do complete the survey that will be emailed to you in a few minutes and really if everybody could fill it out it will give us a great sense of how you found today and also help us to prepare the next meeting. So I'm delighted that we've managed to finish, not quite on time, but pretty close to time and thanks for the stamina and the determination with which you have carried out today. I think it really bodes very well for our future work. So I hope to see as many as possible of you on either 22nd or the 23rd and then on the 13<sup>th</sup>. Sorry, just one more, one second.

So I think that will bring us to the end of our work. I see lots of compliments to the legal team going in the chat line and I want to add my thanks to them. They've not only been with us today and given us very clear answers to the very interesting and far-reaching questions that you've put, but they've also been working with us to try to prepare today and I think they really do deserve a round of virtual applause because they've really helped us and I think we've all learned an enormous amount about how constitutions work and what you should and shouldn't put in them and so really thank you all very much and have a good Valentine's day tomorrow. It's interesting that we, this time, exactly this weekend last year those who were with us since the beginning, we were all celebrating in Malahide. So I hope you can find a bit of time to celebrate today and tomorrow, particularly to give yourselves all a pat on the back for the work that we've done today and I look forward to continuing the rest of the journey with you. So really heartfelt thanks to all of you, to our legal team and to the Secretariat who do such fantastic work to make it all possible and to keep us all moving in the right direction. So thanks a million to everybody and we'll see you again shortly.