# A Joint Submission

by the

# The Committee on the Family of the Irish Episcopal Conference & The Office for Public Affairs of the Archdiocese of Dublin

to the

# All-Party Oireachtas Committee on the Constitution on the Review of Constitutional Provisions relating to the Family.

## February 2005

### Introduction

Articles 41 and 42 of the Constitution, as originally drafted, represent a most important protection of marriage and the family. In striking contrast to the United States Constitution, for example, the Irish Constitution recognises the family as the natural unit of society and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law. Under Article 41.3.1, the State pledged itself to guard with special care the institution of marriage, on which the family is founded, and to protect it against attack.

In setting out this position, the Constitution is clearly recognising the importance of the family based on marriage and the vital contribution it makes to the well-being of society and the state. It is not the Constitution that creates the family or that defines it, rather it recognises an institution that is prior to it.

In doing so, the Constitution recognises that in discussing the relationship between the family and society, there is much at stake. Marriage and the family are primary sources of stability, life and love in any society, they constitute a 'primary vital cell' from which the rest of society derives so much of its own cohesion and potential success. This fact is recognised by our own Constitution when it describes the family 'as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.' (Article 41.1.2 Irish Constitution). The Greek Constitution expresses the same conviction when it describes the family as 'the foundation of the conservation and the progress of the nation.' Such values are consistent in turn with Article 16 of the Universal Declaration of Human Rights when it states: 'The family is the natural and fundamental unit of society and is entitled to protection by society and the State.' Article 16 of the Social Charter of Europe (1961), Article 23 of the International Treaty on Civil Rights, Article 10 of the International Charter on Economic, Social and Cultural Rights as well as many other national and international instruments both affirm and develop this basic insight that the family is the nucleus of society, and for that reason is deserving of special status, development and care.

Prior to any consideration of the specific content of the constitutional provisions of the family, it would seem opportune to endorse the present jurisprudential framework that clearly understands the family as a natural institution rather than the creation of positive laws. The Constitution, in establishing this framework, sets the context for our more analytical consideration of the specific provisions. It might also be argued that in so doing it achieves its fundamental role as a Constitution to shape subsequent legal reflection. As was pointed out by Wheare, "a Constitution is something more than a selection of supreme legal rules. It is often, and sometimes first, a political manifesto or creed or testament. As such, it can be argued, it evokes the respect and affection and, indeed, obedience of the people in a way which no exhaustively legal document can hope to do". In outlining certain key insights into the nature of the family, the Constitution could be said to meet the aspiration expressed in Statement No. 2 of the Interim Report of the Commission on the Family that 'Family policy has a fundamental role in expressing and affirming society's values and ideals concerning family life, at the symbolic as well as the practical levels.'

## How should the family be defined?

This is an issue that received significant attention in the Report of the Constitution Review Group and this submission will respond to said Report in advancing the argument that it is appropriate that the Constitution would continue to define the family as being founded on marriage.

**Preliminary Considerations**

In its Introduction to its review of the provisions dealing with Family, the Review Group prefaced its consideration with a brief presentation of the changes which had affected family life in the years since the Constitution was enacted in 1937. The analysis was not particularly detailed, yet the Review Group concluded that these 'social changes call for amendments in the Constitution'. The Review Group's conclusion ought to be questioned. Is it not appropriate for a Constitution to seek to shape civil society rather than merely to follow sociological trends? Surely it would have been appropriate for the Review Group to consider the desirability or otherwise of the changes which had occurred before giving them constitutional endorsement or support.

The Review Group, for example, drew attention to an increase from 3% to 20% in the proportion of births outside marriages. The Review Group did not, however, give attention to the implications of this change and no account is taken of the evidence, which although it needs careful and sensitive evaluation, would seem to suggest that the children of one-parent families, notwithstanding the best and commendable efforts of their parents, may be at a disadvantage when compared to those of traditional families. If the Review Group had attended to such issues then its laudable desire to offer support to those living in non-traditional family arrangements might well have been tempered by a more obvious concern to offer such a support in a manner which did not erode support for the family based on marriage or undermine its indispensability to the welfare of the Nation and the State.

It is arguable that, if the Review Group had seriously considered the impact of the social changes which it notes, it might not have come to its apparent conclusion that what is, is what ought to be. The Review Group seems to consider it to be the role of law simply to regulate existing arrangements and no attention is given to the possible educative value of law. Surely, concerning an issue as fundamental as family life, the Constitution ought to continue to signal the unique position and value of the family based on marriage.
Moreover, the Review Group's analysis of the philosophical basis of Articles 41 and 42 of the Constitution is inadequate and unconvincing. These Articles do not represent an arbitrary concept of the family; on the contrary, they are clearly based on a philosophical understanding of the nature of family life, of the responsibilities attaching to marriage and of the relationship between the family and the State. The Group's Report betrays no apparent interest in this philosophical dimension.

It need hardly be pointed out that in societies where religion may play no significant role, the philosophical question of the role of the State in relation to the family is an important and controversial issue. The Review Group appears to be unconcerned with this crucial issue, preferring to transform the question into one of Church-State relations. In fact, much more is at stake.

**Definition**

The first specific issue to receive the attention of the Review Group was the constitutional definition of 'family'. It acknowledged that the family recognised and protected in Articles 41 and 42 is the family based on marriage. Mr Justice Walsh in the Supreme Court case, *The State (Nicolaou) v An Bord Uchtála* said it was: 'quite clear... that the family referred to in [Article 41] is the family which is founded on the institution of marriage and, in the context of the Article, marriage means valid marriage under the law for the time being in force in the State ...'
This view is supported by Article 42.3.1: 'The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.'

The Review Group noted the existence in Irish society of numerous units which are generally regarded as family units but which are not families based on marriage. Such non-marital families are not included by the defintion of family as outlined above and do not, *per se*, enjoy the protection or guarentees of Article 41. The Review Group expressed its appreciation for the view that persons living in family units not based on marriage should have constitutional recognition but observed 'that the constitutional protection of the rights of any family unit other than a family based on marriage presents significant difficulties.' The Review Group recognised that, once one gets beyond the family based on marriage, definition becomes very difficult. It commented:

> "Thus the multiplicity of differing units which may be capable of being considered as families include:
> a cohabiting heterosexual couple with no children
> a cohabiting heterosexual couple looking after the children of either or both parents
> a cohabiting heterosexual couple, either of whom is already married
> a cohabiting heterosexual couple, either of whom is already married, whose children (all or some of them) are being looked after elsewhere
> unmarried lone parents and their children
> homosexual and lesbian couples."

It noted that questions will also arise as to what duration of cohabitation should qualify for treatment as a family and it raises the issue of whether it would be an interference with the personal rights of those who have chosen deliberately not to marry to accord in effect a legal status to their family unit. It reviewed the provisions relating to family and marriage in many European Constitutions, the ECHR and CCPR and concluded that 'none attempts a definition of a 'family' in terms other than one based on marriage.'

Yet, having adverted to these formidable difficulties of definition that follow inevitably once one has broken the connection between marriage and the family,

the Review Group thereafter continues its discussion on the basis that the concept of family does not in fact need to be defined by the Constitution. The Review Group seems to want to have it both ways. It insists that the Constitution should continue to protect the family based on marriage (p.323, p.331, p.336) and yet it seems to strip that protection of any real value when it suggests that the words 'on which the family is founded' should be removed from Article 41.3.1. which pledges to guard the institution of marriage. The Review Group's criticism that these "words have led to an exclusively marriage-based definition of the family"(p.332) is not easily harmonised with its own recognition of 'particular difficulties if the family unit is extended beyond the family based on marriage'(p.323). Inevitably the Review Group cannot have it both ways and it would seem that it is the family based on marriage that loses out.

The result is that the Review Group effectively endorses a proposal to extend the definition of the family. This may present the appearance of a liberalising proposal: in fact it would suppress the proper independence of the family. Deprived of inherent rights and absolved from responsibility other than such as the State might choose to impose, the family would be subjected to unlimited interference as a mere creature of the State. This would be a violation of fundamental social responsibilities and rights. Once the family has been disconnected from marriage, the State must decide, in the interest of the common good, how it should be structured, how it should function and how it should be regulated. But it is the common good that requires marriage as the basis of the family. This is because marriage is the source of the stability of the family through the responsibilities and rights it confers with a view to ensuring the welfare of the family community. It is the duty of the State to protect the family from the destruction that would follow from the Review Group's readiness to abstain from defining the family in accordance with its own proper nature. The State must respect and support the family based on marriage: it cannot replace the family without sacrificing its own interest in social cohesion and undertaking responsibilities it has neither the mandate nor the capacity to fulfil.

The significance of marriage as the foundation of the family was recognised in the final Report of the Commission on the Family, notwithstanding its endorsement of the proposals of the Review Group. "A man and woman in getting married make a clear and public commitment to live together and to support each other, with the intention of their union being for life. Marriage is a legal contract. It is afforded a clear legal status by the State and both parties have legally enforceable rights and duties. These features of marriage result in a majority of cases in the union being permanent or at least continuing for a relatively long period. They facilitate, in particular, joint parenting and a stable family life for the children of married couples, which is conducive to their overall development."

**Recommendation**

It is submitted that the constitutional understanding of family as being the family based on marriage should be retained in order to indicate the value of marriage and its irreplaceable contribution to the good of society. This proposal is not intended as a penalty for those who have chosen or find themselves in different family forms or relationships. A diversity of family forms support the fundamental human activities of care, intimacy and belongingness to varying degrees, yet it is appropriate that the Constitution should guard with special care the institution of marriage. Such a commitment to special care of the family based on marriage ought not, nor does it, prevent the State from seeking to offer appropriate support to individuals in other forms of family units.

**How should one strike the balance between the rights of the family as a unit and the rights of individual members?**

This question arises in the context of the judgement of the Constitutional Review Group that the Constitution, as interpreted by the Courts, emphasises the rights of the family as a unit to the possible detriment of individual members. It recommends the removal of the qualification of the rights of the family as being 'inalienable and imprescriptible' and suggests that all rights or duties which derive from marriage or family ought to be guaranteed or imposed on the individuals rather than the family unit. This recommendation in conjunction with the recommended deletion of Articles 41.1.1, 41.1.2 and 41.3.1 would have the effect of making the family a creation of positive law rather than viewing it as 'a moral institution .... antecedent and superior to all positive laws.' It is not clear that these recommendations succeed in 'achieving the balance which will offer security and a measure of equality to individual family members in a manner which does not devalue or endanger the family as an institution.' The desire that underlines these recommendations to protect vulnerable members within family units and to afford a constitutional protection to the right, or even the obligation, of the state to intervene in family units to protect the rights of individuals is thoroughly laudatory. It is arguable, however, that the same end has been achieved by the Courts through the exercise of their jurisdiction under Article 40,3 to protect individual rights and, more particularly in this context, through their more robust application of Article 42.5. This issue will be considered in further detail under the heading of the rights of the child. Because the issue of protection of individual members is not confined to children, it is important that the Courts exercise equal vigilance in affording a legal basis for State interventions in family life, where necessary to safeguard the welfare of the elderly, those with disabilities and other family members who are vulnerable.

## Is it possible to give constitutional protection to families other than those based on marriage?

In accordance with its observations on the question of a constitutional definition of the family, this submission will not engage with questions concerning the manner in which specific constitutional protection could be afforded to non-marital family units *per se.* It is important that such units, especially insofar as they include children, are offered appropriate social and financial support as is already provided for by various statutory and regulatory measures. It is clear that such support can be, and is, offered in ways that do not undermine the position of the family based on marriage. The precise achievement of such a balance is a matter of prudent social policy judgements and is best achieved without specific constitutional direction. It is not clear that the recommendation of the Review Group that the pledge by the State to guard with special care the institution of marriage be subject to the express proviso that the pledge should not prevent the Oireachtas from legislating for the benefit of families not based on marriage is necessary. It could, however make the pledge merely rhetorical.
Questions concerning the rights of individual members of non-marital units are best considered as personal rights. If there were to be a guarantee to all individuals of respect for their family life whether based on marriage or not, as envisaged by the Review Group, it is arguable that said provision would effectively render meaningless any attempt to define the family in terms of marriage.

In this context, it is appropriate to attend, albeit perfunctorily, to the recent Consultation Paper on the Rights and Duties of Cohabitees issued by the Law Reform Commission. It is interesting to note that the Commission was of the view that Article 41 does not prevent the Oireachtas legislating in respect of cohabitees, so long as the legislation does not grant cohabitees more extensive rights than those enjoyed by married couples. Whatever view one may hold about the actual proposals of the Commission, it is clear that the existing Constitutional support for the family based on marriage would not seem to exclude extensive measures being taken in support of non-marital units. In terms of the specific measures, the Commission expressed the view that unmarried cohabitees who live together in a 'marriage like' relationship should be entitled to certain rights and duties. The Commission is of the view these rights and duties should be extended to same –sex as well as opposite sex cohabitees. The Commission did not recommend that the scheme be extended beyond 'marriage like' relationships and excluded non-sexual domestic relationships. The Commission advocated that the status of qualified cohabitee should be presumptive; the very fact of cohabitation would subject to certain requirements create the legal relationship independent of the wishes of the cohabitees. In arguing for this presumptive scheme, the Commission said that it would be desirable in order to protect the interests of the more vulnerable cohabitee who might not be in a position to insist on voluntary registration or the making of legal provision to provide for the protection of his or her interests.

This 'protectionist' rationale would seem to be justified in order to protect vulnerable individuals irrespective of the type of relationships they may have formed. It may, in certain circumstances, be in the public interest to provide legal protection to the social, fiscal and inheritance entitlements of persons who support caring relationships which generate dependency, provided always that these relationships are recognised as being qualitatively different from marriage and that their acceptance does not dilute the uniqueness of marriage. However, it would seem discriminatory to confine this protection to those in sexual relationships and thereby exclude from protection the interests of siblings and other non-sexually involved cohabitees. Moreover, the creation of a category of 'marriage like' relationships which would enjoy particular protections would seem to contradict in spirit, if not in law, the pledge in Article 41.3.1 to guard with special care the institution of marriage. In the cases of those who would in any event be free to marry, the scheme, which confers many of the advantages of legal marriage, might be judged to be an incentive not to marry.

**Should gay couples be allowed to marry?**

In accordance with the argument of this submission that marriage is a natural institution rather than an institution created by positive law, it would seem that the question is not whether gay couples should be allowed to marry rather whether they can marry. Until recently it would have been seen as obvious to say that marriage is a relationship that by its very nature requires a man and a woman. The complementarity that a man and woman bring to marriage and the procreative potential that is rooted in their different genders would have been seen as constitutive of the institution of marriage. Church teaching stresses that marriage is exclusively between a man and a woman, because this is part of the basic structure of the complementarity of the sexes, something rooted in creation, and not simply a social or cultural construct.

The Catholic Church remains committed to advocating and promoting the common good of everyone in our society. The Catholic Church teaches that homosexual people are to be 'accepted with respect, compassion and sensitivity.' The Church condemns all forms of violence, harassment or abuse directed against people who are homosexual.

In recent years there have been significant changes to the law to remove discrimination against people on the grounds of their sexuality. These changes have removed injustices, without of themselves creating any parallel legal institution to marriage.

However, it is essential when considering future legislation concerning marriage and the family, to acknowledge the vital distinction between private homosexual behaviour between consenting adults, and formalising that behaviour as 'a relationship in society, foreseen and approved by the law, to the point where it becomes an institution in the legal structure.' Legal developments must be

considered not only in terms of their impact on individuals, but also in terms of their impact on the common good and on the fundamental institutions of society such as marriage and the family. Civil laws play a very important and sometimes decisive role in influencing patterns of thought and behaviour. Legal recognition of homosexual unions would obscure certain basic moral values and cause a devaluation of the institution of marriage.

The recognition of same-sex unions on the same terms as marriage would suggest to future generations and to society as a whole that marriage as husband and wife, and a same-sex relationship, are equally valid options, and an equally valid context for the bringing up of children. What is at stake here is the natural right of children to the presence normally of a mother and father in their lives. Given the legal changes that have already taken place and the fact that two people can make private legal provision covering many aspects of their lives together, including joint ownership of homes, living wills and powers of attorney, the argument that same-sex marriage is necessary to protect human rights becomes a redundant one. When it is balanced against the manner in which it will undermine such a fundamental institution as marriage and the family, it is difficult to see how such a development could be justified in terms of the Government's duty to defend marriage and the common good.

**Is the Constitution's reference to woman's 'life within the home' a dated one that should be changed?**

The reference is frequently dismissed as dated and this would seem just if were read to suggest that women only have a contribution to make in the home or that work in the home were to be the exclusive duty of women. The provision may, however, be seen as a 'pedestal rather than a cage.' As Mrs Justice Denham has pointed out in *Sinnott v Ireland*: 'Article 41.2 does not assign women to a domestic role. Article 41.2 recognises the significant role played by wives and mothers in the home. This recognition and acknowledgement does not exclude women and mothers from other roles and activities. It is a recognition of the work performed by women in the home. The work is recognised because it has immense benefit for society. This recognition must be construed harmoniously with other Articles of the Constitution when a combination of Articles fall to be analysed.'

A revision of this Article in more gender neutral form as suggested by the Review Group might be appropriate but perhaps unnecessary. Mr Justice Murray, as he then was, in *D.T. v C.T.* noted that 'the Constitution ... is to be interpreted as a contemporary document. The duties and obligations of spouses are mutual and, without elaborating further since nothing turns on the point in this case, it seems to me that [the Constitution] implicitly recognises similarly the value of a man's contribution in the home as a parent.'

**Should the right of the natural mother have express constitutional protection?**

At present, although a natural mother has no rights under Articles 41 and 42, she does enjoy a constitutional right to the custody and care of her child pursuant to Article 40.3. The Review Group suggested that this right should be expressly enumerated but it did so in the context of its recommendation that all the unenumerated rights protected by Article 40.3 should be enumerated. It is not clear that the enumeration of all such rights is either necessary or appropriate but that judgement involves the evaluation of jurisprudential and constitutional theories that are not required in the context of this submission. In any event, it would seem consistent with the views expressed above on the definition of the family that any express rights of a natural mother would be seen as personal rather than family rights.

**What rights should a natural father have, and how should they be protected?**

It would seem that it is best to provide for the rights of natural fathers through statutory provision and judicial determination. This allows for the necessary distinctions that can exist among natural fathers. As Chief Justice Finlay observed in the case *Re SW an infant, K v W*: "The extent and character of the rights which accrue arising from the relationship of a father to a child to whose mother he is not married must vary very greatly indeed, depending on the circumstances of each individual case. The range of variation would, I am satisfied, extend from the situation of the father of a child conceived as a result of a casual intercourse, where the rights might well be so minimal as practically to be non-existent, to the situation of a child born as the result of a stable and established relationship and nurtured at the commencement of his life by his father and mother in a situation bearing nearly all the characteristics of a constitutionally protected family, when the rights would be very extensive indeed."

Equally it would seem inappropriate to exclude the idea of a natural father having natural rights. It is submitted that the statement of Mr. Justice Murphy, in the same case that what "are described as 'natural rights' whether arising from the circumstances of mankind in a primitive but idyllic society postulated by some philosophers but unidentified by any archaeologist, or inferred by moral philosophers as the rules by which human beings may achieve the destiny for which they were created, are not recognised or enforced as such by the courts set up under the Constitution" is overly positivistic and unduly restrictive of the role of the Courts in balancing rights.

The position enunciated by Mr Justice Barrington seems more appropriate: "[I]llegitimate children are not mentioned in the Constitution. Yet the case law acknowledges that they have the same rights as other children. These rights

must include, where practicable, the right to the society and support of their parents. These rights are determined by analogy to Article 42 and captured by the general provisions of Article 40, s 3 which places justice above the law. Likewise a natural mother who has honoured her obligation to her child will normally have a right to its custody and to its care. No one doubts that a natural father has the duty to support his child and, I suggest, that a natural father who has observed his duties towards his child has, so far as practicable, some rights in relation to it, if only the right to carry out these duties. To say that the child has rights protected by Article 40, s 3 and that the mother, who has stood by the child, has rights under Article 40, s 3 but that the father, who has stood by the child, has no rights under Article 40, s 3 is illogical, denies the relationship of parent and child and may, upon occasion, work a cruel injustice."

This submission would join with the authors of *J M Kelly: The Irish Constitution* in questioning "whether the distinction drawn by the courts between natural mothers and natural fathers in the context of their rights in respect of their children is not too absolutist in its denial of constitutional rights to all natural fathers and specifically those who have made a commitment to their children. Barrington J's critique of the reasoning in Nicolaou which led to this result is compelling and the current constitutional position clearly reflects a stereotypical image of the natural father that does not accord with the reality in a growing number of cases." The determination of the content of such rights and their enforcement would be ultimately a matter for consideration on a case by case basis.

**Should the rights of the child be given an expanded constitutional protection?**

The Review Group on the Constitution, as has been noted, recommended that all the unenumerated rights conferred by Article 40.3 should be expressly enumerated and this recommendation was extended to the unenumerated rights of children. This is a question of jurisprudential and constitutional theory. It is a matter of prudential judgement for the appropriate experts as to whether the protection of children's rights is best effected through express constitutional enumeration or through entrusting to the Courts the task of specifying said rights in particular circumstances.

Particular issues arise when tensions emerge between families and outside agencies as to the determination of the best interests of children. The question may arise as to whether the family or the State is best positioned to safeguard the rights of children. Not all families are good environments for rearing children. They may be affected by the personal moral weaknesses and limitations of parents. Children may be exposed to sexual abuse, violence or neglect. In these and similar circumstances, the State may clearly intervene. Thus, for example, the Childcare Act 1991 and the Adoption Act 1988 enable children to be protected from the effects of the failures of their parents. The Supreme Court made it clear in *In re Article 26 and the Adoption (No. 2) Bill 1987* , that Article

41 is no barrier to the compulsory adoption of children on the basis of continuing parental failure.

In *re JH (an infant)*, the Supreme Court held that section 3 of the Guardianship of Infants Act 1964, which requires the Court to regard the welfare of the infant as the first and paramount consideration, should: "be construed as involving a constitutional presumption that the welfare of such a child is to be found within the family unless the Court is satisfied that there are compelling reasons why this cannot be achieved or the evidence establishes an exceptional case where the parents have, for moral or physical reasons, failed, and continue to fail, to provide education for the child."

The Review Group took issue with this approach and proposed that Article 41 should be modified by the inclusion of the express obligation that, in all actions concerning children, whether by legislative, judicial or administrative authorities, the best interest of the child is to be "the paramount consideration". This is the expression used on page 337 of the Report; it contrasts with the expression "a paramount consideration" on page 329. The Review Group does not appear to have been aware of the significance of this distinction, although the courts have pronounced upon it. It is interesting to note that Report of the Commission on the Family used the term 'a paramount consideration' in its proposals to the All-Party Committee on the Constitution.

It is clear that the Constitution must afford legal protection for measures which are necessary to protect the rights of children, however the family unit must be allowed to retain its appropriate authority and autonomy. Whether this balance is best achieved by express constitutional provision or by judicial interpretation of the existing constitutional parameters remains to be seen. The authors of *J M Kelly: The Irish Constitution* draw attention to the following statement from a judgement of Mr. Justice Ellis: 'In my opinion, the inalienable and imprescriptible rights of the family under Article 41 of the Constitution attach to each member of the family including the children. Therefore in my view the only way the "inalienable and imprescriptible" and "natural and imprescriptible" rights of the child can be protected is by the courts treating the welfare of the child as the paramount consideration in all disputes as to its custody, including disputes between a parent and a stranger. I take the view also that the child has the personal right to have its welfare regarded as the paramount consideration in any such dispute as to its custody under Article 40.3 and that this right of the infant can additionally arise from "the Christian and democratic nature of the State".' On the basis of their analysis of that judgement, they conclude that "it indicates how a more balanced approach to the complex area of custody disputes .... can be achieved by rearguing the constitutional principles involved and without the necessity of a constitutional amendment." This view would seem to be re-enforced by the recent judgement of Mrs. Justice Finlay Geoghegan in the case *F.N. v C.O.*

**Does the Constitution need to be changed in view of the UN Convention on the Rights of the Child**

The Review Group stated that many of the child-specific rights contained in the Convention have already been identified by the superior courts as unenumerated rights under the Constitution. As already indicated, the question as to whether such rights need to be expressly specified is one which is beyond the scope of this submission. It would seem, moreover, that the superior courts could have regard to the Convention in understanding their mandate under Article 40.3 to vindicate the personal rights of all citizens including children.

In the event that this judicial protection were to be judged inadequate, further consideration could be given to the proposal in the Review Group Report, endorsed by the Final Report of the Commission on the Family, that certain rights of the child be given express constitutional protection. These would include a) the right of every child to be registered immediately after birth and to have from birth a name, b) the right of every child, as far as practicable, to know her or his parents, subject to the proviso that such right should be subject to regulation by law in the interests of the child, c) the right of every child, as far as practible, to be cared for by her or his parents, and d) the right to be reared with due regard to her or his welfare. Such rights might be expressly included among the personal rights enunciated in Article 40.