

## Amen Document dealing with Civil and Human Rights

### Article 40.1 Bunreacht na hEireann

*All citizens shall, as human persons, be held equal before the law.*

The treatment of men and fathers in the family law system is a violation of article 40.1. The current family law system is destructive of the family, of citizens' lives and of society in general. The State's response to marriage breakdown is to set up a system that exacerbates hostility, encourages parents to abdicate their responsibilities and drives parents into an expensive legal system, which plunders scarce family resources.

**Invariably men emerge as the supreme losers in these cases.** As one member of Amen said 'the State's response to the problem of marriage breakdown can be summed up in three words "*wipe men out*". Men are not treated as equal to women in family law.

Because they are male they are

- deemed to be inferior parents;
- their paternal rights and obligations are routinely destroyed or diminished;
- their rights to live in their own homes are arbitrarily removed without any justification and
- they are usually condemned to live in poverty supporting a woman, who is relieved, for life, of any obligation to support herself.

It is no exaggeration to say that the civil marriage contract is now the most lethal contract that a man can enter into. By entering into civil marriage a man is effectively signing a contract containing an unseen termination clause, written in various Acts of the Oireachtas, which provides that the other party can at any time, and for no specified reason, unilaterally break the contract, force him to continue to fulfill his obligations while freeing her from her obligations, confiscate his property, choose to live off him for the rest of her life, take his children, destroy his fatherhood, banish him to a life of emotional and financial poverty, usually living in sub-standard accommodation and dictate the nature and extent (if any) of his contact with his children. Indeed if more men were fully informed of the terms of this termination clause then they simply would not get married. The current family law system is clearly a gross violation of human rights and civil liberties. If organizations such as the so-called Irish Council for Civil Liberties had any integrity they would put the persecution of men and the gross violations of their human rights and civil liberties, under the family law system, at the top of their agenda.

## Universal Declaration on Human Rights

*Article 9. No one shall be subjected to arbitrary arrest, detention or exile.*

*Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

Orders under the Domestic Violence Act, 1996 effectively give individual citizens the power to impose the most severe and draconian penalties on other citizens **without having to provide any proofs or evidence** and, sometimes, in circumstances where the other citizen does not even have the right to defend himself/herself. Being evicted from one's home can be as devastating as imprisonment. The legislation which makes provision for these orders contains no checks or balances and provides no safeguards against abuse. No penalties are provided for those who abuse and are clearly seen to abuse these awesome powers. In fact, there can be no doubt that these provisions involve a serious violation and denial of human rights and civil liberties.

Under the Act a Protection Order can be taken out against a person at a hearing at which they are not present and are not even aware is taking place. In many parts of the country it can take months (even years) before they get a chance to prove their innocence. In the meantime they have a Protection Order hanging over them, which can result in their being imprisoned on the basis of an uncorroborated and uncontested allegation. Indeed it is a sad reflection of the contempt that our legislators have for the innocent accused that such draconian abuses of basic civil rights are provided for in legislation.

This gross breach of human rights is further compounded by the fact that Respondents are not even informed as to what allegations are made against them. A report by the Law Society in 1999 stated that *“frequently, respondents find themselves coming into court to defend proceedings though they are not aware of the statements made by the applicant which led to the granting of the order”*. Respondents can get a copy of the ‘Statement of Information’ on which the order is grounded from some court offices when these are available, though other court offices refuse to give these out. Members of the public are not aware of this and, indeed, some solicitors tell respondents that they are not entitled to this information.

Applications for all types of orders under the Domestic Violence Act are dealt with under the civil code and judges decide on the **‘balance of probabilities’** – no proofs are required. Under the criminal code cases have to be proven **‘beyond all reasonable doubt’** i.e. a minimal level of proofs is required. Cases heard under the Domestic Violence Act can, and often do, result in criminal sanctions. A possible solution - standards of proofs required under criminal law should be required for applications under the Domestic Violence Act.

There is no doubt that the most obscene abuses of human rights and civil liberties are provided for in the Domestic Violence Act, 1996. This Act is entirely in breach of articles 9 and 10 above.

*Article 12. No one shall be subjected to arbitrary interference with his privacy, **family, home** or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

As set out above the current family law system interferes in an arbitrary manner with people's families and their homes. The family home should be recognised as unique and distinct from other property. **A citizen's right to live in his/her family home**

**should be legislatively or constitutionally protected except in extreme circumstances viz. failure to pay rent or mortgage or proven criminal conduct which endangers the safety and rights of other family members.** Neither the State nor any other citizen should have the power to remove any citizen from his/her family home except in the circumstances outlined above. Also, the rights of all family members to live in their family homes should be protected against debts incurred by any member of the family.

*Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled **to equal rights as to marriage during marriage and at its dissolution.***

Quite obviously the Irish family law system involves a breach of this article because of the unequal treatment of men during marriage and, especially, at its dissolution (as set out above).

*Article 17. (1) Everyone has the right to own property alone as well as in association with others.*

*(2) No one shall be arbitrarily deprived of his property.*

The draconian powers to confiscate property (section 9, Family Law Act, 1995 and section 14, Family Law (Divorce) Act, 1996) and to exclude men from their family homes (section 10, Family Law Act, 1995 and section 15, Family Law (Divorce) Act, 1996) clearly breach article 17.

### **UN Convention on the Rights of the Child:**

#### ***Article 2***

- 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

Quite clearly the Irish State is in breach of this article. The child of an unmarried father does not enjoy the same legal relationship with his/her father as he/she has with his/her mother. Also, a child born outside wedlock has an inferior legal relationship with his father as compared to a child born to married parents.

#### ***Article 7***

- 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

A child's right to know and be cared for by his/her father is not adequately protected particularly in the case of children of unmarried or separated fathers. In the case of unmarried fathers, their children do not enjoy automatic guardianship rights and very often the name of the father is not on their birth certificates. In the case of both unmarried and separated fathers, their fatherhood is routinely destroyed or diminished following marriage/relationship breakdown, thus denying the child his/her rights to be cared for by one parent.

### ***Article 9***

- 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.*
- 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.*
- 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.*

In the Irish family law system children are regularly separated from their parents against their will, contrary to the child's best interests. This happens in cases where there is absolutely no evidence of abuse or neglect of the child by the parents. In such cases the State is failing to uphold the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, contrary to the child's best interests. The manner in which the on-going parenting of children is dealt with in the family law system is a clear violation of human rights and civil liberties.