

# All Our Children

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CHILD IMPACT ASSESSMENT FOR IRISH CHILDREN  
OF MIGRANT PARENTS

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**REPORT**

APRIL 2006

*children's*  
**RIGHTS ALLIANCE**

Commissioned by the CADIC Coalition

# **All Our Children**

## **CHILD IMPACT ASSESSMENT FOR IRISH CHILDREN OF MIGRANT PARENTS**

**Carmel Corrigan**

### **Children's Rights Alliance**

**Commissioned by the CADIC Coalition.**

**April 2006**

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The **CADIC Coalition** (formerly known as the Coalition Against the Deportation of Irish Children) was established in July 2003 in the wake of the Supreme Court ruling in the Lobe and Osayande cases of January 2003. The Coalition is comprised of national, regional and local NGOs, spanning human rights organisations, legal aid groups, children's rights organisations, faith-based migrant support groups and other migrant support organisations. The CADIC Coalition's remit is narrowly focused round the rights of a specific group of families comprised of Irish children, their migrant parents and other close family members.

The **Children's Rights Alliance** is a coalition of eighty non-governmental organisations concerned with the rights and welfare of children in Ireland. The Alliance works to secure the full implementation in Ireland of the principles and provisions of the UN Convention on the Rights of the Child, which was ratified by Ireland in 1992.

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## Foreword

Ireland society has become more diverse in recent years and what it means to be Irish is continuously evolving. What has remained constant, however, is the imperative to cherish all the children of this nation equally.

Currently the debate surrounding the Irish child of migrant parents has centred on the migrant parents' rights. Even the Irish Born Child 2005 administrative scheme (IBC/05) formulated by the Department of Justice, Equality and Law Reform was directed at the parents of Irish children, effectively reducing the broader discussion on the rights of the Irish child to the specific issue of the legal status of the child's migrant parents in Ireland.

The CADIC Coalition, a coalition of children's rights, faith-based, human rights, legal aid and migrant support NGOs, is working to secure the rights of the Irish child, their migrant parents and other close family members. Many parents have come seeking refuge from harm, poverty or intolerance, in search of a better life for their families. We hope that this report will bring about a dialogue on the Irish child's right to the company and care of his or her family. Ireland is a country that values family. What is now needed is a new approach, one that will have the effect of keeping these families together so that they can positively integrate and contribute to their communities here in Ireland.

Ireland has lost some of its best and brightest to emigration and has seen families torn apart by the vagaries of fortune that compelled many to seek a new life in a land alien to them. We should, therefore, understand well the hunger to do what is best for one's family. And in this the Government can also do what is best for the children of its nation – the children born on this island. Ireland stands ready to do the right thing by its children, to protect and cherish them and keep their families together.

*Geoffrey Shannon  
Jillian van Turnhout  
April 2006*

## **Executive Summary**

### **A Introduction**

Following on from the Supreme Court case of *Fajjonu v The Minister for Justice, Equality and Law Reform* in 1990, the practice developed in Ireland whereby migrant parents of Irish children were granted leave to remain in Ireland on the basis of their child's Irish citizenship. In 2003, however, this practice was challenged in the Supreme Court case of *Lobe and Osayande v The Minister for Justice, Equality and Law Reform*, which made it clear that migrant parents of Irish children do not have an automatic right to remain in Ireland for an indefinite period. The Minister for Justice, Equality and Law Reform retrospectively applied this decision to all pending applications for leave to remain on the basis of having an Irish child. This resulted in over 11,000 families that had applied for leave to remain on this basis being placed in a very vulnerable situation; families began being issued with deportation notices.

In 2005, the Minister introduced the Irish Born Child 2005 administrative (IBC/05) scheme through which applications to remain on the basis of having an Irish child could be made. This scheme closed in March 2005. As of 31 January 2006 the number of applications received by the IBC/05 Unit of the Department of Justice, Equality and Law Reform numbered 17,917, representing individual parents as each individual had to apply in their own right. Of these applicants, 16,693 applicants have been given leave to remain for an initial period of two years (due to exceptional circumstances, a small number of applicants were given leave to remain status on a one-year basis), with 1,119 applicants refused. Final figures that will include accounting for all applications are scheduled to be released by the Department of Justice, Equality and Law Reform in April 2006. Bearing in mind that parents submitted their applications separately, at a minimum five hundred Irish children could face *de facto* deportation, along with their migrant parents.

### **B Focus of the Report**

This report is concerned with the children whose migrant parents have been refused leave to remain and children whose families are not complete in Ireland, due to an inability to reunify thus far with a parent and/or other family member(s).

For migrant parents who are refused leave to remain, their Irish children now face an uncertain future, they may be *de facto* removed from the State with their parents or be separated from a parent due one parent's application being refused. Alternatively, the Irish child may be left in Ireland in the care of the State. In any of these eventualities it is imperative that the needs and rights of the child inform the decision of whether or not to deport the migrant parents of these children. It is essential that a child impact assessment

is undertaken and given due weight in relation to all applications that have been refused and any appeal proceedings that may arise.

Both the Irish Constitution and the United Nations Convention on the Rights of the Child (CRC) highlight the preservation of family life and the right of the Irish child to enjoy the company of their parents and other family members.

This report presents a model of child impact assessment for use in these processes and procedures. This model is comprised of underlying principles, key features of child impact assessment, an impact assessment template, guidelines for applying the template, and some key sources of information.

### **C Child Impact Assessment**

Child impact assessment is not a new concept. It was suggested by Freeman as a means of safeguarding children's rights as far back as 1987, (cited in Freeman, 1997) prior to the adoption of the CRC. It is also promoted by the United Nations Committee on the Rights of the Child and a number of other organisations that promote children's rights. Child impact assessment provides for the consideration of the direct or indirect impact of legislative, policy or administrative decisions on either an individual child, specific groups of children or children generally. It is based on the premise that children have needs and rights that are separate and different to adults and that these must be given due consideration.

### **D The Legal Framework**

The national and international context for the implementation of child impact assessment in Ireland can be found in Irish, European and International law, directives, conventions and charters. Primary among these is the Irish Constitution, under which children have limited rights, their rights are exercised through adults (primarily their parents) and are subordinate to those of the family. The legal context is further defined by the EU regulation known as Brussels II, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights (ECHR), the UN Convention on the Rights of the Child (CRC) and the EU Directive on the Right to Family Reunification.

A number of policy instruments that have particular relevance to children's rights and child impact assessment in Ireland are also outlined here, including the Council of Europe's White Paper on Principles Concerning the Establishment and Legal Consequences of Parentage (2002).



## **F Experience of Child Impact Assessment in Other Countries**

Sweden and Belgium (Flanders) are the only two European jurisdictions in which child impact assessment is carried out in a systematic manner. In Sweden, the strategy to implement the CRC is governed by legislation, and undertaking child impact assessments on all government decisions that influence children's lives is now required. In Flanders, child impact assessments are required under legislation and must be attached to every draft Act that goes before the Flemish parliament. A model of child impact assessment piloted in the UK by the National Children's Bureau, is currently undergoing further refinement. The CRC underpins these models, contextualised by national policy objectives, priorities and provision.

## **G A Model of Child Impact Assessment**

The model of child impact assessment presented in this report builds on the learning that has arisen from the models, guidelines and practice developed in other jurisdictions and by international organisations. This model is based on the following interconnected principles:

### ***Underlying Principles***

- The best interests of the child must be the paramount consideration;
- The principle of non-discrimination must apply;
- The right of the child to be heard, either directly or through appropriate representation, must be upheld;
- Assessment should be based on the CRC;
- The indivisibility of the articles of the CRC must be respected;
- The whole child perspective should be adopted;
- Protection for particularly vulnerable children must be forthcoming;
- Assessments must be culturally sensitive;
- Respect for the rights of Irish children living abroad must be assured;
- Respect for the rights of Irish children remaining in Ireland on the deportation of migrant parents must be assured;
- High level political commitment to protecting the rights of the Irish child is necessary;
- The burden of proof in cases of competing priorities lies with the decision-maker;
- The model of child impact assessment must strive to be administratively feasible.

### ***Key Features of a Child Impact Assessment Model***

The examples of child impact assessment methods and tools reviewed enable the identification of features common to most if not all impact assessment procedures. A number of these are of particular relevance to child impact assessment:

- Core questions, including what are the most likely positive and negative implications

of the decision? What data is available to support the decision?

- The development of alternatives;

**Consultation with stakeholders;**

- Early intervention;
- The need for the involvement of a range of experts.

***The Template***

*The aim of the following template, set out in its entirety in Chapter 5, is to ensure the protection and achievement of the rights of the Irish child. The ultimate goal of this assessment process is to ensure that the resulting decision is the best possible and is one that will secure positive outcomes for the Irish child.*

<b>Section 1</b>	<b>Family Biography</b>
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<b>Section 2</b>	<b>Impact Assessment for Irish Children Being Removed from Ireland</b>
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- |   |
|---|
| <ol style="list-style-type: none"><li><b>1. Destination of the Irish child</b></li><li><b>2. Prevailing Conditions of the Region</b></li><li><b>3. Specific Provision for the Child</b><ol style="list-style-type: none"><li><b>3.1 Access to social security and a decent standard of living</b></li><li><b>3.2 Accommodation</b><ul style="list-style-type: none"><li><b>* Education</b></li><li><b>* Health</b></li></ul></li><li><b>3.5 Access to parental care and family relationships</b></li><li><b>3.6 Protection from abuse, neglect and exploitation</b></li><li><b>3.7 Armed conflict</b></li></ol></li></ol> |
|---|

<b>Section 3</b>	<b>Impact assessment for Irish Children Left in Ireland on the Deportation of their Parents</b>
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- |  |
|--|
| <ol style="list-style-type: none"><li><b>1. Day-to-day care</b></li><li><b>2. Preserving family Life</b></li><li><b>3. Preservation of cultural identity</b></li></ol> |
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## **Section 4 Compliance with the General Principles of the CRC**

Having completed sections 1 to 3 above, careful consideration must be given to the basic principles of the CRC . These are included in Article 2, Article 3, Article 6 and Article 12 and are a key component of the child impact assessment process to be undertaken here.

1. **Article 2:** All of the articles of the CRC apply to each child without discrimination on the basis of the child's or his/her parent's or legal guardian's ethnic background, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. State Parties must protect children from such discrimination.
2. **Article 3:** In all decisions that affect the child, the child's best interests must be a primary consideration.
3. **Article 6:** This article recognises the right of every child to life, survival and development.
4. **Article 12:** This article respects the right of children who are capable of forming their own views to have those views heard and taken into account in all decisions made concerning them. For this purpose, the child shall be given the opportunity to be heard in any judicial and administrative proceedings either directly or through a representative.

## **Section 5 Details of Contact Person**

**Name of person(s) carrying out the impact assessment**

**Contact details**

### **Guidelines and Sources of Information**

Guidelines on completing the above template are provided in Chapter 5. Relevant sources of national and international information are also identified in Chapter 5.

## **H Recommendations**

- The Department of Justice, Equality and Law Reform should have primary responsibility for carrying out child impact assessment in relation to decisions affecting Irish children of migrant parents. In this they should be supported by the relevant government departments, statutory bodies and external agencies. In addition, the Department should promote the implementation of these assessments in all policies and procedures under their remit affecting Irish children.

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- The Office of the Minister for Children should support the mainstreaming of child impact assessments in all matters affecting Irish children of migrant parents.
- The remit of the Office of the Ombudsman for Children should be expanded to enable the Office to have a supervisory role in the undertaking of child impact assessments in this area.

In the short term, the model of child impact assessment proposed should be applied to all pending decisions and case reviews under the IBC/05 administrative scheme, and those decisions carried out subsequently by the Department of Justice, Equality and Law Reform, including decisions relating to residency status, deportation and family reunification.

In the long term, consideration should be given to integrating child impact assessments into all processes and procedures directly or indirectly impacting on children. The model of child impact assessment presented here can be adapted and amended for use in carrying out child impact assessments on decisions made under various laws, policies, and administrative schemes.

## **Introduction to the Report**

### **Background to the Report**

In 2005, the Children's Rights Alliance, on behalf of the CADIC Coalition, commissioned Carmel Corrigan to compile a report which would:

- research and critically evaluate the available literature on child impact assessment and evaluation statements;
- highlight the models of child impact statements in use in other jurisdictions and report on other models of impact analysis which may be adaptable to child impact statements;
- draft proposals for the framework of a child impact analysis/statement in relation to decision-making in the following areas: the proposed de facto deportation of Irish children, residency decisions and family reunification.

### **Methodology**

This report is based primarily on a literature review. Most sources were accessed through the internet, libraries or contact with relevant organisations.

### **Report Outline**

Chapter 1 is the Executive Summary for the report, which includes recommendations. Chapter 2 sets out the rationale and background literature on child impact assessment. Chapter 3 examines the legal framework for the implementation of child impact assessment. Chapter 4 presents information on the limited models of child impact assessment currently used on a systematic basis in Sweden and in Belgium (Flanders), and a human rights impact assessment in use in the UK. Building on the previous chapters, Chapter 5 presents a model of child impact assessment for the Irish children whose migrant parents face deportation or are seeking family reunification. This model comprises basic principles, key features, a template for child impact assessment and guidelines for completion of the template. It also identifies some relevant and key sources of national and international data. Chapter 6 concludes the report with the presentation of a select number of recommendations for the immediate and long-term implementation of child impact assessments.

## **Chapter 1. Background and Current Situation of Irish Children and their Migrant Parents**

### **1.1 Background to the Situation Facing Irish Children of Migrant Parents**

A number of legislative and administrative changes in citizenship rights and the processing of claims for residency in Ireland on the basis of having an Irish child have occurred in recent years. This Chapter specifically outlines these developments:

#### **The *Fajujonu* and the *Lobe & Osayande* Supreme Court judgments;**

The administrative changes that took place on foot of the *Lobe & Osayande* Supreme Court judgment;

- Constitutional change brought about by the Citizenship Referendum in 2004;
- The Irish Born Child Scheme introduced by the Department of Justice, Equality and Law Reform in 2005.

### **1.2 The Supreme Court Cases of *Fajujonu* and of *Lobe & Osayande***

In 1990, the Supreme Court ruled in the case of *Fajujonu v. Minister for Justice, Equality and Law Reform* [1990] 2 IR 151 that the migrant parents of an Irish child had the right to remain in Ireland and to raise their Irish born children here. The *Fajujonus* had come to Ireland in 1981, had their first of three children here in 1983, were housed by Dublin Corporation and Mr *Fajujonu* had been offered employment.

The Court held that Irish children have certain rights under the Constitution to the care and society of their family, but that these rights are not absolute and can be restricted. While this decision did not prohibit the deportation of the migrant parents of Irish children, it stressed that the Minister could only do so where the interests of the common good and protection of the State and society were served by such a deportation. In this regard, the Court took particular account of the duration of time which the *Fajujonu* family had resided in the State.

Following this case, the practice developed whereby migrant parents of Irish children applied for Leave to Remain residency status on the basis of having an Irish child, and the vast majority of applications were successful.

The *Fajujonu* case took place at a time when there were relatively few immigrants coming to Ireland and seeking the right to reside here. However, from the late-1990s on, these numbers grew substantially and rapidly. Many of these immigrants formed families or had children here and followed the route of securing their residency rights through their Irish children.

In 2002 the Minister for Justice, Equality and Law Reform rejected the application of two families – the Czech Lobe family and the Nigerian Osayande family – for leave to remain on the basis of their Irish children. On 23 January 2003, the Supreme Court delivered an important and influential judgment in this case. The Supreme Court held in this instance that although the Irish children of migrant parents have rights under the Constitution, including the right to family life, these rights are not absolute, can be restricted by law and do not extend to the parents and other family members. Equally, although Irish citizens cannot be deported under the Constitution, this does not extend to their non-national parents or other non-national relatives. Therefore, this case clearly established that migrant parents of Irish children have no automatic right to remain in Ireland.

### **1.3 Administrative Changes arising from the Lobe & Osayande Judgment**

On 19 February 2003 the Department of Justice, Equality and Law Reform ended the practice allowing migrant parents to seek leave to remain solely on the basis of having an Irish child. Following consultations with the Attorney General, the Government made the following provisions in respect of the migrant parents of Irish children:<sup>1</sup>

- The status of persons who had been granted leave to remain in the State on the basis of an Irish born child would not be affected and such parents could apply for a renewal of this leave to remain.
- There would no longer be a separate procedure for considering claims from migrant parents for leave to remain in the State on the sole basis of having an Irish child.
- Claims for leave to remain would not be considered from parents (including current asylum seekers) who have an alternative legal basis for remaining in this jurisdiction; claims would only be considered in the context of representations in relation to a ministerial proposal to deport parents. Parents whose representations are successful would be given humanitarian leave to remain.
- There would be no presumption in favour of allowing parents granted permission to remain to be joined in the State by other family members (including other children).
- The Minister for Justice, Equality and Law Reform would not generally consider the revocation of deportation orders already made. Exceptions to this would be in cases where information in relation to the birth of the Irish child was not known at the time of making the deportation order.

A voluntary return option would be made available to persons with claims currently in the process of being reviewed to enable them to return voluntarily to their countries of origin. This would take the form of training and support, not cash payments.

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<sup>1</sup> Department of Justice, Equality and Law Reform, July 2003

These administrative changes were unexpected, as was the retrospective application of such changes to those who had already applied for leave to remain up to eighteen months earlier. This retrospective application of the rules added significantly to the numbers that were awaiting decisions on their cases.

#### **1.4 Constitutional Change**

In addition to these administrative changes, which left approximately 11,000 migrant parents potentially facing deportation, the Government also decided to pursue a Constitutional referendum on the right to Irish citizenship. In June 2004, the people of Ireland voted to accept the changes proposed to Article 9 of the Constitution. This resulted in children born in Ireland no longer having an automatic right to Irish citizenship solely on the basis of their place of birth. The subsequent Irish Nationality and Citizenship Act 2004 [No. 38], which was enacted in December 2004, gives effect to the decision arising from this referendum. An Irish child's right to Irish citizenship is now dependent on at least one of his/her parents fulfilling one of the following criteria:

- Being an Irish citizen or being entitled to be an Irish citizen;
- Being a non-national entitled to reside in the State without restriction on the period of residence; that is a non-national who has satisfied the 'reckonable residence' by lawfully residing in Ireland for three of the four years immediately prior to the birth of the child.
- Being a British citizen;
- Being a non-national entitled to reside in the Northern Ireland without any restriction on his or her period of residence;
- UK under the UK's immigration laws;

#### **1.5 The IBC/05 Administrative Scheme**

In January 2005, the Department of Justice, Equality and Law Reform issued new administrative guidelines and procedures for the migrant parents of Irish children who were seeking leave to remain in Ireland on the basis of having an Irish child. These procedures applied only to children born before 1 January 2005 and applications had to be submitted before 31 March 2005. Examples of those to whom the new procedures applied included the following:

- Parents of an Irish child who had already applied for asylum;
- Parents of an Irish child who had been issued with deportation orders but were still in Ireland;
- Parents of an Irish child who withdrew asylum applications and applied for residency under the old administrative arrangements;
- Parents of an Irish child who came to Ireland on work permits / working visas;
- Parents of an Irish child who came to Ireland as students;



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- Parents of an Irish child who had been living in Ireland illegally and had never applied for any immigration status before;
- Legal guardians of Irish children.

The following parents of an Irish child who were generally not considered as meeting the criteria for granting residency included the following:

- Parents who had not been continuously resident in Ireland since the birth of their Irish child;
- Parents of an Irish child who had been living in any country outside of the Republic of Ireland, including Northern Ireland;
- Parents of an Irish child who had left Ireland either individually or under a Voluntary Return scheme;
- under a Voluntary Repatriation scheme;
- Parents of an Irish child who were deported from Ireland.

Applicants had to provide the Department of Justice, Equality and Law Reform Irish Born Child (IBC) Unit with specific information and documents in order to apply under the new administrative scheme. These included:

- Passport / National Identity Card;
- Original birth certificate of the Irish child /children;
- Two passport photographs with the applicant's name/signature on the back;
- Evidence of continuous residency in Ireland, for example, utility bills, lease/rental agreement, letter from a landlord;
- If relevant, a letter from a community welfare officer stating the period that Social Welfare payments were being received;
- If in employment, details of that employment (such as tax certificates or a letter from their employer).

As of 31 January 2006, the applications numbered 17,917<sup>2</sup> with 16,693 given leave to remain for an initial period of two years; in addition (less a very small number of applicants that because of exceptional circumstances were granted one year leave to remain status). These numbers represent individual parents as each individual had to apply in their own right. The refusals of permission of residency as of this date number 1,119. Final figures from the Department of Justice, Equality and Law Reform that account for all applications are scheduled to be released in April 2006. Regarding the immigration status of the applicants at the time of application, sixty per cent were asylum seekers, fifteen per cent were workers, six per cent students and nineteen per cent were classified as 'other'.

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<sup>2</sup> The breakdown in terms of gender for applications was 10,034 female and 7,883 males; the acceptances numbered 9,457 amongst females and 7,236 amongst males, with the refusals being close to equally split between the genders.

The majority of the 1,119 unsuccessful applications were refused because continuous residency had not been proven. As of 31 January, eighty-two applications were refused on the basis of refugee status being granted and as such were not a refusal per se. Thirty-eight cases at this time were refused due to criminal convictions. Other reasons given by the Department of Justice, Equality and Law Reform for the refusals were applicants not residing in Ireland at the time of the application, and applicants not having an Irish child. The nationality of those refused leave to remain is clearly an important consideration in the determination of the best interests of the individual child. While it is assumed that neither Irish children nor their parents will be deported to countries designated as non-functioning or unsafe, in the absence of this data this position cannot be substantiated.

According to the Children's Rights Alliance (Children's Rights Alliance, forthcoming 2006), up to the end of 2005, at least thirty-eight Irish children had been *de facto* deported with their parents despite their Constitutional rights as afforded by citizenship. In some cases, Irish immigration authorities provided copies of passports of Irish children directly to foreign embassies for visa purposes, without the consent of their parents. The exact number of Irish children *de facto* deported is not known, as the Department of Justice has not made available statistics on the numbers of Irish children who are transported on deportation charters with their parents, nor does it keep any contact with Irish children removed from the State in this manner. The Alliance has knowledge of several cases where children and their parents were left destitute on arrival at the country of destination, following which children became gravely ill. When the State removed these Irish children with their parents, it undertook no exercise to ensure that the children had means of proving their identity or Irish citizenship so that they could exercise their rights now and when they are adults."

While there was no formal appeals procedure for applicants who had been refused permission to remain, the IBC Unit reviewed applications in cases where additional information and documentation that could influence the decision was forthcoming. Cases where one parent had been granted leave to remain while the second parent had been refused have also been reviewed.

In conservatively estimating that each one of the applications refused had just one Irish child attached, a situation exists now where at least five hundred Irish children face either (i) being left behind in Ireland without the care of one or both of their parents, or put into the care of the State, or (ii) being *de facto* deported to a foreign country. Where the latter occurs, these Irish children may face the trauma of displacement and discrimination due to the fact that they may be aliens in these countries, or, worse, danger of extreme poverty, physical violence and mutilation.

It is with the latter groups of children that this present report is most concerned and the proposed model of child impact assessment has been developed with them in mind. Those children whose families are seeking to reunify with a parent or other family member are also a target group of this report. The aim of this report is:

- to consider the rationale for the systematic use of child impact assessment in the policies, legislation and administrative procedures that impact directly or indirectly on children;
- to outline the legal framework within which decisions regarding children's rights must be considered;
- to examine models of child impact assessment in other jurisdictions, and
- to propose a model of child impact assessment for use in the pending deportation decisions relating to the migrant parents of Irish children whose applications for leave to remain has been denied under the present administrative scheme.

The model presented here has an immediate application in these cases but will also have direct relevance again in 2007 when the first group of parents must apply for the renewal of their residence. As there is currently no clarity or detail available as to the eligibility criteria that will be used at that time, the potential number of Irish children that will be affected is unknown.

However it is intended that the model will be adaptable and flexible enough to allow it to be readily modified and used in a variety of situations where children are concerned.

## **Chapter 2. Child Impact Assessment: Origins and Rationale**

### **2.1 Introduction**

Child impact assessment, analysis or statements feature in the records and documents of EU, UN and other international bodies. Generally, all agree in principle that child impact assessment in some form is a good idea and promote its practice. However, to date the debate on child impact assessment has rarely gone beyond this and there has been little discussion as to the precise nature of, and framework for, child impact assessment. While the absence of best practice in this field may be viewed by some as a drawback, it also presents an invaluable opportunity to define and design child impact assessment tools that are most appropriate to the specific context within which they are working.

- It is also worth noting that the terminology and language of child impact assessment is loosely used. Some studies refer to ‘child impact statements’ or ‘child impact analysis’. By-and-large, these terms are used inter-changeably, with few commentators or policy-makers clearly distinguishing between them. In reviewing the relevant literature the term used by the originators of the work is adopted. In this current report the term child impact assessment is used to denote the child impact assessment proposals and model being developed by the CADIC Coalition.

This chapter addresses two key issues:

- The origins and rationale for child impact assessments as put forward by Michael Freeman, Professor of Law at University College London; the UN Committee on the Rights of the Child; UNICEF, and the Children’s Bureau in the UK.
- The rationale for child impact assessment in the case of the potential deportation of the migrant parents of Irish children.

The material provided here has informed the model of child impact assessment presented in Chapter 5 of this report.

### **2.2 The Origins of and Rationale for Child Impact Assessment**

The idea of child impact statements was first promoted by Freeman in 1987, before the adoption of the CRC. (cited in Freeman, 1997) The basic rationale underlying this concept is that those designing public policy should be compelled to consider the impact of these policies on children. Freeman argues that the direct and indirect impact of policies on children is rarely given any consideration by policy-makers. While relevant to all policy, he argues that child impact statements are particularly important where the policy is not obviously concerned with children.

All too rarely is consideration given to what policies formulated at the level of government, bureaucracy or local state level do to children. This is all the more the case where the immediate focus of the policy is not children. But even in children's legislation the unintended or indirect effects of changes are not given the critical attention they demand. But where the policy is not 'headlined' children, immigration policy or housing policy for example, the impact on the lives of children is all too readily glossed over. Even where the effect on children could be so easily predicted... the impact that this is likely to have is not seriously thought through by those responsible for developing the policy. (Freeman, 1997)

Freeman is clear that the courts, including but not exclusively the children's and juvenile's courts, should also be made subject to rigorous scrutiny for the effect of their activities and judgments on children. In terms of who should have responsibility for conducting child impact statements, Freeman favours a children's ombudsman, one of whose functions would be to analyse and comment on proposed Government policies.

Since the ratification of the CRC, the United Nations Committee on the Rights of the Child has also promoted the use of child impact statements. For example, *The Implementation Handbook for the Convention on the Rights of the Child* (Hodgkin and Newell, 2002) names child impact analysis – that is, the consistent analysis of the potential and actual impact on children of government actions – as a key process in securing the best interests of the child under Article 3 of the CRC. In its observations on the implementation of the CRC in Hong Kong the Committee states:

The implementation of the principles and provisions of the Convention requires that priority be given to children's issues, particularly in the light of the principle of the 'best interests of the child' and of the fact that Governments have, in international forums, agreed to the principle of 'First Call for Children', including in the final document adopted by the World Conference on Human Rights. It is recommended, therefore, that in the formulation of policy options and proposals there should be an accompanying assessment of its impact on children so that decision makers can be better advised when formulating policy as to its effect on the rights of the child. (United Kingdom dependent territory: Hong Kong IRCO, Add.63, para. 20, cited in Hodgkin and Newell, 2002)

The United Nation's Committee on the Rights of the Child further emphasises the need for child impact assessment in securing the best interests of the child in its General Comment on General Measures of Implementation of the CRC.

Ensuring that the best interests of the child are a primary consideration in all actions concerning children (Article 3(1)), and that all the provisions of the Convention are

respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy. (UN Committee on the Rights of the Child, 2003)

In addition to stressing the need for child impact assessment at the level of individual States, UNICEF has developed modules on child impact assessment in the context of its Human Rights Based Programming for Children and an initial checklist for States in considering the impact of policy and legislation on the best interests of the child. These modules and checklist are dealt with in more detail in Chapter 4.

The need for child impact assessment as a tool for the protection of children and the promotion of their rights has been well argued. For example, in considering why government structures continue to fail children, Newell and Hodgkin (1996) argue that a lack of information about children, a lack of respect for them, the very limited facilitation of their participation in society as well as a lack of coordination between government departments and agencies all contribute to the argument that special provisions, including child impact analysis, are necessary to secure their needs and rights. Similarly, Payne (2002) states:

Much of the problem is one of an imbalance of power: rather than being judged as equal members of the human race, children are perceived as being uniquely vulnerable and dependent and, as long as they are well behaved, easily ignored.

Among other mechanisms, Newell and Hodgkin recommend that ministers, parliamentarians and officials assess the direct and indirect effects of policies on children. Payne too cites a number of reasons why, in this context, child impact analyses are necessary and in this supports much of what Freeman has to say. Children are amongst the most vulnerable group in our society. Without political power, they are largely invisible in public policy and dependent on adults to represent their views, protect their interests and secure their rights. Children are often the group that suffer most from poor policy choices as both the direct recipients of services and the dependants of adult recipients. Children are more often the victims of crime, suffer the effects of poverty to a disproportional extent, and are more affected than adults by public transport policies. Special mechanisms such as a child impact analysis are thus required to ensure children's interests are kept to the fore. According to these experts, these mechanisms should be implemented at all stages of policy and legislative processes from design through to implementation, evaluation and refinement. Children impact analysis therefore

...starts with the concept of children's entitlement and children's needs....It supports the notion that we are both responsible for and accountable to young people. It can pick up inherent contradictions in policy development and highlight ideas which need further thought: and it requires those obliged to put ideas into practice to consider the potential impact those measures might have beyond their immediate area of responsibility. (Payne, 2002)

Hodgkin (1999), in introducing the National Children's Bureau's Child Impact Analysis of 23 UK Government Bills (see Chapter 4), reiterates four key reasons why children merit special attention by governments and why child impact statements are needed.

- Although children are recognised as citizens in their own right, they cannot vote, are largely excluded from the political process and are disenfranchised. They are rarely afforded the opportunity to participate in structures that promote active citizenship.
- Government structures and processes tend to fail children. Policies affecting them are frequently fragmented across government departments and agencies that may operate conflicting and contradictory policies. Children's interests often come second to other more influential policy agendas.
- Children are more affected by government policy and provision. They are both quantitatively and qualitatively more vulnerable to the positive and negative effects of government activity.
- Good policies that have a positive impact on children today are an investment in the society of the future. The financial and social costs of poor policy, resulting in a failure to secure children's healthy development, are high and will have to be borne by everyone.

Hodgkin (1999) points out that many countries are beginning to recognise the need for specific measures for children. Within governments this is witnessed through the increasing number of ministers and departments for children, inter-departmental committees and select committees. Outside of government, there are an increasing number of children's ombudsmen, children's parliaments and children's councils.

Nonetheless children's interests are still often assumed to be sufficiently dealt with through other impact assessment measures. For instance environmental, family, social or health impact assessment primarily intended to benefit the adult population are assumed to equally serve the needs of children. This is, of course, untrue. While children are clearly affected, particularly by general and targeted government policies, within these, children's issues tend to come second to those of adults and, where discussed at all, to be subject to

considerable political rhetoric rather than practical application. (Rosenbaum and Newell, 1991)

Policies that serve one section of the community well can also benefit children. For example, policies that promote gender equality in the work place and women's labour force participation may not serve the best interests of the child if fewer mothers breastfeed or if there is a lack of good quality, affordable and accessible childcare. (Corrigan, forthcoming 2006)

In Ireland, in particular, there is now an abundance of policy proofing mechanisms. These include gender proofing, poverty proofing, equality proofing, Health Impact Assessment (HIA), Environmental Impact Assessment (EIA), and Regulatory Impact Assessment (RIA). Many of these mechanisms are relatively new and are still in the early stages of development. These do not focus specifically on the needs of children and need to be further developed and widely practised before children could be fully integrated within their remit. As such, the needs of children need to be addressed separately through a policy impact assessment process that is specifically aimed at this target group.

Although much of the policy impact assessment or proofing that has been carried out in respect of issues such as equality and gender has been criticised for appearing to be tokenistic, Hodgkin (1999) is adamant that there remains a case for child impact statements. The reasons for this include forcing policy-makers to consider children as a separate group, increasing children's policy visibility and, if supported by government, sending a signal that children's needs – as distinct from but potentially not separate to those of their parents, family and society - are important in decision-making.

Connected with these objectives in Ireland, child impact assessment is included in the National Children's Strategy, *Our Children, Their Lives* (2000). This strategy states:

When seeking a government decision, all departments will be required, where relevant, to identify the impact of their policies on children. The value of child impact statements is derived from the early identification of the potential impact of policies on children and their families. Potential effects of decisions can be identified to assist decision-making which is positive for children. The impact on particularly vulnerable children will be highlighted. In this way they will contribute to keeping children's issues to the fore in the government decision-making process.

This is important as it represents the first commitment in Ireland to specifically consider the impact of policy decisions on children. However, recent work undertaken by Corrigan (2006) for the National Children's Office (NCO) questions the implementation of child impact assessment on a blanket, across-the-board basis. This is due to the lack of



evaluation of other forms of all-inclusive, general policy proofing and the subsequent lack of evidence that these have resulted in improved policy or decision-making in Ireland. Among its recommendations is that in developing child impact statements, the NCO, now the Office of the Minister for Children, should, in the first instance, identify single policy instruments, administrative schemes or pieces of legislation and develop child impact mechanisms for these. In this context the development of a child impact assessment tool for Irish children, whose migrant parents face deportation and/or where family re-unification is sought, is an example of how child impact assessment can be used on a single administrative scheme. This has the potential to provide considerable learning for the Office.

## **2.1 The Rationale for Child Impact Assessment in the Case of the Potential Deportation of the Migrant Parents of Irish Children**

A number of additional points are valid when considering the rationale for introducing child impact assessment for Irish children whose migrant parent(s) are facing deportation.

First, in the absence of a systematic child impact assessment procedure across all government policies, strategies and legislation, it is necessary to introduce a system that looks at the individual cases in question. Therefore, a model of child impact assessment that allows for the systematic examination of the effect of a singular administrative decision on individual children (or siblings) that is based on protecting the rights of the child and the child's best interests is necessary. This is in keeping with provisions contained in section 3 of the Guardianship of Infants Act 1964 and section 24 of the Child Care Act 1991. (CADIC, 2004)

Second, given that the Irish child will, in the vast majority of deportation cases, be taken from the State with his/her parents to their country of origin, there is an additional set of considerations for inclusion in these specific child impact assessments. Children who have resided in the State for a considerable period of their formative years may suffer excessively from such disruption to their lives. In addition, the State has an obligation to defend returned migrants from *refoulement* and it is assumed that this protection extends to its own citizens. However, given the lack of contact with deported adults and their *de facto* deported Irish children it is impossible to say whether such protection has been a reality. (Integrating Ireland, 2005) These questions are addressed in the template provided in Chapter 5.

Third, the issue of family reunification must be considered as part of these specific cases. Where leave to remain is granted but the right to family reunification is denied, a child is denied the right to be cared for and know his/her family. It may also lead to the removal of the Irish child to the country of his/her parent's origin. This again places the child at risk of having his/her rights denied.

These specific conditions place Irish children of migrant parents in particularly vulnerable situations. If they are removed to their parent's country of origin, they may face an uncertain future in terms of their standard of living and quality of life. They may be considered aliens in that country and this may impact considerably on their integration and acceptance into family life and society, and their access to entitlements, such as health care or education. It is for these reasons that child impact assessment is particularly significant and urgent.

#### **2.4 Conclusion**

The overriding arguments in favour of using specific measures to protect and secure the rights of children have been well debated by those working to secure these rights. Overall, the underlying rationale is that children represent a distinct group, clearly defined by age, which is particularly vulnerable in society due to their lack of political, social and economic independence and power. Government's and policy-makers' tendency to equate the rights of children with those of adults, and assuming that doing so is sufficient to meet their needs, are particularly prevalent and flawed arguments. Additional rights are required to protect children's interests, not fewer rights or rights that are subordinate to those of adults.

## **Chapter 3. The Legal Framework: Ireland's Obligations Under Irish, European and International Law**

### **3.1 Introduction**

There are a number of key legal instruments that provide the framework within which the rights of children should be considered. These include the Irish Constitution, the EU (Brussels II BIS) Regulation, the Charter of Fundamental Rights of the EU, the ECHR, the CRC and the EU Directive on the Right to Family Reunification.

A number of policy instruments that have particular relevance to children's rights and child impact assessment in Ireland are also outlined here. These include the Council of Europe's White Paper on Principles Concerning the Establishment and Legal Consequences of Parentage (2002).

### **3.2 Irish Constitutional and Statute Law**

The Irish Constitution does not contain a specific article or articles that clearly espouse the rights of children, nor does it have a child focus. Nonetheless, a number of articles of the Irish Constitution have a direct relevance to children, a relevance that is heightened in the situation of Irish children whose parents face deportation.

Articles 41 and 42 of the Constitution deal broadly with the family and the child's upbringing. The first two paragraphs of Article 41 state:

The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

The State, therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

This Article is concerned with the family as a unit. The rights of the family unit supersede the rights of individual family members, including children. In the case of children, their rights are typically considered to be subordinate to those of their parents (Shannon, 2005).

Article 42 of the Constitution governs education both in the scholastic sense and in the broader moral, religious, physical and social spheres associated with a child's upbringing within family life. This is reflected in Article 42.1 which recognises that:

... the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

Article 42.5 is of particular concern in considering the rights of children as it provides the basis for the limited intervention of the State and the courts in family life and the lives of children. It states that:

In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

As argued in the *Lobe and Osayande v The Minister for Justice, Equality and Law Reform* Supreme Court case, Articles 2, 40.1 and 42 of the Constitution have particular relevance in considering the rights of the child in pending deportation cases. Until the Irish Nationality and Citizenship Act 2004 Article 2 stated that:

It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish Nation.

The rescinding of this automatic right to citizenship following the Citizenship Referendum in 2004 and the ensuing legislation led to the administrative scheme IBC/05, which applied only to children born in Ireland prior to January 2005. Any child born in Ireland before this date is a citizen and is thereby entitled to live in Ireland without fear of deportation and to enjoy all other rights awarded to the children of Irish parent(s). Children of non-Irish national parents may still acquire citizenship and with that the right to reside under the new laws, if their parents meet certain criteria, but due to the changes of the law they are no longer automatically entitled to Irish citizenship simply through birth on the island of Ireland.

While the Supreme Court has found some children's rights to be implicit in the Constitution, notably as unenumerated rights derived from Article 40.3 which guarantees the personal rights of the citizen, Articles 41 and 42 have been interpreted as giving a primacy to the rights of parents. (Shannon, 2005) In particular, the Supreme Court has established clear precedent to the extent that the welfare of the child is best served by growing up in a family whose integrity is respected. While this allows for state intervention in the family in only exceptional circumstances, more broadly, it articulates a definition of the family which allows little scope for the independent exercise of children's rights.

A number of pieces of legislation make provision for the primacy of the welfare of the child.

- The Guardianship of Infants Act 1964 provides in section 3 that the courts must regard the welfare of the child as ‘the first and paramount consideration’ in guardianship cases.
- The Children Act 1997, which updated the 1964 Act, states that the best interests of the child must be taken into account in decisions on the contact between the child and his/her parents following separation. This Act also establishes the principle of hearing the child’s voice in judicial and administrative procedures that affect them.
- The Child Care Act 1991 also recognises the best interests of the child as a core principle and introduces the concept of court-appointed Guardians ad Litem in certain cases.

While these statutory benchmarks establish the importance of the best interests of the child in family law decision-making, the fact that statute law is subject to the Constitution has mitigated against an approach which upholds the individual and autonomous rights of the child in these areas. Instead, the primacy of the family, and the parents as key rights holders within it, has dominated (e.g. *North Western Health Board v HW and CW*)<sup>3</sup>

### **3.3 Law of the European Union**

#### **3.3.1 Brussels II (BIS) Regulation**

Regulation Brussels II (*BIS*) was issued in 2003 by the European Commission concerning the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. Brussels II (*BIS*) aims to apply equally to all children in all decisions regarding parental responsibility, including the protection of the child. Its significance lies in the fact that it establishes that children and their needs ought to be considered separately from those of adults. It is legally binding on Ireland and provides a clear framework for Irish domestic law to be brought into line with that of the EU.

Brussels II (*BIS*) covers a large number of issues regarding parental responsibility as well as the right of the child to maintain contact with his/her parents. Of particular concern in the context of the potential *de facto* deportation of Irish children is that it is applicable to cases where:

the child has a substantial connection with that member state, in particular by virtue of the fact that...the child is a national of that Member State. (Article 12, 3(a))

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3 [2001] 3 IR 622

Brussels II (*BIS*) also stresses that hearing the child plays an important role in the application of the Regulation and seeks to respect Article 24 of the EU Charter of Fundamental Rights governing the rights of the child. (Shannon, 2005)

### **3.3.2 The Charter of Fundamental Rights of the European Union**

The EU Charter of Fundamental Rights was adopted in 2000, although it is non-binding without the ratification of the European Union Constitution. This document sets out the fundamental rights, freedoms and principles for all citizens of the EU. Article 24 of the Charter refers specifically to the rights of the child as follows:

- Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
- In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
- Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

In addition to articulating the rights to which children are entitled as a matter of European law, the Charter's importance lies in the requirement by the European Commission that, from January 2001, all proposals for legislation and draft instruments to be adopted must be examined for compatibility with the Charter. This issue is returned to in Chapter 4 in examining human rights-based impact assessment procedures.

## **3.4 The Council of Europe**

### **3.4.1 The European Convention on Human Rights**

The European Convention on Human Rights (ECHR) came into being in 1950, has been ratified by forty-five States and incorporated in some form into their domestic legislation. In Ireland, the ECHR Act 2003 gave the ECHR further effect in Irish law, with a number of consequences. First, public bodies are bound to act in a Convention compliant manner. Second, legislation and rules of law must be read and interpreted by the courts in a Convention compliant manner, and the courts must take judicial notice of the Convention and the case-law of the European Court of Human Rights when deciding relevant cases. (Kilkelly, 2004)

The ECHR is thus a key instrument for upholding human rights at national and international level. Although it is limited in its direct relevance to children – the ECHR

makes no express reference to children's rights – there is nothing in the Convention that specifically excludes its application on the grounds of age. Indeed, the terms of Article 1, under which states guarantee to secure Convention rights to everyone, and Article 14, which prohibits discrimination on any ground in the enjoyment of Convention rights, make this clear. Moreover, the European Court of Human Rights, through its interpretation and application of the ECHR in a wide variety of cases, has confirmed its relevance to children. (Kilkelly, 1999) This is particularly true in respect of Article 8 of the ECHR which guarantees the right to respect for private and family life, which has been found to include the child's right to maintain direct contact with both parents, the child's right to identity and the right to family supports such as parental leave allowance. In addition, it has also been used by the European Court of Human Rights in family reunification cases. (CADIC, 2005)

While much of the immigration case law of the European Court of Human Rights has not directly involved children or their rights, the key issues of the right to family life and family reunification have been key themes. The decisions of the Court in these areas can be seen to have changed direction somewhat in recent years. First, in deportation cases the Court has afforded a higher priority to the right of the nuclear family to stay together than previously when balancing this against the interests of the State. Second, the Court has moved away from focusing on whether return to the immigrant's country of origin is at all possible to consideration of the obstacles to allowing them to remain in their country of residence. Third, instead of considering if allowing family members to remain together or allowing family reunification in the host country is the only way in which family life can be protected, the Court now focuses on the most appropriate manner in which such protection can be afforded. (Forder, 2003)

### **3.4.2 White Paper on Principles Concerning the Establishment and Legal Consequences of Parentage**

This White Paper is a public consultation document drawn up by a working party of the Committee of Experts on Family Law (CJ-FA) of the Council of Europe. (Committee of Experts on Family Law, 2002).<sup>4</sup>

A number of points made in the White Paper are salient here. It is noteworthy that the main principles have been drawn up taking account of the case law of the European Court of Human Rights on Article 8 of the ECHR. With regard to affiliation the Court has stated that:

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<sup>4</sup> Following a number of submissions made on parental responsibility, the draft document now contains 29 principles, 17 of which deal with establishing parental responsibility. Of the remaining 12 principles, 11 address the legal responsibility of parentage while the final principle addresses circumstances where parentage has not been established.

respect for family life implies in particular, in the Court's view, the existence in domestic law of legal safeguards that render possible as from the moment of birth the child's integration in his family.

The interpretation of Article 14 of the ECHR is also cited in the White Paper as it only allows for the separation of children from their family in exceptional circumstances in accordance with the principle of lawfulness and proportionality. Furthermore, this White Paper considers that the best interests of the child should be the paramount consideration in applying its principles and that, in the majority of cases, it is in the best interests of the child to establish parentage from the moment of the birth and to give stability over time to the established parentage.

Principle 19 of the White Paper addresses the issue of joint parental responsibility. Parental responsibilities should in principle belong jointly to both parents and, in cases where only one parent has parental responsibilities, by the operation of law, the other parent should have an opportunity to acquire parental responsibilities, unless it is against the best interests of the child. The underlying idea of this and other principles is that the joint exercise of parental responsibilities is in the best interests of the child.

Many of the principles and arguments put forward in this White Paper clearly have relevance in the context of refusals to allow family reunifications where leave to remain has been granted to the migrant parent/s of Irish children. It is particularly relevant where only one parent has entered the State, has been granted leave to remain, but the other parent is refused permission to join them.

### **3.5 The United Nations Convention on the Rights of the Child**

The most significant international convention relating to children is the United Nations Convention on the Rights of the Child (CRC). This Convention was adopted by the United Nations in 1989 and was ratified by Ireland in 1992 but has not yet been integrated into domestic law. The CRC is the most widely ratified instrument in international law and its articles are widely accepted to represent a blueprint for children's lives. Its widespread acceptance has attributed to the CRC a moral as well as a legal status. While some states have given direct effect to the principles and provisions of the CRC, others have incorporated the values of the CRC into domestic law through the courts. For example, in the Canadian case of *Baker v Canada (Minister of Citizenship and Information)* [1999] 2 SCR 817 in which the Supreme Court dealt with an immigration matter, the majority judgment referred to the CRC in its analysis and concluded that while

[i]nternational treaties and conventions [are not part of Canadian law unless they have been implemented by statute . . . Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation



and judicial review ... the important role of international human rights law as an aid in interpreting domestic law has also been emphasised in other common law countries ... It is also a critical influence on the interpretation of the scope of rights included in the Charter.

In this way, notwithstanding that the CRC had not been incorporated into Canadian domestic law, the Supreme Court used the widespread support for the CRC to incorporate the best interests principle set out in Article 3 of the CRC into the immigration decision-making process at domestic level. Similar approaches have been taken in the United States, which has neither incorporated nor ratified the CRC. (Kilkelly, 2005)

The CRC covers a wide range of socio-economic and cultural rights, as well as civil and political, or participation rights. It provides for the basic needs of children, and makes provision for their protection from all forms of harm and ill-treatment. According to the UN Committee on the Rights of the Child, four articles form the basic principles of the Convention:

- Article 2 states that all rights guaranteed by the Convention should be available to all children without discrimination;
- Article 3 states that the best interests of the child shall be a primary consideration in all actions concerning children, including those of welfare institutions, courts of law, and legislative and administrative bodies;
- Article 6 recognises the right to life, survival and development of the child, and
- Article 12 states that children capable of expressing an opinion have the right to be heard on all matters which concern them, and to have their views given due weight in accordance with their age and maturity; it also provides for the separate representation of children in legal and administrative proceedings.

In the context of the rights of Irish children central to this report, a number of CRC provisions are of particular relevance. Article 3 states that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 7 provides that:

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.

Article 8 provides for the right of the child to preserve his/her identity and nationality. The right of the child not to be separated from its parents is covered in Article 9 of the Convention. The State should only separate children from their parents where this is deemed to be in the best interests of the child. All parties involved in such a decision, including children where appropriate, should have the opportunity to make their views known. Where the child is separated from one or both of his/her parents, the child has the right to ongoing regular contact with those parents, except where this is contrary to the child's best interests. Where this separation is the result of an action by the State – including in the case of deportation – the State must make information on the whereabouts of the absent parent(s) to the remaining parent, child or other family member, except where this is deemed to be detrimental to the child.

Article 10 of the CRC states that, in the event of children and parents being separated, the application for family reunification will be dealt with in a positive, humane and expeditious manner. The Preamble to the CRC also provides a useful basis for the consideration of the rights of the Irish child with migrant parents. This states that:

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,...

In addition to considering the rights of the Irish child to the company of its migrant parents, this section of the Preamble also has particular resonance in consideration of the right to family reunification.

Article 4 of the CRC requires States to take all appropriate legislative, administrative and other measures necessary for the implementation of the Convention. Child impact statements are considered to be one such measure, particularly in respect of the implementation of Article 3 on the best interests of the child and related provisions. The CRC has thus been used as a basis for measuring the impact of government actions on children and the extent to which children enjoy protection of their rights. For example, child impact statements or assessments are sometimes embedded within strategies for the implementation of the Convention, as in Sweden, or the key principles of the Convention are included in child impact statements, as in Belgium (Flanders, see Chapter 4). In addition, it should be noted that the European Commission work programme for 2006 will include the development of an action plan to support member states to meet their obligations under the CRC. This makes the relevance of the Convention and of child impact assessment based on its provisions extremely apt. This is reflected in the model presented in Chapter 5.

### **3.6 European Union Directive on the Right to Family Reunification**

In September 2003, the Council of the European Union issued Directive 2003/86/EC on the right to family reunification. (Council of the European Union, 2003) This Directive recognises the importance of family reunification in the creation of socio-cultural stability and the integration of non-EU nationals, thereby contributing to social cohesion within the EU. Paragraph 2 of the Directive reaffirms the right to family life as enshrined in international law, including Article 8 of the ECHR. Furthermore, these rights must be provided for in a non-discriminatory way.

In its Preamble, the Directive states that family reunification should apply at a minimum to the members of the nuclear family. Article 4 provides greater details of the family members and their characteristics that fall under the Directive. Reunification that involves separated spouses and minor, unmarried children should be treated positively. Other family members may also be eligible for family reunification where they are dependent on the nuclear family due to lack of family support or health status.

Article 5 deals with the submission and examination of applications. Overall, it recommends that the process for assessing applications for family reunification be transparent, fair, and expeditious. It also states that due regard should be awarded to the best interests of the child in this process.

Family reunification may be denied on a number of grounds, primarily where the admission of family members is considered a threat to the State and where the family members seeking entry have been involved in serious criminal activity. In addition, the family member already resident in the EU must show that they can provide suitable accommodation for family members, health insurance that will provide for all family members, stable and regular resources with which to support family members without recourse to the social welfare system, and have been lawfully resident in the State for at least two years.

This Directive was expected to be implemented in the Member States by 3 October 2005. However, so far only six States (Belgium, Estonia, Latvia, Lithuania, Poland and Slovenia) have notified the Commission of their implementing measures. (Save the Children (Brussels) 2005). Ireland has not opted into the Directive. The Directive's provisions are reasonably stringent. However, some of the provisions of the Directive make application for family reunification very difficult for some migrant parents of Irish children. In particular, it may be difficult for mothers parenting alone to prove that they can support additional family members without social welfare assistance.

Some provisions of this Directive have been criticized as meeting only the minimum standards for policy on family reunification. However, its introduction provides at least a recognition by Member States that family reunification measures not only serve to bring families back together, they provide an essential function in facilitating the integration of immigrants.

### **3.7 Conclusion**

In developing a model of child impact assessment for the Irish children of migrant parents facing deportation and for family reunification issues, it is essential to consider the national and international legal and administrative framework within which this assessment model will operate. It is particularly important that any model of child impact assessment comply with Ireland's international obligations. In this regard, it is significant that the ECHR, the CRC and other international agreements and instruments not only support the concept of child impact assessment, but also advocate a rights-based approach to such analysis. The model of child impact assessment proposed in Chapter 5 addresses this further.

## **Chapter 4. Child Impact Assessment in Other Countries**

### **4.1 Introduction**

Despite increased awareness of the rights and needs of children, few countries conduct any systematic assessment of the impact of policy or legislation on children. The reasons for this are unclear, given the increasing prominence of proofing and impact assessment generally, the increasing awareness of rights-based approaches and increasing reference to the need for child impact assessment in particular. However, they are most likely the same as the arguments as to why child impact assessments are needed: the disenfranchisement of children, their relative invisibility in policy, their lack of economic or political power and the assumptions that their needs will be protected by the adults who care for them.

This chapter provides some details of the model of child impact assessment promoted by the UNICEF Model of Child Impact Assessment; human rights proofing in the UK and the assessment of actions for compatibility with the EU Charter of Fundamental Rights are also considered. Following this, child impact assessment models that are in use in the small number of countries are presented. These countries are Sweden, Belgium (Flanders) and the UK. These sections of the chapter rely heavily on previous work undertaken by the present author for the National Children's Office (now the Office of the Minister for Children) (Corrigan, forthcoming 2006). Combined, these inform the model presented in Chapter 5.

### **4.2 The UNICEF Model of Child Impact Assessment**

UNICEF deals with child impact assessment under the heading of Human Rights Based Programming for Children. Child impact assessment is defined and described by UNICEF as follows:

Child impact assessments are a tool for translating the Convention and its Article 3, giving priority to children's best interests, into practice in a concrete, structured manner. Impact assessments contain various parts such as appraisals, analysis, reviews, and evaluations. A child impact assessment can be described as a prior assessment of the impact which a decision can have on the child or group of children affected by it. This means establishing a causal connection in advance, ie 'having second thoughts first' in a structured manner and examining the best interests of the child or children. A child impact assessment with a close analysis and balancing of relevant interests furnishes a more advanced basis for decision-making, thus facilitating a total assessment of the decisions impact on the child or children. (UNICEF, 2003)

UNICEF recommends that a child impact assessment be carried out on existing and proposed policies, legislation, the annual budget, Constitutional structures and administrative changes for their impact on children. It should be carried out at all stages of the process, including when the policy, legislation or administrative change is first considered, when the policy is being drawn up and a budget allocated to it and when the change is being evaluated for its actual impact. Child impact assessment should, therefore, be an integral part of policy making. However, UNICEF is clear that requiring all policies and legislation to be child proofed could quickly reduce this to a ‘rubber stamp’ exercise that will have little meaning or effect. Therefore, the most relevant government actions, those that will benefit most from child impact assessment, should be identified with the relevant government officials.

UNICEF goes on to identify the main components of a child impact assessment as follows:

*A description of the proposed measure.*

This is particularly important if the assessment is to be publicly available as it should not be assumed that all interested parties know and understand the measure being assessed.

*How the measure affects or might affect children*

This will be particularly important where the measure does not obviously affect children in a direct way, and many immigration measures fall under this heading. Also, if children are to be negatively affected in the same way as other groups this should be highlighted as it adds weight to the overall argument for change while still putting forward the specific case for children.

*How the proposed measure is affected by, or affects, other current government activities*

Many measures that affect children, as in the case of child income supports, cannot be considered in isolation from other government action – such as adult social welfare policies. They need to be considered in the light of the entire package of measures being presented.

*How the measure promotes or impedes implementation of the Convention on the Rights of the Child and other relevant human rights treaties.*

States, such as Ireland, which have ratified the CRC, have a positive duty to take all measures and implement its provisions.

*Whether there are any areas of controversy*

Identifying where there are disagreements about the impact on children is an essential component of a good assessment. This requirement allows assessors to raise criticisms of the measure, which may not fully be guided by the best interests of the child.

*Where the assessment predicts that children might be adversely affected by the measure, what steps are suggested to avoid or mitigate this adverse impact*

The assessment should be as helpful to Government as possible. This includes proposing solutions to perceived difficulties or alternatives to the measures proposed.

*Whether the assessment has identified:*

- gaps in information: Lack of appropriate data can hamper the capacity of impact assessment to identify potential impact on children. The assessment could signal the need for the collection of this information or highlight the need for a further assessment in the future.
- gaps in expertise: This may arise particularly where a proposed measure does not directly affect children. Therefore it may be necessary for a range of experts to work collaboratively on the assessment.

*Ascertaining the views of children*

The Convention on the Rights of the Child requires States to assure to children the right to have their views considered in decisions that affect them (Article 12). This should form part of the process of child impact assessment and is particularly important when a measure is likely to affect vulnerable children (children in schools, child labourers, refugee children, children separated from parents and so forth).

*Broadening the scope*

If assessments focus narrowly on what the measure proposes, then an opportunity is lost to propose measures that could improve the lives of children. Child impact assessments should include proposals for alternative approaches and for extending the approach chosen. UNICEF recognises that this provides a broad approach to child impact assessment as opposed to a specific model. In pursuing such a model they refer to the *UN Handbook on the Implementation of the UNCRC*. (Hodgkin and Newell, 2002) This provides a useful checklist for ascertaining whether or not the best interests of the child have been considered in all government measures, and at the national, regional and local levels. This checklist covers the following areas:

- Budget allocations to the social sector and to children, and between and within departments of government;
- Social security;
- Planning and development;
- The environment;
- Housing;
- Transport;
- Health;

- Education;
- Employment;
- Administrative of juvenile justice;
- The criminal law (e.g. the effects of sentencing of parents on children);
- Nationality and immigration, including asylum seeking;
- Any rules governing alternative care, including institutions for children.

**Article 3 (1) Primary consideration of the best interests of the child**

- Are there legislative provisions relating to children in which the best interests of the child are the paramount rather than primary consideration?
- Where legislation requires determination of the best interests of a child in particular circumstances, have criteria been adopted for the purpose which are compatible with the principles of the Convention?

**Article 3 (2) Legislative and administrative measures to protect the best interests of the child**

- Does legislation require the State to provide such care and protection as is necessary for the well-being of any child in cases where it is not otherwise being provided?
- Does legislation provide for such care and protection at times of national disaster?
- Is there adequate monitoring to determine whether this provision is fully implemented for all children?

**Article 3 (3) Competency in the protection and provision of care**

Has the State reviewed all institutions, services and facilities, both public and private, responsible for the care or protection of children to ensure that formal standards are established covering:

- Safety;
- Health/
- Protection of children from all forms of violence and abuse/
- The number and suitability of staff;
- Conformity with the Convention;
- Independent inspection and supervision.(Hodgkin and Newell, 2002)

Hodgkin and Newell (2002) also draw attention to the indivisibility of the CRC. Therefore, the consideration of the best interests of the child should be seen as relevant to the implementation of the entire Convention. However, they draw attention to specific articles for which the best interests of the child should be a particular consideration. Among these are Article 9 governing the separation of children from parents, and Article 20, relating to depriving the child of a family environment.



### **4.3 Child Impact Assessment in Sweden**

Sweden is one of the few countries that has introduced a systematic approach to child impact assessments as part of its strategy to implement the CRC. This strategy, included in a government Bill of 1999, seeks to operationalise Article 3 on the best interests of the child in particular. As part of this, child impact assessments must be carried out on all government decisions which influence children's lives. Child impact appraisal, that is, the systematic assessment of the impacts of a policy, programme, legislation, project or proposal on children, is the most common form of assessment carried out in Sweden. It draws on the combined knowledge of experts, decision-makers and children's representatives on the basis of existing knowledge gained from experience, research or similar exercises. Supplementary measures were also introduced under the 1999 strategy, including the representation of children's perspective as far as possible in all government commissions, the provision of in-service training to all officials whose work involves children, and the development of statistics on children. This involves government officials at all levels, including national level, county councils and municipalities. (Sylwander, 2001)

According to the Swedish model, the best interests of the child should always be the point of departure of all child impact assessment, and assessments must be carried out in a meaningful way. The latter requires the procurement of the perspective of children and systemic supports that go beyond any one individual official or any one institution. In addition to these two core points, a number of key questions must also be addressed. These are:

1. *Which children or groups of children are affected by the initiative?* Article 3 of the CRC refers to both the individual and collective levels and it must thus be decided at an early stage whether the assessment is of a decision that affects an individual or a group. Also, it must be recognised that what is best for one child or groups of children might not be best for others.
2. *What initiatives or decisions are to be subject to child impact assessment?* This is primarily concerned with questions of screening and the principle of proportionality. It is recommended that every decision, policy or other change should be subject to the most basic screening question, that is 'does this have an impact on children?' If the answer to this is No, then no child impact assessment is carried out. If the answer is Yes, then the issue of proportionality arises where the organisation concerned must determine the significance of the impact. If the impact is expected to be substantial, then a child impact assessment is required. In making this decision, it is recommended that the views of children are sought.
3. *What form is the child impact assessment to take?* This will depend on the particular measure being assessed. In all methods however, it is essential that those making the policy or decision are well acquainted with the general principles and

main articles of the CRC and committed to its implementation.

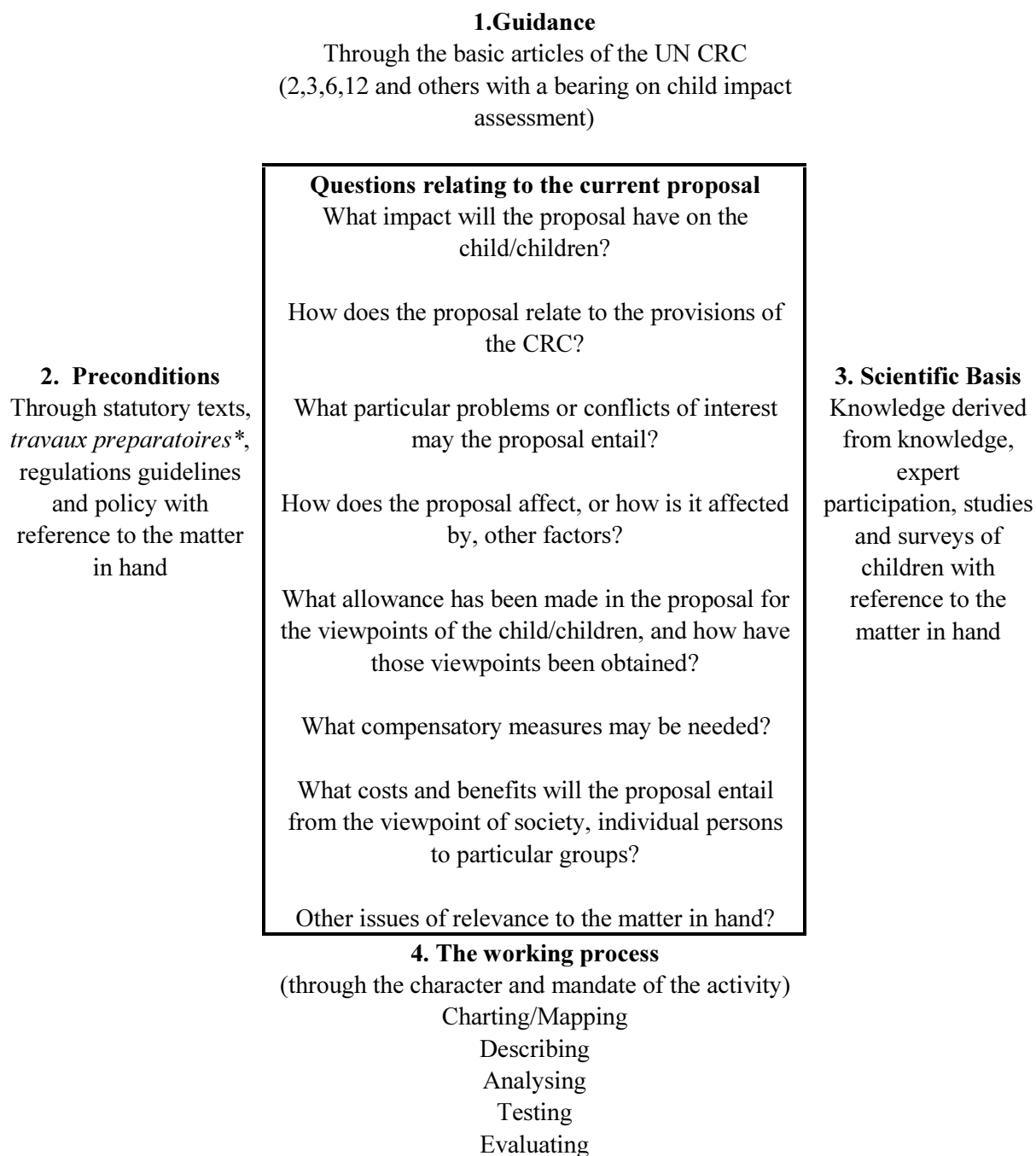
4. *What consequences are to be analysed?* Given that it is impossible to predict every consequence or impact of every decision, it is important that the impacts that are most significant for children and that are most likely to occur are prioritised.

The model of child impact assessment developed in Sweden is shown in Figure 1 below. This has two parts: the contents of the centre of the frame which comprises questions based on those identified by the UN Committee on the Rights of the Child as being central to child impact assessment; and the sides of the frame which refer to the overall context within which the impact assessment should take place and the working processes involved.

According to this framework, *Guidance* on child impact assessment should be drawn from the CRC, and in particular the four basic principles set forth in Articles 2, 3, 6 and 12. The *Preconditions* refer to pre-existing legislation and policies that are concerned with or provide the national context of children's rights and interests. *Scientific basis* refers to the need for both scientific research as well as general knowledge of the policy domain in which the child impact assessment is being undertaken. The *Working Process* should take account of the issue at hand, but should generally contain the five elements of *charting/mapping, description, analysis, testing and evaluation*. The first three of these are essentially concerned with applying a different approach to the questions posed in the frame. Testing and evaluation move beyond this and bring all of the charting, description and analysis together to make a decision. In formulating this decision, the best interests of the child must be one of the most significant if not the primary concern. Ultimately, the decision taken must be the best possible decision for children.

However, Sylwander (2001) acknowledges that the best interests of children cannot be the primary consideration in all policy decisions that affect them. Where other interests – such as the economy, national security or the needs of other groups – take precedence, the burden of proof lies with the decision-maker, who must show that the best interests of the child were considered and the reasons why, in any specific instance, other priorities were allowed to take precedence and to declare the basis of the decision taken. When the best interests of the child therefore have to give way to other interests, compensatory measures for children should be provided.

*Figure 1 A Model for child impact assessment in Sweden*



Source: Sylwander, 2001.

\* This is an official record of a negotiation, one that could be published, and which clarifies the intentions of a treaty or other instrument.

Both strengths and weaknesses of the Swedish model of child impact assessment as a tool for implementing the CRC have been identified. In terms of weaknesses, these include the lack of a long-term strategy for the implementation of the Convention, the lack of evaluation of the effect of child impact assessment on policy, the use of assessments only in areas that positively affect children rather than as a tool in the formulation and checking of policy, a lack of debate on competing priorities and how decisions regarding these are made, and a lack of participation of young people in the policy process. (Sylwander, 2001)

Factors that contribute to the success of child impact assessment can also be identified and are of relevance in the consideration of a model for use in Ireland. These are:

- Commitment and determination to implementing the CRC, based on a firm understanding of the purpose and meaning of the Convention.
- Information and education: Those being asked to give effect to the CRC must also be given the opportunity to learn about its background, context, legal status and the main elements. They must also be aware of the implications of adopting a child perspective in their daily work, have a reasonable knowledge of the conditions of children in their jurisdiction, the problems and challenges facing children, as well as a knowledge of the wide policy and administrative environment that affects children.
- A common frame of reference and agreed definitions of core terms. The use of language in both political and professional contexts is notoriously ambiguous, with the same term meaning very different things or being entirely vague. It is important that key terms used in the CRC have a common understanding that is continuously debated as the interpretation of the UN Convention develops.
- Time to develop the assessment tools, to gain acceptance and a clear understanding of the CRC. While developing child impact assessment as a tool for the implementation of the CRC must be seen as a learning process which will take considerable time to develop, the adherence to its principles and provisions must be paramount.

Two other issues raised in this review of child impact assessment in Sweden are of critical importance in the context of the current project. First, evaluating the impact of the policy or intervention and after it has been implemented is an important part of child impact assessment. Impact evaluation should compare the actual impacts of the measure against those anticipated in the earlier stages of the assessment. The views of children affected by the measure must form a key part of this evaluation process.

Second, the Swedish review highlights the importance of documentation. The process of child impact assessment needs to be transparent if learning is to be shared. In addition,

meticulously documenting the process and making this widely available and easily accessible contributes to the knowledge of how children's rights are viewed and the weight they carry relative to other considerations. In the context of the current report this is also essential as those facing deportation are frequently given only minimal information of the basis of the decision. Meticulous record keeping could address this situation and also provide some of the most basic information in conducting a child impact assessment in these cases.

In January 2004, the Swedish Government issued a Communication to the Rikstag on the further development of the strategy to implement the Convention. (Ministry of Health and Social Affairs, 2004) In this, a renewed commitment is given to child impact assessment, with the emphasis on learning from work already done by various government agencies at different levels of government, particularly in the area of integrating a children's perspective into decision making, improving the system of management by objectives and results, and providing support for relevant agencies. (Corrigan, 2006)

#### **4.4 Child Impact Statements in the UK**

In 1997 the Gulbenkian Foundation and UNICEF funded the National Children's Bureau (NCB) to undertake a project on child impact statements on all of the bills being presented to Parliament at the time (with the exception of the Finance Bill) on behalf of the All Party Parliamentary Group for Children. Twenty-three Bills were assessed. (Hodgkin, 1999)

A range of experts were commissioned to undertake the child impact statements on these Bills, which covered a wide range of issues, some of direct relevance to children and others that were not. These experts included lawyers, academics and staff in NGOs. The following four questions were provided as a framework for the statements:

- Are there any effects of the Bill that are specific to children as opposed to the rest of the population?
- To what extent is the Bill likely to promote or inhibit the implementation of any relevant international treaties or standards applying to the UK?
- To what extent is the Bill likely to contribute to the achievement of any goals identified by the current Government in relation to children?
- Are there any differences of opinion over the likely impact on children expressed in the public domain?

In order to prevent the statements from becoming too subjective, statement writers were asked to consider the Bills according to the following yardsticks:

- The extent to which the Bill would contribute to any specific child policy goals of the Government.

- The extent to which the Bill was likely to promote or inhibit the implementation of any relevant international treaties or standards applying in the UK, including the CRC.

Therefore, it was clear from the outset that the statements should take both domestic and international standards and goals into account.

The child impact statements were required to be short (approximately 4,000 words) and to use plain, non-technical language. The experts were also asked to evaluate the process of writing the child impact statement and this provides some very useful guidance. A number of experts raised very practical difficulties including restricting their analysis of the Bill to its impact on children as opposed to the broader issues it addressed, a lack of expertise in related areas that required them to work collaboratively with others, and the lack of time available for the exercise.

An overall analysis of this process was undertaken by the NCB. This identifies a number of key factors necessary if child impact statements are to be effective:

- Political commitment at the highest level.
- Clear guidelines of what a child impact statement should contain. This should include a brief description of the proposed measure and how this interacts with other Government policy and activities, the identification of the potential positive and negative impacts of the measure on children, how the measure promotes or impedes the implementation of the CRC, identification of any controversial areas, remedial measures to correct any potential adverse impacts, data gaps, gaps in expertise, the views of children and opinions of how best to proceed.
- Clear allocation of responsibility for child impact statements. Ideally, child impact statements should be the responsibility of three bodies: a Minister or Unit to ensure that civil servants conduct child impact statements on a routine basis, a Commissioner for Children who could monitor this process and a Parliamentary body to receive the child impact statements and work to hold the Government accountable for its actions on children. Whether this or alternative structures are eventually put in place, it is essential that this has sufficient political power to have influence on the Cabinet and over some of the most relevant departments.
- Embedding of child impact assessment at all stages of policy-making from development to evaluation.
- Statements should be both integral to Government and have sufficient independence to ensure their objectivity and credibility. Therefore, while civil servants should be the primary author of the statements, these should also involve others who have experience, expertise or opinions on the matter in hand. Civil servants work within a given framework, with limits on potential funding and little or no contact with

NGOs, community groups or children and young people themselves. Ideally, three types of knowledge and experience – that of the civil servant, the external agency involved with children and the knowledge of experts – should have a role in developing child impact statements. (Payne, 2000)

- Child impact statements should encompass inter-acting policies. While it is important to address the main policy proposal being child-proofed, all policy is developed in the context of other existing or planned policies and this should be reflected in the statement.
- Statements should be followed up externally by concerned bodies and / or internally by the Government. (Hodgkin, 1999)

The second round of child impact assessments in 1998/1999 highlighted a number of additional issues. In drawing together the learning from these, Payne (2000) draws attention to

- the need to see child impact statements as a process;
- the need for data and evidence-based judgements, and
- the need to actively involve young people.

In this regard, Payne suggests the adoption of a procedure similar to that applied to new Bills under the Human Rights Act 1998. Under section 19 of this Act a statement of compatibility with the European Convention on Human Rights (ECHR) must accompany every new Bill put before both the House of Commons and the House of Lords (see section 4.4 below). Similarly, Bills could be required to have a declaration of compatibility with the CRC.

#### ***The Association of Metropolitan Authorities: A Local Level Initiative in the UK***

In 1995, the Children's Rights Office developed a Checklist for Children for use by public authorities. This checklist is shown in Appendix 2. In seeking to apply this checklist to their work, the Association of Metropolitan Authorities, which represents the 36 Metropolitan District Councils, 31 London Borough Councils and the City of London, and the Children's Rights Office published *Checklist for Children: Local Authorities and the UN Convention on the Rights of the Child*. (Association of Metropolitan Authorities, 1995) This document provides clear examples of how the work of the local authorities relates to the various principles of the CRC.

In illustrating how the checklist could be applied, the broad service areas of the local authorities that are concerned with children, young people and their families, – such as corporate services, caring for children unable to live with their families, providing and supporting education and supporting children in trouble with the law – are broken down into smaller functional areas. For example, with regard to supporting children in trouble with the law, local authority representation on police authorities on Chief Constables, and

on Youth Justice Teams, and the provision of secure accommodation are identified as key functional areas. Under each of these headings, guiding principles and the relevant articles of the CRC are set out. Following this, examples of how the checklist might be applied are provided.

While falling short of the methodological frameworks provided in other models of child impact assessment, this document provides a very useful example of how a child proofing model can be applied in practice to various service areas of the local authorities. It is relatively straightforward in its approach and provides local authorities with a clear direction for its use.

#### **4.5 Child Impact Reporting in Belgium (Flanders)**

Child impact reporting in Flanders refers to the examination in advance of the potential impact of any given measure on the rights of the child. The obligation to draw up a child impact report is governed by legislation under an Act of the Flemish Parliament in July 1997. Every draft Act that clearly has a direct impact on children's interests must be accompanied by a child impact report. A further Decree of the Government in 2001 states that draft Acts can only be approved by the Flemish Parliament if they are accompanied by a child impact report. (Corrigan, forthcoming 2006)

The basis of child policy is taken to be Article 4 of the CRC, that is, that all appropriate measures will be taken to safeguard the rights of the child guaranteed in the Convention to the maximum extent of available resources. Child impact reporting is the tool which is used to give practical application to this objective (Expert Commission on Child Impact Reporting, 2004).

As in almost all impact assessment of proofing processes, the first step in the Flanders model is screening to determine if the draft Act has a *direct* impact on children. This is done by the competent Minister with the help of the Expert Committee on Child Impact Reporting, established in 1998. If it is decided that no child impact report is required this must be communicated to the co-ordinating Minister for Children's Rights, the Flemish Minister for Welfare, Health, Equal Opportunities and Development Co-operation. Where a decision on the possible direct impact of the draft Act on children is not made, the co-ordinating Minister for Children's Rights may raise this issue with the Flemish Government during their consideration of the draft Act. In addition, the Council of State may also insist on the inclusion of a child impact report before it provides advice on draft Acts. Where a child impact report is deemed necessary the relevant Minister can either have this drawn up or seek the advice of the Expert Committee on Child Impact Reporting on a possible derogation of this obligation.



Drawing up the relevant child impact report is the responsibility of the civil servants drafting the Act. A template for this has been devised by the Office of the Expert Commission on Child Impact Reporting (see Appendix 1) and comprises the following eight sections:

1. general questions regarding the consideration given to the rights of the child in drafting the Act;
2. the anticipated positive and negative impact on children in a range of policy domains;
3. questions specifically relating to the four basic principles of the CRC;
4. list of information sources on which the Child Impact Report is based, including consultations with relevant government and children's organisations and children themselves;
5. miscellaneous considerations;
6. evaluation of the child impact reporting process;
7. policy conclusions, and
8. contact information.

While it is very positive that child impact reporting is governed by legislation in Flanders, thereby making at least some consideration of the effect of government policy and legislation on children necessary, the system has two clear weaknesses. First, child impact reports are limited to draft Acts that can be seen to have a direct impact on children. While making the system more administratively manageable, the exclusion of Acts that may have an indirect impact can be expected to limit the scope and value of the exercise as such Acts often have a very serious impact on children's lives. Second, there is no onus or obligation on the Flemish government to take account of the child impact reports when finalising legislation. This weakens the potential impact of the reports and has led to some frustration among some civil servants, particularly those who devote considerable time and effort to drawing up child impact reports. (Corrigan, 2006)

#### **4.6 Assessing Compatibility with Human Rights: The EU and the UK**

From January 2001 the European Commission requires all proposals for legislation and draft instruments to be adopted to be scrutinised for their compatibility with the Charter of Fundamental Human Rights of the EU. In seeking to achieve this goal, the European Commission issued a Communication setting out a methodology for systematic and rigorous monitoring of compliance with the Charter. (European Commission, 2005a) This document sets out the main aim of the methodology as follows:

- to check all Commission legislative proposals systematically and rigorously to ensure they respect all the fundamental rights concerned in the course of normal decision-making procedures.

Two key processes are identified as central to achieving an overall respect for fundamental human rights: the Commission's updated impact integrated assessment procedures and the explanatory memoranda that accompany Commission proposals. With regard to the former, a number of questions on fundamental rights have been inserted into the revised framework for integrated impact assessment (European Commission, 2005b). It is intended that this will ensure that fundamental rights impacts will be identified and a proportionality assessment carried out as to their scope and extent. Questions on fundamental rights have been inserted in relation to each of the three areas of the integrated impact assessment framework: economic impact, environmental impact and social impact.

With regard to the explanatory memoranda, in providing guidelines as to which legislative proposals should contain the Charter recital, the Communication states it should apply where:

- it is clear that, particularly in the light of information provided by the impact assessment, a legislative proposal includes a limitation of a fundamental right which must be justified under Article 52 of the Charter; or where there is a direct or indirect difference in treatment that must be justified in relation to the general principles of equality before the law and non-discrimination;
- a legislative proposal is aimed at implementing or promoting a particular fundamental right. (European Commission, 2005a)

In addition, it is recommended that in all future legislative proposals that include the Charter recital relating to fundamental human rights, the explanatory memorandum should include a section summarising the reasons for the conclusion that fundamental human rights have been respected.

The extent to which either this methodology or the revised impact assessments have resulted in improved consideration or implementation of the Charter on Fundamental Rights is not yet known. However, concern has been raised that these attempts at improved compliance with fundamental human rights will only be as good as the standards used to judge compliance, and that they serve to decrease the likelihood of thorough judicial scrutiny. (Immigration Law Practitioners' Association, 2005)

### ***Statements of Compatibility with the UK Human Rights Act, 1998***

As noted above, section 19 of the Human Rights Act 1998 requires the Minister responsible for a Bill in either House of Parliament, before the second reading of the Bill, to make a statement to the effect that in his/her view the provisions of the Bill are compatible with the ECHR. This statement of compatibility must be in writing and be published in such manner as the Minister making it considers appropriate. Alternatively, the Minister must make a

statement to the effect that although he/she is unable to make a statement of compatibility the government wishes to proceed with the Bill in any case.

### **Equality Proofing under The Northern Ireland Act 1998**

Northern Ireland is governed by the Human Rights Act 1998 and the process of providing declarations of compatibility outlined above applies. However, under the Northern Ireland Act 1998, implemented in 2000, there is an additional onus of equality proofing. Section 75 of this 1998 Act requires a public authority to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation, between men and women, between persons with a disability and persons without and between those with or without dependants. All public authorities are required to produce an equality scheme which is a statement of the public authority's commitment to fulfilling its statutory obligations and a plan for doing so. The public authority is also required to carry out screening of all of its policies and practices to determine whether there is likely to be any adverse impact on members of any of the nine groups specified in the legislation. If there is potential for adverse impact on any of the nine groups, the public authority must screen in the policy or practice and an equality impact assessment should be carried out in accordance with the Equality Commission's Guidance for implementing section 75 of the Northern Ireland Act 1998 (revised February 2005).

As age is one of the nine grounds specified in the legislation, children are included under the provisions of section 75. However, there are some concerns about the extent to which Section 75 has been effective in addressing breaches of children's rights in policy proposals. (Boyce, 2004 and Kilkelly et al, 2005)

In May 2004 the Children's Law Centre and ten other organisations lodged a complaint with the Equality Commission over a failure by the Northern Ireland Office (NIO) to carry out an equality impact assessment on the introduction of the Anti-Social Behaviour Order (ASBO) legislation on the grounds that it would have very clear adverse impacts for children and young people and in particular, young males. The Equality Commission investigated the complaint and recommended that the NIO carry out an equality impact assessment on the introduction of the ASBO legislation as a result of the potential for adverse impact.

The Children's Law Centre and Save the Children are currently working on the development of a model of child impact assessment. This work is at an early stage but is likely to progress considerably in 2006.

## **4.7 Conclusion**

From this brief review of existing models of child and human rights impact assessment, it is clear that, at this point, neither is very common. The most significant impact of this for

the current paper is that the model it proposes, while taking what learning it can from the foregoing examples, is essentially a work of first principles. This can be viewed as both negative and positive. On the negative side, there are few examples from which to draw good practice. On the positive side, this means that the current model can be informed by what models exist, but is not confined by what is considered good or best practice elsewhere. It provides an opportunity for Ireland to lead rather than follow in the area of child impact assessment, in this case specifically in relation to the Irish children of migrant parents.

## **Chapter 5. A Model of Child Impact Assessment for the Irish Children of Migrant Parents**

### **5.1 Introduction**

This chapter sets out the proposed model of child-impact assessment for the Irish children of migrant parents facing deportation and for those seeking family reunification. In most cases where leave to remain is refused to one or both parents, the Irish child is taken to the parent's country of origin. The basic premise underlying the development of this model is that Irish children are being denied the opportunity to live in Ireland with their family. The model is intended to determine the impact that such a decision is likely to have on the Irish child in situations where they are *de facto* deported along with their parents and in those situations where they are denied the company of a parent or sibling. It is informed by the human rights and children's rights instruments and practice in other countries reviewed in the chapters above.

The model is set out in five parts.

- The basic principles underpinning child impact assessment;
- The key features of child impact assessment models;
- The template for child impact assessment in the case of the deportation of the migrant parents and Irish child;
- Guidelines for the use of the template;
- Key sources of information that will help in completing the template.

Underpinning all aspects of the model is Ireland's responsibility to Irish children. When an Irish child is removed from Ireland to another country, the legal responsibility of the State to that child does not end. As an Irish child, he/she is entitled to the protection of the State and its consular services across the globe. This is reflected in a number of the sections of the template provided below.

### **5.2 Basic principles of Child Impact Assessment**

The following basic principles should apply to all child impact assessments in the case of Irish children facing *de facto* deportation and those seeking family reunification. These should be taken as the basis of administrative and judicial decisions.

#### ***Rights Based***

All decisions involving an Irish child must be rights based and informed by the CRC, including the following principles and provisions:

- The Child's Right to his/her Family: including Article 7 (the right to know and be

cared for by his/her parents) and Article 9 (the right not to be separated from his/her parents).

- **Non-Discrimination:** All children have the right to enjoy their rights without discrimination: Article 2 of the CRC states child impact assessments must ensure that this is the case and, in particular, that Irish children are not being discriminated against on the grounds of their parent's nationality, ethnic background or ethnicity.
- **The Best Interests of the Child:** Article 3 of the CRC requires that the best interests of the child form a primary consideration in all decisions affecting them, even where the policy or administrative scheme does not directly refer to them. In the context of this report, for example, the administrative scheme IBC/05 is focused on decisions directly relating to the parents of Irish children, not the children themselves. However, these decisions will have very substantial impact on the children involved.
- **The Right to be Heard:** Article 12 of the CRC recognises the right of the child to be heard in all proceedings affecting him/her and makes provision for the child's right to separate, independent representation in legal and administrative proceedings.

### ***Whole-Child Perspective***

Decisions that affect children should be taken from the holistic, whole-child perspective. In practice, this means that they should consider all of the wide variety of roles filled by children, such as child, brother/sister, friend, pupil, citizen as well as the range of environments in which these are played out including the home, school and community. The child's rights are indivisible.

### ***Protection for Particularly Vulnerable Children***

Special consideration should be given to Irish children who are particularly vulnerable due to physical, sensory or intellectual disability or the need for ongoing medical treatment.

### ***Awareness of Cultural Rights***

When applying the child impact assessment, consideration must be given to the child's right to practice his/her religion and culture recognised by Article 30 of the CRC.

### ***Respect for the Rights of Irish Children Living Abroad***

In cases of *de facto* deportation, the Irish child may be considered a non-national in the country to which he/she is *de facto* deported. The potential effect of this on the child's rights and their ability to fully realise the child's rights must be fundamental considerations.

***Respect for the Rights of Irish Children Remaining in Ireland on the Deportation of Migrant Parent(s)***

Where Irish children remain in Ireland on the deportation of their migrant parents consideration must be given to ensuring respect for the child's rights including his/her right to alternative care (under Article 20 of the CRC) and his/her right to know and have contact with both parents (under Article 7).

***Political Commitment to Protecting the Rights of the Irish Child*** Responsibility for ensuring that child impact assessments are undertaken and lead to positive decisions for Irish children of migrant parents lies with the political and public administration systems. Commitment at the highest level must be forthcoming in order to promote and protect these children's rights.

***Burden of Proof in Competing Priorities***

Where other considerations are deemed to be of greater priority than the rights of the child, most probably in this case to preserve the integrity of the Irish immigration and asylum system, the burden of proof of this lies with the decision makers.

***Administrative Feasibility***

The model of child impact assessment should be administratively feasible but sufficiently detailed to allow for a substantive decision making process that is not simply a tick-box exercise.

Although some of the above principles are specific to the Irish child of migrant parents, they are presented here as being sufficiently broad to be adopted for use in a range of decisions affecting children.

**5.3 Key Features of a Child Impact Assessment Model**

The examples of child impact assessment methods and tools reviewed in Chapter 4 above, as well as a review of other impact assessment and policy proofing mechanisms in use in Ireland (Corrigan, 2006) enable the identification of features common to most if not all impact assessment procedures. A number of these are of particular relevance to child impact assessment and are adopted here to reflect the Irish children with which the current report is concerned.

***Core questions***

Generally, impact assessment processes have a similar set of core questions, which include:

- What are the objectives of the policy concerned?
- What are the most likely positive and negative implications of the policy

/administrative decision?

- What alternatives can be identified to eliminate or at least reduce the potential negative impacts or improve the potential positive effects of the decision for the child?
- What data are available to support the decision and the child impact assessment?
- What further information is needed to ensure the best outcome is achieved for the child?

All of these require consideration in the context of the *de facto* deportation of Irish children and decisions on reunification of the child's family.

### ***The development of alternatives***

Child impact assessments should identify the alternative options and identify how these options address shortcomings in the overall policy relating to the deportation of migrant parents of Irish children and the severe limitations on family reunification.

### ***Consultation with stakeholders***

This is recommended and has particular implications for children. As stated above one of the basic principles that should underpin child impact assessment is the right of the child to express their views (Article 12 of the CRC). Sufficient and appropriate resources should be put in place to ensure that this happens. In addition, other relevant stakeholders, particularly parents, other family members and members of the community in which these families live, should be offered the opportunity to input into the decision.

### ***Early intervention***

There is general consensus that the earlier in the policy and decision-making process the impact assessment applies the better. In the case of the migrant parents of the Irish children discussed, the opportunity for early intervention and child impact assessment could have been taken but was not when the Department of Justice, Equality and Law Reform was considering policy in this area. Child impact assessment should now be carried out as soon as a provisional decision to refuse leave to remain is taken. Where the child impact assessment does not change the decision then this assessment should be attached to the communication of the decision to the parents in order to provide them with the basis on which the decision was made and to facilitate their decision to appeal the decision.

### ***The need for the involvement of a range of experts***

Rigorous child impact assessment requires knowledge of a range of areas including a detailed knowledge of the conditions, customs and practices in various parts of relevant countries, of children's rights, of national and international children's law, and of child development. It is unlikely that the civil servants charged with making decisions on IBC/05 cases will have this wide ranging of expertise or have it made available to them



within the civil service. However, as Freeman (1997) points out, it is more desirable that child impact assessments are not carried out by civil servants, or at least not by civil servants alone. Therefore, it will be necessary to involve external organisations and experts to ensure that the best decision is made for the Irish child. At a very minimum, external organisations may be required to conduct or to comment on the first child impact assessments in order to undertake a learning-by-doing exercise which can then be used to inform relevant civil servants on the use of the model. Accordingly, it is recommended that child impact assessments be carried out and integrated into the work of the Department of Justice, Equality and Law Reform. The Office of the Minister for Children should support the mainstreaming of Child Impact Assessments in all matters affecting Irish children of migrant parents and could encourage similar child assessments to be taken on in all government work. The remit of the Office of the Ombudsman for Children could be expanded to enable the Office to have a supervisory role in the undertaking of child impact assessments.

#### **5.4 Template for Child Impact Assessment**

Taking the above into consideration, the following template for child impact assessment in the case of the Irish children of migrant parents facing deportation and those whose families are seeking family reunification is proposed.

## **Section 1                      Family Biography**

1. Name of Applicant:
2. Marital Status:
3. Spouse/Partner Resident in Ireland:
4. Spouse/Partner Seeking Leave to Remain under IBC/05:
5. Spouse/Partner Seeking Leave to Remain under any other administrative scheme (if yes, please specify):
6. Number of Irish Children:
7. Name and Age of Irish Children:
8. Name and Age of Other Children:
  - (a) Resident in Ireland
  - (b) Resident Abroad

## **Section 2                      Impact Assessment for Children Being Removed from Ireland**

### **1.                      Destination of the Irish child**

- 1.1 To what country will the parents of the Irish child be deported?
- 1.2 Has this been designated as a safe country by the Irish Government? In defining a safe country of origin, regard should be given to the country's compliance with the general principles underpinning the UN Convention on the Rights of the Child
- 1.3 Has the specific region/area to which the Irish child will be *de facto* deported been identified?
- 1.4 What is the location of the closest consular service to the child's residence?
- 1.5 What are the procedures for alerting the relevant consulate of the child's arrival within their area?

1.6 What procedures for monitoring and reporting on the child and its well-being will or have been put in place?

1.7 What procedures are in place for intervention where the rights of the child under the CRC are not being upheld or where family crises arise?

1.8 What procedures are in place to protect the Irish child in the event of deportation from their parent's country of origin on the grounds of his/her nationality?

## **2. Prevailing Conditions of the Region**

2.1 What are the prevailing conditions in this region regarding

- Economic stability?
- Political stability?
- Poverty?
- Employment?
- Social factors?
- Armed conflict?
- Gender equality?
- Respect for children's rights?
- Human rights compliance or abuses?

## **3. Specific Provision for the Child**

3.1 *Access to social security and a decent standard of living:* Briefly describe the probable economic circumstances of the Irish child's family in their country of origin and the social security situation in the region to which the child will be taken. In particular will the Irish child

- Have access to family/household earned income sufficient to meet his/her basic needs?
- Have access, through their family, to social security income adequate to meet his/her needs?
- Be at risk of poverty and deprivation?

3.2 *Accommodation:* Please describe the overall accommodation situation in the region to which the Irish child will be taken. On return to (region/country name) will the child

- Reside in secure accommodation?
- Have access to proper sanitation facilities?
- Be subject to overcrowding?
- Have access to a safe sleeping environment?
- Have security of tenure?

- 3.3** *Education:* Please describe the overall situation with regard to education at all levels in the country to which the Irish child will be taken. On return to (region/country name) will the Irish child have access to education including
- Primary education?
  - Second-level education?
- 3.4** *Health:* Please describe the overall situation with regard to the health status and health services in the country / region to which the Irish child will be taken. On return to (region/country name) will the Irish child
- Have access to clean water?
  - Have access to a healthy diet?
  - Have access to primary health care, including immunisations?
  - Have ready access to hospital services?
  - Have access to services appropriate to children with disabilities or ongoing medical conditions that require treatment?
  - Be exposed to risk of infectious and potentially fatal diseases?
- 3.5** *Access to parental care and family relationships:* Please describe the following in respect of the Irish child.
- Will the child have direct and regular contact with both parents?
  - Will the child have access to reunification with the members of his/her nuclear family?
  - What care will be provided to the child in the event of either the imprisonment or death of his/her parent(s)?
  - What supports will be put in place to assist the family of the Irish child settle and (re-)integrate into their family and community, particularly in the event of imprisonment or death of his/her parents?
- 3.6** *Protection from abuse, neglect and exploitation:* In the Irish child's family's country of origin, please describe the extent of exposure to
- Physical or emotional abuse
  - Sexual abuse or exploitation
  - Economic exploitation or participation in forced or inappropriate labour
  - Child trafficking
- 3.7** *Armed Conflict* Will the Irish child be exposed to armed conflict either directly or indirectly?

### **Section 3      Impact assessment for Irish Children Left in Ireland on the Deportation of their Parents**

#### **1.    Day-to-Day Care**

In the event of Irish children being left in Ireland on the deportation of their parent(s), what provisions will be made for the day-to-day care of these children including their:

- care arrangements
- education
- accommodation
- physical health and well-being
- psychological counselling on the separation from their parent(s)

#### **2.    Preserving Family Life**

Where more than one child from a single family is left in Ireland, will the State ensure that these siblings remain together?

With regard to these children, will the Irish-citizen child be able and facilitated to maintain contact with their family members abroad, including their parents and siblings? This also applies to Irish children who have had one parent deported while the other parent is allowed to remain. Will the Irish child be able to maintain contact via

- written and telecommunications;
- physical contact that requires safe and funded travel to and from their parent's country of residence.

#### **3.    Preservation of Cultural Identity**

Will the Irish-citizen child be educated, and facilitated to engage in the cultural practices of their parents and family? This includes

- Freedom to be educated in and to practice their religious beliefs;
- Provision for the education of the child in their parent's first language;
- Provision for the education of the child in the cultural mores and history of their parent's country of origin.

#### **Section 4 Compliance with the General Principles of the CRC**

Having completed sections 1 to 3 above, careful consideration must be given to the basic principles of the CRC. These are included in Articles 2, 3, 6 and 12 and are a key component of the child impact assessment process to be undertaken here.

- 1. Article 2:** All of the articles of the CRC apply to each child without discrimination on the basis of the child's or his/her parent's or legal guardian's ethnic background, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. State Parties must protect children from such discrimination.

*In light of the foregoing assessment, please state the risk of discrimination towards the Irish child in the country or region to which they will be taken or remain behind in Ireland?*

*Please also indicate how, if the Irish child is removed from Ireland, this right to non-discrimination will be secured by the Irish authorities or consular services.*

*In the case of the Irish child being left in Ireland, what provision will be put in place to protect the child from discrimination on the grounds identified in the CRC?*

- 2. Article 3:** In all decisions that affect the child, the child's best interests must be a primary consideration.

*In light of the foregoing assessment, please state how removal from Ireland will be in the best interests of the child.*

*Please also indicate how, if the Irish child is removed from Ireland, the Irish State or consular services will ensure that the child's best interests are served in the country to which they are removed.*

*If the best interests of the child are not a primary consideration here and have been subjugated to preserve the integrity of the immigration and asylum system or other interests, please provide proof that this is necessary.*

- 3. Article 6:** This article preserves the right of every child to life and to the maximum extent possible the right to survival and development.

*In light of the foregoing assessment, please state how, if the Irish child is removed from Ireland, the Irish State or consular services will ensure that the child's development and survival is maximised.*

4. **Article 12:** This article respects the right of children who are capable of forming their own views to be heard in all decisions concerning him/her with due weight being given to the child's views in accordance with his/her age and understanding. It also provides for the child's right to be heard directly or indirectly through a representative in any judicial or administrative procedure that affects them.

*Please indicate the procedures through which the Irish child was afforded the opportunity to be heard in this process.*

*Please indicate how due weight was awarded to the child's views and is reflected in the outcome of this procedure.*

## **Section 5      Details of Contact Person**

**Name of person(s) carrying out the impact assessment**

**Contact details**

## **5.5 Guidelines to Assist in the Implementation of the Model**

The following guidelines are intended to support government officials, NGOs and others in the implementation of the template provided above.

### **Section 2 *Child Impact Assessment in the Case of Irish Children Being Removed from Ireland***

*Question 2.1: Prevailing conditions of the region to which the Irish child will be taken.* The identification and detailed profiling of the region as well as the country to which the Irish child is being taken is essential. This is due to the very different economic, social and cultural conditions and service provision that exist in different regions within countries. Therefore, although a country may be deemed safe by the Irish Government, this does not mean that the specific region to which the child will be taken is safe or suitable for the child. In addition, if comprehensively compiled, this profile provides a context for responses to further questions in the assessment template.

Indicators for assessing the overall conditions in any regions should, at a minimum, include the following:

- employment rate;
- unemployment rate;
- average incomes relative to the cost of living;
- overall absolute and relative poverty rate;
- child poverty rate;
- political stability as measured by the history of armed conflict including civil war;
- record of child and human rights compliance or abuses.

*Question 3.1: Access to a decent standard of living.* Articles 26 and 27 of the CRC state that the child has a right to adequate social security benefit and an adequate standard of living. Thus no child should be forced to leave Ireland to live in poverty where the economy is weak and/or the State cannot or does not provide adequate social security protection for children. This reflects one of the most basic considerations of child well-being and quality of life.

Indicators that may be useful here include:

- (i) the minimum required to live without poverty (the poverty line) in the country or region;
- (ii) the proportion of families and children who live on incomes below this;
- (iii) the level of social security assistance available to children / families with children;
- (iv) the potential income status of the family, taking into account the parents' prior work history and qualifications and the economic and employment profile of the region.



**Question 3.2 Access to accommodation** – Article 27(3) of the CRC stipulates that children should, through their parents who will be supported by the State if necessary, have access to adequate accommodation. In answering this question the assessor should have due regard to the standard of accommodation enjoyed by the child in Ireland, the regional standard of accommodation where the child will be taken, the parents’ ability to provide for adequate accommodation and the extent to which the State will, if necessary, assist in providing accommodation for the family.

Indicators here could include

- (i) proportion of children living in overcrowded accommodation;
- (ii) average cost of family accommodation (less than/more than 50% of family income);
- (iii) proportion of families with children seeking State assistance with housing;
- (iv) number of homeless children with an accompanying parent(s) seeking State assistance with housing;
- (v) proportion of homeless children without an accompanying parent(s);
- (vi) proportion of children living in sub-standard accommodation, including those without sanitation facilities, adequate ventilation or adequate heating

**Question 3.3: Access to education** – Articles 28 and 29 of the CRC addresses education and development and should provide the basis for consideration of this question. The right to education for a child is also enshrined in the Irish Constitution. (Article 42.3.2). Access to education should be interpreted in the widest sense. This goes beyond physical school facilities being available and should also include considerations of the distance travelled to school, access to school transport, access to any remedial teaching necessary for language development where the child’s primary language is not that of the country of deportation, educational provisions for children with disabilities, access to school equipment and to leisure and sport facilities.

Consideration of education should also look at the overall education participation rates of children and in particular examine the differences between the education opportunities afforded to girls compared to boys. This may be particularly relevant in relation to second-level education. Finally, the disciplinary procedures used in schools should be noted as these must protect the integrity and dignity of the child and should not involve physical or other cruel punishment.

Indicators that should be considered here are:

- (i) the participation rate of boys and girls at all levels of education;
- (ii) the proportion of boys and girls who leave school before the recommended minimum age;
- (iii) proportion of young adults with a recognised educational qualification;

- (iv) attendance rates (i.e., the average number of days which children are absent from school in a given month or year);
- (v) progression rates for boys and girls to senior level secondary education.

**Question 3.4: Access to health care:** the right of the child to adequate health care and services is covered in a number of articles of the CRC. These include Article 3.3 (access to adequate services for their care and protection including health care and, in this, to adequate and suitably qualified staff), Article 23 (which provides for the care and development of children with disabilities), Article 24 (the right of the child to the highest possible standard of health care), and Article 39 (recovery from torture, abuse or other trauma). Therefore, the issue of access to primary health care and hospital services should be assessed, as should the incidence of infectious diseases. In particular, the level of HIV infection and AIDS should be taken into account and the relationship between these and cultural norms of the country/region.

Potential indicators here are

- (i) child mortality rates;
- (ii) immunisation rates;
- (iii) reported cases of vaccine preventable diseases such as measles, mumps rubella, hepatitis B;
- (iv) the rate of HIV/AIDS infection among children and young adults;
- (v) percentage of children under five who are under weight;
- (vi) suicide and attempted suicide rates amongst children and young people.

**Question 3.5: Access to parental and family contact and care** – The Preamble of the CRC states that the family is the basic unit of the society, has particular significance for the well-being of children, and states that children should have the opportunity to grow up in the environment of a caring family. Several articles of the CRC relate to the family. Article 5 recognises the rights and duties of parents and the extended family, while Articles 7, 8 and 9 refer to the rights of children to be cared for by their parents, to have family relationships and not to be separated from their parents except where this is in the best interests of the child. Article 10 addresses the right to family reunification. In addition, Articles 41 and 42 of the Irish Constitution enshrine the family as the basic unit of society and guarantee to preserve it except in extreme circumstances.

Indicators that will help illustrate these conditions include:

- (i) the proportion of children living in two-parent households;
- (ii) the proportion of children living in one-parent households;
- (iii) the proportion of children with regular contact with extended family members including grandparents, aunts, uncles.
- (iv) national budgetary spending on supporting families;

- (v) the provision for children on the incarceration or death of their parent(s).

In the case of Irish children separated from one parent and/or dependent siblings on their deportation, this question should also clearly indicate the measures that the State will take to ensure that regular contact is maintained with the deported family members, including their right to re-enter the country for the purposes of family visitation and potentially reunification.

**Question 3.6: Exposure to abuse, neglect or exploitation** – A number of articles in the CRC and its Optional Protocol on the sale of children, child prostitution and child pornography refer to the child’s right to live free of abuse, neglect and exploitation. Article 19 refers to the State’s responsibility to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. Article 32 prohibits the exploitation of children for labour. Article 34 iterates the State’s responsibility to protect children from all forms of sexual exploitation, while Article 36 asserts the child’s right to be protected from all harmful situations. Children whose parents are at risk of incarceration on their return to their own country, or who are at a significantly high risk of death from infectious disease or in armed conflicts, are particularly vulnerable.

Indicators that can be used to assess these risks include:

- (i) percentage of children in forced child labour;
- (ii) percentage of girls in child marriage;
- (iii) percentage of girls subjected to female genital mutilation;
- (iv) rate of children who have experienced physical or sexual assault or rape;
- (v) rate of child trafficking and child prostitution;
- (vi) state provision for children without the care of their parents;
- (vii) state provision for promoting the physical and psychological recovery and social reintegration of child victims.

**Question 3.7: Armed conflict** – armed conflict, including civil and tribal wars, may be a feature of the region or country’s present or recent past. Article 38 of the CRC aims to protect children from participation in armed conflict. It stresses the importance of children being treated humanely in all armed conflict situations. Article 37 of the Convention, which asserts a child’s right not to be tortured and incarcerated should also be considered here.

Indicators that should be considered here include:

- (i) Ratification of the Optional Protocol to the CRC on Children in Armed Conflict;
- (ii) present or recent history of armed conflict;
- (iii) number of child soldiers including those indirectly involved in armed conflict;

- (iv) number of child casualties as a result of armed conflict;
- (v) reported cases of child torture and imprisonment.

### **Section 3 Impact Assessment in the Case of Children Remaining in Ireland on the Deportation of their Parent(s)**

#### ***Question 1 Day-to-Day Care***

Where children are left behind on the deportation of their parents, the impact of this separation will be extremely traumatic. In the first instance, the issue of what will happen to the children in terms of their day-to-day care and well-being must be addressed. The options available to the State – primarily foster care or residential care – must be considered and the most likely scenario identified. In considering this question careful attention must be paid to the social and cultural context within which the child lived with his/her parents and all attempts to maintain the stability of this context must be made. Therefore, where possible, children should not be required to change schools or residential area unless this can be shown to be in the best interests of the child. Such anticipated changes and the appropriate supports to make these as easy as possible for the children involved, including counselling, should be identified.

#### ***Question 2 Preserving Family Life***

***Maintaining living arrangements and contact with Irish siblings also remaining in Ireland*** – The impact of separation from one or both parents will be difficult. However, this will be exacerbated where siblings are further separated through the State care system. In answering this question the most likely scenario should be identified and the additional supports for siblings who are separated identified.

***Maintaining contact with deported parents, siblings and other family members living abroad*** – The CRC, the ECHR, Brussels II (*BIS*) and the EU Directive on the Right to Family Reunification all refer to the importance of maintaining links and contact with family members, particularly parents and siblings. In answering this question the practicalities of maintaining contact between Irish children and their migrant parents must be considered. At least some of the countries to which these parents will be deported will have limited international communication systems and travel to them may involve levels of danger for children. In such situations the role of the Irish consular service must be considered and practical arrangements, including the funding of regular contact visits, identified.

#### ***Question 3 Preservation of Cultural Identity***

Many international conventions and charters provide for the preservation of cultural identity. However, cultural identity is usually transmitted to children through parents and

other family members as well as their community. As the deported parents of these Irish children will be in a very weak position to pass on their cultural and religious heritage, traditions, history and mores, this role must be taken on by the State. Therefore, in answering this question consideration must be given to the necessary supports required to protect the right of children to their cultural identity and the measures that exist or need to be put in place to secure this.

#### **Section 4 Compliance with the General Principles of the CRC**

**Question 1: Article 2 The Principle of Non-Discrimination** – in answering this question, the assessor should have due regard for the foregoing assessment. For example, if in answering Question 3.3 there is an obvious neglect of the education of girls, then it is clear that the right to education is offered on a discriminatory basis. Whether the child is a member of an ethnic, religious or political group against whom discrimination is common will need also to be assessed. Taking the sum of the foregoing assessment, the assessor should be in a strong position to ascertain the extent to which Irish children will be subject to discriminatory practices on the basis of age, gender, nationality.

**Question 2: Article 3 The Best Interests of the Child** – It is one of the fundamental provisions of the CRC and has been written into Irish legislation in the Child Care Act 1991 and the Children Act 1997. At a minimum, the best interests of the child is the sum total of the norms expressed in the articles in the CRC. (Hammarberg and Holmberg, 2000) Therefore, for instance, it is in the child's best interests to be cared for by his or her parents (Article 7), to have family relations (Article 8), to receive an education (Article 28). Again, in completing the assessment template the assessor must be in a position to make an informed decision on this matter. The basic question here is whether or not it serves the child's best interests to be removed from Ireland. Where it is decided that it is not, but that the Irish child's migrant parents should be deported anyway, then the burden of proof is on the assessor to show what considerations subjugated the best interests of the child. This argument needs to be clearly stated and substantiated.

**Question 3: Article 6 The Right to Life, Survival and Development** – The protection of this article will be reflected in a good many of the indicators suggested above. These include the availability of an adequate diet, access to an adequate standard of living through income or social security, access to adequate accommodation, education and health service, and the right not to participate or be exposed to armed conflict. The answers to these questions will provide a clear basis for an assessment of the likelihood of the child securing these rights.

**Question 4: Article 12 The Right to be Heard:** This should indicate the procedures adopted to hear the views of the Irish child on the deportation of his or her parents and their

own *de facto* deportation, giving due weight to the children's views, in accordance with their age and maturity. In securing and reflecting the views of the child it is essential that age appropriate and ethical methods are employed.

## **5.6 Relevant Sources of Information**

There are a number of key sources of information and data that can be drawn on in answering the above questions. While this information is a vital component in completing the child impact assessment, this should in all instances be complemented by the testimony and personal histories of both the parents and the Irish child involved.

### **Key International Sources of Information**

#### **International Organisations**

##### ***The UN Committee on the Rights of the Child – [www.ohchr.org](http://www.ohchr.org)***

This Committee provides guidance on how to implement the CRC at national level. Its website provides access to country reports on implementation of the CRC and concluding observations on these.

##### ***UNICEF - [www.unicef.ie](http://www.unicef.ie)***

UNICEF's *The State of the World's Children* is updated annually. The current report is entitled *The State of the World's Children 2006: Excluded and Invisible*. This report provides an overview of conditions and circumstances of children in 195 countries around the world. It provides commentary on the overall situation of children, and the basic statistics necessary for monitoring the achievement of the Millennium Goals. These include child mortality rates, birth weights, immunization rates, HIV/AIDS statistics, information on school enrolments, child labour, female genital mutilation and a host of additional information on a country by country basis.

##### ***UNICEF Innocenti Research Centre - [www.unicef-icdc.org](http://www.unicef-icdc.org)***

This Centre produces a wide range of research publications and series. In particular, its working paper series on child poverty and its Money Reports provide a range of valuable information and statistics on the lives and welfare of children and their families around the world. The Centre also publishes occasional papers and on topics such as child poverty, child trafficking, access to child services and children at risk.

##### ***World Bank – [www.worldbank.org](http://www.worldbank.org)***

The most relevant publication of the World Bank is its annual *World Development Indicators*. This report provides statistical information across a wide range of indicators in the areas of the economy, people (including poverty, health care, education), the

environment, and states and markets (including science and technology). This is one of the most comprehensive global reports.

***World Health Organisation (WHO) – [www.who.int](http://www.who.int)***

The WHO produces a range of publications on global health. Its annual *World Health Report* focuses on a different key theme each year and provides detailed statistical information on key indicators across a wide range of countries. The most recent report refers to 2005 and is focused on mothers and children. In addition, the WHO produces a range of fact sheets on key health issues, many of which are relevant to children.

***Amnesty International – [www.amnesty.org](http://www.amnesty.org)***

Amnesty International is one of the world's foremost human rights organisations and produces a number of reports on children's rights in various countries around the globe. The organisation has a particular interest in children's rights in the areas of juvenile justice, children in the family and community, and children in armed conflict.

***International Labour Organisation (ILO) – [www.ilo.org](http://www.ilo.org)***

The ILO produces a number of publications and databases that are of use in child impact assessment. In addition to providing information on the overall labour situation in various countries, the ILO is operates the International Programme to End Child Labour in approximately 40 developing countries. This programme and the associated Statistical Information and Monitoring Programme on Child Labour provide crucial information on the extent and nature of child labour by a range of variables including gender and urban/rural location.

**Key Irish Sources of Information**

The Irish organisations can contribute significantly to child impact assessments by providing expertise in the field of children's rights, immigration and international human rights law and protocols, as well as knowledge based on ongoing contact with immigrants, refugees and asylum seekers, and their own research and analysis.

***CADIC Coalition (formerly known as the Coalition Against the Deportation of Irish Children)***

The CADIC Coalition was established in July 2003 in the wake of the Supreme Court ruling in the Lobe and Osayande cases of January 2003. The Coalition is comprised of national, regional and local NGOs, spanning human rights organisations, legal aid groups, children's rights organisations, faith-based migrant support groups and other migrant support organisations. The CADIC Coalition's remit is narrowly focused round the rights of a specific group of families comprised of Irish children, their migrant parents and other close family members.

The objectives of the Coalition are:

- (i) to ensure that the Constitutional rights of Irish children, and the legal and human rights of their migrant parents are respected,
- (ii) to call for the right of residency to be given to families of Irish children who made applications for residency prior to the withdrawal of the right to apply for residency on 19 February 2003,
- (iii) to call for the establishment of a procedure whereby all families of Irish children can apply for residency, that is fair, transparent, human rights compliant, and places the best interest of the child as the paramount factor in the decision-making process, and
- (iv) to call for free and adequate legal assistance to be made available to families of Irish children who face deportation orders.

Representatives of CADIC were in regular contact with the Irish Born Children Unit and policy makers of the Department of Justice, Equality and Law Reform during the IBC/05 Scheme, as well as being in direct communication with many families applying for leave to remain under this administrative residency scheme. See [www.integratingireland.ie/cadic/1006](http://www.integratingireland.ie/cadic/1006)

***Children's Rights Alliance*** – [www.childrensrights.ie](http://www.childrensrights.ie)

The Children's Rights Alliance was formed in 1995 and is comprised of 80 NGO member organisations, including child welfare agencies and service providers, child protection groups, family support groups, disability and Traveller organisations and trade unions and professional bodies. The overall aim of the Alliance is to secure the rights of children and young people in Ireland, primarily through the implementation of the CRC. The Alliance's policies, projects and activities are developed through ongoing collaboration and consultation with member organisations. The principle activities of the Alliance include making submissions to and engaging in constructive dialogue with government departments, statutory bodies and other national fora, commenting publicly on policy issues and developments, participating in advisory and working groups, undertaking research, producing policy reports, providing education and training sessions on children's rights, organising conferences and seminars, raising awareness and understanding of children's rights, and networking with relevant organisations, both national and international. The Children's Rights Alliance is a CADIC coalition member.

***Immigrant Council of Ireland (ICI)*** – [www.immigrantcouncil.ie](http://www.immigrantcouncil.ie)

The Immigrant Council of Ireland is a national independent non-governmental agency that responds to the emerging needs of immigrants in Ireland. It was established by Social Innovations Ireland, which works to demonstrate and create new innovative responses to



changing social needs in Ireland. The joint steering committee of the Immigrant Council of Ireland is made up of individuals who have expertise, interest and commitment in the area of immigration. The ICI has produced a number of useful sources of information on immigrants covering relevant areas such as leave to remain, family reunification and citizenship and residency. The ICI also campaigns for positive change relating to immigrants and their families and provides information and advice directly to those facing immigration issues. Immigrant Council of Ireland is a CADIC coalition member.

***Integrating Ireland - [www.integratingireland.ie](http://www.integratingireland.ie)***

Established in 2001, Integrating Ireland is an independent network of community and voluntary groups working in mutual solidarity to promote and realise the human rights, equality and integration of refugees, people seeking asylum and immigrants in Ireland. To date over two hundred organisations across the country have joined Integrating Ireland, benefiting from a wide range of membership support services, such as training and capacity building, local, regional and national networking, joint campaigning and strategic lobbying. Integrating Ireland seeks to support the huge range of activities by member organisations of, or for, refugees, asylum-seekers and immigrants. Integrating Ireland is a CADIC coalition member.

***International Organisation for Migration (IOM), Dublin***

IOM is an international organisation committed to the principle that humane and orderly migration benefits migrants and society. As the leading international organization for migration, IOM acts with its partners in the international community to assist in meeting the growing operational challenges of migration management; advance understanding of migration issues; encourage social and economic development through migration and uphold the human dignity and well-being of migrants. The principle activity of IOM Dublin is the operation of voluntary return programmes for migrants who wish to return to their home country but so not have the means to do so. Returnees under the IOM programme travel as regular passengers. The reasons for their travel remains confidential and assistance is provided in obtaining valid travel documents from embassies and consular missions in Ireland or other European countries. IOM Dublin ensures that all returnees have appropriate transit and post-arrival assistance from IOM missions in countries through which they travel as well as in their ultimate destination. See [www.iomdublin.org](http://www.iomdublin.org) and [www.iom.int](http://www.iom.int)

***Irish Council for Civil Liberties (ICCL) [www.iccl.ie](http://www.iccl.ie)***

The Irish Council for Civil Liberties is an independent non-governmental organisation that works to promote and defend human rights and civil liberties. It was founded in 1976 by, among others, Mary Robinson, Kader Asmal and Donal Barrington. ICCL has been particularly active in campaigns against emergency legislation and special courts and has been to the forefront in Constitutional referenda on numerous issues including divorce,

abortion, bail, and cabinet confidentiality. It has championed the rights of minorities including gay and lesbian rights, Travellers' rights, women's rights, the rights of refugees and asylum-seekers, and has been active in the protection of a range of due process rights including the right of persons in psychiatric detention. The ICCL is a coalition member of CADIC, and has undertaken research and made public/policy statements on the position of Irish children of migrant parents.

***Irish Refugee Council [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie)***

The Irish Refugee Council (IRC) is an independent non-governmental organisation (NGO) which was set up in 1992. Membership of the organisation is open to individuals and organisations which support its aims. The work of the IRC on a national level includes policy, research, legal, networking and information components while the Ennis sub-office deals with the broad range of issues affecting the local refugee community. Irish Refugee Council is a CADIC coalition member.

## **5.7 Conclusion**

Under the Irish Constitution, separation of children from their parents is deemed rarely in the best interests of the child. The CRC broadens this concept to one of the enjoyment of the society and company of their family. Therefore in cases of both refusals to residency and requests for family reunification, this model of child impact assessment can be of great use as a tool to ensure the Irish child's rights are being respected. Of primary importance and where this model can be immediately applied is for Irish children of migrant parents who face *de facto* deportation if their parents are forced to leave Ireland. Some consideration is also given to the protection of the Irish children who may be left behind in Ireland following their parent's deportation. The assessment can also be used for those children whose families are seeking family reunification. The model draws on existing materials on child impact assessment but, given the limitations of this, breaks new ground in the Irish context. As deportation decisions following refusals are currently being considered by the Department of Justice, Equality and Law Reform, it is imperative that this model be put into use as quickly and as effectively as possible.

## **Chapter 6. Conclusion**

### **6.1 Introduction**

The foregoing chapters have provided an overall rationale and framework for the introduction of child impact assessment in the case of Irish children whose migrant parents are facing deportation and for those seeking family reunification. Chapter 5 provides a model for such impact assessment, including a template and guidelines for its use. This final chapter identifies some of the key steps that are necessary to put this model into practice.

### **6.2 Immediate Application of the Model**

There is a need for this model to be implemented immediately in respect of cases where the parent(s) of Irish children are now or will soon be facing deportation or the refusal of family reunification, in order to assess the impact of this on the child. These assessments should, ideally, be carried out by the Department of Justice, Equality and Law Reform with the support of government departments, statutory agencies and external organisations identified in section 5.6 above. In particular, those with expertise and knowledge of children's rights and development, immigration and child and family law, and who are familiar with the areas to which parents are being deported, should be involved. In this, as in all instances, the voice of the child should be heard.

### **6.3 Responsibility for Child Impact Assessment**

While it is recommended that child impact assessments should be mainstreamed and integrated into the decision-making process of the Department of Justice, Equality and Law Reform, it is recommended that the Office of the Minister for Children have responsibility for supporting the use of Child Impact Assessments generally. Moreover, the Office of the Ombudsman for Children, which has both expertise and an independent mandate in this area, should have a supervisory role over this process.

### **6.4 Development of a Model for Monitoring Children's Rights in Ireland**

The model of and template for child impact assessment presented here is specifically designed for use in the case of Irish children whose migrant parents face deportation or have been refused family reunification. However, the model and template provided could be adapted for use in other areas. It is recommended here that the model and template be adapted, adjusted and changed in order to support the impact assessment of individual pieces of policy, legislation and administrative schemes that impact both directly and indirectly on children and their rights. Building on such practical experience, the systematic introduction of Child Impact Assessment on a much wider scale, as proposed in the National Children's Strategy, may be possible. In addition, given that the European

Commission is expected to issue an action plan on supporting member states' compliance with the CRC as part of its 2006 work programme, it is an apt time to consider the application of child impact assessment more broadly.

In the long term, therefore, consideration should be given to mainstreaming child impact assessments throughout all administrative and political decision making, with a view to it becoming integrated into all decision-making processes and procedures directly or indirectly impacting on children.

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## **Appendix 1: Template for Child Impact Reporting in Flanders**

1) **Has the impact on children and their rights been taken into account when the draft Act was drawn up?**

a) What is the current regulation? What were the effects on children and their rights?

.....  
.....

b) Which changes does the draft make? Which effects on children and their rights are to be expected?

.....  
.....

c) Were alternative policy intentions considered?

Yes    No

Justify your answer.

If yes, which alternatives were considered and why were they not selected?

If no, why were no alternatives considered?

.....  
.....

d) Did this child impact report result in a clearly provable adaptation of the preliminary draft Act?

Yes    No

Justify your answer.

.....  
.....



2) **Analysis of the impact on children and their rights.**

**1. In general**

a) Were the provisions and principles of the International Convention on the Rights of the Child explicitly taken into account when the preliminary draft Act was drawn up?

Yes     No

Justify your answer.

.....  
.....

b) Which provisions of the preliminary draft Act contribute to the realisation of the rights of the child as guaranteed by the Convention?

Justify your answer.

.....  
.....

c) In case the draft Act aims at the approval of an international standard, does the latter contribute more to the realisation of the rights of the child than the Convention?

Yes     No     Not applicable

If yes, indicate which provisions of the draft/Convention are concerned.

If no, indicate why the preliminary draft is submitted to the approval of the Government in the knowledge that the most strict standard applies.

.....  
.....

**2. Per policy domain**

What is the positive/negative impact on children to be expected in the following policy domains?

What is the difference with the impact on adults? Justify your answer.

‘Policy domain’ does not only refer to the specific competence and remit of each minister or administration. By definition, a competence has common grounds with different domains, and it is the intention of map out these common grounds.

If possible, always refer to specific provisions in the preliminary draft.

**a) Positive**

- Family  
.....  
.....
- Housing  
.....  
.....
- Leisure activities (game, sport, ...)  
.....  
.....
- Health and welfare  
.....  
.....
- Mobility  
.....  
.....
- Education  
.....  
.....
- Environment  
.....  
.....
- Others  
.....  
.....

**b) Negative**

- Family  
.....  
.....

- Housing  
.....  
.....
- Leisure activities (game, sport, ...)  
.....  
.....
- Health and welfare  
.....  
.....
- Mobility  
.....  
.....
- Education  
.....  
.....
- Environment  
.....  
.....
- Others  
.....  
.....

**3. Per basic principle of the Convention**

Do the four basic principles of the Convention, as mentioned below, apply to the preliminary draft Act?

If yes, circle the figure (1 = very little; 5 = very much).

If no, circle NA (not applicable).

Justify your answer with reference to the applicable provisions of the preliminary draft.

1. The best interests of the child (Art. 3 ICRC)

- in general: 1---2---3---4---5---NA

.....

- joint responsibility of the parents: 1---2---3---4---5---NA

.....

- government's responsibility: 1---2---3---4---5---NA

- responsibility of the child itself: 1---2---3---4---5---NA

.....

2. The right of the child to non discrimination (Art. 2 ICRC)

- in general: 1---2---3---4---5---NA

.....

- respect for the rights of the child, 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:

1---2---3---4---5---NA

.....

- government's obligation to take all appropriate measures in order to protect the child against all forms of discrimination:

1---2---3---4---5---NA

.....

3. The right of the child to life, survival and development (Art. 6 ICRC)

- in general: 1---2---3---4---5---NA

.....

- government's obligation to protect the child against ill-treatment by the parents or those who have the care of the child:

1---2---3---4---5---NA

.....

- government's obligation to take the necessary preventative and curative measures with regard to health care:

1---2---3---4---5---NA

.....

- right to a decent standard of living: 1---2---3---4---5---NA

.....

- right to education: 1---2---3---4---5---NA

.....

.....

4. The right of the child to participate (Art. 12 ICRC)

- in general: 1---2---3---4---5---NA

.....

- right of the child to express its views in all matters affecting the child:

1---2---3---4---5---NA

.....

- government's obligation to make sure that the views of the child are given due weight in accordance with the age and maturity of the child:

1---2---3---4---5---NA

.....

- right to access the appropriate information: 1---2---3---4---5---NA

.....

- right to freedom of association: 1---2---3---4---5---NA

.....

- right to freedom of thought, conscience and religion:  
1---2---3---4---5---NA

.....

.....

3) **Which information sources did you and/or can you consult?**

a) Tick your answer, and justify it.  
If possible, enclose a copy of the viewpoints, articles and excerpts from studies, and/or very clearly mention the date of the consulted documentation.

1. General knowledge (ready knowledge, media, ...)

Yes  No

Justify your answer.

.....  
.....

2. Consultation with the children's Rights contact point of the administration/institution with functional responsibility and/or co-ordination Children's Rights contact points (<http://www.wvc.vlaanderen.be/kinderrechten/>)

Yes  No

Justify your answer.

.....  
.....

3. Advice Expert Committee Child Impact Reporting

Yes  No

Justify your answer.

.....  
.....

4. Consultation Office of the Children's Rights Commissioner (<http://www.kinderrechten.be>)

Yes  No

Justify your answer.

.....  
.....

5. Consultation children’s rights and youth organisations: “Kinderrechtencoalitie Vlaanderen” (Children’s rights coalition) (<http://www.kinderrechtencoalitie.be>), “Vlaamse Jeugdraad” (Flemish Youth Council) (<http://www.vlaamsejeugdraad.be>), “Steunpunt Jeugd” (Youth Centre of Expertise) (<http://www.steunpuntjeugd.be/>)

Yes  No

Justify your answer.

.....  
.....

6. Results scientific research

Yes  No

Justify your answer.

.....  
.....

7. Inquiry among children and youngsters (e.g. <http://www.whatdoyouthink.be/>)

Yes  No

Justify your answer.

.....  
.....

8. Other

Yes  No

Justify your answer.

.....  
.....



4) **Miscellaneous**

Are there any other considerations that are important for children and their rights, and that mattered when the preliminary draft Act was drawn up, but that have not been dealt with in this child impact report?

Yes     No

If yes, which?

.....  
.....

5) **Evaluation child impact report (CIR)**

a) Which difficulties have you experienced when drawing up the CIR?

.....  
.....

6) **Policy conclusion CIR**

a) Will the preliminary draft Act contribute to the observances of the ICRC in Flanders?

If yes, circle the figure (0=not at all, quite the contrary, 5=very much).

If no, circle NA (not applicable).

If it is not known/not clear, circle NK.

NK----NA----0----1----2----3----4----5

Justify your answer.

.....  
.....

b) Has this CIR resulted in a concrete policy intention and/or decision?

Yes     No

Justify your answer.

.....  
.....

7) **Contact person**

Who can be contacted in order to obtain more information about the child impact report that is drawn up (name, administrative unit, telephone, e-mail)?

(It is important to mention here the name of the person who is in charge of the dossier in concrete terms. This does not detract from the fact that the final political responsibility for submitting the draft Act and the child impact report concerned to the Flemish Parliament lies with the Government and the competent minister).

.....  
.....

Source: Expert Commission on Child Impact Reporting (2004) “Child Impact Report”, available in English from Deskundige Commissie Kindeffectrapportage, p/a Administratie Gezin en Maatschappelijk Welzijn, Directoraat-generaal, Ministerie van de Vlaamse Gemeenschap, Markiesstraat 1 – 3de verdieping, 1000 Brussels.

## **Appendix 2 Children’s Rights Office, United Kingdom - Checklist for Children**

Answer the following questions in relation to all local authority policy and planning proposals.

In answering the questions give specific examples, avoid general statements, do not answer only ‘yes’ or ‘no’ and if the question is not seen as relevant explain exactly why.

1. What *input* have children and young people of different ages had in the process of drawing up the proposals?
2. What provision is there for ensuring the *views of children and young people* who might be affected are sought and taken into account at all stages of the implementation of the proposals?
3. In what way do the proposals tackle *disadvantage and deprivation* faced by children suffering the effects of:
  - poverty
  - racism
  - disability
  - being unable to live with their own families
  - homelessness
  - refugee status
  - rural isolation
  - caring responsibilities
  - family breakdown
  - violence
  - not receiving education
4. In what ways do the proposals promote and protect the *health and welfare* of children and young people of different ages, i.e.:
  - birth - 4 years old?
  - 5 - 7 years old?
  - 8 - 12 years old?
  - 13 - 15 years old?
  - 16 - 17 years old?
5. What standards are to be following relating to *safety, staffing and supervision*? How are these standards to be implemented and monitored? The proposals could:
  - specify exactly which guidance and standards are being followed
  - specify process through which standards will be monitored
  - explain why, if guidance or other recognised standards exist but are not being followed, this is so.
6. How do the proposals address what support is being offered to *parents* to ensure they can provide their children with an adequate standard of living, help them bring-up their children and prevent the possibility of family breakdown including
  - material support

- social support
  - information and advice
  - training in parenting skills
7. How do the proposals ensure that there are more *opportunities for disabled children and young people* to take an active part in local activities?
- Have children and their families been consulted about their specific needs?
  - Are plans for integrated service provision included and properly resourced?
  - Do proposals take into account the different needs of children and young people with different physical disabilities and learning difficulties?
  - Do proposals take into account the different needs of disabled children of different ages?
8. In what way do the proposals offer support to children and young people in *exercising their rights* to:
- freedom of expression
  - freedom of thought, conscience and religion
  - freedom of assembly and peaceful gatherings
  - privacy and confidentiality
  - practise their own culture, religion and language
  - have access to information which enhances their education and development
9. How do the proposals enhance the *protection* you offer children and young people of all ages against:
- physical and mental violence
  - sexual abuse or exploitation
  - exploitation in employment
  - drug abuse
  - restriction of liberty
10. In what ways do the proposals contribute to ensuring that all children and young people have *access* to:
- good schools and education which meets their individual needs
  - good quality, appropriate, accessible health care services
  - play, leisure and cultural facilities which meet their own expressed needs
11. In what ways does your agency ensure that the *service structure* reflects the needs of children and their families in terms of:
- planning
  - resources
  - discussion
  - inter-agency working
  - methods of decision making

Source: Association of Metropolitan Authorities and The Children's Office (1995) *Checklist for Children: Local Authorities and the UN Convention on the Rights of the Child*, London: Association of Metropolitan Authorities.





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