

# All Our Children

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CHILD IMPACT ASSESSMENT FOR IRISH CHILDREN  
OF MIGRANT PARENTS

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SUMMARY  
APRIL 2006

children's  
RIGHTS ALLIANCE

Commissioned by the CADIC Coalition

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## Child Impact Assessment for Irish Children of Migrant Parents

### Summary

April 2006

The CADIC Coalition commissioned Children's Rights Alliance to develop a model of child impact assessment for Irish children whose migrant parents have been refused leave to remain and are threatened with deportation and for children whose families are not complete in Ireland due to the absence of a close family member. The aim of the model is to ensure the rights of Irish children are taken into account when decisions are made regarding applications by their migrant parents for residency or family reunification.

This report is a summary of *All Our Children: Child Impact Assessment for Irish Children of Migrant Parents* written and compiled by Carmel Corrigan and published by the Children's Rights Alliance in April 2006, which can be accessed at [www.childrensrights.ie](http://www.childrensrights.ie)

Following the Supreme Court case of *Fajujonu v The Minister for Justice, Equality and Law Reform* in 1990 the practice developed in Ireland whereby the 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 such migrant parents of Irish children did not have an automatic right to remain in Ireland for an indefinite period. The Minister for Justice, Equality and Law Reform retrospectively applied this judgment 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 previously applied for leave to remain on this basis being placed in a very vulnerable situation. Families began being issued with deportation orders.

In 2005 the Minister introduced the Irish Born Child 2005 administrative scheme (IBC/05) through which applications for leave to remain on the basis of having an Irish child could be made. This scheme closed in March 2005. In the first quarter of 2006 over one thousand refusals had been handed down out from close to eighteen thousand applications. Bearing in mind parents submitted applications separately, at least five hundred Irish children could face *de facto* deportation, along with their migrant parents.

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.

## The Legal Framework

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

The national and international context for the implementation of child impact assessment can be found in Irish, European and International law. Primary among these is the Irish Constitution, under which children have limited rights that can be restricted by law, 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, the UN Convention on the Rights of the Child (CRC) and the EU Directive on the Right to Family Reunification.

## A Model of Child Impact Assessment for Migrant Parents

This model is intended to determine the likely impact 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 and/or other family member. It is informed by human and children's rights instruments and practice in other countries.

The model is set out in four parts:

- Basic principles underpinning child impact assessment
- Key features of child impact assessment models from other jurisdictions
- The template for child impact assessment in the case of the deportation of the migrant parents and *de facto* deportation of the Irish child or the denial of family reunification
- Key sources of information that can aid in completing of the template

Underpinning all aspects of the model is the Irish State's responsibility to Irish children. When an Irish child is *de facto* removed from Ireland to another country, the legal responsibility of the Irish State to that child does not end. As an Irish child, he or she is entitled to the protection of the State and its consular services abroad.

### ➤ Underlying Principles

This model is based on underlying principles, including:

- The best interests of the child must be the paramount consideration;
- The principle of non-discrimination must ensure CRC rights are enjoyed without discrimination;
- The right of the child to be heard must be secured;
- Assessment must be based on the CRC, whose provisions are indivisible.

### ➤ The Need for Child Impact Statements – A UK Perspective

Hodgkin (1999) sets out 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, as they cannot vote they 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.

### ➤ **Template for Child Impact Assessment**

This template should be used to ensure the protection and achievement of the rights of Irish children. Guidelines on the use of this template are available in *All Our Children* available from the Children's Rights Alliance [www.childrensrights.ie](http://www.childrensrights.ie)

#### **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 Irish Children Being Removed from Ireland**

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

- 1.1 To what country will the parent/s 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 of 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 his/her 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**

The model of child impact assessment proposed should be applied to all pending decisions and case reviews carried out by the IBC/05 administrative scheme and all decisions carried out subsequently by the Department of Justice, Equality and Law Reform in relation to residency status, deportation and family reunification involving children.

In addition, 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.



## ➤ Relevant Sources of Information

Below are a number of key sources of information and data that can be used to help answer the questions set out in the template. While this information is a vital component in completing the child impact assessment, it 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

<b>Amnesty International</b>	<a href="http://www.amnesty.org">www.amnesty.org</a> ; <a href="http://www.amnesty.ie">www.amnesty.ie</a>
Provides reports on children's rights internationally.	
<b>UNICEF Innocenti Research Centre</b>	<a href="http://www.unicef-icdc.org">www.unicef-icdc.org</a>
Provides statistics on the lives and welfare of children and their families worldwide.	
<b>International Labour Organisation (ILO)</b>	<a href="http://www.ilo.org">www.ilo.org</a>
Provides statistical information and child labour statistics in approximately 40 developing countries.	
<b>World Bank</b>	<a href="http://www.worldbank.org">www.worldbank.org</a>
Provides statistical information in the areas of economy, people, including poverty, health care, education, environment, states and markets.	
<b>The UN Committee on the Rights of the Child</b>	<a href="http://www.ohchr.org">www.ohchr.org</a>
Provides guidelines on monitoring and reporting on children's rights at national level and country reports on progressing implementation of the CRC.	
<b>World Health Organisation (WHO)</b>	<a href="http://www.who.org">www.who.org</a>
Provides key global health information relevant to children.	
<b>UNICEF</b>	<a href="http://www.unicef.org">www.unicef.org</a> ; <a href="http://www.unicef.ie">www.unicef.ie</a>
<i>The State of the World's Children</i> provides worldwide statistics including child mortality rates, birth weights, immunization rates, rate of HIV/AIDS, school enrolments, child labour and female genital mutilation.	

### Key Irish Sources of Information

<b>CADIC Coalition</b> ( <i>formerly known as the Coalition Against the Deportation of Irish Children</i> )	<a href="http://www.integratingireland.ie/cadic">www.integratingireland.ie/cadic</a>
<b>Children's Rights Alliance</b>	<a href="http://www.childrensrights.ie">www.childrensrights.ie</a>
<b>Department of Justice, Equality &amp; Law Reform</b>	<a href="http://www.justice.ie">www.justice.ie</a>
<b>Immigrant Council of Ireland</b>	<a href="http://www.immigrantcouncil.ie">www.immigrantcouncil.ie</a>
<b>Integrating Ireland</b>	<a href="http://www.integratingireland.ie">www.integratingireland.ie</a>
<b>International Organisation for Migration</b>	<a href="http://www.iomdublin.org">www.iomdublin.org</a> & <a href="http://www.iom.int">www.iom.int</a>
<b>Irish Council for Civil Liberties</b>	<a href="http://www.iccl.ie">www.iccl.ie</a>
<b>Irish Refugee Council</b>	<a href="http://www.irishrefugeecouncil.ie">www.irishrefugeecouncil.ie</a>

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.

#### **For copies of the full report or information on CADIC contact:**

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Tel: +353 1 6629400, Fax: +353 1 6629355, Email: [info@cra.iol.ie](mailto:info@cra.iol.ie),  
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