

**Submission of the  
Children's Rights Alliance  
to the  
Joint Committee of the Oireachtas on Justice,  
Equality, Defence and Women's Rights  
in relation to the implications of the recent Supreme  
Court judgement concerning residency rights of non-  
national parents of Irish citizen children**

**Presented by Raymond Dooley, Chief Executive,  
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Thank you for the opportunity to comment this evening on the implications of the recent Supreme Court judgement concerning the residency rights of non-national parents of Irish citizen children.

The Children's Rights Alliance, a coalition of seventy-four Irish non-governmental organisations concerned with the rights and needs of children in Ireland, has taken an active interest in this matter since the Government made clear its intentions to change policy in the area of residency for non-national parents of Irish citizen children.

Our primary concern in relation to this issue has been to make sure that the constitutional and human rights of the children of non-national parents are respected and protected.

For more than a year, in correspondence with the former and current Ministers for Justice and through a succession of public statements, we have been urging that the rights of children be directly addressed and not be treated as a mere footnote to the issue of asylum and residency policy.

We have asked – and continue to ask – the following questions which we believe must be answered before assurances can be given that the rights of the children involved will be fully safeguarded and their needs fully met.

- What will happen to the Irish citizen children of deported non-nationals?
- Will they be left behind or – despite their status as Irish citizens – will they be effectively deported, or exiled, along with their parents?
- If they are left behind, who will care for them? What preparations have been made and what resources have been allocated by Government to provide for the care of these children?
- During the High Court proceedings in the O and L cases, lawyers representing the Department of Justice said that it was the parents 'duty' to take their children with them. In the aftermath of the Supreme Court decision, the Minister for Justice has publicly stated that the Government will insist that deported non-nationals take their children with them, even if those children are Irish citizens. If the children are taken to a foreign country, how long will they be required to remain in exile?
- How will their constitutional rights as Irish citizens be protected during their childhood in exile?
- How will consular offices ensure that the children will be able to realise their rights to a proper education, to decent health care, to protection from abuse and to all of their other rights under the Irish Constitution, the European Convention on Human Rights and the UN Convention on the Rights of the Child?
- What will happen to the children if they are forced to move to a country where even the limited benefits of consular assistance are unavailable to them?
- What will be done if the government of the foreign country to which the children are being transported refuses them entry or subsequently deports them on the grounds that they are non-nationals with no permanent rights of residency?

- If the exiled Irish children find themselves in a country that routinely engages in serious breaches of human rights, how will they protect themselves?
- What will happen to the children if their parent or parents are placed in prison following deportation?
- Forced marriage, female genital mutilation and torture are common practices in a number of the countries to which Irish citizen children could find themselves exiled. What safeguards and protections will be put into place to ensure that Irish children forced to move to these countries do not fall victim to such abuses of their basic human rights?
- What if these exiled Irish children are forced to flee persecution? Where would they be allowed to go?
- Many foreign countries provide free or subsidised public education and public health services only to their own citizens. How will the transported Irish citizen children, as resident aliens in these countries, have their basic education and health rights vindicated?
- Ireland is a party to the UN Convention on the Rights of the Child. In ratifying the Convention, Ireland has accepted and assumed the solemn responsibility to make the best interests of the child a primary consideration in all of its actions and decisions affecting children. How does the Department of Justice propose to determine what would be in the best interests of the child?
- After making such a determination, what weight would the Department give to the child's best interests before making a decision to deport the child's parents and effectively deport the Irish citizen child?

The answers to these questions are critically important to thousands of Irish children who could find themselves separated from their parents or forced into effective exile.

While the cases were before the courts, the Government declined to answer these questions. A spokesman for the Department of

Justice said these were “hypothetical situations that had not arisen yet”.

Now that the Supreme Court has rendered its decision, these prospective scenarios are no longer hypothetical for more than 11,000 Irish children. Government must stop pretending that the rights of children can simply be ignored and must provide answers to these legitimate and practical questions.

Government must reveal its plans for the children involved, address itself to the consequences of its actions, explain how the rights of the children will be protected and establish proper systems and procedures for ensuring that primary consideration will be given to the best interests of the children involved.

Until that happens, there should be a moratorium on the effective deportation of Irish citizen children.

At an administrative level, a system of procedures must be designed, developed, resourced and put into place to ensure that the rights of the children are adequately protected. Minimally, this would involve the following steps being taken:

- It must be a requirement that a Child Impact Review be undertaken before any official action is taken that would bring about the effective deportation of an Irish citizen child.
- The Child Impact Review must involve a thorough examination of the circumstances prevailing in the foreign country to which the child may be forced to go.
- This Review would include a close look at the practices and policies that would bear upon the child’s ability to vindicate his or her constitutional and human rights in the country in question.
- Following the examination, written findings would be made.
- The findings would be assessed against standards that would need to be designed and developed to enable officials conducting the Review to determine whether it would be in the best interests of the child to be transported to the country in question.

- Weightings and criteria would need be developed to ensure that such assessments would be applied on a fair and consistent basis.
- Staff responsible for conducting these Reviews must receive adequate training in children’s rights and in the requirements of relevant international and domestic law.
- Particular attention must be paid to section 3 of the Guardianship of Infants Act, 1964 and to section 24 of the Child Care Act, 1991 which provide that “the first and paramount consideration” be given to the welfare of the child, and to Ireland’s obligations under the UN Convention on the Rights of the Child regarding the primary consideration to be given to the best interests of the child in matters that affect them.
- Sufficient resources would need to be allocated to ensure that such Reviews would be undertaken in a manner consistent with a genuine respect for the rights of the child and with full regard to the momentous nature of the question to be decided.

We believe that unless the Government takes this approach to its responsibilities in this area, several outcomes will occur:

1. The State will proceed on a systematic basis to take actions in violation of the basic constitutional and human rights of Irish children.
2. The State will find itself facing litigation for years to come from those whose rights were abrogated.
3. Test cases will be taken that will, in all likelihood, result in a deportation order being overturned by a higher court as occurred in Canada when the Canadian Supreme Court determined in 1999 in *Baker v Canada* that insufficient weight had been given to the fundamentally important impact that a non-national parent’s deportation would have upon her children and upon their rights and welfare.

The recent Irish Supreme Court decision in the O and L cases may have permitted the State to deport non-national parents in two

particular instances, but it does *not* permit the State to absolve itself of its responsibility to promote and protect the rights of Irish children whose parents are subject to possible deportation.

We ask the Chairman and Members of the Joint Committee to consider these issues during your deliberations on this matter.

Thank you.