



The Case against the Citizenship Referendum from the Standpoint of the Rights and Well- Being of Children

Since its inception, the Children's Rights Alliance has supported Constitutional change to ensure that the rights of children are fully protected and promoted in the Irish Constitution and in Irish statutes and regulations. Since 1996, we have called for implementation of the recommendations of the Constitution Review Group with respect to children to ensure that the principles and provisions of the UN Convention on the Rights of the Child are fully expressed in the Irish Constitution. We believe that the proposed Constitutional amendment represents a step backward in this effort because it will weaken, not strengthen, the rights and entitlements of some children at a Constitutional level, and will do so to an extent that remains unclear.

This is a referendum on the rights of children.

We can speculate on what some of the consequences might be if the referendum were to pass. It may or may not serve to undermine the Belfast Agreement, alter patterns of immigration, relieve pressures on maternity hospitals, encourage racist behaviour or require the creation of new bureaucracies. What we do know for certain is that it will place some children in a separate class, and those children will not have the same rights as other children.

Rights, entitlements or benefits for some children will be weakened.

The rights and entitlements of non-citizen children will be – to an extent that remains unclear – reduced and weakened in certain ways. Moreover, they will be placed in a category of the population that is currently experiencing the restriction, rollback and denial of many existing entitlements and benefits.

Where this will ultimately lead cannot be predicted with any certainty, but if the recent past is prologue, the future does not bode well for non-citizen children in Ireland.

Child Benefit, for example, may no longer be available to the children of non-Irish nationals, or at least not until they have established a sufficient, multi-

year period of residency. Using legislation purportedly enacted to defend Ireland's social welfare system from a possible influx of claimants arriving from the accession states following EU enlargement, the Government has decided that newly-arrived asylum-seeking children in Ireland will no longer qualify for Child Benefit or One Parent Family Payment, effective May 1st of this year.

The Irish Human Rights Commission has questioned whether the referendum may weaken the rights of non-citizen children to the extent that Ireland may find itself in violation of international law. Many of the fundamental rights provided for in the Irish Constitution explicitly link those rights to citizenship. William Binchy has argued that the absence of extensive jurisprudence in this area means that there are very serious, open questions about whether the fundamental rights of non-citizen children are equally protected in the Irish Constitution and, consequently, whether the basic rights of non-citizen children would be substantially diminished.

The referendum is not consistent with the Articles and principles of the Convention on the Rights of the Child (CRC) concerning non-discrimination, best interests of the child and voice of the child.

Article 2 of the CRC requires States Parties to "respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents...race,...national, ethnic or social origin..."

Passage of the referendum will impact disproportionately on children of ethnic and racial minorities and children in lower-income households.

Article 3 of the CRC provides that the best interests of the child be a primary consideration in any actions or decisions taken on matters that affect children. Article 12 provides that the voice of the child be heard in relation to all such matters.

There is no indication that any consideration whatsoever has been given to either of these CRC articles, notwithstanding the fact that they comprise two of the four fundamental principles underlying the Convention.

Given the reductive impact passage of the referendum would have on the rights of non-citizen children, it is difficult to understand how it might be said to be in their 'best interests'.

No Child Impact Review has been undertaken.

The National Children's Strategy, launched by the Taoiseach in November, 2000, makes the following commitment to children: "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... The impact on particularly vulnerable children will be highlighted..." (p. 41, National Children's Strategy, 2000).

No indication has been given that any such child impact statement has been prepared or child impact review undertaken in relation to the referendum and its implications for children.

There has been insufficient time to research, evaluate, debate and consider the full implications of the proposed Constitutional amendment, in stark contrast to the eight years and running that the Government has taken to consider the Constitution Review Group's well-researched proposals to strengthen children's Constitutional rights.

After years of deliberation, the Constitution Review Group published a series of recommendations for changes and improvements to the Irish Constitution. Specific proposals were put forward regarding how the Constitution might be amended to strengthen the rights of children. Eight years later, those recommendations remain pending, in theory under the review of the All-Party Oireachtas Committee on the Constitution.

In stark contrast to that approach, a Constitutional amendment that will serve to weaken the rights and entitlements of certain children has been put on the fastest track possible. Research has been deemed unnecessary and anecdotal evidence has been said to suffice. Questions raised by the Irish Human Rights Commission and by legal and human rights scholars have been dismissed out of hand. Questions regarding which specific children's entitlements or benefits will be reduced or limited are left unexamined and unanswered. Instead, the Government has moved at breakneck speed to pass a Constitutional amendment – for reasons that seem to change on a weekly basis – which will weaken, rather than strengthen, the rights of children.

The Government has put forward a succession of arguments which have either failed to stand up to scrutiny or have left unanswered questions and concerns about the rights and well-being of children.

The various arguments put forward on behalf of the referendum have, upon examination, turned out to be exaggerated, misleading or based on little or no research, other than anecdotal information.

The Government has advanced the following arguments:

- Ireland is unique in conferring citizenship on a birthright basis.
- The maternity wards are overwhelmed by a disproportionate number of non-Irish national births caused by 'citizenship tourism'
- Significant numbers of 'baby tourists' are coming to the hospitals straight from the airport at great risk to both

mother and child, as evidenced by the number of unbooked, late arrivals

- The Masters asked for the referendum change
- The constitutional amendment is required as a matter of EU harmonisation
- The referendum is entirely consistent with and in no way undermines the Belfast Agreement
- There is an urgent need to act because the Supreme Court decision in the O&L case has had no effect on the numbers of pregnant, non-Irish national women coming to Ireland to give birth
- The proposed constitutional amendment is a minor, technical change that will simply 'close a loophole'
- The Chen case proves the need for the referendum to be passed to head off a major new influx of 'citizen tourists' seeking to win EU rights by having a baby born in Ireland

Taking them one at a time:

Ireland unique. The Taoiseach has stated “that Irish citizenship for a child born to non-national parents should not derive solely from the circumstances of birth in Ireland and that there should be a stronger connection with Ireland on the part of at least one of the parents for the privilege of Irish citizenship to be available to their children born here. That is how it would be in any other country.” (emphasis added)

In fact, that is not how it is many other countries. More than 40 countries, including Canada, New Zealand, India and almost all of those in the Caribbean and Latin America provide citizenship on a birthright basis.

Perhaps the most notable of such countries, because of its size and historical connection to Ireland, is the United States.

Maternity wards overwhelmed. The number of births of children of non-Irish national children is not out of line with what one would expect after factoring in the substantial number of non-national women of child-bearing age already in Ireland, in part a function of the dramatic increase in the number of non-nationals here under work-permits issued by the Government – a 760% increase in 2003 over the level in 1999.

Straight from the airport. Of the unbooked, late arriving pregnant women presenting at the Coombe last year, at least half were Irish. The rest might have had Irish husbands, boyfriends or partners, and/or have been living in the country for years. No one knows because the hospital doesn't ask. Even assuming that none of the non-Irish national women who presented late or unbooked at Dublin's maternity hospitals were citizens of other EU countries, or about to give birth to Irish citizen children because the father was Irish (or, for that matter, a grandparent was Irish), the maximum number of children being born and obtaining Irish citizenship under such circumstances last year

in Dublin's maternity hospitals was 548, or 0.024 of all births in those hospitals.

At the Masters' request. After the Minister for Justice said that the Masters of the maternity hospitals asked for the referendum, they said they hadn't. After the Minister said they had asked for the meeting to discuss the issue, they said it was the other way around.

EU harmonisation requirement. There is no EU harmonisation requirement regarding citizenship in which Ireland is not in compliance. Apparently, despite suggestions to the contrary, no other European government has raised the subject of Ireland's citizenship laws with the Irish government. A 1993 EU Declaration on the question of citizenship states clearly that each Member State has the sole responsibility to determine its own laws on citizenship.

The Belfast Agreement. On numerous occasions since 1998, those who had not signed up to the Good Friday Agreement (and some who had) have put forward proposals to effectively amend the Agreement by requiring other parties to take steps to which they had not previously agreed. Up until now, the Irish Government has adhered to a policy of defending the integrity and authority of the Agreement by not supporting its amendment. But in proposing a referendum which, despite claims to the contrary, will effectively amend a substantive provision of the Agreement, the Government has taken a step that will entitle any other party in the future, including those who seek to have the Agreement put aside or substantially re-negotiated, to say that the precedent for changing the Agreement has been established.

Moreover, by failing to consult with other parties to the Agreement (including the political parties who signed up to it) before putting the amendment to a vote in the Republic, the Government has arguably breached the Agreement.

Urgent need to act. The Government has argued that there is an urgent need to act because the Supreme Court decision in the O&L case has had no effect on the numbers of pregnant, non-Irish national women coming to Ireland to give birth.

In fact, according to statistics released by the Government, there has been a 59.5% drop in the actual number of pregnant, asylum-seeking women arriving in Ireland since the Supreme Court decision.

Just closing a loophole. The Government maintains that it is just closing a

'loophole' in Irish citizenship laws in order to keep them from being abused.

In fact, the referendum will change the entire basis on which citizenship has been conferred in Ireland since the founding of the State by replacing the *jus solis* system (citizenship by birthright) with the *jus sanguinis* system (citizenship through bloodline or descent).

Such a change is fundamental and goes well beyond the minor, technical adjustment suggested by the referendum's proponents. The implications of such a change need to be thoroughly considered and evaluated before the Constitution is amended, not after.

Many experts in the field of citizenship and immigration would argue that in societies that determine citizenship by parentage or bloodline (such as Germany), ethnic minorities have faced greater difficulties in establishing their claims to equal rights and protection under the law. Societies that confer citizenship on a birthright basis, it has been argued, tend to undermine the perpetuation of privileged status based on family or caste background and instead promote a more equalitarian ethos.

In the United States, if such a constitutional 'loophole' had ever been corrected, many millions of children born in the United States to Irish parents would not have acquired U.S. citizenship at birth, if ever. (During the 1990s alone, closing such a loophole would have denied U.S. citizenship to 6.9 million children born in the United States to non-U.S. national parents. In Ireland, after adjusting for the difference in population size, that would equate to roughly 10,000 children per year born to non-Irish national parents, well above the level currently experienced here.)

Had this 'loophole' been closed in the United States, Eamon de Valera would not have been saved from execution on the grounds of being a U.S. citizen.

The Chen case. The Government has implied that economic migrants from all over the world will now seek to have their children born in Ireland in order to secure residency rights in other EU countries.

Firstly, even if the Advocate General's opinion is eventually adopted as a judgment of the Court, it will only have application to a small fraction of potential immigrants to the EU, none of whom can or will be impoverished economic migrants, simply because it would only have relevance in situations where it could be demonstrated that the child would not be an economic burden on the state. Secondly, no European government has asked Ireland to change its laws. Thirdly, it would appear that no European government has ever complained about a comparable, longstanding situation in which non-Europeans routinely make use of a 'loophole' in Irish citizenship laws to obtain residency in EU states, specifically, those who have never been to Ireland and have no intention of even visiting Ireland but have one Irish grandparent and want to travel or reside or work in some other EU state. Fourthly, if any EU state chooses to address this matter it can do so at the appropriate level – EU Community Law.

Questions for the Government.

If the objective is to have fewer non-Irish national births, why not issue fewer work permits? Why express surprise at a significant rise in the number of children born to non-Irish national parents when it arises as an entirely predictable outcome of Government policy, i.e., a nearly eight-fold increase in the issuance of work permits since 1999, with nearly 48,000 being issued in 2003 alone?

If the desire is to have fewer citizens of non-Irish national parents, why not introduce legislation to end the grandparent entitlement under which children whose parents have never even visited Ireland can automatically claim Irish citizenship for their children?

If Government policy is to keep Filipino nurses in Ireland, why punish their children by weakening their rights by denying them Irish citizenship?

If we are being asked to believe that no children will find their status diminished or their rights and entitlements weakened or reduced, and that the Government will treat all children equally and show equal concern for their well-being, what are we to make of the application of the 'habitual residence test', of the denial of Child Benefit and One Parent Family Payment to asylum-seeking children?

If we are being asked to believe that this is not a racist or discriminatory proposal in any way, shape or form, what are we to make of the fact that it will disproportionately impact upon children of racial and ethnic minorities?

If the Government is concerned about pressure on maternity wards, why not respond rationally and in a manner consistent with ostensible pro-family, pro-child policy, by providing additional resources to the hospitals? Why – for probably the first time in Irish history – take the position that there are too many births, and not too few beds?

If the Government wishes to address the phenomenon of immigrant women arriving in Ireland at a late stage of pregnancy, why not meet with executives from the airline industry and discuss steps that might be taken? All of the major airlines claim they have a policy of not allowing women in the later stages of pregnancy to board their airplanes. Why not find out what steps are being taken, or not being taken, to enforce those policies?

Why not tell the Irish people that whichever way the vote goes on June 11, the number of children born to non-Irish national parents in Ireland will, in all likelihood, continue at current levels for the foreseeable future, for the following reasons: the present composition of the Irish population; the implications of Government decisions to encourage inward migration (by, for

example, issuing 48,000 work permits annually); and the absence of evidence to support the conclusion that so-called 'citizenship tourism' represents anything more than a small fraction of the number of children born in Ireland. Why rely on anecdotal information? Why not conduct research to examine the extent of the phenomena cited, such as the numbers of and the factors contributing to non-Irish national births and late or unbooked arrivals?

Why take any action that might jeopardise or undermine the Good Friday Agreement, particularly in light of its currently fragile state?

Why proceed with a referendum that will subtract citizenship rights from some children and threaten to undermine other rights and entitlements without first exploring the implications of such a step by conducting a Child Impact Review and giving primary consideration to the 'best interests of the child', as provided for in the Convention on the Rights of the Child?