

Akina Dada wa Africa (AkiDwA) Submission to the Joint Committee on Justice, Equality, Defence and Women's Rights regarding Carrier's liabilities legislation and the Immigration Bill 2002; and the implications of a recent Supreme Court judgement concerning the residency rights of non-national parents of Irish born children

Salome Mbugua, Chairwoman, AkiDwA
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On behalf of AkiDwA I would like to thank the Joint Committee for its invitation to us to make a submission on the Carrier's Liabilities legislation and the implications of the Supreme Court judgement on the residency rights of non-national parents of Irish born children. I am speaking here today in the name of countless African women living in Ireland, but their concerns are also the concerns of women from many other nationalities.

For the benefit of those of you who are unaware of the existence of AkiDwA and our work I should say that we were formed in August 2001 with initial support from the Catherine McAuley Centre. We are a national network of (and representative body for) African women living in Ireland irrespective of their ethnic or national backgrounds, religion traditions and socio economic or legal/residency status.

In regard to our submission to you today our position is guided by –

- The well being of African women (and indeed the well being of women from other continents that we do not represent)
- The well being of children whose principal carers are their mothers. So while we have been asked to comment on the implications of the Supreme Court judgement on non national parents of Irish born children we will contend that the judgement also has serious implications for the Irish born children
- The well being of the larger family units of the mothers and children within which both mother and child have a bond and feel most secure despite all their vulnerabilities

Our interest today is primarily concerned with the implications of the Supreme Court judgement. On the matter of the Carrier's liabilities legislation we would make the following brief comments –

- The vulnerabilities and level of danger that those entering Ireland and other European countries in search of safety encounter is evident from the large amounts of money often paid for passage. Many people have had to sell the scarce properties and belongings that they had in their home countries and took donations from friends and extended family in the hope of having a better and safer life and providing for those left behind and for those seeking refuge in neighbouring African countries. In this regard the legislation should clearly target the carrier who is profiting as opposed to the vulnerable people being carried
- We strongly hold the view that in the allocation of resources to enforce the legislation, priority has to be given to breaking carrier rings involved in the transportation of women for the European prostitution markets

Regarding our submission on the implications of the Supreme Court judgement we wish to highlight the following –

- The need for an immediate and fair system of hearing cases (and where necessary reopening cases) of non-national parents of Irish born children. AkiDwA feels that a general amnesty granting leave to remain to all non-national parents of Irish born children before the Supreme Court judgement would be the fairest way of dealing with all the complexities of each individual case. The reasons for this position will become more apparent further on especially when we look at the implications to the Irish born children. We feel that humanitarian consideration be given in the cases of all children born after the judgement. We also feel that women who dropped their claims for asylum after giving birth did so on the basis of bad advice and need to be afforded the opportunity of having their claims reactivated
- The requirement that adjudications be made giving due concern to the application of social justice and humanitarian considerations rather than on the basis of negative racist stereotypes. On this point AkiDwA contends that negative racist and sexist stereotypes of Africans and African women have developed around the issue of childbirth. There is a perception that the primary concern of African women when giving birth is to obtain leave to remain and to live off the welfare system. Nothing could be further from the truth. African women have no desire to be dependent on welfare. They do however want to be granted the opportunity to make a positive contribution to society, to earn a living, support themselves and their families in Ireland and their extended families (some in their home countries and others in safer locations). The women who gave birth when in Ireland were obviously of a child bearing and sexually active age. Unlike Europe where the current

family size is approximately 2 – 3 children, the standard African family has 5 – 6 children. A further point that needs to be made (and an issue that AkiDwA is working to address) is that not all African women entering Ireland knew how and where to access family planning while others found discussing these issues with strangers culturally inappropriate. The underlying issue that we wish to emphasise is the need to ensure that those hearing the cases do not do so with negative baggage.

- The need for the rights of the child to be protected. Although AkiDwA represents the position of African women we feel that the group that will be most affected by the recent Supreme Court ruling are the Irish born children themselves. In the current climate where deportation orders are being issued against the parents of these children we envisage 3 possible scenarios that could emerge. In each case it is likely (with the exception of good luck) that there will be a negative outcome for the child.

In the first scenario the parent(s) of the child are deported and take the child with them. The child, an Irish citizen, will, in most instances, not be able to receive dual citizenship. The right of the child to an identity in a new land would be denied. Likewise the capacity of the Irish State to afford the child protection to an acceptable degree will be limited. The parent(s) of the child would have entered Ireland in a vulnerable position and would be returned home more vulnerable and in greater poverty and insecurity to how they arrived. The child will have to contend

With a culture to which s/he has not been socialised and would have reduced life

Options. In the event of parental separation or divorce a question arises over the jurisdiction to decide the fate and well being of the child – in most African traditions priority would be given to men to take their children if they so choose, thus the mothers will again be the losers.

In the second and third scenarios the parent(s) are deported and choose to leave the child behind. While this may seem like neglect it will actually be quite a logical decision and will only be taken after the parents have painstakingly weighed the options and considered what might be best for the security, protection and long-term future of the child. In the second scenario the child becomes a ward of the State and will most likely be assigned to residential care, foster care, or put up for adoption. Each option will have a developmental and psychological impact on the child and possibly his/her guardians.

In a third scenario it is quite possible that parents facing deportation will use a variation of the extended African family and use an existing network of relatives with leave to remain for the function of caring for

their Irish born children. In this scenario, which I believe is quite possible; there would be a disproportionate ratio of children to guardians. The decision to entrust the care of the child among relatives with leave to remain will most likely be made by and between men but will impact on women as primary carers. Given the disproportionate number of children to parents/guardians, the degree of care and attention needed by children will be reduced.

- The fears, concerns and needs of women need to be catered for. In this respect we would point that the needs of a child is best served with its mother in a safe and secure environment. The recent environment has been such that we in AkiDwA have encountered women with psychological trauma as they envisage the prospect of deportation and the dangerous and difficult situations to which they will return. We would further add that there are specific forms of violence against which women are not protected in many African societies (for example female genital mutilation, death sentences for alleged adultery, domestic violence is also accepted as the norm in many African societies). These however are not covered by the terms of the Geneva Convention as grounds for asylum. Nonetheless they do warrant consideration on humanitarian grounds. As I have already mentioned most African societies do not give priority to the mother in the case of a dispute on child custody. This we feel is wrong and all the more reason why the Irish State needs to protect both Irish born children and their mothers by granting leave to stay. Overall we feel that everyone's best interests would be served by creating an enabling environment for African women – migrants spell opportunity and progress and investing in a multicultural society would result in positive returns for all.

In conclusion AkiDwA feel that –

- A general amnesty should be given to all parents of Irish born children who became parents prior to the Supreme Court ruling
- Failing this, these parents and all individual cases after the ruling be examined immediately on the basis of the legal entitlement of Irish citizens (Irish born children), social justice and humanitarian consideration, protection for the rights of the child and with due consideration for the specific concerns of women
- That an enabling society be established whereby Africans and their Irish born children can make a positive contribution to Irish society rather than be left in a state of dependence.

Thank you for taking the time to listen.