



Consultation Response for the UN Committee on the Rights of the Child's General Comment 27: Children's access to justice and effective remedies

August 2024

Children of Prisoners Europe (COPE) welcomes the opportunity to contribute to the UNCRC General Comment on children's access to justice and effective remedies. COPE is an EU-funded network working with and for the estimated 2.1 million children with a parent in prison in Europe. With its 74 member organisations and individuals in 31 Council of Europe countries (and affiliates outside Europe), COPE helps prevent and respond to violations of the rights of children with a parent or family member in prison,¹ while improving standards and policies to prevent and respond to these violations. COPE's work is further elaborated in the [COPE Principles](#).

Definitions and understandings of access to justice

As alluded to in the guidance and concept note, most people understand access to justice as coming into play when in contact with the justice system. But this group of children do not know that they have rights or when and how to claim them. This is the biggest barrier to access to justice. An access to justice definition for children must include their knowing what their rights are, how to claim them, and appropriate supports during all procedures. The submission from Child Rights Connect –

¹ For conciseness, from now on, we use the term “children” to refer to “children with a parent or family member in prison or in conflict with the law” in this document.

Working Group on children with incarcerated parents (CRC–WGCIP) details how children's rights are routinely breached at each stage of adult criminal justice systems, limiting their access to justice and opportunities for violations to be remedied. These children are a low priority for most governments and not readily recognised as a vulnerable group, despite their exposure to stigma, instability, absence of parental involvement in their upbringing and development, and violence. Various policy papers on children's access to justice do not refer to invisible groups such as this one. Greater awareness of their existence and processes that identify them without stigmatising them are fundamental to their gaining greater access to justice. The CRC–WGCIP submission gives a good overview of efforts to make children more visible, including data collection.

Children whose rights have been violated who have participated in consultations and advocacy generally and generously do so to help their peers and in the hope that systems will be improved to prevent violations in the future. The **systematisation of better preventive and responsive mechanisms** should be an overarching objective of this GC.

Holistic cross-sectoral frameworks with a multidisciplinary approach guaranteeing children's right to justice, civil, political, economic, social and cultural rights need to be developed. Italy's [Memorandum of Understanding](#) (MOU) between the Justice Ministry, Children's Ombudsperson and CSO Bambinisenzasbarre is a model for replication by other States parties. [Council of Europe Recommendation CM/Rec\(2018\)5](#) strengthens cross-sectoral rights frameworks and holistic support systems for children.

Barriers to children accessing justice

When children's right to maintain contact with their detained/imprisoned parent (except if contrary to their best interests) is raised with authorities/in any legal proceedings, it is usually raised by the parent in prison, with children excluded from proceedings.

Children are stigmatised because of their family circumstances. [Tyler and Campbell \(2024\)](#) describe how stigma acts as a strong barrier, entrenching disadvantage, marginalisation and violations. There is little societal interest in children maintaining a relationship with their parents in detention/prison.

Research demonstrates the [financial impact of imprisonment on families and children](#). Ireland introduced a means-tested Prisoner's Wife's Allowance as early as 1974, incorporated later into the [One Parent Family Payment scheme](#), although certain conditions limit eligibility. Many prisons are located at great distances from homes, particularly for imprisoned mothers as there are fewer women's prisons. The UK operates a [Help With Prison Visits](#) scheme.

Additional barriers include:

- **Structural barriers:** unavailability of mother-baby units in remand and youth justice facilities; lack of child-friendly visits in prisons; geographical distance between prisons and families; prisons not considering an individual child's needs over security issues, e.g. not routinely providing wheelchairs when personal wheelchairs are not allowed.
- **Psychological barriers:** hostile prison settings and behaviours, strip-searching children prior to visiting parents in prison in some jurisdictions.
- **Gender-related barriers:** discounting women's credibility by justice systems and other social institutions, their testimony weighted less than that of men ([Epstein & Goodman 2018](#)), which can, *inter alia*, adversely impact a mother's efforts to regain custody of children following her release from detention/prison.
- **Barriers to information:** lack of any accurate systematic record of the number of children with parents in prison worldwide, an obstacle to evaluating the number of children impacted and ensuring support. Families also identify a lack of information at all stages of the criminal justice system, including not being informed about a prison transfer in advance of visits.
- **Age-related barriers:** Finland's Child Welfare Act stipulates that children aged 12 and over must be granted opportunities to express their views in child welfare cases affecting them; children under 12 are not heard. Also in

Finland, child-friendly visits are reserved for children under 15, so siblings 15 and over are not guaranteed access.

All children in general often face legal and social obstacles—their status as dependents, lack of knowledge of their rights and ability to claim them, complex justice systems. Distrust in the system and fear of stigma serve as further barriers for children and caregivers impacted by imprisonment to access complaints mechanisms and seek support services. Implicit societal biases intersect with these fears and exacerbate unequal access to justice. Distrust is seeded from the moment of [a parent's arrest, which can be highly traumatic for children](#) who are present. Children need access to justice from the moment of the arrest, but also throughout adult criminal justice proceedings, the parent's pre-trial detention, the incarceration and the parent's release. A [parent's remand detention can be particularly traumatic](#), when information is lacking and children experience high levels of uncertainty.

[Parents from minority ethnic backgrounds such as Roma and Travellers are over-represented in prison populations in many countries](#), compounding rights violations and fuelling cycles of racism, economic hardship and exclusion. Likewise, parents who are foreign nationals are over-represented in remand detention — e.g. due to 'flight risk'. [Discrimination in parents and their children accessing justice](#) include:

- **Linguistic barriers** for foreign national and ethnic minority families during court proceedings and once imprisoned. These impede a parent's access to legal representation, information on proceedings and a fair trial, families' access to information, and quality child-parent contact during the imprisonment, including [prohibition of Roma prisoners to speak Romani to their young children](#) on the telephone in some jurisdictions.
- **Barriers with respect to special needs:** children may not speak or may experience linguistic problems; learning difficulties affect reading and understanding rights; children with disabilities or who are neurodiverse; facilities don't consider special needs, praxis does not take them into account.

Parental incarceration directly challenges respect for children's dignity and equality and may pigeonhole, disempower and isolate them. Children are erroneously perceived as being at high risk of becoming criminals themselves. In some jurisdictions, [police have established AI-mediated risk profiles for children](#).

The child's right to be heard and the child's Articles 2, 3, 9 and 18 rights in situations of parental separation, divorce and custody are increasingly recognised and written into law but those rights for this group of children (who also face parental separation) are largely ignored.

Access to justice represents a crucial factor in helping to curb inequalities and discriminatory practices while enabling children and families to reclaim entitlements that have been denied. Yet very few children and families have access to timely and effective remedies to these violations; very few have access to justice, resulting in cycles of discrimination and exclusion.

Enabling factors and strategies

Children need to know about their [right to maintain contact with their parent during both pre-trial and sentenced imprisonment](#) and have a means to assert their right. Children's access to justice and protection of their rights and welfare often hinge on caregivers receiving adequate support, including financial support. They in turn can better support children and understand the importance of such factors as communicating with children about the parent's situation. Contact with an imprisoned parent is [a known protective factor](#) except if contrary to the child's best interests; parents must be enabled to participate in children's upbringing and development. It should be clear in any domestic legislation that children should have a right of redress by being able to complain to the Ombudsperson for Children or equivalent.

Each State party should:

- a) **establish and fund monitoring bodies**, to provide data and an impetus for cross-sectoral support.

- b) **require all judicial officials to ask for and receive prompt accurate information** about whether there are children who are/could be affected by an arrest, by pre-trial detention/alternative measures, by a parent's prison sentence; about current care for the child, the involvement of social welfare institutions, who will provide care if the parent is in prison, and children's special needs; police must check prior to an arrest on whether children will be present.

- c) **systematise signposting** towards services, including civil society, that can provide supports.

- d) **promote the development of [sentencing guidelines](#)** for judges and magistrates to systematise respect for children's rights and curb harm to children from sentencing practices.

- e) ensure **children are heard during court proceedings** that affect them, noting that children should never be used as tools in mitigation.

- f) **ensure cross-sectoral induction and ongoing training** with adequate funding.

- g) **curb pre-trial solitary confinement** commonly used in Scandinavian contexts, with [family visits highly restrictive](#) or entirely ruled out. Recommendations for pre-trial detention policies and conditions include:
 - Any decision to exclude family visits for prisoners must require consideration of the possibility of children visiting, and the child's rights to do so, even if this necessitates someone other than family members accompanying them (e.g. an NGO).

- The use of alternatives to remand detention must be promoted, also access to these alternatives free of charge (e.g. electronic tagging), to avoid potential discriminatory effects on defendants and their children.
- Formal mechanisms should ensure that children's best interests should be considered throughout remand procedures (e.g. in decisions about extending pre-trial detention, proximity of prison/detention facilities to home, active communication and information channels concerning the parent's situation, children's right to respect for their private life). [Child impact assessments](#) are one way to systematise children's best interests being accounted for during criminal justice proceedings.

h) **ensure child-sensitive visits environments** are available in prisons/remand facilities.

i) **take account of infants/pregnancy/childbirth when considering the detention/imprisonment of women, ensuring [adequate mother-baby units](#)** are available in remand facilities and facilities for young parents in prison, as well as prisons, with [appropriate support networks](#).

j) **provide support to families** to defray financial burdens placed on caregivers.

k) **ensure funding to civil society organisations (CSOs).**

CSOs can raise greater awareness of the rights and needs of these children. [Children are often separated from siblings](#) in this and other contexts (e.g. separation in alternative care, adoption). CSOs can highlight their rights as well. CSOs can:

- facilitate information
- promote contact with imprisoned family member
- help families access support
- help children to understand, claim and exercise their rights
- [amplify children's voices](#)
- foster [protective language](#) and messaging about children

- liaise with schools about the direct support teachers can provide, highlighting that parental imprisonment is an [Adverse Childhood Experience](#) and a public health issue that needs to be addressed and emphasising that schools should **disseminate child-friendly materials** on children's rights and accessibility to these rights
- run public awareness campaigns to foster understanding of children's experiences.

In addition to enabling children's legal empowerment to access justice and providing access to complaints mechanisms, [Ombudspersons for Children's Offices \(OCOs\) can bring together cross-agency stakeholders](#), providing building blocks of holistic support systems. OCO Italy played a key role in developing the cross-sectoral MOU (see MOU in [Definitions and understandings of access to justice](#)).

Video calling, emailing and instant messaging, while never replacing in-person contact, bolster child-parent contact and complement in-person visits and should be free of charge. [Finland's Smart Prison Project](#) at Hämeenlinna women's prison illustrates the **benefits of digitalisation of prisons and in-cell technology for contact** via in-cell video calls.

Proceedings

Formal mechanisms frequently are not in place to consider a child's best interests in parental remand decisions and for the most part, criminal procedures do not provide a mechanism to hear children in such proceedings.

Despite children's Articles 9 and 18 rights, they are nearly always excluded from legal proceedings (see [Barriers to children accessing justice](#)). It should be required that all children must be informed of their right and can access a process to make representations. If the issue is raised by the prisoner and/or adult family members, children must be informed and have the possibility of joining the case with appropriate support.

Cross-sectoral training and resources can help ensure children's rights are respected. Training should include:

Law enforcement:

- greater police awareness of children's rights and safeguarding
- systematisation of child-sensitive approaches so that all officers carrying out arrests can be respectful of children's rights and welfare, see [COPE Toolkit for Police](#).

Judges:

- ensuring a child-rights approach at all stages—issuing arrest warrants; deciding on pre-trial/during trial; reviewing conditions for ongoing child-parent contact, sentencing (including consideration of non-custodial measures), during a parent's release from prison (temporary or permanent and any ongoing restrictions), see [COPE Toolkit for Judges and Magistrates](#)
- respecting children's right to be heard during a parent's criminal justice proceedings
- greater awareness of implicit biases

Prisons:

- safeguarding children's rights when visiting a parent in prison
- making prison visits child-sensitive, with physical contact
- supporting children, including those with disabilities, in often hostile settings, e.g., security measures that maintain children's dignity
- supporting imprisoned parents, strengthening parental role
- fostering quality child-parent contact and engaging in daily activities
- making prison walls more 'permeable', humanising prisons
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Schools:

Training helps **teachers and school staff** (e.g. school counsellors) better understand children's issues and how they can support. See [COPE Toolkit for Teachers and Schools](#).

Positive practices and policies

An [EU-funded Erasmus project promotes basic legal literacy](#) in schools with resources for teachers and students.

Croatia's Ministry of Justice includes the Ombudsperson for Children in basic training for prison officers about children's rights.

The **Irish Prison Service** recently appointed a [National Family Connections Officer](#) responsible for day-to-day roll-out and management of the [Family Links Programme](#), ensuring service delivered is person-centred.

Alternative Sociale (**Romania**) has developed a [guide to listening to children](#) during judicial proceedings.

Spain has developed a [Psychological Assistance Service for Children of Incarcerated Parents and their Families](#), free of charge with specific assistance for caregivers.

Establishing monitoring bodies in each State can help ensure rights-based outcomes, drawing on relevant standards. Ongoing strategic litigation can continue to stimulate structural change and positive outcomes.

With contributions from: BUFFE, the Office of the Ombudsperson for Children Croatia, Families Outside, Irish Penal Reform Trust, Prison Reform Trust, RETS, Rodrigo J. Carcedo González (University of Salamanca)

