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General Comment No. 27 on Children’s Rights to Access to Justice and Effective Remedies

Submission from Families Outside, Scotland (UK)

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Families Outside is the only national charity in Scotland working solely on behalf of families affected by imprisonment. Our purpose is to improve outcomes for children and families, creating and promoting opportunities for families to uphold and defend their rights. We offer a range of services including a national helpline, local 1 to 1 and group support, and training for professionals; whilst also working to raise awareness of the issues facing families affected by imprisonment, influencing policy and practice to bring about longer-term change**.**

Families Outside welcomes the opportunity to share our views on General Comment No. 27 on Children’s Right to Access Justice and Effective Remedies. Our submission focuses on the experiences of children impacted by parental imprisonment and seeks to highlight the specific issues they face in the realisation of their rights including access to justice and effective remedies.

# Definitions and understandings of access to justice

As the Committee’s [Concept Note](https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gcomments/gc27/gc27-concept-note.pdf) on the General Comment highlights, despite recognition that *“access to justice and to effective remedies are essential for the protection, promotion and fulfilment of all human rights… there remains a misconception that access to justice only relates to children alleged as, accused of, or recognized as having infringed the penal law”*.

Unfortunately, Families Outside frequently encounters this misconception in our work, particularly in discussions relating to incorporation and implementation of the UNCRC. On raising the issue of children’s rights and the impact of incorporation with agencies working in the adult criminal justice system, we are often met with the assumption that we are referring to their work with children who are themselves in direct contact with the criminal justice system. On clarifying that we are referring to children who are impacted by parental involvement in the criminal justice system, we are often met with a lack of awareness of the impacts for children’s rights and the implications of incorporation in relation to this experience.

This is highly concerning given that parental involvement in the criminal justice system poses significant threats to children’s rights including those relating to non- discrimination, the best interests of the child, protection and preservation of identity, maintaining contact with parent(s), respect for children’s views, privacy, access to information, and support when the child cannot stay with their parent(s). Currently, children’s rights are not routinely considered at any stage of the adult criminal justice system resulting in rights being routinely breached with no clear accessible means for such breaches to be challenged and remedied.

It is therefore crucial that the General Comment expressly addresses the misconception that access to justice is concerned solely with those children who are in conflict with the law and makes clear that access to justice is crucial for the meaningful realisation of *all* rights for *all* children. Moreover, we consider it vital that the General Comment goes further and expressly specifies groups of children who are particularly disadvantaged or structurally discriminated against in exercising their right to access to justice. This is necessary if we are to decisively address such disadvantage and discrimination. Consideration of the barriers facing children impacted by parental imprisonment in accessing justice demonstrates them to be one such group of children and we strongly urge the Committee to ensure they are specifically recognised in the General Comment.

# Barriers to accessing justice

Children affected by imprisonment face numerous barriers in relation to the realisation of their rights and accessing justice. Key barriers include a lack of awareness and consideration of children’s rights, a lack of accessible information for children, financial hardship, and stigma and discrimination.

**Lack of awareness and consideration of children’s rights**

Currently, the lack of awareness of children’s rights in the adult criminal justice system acts as a key barrier to the realisation of rights and access to justice where those rights are breached. Without an awareness of children’s rights there can be no targeted efforts to put in place the means to remedy breaches of those rights, at least not in terms of the internal systems and processes of those agencies within the adult criminal justice system.

The threat to children’s rights in the adult criminal justice system is however wider than simply a lack of awareness, and appears in some situations to extend to an overt lack of consideration of children’s rights in decisions affecting them. Worryingly, we see situations where despite an awareness of children’s rights, those rights remain at best overlooked, and at worst disregarded, in the decisions of agencies within the adult criminal justice system.

A recent [sentencing decision](https://judiciary.scot/home/sentences-judgments/sentences-and-opinions/2024/07/25/hma-v-hayley-matthews) which took place after the commencement of the UNCRC legislation in which a mum received a two year custodial sentence with no reference to the fact that she had children serves as a timely example of our concerns in this regard. Despite our ongoing efforts to raise awareness of UNCRC incorporation and its implications for the adult criminal justice system, including in particular in relation to sentencing, we remain concerned that the judiciary is not considering the relevance of the UNCRC in their actions. Where children are considered, they are being treated as a factor in sentencing and mitigation rather than as a need to consider the rights and impact on the child themselves.

The lack of awareness of the impacts of the adult criminal justice system for children’s rights extends beyond those agencies directly involved in the criminal justice system with children affected by imprisonment being very much a ‘hidden group’ across services such as education and health. This is partly due to the fact that there is no systematic process to identify children and families affected by imprisonment at any stage of the criminal justice system, and also due to the stigma facing families which makes self-disclosure to services difficult.

Ultimately this widespread lack of awareness is not only a barrier to preventing breaches of children’s rights but also to accessing justice when breaches occur. Without an awareness and understanding of children’s rights in the context of the adult criminal justice system, how can services and agencies, both within and beyond the criminal justice system, act to uphold rights and ensure access to justice where rights are breached?

**Lack of accessible information for children**

There is a dearth of information forthcoming from agencies in the adult criminal justice system for children at any point of a parent’s journey through the criminal justice system. This leaves children unaware of the processes to expect at the various stages of the system and their rights in relation thereto.

The lack of information about their rights can have a profound effect on children who find themselves directly impacted by decisions of the adult criminal justice system. A recent comment from a child to our family support team illustrates such impacts: *“When Dad first went to prison, I did feel sad, I didn’t know if I was going to see Dad ever again.”* This is sadly not uncommon, with many children unaware of their right to maintain contact with a parent in prison. The lack of information is again not only a barrier to children’s rights being upheld in the first place, but also a barrier to accessing justice where rights have been breached. Without knowledge of their rights, how can children seek to claim and enforce these rights?

**Financial hardship**

Imprisonment of a family member can have serious financial consequences for families. Our recent research [‘Paying the Price: The Cost to Families of Imprisonment and Release’](https://www.familiesoutside.org.uk/content/uploads/2022/11/Paying-the-Price-October-22022.pdf) explored the financial cost to families of supporting someone in prison and after release and demonstrated the role of imprisonment in creating, sustaining, and deepening poverty amongst children and families.

The children we work with have also directly highlighted the financial impacts of imprisonment to our family support team with recent comments including:

* *“My mum is stressed about money as my dad earned a lot. It costs a lot to visit, and the vending machines are a rip off.”*
* *“Less money for school trips, football and clothes.”*
* *“We don’t get to stay with him at weekends anymore, he used to take us out and buy us games and stuff. He paid for our school trips. Money is tighter now.”*

The financial hardship associated with imprisonment undoubtedly acts as a barrier to the realisation of the rights of children impacted by imprisonment, such as the right to maintain contact with a parent in prison. Beyond this, the wide-ranging and far-reaching impacts of poverty can be a significant impediment to accessing services and support, thereby acting as a barrier to accessing justice when rights are beached.

**Stigma and discrimination**

Stigma and discrimination are further barriers facing children impacted by imprisonment. Imprisonment of a parent carries huge stigma in society which can serve to shame and isolate children and families and further compound the other wide-ranging challenges associated with imprisonment. We often hear from families that stigma acts as the biggest barrier to seeking and accessing support. Children and families often also report feeling discriminated against, particularly in their interactions with services.

The direct comments below gathered recently from children through our family support work offer an insight into the stigma they encounter in their day to day lives:

* *“People talk about us. It feels like we did something wrong, but it was him.”*
* *“I worry about people finding out. People calling him a paedophile.”*
* *“People are whispering that my Dad is in jail. This happens in class and in the playground.”*

Further direct evidence from young people relating to stigma and discrimination can be found here:

[Stereotypes and statistics](https://vimeo.com/735474677)

[No discrimination 30 years of UNCRC Article 2](https://vimeo.com/familiesoutside)

Worryingly, children affected by parental imprisonment can also encounter stigma and discrimination in terms of policy developments. The [Manifesto](https://labour.org.uk/change/take-back-our-streets/) of the newly elected UK Labour Government provides a recent example of this, stating: “*The children of those who are imprisoned are at far greater risk of being drawn into crime than their peers. We will ensure that those young people are identified and offered support to break the cycle.”*  Whilst it is positive to see recognition of children affected by parental imprisonment and commitments to ensure they are supported, it is concerning that the Manifesto claims that children affected by parental imprisonment are at greater risk of criminal behaviour. There is no proven causal link between parental imprisonment and children’s future offending behaviour. As such, this statement serves to reinforce the stigma facing children affected by imprisonment, whilst compulsorily identification of children based solely on the actions of their parents could well be in breach of Article 2.

# Enabling factors and strategies

The recent [incorporation](https://www.legislation.gov.uk/asp/2024/1/contents) of the UNCRC in Scotland is a major step forward in the protection of children’s rights and will be a key enabling factor in supporting access to justice and effective remedies for children. However, effective implementation will be crucial to the meaningful realisation of rights in practice, particularly for those whose rights are most at risk such as children affected by parental imprisonment.

To make rights real for children impacted by parental imprisonment there must be a targeted programme of training and awareness raising to ensure those working in the adult criminal justice system are aware of their duties under the new legislation and to ensure that children’s rights become embedded in practice at all stages of the criminal justice process. The recent [sentencing decision](https://judiciary.scot/home/sentences-judgments/sentences-and-opinions/2024/07/25/hma-v-hayley-matthews) mentioned previously clearly illustrates this need. Families Outside is working to develop and deliver training to address this issue but considers that efforts to drive targeted awareness raising and training must come from the Scottish Government to help secure compliance with the UNCRC across the adult criminal justice system.

 Beyond those agencies in the criminal justice system, there is a need to ensure that other professionals working directly with children impacted by parental imprisonment are equipped with the knowledge and skills to support them to access their rights. In addition, parents, including those at home with the child and those in prison, need to be informed about their children’s rights so that they are better able to support them to use their rights and to access justice if rights are breached. Children themselves, of course, also need to be informed about their rights and how to use them. All of this again this requires a targeted programme of awareness raising and training given the specific impacts of parental involvement in the criminal justice system for children’s rights.

Finally, the [Council of Europe Recommendations](file:///C://Users/SarahRogers/Downloads/116618GBR__%20Rec(2018)5_children%20with%20imprisoned%20parents%20(1).pdf) concerning children with imprisoned parents should also be regarded as a key enabling factor. The recommendations essentially translate the UNCRC into practice for children affected by parental imprisonment, and their meaningful and consistent implementation in full by agencies in the criminal justice system could serve to transform how children impacted by parental imprisonment experience and access their rights.

# Proceedings / Outcome and impact of the remedy

For children impacted by parental imprisonment there needs to be improved measures at all stages of the criminal justice system to protect their rights and prevent breaches, and also to respond to and remedy breaches where they occur. This requires processes to be put in place that provide for the recognition and protection of children’s rights in relation to arrest, pre-trial measures, trial, sentencing, contacts during any period of imprisonment, and at release. It further requires for processes to be put in place at each of these stages for children to challenge instances where their rights may have not been considered or upheld.

In terms of remedy, it is critical that access to justice occurs in a timely manner. Effective remedies should ensure that any breaches can be resolved to allow for children’s rights to be upheld. Delays in access to justice could result in opportunities having passed to implement children’s rights throughout the various stages of the adult criminal justice process.

# Examples of good practice

The [incorporation](https://www.legislation.gov.uk/asp/2024/1/contents) of the UNCRC into Scots law is a clear example of positive practice with the potential to deliver transformative change for children across Scotland. So too, is the Scottish Public Services Ombudsman’s recently launched [Child Friendly Complaints Process](https://www.spso.org.uk/child-friendly-complaints) which will support public bodies to develop and deliver child-friendly complaints processes that uphold children’s rights under the UNCRC.

In terms of our own work, we are currently working with Perth and Kinross Council to help embed the use of the [Child Impact Assessment Toolkit](https://prisonreformtrust.org.uk/publication/child-impact-assessment/) developed by the Prison Reform Trust across their services. The toolkit aims to help ensure children with a parent in the justice system are listened to and supported.

We have also created a range of rights [resources](https://www.familiesoutside.org.uk/publications/staying-connected-care-experienced-young-people-and-sibling-imprisonment/) as outputs from the ‘Staying Connected’ project for care experienced siblings separated by prison or secure care and the professionals working with them.

We thank the Committee for the opportunity to share our views on this important issue and hope our submission is helpful to the Committee’s work moving forward.