**Submission to the United Nations’ Day of General Discussion 2021: Children’s Rights and Alternative Care**

Families Outside is a national independent charity that works solely on behalf of children and families affected by imprisonment in Scotland. We do this through provision of a national freephone helpline for families and for the professionals who work with them, as well as through development of policy and practice, delivery of training, and face-to-face support.

Children and young people who are affected by imprisonment are at increased risk of being separated from the care of their parents. The likelihood is increased when the primary care giver is sentenced, typically the mother. In Scotland, and across all jurisdictions children and young people affected by imprisonment live in a range of environments such as living in a single parent household, living with a grandparent or being taken in to care.

Families Outside welcomes the opportunity to make this submission to the UN’s Day of General Discussion. The DGD comes at a time when national Governments and wider societies across the globe continue to respond to the COVID-19 pandemic. Human rights matter even more at times like these, as Governments have to decide on the trade-offs between placing restrictions on populations and supressing transmission of COVID.

COVID Response

Children affected by imprisonment largely depend on in-prison visits to remain in contact with parents and family members in prison. Rule 63 of the Scottish Prison Rules provide for people in prison to receive at least a half-hour visit every week or a two-hour visit at least once every 28 days[[1]](#footnote-1). In practice, prisons have provided much more frequent contact. Rule 64 of the Scottish Prison Rules provides for people being held on remand in a Scottish prison to receive at least five half hour visits a week[[2]](#footnote-2). On a number of occasions during the pandemic, prison visits were suspended by the Scottish Government and Scottish Prison Service resulting in the loss of in-person contact by children affected by imprisonment. The suspension of in-prison visits challenged Article 9 of the UNCRC, as children had no access to their parent in prison, and Article 18, as parents in prison struggled to maintain any responsibility for the upbringing and development of their child at home.

Research by Dr Shona Minson[[3]](#footnote-3) shows that the impact of COVID-19 prison lockdowns on children affected by imprisonment were similar across children who lived with their single mother or children who lived with their grandmother. The cessation of visits led to a number of emotional and physiological responses from children and young people including feelings that the parent in prison did not want to see them and that long periods between phone calls made this contact distressing for both children and the parent in prison. In this research, grandparent caregivers noted that children were forming much stronger bonds with them rather than with their parent in prison, as contact was abruptly stopped due to pandemic restrictions, further highlighting the challenge to UNCRC Articles 9 and 18.

In Scotland, Families Outside welcomed the introduction of in-cell telephony and video ‘virtual’ visits across the prison estate. In-cell telephony allowed people in prison to contact their family outside easily. The prison regime during the pandemic has meant that people in prison spend nearly 23 hours a day in their cell providing very little time for them to access hall telephones. Virtual visits allowed children and young people to speak to their parent in prison using videoconferencing. This helped them to maintain contact but has been unable to replace the crucial importance of in-person visiting and contact.

Families Outside is aware that a number of children and young people who required a supervised visit or were living in a children’s home have struggled to access this technology. This could be as a result of the SPS and social work using different software: in Scotland the SPS has contracted the “E-mail a Prisoner” service to provide virtual visits, whereas social work authorities have worked with the NHS and are using “Near Me”.

In Scotland, Families Outside is calling on the Scottish Government to ensure the unlocking of the prison estate comes into line with the easing of restrictions in the community. This is not currently the case, which means there is a negative impact on children affected by imprisonment compared to their peers. We are also calling for increased holistic support for children and families to support the recovery of mental and emotional wellbeing of children affected by imprisonment and their caregivers and repair relationships between people in prison and their children.

While the pandemic has been a negative experience, it did lead to the rapid acceleration of a number of family contact tools like in-cell telephony in Scotland and in other jurisdictions. Families Outside is working with the Scottish Prison Service and Scottish Government to ensure that both of these contact mechanisms remain in place and are expanded. The technology could allow parents in prison to play a more active role in their child’s life such as attendance at medical appointments and school parents’ evenings. This would help support a number of UNCRC Articles for children affected by imprisonment in Scotland and complies with Articles 25- 27 of the 2018 Council of Europe Recommendations for children with imprisoned parents.[[4]](#footnote-4) Key to achieving this in Scotland will be ensuring that the technology is embedded in key Strategies, ensuring there is buy-in from every prison establishment in Scotland and that the technology and processes of different public agencies work together and are compatible.

Children’s Rights

On 16th March 2021, the Scottish Parliament voted unanimously to incorporate the United Nations Convention on the Rights of the Child (UNCRC) in to domestic law[[5]](#footnote-5). The legislation, once fully enacted, will require public agencies to implement and uphold children’s rights and will also enable children and young people to challenge breaches of their rights through the Courts.

During the Bill process, Families Outside highlighted that for children and young people affected by parental imprisonment, a Court is the place that their mother or father was remanded or sentenced to custody. Many of the children and young people Families Outside support would also struggle to raise their case in Court due to capacity or lack of finance. It is imperative that, to support all children and young people to challenge breaches to their rights, advocacy and financial support are put in place by the Scottish Government.

Incorporating the UNCRC in Scots Law is not the end of the journey; it is the beginning of a new chapter. Public agencies, the third sector, and wider society should still continue to innovate and try new approaches to secure children’s rights in Scotland and ensure that children are heard. A much talked-about example to achieve this, is children’s rights budgeting. Families Outside is also keen to see child-friendly complaints mechanisms that would provide a more accessible way of raising breaches to their rights. Child-friendly complaints mechanisms would not burden a complainant with excessive costs, and a range of organisations that already exist can support children and young people through this type of process.

The Scottish Government is now progressing the establishment of a Children’s Scheme. The Policy Memorandum[[6]](#footnote-6) laid down by the Scottish Government sets out that the Children’s Scheme will:

* Require Scottish Ministers to report on the arrangements in place to fulfil

its compatibility duty

* Aid transparency and scrutiny of how Scottish Ministers fulfil their obligations
* Ensure the participation of children and young people in the decisions that affect them
* Raise awareness of children’s rights
* Consider the rights of children within public budgeting
* Prepare Children Rights and Wellbeing Impact Assessments (CRWIAs)

As the Scottish Prison Service (SPS) carries out Ministerial functions, it’s reporting on UNCRC compliance and promotion will be through the Children’s Scheme. Families Outside will be working closely with the Scottish Government and the SPS to ensure that the rights and participation of children and young people affected by parental imprisonment are well-reflected within the Children’s Scheme. Children and young people affected by imprisonment are often overlooked within reporting despite a recognition of their vulnerability and imprisonment of a household member recognised as an Adverse Childhood Experience (ACE).

In Scotland, there is no data collection on the number of children and young people affected by parental imprisonment. The Scottish Government estimates that between 20,000 to 27,000 children in Scotland experience a parent’s imprisonment each year, however, this is not a robust figure. To monitor children’s rights and ensure that children affected by imprisonment are not discriminated against compared to their peers (UNCRC Article 2), systematic data collection is required, in line with Rule 7 of the UN Standard Minimum Rules for the Treatment of Prisoners 2015 (Nelson Mandela Rules)[[7]](#footnote-7).

In 2018, the Council of Europe agreed recommendations for Member States concerning children with imprisoned parents[[8]](#footnote-8). These recommendations embedded children’s rights ensuring that children affected by parental imprisonment are supported through the trauma of a parent entering custody. The recommendations also informed our *Framework for the Support of Families affected by the Justice System*[[9]](#footnote-9). We are currently updating the Framework and Supporting Document to reflect the Council of Europe’s recommendations to support lobbying and practice further.

In Scotland, progress has been made on implementing the Framework and Council of Europe recommendations, but there is still progress to be made. The Scottish Alliance of Children’s Rights (Together Scotland) 2019 State of Children’s Rights Report[[10]](#footnote-10) called on the Scottish Government to implement the 2018 recommendations. The recommendations could help support incorporation of the UNCRC in Scotland and improve the chances and experiences of children affected by imprisonment in Scotland.

This is an exciting time for children’s rights in Scotland. The incorporation of the UNCRC into domestic law is a game-changer, but it will only matter if we see meaningful progress. Tracking and monitoring of data are essential to ensuring that children’s rights are being implemented and achieved, which is why Governments must ensure that appropriate mechanisms are in place to do this. Appropriate reporting must also be carried out that has the voices of children and young people at its heart. In Scotland, this will be carried out via the new Children’s Scheme which will hopefully be a future example of best practice.

For children and young people affected by imprisonment, the Council of Europe’s 2018 recommendations provide a blueprint for minimum standards for the treatment and support they should receive. The recommendations alongside the UNCRC should be implemented by national Governments to ensure children and young people receive the advice and support they need.

Prison Population

Scotland is currently experiencing high levels of imprisonment. As of the 18th June 2021, 7,459[[11]](#footnote-11) people were in prison custody in Scotland, including 292 women. The remand population is of considerable concern. The data shows that 33.2% of women, 83.3% of the 16- and 17-year old population, and 51.9% of the 18–20-year old population are being held in custody on remand at this time.

In 2018, the Scottish Parliament’s Justice Committee referred to the time spent by a person on remand as “largely unproductive”[[12]](#footnote-12) due to a lack of services, support, and programmes available to the population. Due to the COVID-19 pandemic, there has been disruption to visits received by people in prison, with people in remand receiving very little of their daily entitlement.

With such a damning indictment on remand in Scotland from the Parliament’s Justice Committee, Scotland needs to re-think why and how we use remand. Courts are removing innocent and often vulnerable children and young people from their families and familiar surroundings and placing them in a prison cell. Research commissioned by the Scottish Sentencing Council showed that a person’s brain only completes development in a person’s late 20s[[13]](#footnote-13). Furthermore, the research concluded that children and young people’s development can be negatively affected by Adverse Childhood Experiences (ACESs); where an ACE is experienced, this is likely to negatively impact on development, maturity, and future decision making.

By recognising the science and ensuring that we fully implement Article 40 of the UNCRC, Scotland and other Governments should see offending behaviour in children and young people as a cry for help - something for which they should receive support rather than punishment. The overriding motivation in sentencing should not be punishment or retribution but rehabilitation. Families Outside is pleased that this view was adopted in the Scottish Sentencing Council’s Draft Guidelines for Sentencing Young People[[14]](#footnote-14), and we are hopeful that the Guideline will be adopted soon. The draft Guideline in development in Scotland could be a future example of best practice for other jurisdictions to consider and replicate in their own youth justice systems.

The high prison population in Scotland means that a number of children and young people across the country are affected by parental imprisonment. Recommendations from Scotland’s Independent Care Review, *The Promise,* were absolutely clear on the need for Scotland to do everything it can do to reduce the number of parents and carers in prison[[15]](#footnote-15) as a means of preventing harm to children and young people indirectly impacted by the justice system. This includes assessing and planning ahead for the impact on any dependents likely to be left behind as a result of the imprisonment. Families Outside has welcomed moves in Scotland to discourage short sentences, but more must be done to increase community-based measures in preference to custodial sentences.

Families Outside has also welcomed a move to Community Custody Units[[16]](#footnote-16) as part of the female estate. The new units are hoping to transform the penal system for women, particularly for mothers by increasing the opportunity for contact with their children. We are working with the Scottish Government and Scottish Prison Service to maximise the opportunities for mothers in the new units to keep in contact with their children to foster strong, close, and supportive parent/child relationships, include children staying with their mothers overnight.

By taking action to reduce the prison population, we can ensure that fewer children and young people are affected by parental imprisonment. This helps to keep more families together and, in most cases, is the best start for children. Where this is not possible, in line with UNCRC Article 20, wraparound support must be available to ensure that children and young people with a parent or carer in prison are supported through this separation.

We are grateful for the opportunity to make this submission to the DGD and look forward to engaging further on these issues.

For more information contact: Adam Wilson, Policy and Public Affairs Officer, adam.wilson@familiesoutside.org.uk.

1. The Prisons and Young Offenders Institution (Scotland) Rules 2011, Rule 63. Available at: https://www.legislation.gov.uk/ssi/2011/331/article/63/made [↑](#footnote-ref-1)
2. The Prisons and Young Offenders Institution (Scotland) Rules 2011, Rule 64. Available at: https://www.legislation.gov.uk/ssi/2011/331/article/64/made [↑](#footnote-ref-2)
3. Shona Minson, ‘The Impact of COVID 19 Prison Lockdowns on Children who have a Parent in Prison.’ Available at: <https://shonaminson.com/2021/03/15/the-impact-of-covid-19-prison-lockdowns-on-children-who-have-a-parent-in-prison/> [↑](#footnote-ref-3)
4. *Recommendation CM/Rec(2018)5
of the Committee of Ministers to member States concerning children with imprisoned parents*. Available at https://rm.coe.int/cm-recommendation-2018-5-concerning-children-with-imprisoned-parents-e/16807b3438 [↑](#footnote-ref-4)
5. Chamber Official Report. Available at: https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=13202&i=119544&c=2330676&s=UNCRC [↑](#footnote-ref-5)
6. The Scottish Government, ‘UNCRC Incorporation Bill. Policy Memorandum.’ Available at: https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/introduced/policy-memorandum-united-nations-convention-on-the-rights-of-the-child-scotland-bill.pdf [↑](#footnote-ref-6)
7. UNODC (2015) *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. Available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson\_Mandela\_Rules-E-ebook.pdf [↑](#footnote-ref-7)
8. *op cit*., footnote 3 [↑](#footnote-ref-8)
9. Families Outside, ‘Framework for the support of families affected by the Justice System.’ Available at: https://www.familiesoutside.org.uk/content/uploads/2017/12/Framework-for-all-Professionals.pdf [↑](#footnote-ref-9)
10. TOGETHER Scotland, ‘State of Children’s Rights.’ Available at: https://www.togetherscotland.org.uk/media/1436/socrr\_online\_version.pdf [↑](#footnote-ref-10)
11. SPS Prison Population Statistics. Available at: https://www.sps.gov.uk/Corporate/Information/SPSPopulation.aspx [↑](#footnote-ref-11)
12. Scottish Parliament Justice Committee, ‘An inquiry in to the use of Remand in Scotland.’ Available at: https://sp-bpr-en-prod-cdnep.azureedge.net/published/J/2018/6/24/An-Inquiry-into-the-Use-of-Remand-in-Scotland/JS052018R07.pdf [↑](#footnote-ref-12)
13. Suzanne O’Rourke; Heather Whalley; Sarah Janes; Niamh MacSweeney; Asaly Skrenes; Suzy Crowson; Laura MacLean; Matthias Schwannauer, ‘The Development of Cognitive and Emotional Maturity in Adolescents and its Relevance in Judicial Contexts – Literature Review.” Available at: https://www.scottishsentencingcouncil.org.uk/media/2044/20200219-ssc-cognitive-maturity-literature-review.pdf [↑](#footnote-ref-13)
14. Scottish Sentencing Council, “Sentencing Young People, Draft Guideline.” Available at: https://www.scottishsentencingcouncil.org.uk/media/2045/sentencing-young-people-draft-guideline.pdf. [↑](#footnote-ref-14)
15. The Independent Care Review, “The Promise.” Available at: https://www.carereview.scot/wp-content/uploads/2020/03/The-Promise\_v7.pdf [↑](#footnote-ref-15)
16. Scottish Prison Service, Community Custody Unit Webpage, https://www.sps.gov.uk/Corporate/Information/CommunityCustodyUnits.aspx [↑](#footnote-ref-16)