

**Irish Penal Reform Trust Submission** **to the UN Committee on the Rights of the Child on its draft General Comment No. 27 on children’s rights to access to justice and effective remedies**

***23 August 2024***

**Irish Penal Reform Trust**

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's principal independent non-governmental organisation working for systemic penal reform and change. Our vision is a just, humane Ireland where prison is used as a last resort. We advocate for a progressive criminal justice system that prioritises alternatives to prison, upholds human rights, and champions reintegration. We do this through conducting research, campaigning, and changing attitudes.

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**Introduction**

1. IPRT welcomes the opportunity to make a submission to inform the UN Committee on the Rights of the Child (‘the Committee’)in its drafting of general comment No. 27 on children’s rights to access to justice and effective remedies (‘general comment’).
2. While not intended to be comprehensive, this submission provides information to the Committee which is intended to inform its forthcoming general comment with particular reference to children and young people who have a parent or family member in prison. IPRT has also contributed a joint submission made by the Children of Prisoners Europe (COPE) Network.
3. IPRT wishes to draw the Committee’s attention to previous research reports published by IPRT on the impact of imprisonment on children and families. This includes IPRT’s 2012 report, [*“Picking Up the Pieces": The Rights and Needs of Children and Families Affected by Imprisonment*](https://www.iprt.ie/iprt-publications/picking-up-the-pieces-the-rights-and-needs-of-children-and-families-affected-by-imprisonment/) and the follow-up research report published in 2021, [*Piecing It Together: Supporting Children and Families with a Family Member in Prison in Ireland*](https://www.iprt.ie/site/assets/files/6958/piecing_it_together_supporting_children_and_families.pdf). IPRT commissioned and published a subsequent report [*Maternal Imprisonment in Ireland: A Scoping Study*](https://www.iprt.ie/site/assets/files/7194/maternal_imprisonment_in_ireland-_a_scoping_study_-_edited_-_web.pdf) in 2023.

**Definitions and understanding of access to justice**

1. The [*Council of Europe Guidelines on Child Friendly Justice*](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1098/10.2abc&Language=lanEnglish&Ver=app6&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383) (‘the Council of Europe 2010 guidelines’) define child-friendly justice as being accessible, age-appropriate, speedy, diligent, adapted to and focused on the needs of the child as well as respecting the rights to due process, participation, understanding proceedings, private and family life and dignity. They make it clear that under the European Convention of Human Rights (ECHR), the right of access to justice applies to children as well as adults:

Considering that, as guaranteed under the ECHR and in line with the case law of the European Court of Human Rights, the right of any person to have access to justice and to a fair trial – in all its components (including in particular the right to be informed, the right to be heard, the right to a legal defence, and the right to be represented) – is necessary in a democratic society and equally applies to children, taking however into account their capacity to form their own views.[[1]](#footnote-2)

1. [*Recommendation CM/Rec (2018) 5 of the Committee of Ministers to Member States concerning children with imprisoned parents*](https://rm.coe.int/cm-recommendation-2018-5-concerning-children-with-imprisoned-parents-e/16807b3438) (‘the Council of Europe 2018 Recommendation’) reaffirms that children with imprisoned parents are entitled to the same rights as all children and sets out basic principles about treatment and respect for the rights of children with imprisoned parents with due regard for their particular situation and needs.[[2]](#footnote-3)

**Proceedings and Structural Barriers to Access to Justice**

1. Children with a family member in prison are a specific cohort at-risk of stigmatisation and social exclusion.[[3]](#footnote-4) While they may not be a direct party to any criminal law proceedings involving their parent, pre-trial procedures can disrupt a child’s life in several ways eg . education, housing, household income, uncertainty and difficulty to maintain contact with their parent/caregiver.
2. Article 3 of the UNCRC enshrines the best interest's principle of the child as the “primary consideration” in all decisions made by “public or private institutions, courts of law, administrative authorities or legislative bodies”.[[4]](#footnote-5) However, there is little publicly available information to assess to what extent the Irish judiciary consider the best interests of the child when imposing a sentence on a primary caregiver or other parent.
3. The Council of Europe 2010 guidelines highlight that the best interests of the child should be assessed giving due weight to their views; respecting all of their other rights at all times including their right to dignity, liberty and equal treatment,[[5]](#footnote-6) and that all relevant authorities should adopt a “comprehensive approach” to “take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child”.[[6]](#footnote-7) It further states:

While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should make, where necessary, concerted efforts to establish multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them.[[7]](#footnote-8)

1. Under Article 12 of the UNCRC, every child has the right to express his or her views in matters that concern them “in accordance with age and maturity”.[[8]](#footnote-9) The UNCRC also states that children should be “provided the opportunity to be heard in any judicial and administrative proceeding affecting the child, either directly or through a representative or an appropriate body”.[[9]](#footnote-10) At no point in the Irish criminal justice system do children of persons on trial have a mechanism or an advocate to have their views heard in matters directly affecting them. This is in comparison to other legal proceedings involving decisions that impact children including childcare proceedings where a Guardian ad Litem may be appointed to produce a report advising on a child’s best interests and conveying the views of the child to the court.[[10]](#footnote-11) In family law proceedings, a child views expert can be appointed to carry out a similar function.[[11]](#footnote-12)
2. Children often feel their views are not taken into account during sentencing.[[12]](#footnote-13) Child impact statements have been proposed as one way to address this and allow children an opportunity to be heard in the pre-trial and sentencing processes. The Council of Europe 2018 Recommendation states:

Without prejudice to the independence of the judiciary, before a judicial order or a sentence is imposed on a parent, account shall be taken of the rights and needs of their children and the potential impact on them. The judiciary should examine the possibility of a reasonable suspension of pre-trial detention or the execution of a prison sentence and their possible replacement with community sanctions or measures.

1. The Council of Europe recommends the removal of all obstacles for children’s access to court including cost, lack of legal representation and any barriers of a psychological nature.

**Enabling Factors and Strategies**

1. Sentencing guidelines should be developed in all jurisdictions and include three key principles: (1) imprisonment as a last resort; (2) presumption in favour of a community sentence where a primary caregiver is being sentenced; and (3) a requirement to consider the impact of imprisonment on the child in circumstances where the primary caregiver may be imprisoned. It is important to state ‘primary caregiver’ in order to recognise that the same standards should apply to children of imprisoned parents / caregivers, regardless of that person’s gender and biological role.[[13]](#footnote-14)
2. Judicial bodies should provide training to all judges on the impact of imprisonment of a primary caregiver on children.
3. National authorities responsible for the administration of justice should consider implementing a formal process whereby a child’s voice can be heard in all judicial decisions that may affect the child, including where the child’s primary caregiver may be sent to prison.[[14]](#footnote-15)

**Conclusion**

1. This submission focuses primarily on criminal law proceedings involving a caregiver or parent who may be imprisoned. However, the issues that a child faces when a parent goes to prison are multi-faceted. Their right to access justice in relation to the many barriers they face in maintaining contact with a parent, visiting them in prison and the security settings they encounter are all relevant. Very often, even where a right exists to make a complaint to a Children’s Ombudsman or Commissioner, this often does not occur. More information and awareness-raising is necessary and building trust in such structures may increase the number of complaints made.

1. Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (COE 2010). [↑](#footnote-ref-2)
2. Council of Europe, 1 CM/Rec(2018)5 of the Council of Europe of 4 April 2018 to member States concerning children with imprisoned parents (COE 2018). [↑](#footnote-ref-3)
3. Robertson, O. (2012). Collateral Convicts: Children of Incarcerated Parents Recommendations and Good Practice from the UN Committee on the Rights of the Child. [Online]. Geneva: Quaker United Nations Office. Available from: <https://www.quno.org/sites/default/files/resources/ENGLISH_Collateral%20Convicts_Recommendations%20and%20good%20practice.pdf>. [↑](#footnote-ref-4)
4. UN Convention on the Rights of the Child, Article 3. [↑](#footnote-ref-5)
5. Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (COE 2010) Part 11(c). [↑](#footnote-ref-6)
6. Ibid, (COE 2010) [↑](#footnote-ref-7)
7. Ibid, Part III(B)(2)(c). [↑](#footnote-ref-8)
8. UN Convention on the Rights of the Child, Article 12 (1). [↑](#footnote-ref-9)
9. Ibid. [↑](#footnote-ref-10)
10. Section 26 of the Child Care Act 1991 as amended. [↑](#footnote-ref-11)
11. Section 32(1)(B) of the Guardianship of Infants Act 1964 as amended by the Children and Families Relationship Act 2015. [↑](#footnote-ref-12)
12. Prison Reform Trust. (2020) The importance of child impact assessments for children affected by maternal imprisonment [online]. Available from: http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/Women/News/vw/1/ItemID/785. [↑](#footnote-ref-13)
13. Halton, L. and Townhead, L. (2020). Children of Incarcerated Parents: International Standards and Guidelines [online]. Geneva: Quaker United Nations Office. Available from: https://quno.org/sites/default/files/resources/QUNO%20-%20Children%20of%20 Incarcerated%20Parents%20-%20Intl%20Standards%20and%20Guidelines\_02032020.pdf. [↑](#footnote-ref-14)
14. Irish Penal Reform Trust (2021) *Piecing It Together: Supporting Children and Families with a Family Member in Prison in Ireland*, 7. [↑](#footnote-ref-15)