

## Response ID ANON-XADZ-RVAN-E

Submitted to **UN Convention on the Rights of the Child Bill**

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### About you

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I would like my response to be published in its entirety

**3 What is your name?**

**Name:**

Adam Wilson

**4 What is your email address?**

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**5 Are you responding as a, child or young person, an older individual or on behalf of an organisation?**

Organisation

**Organisation :**

Families Outside

### UN Convention on the Rights of the Child Bill

**1 Will the Bill make it easier for children to access their rights?**

**Please enter your response in the box provided. :**

The Bill will certainly provide more clout for the UNCRC within Scotland. The Bill prevents public authorities from acting in a way which would be incompatible with the UNCRC, which in theory should mean that children's rights will be implemented and respected in the decisions that matter to them.

There are a number of areas we feel the Committee should explore further, with further details in the questions below.

**2 What do you think about the ability to take public authorities to court to enforce children's rights in Scotland?**

**Please enter your response in the box provided. :**

Families Outside supports the provisions in the Bill that would allow the UNCRC to be upheld by the Courts in Scotland.

While in theory this will help to ensure that there is always a course for children and young people to have their rights enforced, it could be very difficult in practice for a child or young person to receive the support required that would enable them to take this step. A number of the children and young people that Families Outside supports would struggle to raise a case in Court to protect their rights due to capacity and/or access to the resources required to do so.

Families Outside would like to ensure the Committee is aware of CRC in Court: The Case Law of the Convention on the Rights of the Child ([https://archive.crin.org/docs/CRC\\_in\\_Court\\_Report.pdf](https://archive.crin.org/docs/CRC_in_Court_Report.pdf)). This research shows, through a comparative study of case law involving the UNCRC across all continents, that only a small proportion of the cases were actually brought by a child or young person. The research suggests some reasons as to why this could be, including the reasons stated above. This demonstrates the need to ensure that all young people are able to ensure their rights are implemented and respected in Scotland and that means other than taking a case through the Civil Court are available. We explore these further in the next question.

The CRC research also showed that a large proportion of cases where the UNCRC was raised, cited, or discussed were in private matters. As awareness of the UNCRC grows within the legal system due to this Bill, it is likely that the UNCRC will be reflected within both Criminal and Civil Cases going forward. It is therefore important that processes are put in place to ensure that the Scottish Court and Tribunal Service and associated justice partners can meet the needs of children and young people and ensure their rights are respected in the legal and criminal justice systems. This action would ensure that all Articles - but in relation to this question, Articles 3, 5, 12, 13, 36, and 40 - are incorporated and implemented. Again, we explore this in more detail in other questions.

**3 What more could the Bill do to make children's rights stronger in Scotland?**

**Please enter your response in the box provided. :**

Building on some of the issues highlighted above, Families Outside believes that there should be an easier route to raise children's rights breaches other than through the Commissioner or going to Court. In a situation where a child or young person were to inform us of a children's rights breach, a sensible first action

would be to raise this with the relevant public agency. This may be a member of Families Outside staff doing this on behalf of the child or young person, supporting them to do so, or empowering them with the information and confidence to raise it themselves.

Families Outside believes that a requirement on public agencies to have a clear children's rights complaints procedure would provide a more accessible method of raising and fixing children's rights breaches compared with using the current routes set out in the Bill. Public agencies already have complaints processes that could be altered or used as a basis for a separate Children's Rights Complaint mechanism. We are aware that Together (Scottish Alliance for Children's Rights) has made a similar point in their submission to the Committee. We would agree entirely with Together that complaint procedures should be child-friendly with provision in place to provide advice, advocacy, and legal or other appropriate support that may be required. Families Outside feels that such processes would make rights more accessible to the children and young people we support and would prevent the need to take expensive cases to Court, which some children and young people would not have the confidence and/or resources to do.

The Committee should consider how children and young people can be supported first of all to know what their rights are; secondly, that they should be applied within their daily lives; and thirdly, that if their rights are not respected, that there are methods such as pursuing the matter in a civil court. Families Outside notes in the Financial Memorandum that £200,000 over three years is to be dedicated to a social marketing campaign to raise awareness. Within Scotland, there is currently a strong group of children and young people who are aware of their rights and know how to ensure their rights are taken seriously. However, a number of children and young people are not aware of their rights or how to ensure they are taken seriously. Young people who are unaware of their rights are more likely to be in or at high risk of poverty, suffer from digital exclusion, and/or be in contact with the criminal justice system. The Scottish Government should therefore not limit awareness raising to a social media campaign. Ensuring that children and young people are aware of their rights needs to happen over a course of years, where children's rights are embedded into the school curriculum and are actively used and promoted in wider society.

Section 6 of the Bill makes it "unlawful for a public authority to act in way which is incompatible with the UNCRC requirements." While we welcome the policy intention of the Scottish Government in this regard, we do have concerns that the current nature of decision-making within Scotland is not fully taken into account. Within a justice context, partnerships such as Community Planning Partnerships and Community Justice Partnerships exist to bring partners together at a local level to achieve outcomes. In these circumstances, decisions will be made by the Partnership, but there will be no budget held by the partnership; instead, the budget would be held by individual partners. The Bill as it stands at present would only prevent statutory partners from operating in a way that is incompatible with UNCRC requirements. Similarly, a number of public functions are outsourced to the private and third sectors through a mixture of Service Level Agreements, Public Social Partnerships, and other mechanisms. We would urge the Committee to ensure that the policy intent of the Government to ensure that all acts of a public nature are subject to the requirements in Section 6 and that the legislation is in line with the current operating and decision-making procedures across the public sector. We would also defer to the submission by Together on concerns over the current wording within the Bill.

#### **4 If you work for an organisation or public authority, what resources do you need to help children and young people access their rights? Will you require additional resources or training to implement the Bill, for example to make or respond to challenges in court?**

**Please enter your response in the box provided. :**

Families Outside has begun a piece of work on ensuring that the UNCRC is incorporated and implemented within our work. This started with a Children's Rights & Wellbeing Impact Assessment (CRWIA) on our current services and policies and is progressing to look at where children's views can be heard more effectively, making any changes to improve UNCRC compliance. This work will take time but can be managed within existing resources,

The Bill at present places no obligations on third sector organisations. However, it is expected that, in line with Section 6 of the Bill, future funding and service agreements will reflect the need to act compatibly with the UNCRC and to embed children's rights. Organisations like Families Outside would welcome clarity on how this will be achieved by the Scottish Government and other public agencies. There are a range of different agreements in place with private and third sector partners, and it is important to ensure that children's rights are reflected across these services.

Families Outside already has a solid understanding of Children's Rights and ensures that we embed UNCRC Articles within our work. Article 2 (No Discrimination), Article 3 (Best Interests of the Child), Article 9 (contact with parents), Article 12 (Children's views are heard), and Article 20 (children receive support when separated from a parent) are of particular importance within our service delivery. Given the Bill, we will need to ensure that UNCRC training for our staff is ongoing (already a component of staff induction) and that regular refresher training is provided where required.

### **UN Convention on the Rights of the Child Bill**

#### **1 Are there any relevant equalities and human rights issues related to this Bill, or potential barriers to rights, that you think we should look at?**

**Please enter your response in the box provided. :**

At present, there is no mention explicitly of children affected by parental imprisonment on the face of the Bill or accompanying documentation. Article 2 of the UNCRC requires State Parties to ensure that no child is discriminated against on the basis of a number of characteristics including "or other status." Families Outside would welcome a commitment from the Scottish Government and relevant agencies that children and young people who are either in or affected by the criminal justice system are recognised on this basis. Imprisonment of a household member is listed as one of the ten Adverse Childhood Experiences (ACEs) proven to increase risk to longer-term health and wellbeing, demonstrating the long-term impact on the social, health, and economic wellbeing of children and young people when a parent or family member is in prison. Ensuring that children and young people who have a parent in prison are not discriminated against will go a long way towards improving outcomes for the children and young people we support and ensure their rights are upheld and respected in policy making and service delivery.

Article 2 of the UNCRC also requires State Parties to ensure that, "all appropriate measures" are taken to ensure that discrimination does not occur. At present, there is no robust figure for the number of children and young people who are affected by imprisonment in Scotland, which makes it extremely difficult to ensure there is no discrimination and that appropriate measures are put in place. To ensure compliance with Article 2, Families Outside is of the view that Scottish Ministers will need to collect more data on demographics and outcomes for children and young people, which would then be used by public agencies to ensure that all appropriate measures are put in place where required. For children and young people affected by imprisonment, this action is outlined in the UN Rules For The Treatment Of Women Prisoners And Non-Custodial Measures For Women Offenders (The Bangkok Rules) and especially the 2018 Council of Europe

recommendations on Children Affected by Parental Imprisonment. The 2006 (revised) recommendations on the European Prison Rules also notes the importance of this, requiring people entering prison to be asked if they have children and relevant details on their current care - something also required under Rule 7 of the UN Standard Minimum Rules for the Treatment of Prisoners 2015 (Nelson Mandela Rules). We would expect that there will be data in other areas of work and that a Whole Systems Approach to data collection would be required to ensure that no group of children and young people are discriminated against, and for Children's Rights Indicators to be set by Ministers and monitored as a result of the Bill. Implementing these processes may require one-off investment to aid the processing of these data, however we acknowledge this would require further funding within the Financial Memorandum.

Within Scotland, a number of children and young people are aware of their rights and ensure these are upheld. Unfortunately, this is not always the case. Families Outside works with a number of children and young people whose rights are not respected or fulfilled. Building on our previous points, we would urge the Committee to consider what action can be taken to ensure that awareness of children's rights is universal. The Financial Memorandum makes provision for a social media marketing campaign to raise awareness and support children's rights. Families Outside supports this plan in principle but must stress that, to ensure universal understanding amongst all children and young people, a broad plan of various measures will be required to inform and promote children's rights and to work with children and young people in a method that works best for them to understand their rights fully. Families Outside would welcome further details on how the funding would be deployed and any relevant targets that would be put in place to work with children and young people affected by imprisonment about their rights. We would also welcome resources created specifically for children and young people who are in contact with the justice system. We would be happy to discuss this further with the Scottish Government and/or the Committee.

## **2 What are your views on the provisions in the Bill that allow the courts to strike down legislation judged to be incompatible with the UNCRC?**

**Please enter your response in the box provided. :**

Families Outside supports provisions within the Bill to allow courts to strike down legislation that is incompatible with the UNCRC. It goes without saying that, if robust consultation and the provisions within the Bill on Children's Rights and Wellbeing Impact Assessments and Reporting are followed, then there will be no need for Courts to use these powers.

## **3 What are your views on the Children's Rights Scheme and the requirement on public authorities to report?**

**Please enter your response in the box provided. :**

Families Outside understands that the Children's Rights Scheme will require Scottish Ministers to set out the action they intend to take to ensure that children's rights are respected and fulfilled. We also understand that the Scottish Government has looked at various methods and best practice with regard to general measures of implementation. Our understanding is that reporting on the Scheme would be carried out annually.

Families Outside would welcome clarity on how consultation would be carried out on the Scheme and who will be involved. However, we also appreciate that there will be Parliamentary oversight of the Scheme, as set out in Sections 12 and 13 of the Bill, which would allow for further consultation and engagement to be carried out if required. We also note that, while the Bill is clear in the time frame for publishing the Scheme and subsequent reporting, it is less clear on the content that would be required. We would support the suggested amendments made by Together Scotland in their submission to the Committee on strengthening these sections of the Bill.

Families Outside welcomes the need for Child Rights & Wellbeing Impact Assessments to be carried out by Ministers. Impact Assessments can help to ensure that children's rights are respected in the ongoing decisions made by Scottish Ministers and in proposed legislation. Families Outside would welcome further clarity on what would constitute a "decision of a strategic nature," as set out in Section 14(3). We believe that subsection 4 could be strengthened so that, on an annual basis within the Children's Rights Scheme, Ministers could identify upcoming decisions where an Impact Assessment would be required.

Families Outside would support amendments to this section that aim to define decisions of a strategic nature further. However, we appreciate that international examples where this has been done in legislation results in some decisions being out of scope of the legislative requirement and do not actually achieve what they set out to do. We are of the understanding that the Scottish Government is keen for this situation not to arise as a result of this Bill, which is why our suggestion on strengthening subsection 4 may be preferable.

Sections 15 and 16 of the Bill, as the Committee will be aware, are in line with provisions in the Children and Young People (Scotland) Act 2014. Families Outside would like to see the list of authorities in Section 16 expanded to include the Scottish Prison Service and the Scottish Court and Tribunal Service, given the impact these respective agencies have on children's and young people's lives. Both of these agencies have a role to play in implementing UNCRC Articles 3 (Best Interests of child), 9 (contact with parents), 12 (respect for views of child), 20 (supporting children unable to live with parents), and 40 (Youth Justice).

## **4 Is there anything else you want to tell us about the Bill?**

**Please enter your response in the box provided. :**

Families Outside works with families who are affected by imprisonment, hence our particular interest in this important Bill is for children and young people who are affected by imprisonment. We would like to raise the following points with the Committee specifically within a justice context. Article 12 of the UNCRC gives children the right to have their views heard in decisions that affect them directly or indirectly. In an adult criminal court, a sentencing decision is taken for a person who has been found guilty of a crime. At present, a child's voice is not required to be heard in that process before a remand or sentencing decision is taken by a Judge or Sheriff. To fulfil Article 12, Families Outside believes that, where an accused person is a parent and/or primary care giver, the child's voice must be heard. Crucially, the impact on a child's life must be heard and understood, even if a custodial decision is inevitable, in order to ensure appropriate supports are in place (Article 20). The Children (Scotland) Bill that recently progressed through the legislative process outlined the process and methods to be used to hear a child's voice in family courts. This could form the basis of how children's voices are heard within adult criminal courts.

Similarly, Community Justice Scotland in their response to this consultation has asked the Committee to consider whether a Children's Rights & Wellbeing Impact Assessment is required in the process for developing sentencing guidelines by virtue of it being a decision of a strategic nature. Families Outside would support this. We have made similar representations to consultations carried out by the Sentencing Council on draft guidelines on strengthening children's rights. Ensuring

that children's voices are heard within an adult criminal court must be a priority to protect the rights of the child and not simply as a tool in mitigation. We would recommend this is considered as part of the Bill process in conjunction with discussions with justice sector partners on other changes that may be required to realise and embed children's rights fully in the justice system, reflecting points made by Community Justice Scotland.

The Council of Europe's 2018 Recommendations for member states concerning children affected by parental imprisonment set out the minimum steps that should be taken to support children who are affected by parental imprisonment. The Council's recommendations should be considered by public agencies in how we can ensure the rights of these children are incorporated and implemented. Families Outside is of the view that a number of actions still need to be taken to implement the Council's recommendations. The Proposed Support for Children (Impact of Parental Imprisonment) (Scotland) Bill in Session 4 of the Parliament consultation summary detailed the gap in support for children affected by parental imprisonment. Families Outside would urge the Committee and Scottish Ministers to use these recommendations and evidence in the process of incorporating the UNCRC.

To ensure that children's rights are incorporated fully in Scotland, a number of legislative changes are likely to be required. This will be a mix of repealing and updating legislation, making amendments through regulations, and introducing new primary legislation to put in place measures that will secure children's rights in Scotland. As highlighted in this consultation response, Families Outside believes that greater data collection will be required to ensure compliance and fulfilment of rights, which is an example of where legislation may be required. We would recommend that the Committee should identify the time frame that would be required to make these legislative amendments, as this could impact full implementation of the UNCRC. The Committee may also want to make recommendations on how to secure these changes in a timely manner so that commencement of the provisions within the Bill can happen more quickly.

Finally, Families Outside believes that, during the legislative process, amendments must be made to the Bill to solidify the role that the Scottish Parliament will play in UNCRC Incorporation. As a decision-making body, it is essential that children's rights are incorporated and fulfilled in the decisions taken by MSPs. We understand that discussions with the Scottish Parliament Corporate Body (SPCB) are ongoing, and we would support the SPCB being added as a listed authority in Section 16 of the Bill. However, we do feel that further action must be taken. Within the legislative process, action must be taken to ensure that children's views are heard in decision-making. Committees could produce child-friendly consultation documents where identified children's rights issues are part of a proposal or a Committee-specific Inquiry. Committees could also be required to carry out their own Children's Rights & Wellbeing Impact Assessments on legislation and strategic decisions. This could be particularly useful at Stage 2 of the legislative process when amendments are made to Bills; similarly at Stage 3, arrangements could be put in place for a further Impact Assessment to be carried out if a Bill is amended further. The requirements for Government Bills in terms of a Children's Rights & Wellbeing Impact Assessment being carried out should be required for all Bills. Any discussion on the role of Parliament in UNCRC Incorporation should involve partners. Families Outside would be happy to contribute to any such discussions.

Families Outside is grateful for the opportunity to submit our views on this important Bill. We are very supportive of this Bill and fully back the principles and intended outcomes. We are happy to speak to the Equalities & Human Rights Committee further on any of the issues we have raised within response and look forward to contributing to further deliberations as the Bill proceeds through the Parliamentary process.

## Evaluation

### 1 Was this views submission tool easy to use?

Easy to use

**Why did you feel it was, or was not, easy to use?:**

### 2 Do you think this Call for Views submission tool provides a good way for you to get involved in the work of Parliament?

Yes

**Please explain the reasons for your answer?:**

It would be useful to have a list of the questions available before entering the tool. This would assist organisations that draft responses on a Word document and then copy and paste onto this tool.

Prior to this tool, submissions tended to be published on the Scottish Parliament website once submitted rather than in bulk after the closing date. This was useful, as it allowed organisations to refer to other submissions if similar or the same points were being made in more than one response and hopefully aids the Committee's deliberations.