

# Concept Note for a General Comment on Children's Rights to Access to Justice and Effective Remedies:

## Submission from Together (Scottish Alliance for Children's Rights)

### About Together (Scottish Alliance for Children's Rights)

Together (Scottish Alliance for Children's Rights) works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) and other international human rights treaties across Scotland. We have nearly 600 members ranging from large international and national non-governmental organisations (NGOs) through to small volunteer-led after school clubs and interested professionals. The views expressed in this submission are based on wide consultation with our members but may not necessarily reflect the specific views of every one of our member organisations.

### Introduction

Together (Scottish Alliance for Children's Rights) welcomes the chance to comment on [proposals for a General Comment on children's rights to access to justice and to effective remedies](#). Our submission is based on evidence gathered by [Together's Rights Detectives](#) (aged 11-17) and [our members](#).

Children's experiences highlight the urgent need for this General Comment. They report difficulties in having their rights upheld, often due to confusing processes or a lack of knowledge, skills, confidence, or support. Even with these, many feel powerless due to the imbalance of power or fear of being seen as a 'troublemaker'<sup>1</sup>

*"Children might be afraid to speak up."<sup>2</sup>*

*"...I was made to feel like I was in the wrong for making a complaint. I'm sorry but this is my life, those decisions you make directly affect my life. I have to deal with the consequences where they can switch off at night."<sup>3</sup>*

The Committee has a significant opportunity to address these issues and explore often overlooked aspects. The General Comment should **stress the importance of child-friendly complaints processes and other 'softer' forms of access to justice** that allow for swift resolution 'close to the breach,' in addition to formal procedures. It should also guide States on **ensuring access to justice for children most at risk, including babies and early years children.**

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<sup>1</sup> Together (2022). State of Children's Rights Report, p114. [https://www.togetherscotland.org.uk/media/2204/socrr-22\\_final.pdf#page=113](https://www.togetherscotland.org.uk/media/2204/socrr-22_final.pdf#page=113) [Date accessed: 18.08.24].

<sup>2</sup> Children's Parliament (2019). 'All rights are important, so all rights should be law' – A consultation on incorporating the UNCRC into domestic law in Scotland, p17. <https://www.childreparliament.org.uk/wp-content/uploads/Incorporation-Online.pdf> [Date accessed: 18.08.24].

<sup>3</sup> Who Cares? Scotland (2020). Navigating the world of rights, p.29. <https://bit.ly/3ukvDdm> [Date accessed: 19.1.22].

## 1. Definitions and understandings

The first two questions should be considered together, as the key elements of ‘access to justice’ and ‘effective remedies’ can only be identified through children’s perspectives.

Children tell us they need various ‘tools’ to uphold their rights, including proactive, preventative, and reactive measures, such as child-friendly information, accessible complaints processes, independent advocacy, and the ability to take legal action.

We urge the Committee to include guidance on the following elements that children have identified:

### 1.1. Accessible, child-friendly information

Children tell us that the most important thing for them is knowing their rights and who to speak to if something goes wrong.<sup>4</sup> This is crucial for any effective complaints system. Information must be readily available, child-friendly, and accessible, considering age, evolving capacity, and communication needs:

*“If children can’t understand then explain in a way that they can process it”<sup>5</sup>*

*“Language is important, use everyday language, use pictures, graphics etc. And keep things clear and simple. Needs to be accessible without diluting the content.”<sup>6</sup>*

*“If a child can’t speak English, they won’t be able to speak up about their worry or complaint.”<sup>7</sup>*

Child human rights defenders highlight the need for a ‘flowchart’ to guide children on what to do and who to approach if they’re worried about their rights:

*“Who can you report to if your rights are being breached? Whether it’s through school or anonymous online or something like that.”<sup>8</sup>*

We urge the Committee to consider the information needs of parents and caregivers, especially for babies and young children who require additional support in expressing their views. Together has begun a new phase of the Rights Detectives to engage with babies, toddlers, and their caregivers on access to justice and will share our findings with the Committee.

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<sup>4</sup> Rights Detectives (2023). Putting Children and Young People's Rights into the Law: Scotland's Journey So Far. <https://togetherscotland.blog/2023/11/23/putting-children-and-young-peoples-rights-into-the-law-scotlands-journey-so-far/> [Date accessed: 23.08.24]

<sup>5</sup> Safiyah, Rights Detectives (2023). Putting Children and Young People's Rights into the Law: Scotland's Journey So Far. <https://togetherscotland.blog/2023/11/23/putting-children-and-young-peoples-rights-into-the-law-scotlands-journey-so-far/> [Date accessed: 23.08.24]

<sup>6</sup> CYCJ and Staf (2020). Equalities and Human Rights Committee UNCRC (Incorporation) (Scotland) Bill Outreach Virtual Session with young people and Committee Members CYCJ & Staf (Scottish Throughcare and Aftercare Forum), p.3. <https://bit.ly/3IXK006> [Date accessed: 19.1.22].

<sup>7</sup> Children’s Parliament (2019). A consultation on incorporating the UNCRC into domestic law in Scotland, p.18. <https://bit.ly/3INQ6eK> [Date accessed: 19.1.22].

<sup>8</sup> Arden, Member of the Children’s Parliament (2023). Putting Children and Young People's Rights into the Law: Scotland's Journey So Far. <https://togetherscotland.blog/2023/11/23/putting-children-and-young-peoples-rights-into-the-law-scotlands-journey-so-far/> [Date accessed: 23.08.24]

## 1.2. Supportive adults

Children consistently highlight the importance of supportive adults in helping them defend and claim their rights. This includes parents, carers, family members, teachers, health workers, professionals, and independent advocates:<sup>9</sup>

*"If you have somewhere to go or someone to talk to, it then does not feel like a big deal."*<sup>10</sup>

*"Having an advocate there makes you ten times louder"*<sup>11</sup>

Children understand the range of support they need—from emotional support and protection to fighting for justice, advocating for rights, and raising awareness:

*"They can look after you and support you in ways that you need. They can protect you."*<sup>12</sup>

*"Give you a hug."*<sup>13</sup>

*"Try to help as much as possible" and "ensure it doesn't happen to anyone else."*<sup>14</sup>

*"They should make sure you're safe" and "fight for justice/our rights."*<sup>15</sup>

Care Experienced children<sup>16</sup> particularly stress the importance of independent advocacy to help them understand their rights, prevent breaches, address power imbalances, and ensure their views are heard. Advocacy workers are independent, meaning they are not connected to service providers. The General Comment is an opportunity to recognise this crucial role and encourage States to enshrine the right to independent advocacy in legislation, with the resources needed for full implementation.

## 1.3. Resources

Children say the support they need isn't always available due to funding or staff shortages:

*"We had a lot of PSAs at school, and there was a really really good one who couldn't work anymore because there was no funding to pay her and that was very sad."*<sup>17</sup>

*"I always feel like there's no enough, like at school there's never really like a place they say if you have an issue come here."*<sup>18</sup>

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<sup>9</sup> Together (2022). The Rights Detectives: Phase 1 Mapping Report.

[https://www.togetherscotland.org.uk/media/3320/report\\_rightsdetectives\\_mapping-2.pdf](https://www.togetherscotland.org.uk/media/3320/report_rightsdetectives_mapping-2.pdf) [Date accessed: 23.08.24]. Together (2023). The Rights Detectives: Mission Updates #001-#003. <https://www.togetherscotland.org.uk/about-us/our-work-with-children/rights-detectives/#:~:text=The%20Rights%20Detectives%20are%20a,SNAP%20Inverness%20and%20Who%20Cares%3F> [Date accessed: 23.08.24]. Together (2022). State of Children's Rights Report [https://www.togetherscotland.org.uk/media/2204/socrr-22\\_final.pdf#page=113](https://www.togetherscotland.org.uk/media/2204/socrr-22_final.pdf#page=113) [Date accessed: 23.08.24].

<sup>10</sup> Together (2021). All Our Rights in Law: Conversation events with children and young people.

[https://www.togetherscotland.org.uk/media/1910/report\\_final\\_md\\_comments\\_ns.pdf](https://www.togetherscotland.org.uk/media/1910/report_final_md_comments_ns.pdf) [Date accessed: 01.08.22]

<sup>11</sup> Who Cares? Scotland (2021). UNCRC Outreach Session: Who Cares? Scotland.

[https://archive2021.parliament.scot/S5\\_Equal\\_Opps/General%20Documents/UNCRC\\_Outreach\\_Session\\_Who\\_Cares\\_Scotland\\_Confirmed.pdf](https://archive2021.parliament.scot/S5_Equal_Opps/General%20Documents/UNCRC_Outreach_Session_Who_Cares_Scotland_Confirmed.pdf) [Date accessed: 23.08.24]

<sup>12</sup> Together (2023). The Rights Detectives: Mission Update #003. [https://www.togetherscotland.org.uk/media/3557/rights-detectives\\_mission-update-3\\_final.pdf](https://www.togetherscotland.org.uk/media/3557/rights-detectives_mission-update-3_final.pdf) [Date accessed: 18.08.24].

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

<sup>16</sup> Care Experienced refers to those who have been in the care of the State or a local authority at some stage in their lives, including those who have lived in foster care, residential care, kinship care, or other formal or informal care arrangements. The term acknowledges that the experience of being in care can have a significant and lasting impact, irrespective of the length or type of care received.

<sup>17</sup> Together (2022). The Rights Detectives: Phase 1 Mapping Report.

[https://www.togetherscotland.org.uk/media/3320/report\\_rightsdetectives\\_mapping-2.pdf](https://www.togetherscotland.org.uk/media/3320/report_rightsdetectives_mapping-2.pdf) [Date accessed: 18.08.24].

<sup>18</sup> *ibid.*

#### 1.4. Child-friendly complaints

Children talk about both ‘formal’ justice (e.g., police, courts) and ‘softer’ notions like fairness at school and receiving apologies:

*“I guess schools have a role in justice, like not criminal, but in terms of fairness in the classroom and that...”<sup>19</sup>*

Children tell our Rights Detectives they “want to see things change” *without* resorting to formal complaints.<sup>20</sup> They stress the need for quick resolution, but say this often doesn’t happen:

*“I think the process needs to be easier to challenge, waiting for a response for an email for 3 weeks is still quite long”<sup>21</sup>*

Where things are not resolved at local level, children feel more formal processes need to be widely available and easy to understand.<sup>22</sup> We appreciate the Concept Note’s recognition that justice can be pursued through processes that don’t involve the formal justice system.<sup>23</sup>

We urge the Committee to emphasise the importance of child-friendly complaints processes and informal routes to justice in the General Comment. At the same time, it should clarify that this doesn’t reduce the obligation of States to make formal procedures more child-friendly.

#### 1.5. Remedies

As noted, children find that receiving an apology can validate their experiences and reassure them that issues won’t reoccur. An effective remedy might involve a meeting between a service provider, the child, and their advocacy worker to discuss concerns and resolve them to the child’s satisfaction:

*Child: “so I’ve got a voice- so they can see things from my perspective”*

*Facilitator: “And how did it make you feel, getting an apology? “*

*Child: “It felt good to know he understood and obviously apologising. So not only did he apologise he acknowledged what he did was wrong and understood the consequences. It was good to hear him apologise and to understand he knew just how bad it was.”<sup>24</sup>*

Together welcomes the broad interpretation in the Concept Note, drawing from General Comment 5, including reparation, compensation, and measures for recovery, rehabilitation, and reintegration.

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<sup>19</sup> Together (2022). The Rights Detectives: Phase 1 Mapping Report. [https://www.togetherscotland.org.uk/media/3320/report\\_rightsdetectives\\_mapping-2.pdf](https://www.togetherscotland.org.uk/media/3320/report_rightsdetectives_mapping-2.pdf) [Date accessed: 18.08.24].

<sup>20</sup> Together (2023). The Rights Detectives: Mission Update #002. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 18.08.24].

<sup>21</sup> Who Cares? Scotland (2020). Navigating the world of rights, p.29. <https://bit.ly/3ukvDdm> [Date accessed: 19.1.22].

<sup>22</sup> Together (2023). The Rights Detectives: Mission Update #002. <https://www.togetherscotland.org.uk/media/3368/detect-1.pdf> [Date accessed: 18.08.24].

<sup>23</sup> OHCHR (2024). Concept Note. Para 7. <https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gcomments/gc27/gc27-concept-note.pdf> [Date accessed: 18.08.24].

<sup>24</sup> Together (2022). The Rights Detectives: Phase 1 Mapping Report. [https://www.togetherscotland.org.uk/media/3320/report\\_rightsdetectives\\_mapping-2.pdf](https://www.togetherscotland.org.uk/media/3320/report_rightsdetectives_mapping-2.pdf) [Date accessed: 18.08.24].

## 2. Barriers to accessing justice and effective remedies

Many barriers arise from failures to embed the elements identified by children:

- Lack of child-friendly, accessible information, leaving children disempowered to know and claim their rights (including information for adults around the child);
- Limited access to supportive adults who understand children's rights and know how to act if a child has concerns;
- Insufficient resources and investment in child-friendly justice approaches;
- Absence of child-friendly complaints mechanisms, leading to children being unable to voice concerns, which may result in organisations mistakenly believing there are no issues due to a lack of complaints;
- Remedies that are out of reach.

Additional barriers include:

- Public attitudes and organisational cultures that pressure children to stay silent for fear of negative consequences;
- Limited awareness of children's rights among adults, including those involved in service delivery and justice processes;
- Adults often miss children's complaints, as they may be less formal, framed as a question or reflection rather than a direct complaint;<sup>25</sup>
- Missed opportunities or a lack of understanding of the importance of engaging children in designing justice processes, making them less suited to children's needs;
- Lengthy, non-child-friendly processes—the General Comment should stress the importance of timely justice;
- Additional barriers faced by children whose rights are at risk, such as a lack of appropriate complaints processes for babies and young children, financial hardship, information challenges, and stigma faced by children with a parent in prison;
- Financial and practical barriers to legal advice and representation, including cuts to legal aid and a shortage of skilled solicitors able to communicate effectively with children;
- Formal proceedings that are not child-friendly and can re-traumatise children;
- Legal limitations, such as strict time limits on raising proceedings or narrow definitions of standing;
- Gaps in data collection, monitoring, and evaluation—disaggregated data showing the extent of children's representation in civil and criminal justice systems would greatly assist decision-makers. Problems are hard to fix if they're not visible.

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<sup>25</sup> Together (2022). State of Children's Rights Report, p. 122. [https://www.togetherscotland.org.uk/media/2204/socrr-22\\_final.pdf#page=113](https://www.togetherscotland.org.uk/media/2204/socrr-22_final.pdf#page=113) [Date accessed: 23.08.24].

### 3. Enabling factors and strategies

#### 3.1. Role of states

Together would like to highlight three key elements of the UNCRC (Incorporation) (Scotland) Act 2024<sup>26</sup> that the Committee may wish to consider as promising legislative practice:

- **Standing:** Children have standing to bring cases directly or through a representative, based on “sufficient interest” rather than “victim status.”<sup>27</sup> NHRIs, including the children’s commissioner, can also bring or intervene in proceedings, ensuring support for children wishing to bring cases.
- **Time limits:** While proceedings generally must be brought within a year of the breach, the Act allows the one-year period to start only when the child turns 18.<sup>28</sup> This accommodates the fact that many children may not recognise a rights breach immediately. The Committee should encourage States to avoid strict time limits or allow similar exceptions.
- **Children’s views as to appropriateness of remedy:** Courts are legally required to give children the opportunity to express their views on appropriate remedies. The Act ensures that children can express their views in their preferred manner and that courts must consider these views, assuming children are capable of forming a view unless proven otherwise.<sup>29</sup>

The Committee should encourage States to underpin legislative measures with comprehensive policies and strategies that include disseminating information, raising awareness, and providing training to ensure children’s access to justice, including information for both children and adults. This should also highlight the crucial role played by States in relation to data collection, evaluation, and monitoring to ensure that complaints processes lead to continuous improvement.

#### 3.2. Role of CSOs, NHRIs and other stakeholders

The Concept Note emphasises the importance of access to justice across all proceedings, including informal or non-state systems.<sup>30</sup> CSOs, NHRIs, and similar bodies must lead by example by creating child-friendly complaints processes, co-designed with children to ensure accessibility and effectiveness. The Committee should encourage NGOs and other stakeholders to implement and promote these practices.

The Concept Note also highlights the proactive role of CSOs in supporting children’s rights.<sup>31</sup> These organisations can bridge the gap between children’s justice needs and the system’s capacity to address them by submitting third-party interventions, developing strategic litigation, and raising awareness among professionals and the public.

The General Comment should underscore the crucial role of CSOs in independently monitoring breaches of children’s rights. With their independent status, CSOs can scrutinise State actions impartially, ensuring children’s rights are upheld. We urge the Committee to recommend that States support CSOs in this role.

Finally, the General Comment should emphasise the role of CSOs in using strategic litigation to address structural and long-standing breaches. We recommend the Committee encourage States to recognise and support strategic litigation by CSOs as a means to drive systemic change. In challenging harmful laws and policies, CSOs can establish legal precedents that strengthen protections for all children, making strategic litigation a powerful tool for advancing children’s rights.

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<sup>26</sup> UNCRC (Incorporation) (Scotland) Act 2024. <https://www.legislation.gov.uk/asp/2024/1/contents> [Date accessed: 23.08.24].

<sup>27</sup> *ibid* s.7 4

<sup>28</sup> *ibid* s.7(11)

<sup>29</sup> s.9(1) UNCRC (Incorporation) (Scotland) Act 2024

<sup>30</sup> OHCHR (2024). Concept Note. Para 11.

<https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gcomments/gc27/gc27-concept-note.pdf> [Date accessed: 23.08.24].

<sup>31</sup> *Ibid* Para 15.

### 3.3. Role of technologies

*"I think there should be a children's rights website that you can talk to someone and get their advice."<sup>32</sup>*

A few children our Rights Detectives spoke to believed that social media could be used by adults and children to raise awareness of children's rights breaches. Others stressed the importance of privacy and didn't want personal information shared publicly.<sup>33</sup> It's crucial that digitally excluded children are not disadvantaged by any online approaches.

### 3.4. Empowerment of children

Involving children in designing the child-friendly complaint mechanism from the start ensures it is accessible and meets their needs. Scotland's First Bairn's Hoose shows that children's input:

- Makes services more effective by aligning them with the needs of those they support;
- Reorients professionals' objectives, changing the nature of conversations;
- Prevents the system from delivering only what it feels capable of, instead of what children truly need.<sup>34</sup>

## 4. Proceedings

We welcome the commitment to timely, efficient and orderly complaints mechanisms that are accessible to all children. We offer the following additional comments:

### 4.1. Right to be heard:

It is essential that children can express themselves in the way that is best for them – rather than being expected to speak in 'adult' ways:

*"Children shouldn't have to speak in a way that adults do just to have their views heard. It's important that our voices are listened to. Don't dismiss us – we experienced it, and we know what we're talking about. If we feel like we aren't being listened to, it can make us not want to speak to people or take part in things."<sup>35</sup>*

Please see our earlier comments on how legislation in Scotland seeks to implement this.

### 4.2. Pre-recording evidence

Pre-recording evidence is an aspect of a child-friendly justice process that reduces the need for children to repeat their stories. There must also be a commitment to ensure children do not attend court unless absolutely necessary. When evidence is pre-recorded, efforts should be made to fully utilise it. If further evidence is needed, it should be organised to prevent children from having to repeat themselves or return to court whenever possible.

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<sup>32</sup> Safiyah, Rights Detective (2023). Rights Detectives: Mission Update 3.

[https://www.togetherscotland.org.uk/media/3557/rights-detectives\\_mission-update-3\\_final.pdf](https://www.togetherscotland.org.uk/media/3557/rights-detectives_mission-update-3_final.pdf) [Date accessed: 23.08.24]

<sup>33</sup> Rights Detectives (2023). Rights Detectives: Mission Update 3. [https://www.togetherscotland.org.uk/media/3557/rights-detectives\\_mission-update-3\\_final.pdf](https://www.togetherscotland.org.uk/media/3557/rights-detectives_mission-update-3_final.pdf) [Date accessed: 23.08.24]

<sup>34</sup> Children 1st (2024). Developing Bairn's Hoose with Children, Young People, and Families.

<https://www.children1st.org.uk/help-for-families/bairns-hoose/developing-bairns-hoose-with-children-young-people-and-families/> [Date accessed: 24.08.24].

<sup>35</sup> Scottish Women's Aid and Improving Justice in Child Contact (2019). Young Expert Group (YELLO!) Response to Call for Views on the Children (Scotland) Bill. <https://bit.ly/3L5tw2W> [Date accessed: 17.1.22].

## 5. Outcome and impact

Access to justice can foster positive cultural change encouraging a rights-based approach from the outset. Establishing child-friendly complaint mechanisms exemplifies this. The potential for accountability, fines, or reputational damage helps prevent rights breaches. Complaints mechanisms offer children a chance for remedy as well as allowing governments and organisations to collect data, identify service gaps, and learn which children might be excluded. They can reveal legislative loopholes and provide real-life examples of policy inadequacies.

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