

**HUMAN RIGHTS COUNCIL**

**32<sup>nd</sup> Session of the Working Group on the  
Universal Periodic Review (UPR)**

Stakeholder's Submission on:

**The Human Rights Situation in CHILE**

Submitted by:

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## INTRODUCTION

APG23 is an international catholic association founded in Italy by Fr. Oreste Benzi. Its activities in the world of poverty and marginalization brought to the direct sharing of life with the poor in 1973 when the first family-home was opened. The Community is now present in thirty-seven countries on five continents. The Association has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC) and its commitment at the UN is the result of sharing the life with the poor and is the fruit of the international elaboration and synthesis of the action for the removal of the root causes, which create poverty and injustice.

### 1.SOURCES

The Association has been working in Chile since 1994, starting with two family homes, after having been invited by Caritas Chile. Nowadays, APG23 works constantly in three cities: Santiago (Capital), La Serena and Valdivia. In 1998, the Association began to develop projects with the National Service for Minors - Ministry of Justice, for which it was recognized as a "Partner Organization", and in 2006, with Senda - Ministry of Health. In 2011, the Association obtained an authorization from the Presidency of the Republic to carry out activities in Chile, through the Exemption Decree No. 5288 of November 24, 2011.

We offer a wide variety of social actions in the field of children: street children, children who are exempted from prosecution due to their age and children 'diverted' away from judicial proceedings, abandoned children, abused children and minors in general. We are also taking care of battered women, people with physical, sensory and mental disabilities, drug addicted and we promote and defend human rights. All these areas are treated through specific projects.

Throughout the years, APG23 has expanded in Chile through the opening of the following structures: three family homes, six open host families, a therapeutic community, a program called "Acuarela" focused on the prevention from juvenile discomfort, a centre for promotion of rights and social integration called "la Escuelita", a home called "Esperanza", a Refuge and House of Prayer, a Soup Kitchen, a Centre for Young People with Hearing Disability - Project Sol "The Voice of Silence", a Program of Assistance and Prevention for the Roma Population - "La Serena", a project in its beginning of Inclusion for people with Mental and / or Psychic Disability, A Social Pastoral for Immigrants and the Pro-Monitoring Project of the Mapuche Conflict in Valdivia. In 2012, we assisted 37 children and adolescents in residential centres, 170 children and adolescents in our Centres for Prevention and Promotion of Rights and 62 adults in our Assistance, Disability and Addiction programs. Among the programs established by APG23 in Chile, one project is accredited and collaborates with the National Service for Minors and one is accredited and works with the National Service for the Prevention and Rehabilitation of Drug and Alcohol Addiction.

## 2.FOCUS ON RECOMMENDATIONS (refer doc. A/HRC/WG.6/18/L.3)<sup>1</sup>

### 2.1. Recommendations n° 121.118. 121.119. 121.120. - Juvenile Justice System-

#### 2.1.1 Concerns

In October 2015 twelve years after the entry into force of the Law No. 20,084 (Juvenile or Adolescent Criminal Responsibility Law), the Chamber of Deputies Department of Evaluation of the Law made the study/wrote a report that drew these conclusions: there is currently no integrated system, but rather organizations that operate in a disjointed manner and, as it has been pointed out, encounter important coordination difficulties with other public services and great disparities in the systematization and handling of information.<sup>2</sup>

In the country the 96% of the specialized protection benefits and of the structures for social reinsertion of adolescent offenders are managed with the collaboration of agencies of the “Servicio Nacional de Menores” (SENAME).<sup>3</sup> Sorrowfully, in 2017 as revealed by the National Institute of Human Rights (INDH), in its annual report<sup>4</sup>, it has emerged clear evidence that SENAME has been involved in a profound crisis that has shown not only its ineffectiveness but also a staggering series of violations of children's rights in its actions<sup>5</sup>. The most devastating results are that 1 out of 15 children reported abuse or sexual exploitation within the SENAME centres.<sup>6</sup> Moreover, according to the National Service for Minors, the deaths of 210 children served/hosted in the residential system and 406 in the outpatient system were registered, in a period which goes from January 30, 2005 to June 30, 2016.

It can be stated categorically that the State - through its institutional framework - is not fully guaranteeing children rights, especially in the residential systems which include specialized re-education centres and host families of direct administration.<sup>7</sup> The main institution that has focused on the specialized protection of children also in the Juvenile Justice System has failed.<sup>8</sup> A deep reform is now under way and it needs to be thoroughly monitored.

The possibility to have an adequate offer of broad socio-educational interventions aimed at full social integration project and social reintegration associated to penal sanctions is far away from being fulfilled. The considerations and recommendations made in our previous UPR (Universal Periodic

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<sup>1</sup> Numeration based on: Draft report of the Working Group on the Universal Periodic Review available at: [https://www.uprinfo.org/sites/default/files/document/chile/session\\_18\\_-\\_january\\_2014/a\\_hrc\\_wg.6\\_18\\_l.3\\_chile\\_e.pdf](https://www.uprinfo.org/sites/default/files/document/chile/session_18_-_january_2014/a_hrc_wg.6_18_l.3_chile_e.pdf)

<sup>2</sup> [http://www.evaluaciondelaley.cl/foro\\_ciudadano/site/artic/20150406/asocfile/20150406123747/informe\\_ejecutivo\\_20\\_084conportada.pdf](http://www.evaluaciondelaley.cl/foro_ciudadano/site/artic/20150406/asocfile/20150406123747/informe_ejecutivo_20_084conportada.pdf)

<sup>3</sup> SENAME is the centralized government agency, collaborator of the judicial system and dependent on the Ministry of Justice, in charge of protecting the rights of children and adolescents, and of young people between 14 and 18 years of age in the judicial system. Servicio Nacional de Menores <http://www.sename.cl>

<sup>4</sup> Available at [https://www.indh.cl/bb/wp-content/uploads/2017/12/01\\_Informe-Anual-2017.pdf](https://www.indh.cl/bb/wp-content/uploads/2017/12/01_Informe-Anual-2017.pdf)

<sup>5</sup> 1 in 3 children reported neglectful negligence, which includes physical, educational, medical care, psychological or emotional, and judicial carelessness. 1 in 5 children reported physical abuse, including unlawful coercion, torture and assault. 1 out of every 7 children reported mental or psychological abuse.

<sup>6</sup> Regarding the current crisis in the institution, the director of the INDH, said that "the radiography taken account of an institution that must be reformed that has serious defects, serious violations and this cannot wait any longer.

<sup>7</sup> See reports Unicef, 2015; Siles, 2017; National Council for Children, 2016. It had considered 14 types of programs, among those that include host families, sexual exploitation and street children and includes 14 types of centres for different population groups: elderly, infants, preschoolers, children with disabilities and teenage mothers.

<sup>8</sup> Regarding the current crisis in the institution, the director of the INDH, said that "the radiography taken account of an institution that must be reformed that has serious defects, serious violations and this cannot wait any longer."

Review) report submitted in Geneva in June 2013<sup>9</sup> are still valid and require full implementation.

### **2.1.2 Conclusion and recommendations**

In order to solve part of the most urgent problems presented by the institutional framework regarding Juvenile Justice System we recommend the Member State:

1. To establish an integral protection system, based on explicit legal, administrative and judicial guarantees that improve access to the basic social rights and needs (education, physical and mental health, housing, etc.) and basic civil and political rights (physical and mental integrity, right to be heard and taken into account, due process, non-discrimination).
2. To promote the specialization of all the actors involved in the Juvenile Justice System and of the educators of residential centres.
3. To guarantee priority attention in health and education sector for the institutionalized population, and if the public system is not able to deliver the required care, to resort to private providers of certified experience.
4. To review, at a systemic level, the current approach that has left the prevention work in the background and has lacked a comprehensive and articulated vision. The lack of coordination between the judicial, health and intervention mechanisms and a public policy of incipient childhood and adolescence, hinders the possibilities of developing a systemic and ideal approach that guarantees the social reinsertion of adolescent offenders.
5. To add the figure of the “case manager”, housed at the local level, whose function should be to plan the strategy to be followed with each child and, if appropriate, the other members of his family, and follow up on each of them in order to ensure coordination among the different programs and agencies that provide care to children.
6. To adopt suitable tools to begin an open and constructive dialogue with civil society and the institutions involved in this field.
7. To generate and strengthen agreements and coordination between SENAME and Health, Education and Training Institutions.<sup>10</sup>

### **2.2 Recommendations n° 121.35-121.145 up to 121.148-121.150-121. 157 up to 121.159 - Rights of Persons with Disabilities**

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<sup>9</sup> Available at: [APG23 UPR Declaration for Chile 2014](#)

<sup>10</sup> Sename also has responsibility for intersectoral coordination with those institutions that deliver the programmatic offer that accompanies the intervention process, in the areas of health, education and job training.

### 2.2.1 Concerns

Despite the Law No. 20,422 enacted in February 2010, which establishes norms on equal opportunities and social inclusion of persons with disabilities as well as principles for independent living, universal accessibility, universal design, intersectoriality, participation and social dialogue, there are not yet the necessary measures for the development of an institutional framework at the national level, guaranteeing that these principles are translated into effective and efficient measures for the population with disabilities. On the other hand, this Law has not implied a full harmonization of the national regulations with the Convention on the Rights of Persons with Disabilities (CRPD).<sup>11</sup>

According to APG23 experience in the field, demonstrated by specific monitoring questionnaires<sup>12</sup>, the country, despite some progress, does not sufficiently guarantee the rights of people with disabilities, delineating a climate of progress stagnation. The school inclusion system shows great limits; in special schools, even in the best ones, there is a form of "segregation" because they group only boys and girls in a situation of disability, ignoring inclusion as a principle. The scholastic insertion can last up to 26 years, but in most cases the professional training is insufficient to provide continuity or projection of work. The children, young people and adults, who live in our families and projects, are completely forgotten by the State and private sector, who fail to open and promote for them employment opportunities/who do not offer them employment opportunities. The ability to promote an increasingly independent and socially integrated life, in most cases, is also impractical due to the fact that public and private spaces and transport often do not comply with minimum accessibility conditions. People with disabilities who must still fight discrimination in social and work fields do not have adequate spaces and means of collective locomotion and the same pathways of public and private spaces: even if they are important places of the daily life, shopping centres and supermarkets represent a major obstacle to access because of the architectural barriers. Even ministries and public facilities do not comply with the necessary adjustments. The necessary adjustments do not exist either in universal architecture or in design, and obviously people with disabilities are forced into segregation and dependency.

There is no clearly institutionalized mechanism for consultation and participation of organizations of people with disabilities. There are insufficient professionals in the area of mental health and rehabilitation (in the educational, social, psychological, neurological, psychiatric therapy, specializations sectors), and an absence of coordination among the different sectors involved. This is true especially when there are cases of serious violations of rights, which are added to the problems of psychosocial disability, and consequently there aren't clear referral mechanisms and public policies to overcome these situations.

The public health services for example Mental Health Centres, psychiatric hospitals and the Family Health Centres are often saturated, and consequently there isn't an inappropriate attention to the frequency and continuity. Regarding the available information, the main source is the National Disability Study (ENDISC) based on the International Classification of the Functioning of Disability

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<sup>11</sup> [http://www.un.org/disabilities/documents/convention/convention\\_accessible\\_pdf.pdf](http://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf)

<sup>12</sup> Questionnaire, applied and closed, in February 2018 to 7 projects (users, volunteers, members and operators of APGXXIII) :

1 Handicap Sensory (deaf) who works with the National Disability Service (SENADIS)

1 Family-home-Santiago

3 Foster family-Santiago (Children with Severe Autism, Down, e physical)

2 Family-home Valdivia (mental and psychic disability)

and Health.<sup>13</sup> In the new study, ENDISC II (2015)<sup>14</sup> - with respect to the adult population older than 18 years old- identifies 1,523,949 people in a situation of mild to moderate disability, equivalent to 11.7% of the total national population and 1,082,965 people with a severe disability, what amounts to 8.3% of the population. Thus, 20% of the population of legal age in Chile has some disabilities. Talking about minors, the study is based on a limited sample: 5,515 people aged 2 to 17 who live in homes.<sup>15</sup> We recognize the progress that this second study has underlined as it disaggregates the information obtained by sex, age, indigenous people and area but it needs to be improved because it is important to consider also the situation of people who are deprived of liberty (that the ENDISC does not contemplate either). In fact, it is urgent for the State to get better and more complete data and statistics in order to promote a culture of human rights and to strengthen respect for the principles of equality and non-discrimination. This process should be oriented to society in general, but above all, to organizations of people with disabilities and their families. The constituent process that begins in the country is an opportunity to follow up the presidential announcements to strengthen civic education and participation that should consider accessibility mechanisms for people with different disabilities. The exercise and enjoyment of rights by persons with disabilities requires the recognition of their full legal capacity, recognizing them as subjects of law. Likewise, it is vital to design and implement support systems and devices with reasonable adjustments for their homes, mainly single-parent families, through social guarantees to families that welcome people with disabilities.

In Chile - as it has been reported to the different treaty bodies- women, indigenous people, children and adolescents, migrants and persons with disabilities are discriminated. Additionally, in the presence of the same condition of disability, greater opportunities for employment and better remuneration for men than for women are provided, as in the case of general population.

On 12 July 2012, Law No. 20,609<sup>16</sup> came into force and established measures against discrimination and contemplated the possibility of acting against individuals and public bodies to make a discriminatory act null and void. However, beyond the advances that the approval of this law could have meant, its regulation is deficient because, among other things, it does not contemplate neither preventive actions nor it establishes any concrete measure of protection or reparation for the victims. Although the law recognizes several categories of discriminatory acts, it does not reverse the burden of proof – which is currently on the person who experienced such actions - and it does not contemplate the creation of an institutional framework designed to supervise and enforce compliance with the principles of equality and non-discrimination that it establishes.

Also, the Committee on the Rights of the Child has corroborated this generalized situation of exclusion of vulnerable children, making important recommendations to the Chilean State in September 2015.<sup>17</sup> It evidences the need to create an entity responsible for the implementation and evaluation of the Law,

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<sup>13</sup> It should be noted that the survey represents only the population residing in private homes, so the estimates do not cover people living in collective housing, institutions or street situations, this would be raising strategies on a population parcelled of the people with disabilities, leaving out just those who are in greater situations of vulnerability and exclusion. The first study dates back to 2004 and the second one is carried out 12 years later.

<sup>14</sup> Available at [https://www.senadis.gob.cl/pag/355/1197/ii\\_estudio\\_nacional\\_de\\_discapacidad](https://www.senadis.gob.cl/pag/355/1197/ii_estudio_nacional_de_discapacidad)

<sup>15</sup> Available at: see note above n°13

<sup>16</sup> Available at: <https://www.leychile.cl/Navegar?idNorma=1042092>

<sup>17</sup> CRC/C/CHL/CO/4-5 Comité de los Derechos del Niño, Observaciones Finales sobre los Informes Periódicos cuarto y quinto combinados de Chile, p. 56 y 57. Available at <http://observatorioninez.consejoinfancia.gob.cl/wp-content/uploads/2017/06/Comit%C3%A9-de-los-Derechos-delNi%C3%B1o.pdf>

capable of designing, executing and evaluating public policies to prevent possible discriminatory actions, thus preventing the new regulation from being reduced simply to the consecration of a judicial action. Despite the previous considerations and the deficiencies of the institutional framework for the protection and promotion of the rights of children and adolescents, it is to be underlined the positive step of the Government of Chile that enacted legislation on 22 January 2018, which created the new position of ‘Ombudsperson for Children’ LEY NÚM. 21.067<sup>18</sup> and starting in 2018, also the new regulations on the labour inclusion of the disabled. The purpose of the new “Labour Inclusion Law” - Ley 21015 of 15 June 2017<sup>19</sup> is to promote the hire employees with disabilities in the public and private sectors.

### **2.2.3. Conclusions and recommendations**

We recommend the Member State:

9. To strengthen the National Disability Study (ENDISC) so that its application is periodic, it covers the population that does not live in a private home -which corresponds precisely to the most vulnerable and excluded - and it includes in particular people with psychosocial disabilities.
10. To incorporate a disability approach in the next national census and consult the organizations of people with disabilities during its design and implementation stage.
12. To establish the necessary measures for the development of a national institutional framework that addresses effective and close supervision, oversight, penalization and redress of the rights of persons with disabilities when they are violated according to the principles of the CRPD.
13. To amend Law 20,609 in order to establish preventive actions and specific protection and reparation measures for victims and reverse the burden of proof in case of discriminatory acts so that those who experienced such actions are not the ones who have to provide proofs.
14. To establish the creation of an institutional framework designed to supervise and enforce compliance with the principles of equality and non-discrimination.
15. To implement a system of reasonable adjustments that guarantee the right to equality and non-discrimination of persons with disabilities, particularly ensuring equality and inclusion before the law in education, the pension system and justice.
16. To consider, in the current process of reform of the migration law, the situation of persons with disabilities through the creation of a humanitarian visa for migrants with disabilities and multiple visas for their companions or caregivers.

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<sup>18</sup> Available at <http://www.diariooficial.interior.gob.cl/publicaciones/2018/01/29/41969/01/1344902.pdf>

<sup>19</sup> Available at <https://www.leychile.cl/Navegar?idNorma=1103997&idParte=>

17. To adapt domestic legislation in order to recognize children and adolescents as subjects of rights with autonomy and progressive legal capacity; to institutionalise mechanisms so that they can freely express their opinion in matters that concern them and to establish the duty of the State to protect the evolving personal integrity of children and adolescents with disabilities.
18. To adopt a policy of deinstitutionalisation of girls and boys with disabilities, including measures to prevent their abandonment and to ensure their inclusion in a family environment in the community.
19. To adapt public policies on disability by expanding its coverage to all children and adolescents and implementing them in accordance with the CRC and CRPD.
20. To promote and support the adoption and fostering of disabled children in families and family-like structures. A new national legislation that forbids the placing of minors with disability in another type of institution (unless in the case of extreme ratio) should be adopted.
21. To take all necessary measures to overcome architectural barriers and a national construction policy that complies with the CPRD.

*Finally, on reporting and follow up of the third UPR Cycle, we would like to recommend the following: Ensure the effective implementation of UPR recommendations through the establishment by the time of the mid-term review of the current cycle, of a permanent governmental mechanism to liaise with relevant ministries and consult with civil society, National Human Rights Institutions (NHRIs) and all relevant stakeholders.*