

HUMAN RIGHTS COUNCIL

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The Human Rights Situation in

CHILE

Submitted by:

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(NGO in Consultative Status with the ECOSOC)

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INTRODUCTION

APGXXIII is a catholic international association founded in Italy by Fr. Oreste Benzi. Its activities in the world of poverty and marginalization brought to the direct sharing of the life with the poor in 1973 when the first family-home was opened. The Community is now present in twenty-five countries of the 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 injustice.

1. SOURCES

The Association has been working in Chile since 1994, beginning with two Family homes, after having been invited by Caritas Chile. Nowadays, the APGXXIII works steadily in three cities: Santiago (Capital), La Serena and Valdivia. In 1998, the Association began developing projects with the National Child Service - Ministry of Justice, by which it was recognized as "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 Exemption Decree N° 5288 of November 24th, 2011.

We offer a wide variety of Social Actions in the field of childhood: street children, children exempted from prosecution, abandoned children, maltreated children, and minors in general. We are also caring for maltreated women, persons with physical, sensory, mental disabilities, and drug users; we promote and defend Human Rights. All of these areas are dealt with through specific projects.

Over the years, APGXXIII has expanded in Chile through the opening of the following structures: six Family homes, six open foster families, one therapeutic community, one Community Prevention Programme called "Acuarela", one Centre for the Promotion of Rights and Social Integration called "la Escuelita", one shelter home called "Esperanza" (Specialized Residence with Programme), one Foster Family Programme (Specialized Foster Families), one Fraternity and Shelter Home for the Poor called "Capanna di Betheleme", one Shelter and House of Prayer, one Soup Kitchen, one Centre for Young People with Hearing Impairment – Proyecto Sol "La voz del silencio", one Assistance and Prevention Programme for the Gypsy Population - La Serena, one Social Risk Prevention Programme called "Miramar" - Valdivia. In 2012, we assisted 71 children and teenagers in our Specialized Residence mode, 170 children and teenagers in our Prevention and Promotion of Rights Centers and 87 adults in our programmes of Assistance, Disability and Addiction. Among the programmes set up by the organization in Chile, 3 projects are accredited and collaborate with the National Juvenile Service and 1 is accredited and works with the National Service for the Prevention and Rehabilitation from Drug and Alcohol Addiction.

2. FOCUS ON RECOMMENDATIONS

In this report, APGXXIII has focused his attention on the following recommendations¹:

Recommendation n. 6

Continue and strengthen efforts to bring the national legislation, in particular the Criminal Code, into line with ratified instruments (Ukraine);

Recommendation n. 50

Take all necessary steps to ensure that persons between the age of 14 and 18 are under all circumstances tried by a specialized juvenile justice system, that the best interests of the juvenile offenders are given the highest priority so they can successfully be reintegrated into society, and that deprivation of liberty of children is used only as a measure of last resort (Austria).

APGXXIII, recognizes that much has been done by the Government within the Juvenile Justice System. It is important to underline that most efforts followed the implementation of the new Law on the Penal Liability of teenagers (Law 20084 of 2007) and influenced the adaptation of public, administrative and institutional policies.

¹ Convention on the Rights of the Child, Human Rights Instrument of the United Nations, 1989, artt. 3, 37, 39, 40

In this context, it is a duty of the State, as it has taken a commitment through international tools such as the Convention on the Rights of the Child²(CRC) and other more specific instruments³, to draft a policy that can guarantee optimal conditions for children and teenagers in conflict with Justice to be judged through a "proper trial", consistent with international tools, focused on an intervention programme aiming at reducing the violation of rights and promoting effective reformation and social reintegration. Such policy should be a consistent, integrated and constantly evaluated as a whole, as it faces a complex and multi-causal problem. At the same time, it should include effective measures to raise awareness and foster prevention. Although we recognize that, since 2007, much progress has been made in politics on Juvenile Justice issues, we believe that these issues have not acquired the importance and priority they deserve in public policy.

2.1 Feedbacks. Concerns and Results

Considering that the Chile Government has signed and ratified the relevant treaties and protocols and consequently has duties, the way in which the State has faced the above mentioned issues, is - according to the elements based on our experience⁴ - insufficient on:

A) Specialised Juvenile Justice system:

Lack of specialization of Actors in the Juvenile Justice System: Judges, Prosecutors, Defences (guardians). There is not enough capacity to deal with all the proceedings.

Law 20084, article 29 paragraph 2, as well as article 49 d and IV guarantee the specialization of the Juvenile Justice System, especially of those who have the authority to administer it. We found the following problems:

- The Family and Criminal Courts take care of the demand and are responsible for training their staff. The law provides for and authorizes that in case of overload and over subscription, even non-specialized judges can evaluate cases. Regrettably, such a situation is very frequent.
- In most cases, we notice that it is difficult to have continuity of the stakeholders involved in a trial, with a high level of turnover of the attorneys, lawyers, 'curatores ad litem', prosecutors and officers assigned to the trials of teenagers.
- We notice an unstable systematic and technical communication amongst professionals of Projects and stakeholders in the Juvenile Justice System;
- We highlight lack of rigorous follow-up and continuity of the representatives of the child. This makes children and teenagers not to know exactly their rights and not to have the possibility to refer to a professional who knows enough their personal history. Without this more in-depth information, the Court might not be able to pass final judgement oriented towards favouring the social reintegration of the child or teenager and mitigating its punitive focus.

B) Reformation and Social Reintegration Programme offer through Specialized Projects

We believe that both the covering and the implementation of social programmes is inadequate, and only partially covers the actual demand.

Law 20084, article 42 guarantees, through the National Child Service, the existence in the various regions of the country of the programmes necessary for the implementation and control of the measures mentioned by the Law itself. However, based on our experience, we find the following problems:

2 Convention on the Rights of the Child, Human Rights Instrument of the United Nations, 1989, artt. 3, 37, 39, 40

3 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"; A/RES/40/33, 29 November 1985; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines);A/RES/45/112; 14 December 1990

4 Interview Sr Daniel Cema Director Casa de Acogida "Esperanza" Residencia Especializada con Programa Acreditado por Servicio Nacional de Menores- Ministerio de Justicia, April 2013

-- We detect an obvious lack of adequate programmes offered in terms of precautionary measures and execution of punishments on behalf of the National Juvenile Service. There is a lack of adequate Closed and Semi-Closed Detention Centres, as well as of a sufficient amount of specialized intervention programmes, considering the special needs of children and teenagers.

-- Courts, provided for by article 80 bis of Law 1996, send cases to projects, aiming at reducing waiting lists. This produces overpopulation, does not take into account the real capacities and infrastructures of the programmes and causes overcrowding and lack of minimum living conditions, thus having negative effects on children and teenagers and slowing down intervention processes, as well as increasing the workload of professional and technical teams participating in the programmes.

-- It is important to mention, as an obstacle for the application of Law 20084, that there is a lack of accuracy in paying subventions deriving from article 80 bis, thus causing negative effects in the social and administrative management of programmes.

C) *Satisfactory Reintegration in Society*

Deficient inter sectoral coordination on behalf of the State for a real and effective action of social reintegration.

We believe that the policies for the inter sectoral coordination of networks for assistance to children and teenagers in conflict with Justice show the following deficiencies.

The issue of children in conflict with Justice is a complex and multi-causal problem, virtually all of these children and teenagers have seen more or less serious violation of their rights. Therefore repairing the damage does not only mean accompanying them in psychological issues, but also providing multidisciplinary assistance aiming at solving their problems which include family problems, their possible addictions, their situation with Justice, their probable school drop out and their health. When dealing with these issues, project staff report that they meet multiple obstacles. Support and joint and coordinated work with the judicial, health and education systems and with other institutions that assist these children and teenagers is difficult, slow and hampered by behaviours and prejudices that undermine the superior interest of children and teenagers.

Let us see some examples in each of these areas:

- **HEALTH:** Children and teenagers in conflict with justice have various, numerous and more or less serious health problems, due to the fact that most of them had no support from a responsible adult who took care of this aspect. In the health area there is no specific policy to cover the needs of children and teenagers in conflict with justice, as well as adequately assisting children and teenagers in need. As a consequence, professionals dealing with these children have to face many obstacles every day. Some of them are the following:
 - In the case of Specialized Assistance (Mental Health), there are not specific guidelines or rule of assistance. Since there is no permanent monitoring of childhood policies on behalf of the Government, nor a specific policy for children and teenagers with complex social situations, many measures related to their assistance are left to the decision of municipalities (in the case of medical centres), directors of structures or the assisting staff.
 - Psychiatric area. Figures collected in our centres⁵ indicate that 30% of children and teenagers assisted within dedicated programmes present some kind of psychiatric pathology. Of these, about 15% suffer from a severe pathology. A specific treatment is of fundamental importance considering that their behaviour is often disruptive and careless, and puts their lives and those of others at risk.

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- Programmatic offer in the field of drug addiction also presents severe deficiencies, as there are no prevention or assistance programmes focused on the various needs and levels of addiction of children and teenagers.
 - **EDUCATION:** The Education System, which should be *accessible* and *adjustable* (Art. 28 Convention on the Rights of the Child), is another area that presents significant obstacles for the reintegration of children and teenagers in conflict with justice.
A significant percentage of these children and teenagers drops out from school. The level of education for most of them is deficient and shows delay in the year/age relation.
 - Usually, it is difficult to find schools where children and teenagers can actually reintegrate. The year/age gap implies that they have to enter classes with much younger children, with a very big age difference in some cases (13 year-olds sometimes find themselves in courses with 8 year-olds). Schools for children and teenagers with special needs or evening or adult education are only limited solutions to the need of feeling integrated of these children.
 - On the other hand, in those cases where school drop out was shorter, and where school reintegration might be simpler due to the smaller year/age gap, often school directors and managers are reluctant to accept children and teenagers with disruptive behaviour.
 - Therefore, reintegrating children and teenagers in conflict with justice in the school system is often very difficult in practice. This becomes particularly serious as the child or teenager experiences yet another "failure" when striving to reintegrate, and might probably give up on finishing school completely.
 - In many cases, the solution is left to protection or reparation projects and to the personal networking that the relevant project managers manage to build.
 - **TRAINING:** The need to generate an adequate personal development in these children and teenagers, in their skills, abilities and own resources is fundamental to have a successful social reintegration. Giving them professional training for them to get a job is an important part of their reintegration process.

There is no accessible and adaptable offer deriving from a state policy to which these children and teenagers can have access. Just as in the education area, there is prejudice against some of these children and teenagers and this hinders their integration.

3. CONCLUSIONS AND RECOMMENDATIONS

We recommend to the Member State:

- I – Increasing the number of specialized centres, consistently with the type of intervention, thus guaranteeing the protection and reinsertion of children and teenagers in conflict with Justice.
- II – Guaranteeing an effective and sufficient specialization of the stakeholders in the Juvenile Justice System, and use all of the available tools for the effective creation of specialized sections in the area.
- III – Adopting a National Programme of Multisectoral Coordination (Justice, Health, Education), for a complete intervention and for the follow-up and assessment of children and teenagers in conflict with Justice.
- IV – Adopting suitable tools to begin an open and constructive dialogue with civil society and the institutions involved in this topic.