

HUMAN RIGHTS COUNCIL

46th Session of the Working Group on the Universal Periodic Review (UPR)

Stakeholder's Submission on:

The Human Rights Situation in

CHILE

Submitted by:

Associazione Comunità Papa Giovanni XXIII (APG23)
(NGO's in Consultative Status with the ECOSOC)



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INTRODUCTION

The Associazione Comunità Papa Giovanni XXIII (APG23)¹ is an International Lay Association of Pontifical Right with legal status accredited with Special Consultative Status to the Economic and Social Council (ECOSOC) since 2006. Founded in Italy during the early '60s by the catholic priest Fr. Oreste Benzi, the Association is present in 40 countries on the five continents.

1. SOURCES

Since 1994, APG23 is present in Chile² in two cities: Santiago (the Capital) and Valdivia (Los Ríos Region). In 1998, the Association has started to develop projects with the National Service for Minors (SENAME), and the Ministry of Justice and Human Rights, being recognised as "Partner Organization" and, in 2006, with the Ministry of Health and the National Service for the Prevention and Rehabilitation of Drug and Alcohol Consumption (SENDA). In 2011, APG23 was authorised by the Presidency of the Republic to carry out activities in Chile, through the Exemption Decree No. 5288 of 24 November 2011.

A wide range of social actions in the field of children's rights and protection are offered³. APG23 takes care of abused women, persons with physical, sensorial and mental disabilities and of drug users; it carries out activities to promote and defend Human Rights. APG23 addresses all this through specific projects and structures: three family homes, six open families, a therapeutic community, a prevention programme called "Acuarela", a promotion of rights and social integration centre called "la Escuelita", a canteen for the poor, a centre for young people with hearing impairment - Sol Project "La voce del silenzio", a social pastoral programme for migrants, the project to monitor the Mapuche conflict between the territories of Valdivia and Lautaro, a hostel "Tata Oreste" for homeless people, and a "Ruta Social" Service to offer food aid to people living on the street.

In 2022, we assisted 37 children and adolescents in our Specialised Residency mode, 170 children and adolescents in our Rights Promotion and Prevention centres and 62 adults in our Assistance, Disability and Addictions programmes. Among the programmes established by APG23 in Chile, one projects is accredited and collaborate with the National Service for Minors (SENAME now Mejor Niñez) and the other one is accredited and works with the National Service for the Prevention and Rehabilitation of Drug and Alcohol Consumption (SENDA).

In 2019, APG23 participated in the Italian Government's call for the Civil Peace Corps⁴ with the project "Civil Peace Corps: The Mapuche Conflict", through which our volunteers on the ground started to carry out monitoring activities on the Human Right situation of the Mapuche people in Chile in the territory of Curacautín (Araucanía Region). Currently, the presence is coordinated by the non-violent Civil Peace Corp - APG23 - Operazione Colomba (OP).

2. FOCUS ON RECOMMENDATION⁵ 125.42, 125.62, 125.71, 125.215 up to 125.246

2.1 MAPUCHE MINORITY

The main source of this report is based on the APG23's experience in Chile, where it has been operating in four regions (namely: Araucanía, Biobío, Los Ríos, and Los Lagos), visiting several Mapuche indigenous communities,

¹ www.apg23.org

² <https://www.apg23.org/it/cile/>

³ Street children, children in judicial proceedings, abandoned children, abused children and minors in general.

⁴ The Civil Peace Corps is an experimental project within the Civil Service, established by Law No. 147 of 2013 of the Italian Republic, which provides the possibility also for civil society operators to operate in conflict zones on a par with the armed forces. They became operational in 2017 and aim to seek alternative solutions to the use of military force, to promote positive peace, understood as the cessation of violence but also as an affirmation of Human Rights, to promote solidarity and cooperation, education for peace among peoples. What characterises the Civil Peace Corps is the analysis, prevention, and transformation of conflict, both potential and real, through activities of mediation, dialogue, reconciliation, information, promotion of democratic principles, entering directly into the communities that need support. See <https://www.politichegiovanili.gov.it/servizio-civile/corpi-civili-di-pace/>. See also: <https://www.odcpace.org/new/index.php/corpi-civili-di-pace-2019-il-conflitto-mapuche>

⁵ Reference numbers of the recommendations referred to in the document A/HRC/41/6 Human Rights Council Forty-first session 24 June–12 July 2019 Agenda item 6 - Universal periodic review - Report of the Working Group on the Universal Periodic Review* Chile Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/088/61/PDF/G1908861.pdf?OpenElement>

conducting interviews with activists and leaders, and closely monitoring the dynamics of the ongoing conflict between the Chilean State and Mapuche communities. Since January 2023, an APG23 presence has been established in the rural area of Lautaro in order to better combine Human Rights monitoring and the directly sharing life with Mapuche communities. During these years of presence, it can be estimated that more than 30 Mapuche communities have been met.

The Mapuche's ancestral lands are subject to an increasing exploitation by commercial entities which often operate irresponsibly, contaminating the environment and exposing local communities to dangerous substances. Regrettably, undiligent corporate behaviour and practices are fostered by serious shortcomings in the Chilean legal and administrative frameworks aimed at protecting the environment and the rights of indigenous people, as well as by the lack of national enforcement of international environmental and human rights obligations. APG23 has already pointed out this situation in international contexts⁶.

In recent years, Indigenous peoples, thanks to their activism and as the result of strong civil protest pressures that began in 2019, have been able to play a role in the process of drafting a new constitution for Chile for the full recognition of their social and cultural identity and of their rights. Their participation was guaranteed with the inclusion of 17 seats reserved to Indigenous in the Constitutional Convention (CC): 7 Mapuche, 2 Aymara, and one for each of the other peoples recognised by law.

Unfortunately, the drafted text provoked strong criticism from conservative sectors and the constitutional proposal of the Convention was rejected by 62% of the voters in the referendum that was supposed to confirm the change. Following the rejection of the proposal, the political parties represented in the National Congress tried to promote a new constitution-making process through the so-called 'Agreement for Chile'.

However, the "Agreement" has unsatisfactory contents that remove the recognition of various Indigenous rights. The formula for electing representatives to the Constitutional Council under the new draft prevents any possibility of Indigenous participation proportional to their demographics and does not allow for adequate representation of all Indigenous peoples in this body.

This has generated frustration and scepticism among Indigenous peoples of Chile, who are questioning their potential participation in this stage of the constitutional process. Chile will hold a new referendum on the final draft on the 17th December 2023. If approved by a simple majority, the new chart would become law.

Although the Government has sought an opening to the Indigenous demands, the repressive approach of the state policies against the Mapuche people and the militarization of the lands have never ceased and continue to exacerbate tensions; the promulgation and extension of the application of highly controversial law for the so-called "privileged defence" opens the door to possible and further abuses by the security forces and landowners by providing them with excessive instruments for suppressing their rights.

RECOMMENDATIONS:

- I. *Explicitly recognise in the Constitution the rights of indigenous Mapuche people, ensuring full respect for its culture, spirituality and ancestral lands with effective and rapid mediation and restitution processes that also involve Mapuche communities not registered with CONADI.*
- II. *Fully implement the provisions of the UN Declaration on the Rights of Indigenous Peoples and comply with applicable human rights legislation.*
- III. *Reform Ley Nain-Retamal no. 21.560⁷, limiting law enforcement powers, in particular in the context of Indigenous peoples' rights claims.*
- IV. *Establishing a commission of enquiry investigating complaints of human rights violations caused by the abuse of police power towards the Mapuche people.*
- V. *End the state of emergency, militarisation of the Araucania and Biobio region and the repressive policies that radicalise conflicts.*

⁶ See <https://www.ohchr.org/sites/default/files/documents/issues/toxicwaste/toxics-indigenous-peoples/inputsreceived/2022-07-13/APG23.pdf>

⁷ <https://www.bcn.cl/leychile/navegar?idNorma=1191005> popularly called Ley "gatillo facil"

- VI. *Mitigating the application of Criminal Law no. 21488⁸, which criminalises the theft of wood, in the context of conflicts arising from Mapuche territorial claims.*
- VII. *Establish a fair and just dialogue with the Mapuche communities that are affected by the process of reclaiming their ancestral lands.*
- VIII. *Reject any legislative reform that would confer privileged and private forms of self-defence on landowners towards the occupations of the contested lands by the indigenous population.*
- IX. *Urgently amend and reform Law 19.253⁹ of 1993 on the Promotion, Protection and Development of Indigenous Peoples, or 'Indigenous Law', to bring it in line with current international standards on the rights of indigenous peoples, such as ILO Convention 169, ratified by Chile in 2008.*
- X. *Recognise and adopt clear processes of justice on Indigenous lands seized during the dictatorship (1973), in order to pay fair compensation and work towards the restitution of lands allocated before the coup that overthrew democracy.*
- XI. *Guarantee - through an appropriate legislation consistent with ILO Convention 169 - that respect for the cultural, spiritual and religious identity of Mapuche people in prison is ensured: both in the case of restriction of freedom, in pretrial detention or in the case of a prison sentence, allowing them to carry out their religious and community activities and to enjoy a diet that respects Mapuche traditions.*

3. FOCUS ON RECOMMENDATION¹⁰ from 125.187 up to 125.214

3.1 CHILDREN'S RIGHTS

The National Service for the Specialized Protection of Children and Adolescents - Mejor Niñez¹¹ (MN), which replaced SENAME, reports a waiting list of 28,000 children for the first outpatient diagnosis. Only 5.2% of these children receive assistance, with 64% undergoing recovery and outpatient care, 6.7% accessing temporary family assistance under the family foster care programme, and 28% being monitored by the Offices for the Protection of Rights.¹² A gradual implementation of the Territorial Family Accompaniment programme is also planned, and it will replace targeted prevention and outpatient protection programmes for children and adolescents with disabilities.

The platform of the waiting list for the taking in charge of children poses a significant criticality. A large percentage of cases on this list do not receive timely care. Many children have lost their diagnostic history due to the waiting period, caused by the total absence of intervention or lack of active synergy in coordination and training by state bodies such as the Family Court and others. The average length of staying in the waiting list is too long, as it takes at least a year before the State assumes the responsibility of the child and specifies the admission cause in the MN and the attention profile.

There is growing resistance from civil society, particularly from families that should be assisted, due to disappointment with the system and the lack of previously agreed and committed attention. There are several reasons for the delayed care:

- The need to update diagnoses that have remained unchanged due to excessive time spent without intervention. Many children no longer have the same profile for which they were admitted to projects at the Family Court or the Municipal Office for the Protection of Children and Adolescents Rights (OPD). In some cases, their condition changes or worsens from low or moderate complexity to high complexity, and therefore they need to be referred to another specialised programme.

⁸ <https://www.bcn.cl/leychile/navegar?idNorma=1181923> popularly called Ley “robo de madera”

⁹ <https://www.bcn.cl/leychile/navegar?idNorma=30620&idParte=8639832&idVersion=2020-10-17>

¹⁰ See note n.5

¹¹ See Act No. 21.302 establishing the National Service for the Specialised Protection of Children and Adolescents and amending the legal regulations thereunder. The website of the national service at the following link: <https://www.mejorninez.cl/>. For the guarantees and integral protection of the rights of children and adolescents see Act No. 21.430.

¹² See https://www.camara.cl/verDoc.aspx?prmID=279688&prmTIPO=DOCUMENTO_COMISION p.25 note 8 and public statements in: <https://www.latercera.com/la-tercera-pm/noticia/las-dificultades-estan-en-los-sobrecupos-nna-atendidos-en-programas-de-proteccion-de-mejor-ninez-aumentan-casi-10/GNSKASILZAOZGXTG5VW3BBB4/> and https://litoralpress.cl/sitio/Prensa_Texto?LPKey=RXTZTLOYU4X2Y5QQQLSRPFUVOYTXOYFB3X6T4XUIF6WKKXJ42WOA

- The inability of families to co-finance with government institutions.
- Reaching the child's legal age of majority during the waiting period with consequent exclusion from the lists.
- Changing addresses or contact information by the family.
- Lack of validation of previous evaluations by the specialised clinical diagnosis programme and the "Mejor Niñez" competence programme in charge of interviewing the adults involved.

It has also been observed that a significant number of children and families, even though they are in the care system, remain on assistance lists for periods exceeding State guidelines (a maximum of one year and eight months). This inevitably leads to the erosion of the number of intervention slots available, feeding the circle of excessive slowness in the lists and reducing interventions for children and their families to mere monitoring actions.

RECOMMENDATIONS:

- I. *Finalise and adopt a national policy and action plan on childhood whose outcomes are monitored and evaluated in accordance with human rights indicators based on the Convention on the Rights of the Child.*
- II. *Adopt new State Action Plans, with adequate funding allocations that provide sufficient human, technical, and financial resources for effective implementation.*
- III. *Above all, strengthen the preventive actions of National Programmes and the systematic training for all professionals involved in various sectors, including the Family Court, the Ministry of Social Development, or Civil Society.*
- IV. *Implementation of programmes capable of addressing the current profiles of children, adolescents, and their families, taking into account and responding to updated national and municipal diagnoses.*
- V. *Expand the offer of protection programmes, emphasising two lines of action: the Specialized Clinical Diagnosis and the new model of individual intervention plan.*
- VI. *Rapidly develop interoperability between the National MN Service and the Local Offices for Childhood, with the aim of receiving administrative reports and providing more comprehensive analyses in line with the reality on the ground.*
- VII. *Ensure an articulated offer that responds to the immediate needs for specialised care of children, adolescents and their families.*
- VIII. *Ensure coverage in the territories of specialised therapeutic interventions for children, adolescents and their families, informing families about reasonable waiting times and transparency of the intervention processes at the time of admission.*
- IX. *Create the technological conditions for the functioning of the MN National Service, promoting coordination and communication among the various stakeholders involved with the family and the child.*

4. FOCUS ON RECOMMENDATION¹³ from 125.252 up to 125.258 and 125.148

4.1 DISABILITY

The Servicio Nacional de la Discapacidad¹⁴ (SENADIS), an organ of the Ministry of Social Development and Family, has conducted three disability studies in Chile since 2004 (Estudio Nacional de la Discapacidad, ENDISC), the last of which in 2022.¹⁵ This latest study reveals that 2,703,893 people in Chile have a disability (or 17.6% of the total population), with a higher prevalence (21.9%) among women than men (13.1%).

Disability cases grow with increasing age: 9.9% for those aged 18-29, 11.7% for 30-44 years, 17.5% for 45-59 years, and 32.6% for those aged 60 or older. Persons with disabilities have 2.2 fewer years of education than those without disabilities, and, compared to persons without disabilities, they work 20% less. 11.4% of the population suffers from severe disabilities.

¹³ See note n.5

¹⁴ <https://www.senadis.gob.cl/>

¹⁵ https://senadis.gob.cl/pag/136/1196/resultados_endisc_i

In 2010, Law No. 20,422 “Normas sobre Igualdad de Oportunidades e Inclusión Social de Personas con Discapacidad”¹⁶ was enacted. Among other things, this Law established SENADIS¹⁷ (Servicio Nacional de la Discapacidad), a public entity under the Ministry of Social Development and Family; in 2012 issued Law No. 20,609, known as the "Zamudio Law," which intervenes against generic arbitrary discrimination, establishing a judicial process and sanctions.

In April 2019, Law No. 21,015, the "Ley de Inclusión Laboral"¹⁸, came into force. It not only reiterates general prohibitions against discrimination of persons with disabilities but also introduces practical measures for employment inclusion. For instance, public bodies and companies with more than 100 employees must employ at least 1% of workers with disabilities, a requirement that can be replaced by "concluding contracts for the provision of services with companies that have employed persons with disabilities" or with a "donation in cash to projects or programs of associations, corporations, or foundations" working in this field.¹⁹

However, these legislative safeguards are still weak, often disregarded or legally circumvented, contributing to the worsening situation of persons with disabilities and to a disconnection between the regulatory and *de facto* situation.

In the school context, there is the positive PIE programme (Programa de Integración Escolar)²⁰. The PIE programme includes the figure of the differential educator. However, in the cases monitored by APG23 volunteers, the support teacher is present in the classroom to support children with disabilities, often in large numbers and with diverse difficulty conditions, only twice a week (duration: 45 minutes each). During the remaining time, the child is typically left without special support in the care of the regular teacher, who often teaches to very large classes (up to 40 students).

While acknowledging the progress made as a result of public policies aimed at ensuring inclusive and quality education, the reality is still far from achieving the desired goals and many children with disabilities are not guaranteed the full right to education. Socially, there are still forms of segregation of persons with disabilities, often confined to their homes and almost absent from any public situation. Their integration into society remains distant and challenging.

RECOMMENDATIONS:

- I. *Strengthen the legislation for the job placement of persons with disabilities with effective policies that truly lead to their integration into companies, without the possibility of bypassing the requirement both in companies and cooperatives.*
- II. *Promote social, cultural, and professional activities at the territorial and national levels also for persons with disabilities to facilitate their inclusion and participation in the cultural life of the community.*
- III. *Provide support and assistance to families with members with disabilities and ensure a more consistent support system during the school journey to reduce the dropout rate among individuals with disabilities and establish appropriate educational standards.*
- IV. *Allow the support teacher to have more hours and provide more appropriate support for children with disabilities.*
- V. *Develop infrastructure and teacher training further to make school buildings suitable for accommodating students with disabilities.*
- VI. *Create a network between different educational institutions, school - after-school activity - family, to find common strategies that can help children with disabilities spend higher quality time in each of these places.*
- VII. *Train all professionals working in educational institutions on the topic of disability.*

¹⁶ Actualising Law 19.284 of 1994

¹⁷ Public body part of the Ministry of Social Development and Family

¹⁸ <https://www.dt.gob.cl/portal/1626/w3-propertyvalue-167780.html>

¹⁹ Art. 157ter paras. a and b.

²⁰ <https://institucionacional.cl/programa-de-integracion-escolar-pie/>

and

<https://especial.mineduc.cl/wp-content/uploads/sites/31/2021/09/MANUAL-PIE-2021-1.pdf>