

# JUVENILES DEPRIVED OF THEIR LIBERTY AND THEIR RIGHT TO EDUCATION IN THE CHILEAN JUVENILE JUSTICE SYSTEM

Third Cycle-Universal Periodic Review-Chile 2019



## INTRODUCTION

The Convention on the Rights of the Child (CRC) establishes that the education of minors must be aimed at developing their personality, aptitudes and mental and physical capacities to their fullest and instill in them respect of human rights, fundamental freedoms and the principles established in the Charter of the United Nations. Education must also impart respect for their parents, their own cultural identity, their language and their values, including values of civilizations different from their own. It must prepare them to assume a responsible life in a free society, with a spirit of understanding, peace, tolerance, equality of the sexes and friendship between ethnic groups, people of indigenous origin, nations and religions, and instill respect for the environment. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish that every minor of compulsory education age will have the right to receive an education adapted to their needs and capabilities, designed to prepare them for their reinsertion in the society, in environments that meet the needs of human dignity. Additionally, States must guarantee that when minors leave detention centers they are not at a disadvantage in terms of education with respect to their peers.

## OUR COALITION

The Tierra de Esperanza Coalition includes Tierra de Esperanza Foundation, the Educational Corporation of Tierra de Esperanza, and organizations of the Civil Society of Chile, who for more than 20 years, have defended the essential rights of children and adolescents who have been severely abused, especially victims of different forms of child abuse, those in conflict with the law, with problematic drugs use and adolescents deprived of their liberty who attempt to gain access to education in the juvenile justice system. For more information, visit our website: [www.tdesperanza.org](http://www.tdesperanza.org)

## OUR OBJECTIVE

By participating in the Universal Periodic Review, our objective is to contribute reliable and first-hand information about juveniles' right to education who are deprived of their liberty in the Chilean juvenile justice system, in order to promote dialogue between the Member States of the United Nations and the State of Chile and the consideration of our recommendations for the guarantee of the right to education in detention centers for juveniles deprived of their liberty, who are the most systematically discriminated against in regards to this right in Chile.

In relation to the Right to Education, during the first and second cycles of the Universal Periodic Review, 18 recommendations were made to the State of Chile, mainly relating to quality, inclusion and access to education for women, indigenous people, people with disabilities and immigrants.

We recognize advances in: the elimination of arbitrary discrimination and the creation of necessary conditions for the access and permanence of students with special educational needs; inclusion of students who are outside of the school system; inclusion of gay, lesbian, transgender, bisexual and intersex children and adolescents; inclusion of migrant students in the education system; access to preschool education; access to different sectors of society to establish free education in subsidized establishments or areas that receive permanent State contributions; and in the access of higher education free of charge to students that come from lower income households.

Regarding the quality, access and inclusion in education provided in detention centers of the Chilean juvenile justice system, the State's non-compliance is maintained given that judicial workers give low priority to alternative methods to the deprivation of liberty. Juvenile justice system workers maintain said non-compliance as well with the consideration of provisory detention as a mechanism of punitive control and not a last resort, which reformulates the juvenile justice system to increase and harden penalties and lower the age of imputability. Juveniles continue to be tried "as adults", which impacts the proper use of suitability criterion of the sanction and maintains an insufficient specialization in gendarmerie officials, those responsible for the management of custodial centers and the professional and technical teams in charge of social reintegration of adolescents.

## RECOMMENDATIONS TO THE STATE OF CHILE

- Ensure that all detention centers for juveniles have access to formal educational establishments.
- Ensure that in the establishment of preventative measures and sanctions for juveniles, that deprivation of liberty is used as a last resort, avoiding family uprooting and encouraging effective social reintegration of adolescents.
- Ensure effective, sufficient and permanent specialization of justice system personnel, at the judicial level, of direct attention and perimeter security, according to the CRC as well as the remaining international human rights instruments ratified by the State of Chile.
- Incorporate recognition of the value of cultural diversity and ethnicity into educational public policy, fostering through the curriculum the use of languages of different indigenous peoples and migrants throughout the educational trajectory.

The Adolescent Criminal Responsibility Law indicates that the continuity of studies, reintegration into school, preparation for work life and personal development must be guaranteed to juveniles. We view with special concern that: there are still important gaps in access to quality education, detained juveniles are discriminated against, and infrastructure and resources in their educational establishments are scarce and deficient. Teachers who work in detention center do not have specific initial training, ignoring the needs and characteristics of education in contexts of detention. There is no adequate institutionality designed to meet the specific needs and conditions of juveniles deprived of liberty. There is discrimination against these adolescents, given that the type of education provided does not respond to their characteristics and needs, nor the complexities of the context of detention, guided by an adult education system. There is no mechanism to ensure their continuity of studies when they exit custodial centers.

Juveniles' right to access education is severely threatened, considering that these educational institutions receive a lower subsidy than those in the common school system, which limits the quality and risks the continuity of educational establishments. The financial system does not allow formal educational establishments for juveniles deprived of liberty to rely on resources to maintain an adequate teaching staff, threatening their right to access and permanence in education. Even when we appreciate advances in the Chilean educational system, education for juveniles deprived of their liberty continues to be discriminatory, keeping this group excluded from the standards in educational policies for adolescents not deprived of liberty.

## **RECOMMENDATIONS TO THE STATE OF CHILE**

- Create a Curricular Framework that adapts to the educational trajectories of adolescents deprived of their liberty and ensures the continuity of studies in the common educational system once they have complete their sanction.
- Establish a financial mechanism that ensures the sustainability of educational institutions in juvenile detention centers that does not exclusively depend on the classroom attendance of the adolescents, to guarantee their access to education.
- Ensure the basic conditions of infrastructure and equipment of educational institutions for juveniles deprived of their liberty, which permits the development of quality educational processes.
- Develop policies that incorporate specialization for juvenile detention center contexts in the initial and permanent training processes for teachers.
- Ensure the conditions of juvenile detention centers take into consideration their dignity, especially with regard to preventing the entry of drugs in detention centers, improving the security systems and climate according to the diversity of territories.



Without a relationship based in human dignity, it is impossible to successfully execute any model of education or social integration for juveniles deprived of their liberty. We express with special concern that institutionalized practices of abuse exist. It is unacceptable that workers of said system violate the rights of adolescents established by the CRC, especially those related to effective protection and psychological recovery. We note that the vast majority of adolescents that break the law have life trajectories marked by polivictimization and trauma, but once they violate the law, there is no space for them to process their previous experiences. When new victimizations happen to them as subjects of juvenile criminal justice, workers do not begin the protection procedures, violating rights of protection and psychological recovery acclaimed by the CRC, which further deepens the emotional, interpersonal and social damage and increases risk factors.

Abusive situations are not always communicated to the public officials responsible for their wellbeing, either because juveniles are pressured to respond to codes of honor, due to shame, the perception of complicity between officials, a lack of proactivity or by assuming that abuse is a part of detention, not knowing their rights and reporting mechanisms. With these practices, the State of Chile does not recognize the exercise of rights included in the CRC, especially to the protection against all forms of prejudice or physical and mental abuse, neglect or careless treatment, mistreatment or exploitation, protection against torture and degrading treatment and the right to physical and psychological recovery. The State of Chile must guarantee the care and protection of juveniles deprived of their liberty, as well as their education, to enable them to play a constructive and productive role in society.

## **RECOMMENDATIONS TO THE STATE OF CHILE**

- Implement a national independent reporting mechanism, permanently adapted and published, to be used by juveniles deprived of their liberty who are victims of some form of exploitation or abuse, torture or other forms of mistreatment or cruel punishments, by public officials or peers.
- Create a permanent and independent mediating entity in detention centers, empowered to receive and investigate the complaints made by the juveniles and to help reach solutions, as recommended by the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
- Implement a national database to register rendering of accounts of administrative and criminal measures of the State in the face of allegations of exploitation or abuse, torture or other forms of cruel, inhumane, or degrading treatment or punishment by public officials or peers towards juveniles deprived of their liberty.

## RECOMMENDATIONS TO THE STATE OF CHILE

- Create a special procedure for investigating crimes related to exploitation or abuse, torture or other forms of mistreatment or cruel, inhumane or degrading punishments towards juveniles deprived of their liberty, considering the inequality of power between juveniles and public officials responsible for their care and custody.
- Ensure physical and psychological recovery and social reintegration for adolescents deprived of their liberty who are victims of any form of abandonment, exploitation or abuse, torture or other forms of mistreatment and cruel, inhumane or degrading punishment by public officials or peers, under the supervision of Family Courts.

## WHAT DO WE HOPE FOR FROM OTHER MEMBER STATES?

By participating in the Third Cycle of the Universal Periodic Review of the State of Chile, the Coalition Tierra de Esperanza hopes that other Member States of the United Nations have reliable and first-hand information about juveniles deprived of their liberty and their right to education in the Chilean juvenile justice system. The Coalition hopes this report allows Member States to recognize some progress and especially, make informed recommendations to improve the educational situation of juveniles deprived of their liberty in the juvenile justice system, who are the most systematically discriminated against in regards to this right in Chile.

The Universal Periodic Review of the State of Chile will convene at the Permanent Missions in the United Nations Palace, Geneva-Switzerland, on Tuesday, January 22, between 9:00 and 12:30 hrs.



## CONTACT US

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