

United Nations Human Rights Council Universal Periodic Review 2017

Argentina Joint submission

Presented by



Marist Foundation for International Solidarity

NGO with consultative status in ECOSOC

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I Introduction

1. Marist Foundation for International Solidarity (FMSI) was founded with the goal of making the world a better place for children and young people living in difficult situations. It is inspired by the ideal of Saint Marcellin Champagnat and is promoted by the Marist Brothers who provide education in 80 countries. It has been accredited by ECOSOC since 2011.

2. VIVAT International is a non - governmental organization with ECOSOC consultative status at the UN, uniting the voices of its members around the world. Its members throughout the world run schools, hospitals, Justice and Peace offices among other works, and specialize in services for the poor.

3. Edmund Rice International (ERI) is an international non-governmental organization, founded in 2005 and with Special Consultative Status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. It works with networks of like-minded organizations and in the countries where the two congregations are present. ERI has a special interest in the rights of the child, the right to education and in eco-justice.

4. This report is the result of the survey conducted by our coalition of NGOs about Human Rights in Argentina, focused mainly on the rights of children, and adolescents living in the province of Buenos Aires. 40,091,359 inhabitants live in Argentina, of whom 33% live in the City of Buenos Aires and in Gran Buenos Aires. Quilmes, where data was surveyed, has 582,943 inhabitants, of whom 190,735 are under age 18. ¹

5. In Argentina, between 25% and 32% of children are multidimensionally poor, with 8.4% being extremely poor. Access to technology and information, protection from violence, access to health and leisure are the determining factors in identifying these levels of poverty and explain more than 63% of total poverty in the country.²

6. This coalition of NGOs takes note of the significant progress made by the Argentine State in the area of Human Rights, with the development of new public policies in favor of the care of its citizens, and the encouragement of an awareness in society of the problems that surround it. The Argentine State has also made progress since its previous review in 2002, having adopted the Comprehensive Protection of the Rights of Children and Adolescents Act 26.061 in 2005. Many provinces throughout the country were required to align their legislation with the new instrument, and by doing so, refocus on the issue of protection of children and adolescents who are at risk of abuse.

7. In light of these developments, the report will focus on two issues related to the rights of children and adolescents on which the coalition believes that the state must improve.

- Child sexual abuse and violence against children in all its forms (Recommendations 99.46, 99.59 and 99.66).
- The lack of an Ombudsperson for the Rights of Children and Adolescents (Recommendation 99.11)

8. It is important to note that according to the report of the Working Group on the UPR of Argentina in 2012, 118 recommendations were received. Of these, 27 deal with the rights of children and adolescents. Of these 27 recommendations, 15 of them³ (over 50%) address one or more of the following: child sexual abuse, violence against children and the lack of an Ombudsperson.

II Methodology

9. The FMSI - VIVAT International - ERI coalition has carried out the preparation of this report through the implementation of several methodological instruments to ensure the accuracy of the information provided. Thus, in addition to the 11 in-depth interviews carried out with direct work agents involved with children and adolescents in situations of abuse or violence in the city of Rosario (Colectivo "Foro de Infancias") and in the City of Buenos Aires (Red Papmai), we have also distributed a questionnaire with open questions to different professionals who work in organizations dedicated to the care of children affected by the situations already mentioned.

10. The coalition also had access to the database of a PAPMAI center in the Civil Association "Una Mano que Ayuda", a member of Red Hospital Garrahan, located in the south of the City of Buenos Aires. This organization works with children and adolescents who are victims of sexual abuse or mistreatment, and who have already filed a complaint to the relevant authorities.

11. In regard to the issue of the lack of an Ombudsperson, the coalition has carried out a jurisprudential and comparative analysis of the effects caused by the non-fulfillment of this position since 2005 in the "Ley de protección integral del niño." (26.061).

III Child abuse and violence against children in all forms

12. Recommendation 99.46 made by Costa Rica during the last review urges Argentina to "*design and implement policies for access to justice for victims of domestic violence, including free and extensive services providing legal and psychological support, as well as shelter.*"⁴

13. From interviews with professionals it is evident that the current situation highlights a lack of protection, and a lack of implementation of measures that would address the violations occurring.

14. A lack of cooperation between State bodies also complicates children accessing their basic rights. This deficit is mainly seen in the Social Development Ministry - through the Secretary of Children, Adolescents and Family - and in the different provincial

secretaries of the same areas. There is also a lack of coordination between the aforementioned Ministry and the Justice Ministry to deal with the systematic violation of their rights.

15. Our recommendations therefore will focus on the failings of the state regarding the abuse of children and adolescents, highlighting the lack coordination among the multiplicity of actors involved in the care of victims.

The Convention on the Rights of the Child (CRC) and National Legislation

16. Argentina ratified the UN Convention on the Rights of the Child in 1990. In article 27 of the Convention, it establishes that signatory states recognize the right of every child to *'a standard of living adequate for the child's physical, mental, spiritual, moral and social development'*.

17. In Article 37, it directs all States Parties to ensure that *'no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment'*.

18. Article 34 also reminds States of its commitment to protecting the *'child from all forms of sexual exploitation and abuse'*.

19. Article 8 and 9 of the Convention, highlight the preservation of identify of the child and connection with kinship, specifically parents.

20. Argentine National Legislation, Law 26.061 on Protection of Children and Adolescents, stipulates the prevention of violence and abuse of minors. In this same law, article 31 refers to the duty of every official to receive complaints made relating to the violation of the rights of children.

Recommendations received by the Argentine Republic in past UPR cycles.

21. In previous UPRs Argentina accepted several recommendations relevant to this issue. Bulgaria recommended (99.66) that the Argentine government *'Prohibit by law, all violence against children, including corporal punishment in all areas'*.⁵

22. Canada recommended (99.59) that Argentina should *'continue to take steps to address domestic violence and human trafficking through education and awareness campaigns and services to victims, as well as ensuring the effective application of the law against perpetrators'*.⁶

23. Little progress can be seen in implementing these recommendations. In the mid-term report submitted by Argentina in 2014, references to what was done are scarce and unclear. There is no reference made to recommendation 99.66⁷ and recommendation 99.59 only speaks of programs and campaigns referring to violence against women,⁸ leaving aside any reference to children and adolescents.

24. In short, although these recommendations were accepted, the government has failed to fulfil its commitment and has made minimal progress towards implementation.

Fieldwork, research and interviews conducted.

25. As already mentioned, the fieldwork carried out in preparation of this submission was comprehensive and included interviews with an array of professionals who work with children and adolescents. Reliable databases were also accessed including the PAPMAI Center, the Civil Association *Cáritas*, and data from the Garrahan Hospital.

26. A total of 610 cases of children and adolescents involved in situations of abuse or violence in the province of Buenos Aires between the years 2012 and 2016 were identified. All 610 cases involved criminal complaints made to authorities

27. The ages of the affected children range from 3 to 16 years. Analysis on the affected group revealed that most of the children who were referred in the care center resided in the Buenos Aires metropolitan area (Quilmes, Berazategui and Florencio Varela).

28. Analysis of the socio-demographic characteristics of the evaluated population, showed children attending the care center were of a medium-low or low socioeconomic level. Within this group, a high percentage were living with a relative who was in charge of their guardianship, and were attending school on a regular basis. The following is a percentage of the types of violence in the cases.

- 74.3% sexual abuse
- 25.7% situations of violence due to physical or verbal abuse

29. What is abundantly clear from a comprehensive study of the data and interviews with professionals in the sector, as well as the perspectives from the three organizations of this coalition, is a serious lack of protection of children and adolescents.

30. According to the survey conducted by specialized agencies regarding cases of sexual abuse, national figures reveal that 1 in 5 abuses of children are perpetrated by a family member before they turn 18⁹, and in Buenos Aires, a child victim of sexual abuse is reported every 16 hours.¹⁰ These figures, expose not only the high level of violent abuse of children, including sexual abuse, but illustrate the lack of coordination between state agencies in responding to these situations.

31. The mid-term report presented by the Argentine government provides a brief description of some of the programs being undertaken to address the situation. The reality is however, that these programs are ineffective and reflect negligence on the part of the State in addressing the issue. This is evident from the day-to-day contact with affected children, their families and the evaluations of professionals who give further support to this conclusion.

32. As the Argentine state is not able to give concrete statistics regarding children involved in cases of violence and abuse, there is no real awareness by the authorities of the importance of this violation of human rights. As the great majority of professionals interviewed said: there is no definition of the problem. It has not been possible to find a definition due to a lack of resources, a lack of coordination between the state agencies

and ignorance in regard to the problem, the lack of an Ombudsperson for victims and of public policies on development and the betterment of children. This results in the denial of complaints and negligence of the judicial system towards victims.

33. Despite the fact that the State has developed several avenues of support for victims, such as the Free Woman phone line for gender violence, the Victim Care Center of the Federal Police, or the 137 phone line that aids victims of family and sexual violence 24 hours per day every day of the year (but exclusively in the City of Buenos Aires) – there are few public services specializing in working alongside children who are victims of violence after a complaint, or at the start of the judicial process. On numerous occasions, the focus has been almost almost exclusively in the capital of the country, leaving residents outside the city or those who do not have access to travel, without adequate protection.

34. According to the report presented by the Domestic Violence Office of the Supreme Court of Justice, between 2010 and 2015, a total of 56,259 complaints were received relating to violence of any kind resulting in a victim. The number of cases according to the years of registration is as follows:

- 2010: 6896 reported cases
- 2011: 8261 reported cases
- 2012: 9657 reported cases
- 2013: 9920 reported cases
- 2014: 10252 reported cases
- 2015: 11273 reported cases

Of these in a total of 16,040 of the reported cases, the victims were children and adolescents, representing 29% of the total¹¹. These statistics obviously correspond only to the reported cases.

35. Members of this coalition have been involved in programs where children and adolescents were victims of some type of violence. In most instances, young persons who lodged a complaint to one of the relevant agencies were referred to health care centers, similar to that of PAPMAI or the Garrahan Hospital unit.

36. A commonly held view among the professionals interviewed, was that once a victim has made a complaint and had their case referred to a center to be dealt with, it appears that the Argentine state has absolved itself of the responsibility of continuing to provide ongoing support for the victim. The Argentine State is therefore not fulfilling its obligations, as the law on protection of Children and Adolescents clearly states that *'public policies of state agencies must ensure absolute priority to the exercise of the rights of children and adolescents'*.¹²

37. Furthermore, the professionals also stressed that they are inundated by an ever-increasing workload of cases where children and adolescents are victims of violence or abuse. In meeting the rising demand, professionals in this sector have to adapt to a work environment that is impractical and difficult.

38. Thus the problem is not only the prevention of the situations in which the children and adolescents are victims, but also that there is not an adequate response on the part of the Argentine state towards those who have already suffered the injury. There is a lack of resources, leadership, structures or definition of the problem included in the assistance programs of ministries such as Social Development or Justice and Human Rights or in legislation that enable them to work together effectively to take care of the victims of violence.

Recommendations:

39. In the light of the above we urged the Argentine government to:

- 1. Fully implement recommendation 99.66 made by Bulgaria in the last cycle, to prohibit and eliminate all forms of violence against or childhood.**

- 2. Develop and implement an effective complaint process, especially in cases where children and adolescents are victims of abuse, and develop a process to simplify victim's access to justice with the emphasis on the needs of the victim.**

IV Lack of an Ombudsperson for children and adolescents

Current legislation

40. During the second cycle of the Universal Periodic Review of Argentina, recommendations were made and accepted by the state, that indicates the need for the appointment of an Ombudsperson for Children and Adolescents.

41. The National Law on the Protection of the Rights of Children and Adolescents (26.061), promulgated on October 21, 2005, outlines the work required for the care of children, details the rights they should enjoy, and highlights the responsibilities of the state in ensuring compliance with the law.

42. The text of the law also shows the appointment of an Ombudsperson of Children and Adolescents, which will have among its functions:

1. Promote and bring actions for protecting the rights of Children and Adolescents.¹³

2. Monitor public and private entities engaged in the care of Children and Adolescents, reporting to the competent authorities any irregularity that threatens or violates the rights protected by this law.¹⁴

3. Provide advice of any type to children and adolescents and their families through a suitable organization.¹⁵

The text of the also law indicates, that the Ombudsperson is required to submit an annual report on the complaints made, and the results of any investigation before a

special commission composed of members of the Senate and the Chamber of Deputies.

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43. Notwithstanding the clarity and significant progress made with the creation of Law 26.061, the specific functions of the new role and the presentation of the annual report with the analysis of the situation of the Rights of Children were never carried out after the promulgation of the law. The Ombudsperson for Children and Adolescents does not exist beyond the legislative text.

Reference to the Ombudsperson for the Rights of Children in the midterm report, presented by the Argentine State: supposed progress and current situation

44. The 2014 mid-term report submitted by the Argentine State, respond to the claim for the appointment of the Ombudsperson for the Rights of Children and Adolescents. It clearly underlines that this role was created in order to have a specific body to ensure the protection of the rights of the child, although the Ombudsperson already has this among responsibilities.

"The creation of such a specific body for collective protection of children (ombudsperson) had as its precise purpose to have a specific figure of childhood, but not to correct a lack of the current system given that according to our constitutional system, the Ombudsperson of the Nation, established by Article 86 of the Constitution, has among its duties ensuring the protection of children's rights ... "¹.

45. However, the Argentine State has failed to acknowledge that the office of the National Ombudsperson lacks direction. This accounts for the minimal level of work coming from the Office of the Ombudsperson.

46. The National Ombudsperson's Office has had constitutional rank since the reform of the Constitution in 1994; it is an autonomous body, dependent on Congress and responsible for representing Argentine citizens against the State, as well as for private individuals who provide public services. Dr. Juan Jose Böckel¹⁸, who is the Secretary General of the office, temporarily occupies the head of the National Ombudsperson Office. The position of the National Ombudsperson is still vacant.

47. Therefore, although this coalition recognizes that the designation of the Ombudsperson for Children and Adolescents is in process and that its role was created to give greater specificity and strength to work for children, it is essential to point out that the role was created almost 12 years ago. In the 8 years that have passed, the role of the Ombudsperson has lacked direction. Both citizens in general and children in particular, are not properly represented by an Ombudsperson.

Analysis of the recommendations received by UN agencies

48. Under the two main reports received by the Argentine State from the Committee on the Rights of the Child (June 21, 2010) and the United Nations Country Team in

Argentina (April 2012), this coalition believes it is important to highlight the recommendations made in relation to children's issues.

49. For its part, the Committee on the Rights of the Child stated: p. 4, pars 19 and 20:

19. The Committee notes that monitoring of children's rights is included in the mandate of the National Ombudsperson (Defensoría del Pueblo de la Nación Argentina). The Committee welcomes the introduction, by Act No. 26061 (2005), of an Ombudsperson for Children and Adolescents; However, it shares the concern of the State party at the delays in the appointment of the mandate holder by Parliament.

20. The Committee recommends that the State party take all necessary measures to expedite the appointment by Parliament of the Ombudsperson for Children and Adolescents, in order to monitor the implementation of the Convention on the Rights of the Child and its Optional Protocols. The Committee recommends that the Ombudsperson be able to receive and investigate complaints from, or on behalf of, children on violations of their rights and be provided with the necessary human, technical and financial resources.

50. The recommendations of the United Nations Country Team in the Argentine Republic included:

- *“Redoubling efforts to establish a continuous information system about the situation of juvenile justice with a provincial desegregation and private parental care.”*
 - *“Intensify national and provincial efforts to the application of non-custodial measures in harmony with any postulated by the CRC.”*
 - *“Intensify efforts for the eradication provincial of non- detention of adolescents in non - specialized places in harmony with the provisions of the CRC.”*
 - *“Promote the reform of the national law on juvenile criminal justice according to two meters of the CRC.”*
 - *“Promote implementation of systems of comprehensive protection of rights of childhood throughout the country, advocating the establishment of mechanisms and protocols, and monitoring with the definition on quality standards.”*

51. It is evident based on the recommendations made by specialized agencies of the United Nations, that the Argentine State has taken the recommendations into consideration, although sufficient progress is still to be made. As mentioned, the Rights of children and adolescents in Argentina do not have an advocate, and victims are not being effectively represented by an Ombudsperson. The delay expressed by the CRC in 2010 has been further extended.

52. A deeper analysis of the recommendations made by the United Nations Country Team in Argentina reveal that the absent role of the Ombudsperson could be improved if the functions of the Ombudsperson were clearly defined.

Recommendations:

53. In the light of the above we urged the Argentine government to:

- 1. Appoint an Ombudsperson for children and adolescents, in accordance with the national law (26.061), and according to the Paris Principles relating to National Institutions of Human Rights, as well as, implementing the recommendations received and accepted by the state in the previous cycles of the UPR.**
- 2. Increase and strengthen political measures, as well as the coordination between State agencies, so that the work of the Ombudsperson for Children and Adolescents can develop an effective national presence with its own budget.**
- 3. Designate human and economic resources to address the issue of abuse suffered by children and adolescents, by appointing an Ombudsperson, and developing the work of state agencies to formulate an effective approach towards eliminating violence against children.**

V Implementation of UPR Recommendations

53. In order to more effectively implement the recommendations accepted as part of its UPR we recommend that the Government of Argentina:

- 1. ensure the effective implementation of UPR recommendations through the establishment, by the time of a mid-term assessment of the current UPR cycle, of a permanent governmental mechanism to liaise with relevant ministries and consult with Civil Society, NHRI's and all relevant stakeholders.**

References

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- 3. A / HRC / 22/4 Recommendations: 99.8 (Portugal), 99.9 (South Africa), 99.10 (Chile), 99.11 (Russian Federation, Trinidad and Tobago and Honduras), 99.17 (Cuba), 99.19 (Iraq), 99.46 (Costa Rica), 99.48 (Morocco and Greece), 99.59 (Canada), 99.66 (Bulgaria), 99.67 (Republic of Moldova)*
- 4. A / HRC / 22/4*
- 5. A / HRC / 22/4 Recommendation 99.66*

6. *A / HRC / 22/4 Recommendation 99.59*
7. *Progress Report on the implementation of the recommendations made to Argentina under the Universal Periodic Review. 2014*
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