



**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

Thirty-eighth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION**

Concluding observations: Luxembourg

1. The Committee considered the second periodic report of Luxembourg (CRC/C/104/Add.5) at its 1005th and 1006th meetings (see CRC/C/SR.1005 and 1006), held on 13 January 2005, and adopted at its 1025th meeting (see CRC/C/SR.1025), held on 8 January 2005, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report, which was prepared in accordance with the Committee's guidelines, as well as the detailed written replies to its list of issues (CRC/C/Q/LUX/2), which allowed the Committee to have a clear understanding of the situation of children in the State party. It also appreciates the presence of a high-level delegation.

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee notes with appreciation:

- (a) The establishment, by Act of 22 August 2003, of an Ombudsman (Médiateur);
- (b) The establishment, on 26 May 2000, of an independent human rights institution, the Consultative Commission on Human Rights;

(c) Act of 25 July 2002, establishing a Luxembourg committee on the rights of the child, the “Ombuds-Comité” (ORK);

(d) The following legislative measures:

(i) Act of 24 April 2000 introducing the crime of torture in the Criminal Code;

(ii) Act of 18 March 2000, establishing a regime of temporary protection for asylum-seekers;

(iii) Protection of Young Workers Act of 23 March 2001, transposing into national legislation European Directive 94/33 on the protection of young people at work;

(iv) Act of 1 August 2001 on the protection of pregnant workers and workers who have recently given birth or are breastfeeding;

(v) Act of 31 May 1999 introducing, inter alia, a new article 384 of the Criminal Code expressly punishing child pornography and providing for the confiscation of all related items;

(e) The appointment of five intercultural mediators from countries of origin of children of asylum-seekers, with the role of facilitating contact between teachers, families and children.

4. The Committee also wishes to welcome the ratification by the State party of:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 4 August 2004;

(b) The Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption, on 1 September 2002;

(c) ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, on 21 March 2001;

(d) The Rome Statute of the International Criminal Court, on 8 September 2000.

5. The Committee notes with appreciation the State party's contribution to international economic cooperation and the fact that it allocates over 0.7 per cent of its gross domestic product to official development assistance (ODA target).

C. Main subjects of concern and recommendations

1. General measures of implementation

The Committee's previous recommendations

6. The Committee notes with satisfaction that various concerns and recommendations (CRC/C/15/Add.92) made upon the consideration of the State party's initial report (CRC/C/41/Add.2) have been addressed through legislative measures and policies. However, it regrets that some of its concerns and recommendations have been insufficiently addressed, particularly those contained in paragraphs 23 (the reservations affecting articles 2, 6, 7 and 15 of the Convention); 25 (the lack of a comprehensive strategy for children); 27 (the use of the terms "legitimate" and "illegitimate" (natural) children in the Civil Code); 29 (the partial compliance with article 7 of the Convention in relation to the right of children born anonymously to know their parents); 31 (the absence of a provision prohibiting corporal punishment within the family and in care institutions); and 39 (the lack of appropriate infrastructures for detained children). The Committee notes that those concerns and recommendations are reiterated in the present document.

7. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations on the initial report that have not yet been implemented and to provide adequate follow-up to the recommendations contained in the present concluding observations on the second periodic report.

Reservations

8. The Committee notes with concern that the State party has not withdrawn its reservations to articles 2, 6, 7 and 15 of the Convention.

9. The Committee is of the opinion that the reservations regarding articles 2, 6 and 15 are unnecessary and that the reservation to article 7 seems incompatible with the object and purpose of the Convention, but can become unnecessary as well, if the State party implements the Committee's recommendation contained in paragraph 29 of the present document. Accordingly, the Committee reiterates its previous recommendation to the State party (CRC/C/15/Add.92, para. 23) to consider reviewing its reservations with a view to their withdrawal.

National Plan of Action

10. While the Committee notes the launching of a National Plan of Action against the sexual exploitation of children in 1996 and that the State party has set priorities and objectives with respect to its policies concerning children (i.e. child participation, right of the child to be informed, drug abuse and violence against children), it notes with concern the lack of a general national plan of action for children and/or a comprehensive policy on children.

11. The Committee recommends that the State party develop and implement a comprehensive national plan of action for children aiming at the realization of the principles and provisions of the Convention and which takes into account, in particular, the outcome document “A World Fit for Children” adopted by the General Assembly at its special session on children in May 2002.

Coordination

12. While the Committee notes the recent reorganization of ministries and the creation of a division for the promotion of children’s rights within the Ministry of Family and Integration, it is not clear if and to what extent this has resulted in the necessary coordination of all governmental activities regarding the implementation of the Convention.

13. The Committee recommends that the State party establish a body at the inter-ministerial level or entrust an existing one within its administration with a clear mandate to coordinate all activities related to the implementation of the Convention, and to provide it with the necessary human and financial resources.

Independent monitoring

14. While the Committee commends the adoption of the Act of 25 July 2002 establishing a Luxembourg Committee on the rights of the child called “Ombuds-Comité”, it is concerned about its reported lack of sufficient financial and human resources.

15. In the light of its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child and of the Principles relating to the status of national institutions in the promotion and protection of human rights (The Paris Principles) (General Assembly resolution 48/134 of 20 December 1993, annex), the Committee recommends that the State party strengthen the political, human and financial support for the Ombuds-Comité in order to ensure its effective functioning.

Data collection

16. The Committee considers that statistical data are crucial for the monitoring and evaluation of progress achieved and impact assessment of policies concerning children. In this respect, while noting that the State party is conscious of this problem and of the negative impact on its policies, the Committee is concerned that insufficient statistical data are available on the situation of children, especially those belonging to the most vulnerable groups, including unaccompanied and separated refugee and asylum-seeking children, as well as regarding the implementation of the Convention concerning children in conflict with the law.

17. The Committee recommends that the State party continue and strengthen its efforts to develop a comprehensive system for the collection of comparative and disaggregated data on the Convention. This data should cover all children below the age of 18 years and

should be disaggregated by groups of children who are in need of special protection. The State party should also develop indicators to effectively monitor and evaluate progress achieved in the implementation of the Convention and assess the impact of policies affecting children.

2. General principles

Non-discrimination

18. While taking note with appreciation of the various programmes aimed at combating discrimination, including the appointment of intercultural mediators from the countries of origin of children of asylum-seekers, the Committee is concerned at the disparities in the enjoyment of rights experienced by children belonging to vulnerable groups, such as children with disabilities and refugee and asylum-seeking children.

19. The Committee is further concerned at the discriminatory attitudes and the emergence of racism, xenophobia and related intolerance towards the Muslim community and other minorities and at their impact on children belonging to these groups.

20. **The Committee recommends that the State party increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.**

21. **The Committee also requests that specific information be included, in the next periodic report, on the measures and programmes relevant to the Convention that have been undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account the Committee's general comment No. 1 (2001) on the aims of education.**

22. The Committee welcomes the information that the State party intends to eliminate from its legislation any description of children born out of wedlock, which may have a negative or discriminatory connotation.

23. **The Committee encourages the State party to carry out this modification as soon as possible.**

Best interests of the child

24. With reference to the information provided by the State party that the Act of 25 July 2002 was the first piece of legislation where the principle of the best interests of the child was explicitly stated, the Committee expresses its concern about the limited integration of this concept into the policies and legislation of the State party.

25. **The Committee recommends that the State party strengthen its efforts to ensure that the general principle of the best interests of the child is understood and appropriately integrated in all legal provisions, in judicial and administrative decisions, as well as in projects, programmes and services affecting children.**

Respect for the views of the child

26. The Committee notes that, in some respects, the views of the child are not taken fully into account in the State party and that the general principle, as laid down in article 12 of the Convention, is not fully applied within the family, schools and other institutions.

27. **The Committee recommends that the State party continue to promote and facilitate, within the family, schools and institutions, as well as in judicial and administrative procedures, respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention. It further encourages the State party to provide educational information to parents, teachers and headmasters, government administrative officials, the judiciary, children themselves and society at large, with a view to creating an encouraging atmosphere in which children can freely express their views.**

3. Civil rights and freedoms

Anonymous birth and preservation of identity

28. The Committee remains concerned about the fact that the children born anonymously (“under x”) are denied the right to know, as far as possible, their parents, and notes with interest the proposal of the National Consultative Commission on Life Sciences and Health Ethics (CNE) which seems to allow for significant improvements in this regard.

29. **The Committee urges the State party to take all necessary measures to prevent and eliminate the practice of the so-called anonymous birth. In case anonymous births continue to take place, the State party should take the necessary measures so that all information about the parent(s) are registered and filed in order to allow the child to know - as far as possible and at the appropriate time - his/her parent(s).**

Access to appropriate information

30. While the Committee appreciates the measures taken by the State party to prevent and combat child pornography on the Internet, as well as the introduction of article 384 of the Criminal Code punishing the possession of pornographic material involving children, it remains concerned about the exposure of children to violence, racism and pornography, especially through the Internet.

31. **The Committee recommends that the State party continue to take all appropriate measures to effectively protect children from being exposed to violence, racism and pornography through mobile technology, video movies, games and other technologies, including the Internet. The Committee further suggests that the State party develop programmes and strategies to use mobile technology, video advertisements and the Internet as a means for raising awareness among both children and parents of information and material injurious to the well-being of children.**

Torture and other cruel, inhuman or degrading treatment or punishment

32. While noting that the new Act of 16 June 2004 dealing with the reorganization of the State Socio-Educational Centre reduces to 10 days, instead of the previous 20 days, the maximum duration of solitary confinement as a disciplinary sanction for persons under 18 years of age, and provides the child with the possibility of appealing to the juvenile judge, the Committee is still deeply concerned at the use and length of this isolation and at the very harsh conditions depriving the child of almost all contact with the outside world and of any outdoor activity.

33. **The Committee recommends that the State party develop and implement alternative disciplinary sanctions in order to avoid as much as possible the use of solitary confinement, to further reduce the length of this confinement and to improve its conditions, inter alia, by providing persons under 18 with access to an outdoor area for at least one hour a day and giving them access to some kind of recreational facilities. Furthermore, the Committee urges the State party to include, in its next periodic report, specific and detailed information on the use and the conditions of this solitary confinement.**

4. Family environment and alternative care

Parental responsibilities

34. The Committee is concerned about the fact that parents automatically lose parental authority over their children when they are placed in foster care or in institutions by the courts, apparently without determining whether such an automatic measure is in the best interests of the child.

35. **The Committee recommends that the State party take all possible measures, including revision of the existing legislation, in order to adequately protect parental rights and parent-child relationship and that the transfer of parental authority be used only in exceptional circumstances and in the best interests of the child.**

Periodic review of placement

36. While the Committee notes that placements are reviewed every three years and that Youth Court judges frequently visit minors in institutions, it is concerned that decisions to place young people either in “open centres” (State Socio-Educational Centres) or in “closed centres” (Luxembourg Prison) are given for indeterminate periods and that review intervals are very long.

37. **The Committee recommends that the State party introduce the rule that placement of children in foster care or in institutions may only be ordered for a fixed period, e.g. one year, with the possibility of prolonging the placement for another fixed period, which should provide for a regular review of the conditions of and the need for placement.**

Violence, abuse, neglect and maltreatment

38. The Committee continues to be concerned that there is no legislation explicitly prohibiting corporal punishment within the family and that this practice seems to be largely accepted in the society.

39. **The Committee, reiterating its previous recommendation, urges the State party to introduce a provision expressly prohibiting corporal punishment within the family, and to strengthen its efforts to raise awareness among parents and caregivers of alternative, non-violent forms of discipline.**

40. The Committee is concerned at the number of reported cases of sexual abuse of children.

41. **In the light of article 19 of the Convention, the Committee recommends that the State party undertake a study on violence, more particularly on sexual abuse and violence, in order to assess the extent, causes, scope and nature of such practices. The Committee also recommends that the State party strengthen measures to address ill-treatment of children within the family and to ensure the prevention, timely reporting and prosecution of instances of child abuse.**

5. Basic health and welfare

42. The Committee is deeply concerned about the very high number of deaths among children resulting from traffic accidents despite the measures taken by the State party.

43. **The Committee recommends that the State party strengthen as much as possible its efforts to reduce the number of casualties among children caused by traffic accidents, inter alia, by raising awareness through educational campaigns.**

44. The Committee notes with concern the high number of suicides among adolescents in the State party. While welcoming the information that a child psychiatric unit has been recently established within a country hospital, the Committee is concerned about the information that many children from Luxembourg are treated in institutions offering psychiatric assistance to minors across the border in Germany, France or Belgium, owing to the reported lack of an adequate care system, in particular child and juvenile psychiatry, in Luxembourg.

45. **The Committee recommends that the State party use the results of the comprehensive study recently undertaken to address the issue of suicide among the youth as a basis for the formulation of adolescent health policies and programmes. It further recommends that the State party continue to improve the quality and capacity of child and juvenile psychiatry in the country, paying special attention to mental health provisions, both preventive and interventional.**

46. While the Committee notes with appreciation the activities undertaken in this field by the Division of Preventive Medicine, it is very concerned about the abuse of alcohol among youth.

47. **The Committee recommends that the State party increase its efforts to promote adolescent health policies and strengthen the programme of health education in schools, with particular attention to consumption of alcohol by young people.**

6. Education, leisure and cultural activities

48. The Committee is concerned about the fact that many children attend schools in neighbouring countries, apparently due to shortcomings in the school system of the State party. The Committee is also concerned about the information that educational facilities for children

with behavioural problems and/or learning disabilities are limited in Luxembourg and that, in some cases, these children have been excluded from regular schools and located in facilities for mentally and physically disabled children.

49. **The Committee encourages the State party to improve and/or expand the facilities and opportunities for education in the country. It further recommends that the State party take all necessary steps to put an end to the practice of placing children with learning disabilities and/or behavioural problems in facilities for mentally and physically disabled children.**

50. The Committee notes with satisfaction that refugee and asylum-seeking children have free access to the school system in Luxembourg and that the Ministry of Education has appointed intercultural mediators in order to facilitate the integration of foreigners in the educational system. However, the Committee is still concerned that a large number of foreign children (more than 40 per cent of the school population) are often disadvantaged by the educational programme and teaching methods in Luxembourg, including language problems.

51. **The Committee recommends that the State party consider all possible measures through which foreign children and children of asylum-seekers can be granted equal access to the same standard of services in the field of education. The Committee also encourages the State party to ensure that language does not become an obstacle in education and recommends any initiative, including support classes, to help children to learn the needed languages.**

7. Special protection measures

Unaccompanied and separated asylum-seeking children

52. The Committee is concerned at the fact that unaccompanied and separated asylum-seeking children's accommodation is mainly provided in regular reception centres, together with adult asylum-seekers and at the lack of foster care, specialized reception centres and qualified personnel working for asylum-seeking children.

53. The Committee is further concerned at the excessive length of asylum procedures, and that, in principle, separated children staying in Luxembourg are not entitled to reunification with their family. It also notes with concern the absence of relevant statistical data with respect to the registration of unaccompanied and separated children.

54. **The Committee recommends that the State party take all the necessary measures for an adequate reception of unaccompanied and separated children applying for asylum in Luxembourg. In particular, the State party should, inter alia:**

- (a) Address the issue of special protection and assistance rights of these children;**
- (b) Provide supervision by qualified persons to ensure their physical and psychological well-being;**
- (c) Provide the possibility for an appropriate caregiving relationship, such as through foster care or by special reception facilities designed for children;**

(d) Reduce the length of the procedures for children seeking asylum and deal with application by a child or his/her parents for the purpose of family reunification in a positive, humane and expeditious manner, in the light of article 10 of the Convention;

(e) Provide statistical data on the registration of unaccompanied and separated children.

Substance abuse

55. The Committee is concerned at the high level of use of illicit drugs and substances among adolescents and notes the difficulties confronted by the State party in dealing with this phenomenon.

56. **The Committee recommends that the State party undertake a study to carefully analyse the causes and consequences of this phenomenon as well as its possible links with violent behaviour and the high suicide rate among adolescents in the State party. It further recommends that the State party use the outcome of this study to increase its efforts to prevent the use of illicit drugs and substances.**

Sexual exploitation and trafficking

57. While welcoming the many legislative and other measures taken by the State party to combat and raise awareness of the problem of sexual exploitation, trafficking in persons and child pornography, the Committee is concerned that the conditions of work for women and girls arriving in Luxembourg to work in the entertainment sector are such that they may be exposed to the risk of prostitution and trafficking in human beings.

58. **In the light of article 34 and other related articles of the Convention, the Committee recommends that the State party continue and strengthen its efforts to identify, prevent and combat trafficking in children for sexual and other exploitative purposes, including by undertaking studies to assess the nature and magnitude of the problem and allocating sufficient resources to addressing it.**

59. **The State party is encouraged to ratify the United Nations Convention against Transnational Organized Crime and the two protocols supplementing it: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Air and Sea. Furthermore, the State party is encouraged to become party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

Administration of juvenile justice

60. While the Committee notes the positive steps taken by the State party through the recent adoption of the Act of 16 June 2004, it remains concerned about:

(a) The placement of persons under 18 in detention centres for adults, resulting in frequent contacts between both groups (even if they live in separate cells);

- (b) The fact that persons under 18 who are in conflict with the law and those having social or behavioural problems are placed in the same structures;
- (c) The fact that persons between 16 and 18 years of age may be referred to ordinary courts and judged as adults in case of crimes of particular gravity;
- (d) The placing of persons under 18 in solitary confinement (see paragraphs 32 and 33 above).

61. **The Committee reiterates its previous recommendation that the State party fully bring the system of juvenile justice into line with the Convention, in particular articles 37, 39 and 40, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee made at its day of general discussion on juvenile justice (see CRC/C/46, paras. 203-238). In this regard, the Committee recommends that the State party, in particular:**

- (a) **Establish separate detention facilities for persons under 18;**
- (b) **Take measures to prevent and reduce the use of pre-trial and other forms of detention and to make this detention as short as possible, inter alia, by developing and implementing alternatives to detention, such as community service orders, interventions of restorative justice, and so on;**
- (c) **Keep persons under 18 who are in conflict with the law separate from persons under 18 with social or behavioural problems;**
- (d) **Avoid, in all cases, persons under 18 being tried as adults;**
- (e) **Set up an independent monitoring body to inspect regularly juvenile facilities.**

8. Optional Protocols to the Convention

62. The Committee welcomes the information that the State party is taking measures for the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

63. **The Committee recommends that the State party complete this action as soon as possible in order to become party to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.**

9. Follow-up and dissemination

Follow-up

64. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations, inter alia, by transmitting them to the members of the Council of Ministers or the Cabinet or a similar body, to the Parliament, and to provincial or State Governments and Parliament, where applicable, for appropriate consideration and further action.

Dissemination

65. The Committee further recommends that the second periodic report and written replies submitted by the State party and related recommendations (concluding observations) it adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.

10. Next report

66. The Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States' responsibilities to children under the Convention includes ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the implementation of the Convention. In this regard, regular and timely reporting by States parties is crucial. The Committee recognizes that some States parties experience difficulties in initiating timely and regular reporting. As an exceptional measure, in order to help the State party catch up with its reporting obligations so as to be in full compliance with the Convention, the Committee invites the State party to submit its third and fourth periodic reports in one consolidated report by 5 April 2010, i.e. 18 months before the date on which the fourth periodic report is due. The report should not exceed 120 pages (see CRC/C/118), and the Committee expects the State party to report every five years thereafter, as foreseen by the Convention.

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