



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Thirty-eighth session

### Summary record of the 1005th meeting

Held at the Palais Wilson, Geneva, on Thursday, 13 January 2005, at 10 a.m.

*Chairperson:* Mr. Doek

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*Second periodic report of Luxembourg*

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*The meeting was called to order at 10.05 a.m.*

**Consideration of reports of States parties** (agenda item 5) (*continued*)

*Second periodic report of Luxembourg* (CRC/C/104/Add.5; CRC/C/Q/LUX/2; CRC/C/RESP/79; HRI/CORE/1/Add.10/Rev.1)

1. *At the invitation of the Chairperson, Mr. Berns, Mr. Majerus, Ms. Pesch, Ms. Petry, Ms. Schaack and Mr. Welter (Luxembourg) took places at the Committee table.*

2. **Mr. Berns** (Luxembourg) said that his Government welcomed the Committee's criticisms and recommendations, since, in his view, that was the best way to bring about a continual improvement in his country's implementation of the Convention on the Rights of the Child.

3. **Mr. Filali** (Country Rapporteur) commended Luxembourg for the punctual submission of the report and its responses to the Committee's questions. The State party showed exemplary commitment in its efforts to realize the rights of the child. It had set up a number of specialized bodies such as the Mediation Centre, the Consultative Commission on Human Rights and the Ombuds-Comité. It had also ratified the Optional Protocol to the Convention on the involvement of children in armed conflict, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182).

4. Despite that positive record, a number of points required clarification. The Committee wished to know, for example, why Luxembourg maintained its reservations to articles 2, 6, 7 and 15 of the Convention, since nothing in the country's legislation seemed to prevent their withdrawal. The Committee also noted the absence of a real comprehensive strategy on children. To be sure, Luxembourg had taken some steps in that direction, for example by merging the relevant ministerial departments, but no new information had been provided.

5. It was regrettable that the Committee's recommendations concerning the right of children to know their biological parents or concerning the importance of removing the negative connotation attached to the expression "illegitimate child" in the Civil Code had not been followed.

6. The Ombuds-Comité was a most promising initiative, but it would be interesting to know whether it arranged meetings with other relevant bodies, how it avoided duplicating their respective activities and what funds it had at its disposal.

7. The importance of data collection, which was essential for any kind of assessment, could not be overemphasized and it was thus regrettable that Luxembourg did not possess disaggregated statistics on such important topics as services for children with disabilities or the rehabilitation of child victims of sexual exploitation.

8. The Committee would also welcome details on the way in which the courts applied the principle of the best interests of the child. Lastly, with regard to respect for the views of the child, the Committee noted that, in paragraph 79 of its report, the State party said that pupils and their parents played a "limited" part in the running of high schools and technical high schools. It would thus be useful to know what the Government intended to do to remedy that situation.

9. **Ms. Al-Thani** drew attention to the results of an inquiry conducted in 1993, which had revealed that 49 per cent of the people questioned considered corporal

punishment useful in disciplining children, 29 per cent considered it of little use and 22 per cent thought it should be prohibited. She wondered whether the delegation could state whether the Government envisaged taking measures to prohibit corporal punishment in the home, as was already the case in schools, and to organize information campaigns to encourage parents to seek other forms of discipline.

10. **Mr. Kotrane** asked what precisely was the definition of a child, since it seemed that children in the 16-18 year group were sometimes treated as adults, including being detained with adults. Altogether, the various categories of child were not clearly defined. Children in a situation of conflict with the law who needed help with reintegration were thus not always distinguished from children who were themselves victims or under threat.

11. **Ms. Ortiz** noted that European Union development cooperation programmes took no accounts of the principles set out in the Convention and asked whether Luxembourg could exercise any influence in that regard, particularly in view of the fact that it was currently chairing the Union.

12. **Ms. Khattab** said that, despite the extremely high level of respect for children's rights in Luxembourg, some children did not have equal enjoyment of rights, including foreign children, asylum-seekers or children with disabilities. She noted, in particular, a negative attitude towards Muslims, whereby, without being actually violent, people thought that Muslims could not be integrated owing to cultural differences. The public should be made aware of the values of the Muslim community and the fact that it contributed to the national economy like everybody else. As for child asylum-seekers, it seemed that they were often held with adults in reception centres, where the staff were not trained in the Convention.

13. **Ms. Smith** welcomed the fact that children could express their views in the context of legal proceedings, but she was concerned that such a procedure was not systematic, since it was for the judge hearing a case to determine whether or not a child should be heard. She also asked for further details of children's participation in school affairs.

14. **Mr. Citarella** said that he associated himself with the questions put by other members of the Committee concerning the reservations made by Luxembourg to certain articles of the Convention, the distinction between a legitimate and illegitimate child in the Civil Code and the impossibility for children born as the result of an anonymous birth to know their biological mothers.

15. **Mr. Liwski** wondered whether the inclusion in the Criminal Code of the provisions in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, particularly those relating to psychological torture, had been accompanied by the issuance of new guidelines for the relevant personnel, appropriate training and awareness-raising campaigns to inform children and adolescents of that development in the law.

16. **Ms. Vuckovic-Sahovic** requested further details of the State's cooperation with civil society. Relations between civil society and the State were traditionally good in Luxembourg, but it was not clear how far non-governmental organizations (NGOs) influenced the content of policies affecting children. More generally, it would be interesting to know the degree of priority accorded to questions relating to children, not only at the structural level but also with regard to their psychological needs. Lastly, she would be grateful for further detail on

training programmes for personnel dealing with children, particularly doctors, teachers and judicial personnel.

17. **Mr. Krappmann** noted that children's participation should also extend to various areas of community life, such as playgrounds, transport or services, and should not be restricted to high school or technical high school pupils but should include younger children. He was also interested to know to what extent children could participate in decision-making in their families.

18. **The Chairperson** said that it was alarming that about 43 per cent of deaths among young people were due to motor accidents and 7 per cent were suicides. He wondered whether the Government shared that concern and intended to take measures to improve road safety and to prevent suicides.

19. He also wondered whether the Luxembourg authorities had statistics relating to the frequency with which the regime of solitary confinement was applied to young offenders and whether, having already shortened the period of solitary confinement from 20 to 10 days, they might reconsider the practice altogether, given that it had been criticized in a Council of Europe report as being particularly inhuman and degrading.

20. He welcomed the adoption of the act amending the Civil Code and Code of Civil Procedure to guarantee children the right to be heard by a judge in any proceedings that concerned them, but he was concerned by the complexity of the provision, which might act as a disincentive.

21. He also asked the delegation to explain the Government's position on the question of providing children in an anonymous birth with information on their biological mother, bearing in mind the recommendation by the National Consultative Committee on Life Sciences and Health Ethics that such information should be available.

*The meeting was suspended at 10.50 a.m. and resumed at 11.10 a.m.*

22. **Mr. Berns** (Luxembourg) said that Luxembourg was one of the five countries in the world to commit over 0.7 per cent of its national income to development cooperation and aid, focusing its activities, with no strings attached, on the realization of the essential rights of the child, such as education, the abolition of child labour and the non-involvement of children in armed conflict. The cooperation projects in which Luxembourg had chosen to invest were always accompanied by opportunities for political dialogue, particularly on the question of human rights and the rights of the child.

23. The Luxembourg authorities were fully aware of the shortcomings in their system of compiling statistics and intended to remedy the situation as soon as possible. It was, however, difficult for a small country to disaggregate its data, for fear of obtaining skewed results around the zero mark. The lack of statistics was also sometimes explained by the constraints arising out of professional confidentiality.

24. It was dangerous to link the standard of living or a country's wealth with happiness: suicide rates among both the young and adults tended to show the opposite. Another priority for the Government was to reduce the number of children who died on the roads and, in order to address a problem that blighted society, it had, over the years, run numerous campaigns, including campaigns against drink driving and speeding. The latest campaign to appear on television

focused on children and had been extremely controversial owing to the violence of its images.

25. **Ms. Ortiz** noted that almost every country in the world had ratified the Convention on the Rights of the Child. Luxembourg could thus very well use the realization of children's rights as a selection criterion in determining its cooperation programmes.

26. **The Chairperson** invited the State party to take account, where necessary, of the Committee's final comments when planning its international development cooperation and assistance activities and to apply the same working methods within the European Union to facilitate the task of the staff concerned, who would thereby be in possession of reference data.

27. **Mr. Filali** asked whether, in its relations with the Muslim community, the Luxembourg Government could take a lead from the recent measures taken by the Ministry of Internal Affairs of France.

28. **Mr. Berns** (Luxembourg) explained that the presence of a Muslim community of any substantial size in Luxembourg went back only to the Yugoslav wars. That explained its heterogeneity and the fact that, on the legislative and administrative side, the Government did not yet have any one single interlocutor with whom to discuss any measure that should be taken, for example with regard to education or freedom of religion.

29. **Mr. Majerus** (Luxembourg) said that the Luxembourg Government had requested the National Consultative Committee on Life Sciences and Health Ethics to re-examine the reservations made on the subject of provisions on the right to life in the Convention, in accordance with a recommendation made by the Committee on the Rights of the Child following its consideration of the first report of Luxembourg, but had no plans to withdraw its reservations. The Luxembourg Council of State still considered that the laws on voluntary termination of pregnancy and on anonymous childbirth were incompatible with the relevant provisions of the Convention. The country's third reservation related to freedom of association for minors, since, although community life was extremely dynamic in Luxembourg, the authorities had not yet addressed the question of civic responsibility that arose in such cases.

30. **Mr. Welter** (Luxembourg) added that the reservations made by Luxembourg were based on the country's interpretation of the Convention or of national legislation; their sole objective was the best interests of the child. As for the rights of children born outside marriage, which formed the subject of two other reservations, the Luxembourg Parliament considered it dangerous to recognize a person as being the child of persons whose marriage was prohibited or to raise a child in the household of a couple, one of whose members was, at the time of conception, in a marriage relationship with another person.

31. **Ms. Petry** (Luxembourg) said that, in Luxembourg, school attendance was compulsory for all, without distinction as to race, sex, language or religion. Remedial tuition and special assistance were provided in order to ensure the satisfactory progress of children of foreign origin. There were reception classes at both primary and secondary level for recent immigrants, where the children were given intensive tuition in the main languages of instruction, namely French and German. Integration classes and purely linguistic classes had also been set up at the lower level of secondary education and secondary technical education.

32. In an educational system where around 40 per cent of children were of foreign origin, the greatest challenge was peaceful coexistence between children and young persons of different origins and also the maintenance of social cohesion. The Luxembourg Parliament had considered the issue a number of times and had determined that the priority was to preserve the school unit and retain diplomas and certificates. Meanwhile, the greatest challenge in organizing educational structures and programmes was to guarantee the best chances of qualification for all pupils by developing measures that were fair for the community as a whole.

33. Particular efforts were thus made to provide an education for the children of asylum-seekers. Courses on alternative teaching methods, the methodology of learning foreign languages, intercultural education and the cultures of origin of foreign pupils had been included in the initial and further training of teachers. In order to enable foreign children to remain in contact with their mother tongue at the same time as learning Letzeburgish, German and French, courses in Portuguese and Italian taught by teachers hired and paid for by the respective embassies were also included in the normal timetable.

34. With a view to facilitating the school integration of preschool children, teaching assistants with Portuguese as their mother tongue could assist the teacher for several hours per week, the Portuguese community being the largest foreign community in Luxembourg. Children thus felt more secure, had fewer comprehension problems and were integrated more quickly. Moreover, a good knowledge of the mother tongue was useful for subsequent learning, in particular foreign-language learning.

35. Multicultural issues had been introduced into most of the school texts used in Luxembourg, the objective being to provide information on children's rights, prevent intolerance, racism and sexism and make it possible for all pupils to identify with the content. Particular efforts were made to keep foreign parents informed: in addition to information meetings in French or Letzeburgish, meetings were specially organized for Portuguese and Cape Verdean parents, with interpretation into Portuguese and Creole. A very large number of information documents had been translated into the principal foreign languages. In order to promote dialogue between foreign-language parents, school authorities, teachers and pupils, the Ministry of National Education had employed intercultural mediators speaking Portuguese, Cape Verdean, Albanian, Serbo-Croat, Russian and Chinese.

36. In accordance with the principle of the equality of all children before the law, the schooling of children with disabilities had been made the sole responsibility of the Ministry of National Education. The introduction of compulsory education for such children in 1973 had undoubtedly constituted an important step. Children with disabilities or with special needs could currently be educated either in ordinary schools, with or without the support of an external assistant, or in alternative education centres.

37. **Ms. Al-Thani** asked whether it was true that the parents of a disabled child were entitled to choose between education in an ordinary school and placement in a specialized establishment and, if so, which of the two options was generally preferred in Luxembourg society.

38. **Ms. Petry** (Luxembourg) said that the placing of a child with disabilities was determined by a medical, psychological and social committee, in agreement with the parents. The parents' preference for type of establishment was of crucial

importance, but other issues were taken into account: generally speaking, the aim was to encourage integration into the ordinary school system and the parents' wish that their disabled child should attend an ordinary school was respected, except in cases where it was incompatible with the smooth running of the class.

39. Luxembourg had taken the Convention as the starting point for the massive overhaul required to make the principle of the respect for a child's opinion a reality. It was currently reviewing an excessively old law — dating from 1912 — on the role of the school and relations between the school and the children's parents; the Education Council had been established by a Grand-Ducal regulation of 23 May 1991; and, for the past year, a reorganization of high schools and technical high schools had been under way, following which all such establishments would be required to adopt a school charter drawn up with the children's participation. More and more educational establishments generally were drawing up codes of conduct in partnership with their pupils. The intercultural mediators mentioned earlier had made an enormous contribution to the development of children's participation in the school environment and to a number of mediation and awareness-raising projects.

40. At the collective level, a recent study on the welfare of young people, which identified children's priorities and preoccupations, was becoming an influential working tool in schools and youth organizations. At the individual level, children's opinion began to be taken into account at the time when a child's future course of study was set — when a child passed from one level of education to the next — since such a decision took into account not only the child's academic results and intellectual aptitude but also his or her psychological profile and ambitions for the future.

41. **The Chairperson** asked whether pupils and their parents were represented in school councils and whether it was correct that only 15.6 per cent of foreign children who had completed primary school went on to secondary education.

42. **Ms. Petry** (Luxembourg) said that pupils and their parents did not currently participate in school councils, but that situation might change, since the Ministry of National Education had embarked on a round of consultations with its partners that covered that question, among others. The figure of 15.6 per cent was, unfortunately, correct. A detailed study of the reasons for that situation was currently being analysed. According to the preliminary conclusions, a number of factors were responsible, including the high language levels required in secondary education, where a child had to master French, German and English, but, even more, the social and economic situation of the pupils concerned. Luxembourg was aware of the fact that it must take action against failure at school and was working to that end. One focus of its work was to set up a pilot school where greater attention would be paid to a child's own rhythm.

43. **Mr. Majerus** (Luxembourg) said that children's participation was one of those issues where the State still had to contend with obstacles existing in society. For example, the initiative of setting up schools for parents was admirable, but such schools remained optional, which meant that, while families that participated were already convinced, the schools were ignored by the families most reluctant to participate. Mediation was, perhaps, a more effective tool. It had been used extensively in Luxembourg over the past several years in schools, in the family and in the courts. It had proved particularly useful in family conflicts involving adolescent children and in cases where the parents separated. A considerable number of communes had taken the step of setting up mechanisms such as intergenerational consultative committees and children's parliaments, among

others. Universal Children's Day, 20 November, had for several years been the occasion for the launch of campaigns to raise awareness and to listen to children's grievances. The late Grand Duchess Joséphine-Charlotte had worked assiduously for the cause of children's rights and that tradition was perpetuated by the Grand Duchess Maria-Teresa, who had recently given a reception for about 50 children to learn their views. The main concern expressed by the children on that occasion had been that they had too much homework on top of their other work.

44. **Ms. Schaack** (Luxembourg) said that Luxembourg had delayed ratification of the Convention because it had preferred to adapt its legislation to bring it into line with the Convention before ratification, not after. Thus, for example, the Civil Code had been amended to provide that a judge had the obligation to hear a child in any procedure involving him or her. A child could also appeal direct to a judge, who, if he or she did not wish to hear the child, was required to provide reasons for the decision. A child could be heard on his or her own or with a lawyer, if necessary a court-appointed lawyer. In some circumstances, such as cases in which a child did not wish to be heard by his or her parents, the hearing could take place in chambers. In the case of divorce proceedings, a children's judge heard the child before deciding where to give custody. After the age of 15, a child had to give his or her consent to any change of name or to any adoption.

45. Children in conflict with the law were covered not by the Criminal Code but by the Youth Protection Act, adopted in 1992, the aim of which was not to punish but to protect. Hearings before the children's court could themselves be held in chambers and there, too, a child needing help could appeal direct to the public prosecutor or the children's judge. Placement for children up to the age of 18 and educational assistance measures for young people up to the age of 21 were decided with the agreement of the young person concerned.

46. Under the Code of Criminal Procedure, any child giving testimony could, if he or she could prove the need, request that a sound or audio visual recording should be made of his or her statement, which could then be used to enable him or her to avoid repeating the testimony. A bill had also been lodged in May 2003 to strengthen victims' rights and witness protection by providing that a sound recording would automatically be made in cases involving victims of violence or an offence against public morals.

47. The perjorative connotation of the term "illegitimate child" had also been emphasized by the Human Rights Committee when it had considered the third periodic report of Luxembourg. The Luxembourg authorities had taken due note of such criticisms and intended to eliminate all uses of the term, replacing it by the term "child born out of wedlock" in the near future. However, only a few texts were involved and the problem was purely terminological, since the rights and obligations of children born in wedlock or out of wedlock were identical; discrimination between them had not existed since 1979.

48. **Mr. Majerus** (Luxembourg) said that a parent's right of physical punishment had been abolished in 1939. Corporal punishment was an offence and, if the victim was a child or the perpetrator was a person having authority over the victim, that constituted an aggravating circumstance. It remained the case, however, that, in fact, parents resorted far too often to slapping or spanking their children. The Minister for the Family, Social Solidarity and Youth had set up a working group to consider whether there should be a new law explicitly stating that physical or psychological violence was prohibited. In any case, action would need to be taken with regard to training and awareness-raising.



49. Only in a very few cases could a children's judge relinquish jurisdiction over a case and refer it to an adult court, namely where the accused was between 16 and 18 years of age and where the offence was very serious, where it was a repeat offence or where educational methods had been exhausted.

50. State social and educational centres took in young offenders and child drug addicts. Those who ran away, engaged in physical violence, committed acts of vandalism or brought drugs into a centre could be subjected to the disciplinary measure of being placed in temporary solitary confinement, provided that a doctor vouched for their good health. Following criticism expressed by the Committee against Torture in that regard, solitary confinement had been replaced by community service work.

51. Over the past few years, great efforts had been made to raise awareness among teachers, psychologists, educators, judges and nurses of the principles enshrined in the Convention.

52. The social and socio-educational work sector was entirely run by officially approved NGOs, which worked closely with the various ministries active in each NGO's given field. He also drew attention to the existence of the Higher Council for the Family and Children and the Luxembourg Observatory on Children and Generations.

53. With the exception of institutions responsible for taking in children in need, it had been rare, 20 years earlier, to find educational establishments or youth facilities provided with staff supervising activities run for the benefit of the children themselves. Such supervision had become systematic, which meant that it was possible to ensure that legislation relating to children was implemented.

54. **Mr. Filali** asked whether children participated in communal life and whether they were consulted over urban development, in the case of deciding on the siting of green spaces or cycling paths, for example. He wished to know whether the term "natural child" appeared in documents relating to children born of anonymous parents and whether there existed official instructions on giving such children a first name and surname.

55. He would be interested to know the reason why a large number of children in Luxembourg went to school in neighbouring countries and what measures the State party intended to take to improve the educational level of immigrant children, who, for the most part, did not have enough educational achievements to their name when they entered the job market. The State party should also say what it aimed to do to reduce the number of asylum-seekers returned to their country of origin with their families, which was often traumatic for the children. He also asked about the composition of the disciplinary board that had the power to impose the punishment of solitary confinement and wondered whether a visiting magistrate or a doctor could block the implementation of such a punishment. The fact that children between 16 and 18 years of age could in some cases be brought before an adult court ran counter to the spirit and the letter of the Convention.

56. **Ms. Al-Thani** asked whether the State party envisaged adopting legislation to make buildings and public transport accessible to disabled persons. She deplored the absence of psychiatric care services for children under 12 and asked whether mental health programmes had been set up in schools for children with eating disorders, such as anorexia nervosa or bulimia. The relevant authorities should be required to carry out a study on the causes of suicide, which was very common among young people.

57. She asked whether drug addiction, alcohol abuse and tobacco consumption were on the increase in the State party or whether they had been curbed; whether there were campaigns against such scourges; whether the growth in the incidence of HIV/AIDS affected children more than adults; and whether there existed any programmes for AIDS orphans or children living with HIV/AIDS.

58. Lastly, she wished to know what measures the State party had taken to remedy the consistently low breastfeeding rates, despite the commendable extension of maternity leave from 12 weeks to 9 months.

59. **Ms. Anderson** asked why it was not compulsory to conduct a periodic examination of a child's placement in a reception facility. It was regrettable that no one ministry had responsibility for following up the placement of minors in such facilities. She also asked whether the delegation could provide an assurance that the principles set out in the Convention were properly respected in such establishments.

60. **Ms. Ortiz** noted that the biological parents of a child placed in a reception facility or with a foster family were deprived of their parental authority in favour of the adoptive parents. She requested further information on the rules governing the relations between such young people and their biological parents, once the children had attained the age of majority. She also asked about the new law to protect that relationship, which was meant to have been adopted in 2003.

61. Lastly, she asked what measures were taken by Luxembourg, which had extensive experience of combating child pornography, to protect children from such pornography at a time when it had expanded greatly on the Internet.

62. **Ms. Lee** asked what had come of the recommendations of the working group in charge of developing a project involving the establishment of a single case file for disabled persons and what had been the results of the two-year pilot project aimed at the disabled population up to the age of 6. It was most important to identify disabilities and take action at the youngest possible age.

63. **Mr. Citarella** regretted that, in its legislation, Luxembourg had not fixed the age of criminal responsibility. He requested more specific data on the number of minors brought before adult courts and also asked whether the length of a juvenile offender's placement in a socio-educational centre was decided by a judge or by an administrative authority.

64. **Mr. Kotrane** requested further information on the concept of the "viable child" mentioned in paragraph 114 of the report. He also wondered whether the absence of measures to prevent the consumption of legal drugs by young people could not be explained by the fact that such drugs provided an important source of revenue for the State.

65. **Ms. Smith** asked whether members of the judiciary knew that the Convention was directly applicable in domestic law and also whether a child could consult a doctor without his or her parents' consent.

66. **Mr. Liwski** asked whether there had been studies to determine the psychological profile of young drug addicts and reveal the relationship between drug consumption and the high suicide rate.

67. **Ms. Khattab** asked whether the State party had taken measures to ensure that persons working in the country's 60 cabarets, many of whom were from Central and Eastern Europe, were not the victims of sexual exploitation for the purposes of pornography or prostitution.

68. **Ms. Vuckovic-Sahovic** said that, according to information provided by NGOs working on the ground, the educational system in Luxembourg still used various old-fashioned teaching methods. She therefore wondered whether the State party took account of article 29 of the Convention, which required States to promote the development of a child's personality and his or her talents and mental and physical abilities to their fullest potential.

69. **The Chairperson** requested further information on the way in which the Ministry of the Family, Social Solidarity and Youth coordinated all the various activities relating to the promotion of children's rights, given that many such activities to benefit children were the responsibility of a large number of other ministerial departments.

70. The Committee also wished to know whether the State party envisaged setting up a hospital service to provide psychiatric care for children under 14 and whether the abandonment of a child was a matter of concern in Luxembourg.

*The meeting rose at 1.05 p.m.*

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