



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Sixty-fourth session

### Summary record of the 1836th meeting

Held at the Palais Wilson, Geneva, on Monday, 30 September 2013, at 10 a.m.

*Chairperson:* Ms. Sandberg

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

**Consideration of reports of States parties** (*continued*)

*Combined third and fourth periodic reports of Luxembourg (CRC/C/LUX/3-4, CRC/C/LUX/Q/3-4 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of Luxembourg took places at the Committee table.*
2. **Mr. Hoscheit** (Luxembourg), introducing the State party's report (CRC/C/LUX/3-4), said that the situation of Luxembourg was rather special, characterized as it was by large inflows of migrants and an exceptional degree of multiculturalism, all of which presented real challenges with regard to the integration of children, and particularly their integration in the school system. The population of Luxembourg had increased by over 22 per cent since 2001 and the number of children and young people aged 0–19 by over 14 per cent. Such developments had an impact on political priorities and investment and infrastructure needs: places in day- or night-care with parental aides and in early childhood services had multiplied more than fivefold, for example, and the number of post-primary school students had gone up by 20 per cent.
3. In March 2013 the Government Council had set up the Dialogue with Youth, a mechanism for structured consultation. The first item on the agenda for the Dialogue was the youth opportunities initiative ("*Garantie jeunes*") launched by European employment ministers.
4. In July 2013 the ministers of education, equal opportunities, the family and health had launched a national programme for the promotion of emotional and sexual health and had announced a joint policy on the implementation of a plan of action for 2013–2016.
5. In September 2013 the Ministry of Health and the State centre for health research had published two reports on the health of newborns and their mothers. In general, Luxembourg followed the recommendations of Eurostat in compiling data on pregnancy and childbirth in order to provide reliable monitoring.
6. Major amendments had recently been made to the legislation on domestic violence, following discussions with civil society, political circles and the police and judiciary. The rights of victims, whether of age or minors, were now better assured.
7. Secondary education was currently undergoing a major overhaul, and a new bill had been submitted to Parliament in spring 2013. The most important challenge was school students' linguistic and social diversity. By taking better account of the wide range of profiles it would be possible to give more students access to higher education. Educational guidance mechanisms and a new system of student assessment were being established and the introduction of ethical education was being considered.
8. A pilot project had been set up to help new arrivals in the country move into the regular education system, taking account of their existing language skills and improving their learning skills.
9. As to the rights of children with disabilities, he said that a study on inclusion was planned. The aim was to raise awareness in schools of the concept of inclusion; the rather short-term measures put in place to date were proving insufficient. A television advertising campaign was planned for December 2013 to demonstrate how persons with disabilities were disabled not so much by their disabilities as by the barriers they encountered in their daily life. Other initiatives were the establishment of a rehabilitation and social centre for 5–16-year-olds with disabilities and a pilot project on out-of-school activities for autistic children.

10. **Mr. Gurán** (Country Rapporteur) said that the Committee appreciated the active role played by Luxembourg in European activities and forums on children's rights; he congratulated the State party on the professional presentation of its report and its clear written replies.

11. With regard to the institutional framework for implementation of the Convention, he recalled that, in its previous concluding observations (CRC/C/15/Add.250), the Committee had recommended that the State party develop and implement a national plan of action for children. According to the written replies to the list of issues (CRC/C/LUX/Q/3-4/Add.1) the State party had recently set up an inter-ministerial working group to prepare an action plan and coordinate government initiatives. He would appreciate clarification of the structure and mandate of the working group.

12. He wondered what steps the working group planned to take in the near future on coordination and in particular coordination with the National Children's Bureau (ONE). In that regard he would also appreciate information on the mandate of the Bureau and the support it received from the State.

13. In what way were NGOs and children themselves involved in that work? It was not clear whether there was real support for children's participation in issues concerning them at the various levels of society, including communities and schools.

14. On the question of independent monitoring, he noted that the Ombuds-Committee on the Rights of the Child (ORK) was attached to a Ministry, which made him wonder about its independence. He would also like to know more about the professional qualifications of the members of the Ombuds-Committee.

15. How was the complaints mechanism for children guaranteed? Did children know about the Ombuds-Committee and about their right to complain? In that connection, he also wondered whether the State party intended to ratify the third Optional Protocol to the Convention, on a communications procedure.

16. Statistically speaking, the numerous foreign children in the State party were at something of a disadvantage and the school dropout rate was higher for that group. How did the State party ensure that those children had equal opportunities with other children?

17. **Ms. Winter** (Country Rapporteur), referring to the Committee's previous concluding observations, asked whether the State party had given further thought to withdrawing its reservations to articles 2, 6, 7 and 15 of the Convention. The reservations to articles 2, 6 and 15 were no longer necessary and could be withdrawn without any problem. The reservation to article 7 could be discussed.

18. It did not appear that the principle of the best interests of the child had been fully incorporated into domestic law. The principle of taking account of children's views appeared to have been partly incorporated, to the extent that from the age of 9 children were entitled to express their views on legal issues; it was important that children of all ages should be able to express their views, however, and she wondered whether a 4-year-old would be asked to give their opinion in, say, a divorce case.

19. **Mr. Kotrane** said that the State party had ratified nearly all international human rights instruments. It had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, however. Doing so might help to reinforce the rights of that group. It had also not ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and he wondered if any action was contemplated on that front.

20. On the questions of children's right to know their parents and children born outside marriage, he welcomed the Filiation Bill mentioned in the State party's written replies,

which would address the issues raised by anonymous childbirth and put a stop to the use of terms such as “illegitimate”. He still wondered whether, if a child wished to investigate their parentage by means of DNA testing, a person could refuse to undergo such a test.

21. **Ms. Oviedo Fierro** asked how the State party was dealing with the increasing demand for services arising from the influx of migrants. She also wondered how migrant children were being included in consulting processes such as the Dialogue with Youth; their participation was important as they could contribute a different perspective to discussions. In general, she would like to know when the Dialogue had been instituted and how its conclusions would be used.

22. She said that she had found no information regarding children’s involvement in social networks or on measures to monitor the impact of the Internet on adolescents. Internet could expose youngsters to situations that were not necessarily positive and she would like to know what action the State party was taking in that regard.

23. **Mr. Gastaud** asked whether civil society and youth associations had been involved in the preparation of the State party’s report. He would like to know how the State party publicized the Convention, particularly among those who worked with children and children themselves, and with what results. Lastly, he asked whether the children’s parliament was still in existence; if so, how were its members selected and what was its competence in respect of the Government and Parliament?

24. **Ms. Wijemanne** asked what budget allocation had been provided for the National Plan of Action. She would also like to know whether the State party had a database on children containing information disaggregated by issues or needs.

25. **Ms. Khazova** asked whether the new legislation on filiation would do away with all the negative consequences of birth outside marriage. According to the Civil Code, for example, a child born outside marriage to a parent who was married to another person could be raised by that parent only with the consent of the spouse: she wondered what happened to the child if the spouse refused. The same question arose where both the child’s parents were married to other people at the time of the birth: what happened to the child if both parents’ spouses refused to raise the child? She would like to know how that provision of the Civil Code reflected the best interests of the child and whether the State party intended to withdraw its reservation based on that provision.

*The meeting was suspended at 11 a.m. and resumed at 11.20 a.m.*

26. **Mr. Hoscheit** (Luxembourg) said that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families presented a significant and complex issue for the Government of Luxembourg, and in fact posed problems that were the same for all members of the European Union. No European country had ratified that instrument; and Luxembourg did not intend to do so either.

27. **Mr. Janizzi** (Luxembourg) said that the Government had established a coordinating mechanism for children’s rights, and was working to identify long- and short-term priorities. The objective was the preparation of a national plan of action in which each governmental department would play a role. The National Children’s Bureau (ONE) had been set up in 2008, with the mandate to identify the best solutions to the problems confronting children.

28. The chairman of the Ombuds-Committee was appointed by the Ministry of Family Affairs and Social Integration. Efforts were under way to make the Ombuds-Committee more independent, and an independent budgetary structure had already been created. Its members were all charitable organizations with no contractual relationship with the Government.

29. Luxembourg would soon ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. It had now signed the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which would soon be applicable in the State party.

30. As for anonymous birth, he said that it protected pregnant women both from the necessity of giving birth in non-clinical settings and from resorting to abortion in want of another solution. The Government intended to create a confidential register, where the information about a child's parentage would be held. Both mothers and children would have the right to choose whether or not they met each other.

31. **Mr. Kotrane** said that the Committee was naturally interested in the plight of the mother, since the child needed her. And yet there were two conflicting interests, namely, the mother's right to anonymity, and children's right to know their parents – not only their mother, but also their father and siblings. Under the Convention, the principle of the best interests of the child must prevail.

32. **Ms. Herczog** noted that the practice of international adoption and secret adoption seemed to be the same. It would be useful to know whether, under Luxembourg law, children had the right to obtain information about the identity of their parents as of a certain age. Did the Government offer awareness-raising and support services to women on those difficult issues?

33. **Mr. Janizzi** (Luxembourg) said that anonymous birth was clearly comparable to international adoption. Under the proposed new rules, both the mother and the child would be empowered to lift the ban on disclosure.

34. **The Chairperson** asked how, in practice, both the mother and the child could take that decision. She would also like to know whether that rule applied solely to children over the age of 18.

35. **Mr. Janizzi** (Luxembourg) said there were two scenarios: a child seeking a mother, and a mother seeking a child. In either case, the person sought would decide whether or not they wanted contact. In both cases, the child would have to be over 18 years of age.

36. As for NGO participation in preparing the report, he said that the Government had chosen to prepare the report itself. However, an alternative report had also been prepared, with support from the Ministry of Family Affairs and Social Integration, which worked closely with NGOs on the development of policies and programmes.

37. **Mr. Meisch** (Luxembourg) said that draft legislation had been developed establishing a framework of reference for children's education and a curriculum that would apply to all educational institutions. There was currently an initiative to organize children's councils in local communities.

38. The Youth Parliament was open to all young people interested in participating. It had broad autonomy and arranged its own meetings, at which members could discuss any subject of interest to them. Participants worked in small committees, and presented proposals to the plenary, which then adopted resolutions for transmission to the ministries.

39. When relevant draft legislation came before Parliament, youth parliamentarians were invited to sessions dealing with that topic. There was a mobile information programme, which travelled around the country publicizing the work of the Youth Parliament. The Youth Parliament also participated in a structured dialogue with the European Union.

40. At the local level, the youth centres had been working to build bridges between Luxembourg culture and immigrant cultures, with a view to integrating young immigrants into society.

41. **Mr. Kotrane** observed that Luxembourg had not ratified the Convention on the Participation of Foreigners in Public Life at Local Level. Since adult foreigners were not permitted to take part in public life, it was interesting that Luxembourg should make such an exception for children.

42. **Mr. Hoscheit** (Luxembourg) said that was a false perception. All European citizens living in Luxembourg were fully assimilated into public life; 43 per cent of the population was non-indigenous, and played a significant role in society. The Maastricht Treaty had of course opened the way to political integration.

43. **Mr. Meisch** (Luxembourg) said that integration was indeed a great challenge for a country in which 43 per cent of the population was made up of immigrants. In the view of the Government, women and children must be involved in envisioning the future of Luxembourg society.

44. **Ms. Sevenig** (Luxembourg) said that the school system also reflected that social heterogeneity. A distinction should be drawn between nationality and the languages spoken at school. Many children spoke one language at home and another at school.

45. The Government had established special classes for children unable to assimilate into the public education system because of language limitations. It had also initiated a system of preschools for children as young as age 3, with a view to helping them learn the language from an early age.

46. **The Chairperson** asked for further clarification on the reservations that would be lifted by the new bill.

47. **Mr. Thyès** (Luxembourg) said that the new draft legislation amending the Civil Code would repeal article 334-6; when that bill had passed, the Ministry of Justice would notify the Ministry of Foreign Affairs, which would, in turn, formulate legislation that would lift the reservation. The Ministry of Justice could not withdraw a reservation; that was the role of the Ministry of Foreign Affairs. In the view of the Ministry of Justice, the whole reservation could then be withdrawn; other ministries, might, however, raise other objections.

48. If a father refused to take a paternity test, the State would assume the consequences. As to the question of what would occur if other spouses refused to accept the child into their families, the consent rule was to be abolished by the proposed amendment.

49. **Ms. Ney** (Luxembourg) said that the concept of the best interests of the child had existed for many years, and was incorporated into the jurisprudence. When parents divorced, a child's views were indeed considered. However, it was not reasonable to expect a 4-year-old to choose one parent or the other. In a contentious divorce, an expert lawyer chosen and paid by the State spent time with the child and both relayed the child's views to the court and gave an opinion on the child's best interests.

50. **Ms. Winter** inquired as to whether asking children for their views was obligatory.

51. **Ms. Ney** (Luxembourg) said that it was difficult to set an age; not all children were the same. Both age and maturity were taken into consideration, and efforts were also made to avoid exacerbating the conflict between the parents. Children were always present in hearings affecting them, and the judge could directly question children, either in open court or in chambers.

52. **Mr. Kotrane** asked whether it was obligatory for the judge to seek the child's views. In its general comment No. 12 on article 12, the Committee called on States parties to require the court to hear the child; the court's judgements must also be appealable before a higher court.

53. **The Chairperson** said that there were many questions that could be asked of a 4-year-old without directly asking them to choose between parents.
54. **Ms. Ney** (Luxembourg) said that, in divorce proceedings, the relevant interests of the child were primarily those related to the custody and visitation rights awarded to each parent. Divorce judges were not required to hear the child's views, and in practice many children preferred not to give their views because they did not want to get caught up in the conflict. Those who did wish to voice their opinions had the opportunity to do so, primarily through their appointed lawyer.
55. **Ms. Khazova** asked whether there was a minimum age below which the court did not appoint lawyers for children.
56. **Ms. Ney** (Luxembourg) said that there was no minimum age, and that there had been some cases in which lawyers had been assigned even to babies. Children born out of wedlock enjoyed the same rights as children born to married couples; the only differences lay in the competence of judges to decide on custody and visitation matters if the children's parents separated. In the case of children born out of wedlock, it was the guardianship judge who decided, while in the case of children born to married couples the urgent applications judge was competent during the divorce proceedings, after which the juvenile court had jurisdiction.
57. **Mr. Kotrane** said that the discrepancies regarding judges' competence should be reviewed. While he welcomed the Government's efforts to eliminate all distinctions between categories of children in law, they still existed in practice. He cited as an example a recent document from the Ministry of Health that referred to legitimate and illegitimate children.
58. **Ms. Ney** (Luxembourg) said that in fact the differentiation still existed in law as well, but would be eliminated once the Filiation Bill was adopted. At that point, the appropriate administrative steps would be taken to eliminate all such distinctions in practice.
59. **Mr. Gurán** said that, according to information before the Committee, the proposed revision to the Constitution emphasized the rights of parents more than the rights of the child. He asked the delegation to comment.
60. **Mr. Thyes** (Luxembourg) said that the revision of the Constitution was a long, complicated process and that it was still not clear what the outcome would be. The initial proposal had been drafted in consultation with the Venice Commission of the Council of Europe. The Government did not believe that the proposal emphasized parents' rights over the rights of the child.
61. **Mr. Hoscheit** (Luxembourg) said that his country did not have a dualist system, and that international instruments signed by Luxembourg prevailed over national law.
62. **Ms. Winter** asked whether the proposed revision of the Constitution included a specific reference to the best interests of the child.
63. **Mr. Hoscheit** (Luxembourg) said that he was unable to answer that question.
64. **Mr. Gurán** asked if the Government would be open to suggestions from the Committee on the revision of the Constitution.
65. **Mr. Kotrane** asked if the delegation could provide any examples of cases in which the courts had directly applied the Convention or other international human rights instruments over national law.
66. **Mr. Hoscheit** (Luxembourg) said that he could not speak on behalf of the Prime Minister or other members of the Government about how they intended to conduct the

constitutional reform process. Given the internationalist tradition in Luxembourg, there had not been many cases in which national law had been found to conflict with international conventions. Nevertheless, the courts had taken that position in some instances, and those decisions had not caused any controversy.

67. **Ms. Ney** (Luxembourg) said that one such decision had concerned the different provisions on joint parental authority over children born in wedlock compared with children born out of wedlock. The court had declared those provisions unconstitutional, and they would soon be amended through the Filiation Bill.

68. **Ms. Winter** asked whether the Government had developed any strategies to discourage children from posting sexual content involving themselves online. She wished to know whether all forms of corporal punishment were forbidden in the home and in institutions. She asked if it was true that the juvenile courts could place children in conflict with the law in prisons together with adults, and that such placements could be for an indeterminate period of time, as punishment for either criminal or problematic behaviour. If so, that situation appeared to violate the rights of the child.

69. She wished to know if there were any special correctional facilities for children, and whether the State in fact had a juvenile justice system, as the system in place appeared to be a mix of welfare and criminal justice and was difficult to comprehend. Children in prison could be kept in solitary confinement for up to 10 days, which in her view was too long. What monitoring systems were in place to document the time children spent in solitary confinement? Were there plans to amend the law in that regard? Lastly, she wished to know what was preventing the recently-built correctional facility for children 16 to 18 years of age from becoming operational.

70. **Mr. Gurán** asked whether any studies had been conducted recently on the situation of children placed in prison with adults. He wished to know more about the programmes in place to address the needs of migrant children living in Luxembourg.

71. **Ms. Herczog** welcomed the establishment of a parenting school but asked how the Government ensured that the training provided at the school reached the families who most needed it. She wished to know more about counselling provided to parents and expectant mothers to explain children's emotional needs.

72. She wondered why the Government seemed to prefer institutional care for children over community-based care, despite all the evidence showing that institutionalization was detrimental to children's development. She asked whether the Government had taken into consideration the Guidelines for the Alternative Care of Children and the Common European Guidelines on the Transition from Institutional to Community-based Care.

73. **Mr. Kotrane** welcomed the improvements made to the situation of unaccompanied children seeking asylum, but he noted with concern that children could still be held in migrant holding centres and were sometimes even held with adults. He asked how the Government made sure that the migrant children it returned to their country of origin would not be exploited upon return.

74. In 2007, the Committee had recommended that Luxembourg should ensure that the violation of the provisions on the recruitment and involvement of children in hostilities, as contained in the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, was explicitly criminalized in its legislation. It had also recommended that Luxembourg should establish extraterritorial jurisdiction for such crimes when they were committed by or against a person who was a citizen of, or had other links with, the State party. He asked what measures the Government had taken, if any, to implement those recommendations.



75. **Ms. Wijemanne** asked whether any studies had been conducted to determine the causes of the increased suicide rate and mental health problems among young people. She wished to know what kinds of services were available for young people experiencing such problems. Noting that the rate of exclusive breastfeeding was declining, and that only two hospitals in the country had been classified as baby-friendly, she asked how the Government planned to reverse that trend, whether regular training on breastfeeding was provided to health-care workers and whether there were regulations on the distribution of formula in hospitals.

76. Given the increase in the number of young people involved in traffic accidents, she asked what educational and preventive action was being taken in that regard. Obesity rates among children had also increased, as had alcohol consumption among young people. She asked whether the Government had developed any action plans to reverse those trends and to promote the emotional and sexual health of young people. Psychotropic drugs were reportedly overprescribed to children with behavioural disorders, and she asked the delegation to comment. Lastly, she asked whether any studies had been conducted to determine why increasing numbers of pregnancies were being terminated.

77. **Mr. Mezmur** asked whether any progress had been made on the initiative to establish a list of child sex offenders. He wished to know whether statistics were gathered from the two child abuse call centres in the country and from the special police unit responsible for protecting minors. He asked whether it was true that police statistics did not distinguish between child abuse and other crimes involving children.

78. **Mr. Cardona Llorens** asked what specific measures the State party was taking to promote the inclusion of children with disabilities, particularly in education and sports and recreation. It was his understanding that children with intellectual and psychosocial disabilities could be placed in psychiatric institutions solely on the basis of their parents' consent. In such cases, he wished to know to what extent the child's views were taken into account. Lastly, he asked what alternatives to the criminal justice system, such as mediation, were available for children in conflict with the law.

79. **Ms. Oviedo Fierro** said that, according to information before the Committee, child abuse, including sexual abuse, was on the rise in Luxembourg. She asked whether that was correct and, if so, what preventive measures the Government was taking. She requested statistical data on teenage suicide, which was also reportedly on the increase, and asked what measures were being taken to prevent it.

80. **Ms. Winter** asked why parents automatically lost their parental authority over their children when the children were placed in an institution. She wished to know whether national law included clear definitions of child pornography and child prostitution. She asked whether police officers received training on how to deal with children. Lastly, she wished to know who would handle the hypothetical case of an eight-year-old child who had committed murder, and where the child would be placed.

*The meeting rose at 1 p.m.*