



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the eighth periodic report of Luxembourg*

1. The Committee considered the eighth periodic report of Luxembourg¹ at its 1987th and 1990th meetings,² held on 26 and 27 April 2023, and adopted the present concluding observations at its 2003rd meeting, held on 8 May 2023.

A. Introduction

2. The Committee welcomes the submission of the eighth periodic report of the State party. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure, as this allows for a more focused dialogue between the State party and the Committee, and for submitting its report on time.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation and the oral and written responses provided to the questions and concerns raised during the consideration of the periodic report.

B. Positive aspects

4. The Committee notes with satisfaction that, since the consideration of its previous periodic report, the State party has ratified or acceded to the following international instruments:

- (a) Convention on the Reduction of Statelessness, on 21 September 2017;
- (b) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), on 7 August 2018;
- (c) Protocol to the Forced Labour Convention, 1930 (No. 29), of the International Labour Organization, on 18 March 2021;
- (d) International Convention for the Protection of All Persons from Enforced Disappearance, on 1 April 2022.

5. The Committee also welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including:

- (a) The adoption of the Act of 18 December 2015 on International Protection and Temporary Protection;

* Adopted by the Committee at its seventy-sixth session (17 April–12 May 2023).

¹ CAT/C/LUX/8.

² See CAT/C/SR.1987 and CAT/C/SR.1990.



(b) The adoption of the Act of 8 March 2017 strengthening procedural guarantees in criminal cases;

(c) The adoption of the Act of 28 February 2018 strengthening measures to combat the exploitation of prostitution, procuring and trafficking in persons for sexual purposes;

(d) The introduction, in March 2022, of criminal law for minors in conflict with the law.

6. The Committee welcomes other efforts of the State party to give effect to the Convention, including:

(a) The creation, in 2015, of an interministerial committee responsible for ensuring that the recommendations of international human rights protection mechanisms are implemented;

(b) The adoption, in 2016, of the National Action Plan to Combat Trafficking in Persons;

(c) The creation, in 2018, of a post of external inspector of places of deprivation of liberty, who is responsible for ensuring that the fundamental rights of prisoners are respected;

(d) The introduction, in 2018, of an individual detention regime for prisoners

(e) The introduction, in 2022, of reform of the youth protection system aimed at greater compliance with the Convention on the Rights of the Child.

7. The Committee also welcomes the State party's commitment to the United Nations Voluntary Fund for Victims of Torture and encourages it to continue to contribute to the Fund and to consider increasing its contributions.

C. Principal matters of concern and recommendations

Pending follow-up issues from the previous reporting cycle

8. In its previous concluding observations, the Committee requested the State party to provide information on the follow-up to its recommendations on conditions of detention, on racist and xenophobic acts against foreign detainees, on juvenile justice and on the powers of the Public Prosecutor.³ The Committee regrets that, although the Rapporteur for follow-up to concluding observations sent a reminder to the State party on 26 August 2016, the Committee received no response from the State party under the procedure for follow-up to concluding observations.

Fundamental legal safeguards

9. The Committee notes the procedural safeguards to prevent torture and ill-treatment contained in the Code of Criminal Procedure, which establishes the right to an interpreter in articles 3-2 and 3-3. The Committee also notes that persons deprived of their liberty are provided with a fact sheet on their rights, available in several languages. However, it is concerned about reports that the right of all persons kept in police custody to meet with a lawyer as soon as they are taken into custody, as guaranteed in article 3-6 of the Code of Criminal Procedure, is not always respected in practice. While noting that article 39 of the Code of Criminal Procedure guarantees the right to be examined by a doctor without delay, the Committee remains concerned that medical examinations are conducted in the presence of a law enforcement officer and that, in the absence of the latter, the detainee is handcuffed. The Committee is also concerned about reports that persons sometimes have to wait several hours before they can inform a third party about their detention (arts. 2, 11 and 16).

10. The State party should ensure that all arrested or detained persons are afforded, in law and in practice, all fundamental safeguards from the outset of their deprivation of liberty, in particular that they are assisted by a lawyer or, if necessary, provided with

³ CAT/C/LUX/CO/6-7, para. 18, referring to paras. 10, 12, 13 and 15.

free legal aid of adequate quality and that they have the right to request and receive a confidential examination by an independent doctor. The State party should ensure that medical examinations are performed out of the hearing and sight of any police officer or member of the prison staff and without the person concerned being handcuffed, unless the doctor concerned explicitly requests otherwise, and ensure that exceptions to this principle are made only in exceptional and strictly necessary cases. The State party should also ensure that all persons who are arrested or detained may inform a family member or a third party of their choice of their detention.

Pretrial detention

11. The Committee notes the conditions for placement in pretrial detention set out in article 94 of the Code of Criminal Procedure, which require a minimum level of seriousness of the acts in question to justify such a measure. Nevertheless, it noted that 43 per cent of the total prison population was reportedly in pretrial detention. The Committee is concerned about the existence of a presumption of risk of flight when the person is a foreigner or does not have legal residence in Luxembourg. This presumption allows the investigating judge to place the person in pretrial detention, thereby imposing less stringent conditions than those applicable to persons legally resident in Luxembourg. While noting that a detainee could apply for release on bail, the Committee was concerned that the length of pretrial detention was not regulated by laws. With regard to minors, the Committee welcomes the introduction of a bill establishing a maximum period of pretrial detention of minors. It notes with concern, however, that this can add up to 12 months (arts. 2, 11 and 16).

12. The State party should:

(a) **Adopt the necessary measures, including legislative measures, to put an end to the presumption of a risk of flight in criminal cases based solely on the fact that the person concerned is a foreigner or does not have legal residence in Luxembourg, and, as regards a coercive measure involving deprivation of liberty, base the imposition of pretrial detention on an individualized determination that it is reasonable and necessary in all the circumstances;**

(b) **Continue the reform of criminal law and procedure and, within this framework, shorten the period of pretrial detention for minors, in accordance with the recommendations of the Committee on the Rights of the Child;⁴**

(c) **Actively promote the use of alternatives to pretrial detention within the prosecution service and among judges, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).**

Conditions of detention

13. The Committee welcomes the 31 per cent decrease in the incarceration rate between 2010 and 2020 and takes note of the prison occupancy rate, which stood at 77 per cent in 2021. It notes with satisfaction the efforts under way to ensure the separation of untried prisoners from convicted prisoners. The Committee welcomes the free access to medical care and medicines offered to prisoners and notes that a draft Grand-Ducal regulation guarantees a medical consultation within 24 hours of arrival at the detention centre. The Committee notes with interest the efforts made to better care for and prevent psychological disorders in prisons. Nevertheless, it is concerned that the resources allocated to such care are not sufficient to ensure the same level of treatment as that provided to patients treated outside the prison system (arts. 2, 11 and 16).

14. **The State party should guarantee medical consultations for prisoners straight after their admission to the detention centre, possibly provide for a 24-hour extension in case this is not immediately possible and improve the quality of mental health care provided to inmates.**

⁴ [CRC/C/LUX/CO/5-6](#), para. 31 (e).

Violence in detention

15. The Committee regrets the increase in inter-prisoner violence in prisons. It is concerned about reports that such violence is mainly due to drug trafficking in prisons and the concentration of prisoners in cells (arts. 2, 11 and 16).

16. **The Committee calls upon the State party to strengthen measures to prevent and reduce inter-prisoner violence, including by putting in place appropriate prevention strategies that include the monitoring and recording of such incidents in order to ensure that any allegations are investigated and those responsible are held accountable for their actions.**

Searches

17. While noting that the Code of Criminal Procedure imposes strict conditions on the use of intimate body cavity searches, including the existence of a serious risk that the person is concealing objects, documents or items that are the proceeds of a crime or offence or that have been used to commit a crime or offence, the Committee is concerned that full searches are not subject to similar conditions (arts. 2, 11 and 16).

18. **The State party should exercise strict supervision of body search procedures and ensure that such searches are not degrading, that invasive body searches are conducted only in exceptional cases, in the least invasive manner possible, by trained staff of the same sex, and with full respect for the person's dignity and gender identity, in accordance with rules 50–53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Committee invites the State party to consider alternatives to invasive body searches (intimate body cavity and full body searches), including the use of electronic devices such as body scanners.**

Disciplinary regime

19. The Committee takes note of the abolition of strict solitary confinement by the Act of 20 July 2018 on the Reform of the Prison Administration and its replacement by more flexible confinement that allows for contact with fellow inmates. It notes with concern, however, that the disciplinary regime provided for by this law, which is reflected in the prison regulations, is unclear. However, since the disciplinary procedure in detention is a criminal matter, it is essential for the detainee to know in advance what behaviour exposes him or her to disciplinary sanctions. The Committee regrets that the sanctions are cumulative and without any limit, which undermines the principles of predictability and necessity of penalties. While the Committee welcomes the existence of appeals against disciplinary decisions provided for in articles 34 and 35 of the Act of 20 July 2018, it is concerned that such appeals do not have suspensive effect. It also questions the lack of diversity and multidiscipline in the composition of the disciplinary committee (arts. 2, 11 and 16).

20. **The State party should:**

(a) **Continue the regulatory reform in progress concerning the organization of prisons in order to specify which acts may be subject to disciplinary sanctions;**

(b) **Adopt internal regulations specific to each prison that establish a clear scale of sanctions according to behaviour;**

(c) **Establish shorter time limits for appeals against disciplinary decisions and make provision for such appeals to have suspensive effect;**

(d) **Introduce measures to make the composition of the disciplinary committee more diverse and multidisciplinary in nature.**

Juvenile justice

21. The Committee takes note of the ongoing reform of the youth protection system, including bills No. 7991 introducing a juvenile criminal procedure and No. 7992 on the rights of child victims and witnesses in criminal proceedings, which strengthens existing safeguards in the Code of Criminal Procedure and adds new ones, including the presence of a lawyer whenever a minor is subject to protective measures. The Committee also notes with

satisfaction the opening of the security unit in the State socio-educational centre, which has led to a reduction in the number of minors placed in the adult centre. It regrets that it is still possible to incarcerate minors in adult prisons, while noting that the reform under way, including bills No. 7991 and 7994, provides for the prohibition of this practice under the principle that deprivation of liberty is a measure of last resort applicable only to offences carrying a heavy penalty (arts. 11 and 16).

22. The Committee recalls the recommendations made in its previous concluding observations⁵ and urges the State party:

(a) **To continue the ongoing reform of the system for the protection of young persons so that young persons in detention are kept strictly separate from adults, in accordance with rules 13.4 and 26.3 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and that they are deprived of their liberty only as a measure of last resort and for the shortest appropriate period of time, in accordance with the Beijing Rules;**

(b) **To actively promote the use of alternatives to pretrial detention within the prosecution service and among judges, in accordance with the Tokyo Rules and the Bangkok Rules;**

(c) **To continue the ongoing reform of the prison regimes and juvenile criminal detention regimes, taking into account the specific needs of children in incarceration and their rights and best interests within the meaning of the Convention on the Rights of the Child.**

Use of force

23. The Committee takes note of the information provided by the State party to the effect that Bill No. 8065 aimed at having police officers wear body cameras has been drafted in such a way as to promote de-escalation, particularly for the sake of the citizen. However, it is concerned that the prevention as well as the punishment of violence and excessive use of force by law enforcement agencies are not among the main objectives of this bill (arts. 2, 12 and 13).

24. The Committee recommends that the State party take measures to ensure a balanced approach to the use of body cameras, in accordance with the principles of necessity and proportionality, and taking into account the effects of such cameras on society as a whole, in particular with regard to the prevention, detection and prosecution of offences committed against third parties, including the excessive use of force by law enforcement officials.

Asylum system and non-refoulement

25. The Committee notes with appreciation the State party's provisions on international protection, whose effectiveness and expeditiousness are in keeping with international obligations for the protection of human rights. The Committee welcomes the measures implemented by the State party to end the examination of secondary sexual characteristics of asylum-seekers, including the photographing of genitalia, for the purpose of age determination. While the Committee welcomes the State's assumption of costs related to the provision of medical care to migrants, it notes with concern reports that medical personnel responsible for the screening of asylum-seekers and persons granted international protection are not adequately trained to identify and treat victims of torture. While noting the financial assistance allocated to applicants for international protection and the recent efforts made by the State party to improve it, the Committee is concerned that it is not sufficient to ensure family reunification (arts. 3 and 11).

⁵ CAT/C/LUX/CO/6-7, para. 13.

26. **Considering the recommendations made by the Committee in its previous concluding observations,⁶ the State party should:**

(a) **Strengthen training on the detection, treatment and referral of torture victims so that all frontline workers supporting migrants, including health professionals, are able to detect torture survivors and provide them with adequate support, quickly and effectively;**

(b) **Consider legislative and administrative measures that would ensure that beneficiaries of international protection are entitled to financial assistance to enable them to effectively arrange for family reunification.**

Asylum-seeking children

27. While noting the efforts made by the State party to ensure that administrative detention is carried out in good conditions, the Committee recalls that this measure should be used only as a last resort and that this is all the more important when families with children are involved. Immigration-related detention, even for a short period of time and under any conditions, can indeed have lasting adverse effects on children's development. With regard to unaccompanied minors, the Committee welcomes the efforts made by the State party to improve reception services, including accommodation and educational support. It takes note of the fact that a bill under consideration provides that they may only be detained in exceptional circumstances, and of the measures in place to ensure their protection, including the appointment of an ad hoc administrator to defend their interests. However, it is concerned that there is no strict prohibition on the placement of children in situations of migration in an administrative detention centre (art. 11).

28. **The Committee recommends that the State party continue its efforts to provide for the protection of minors in situations of migration. The State party should ensure that children and families with children are not detained solely because of their immigration status.**

Universal jurisdiction

29. The Committee notes that the Act of 27 February 2012 adapting domestic law to the provisions of the Rome Statute of the International Criminal Court transposes the Rome Statute into national law but does not include the element of universal jurisdiction provided for in the Act of 9 January 1985, which it replaces (arts. 5, 6, 7, 12, 13 and 14).

30. **The Committee encourages the State party to take the necessary steps to establish universal jurisdiction over crimes of torture in accordance with article 5 (2) of the Convention.**

Trafficking in persons

31. While the Committee notes the efforts made by the State party to eliminate trafficking in persons, it is concerned about the increase in the number of cases and the emergence of forced labour as a new predominant form of exploitation in the State party, particularly in the construction and catering sectors. The Committee notes that this increase in the number of cases is partly due to improvements in the detection system, including the provision of training to public officials and the implementation of victim care programmes. The Committee is concerned about gaps in the data submitted by the State party, including a fundamental lack of data on the sexual exploitation of children. It is also concerned about victims' access to reparation, which remains difficult, and questions the low number of applications for compensation (arts. 2 and 16).

32. **The State party should:**

(a) **Continue its efforts to stop trafficking in persons, including by developing of a new national plan to strengthen prevention and punishment, in particular with regard to forced labour;**

⁶ Ibid., para. 14.

(b) **Improve data collection on trafficking in persons in the country by mobilizing the relevant State actors to produce consistent and reliable statistics centrally, including on all forms of sexual exploitation of children and the sale of children;**

(c) **Take measures to make the conditions of victims' access to compensation granted by the courts and the State more flexible, in particular by making it no longer conditional on the perpetrator's failure to pay compensation, and to raise awareness among victims and stakeholders about the possibility of compensation;**

(d) **Establish formal procedures for evaluating the vulnerability of a person subjected to human trafficking, including for the purpose of sexual exploitation, and ensure that cases of human trafficking in its various forms are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective protection and redress and the means for as full rehabilitation as possible;**

(e) **Set up accommodation facilities that provide an adequate response to the specific psychological and psychiatric needs of victims.**

(f) **Continue to provide specialized training to law enforcement officials, border guards, immigration officials, prosecutors, labour and mining inspectors, medical professionals and other relevant actors on detecting and identifying victims of trafficking in persons, with a specific focus on persons in vulnerable circumstances, including children who may be victims of sale, prostitution or exploitation for the production of child sexual abuse material;**

(g) **Continue to carry out national prevention campaigns exposing the criminal nature of trafficking in persons.**

Sexual and gender-based violence

33. The Committee notes the information received from the State party to the effect that Luxembourg law does not criminalize femicide, although the Criminal Code currently provides for an aggravating circumstance of hatred in the commission of certain crimes and offences, including gender-based hatred. Furthermore, it is concerned about the statute of limitations for rape, set at 10 years, which is abnormally low.

34. **The State party should ensure that all cases of gender-based violence, including domestic violence, especially those involving actions or omissions by State authorities or other entities that entail the international responsibility of the State party under the Convention, are thoroughly investigated, that alleged perpetrators are prosecuted and, if found guilty, punished appropriately, and that the victims or their families obtain redress, including adequate compensation. The State party should also raise the statute of limitations for rape.**

Intersex persons

35. The Committee takes note of the implementation of the National Action Plan to Promote the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons, presented in July 2018, which includes actions prohibiting the "normalization" of non-vital medical treatments performed without the free and informed consent of the intersex person and the cessation of their reimbursement by the State. However, it is concerned that these principles have not yet been transposed into Luxembourg law.

36. **The State party should continue its efforts, including the ongoing preparation of a bill on surgical operations for variations in sexual development, to end the performance of irreversible medical acts, especially surgical operations, on intersex children who are not yet capable of giving their full, free and informed consent, except in cases where such interventions are absolutely necessary for medical reasons. Measures should also be taken to ensure that victims of such interventions have access to effective remedies and to strengthen the collection of statistics on this issue.**

Follow-up procedure

37. The Committee requests the State party to provide, by 12 May 2024, information on the follow-up to its recommendations on searches, sexual and gender-based violence, and intersex persons (see paras. 18, 34 and 36). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

38. The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.

39. The Committee requests the State party to submit its next periodic report, which will be the ninth, by 12 May 2027. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its ninth periodic report under article 19 of the Convention.
