



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

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**WRITTEN REPLIES BY THE GOVERNMENT OF LUXEMBOURG*
TO THE LIST OF ISSUES (CAT/C/LUX/Q/5/REV. 1) TO BE TAKEN
UP IN CONNECTION WITH THE CONSIDERATION OF THE
FIFTH PERIODIC REPORT OF LUXEMBOURG (CAT/C/81/Add.5)**

Addendum

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Article 3

Question 1

Please provide detailed information on the new asylum procedure adopted on 5 May 2006, and on the remedies available if the application for asylum is rejected.

1. Attention is drawn to the Act of 5 May 2006 on the right to asylum and to additional forms of protection as published in memorandum A No. 78 of 9 May 2006. This act is attached as an annex to the present document.
2. With regard to remedies, particular attention is drawn to articles 17, 19 paragraphs 3 and 4, 20, paragraphs 4 and 5, and 23, paragraph 3 should be stressed that an appeal for correction with suspensive effect may be made in respect of a decision to dismiss, on the merits, an application for asylum or an application for international protection.

Question 2

Can an individual from a third country that has been declared “safe” by the Grand Duchy of Luxembourg claim that, in his or her particular case, he or she risks being subjected to torture if extradited, returned or expelled? Please also indicate the criteria the State party uses to draw up and update the list of third countries declared “safe”.

3. This question is unclear in that it is uncertain whether it refers to “safe third countries” or to “safe countries of origin”. In the case of the former, attention is drawn to article 16 of the Act of 5 May 2006, in particular, to paragraph 4. In the case of the latter, attention is drawn to article 21, paragraph 4.

Question 3

Please indicate in what cases Luxembourg would seek diplomatic assurances from a third country to which an individual is to be extradited, returned or expelled. Please also provide examples of cases in which the authorities did not proceed with the extradition, refoulement or expulsion of an individual for fear that he or she would be tortured. On the basis of what information were any such decisions taken?

4. Diplomatic assurances have never been sought since, in the event of doubt as to whether or not an individual has been tortured, he or she is simply not expelled. However, we do not have any specific examples of such cases.

Question 4

Please provide detailed information on cells located in the basement of police stations and customs posts used to hold aliens in administrative detention. Please also provide a complete updated list of detention centres, in particular for aliens at the disposal of the authorities.

5. Persons arrested provisionally by the police are usually held in short-term detention cells in one of the six main response centres, which operate round the clock. Only units staffed on a

24-hour basis have short-term detention cells. In addition, some neighbourhood police stations have secure facilities (lock-ups with resting facilities), which are used to hold persons temporarily, for example, prior to questioning.

6. The short-term detention cells are equipped with the following:
 - (a) Bunk attached to the wall;
 - (b) WC;
 - (c) Two blankets;
 - (d) Heating and adequate ventilation;
 - (e) Buzzer and intercom;
 - (f) Indirect lighting;
 - (g) Peephole.
7. No other object may be kept inside the detention cell.
8. Short-term detention cells have tiled surfaces, which can be cleaned by hosing down. In addition, they are designed to preclude any possibility of injury or suicide. The cells are cleaned regularly to keep them in a pristine state.
9. All short-term detention cells fitted out after 1 November 2004 are equipped with the following:
 - (a) Minimum surface area of 6 m²;
 - (b) Warning device (intercom);
 - (c) Closed-circuit television monitored round the clock from a central control room;
 - (d) Adequate ventilation;
 - (e) Floor heating;
 - (f) Door-jambs and wire screens, etc., that cannot be disassembled and that preclude any attempt at suicide;
 - (g) Partitions with rounded corners;
 - (h) Tiled floors, walls and partitions;
 - (i) Built-in stainless steel squat toilet with ridged slip-proof placement for feet and external flushing device or faucet;
 - (j) External indirect lighting;

(k) Triple-hinged, internally insulated (fireguard) safety door not connected to the fire alarm system, external panic handle, peephole;

(l) Impact-resistant glazing that meets DIN 52290 class B1-B2 standards.

List of available short-term detention cells and secure facilities

Luxembourg area		
Unit	Detention cells	Secure facilities
Luxembourg CIP	3	2
Train station group		1
Esch-sur-Alzette area		
Esch-sur-Alzette CIP	4	2
Esch-sur-Alzette CP		1
Esch-sur-Alzette SREC		1
Differdange CIS	2	1
Roeser CP		1
Dudelange CP		1
Pétange CP		1
Mondercange CP		1
Grevenmacher area		
Grevenmacher CIP	2	
Remich CIS		1
Niederanven CP		1
Mersch area		
Mersch CIP	2	
Rédange CIS		1
Capellen area		
Capellen CIP	2	
Diekirch area		
Diekirch CIP	3	
Troisvierges CIS		2
Ettelbrück CP		2
Central services		
Airport central police station		2
Rue Curie building	8	1
Criminal Investigation Department		3
Guard and Mobile Reserve Unit		2
(Hospital Centre: Surveillance of hospitalized detainees)		
Total	29	25

CIP: Main response centre.

CIS: Secondary response centre.

CP: Local police station.

SRES: Criminal Research and Investigation Department.

10. The response team located at 51, rue des Martyrs, L-3739 Rumelange, is the only service under the customs and excise authorities that has detention cells. Since this service forms part of the Drugs and Hazardous Substances Division, it does not hold aliens in administrative detention. The response team is exclusively concerned with combating trade in illegal products, particularly narcotics and their precursors. Individuals held in detention cells are those who have infringed the Act of 19 February 1973 on illegal drug use and trafficking.

11. The response team currently has four cells, which are located on the ground floor of its offices. These cells range in size from 8 m² to 14 m² and are equipped with floor heating and a stone bench. Each cell has an emergency buzzer and a (non-recording) surveillance camera. Two of the cells have windows to the outside. The doors lock from the outside and the cells can be viewed through them (via glass pane or spy-hole).

Question 5

Please provide further information about the treatment, in law and in practice, of aliens, particularly women, who are at the disposal of the authorities. In addition, please clarify the situation with regard to the isolation of aliens.

12. A special wing has been set up in Luxembourg prison for aliens subject to a detention order while awaiting extradition. This wing is referred to as the “Holding centre for aliens in an irregular situation.” It is the subject of a grand-ducal regulation dated 20 September 2002, which stipulates, among other provisions that:

- (a) Detainees shall be kept separate from prisoners while being held at the centre;
- (b) Detainees shall be examined by a doctor within 24 hours of their admission to the centre and, thereafter, whenever a medical examination is needed;
- (c) Detainees may not be obliged to perform any prison labour;
- (d) Upon written request, detainees may be authorized by the prison governor to participate in activities with prisoners if it is determined that such activities are in the interests of the detainees;
- (e) Detainees shall enjoy the right to unlimited written correspondence, to listen to the radio and watch television and to use the telephone within the limits established by the Minister for Foreign Affairs and Immigration;
- (f) Detainees’ right to receive visitors is regulated in the same way as that of prisoners, except for the fact that visit permits are issued by the Minister for Foreign Affairs and Immigration;
- (g) With the exception of married couples, men and women are housed in separate quarters within the centre.

13. The more restrictive arrangements described above lapsed, however, on 7 March 2007, at which time persons who were at the disposal of the authorities were transferred back to the former facility, where they are able to circulate freely.

14. A new ministerial directive was issued on 28 February 2007 pursuant to the le grand-ducal regulation of 20 September 2002 establishing a short-term holding centre for aliens in an irregular situation (see annex).

15. At the recommendation of the Minister for Foreign Affairs and Immigration, no further temporary detention orders shall be issued for women, since there is no means within the centre of housing men and women separately.

16. When female detainees are concerned, plans for the future holding centre include the construction of six separate units, one of which may be reserved for women.

17. On 19 December 2006, the Ministry of Public Works referred a bill on the construction of a holding centre (No. 5654) to the Chamber of Deputies. The Government of Luxembourg will make every effort to ensure that this centre is operational by autumn 2008.

18. In considering the current situation of persons who are at the disposal of the authorities, the list of issues asks about the particular treatment afforded to women. In this connection, it is noted that, although the law contains no prohibition against such placement, women are not placed in the holding centre for aliens in an irregular situation because there would be no means of separating them from ordinary prisoners.

19. Where male detainees are concerned, since 30 January 2006, when a fire destroyed the holding centre, interim arrangements of a more restrictive nature have had to be introduced. Detainees have had to be transferred to another building and their numbers limited to 35. For reasons relating to the layout of the facilities, as well as for security reasons - as this new facility has no armoured door between the warder's office and the passageway - the detainees have unfortunately not been able to circulate freely within the facility and have been locked up during the day. However, as compensation, they have been granted a one-and-a-half-hour exercise session in the prison yard, instead of the regulatory one hour session. Moreover, they are authorized to meet in small groups (from four to six persons) from 2 p.m. to 4 p.m. and can participate in sports activities. In addition, a number of specially approved non-governmental organizations (NGOs) have been granted access to the holding centre in order to organize group recreational activities.

20. The daily timetable of the P2 wing (for detainees) is included in the annexes.

Question 6

Please indicate the maximum period of time for which an alien at the disposal of the authorities can be detained under the grand-ducal regulation of 20 September 2002, which established a holding centre in Luxembourg prison.

21. The grand-ducal regulation of 20 September 2002 establishing a holding centre for aliens in an irregular situation does not constitute the legal basis for the placement of such persons at the disposal of the authorities.

22. Under article 15 of the amended Act of 28 March 1972 on entry and residence by aliens, an alien in an irregular situation in the country may be placed at the disposal of the authorities for a period of one month with the possibility of renewing such placement for up to two additional one-month periods. Thus, the maximum period during which an alien in an irregular situation may be placed at the disposal of the authorities is three months.

23. With regard to asylum-seekers, attention is drawn to article 10 of the above-mentioned Act of 5 May 2006, which stipulates that asylum-seekers may, in certain cases, be placed in a closed facility for a maximum period of three months. This measure may be renewed under certain very restricted conditions for additional 3-month periods of up to 3 months each, provided that the total length of detention does not exceed 12 months.

Question 7

Does Luxembourg envisage establishing facilities outside prison to accommodate aliens at the disposal of the authorities?

24. As already specified in question 5, the Government plans to build an independent holding centre outside the prison system.

Question 8

Please indicate whether aliens at the disposal of the authorities are informed as soon as possible of remedies available to them and in a language that they understand.

25. Under the grand-ducal regulation of 20 September 2002, aliens who are subject to a detention order shall be informed of their administrative status and their rights and obligations no later than the first working day following their placement in the holding centre for aliens in an irregular situation.

26. In practice, aliens are informed of their rights and obligations by the criminal investigation police officer in charge at the time they are notified that a detention order has been issued against them. At that time, aliens are required to sign a special form notifying them of their rights. This form exists in the following languages: German, French, English, Greek, Dutch, Albanian, Portuguese, Serbo-Croat, Hungarian, Italian, Polish, Spanish and Russian.

27. These rights are the following:

- (a) The right to notify a person of their choice, unless the exigencies of the investigation dictate otherwise. A telephone is made available to the detainee for this purpose;
- (b) The right to be examined promptly by a physician;
- (c) The right to be assisted by a lawyer.

28. Article 15 of the above-mentioned Act of 28 March 1972 clearly stipulates: “Unless the exigencies of the investigation require otherwise, aliens shall be notified immediately in writing, against a receipt and in a language that they understand, except in duly recorded cases where this is physically impossible, of the right to be examined without delay by a physician and to select a

lawyer to represent them in court from one of the bar associations established in the Grand Duchy of Luxembourg or to have a lawyer assigned to them by the president of the Luxembourg Bar Council.” This information shall also be provided to aliens upon notification of the order for their placement at the disposal of the authorities.

29. It should be added that under ordinary law, review procedures are indicated in the order for placement at the disposal of the authorities. This information is also conveyed orally to aliens at the time they are notified that an order for their placement at the disposal of the authorities has been issued against them.

Question 9

Please indicate whether any complaints have been received concerning acts of torture and cruel, inhuman or degrading treatment, including acts ruled as unintentional homicide, committed in the process of extradition, refoulement or expulsion since 2002. If so, please provide statistics and indicate what type of injuries the complainants sustained. What was the result of those complaints as far as prosecution, punishment and compensation are concerned? Please give specific examples.

30. Since 2002, the Luxembourg prosecution service has not received any complaints of torture or cruel or inhuman treatment, and no such cases have been registered.

31. No complaint of torture or cruel or inhuman treatment has been referred to the Diekirch prosecution service.

32. No such complaint has been referred to the Police Inspectorate.

33. The only known case since 2002 relates to a letter of grievance (not an official complaint) from the Support Association for Immigrant Workers to the Minister for Foreign Affairs and Immigration concerning the expulsion of Mr. Igor Beliatskii (see question 10). The complainant sustained no injuries.

Question 10

Please clarify the conditions in which Igor Beliatskii was expelled to his country of origin on 12 October 2006.

34. The complainant filed an application for asylum in Luxembourg on 2 August 2004 and was interviewed by an official from the Ministry for Foreign Affairs and Immigration on 11 October and 4 November 2004.

35. His application for asylum was rejected on 6 June 2005 by decision of the Ministry for Foreign Affairs and Immigration on the grounds that his statement was incoherent, vague and contradictory. This decision was confirmed by a ruling of the Administrative Tribunal dated 23 November 2005 and by a judgement of the Administrative Court dated 23 February 2006.

36. On 1 March 2006, the complainant was informed (together with his wife, whose application for asylum had in the meantime also been rejected) that he had the possibility of assisted return to Belarus. He was granted until 3 April 2006 to think this over. On 3 April 2006,

in the presence of his lawyer, the complainant told an official from the Ministry of Family Affairs that he intended to file a request for a residence permit on humanitarian grounds and a request for special status. This application was filed on 11 April 2006 and was rejected on 26 April 2006 by a decision of the Ministry of Foreign Affairs and Immigration.

37. On 1 September 2006, the complainant was placed in the holding centre for aliens in an irregular situation.

38. The repatriation of the complainant and his wife was scheduled for 26 September 2006.

39. On 26 September 2006, the complainant's repatriation was scheduled to take place by a regular commercial flight (Luxembourg-Frankfurt, Frankfurt-Minsk) without his wife, who had in the meantime gone missing. However, this repatriation attempt failed owing to the complainant's violent opposition to the repatriation procedure, during which he injured two police officers assigned as escorts.

40. The official responsible for carrying out Mr. Beliatskii's expulsion to Minsk (Belarus) had visited him several times in Luxembourg prison in order to discuss the details of his expulsion with him. During these discussions, Mr. Beliatskii had stated that he had no intention whatsoever of cooperating with the police. In the light of these statements, the police had increased to four the number of officers assigned to escort Mr. Beliatskii. On the morning of 26 September 2006, when the expulsion was scheduled to take place, a body search of Mr. Beliatskii revealed a razor blade hidden in his jeans. As a security measure, the officers thereupon decided to fit Mr. Beliatskii with the main part of a BodyCuff (waist and hand restraint).

41. At the airport, while the officers were waiting for authorization to accompany Mr. Beliatskii on board the Luxembourg-Frankfurt flight, Mr. Beliatskii began screaming and kicking and head-butting the officers. The officers then had to use force in order to fit Mr. Beliatskii with the rest of the BodyCuff restraint. During this attack by Mr. Beliatskii, two police officers sustained injuries that kept them both off work for several days. Mr. Beliatskii had to be carried on to the plane. After he spat in the faces of the policemen, he was fitted with a mask.

42. For security reasons, the captain of the flight in question refused to take Mr. Beliatskii on board, owing to his aggressive behaviour. Mr. Beliatskii's expulsion therefore had to be delayed.

43. After the failure of the first attempt at expulsion, it was decided to use a chartered aircraft to expel Mr. Beliatskii. On 12 October 2006, during the second expulsion attempt, Mr. Beliatskii was fitted with a complete BodyCuff suit at Luxembourg prison. At the airport, Mr. Beliatskii once again attempted to escape expulsion by screaming and thrashing around. He stopped this behaviour, however, when he saw that he was being expelled on a private plane: at that point he realized that he could no longer escape expulsion. During the flight, Mr. Beliatskii was completely immobilized in his seat. Consequently, the journey to Minsk took place without incident. It is also noted that no tranquilizer was administered to Mr. Beliatskii before or during his expulsion.

Question 11

Please provide data disaggregated by age, sex and nationality for the years 2003, 2004 and 2005 on:

- (a) The number of asylum applications registered;**
- (b) The number of successful asylum applications;**
- (c) The number of asylum-seekers whose application was accepted because they had been tortured or might be tortured if returned to their country of origin;**
- (d) The number of deportations or forcible returns (please indicate how many of these related to asylum-seekers whose asylum applications had been rejected);**
- (e) The countries to which these people were expelled.**

Number of asylum applications registered

Year	2003	2004	2005
Applications	1 210	1 346	669
Individuals	1 549	1 577	801

44. The number of asylum applicants, broken down according to age, sex and nationality, is shown in the annexes to this document.

45. Annex 1 gives the numbers of applicants by year, age and sex. It should be noted that the total according to year differs from that shown in the above table since annex 1 also includes children born in the course of the year, thereby increasing the total.

46. Annex 2 gives the numbers of applicants by nationality, sex and year. It should be pointed out that the “True” column refers to applicants over the age of 25, while the “False” column refers to applicants under the age of 25. (“True” and “False” are tags used by the government data processing centre and have no particular significance.)

Number of successful asylum applications

Year	2003	2004	2005
Refugees recognized	62	82	97

Number of asylum-seekers whose application was accepted because they had been tortured

47. Regrettably, there are no statistics available on this subject.

48. Regarding question 11 (a) and (e), tables relating to the forcible return of both asylum-seekers whose asylum applications were rejected and persons in an irregular situation who had not applied for asylum in Luxembourg are provided in the annexes.

Question 12

Please provide information on any cases submitted to the European Court of Human Rights concerning the expulsion, refoulement or extradition of aliens from Luxembourg.

49. We have no knowledge of cases submitted to the European Court of Human Rights concerning the expulsion, refoulement or extradition of aliens from Luxembourg.

Article 4

Question 13

Please indicate the number and nature of cases in which the provisions of criminal law governing such offences as attempted acts of torture have been applied since 2002. Please also indicate the decisions taken in these cases, the sentences imposed or the grounds for any acquittals.

50. Attention is drawn to question 9 above.

Article 5

Question 14

Please indicate whether, under the Code of Criminal Investigation, the Luxembourg courts are competent to take legal action against a Luxembourg citizen for acts of torture committed abroad, including in cases where the act of torture is not punishable under the law of the country in which the act was committed.

51. The rules governing punishment for offences committed abroad by citizens of Luxembourg are contained in article 5 of the Code of Criminal Investigation, which stipulates, among other provisions:

“Any citizen of Luxembourg who, outside the territory of the Grand Duchy, is found guilty of a crime punishable under Luxembourg law may be prosecuted and tried in the Grand Duchy.”

52. In view of the fact that criminal sanctions are applied to the offences described in Criminal Code section V-1 entitled “Acts of torture”, this question may be answered in the affirmative.

53. In addition, article 7-4 of the Code of Criminal Investigation establishes active universal jurisdiction, thus ensuring that a person guilty abroad of one of the offences specified in articles 135-1-135-6 (terrorism) and 260-1-260-4 (torture) of the Criminal Code does not go unpunished. In cases in which an application for extradition is submitted, but in which the individual in question is not extradited, such individuals may be prosecuted and tried in the Grand Duchy of Luxembourg.

Article 10

Question 15

Please explain in detail what training is provided to law-enforcement personnel, forensic doctors and medical personnel responsible for examining persons who have been arrested or detained, asylum-seekers or refugees, with a view to detecting the physical and psychological signs of torture. Please indicate how long such training lasts, how often it is provided, and how it is evaluated.

54. Where health workers are concerned, the training syllabus for both ordinary nurses and psychiatric nurses includes courses in legislation and in ethics, including human rights modules. Since doctors specializing in psychiatry are trained abroad, Luxembourg is not responsible for their specialized training.

55. The Ministry of Foreign Affairs and Immigration does not organize specific training for staff members responsible for examining asylum applications. Nevertheless, each new official follows a training programme of one or two days run by the Office of the United Nations High Commissioner for Human Rights (UNHCR).

56. Likewise, officials responsible for examining asylum applications follow a one-week training course organized by our Belgian counterparts. This course also includes instruction by psychologists in how to identify victims of torture.

57. The prison service does not as yet offer training to its officials to improve their skills in detecting the physical and psychological signs of torture.

58. On the other hand, each individual admitted to prison is subject to a detailed admission procedure that offers safeguards considered adequate for detecting signs of torture:

(a) At the time of admission, administrative formalities are carried out at the prison reception. There, the prisoner undergoes a body search, conducted by two guards, and is examined by a nurse. Article 141, paragraph 2, of the amended grand-ducal regulation of 24 March 1989 on the administration and internal rules of prisons stipulates: "When an individual who is brought to a facility for the purpose of imprisonment presents signs of a physical or mental disorder, a pre-admission medical examination shall be required";

(b) Article 149 of the same regulation stipulates: "At the time of admission, all prisoners shall be invited to indicate the names and addresses of persons who should be contacted in the event of serious illness or of death";

(c) Article 151 requires the physician to examine each prisoner within 24 hours of admission. In practice, the prisoner is examined by a general practitioner, a psychiatric nurse and, if necessary, a psychiatrist, none of whom is employed by the prison service, before being examined by the staff physician;

(d) During the first week of detention, each prisoner has an initial interview with a representative of the counselling and socio-educational service.

Article 11

Question 16

Please provide information on the law and practice with regard to:

(a) The length of police custody from the time the person is arrested until he or she is brought before a judge;

(b) The steps taken to register the person between the time of arrest and the time when he or she is brought before a judge;

(c) The circumstances in which incommunicado detention can be authorized, the authority with competence to authorize it and the maximum duration of such detention;

(d) The obligation of the Office of the Public Prosecutor to order a forensic examination, on its own motion or at the request of the detainee, if that person should allege ill-treatment between the time of arrest and the time when he or she is brought before a judge.

59. The length of police custody from the time a person is arrested until he or she is brought before a judge is determined as follows.

60. According to article 39, paragraph 1, of the Code of Criminal Investigation, the length of temporary detention (“rétention” - the French notion of “garde à vue”, or police custody, does not exist in Luxembourg) cannot exceed 24 hours from the time the person is arrested by the police (art. 39, para. 2) until he or she is brought before a judge.

61. Article 39, paragraph 1, of the Code of Criminal Investigation stipulates: “Where the exigencies of the investigation so dictate, the criminal investigation police officer may, with the authorization of the public prosecutor, hold for a period not to exceed 24 hours persons in respect of whom there is compelling and corroborative evidence sufficient to justify the bringing of charges.”

62. Article 39, paragraph 2, of the Code of Criminal Investigation stipulates: “The 24-hour period begins from the time the person is arrested by the police.”

63. In its judgement No. 117/05 Ch.c.C. of 18 March 2005, the judges’ council chamber of the Court of Appeal ruled that if, in a case of flagrante delicto, an arrested person is held by the police for more than 24 hours before being brought before the examining magistrate, this shall constitute breach of the time limit prescribed by article 39 of the Code of Criminal Investigation and that, in such an instance of illegal deprivation of liberty, there is no need for a specific complaint to be filed in order for the examination proceedings to be annulled (in the case in point, the limit had been exceeded by 1 hour and 30 minutes).

64. Consequently, the judges’ council chamber of the Court of Appeal cancelled the preliminary examination and the detention warrant concerning the individual in question.

65. The same rules apply in the case of arrest pursuant to an arrest warrant issued by the examining magistrate, as well as in the case of arrest pursuant to an arrest and detention warrant; in all cases the arrested person must be brought before a judge within 24 hours.

66. When registering a person between the time of arrest and the time he or she is brought before a judge is concerned, as provided by the last part of article 39, paragraph 8, of the Code of Criminal Investigation: “Detainees’ records must indicate the time and date of their arrest, as well as the time and date of their release or appearance before an examining magistrate.”

67. It should also be noted that, in keeping with an internal police rule, this information must also appear in the register of offences.

The arrested person shall be registered in the incidents log of the competent police station, as well as in the report prepared by the criminal investigation police officer carrying out the arrest.

68. With regard to the circumstances in which incommunicado detention can be authorized, the authority with competence to authorize it and the maximum duration of such detention, the following provisions obtain:

(a) Attention is drawn to article 84, paragraphs 2-6, of the Code of Criminal Investigation;

(b) When required by the exigencies of the investigation, the examining magistrate may order a prohibition of communication for a period of 10 days, renewable for 1 additional 10-day period. The order prohibiting communication shall not, in any case, apply to the accused person’s counsel;

(c) Orders prohibiting communication must be substantiated and shall be recorded in the prison register. The public prosecutor shall be notified of such orders. The registrar shall immediately notify the accused person and his or her counsel of the order by registered letter;

(d) The accused person, or his or her legal representative, his or her spouse or any other person demonstrating a legitimate personal interest, may apply to the judges’ council chamber of the circuit court for the prohibition to be lifted. If the examination proceedings are being conducted by an appeal court judge, such application shall be filed with the judges’ council chamber of the Court of Appeal;

(e) The judges’ council chamber shall, as a matter of priority, rule on the report of the examining magistrate, having heard the prosecutor’s arguments and the oral explanations of the accused person or his or her counsel;

(f) Accused persons and their counsel shall be informed by the clerk of court of the place, date and time at which they are to appear in court.

69. These incommunicado detention orders are extremely rare, as this practice was discontinued at the end of the 1990s.

70. Bar one case from 15 to 25 December 2000, no prohibition of communication (or incommunicado detention) has been ordered since 15 November 1991.
71. Article 327 of the above-mentioned grand-ducal regulation of 24 March 1989 sets out the terms and conditions for carrying out the orders.
72. The obligation of the Office of the Public Prosecutor to order a forensic examination, on its own motion or at the request of the detainee, if that person should allege ill-treatment between the time of arrest and the time when he or she is brought before a judge applies as follows.
73. As provided by article 39, paragraph 6, of the Code of Criminal Investigation:
- “At the time of arrest, a detainee is informed in writing and against a receipt in a language that he or she understands, except in duly recorded cases when this is physically impossible, of the right to be examined without delay by a doctor. In addition, the public prosecutor may, at any time, on his or her own initiative or at the request of a member of the family of the detainee, designate a doctor to examine the detainee.”
74. At the time this new text was adopted by the Act of 24 April 2000, the Luxembourg State Council, while indicating its approval of the proposed texts, found that the new texts needed some elaboration. It was therefore of the opinion that:
- (a) Being informed in writing is not to be confused with a written statement by the person concerned indicating that he or she has been duly informed;
- (b) Since the document in question is for information purposes, it should be left in the possession of the person concerned. At the very least, that person may, at any point during his or her detention, exercise his or her right to be examined by a doctor;
- (c) The requirement that the detainee should be informed of his or her rights in writing and in a language that he or she understands, may, in certain cases, be physically difficult to meet. To begin with, such forms would need to be available in advance in several languages, but even this provision would not help in cases where, for whatever reason, it is impossible to ascertain which language the detainee understands.
75. For this reason, the proposed text was amended by the insertion of the phrase “except in duly recorded cases when this is physically impossible”.
76. The forms referred to in this excerpt from the opinion of the Conseil d’État have, in fact, been drawn up in 13 languages.
77. Lastly, it should be noted that, according to police regulations, any person who is placed in a cell, whether in a prison or police station, must have previously undergone a medical examination to ensure that he or she is fit to be incarcerated. The detainee would be sure to inform the doctor about any injuries he or she had sustained, in the event that the doctor had not already noticed them.

78. The standing orders of the grand-ducal police force stipulate:

“In the event that a person is injured during arrest or complains of injuries that he or she claims to have sustained at the time of arrest, or while being transported to or held at the police station, the police officer is required to summon a doctor immediately in order to have the person examined. The medical certificate is to be attached to the police report. In addition, the exact circumstances of the summoning of a doctor shall be detailed in the police report.”

Question 17

The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Luxembourg from 2 to 7 February 2003 stated that the rights of all persons arrested to contact members of their family and to inform them of their situation and to have access to a lawyer from the time of arrest were not always guaranteed in practice, and were usually granted only after the first official questioning by the police. Please provide information on the measures taken to guarantee this right to every detainee. Please also state whether police officers are present when detainees consult their lawyer or doctor or speak to a family member.

79. With regard to the right of all persons arrested to contact members of their family and to inform them of their situation, the following obtains.

80. Article 39.3 of the Code of Criminal Investigation stipulates:

“Unless the exigencies of the investigation dictate otherwise, the person arrested is, at the time of arrest, notified in writing, against a receipt and in a language that he or she understands, except in duly recorded cases when this is physically impossible, of the right to notify a person of his or her choice. A telephone is made available for this purpose.”

81. The arrested person’s right to notify a person of his or her choice from the time of arrest (and thus before the first official questioning) is guaranteed in practice, unless the exigencies of the investigation dictate otherwise. For this purpose, a telephone is made available to the arrested person.

82. In addition, every person of foreign nationality who is arrested also has the right to inform the consular representatives of his or her country. However, direct contact may take place only with the authorization of the public prosecutor or the competent examining magistrate.

83. With regard to the right of all persons arrested to the assistance of a lawyer, the following obtains:

Article 39.7 of the Code of Criminal Investigation stipulates:

“Before questioning the detainee, the criminal investigation police officers and detectives referred to in article 13 must inform the person to be questioned, in writing and against a receipt, in a language that he or she understands, except in duly recorded cases where this is physically impossible, of the right to the assistance of counsel from the lawyers and barristers appearing on the roll of legal practitioners.”

84. In this connection, the standing orders of the grand-ducal police force stipulate the following:

“After having informed the arrested person of his or her rights, he or she is given a list of lawyers. The police officer contacts the designated lawyer, who must appear within one hour at the police station in question, or at another agreed upon time, provided that this does not influence the investigation. If these arrangements cannot be carried out or if it proves impossible to contact the lawyer, the questioning shall begin or shall continue without the presence of the lawyer. These circumstances must subsequently be recorded in the police report. If the person refuses the assistance of a lawyer, this decision must also be indicated in the police report.”

85. It should be borne in mind that current legislation does not expressly grant arrested persons the right to communicate with their lawyer, either before or during the first official questioning. In practice, therefore, such communication is authorized by the investigator only after initial questioning.

86. After this questioning, a brief consultation is in fact granted to arrested persons notwithstanding the provisions of article 84, paragraph 1, of the Code of Criminal Investigation, which provides that, “immediately following the first official questioning concerning the offences with which they are being charged, accused persons may communicate freely with their counsel”.

87. It is noted in this context that the bar has established a legal assistance service, which means that several lawyers are available to appear at a police station or before an examining magistrate if the detainee (and/or the examining magistrate in the second case) so requests. The bar association prepares this list and makes it available to both the police and to the examining magistrate.

88. As for the measures taken by the grand-ducal police force, attention is drawn to the reply to question 18 below.

89. As to whether police officers are present when detainees consult their lawyer or doctor or speak to a family member, the following situation obtains.

90. If only for security reasons, a police officer is always present when detainees meet their lawyer, a doctor or family members.

91. For security reasons, a police officer must be present during these meetings. In this connection, the current standing orders of the grand-ducal police force stipulate the following:

“In the interest of the physician’s safety, and in order to prevent the prisoner from escaping, the examination shall take place in the presence of an officer. The physician has no right to object to the presence of officers. If the prisoner is female, a female officer shall assume the responsibility of supervision, if propriety dictates against the presence of male officers. However, in exceptional cases, it may happen that the presence of officers is not desired, in cases where the examination involves the genital area or, in the case of women, if no female officer is available. In such cases, the officers shall bring the prisoner (who

shall be handcuffed for security reasons) to a detention cell where the physician can perform the examination, during which time the officers shall remain in front of the cell door in order to provide assistance, if necessary, to the physician.”

92. The regulations thus provide for two hypothetical situations: consultations under police supervision without the use of restraints, and consultations without police supervision but with restraints (use of handcuffs). The usual practice, however, is to relieve the individual of his or her handcuffs at the request of a physician.

93. Detainees held by the response team of the anti-drug division have the right to call a family member or a lawyer before official questioning. A customs officer is present at such meetings.

Question 18

The above-mentioned report highlighted a number of cases of police brutality during the questioning of persons suspected of having committed an offence. Please indicate the measures taken by Luxembourg to remedy this situation.

94. The following measures have been taken by the grand-ducal police force:

(a) Continual reminders of the applicable legal texts and the standing orders (Criminal Code, police ethics and human rights) during the in-service training of police staff, as well as at staff meetings;

(b) Regular reminders and updates of our current standing orders in the form of administrative issuances and over the Internet;

(c) Continuous top-down monitoring, leading, where necessary, to appropriate administrative and disciplinary measures;

(d) Monitoring by the competent judicial authorities of the conduct of the criminal investigation police;

(e) Monitoring by the Police Inspectorate, as part of its general supervisory function, of the tasks performed by the police and by police staff members.

95. A new Charter of Ethics was introduced by the grand-ducal police force on 1 January 2006. Implementation of this Charter was listed among in-service training priorities for police staff over the course of 2006. Article 11 of the Charter stipulates: “The use of legal coercion by members of the police force must always be judicious and limited to that which is strictly necessary. In no circumstances whatsoever should the police inflict, encourage or tolerate any act of torture, any inhuman treatment or any treatment constituting an affront to human dignity.”

96. Approximately five cases a year concerning so-called “police” brutality are referred to the Diekirch prosecution service. All these complaints are subject to investigation, usually by the Police Inspectorate.

97. If a criminal investigation police officer has committed an offence in the course of duty, the prosecution service of the relevant court or the central prosecution authority shall decide whether or not to prosecute the matter.

98. If a criminal investigation police officer is the subject of a complaint, including one not related to his or her functions, a copy is forwarded to the central prosecution authority for information purposes. A meeting was held recently among the senior officials of the Public Prosecutor's Office, the police force and the Police Inspectorate to study this matter.

99. With regard to certain cases of assault and battery, the Police Inspectorate has had no hesitation in investigating whether police brutality may have been involved.

100. Since certain officials from the Police Inspectorate are also active, in particular, in basic training (general criminal law, special criminal law and police ethics), they have been at pains to emphasize, within that area, the importance of the notions of legality, human dignity, proportionality and absolute necessity.

101. Through its recommendations, the Police Inspectorate has also helped ensure that the use of handcuffs is more strictly regulated and recorded. In short, it has made determined efforts to ensure that the practice is no longer treated lightly.

Question 19

Please provide information on any emergency or anti-terrorist laws that might restrict a detainee's rights, in particular the rights mentioned in the above paragraphs: the right to a prompt hearing by a judge, the right to contact family members and to inform them of the situation, and the right to have access to a lawyer and a doctor from the time of arrest.

102. There are no particular laws that restrict the rights accorded to detainees.

Question 20

Please provide detailed information on the implementation of the Act of 16 June 2004 relating to the reorganization of State socio-educational centres, which provides the legal basis for the construction of the Dreibern Security Unit for minors with a view to avoiding their imprisonment. Please also provide detailed information on the current situation of young offenders, and particularly the non-custodial treatment of such offenders (CAT/C/81/Add.5, paras. 8, 119, 156, 163, 173, 186, 190).

103. The Wormeldange municipal council has not yet granted authorization to build the Dreibern Security Unit. However, recent meetings between the Ministry of Family Affairs, the Ministry of Public Works and Wormeldange municipality have led to agreement on finalizing the construction project inside the Dreibern site. Construction is scheduled to begin in 2008.

104. According to the seriousness of the offences committed by minors, the juvenile judges decide whether to place them in prison, the State socio-educational centre or another reception facility (child psychiatric ward, children's home or another national or foreign specialized facility).

Question 21

Please describe in as much detail as possible the conditions of detention in solitary confinement blocks in prisons, including those intended for minors. What is the maximum length of time for which a person can be held in solitary confinement, in what circumstances is this measure applied and who decides whether it should be applied?

105. With regard to Luxembourg prison:

(a) Pursuant to article 197, paragraph 11, of the grand-ducal regulation of 24 March 1989 on the administration and internal rules of prisons, placement in solitary confinement as a disciplinary measure may be applied by the Chief Public Prosecutor for a maximum duration of six months. In case of a repeat offence within 3 years, the duration may be extended to 12 months. However, solitary confinement is also applied to prisoners considered to be dangerous. In such cases, there is no maximum length of time during which prisoners may be kept in isolation;

(b) Pursuant to article 197, paragraph 10, of the grand-ducal regulation of 24 March 1989 on the administration and internal rules of prisons, placement in a punishment cell may be ordered by the prison governor for a maximum duration of 30 days. The Chief Public Prosecutor is notified immediately of this punishment and has the authority to modify it or to order a temporary reprieve.

Solitary confinement

106. Article 6 of the above-mentioned grand-ducal regulation of 24 March 1989 stipulates: “the arrangements regarding this measure [solitary confinement] are specified in instructions from the Chief Public Prosecutor”. These arrangements are determined in line with the following constraints:

- (a) Placement in an individual cell;
- (b) Daily exercise to be taken alone in the prison yard;
- (c) No participation in group activities (work, sports, educational and recreational activities);
- (d) Authorization to use the radio built into the intercom;
- (e) Authorization to have a television set;
- (f) Reading restricted to five books and five magazines, to be exchanged regularly;
- (g) Clothing provided by the administration;
- (h) Purchases at the canteen limited to €25 per week;

(i) Correspondence within the limits of the provisions of articles 211-216, 219, paragraph 1, and 226 of the amended grand-ducal regulation of 24 March 1989 on the administration and internal rules of prisons;

(j) No telephone access;

(k) Visits restricted to the persons enumerated in article 229, paragraph 1, of the amended grand-ducal regulation of 24 March 1989 on the administration and internal rules of prisons, and to take place in a secure, isolated visiting area.

107. These constraints, and particularly the one relating to exercise in the prison yard (which can be taken either alone or in a group), may be adapted on a case-by-case basis by decision of the Chief Public Prosecutor, taking into account the precautions required to prevent acts of violence by detainees placed in solitary confinement.

108. Potential rewards may be authorized to a limited extent in the light of the detainee's behaviour, with due account of security requirements and, in particular, the need to facilitate cell searches at any point in time.

109. Conditions for the application of solitary confinement are specified in the amended grand-ducal regulation of 24 March 1989 on the administration and internal rules of prisons:

(a) Article 3, paragraphs 3-6:

“The following persons may be subjected to solitary confinement:

“(a) Prisoners considered to be dangerous;

“(b) Prisoners subject to a disciplinary measure.

“Placement in solitary confinement or the renewal of this measure by decision of the Chief Public Prosecutor may only be applied to prisoners considered to be dangerous if such prisoners have been given the opportunity to state their views.

“Prisoners subject to such a measure must be informed in writing of the reasons for the solitary confinement or its renewal. Placement in solitary confinement is subject to review every three months”;

(b) Article 6: “Prisoners in solitary confinement are kept segregated 24 hours a day and have contact only with the prison staff and with duly authorized visitors. The arrangements for this measure are specified in instructions from the Chief Public Prosecutor”;

(c) Article 85: “It is compulsory for prisoners subject to solitary confinement to be seen by a physician, at the time this measure is applied, and at least twice a week throughout the course of the application of this measure”;

(d) Article 197: “The punishments that may be applied to prisoners are:

“[...]

“11. Placement in solitary confinement for a maximum duration of six months. In the case of a repeat offence within 3 years, the disciplinary penalty may be set at 12 months”;

(e) Article 206, paragraph 5: “The punishments provided for in article 197, paragraphs 11 and 12, are ordered by the Chief Public Prosecutor.”

110. Solitary confinement has been applied:

(a) In 2005: 20 times as a disciplinary measure for durations ranging, depending on the case, from 45 to 180 days, on grounds of aggravated assault, ill-treatment of a fellow prisoner and hostage-taking;

(b) In 2006: only once, for a duration of three months, for a prisoner considered dangerous; and 22 times as a disciplinary measure for periods ranging from 42 to 150 days, on grounds of aggravated assault, arson and attempted escape.

111. No minor has ever been placed in solitary confinement.

Placement in a punishment cell

112. This is regulated by the following provisions of the amended the grand-ducal regulation of 24 March 1989 on the administration and internal rules of prisons:

(a) Article 197: “The punishments that may be administered to prisoners are:

“[...]

“10. Placement in a punishment cell for a maximum period of 30 days”;

(b) Article 198: “Placement in a punishment cell consists of holding the prisoner for 24 hours in a cell that he or she occupies alone”;

(c) Article 199: “Placement in a punishment cell entails deprivation of work, radio, canteen access and leisure and group activities. Placement in a punishment cell entails deprivation of correspondence with the outside and discontinuance of visits, subject to the provisions of articles 215, 226, 235 and 236. Punishment in the form of deprivation of correspondence and visits does not apply to communication between detainees and prisoners with their counsel and members of the social services. Incommunicado prisoners shall be permitted to take exercise alone for one hour in the prison yard, and shall have access to newspapers and books from the library. All prisoners shall have the right to lodge complaints as set out in articles 211-216”;

(d) Article 200: “The penalty of placement in a punishment cell may be imposed only after a physician has examined the prisoner and has certified in writing that he or she is capable of withstanding it. Derogations from the provisions of the foregoing paragraph may only be made in the case of a serious offence or serious act of indiscipline that is suppressed immediately”;

(e) Article 201: “The physician shall visit prisoners subject to this disciplinary measure at least two times a week. The punishment is suspended if the physician observes that its continuation could compromise the physical or mental health of the prisoner”;

(f) Article 206: “The punishments provided for in article 197, paragraphs 1-10, shall be imposed by the prison governor:

- ‘ (i) The punishments imposed on prisoners and minors placed in Luxembourg prison under article 26 of the Youth Protection Act are immediately brought to the attention of the examining magistrate, who has the power to modify them or to order a temporary reprieve;
- ‘ (ii) The punishments imposed on minors committed to either of the two facilities under article 6 of the Youth Protection Act shall immediately be brought to the attention of the competent juvenile judge, who has the power to modify them or to order a temporary reprieve;
- ‘ (iii) The punishments provided for in article 197, paragraphs 6-10, shall immediately be brought to the attention of the Chief Public Prosecutor, who has the power to modify them or to order a temporary reprieve.’”

113. An internal service instruction specifies that the punishment cell shall be an ordinary standard cell, but that a stiffer regime shall be applied:

- (a) Withdrawal of all group activities;
- (b) Daily exercise alone for one hour in the prison yard;
- (c) Deprivation of radio, canteen and all perks;
- (d) Deprivation of work;
- (e) Deprivation of personal clothing (prison clothing to be issued);
- (f) No visitors, except those prescribed in articles 235 and 236 of the grand-ducal regulation of 1989;
- (g) Deprivation of correspondence, except for correspondence provided for under articles 211-216, 226 and 227 of the grand-ducal regulation of 1989;
- (h) Right to a daily shower.

114. In 2005, three prisoners were placed in punishment cells for 14 days each on grounds of serious violence against fellow prisoners.

115. In 2006, this punishment was imposed on seven prisoners for lengths of time that varied between 1 and 14 days.

Placement in special security cells

116. Luxembourg prison has 13 specially equipped cells to hold prisoners whose behaviour is such that they are a danger to themselves or to others.

117. The conditions governing placement in such cells are generally the same as those for placement in punishment cells, except that placement in special security cells should never be used as a disciplinary measure and may only be ordered as a means of preventing acts of violence.

118. Placement is always ordered for a maximum duration of 24 hours, renewable for 1 day at a time, until the prisoner's behaviour is considered as no longer representing a high risk.

119. In 2005, the records show 219 placements in special security cells for periods ranging from 1 to 11 days.

120. In 2006, there were 84 placements between 1 and 7 days and 2 special placements of 13 and 19 days respectively.

State socio-educational centres

121. The State socio-educational centre is not a prison. It is an open facility that receives minors whose placement in them has been ordered by the juvenile judge. The State socio-educational centre has a closed section comprising 12 isolation cells, of which 6 are in the boys' residential unit in Dreibern and 6 in the girls' residential unit in Schrassig. The disciplinary regime, as defined by article 9 of the Act of 16 June 2004 on the reorganization of the State socio-educational centre, consists of disciplinary measures, including temporary solitary confinement. The temporary solitary confinement measure may be applied only on serious grounds which have been duly documented and only by the governor or his or her deputy. As provided for by article 11 of the grand-ducal regulation of 9 September 1992 on security and discipline in State socio-educational centres, within 24 hours of the start of the measure, a doctor must examine the minor in order to verify whether he or she is capable of withstanding it. The maximum length of detention in the closed section must not exceed 10 consecutive days. The minor against whom disciplinary measures are taken may file an appeal against such decisions with the president of the Supervision and Coordination Commission, and with the juvenile judge. The minor against whom a solitary confinement measure is taken shall be given a copy of this measure in his or her native language enumerating the precise reasons for the isolation. Minors may file an appeal against such decisions with the president of the Supervision and Coordination Commission. An appeal may also be filed with the juvenile judge.

122. Throughout the period of detention in the closed section, minors are entitled to:

- (a) Instruction provided by staff teachers from the Socio-Educational Training Institute (grand-ducal regulation of 3 September 1995 establishing a socio-educational institute attached to the State socio-educational centres);
- (b) Guidance from the staff of the residential unit and from the counselling service;
- (c) Consultations with the governor, the deputy governor and/or the unit supervisors;
- (d) Visits from their lawyer;
- (e) Exercise outside for one hour each day;
- (f) Availability of books.

Question 22

Please provide information on the preliminary bill intended to amend the amended Act of 26 July 1986 on certain modes of enforcement of custodial sentences. Please indicate whether the State party envisages abolishing the use of solitary confinement, in accordance with the latest conclusions and recommendations of the Committee against Torture (CAT/C/CR/28/2, para. 6 (b)) and the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its visit to Luxembourg from 2 to 7 February 2003.

123. With regard to the preliminary bill intended to amend the amended Act of 26 July 1986 on certain modes of enforcement of custodial sentences, a ministerial working group has been established to recast all existing legislative texts on prisons with a view to drafting a genuine prison code.

124. The national prison administration does not believe that the disciplinary measure of solitary confinement should be abolished. Luxembourg has only one medium-security prison, in which many dangerous repeat offenders are serving long terms. Moreover, 75 per cent of the prison population is of foreign nationality. Owing to the growing prison overpopulation, crowding has worsened for detainees, and with it a propensity for violence. To deny prison officials the right to use solitary confinement as a disciplinary measure would thus be tantamount to depriving them of any effective means of guaranteeing a minimum of order and security for personnel and detainees alike.

Question 23

Please provide information on the measures taken by Luxembourg to implement the recommendation made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to eradicate certain discriminatory practices allegedly employed by the police against detainees, including insults with racist and/or xenophobic connotations.

125. See the measures set out in our reply to question 18.

126. It should also be pointed out that the new Charter of Ethics of the grand-ducal police force (see appendix) stipulates in article 4 that: "He (the police officer) shall have absolute respect for persons, without discrimination of any kind."

127. The Police Inspectorate trainers issue regular reminders in this area, and on discrimination in general.

Articles 12 and 13

Question 24

Please explain to what extent the public prosecutor's discretion to decide whether to investigate a complaint and to prosecute, as provided for in article 23 of the Code of Criminal Procedure, is compatible with the provisions of articles 6, 7 and 12 of the Convention.

128. The principle of discretionary prosecution does not pose any problem for the punishment of the offences concerned. Who could possibly decide not to prosecute such serious offences? The principle of discretionary prosecution applies solely to cases of minor importance which have not seriously affected public order.

129. In the same connection, it should be recalled that the public prosecutor is not a free agent who can decide whether or not to prosecute a case at his pleasure. Apart from the common-sense restriction referred to in the preceding paragraph, it should be noted that the Office of the Public Prosecutor is a hierarchical body whose duties are discharged, under the authority of the Minister of Justice, by the Chief Public Prosecutor and, under his supervision and management, by his prosecutors and their substitutes (article 70 of the Organization of the Judiciary Act).

130. Such a serious case as an act of torture would invariably be referred to the Chief Public Prosecutor (see article 18, paragraph 2, of the Code of Criminal Investigation).

131. Lastly, it should be pointed out that the function of the Office of the Public Prosecutor is to ensure that the law is enforced (article 16 of the Code of Criminal Investigation).

132. Bill no. 5156, which strengthens the right of victims of the criminal offences referred to below, would institute a right of the victim to submit an appeal to the Chief Public Prosecutor to reverse a decision by the prosecuting authorities to dismiss a case.

133. See also the reply to question 26.

Question 25

Please indicate the number of cases where law-enforcement personnel have received legal or administrative punishment for the ill-treatment of detainees.

134. During the reference period in question, four police officers were prosecuted and convicted of assault and battery involving detained persons.

135. Since becoming active, the Police Inspectorate has conducted five investigations, which have resulted in legal and/or administrative punishment being imposed for the ill-treatment of detainees.

136. In all, a dozen investigations have been carried out for this reason.

137. In 2003, legal and administrative punishments were imposed on a police officer, including for assault and battery against a prostitute.

138. Another police officer was reprimanded by the competent judicial authorities for deliberately striking a detainee during interrogation; disciplinary punishment was also imposed.

139. In 2004, criminal punishment was imposed on a police officer for assault and battery. The disciplinary investigation was still pending at the time of the drafting of this reply. Another police officer who shot and wounded an arrested person is the subject of a judicial investigation for deliberate assault and unintentional bodily harm. Judicial and disciplinary investigations are under way.

140. As to the powers of the Chief Public Prosecutor in criminal (art. 479 et seq. of the Code of Criminal Investigation) and disciplinary matters (arts. 15-2-15-6 of the Code of Criminal Investigation), to date there has been one criminal conviction of two criminal investigation police officers for assault and battery and one warning on the basis of article 15-2 et seq. Currently, criminal proceedings have been instituted against two criminal investigation police officers for assault and battery resulting in incapacity for work. A recent case in which a police officer is being investigated for assault and battery will also most probably be referred to the competent criminal court. The Police Inspectorate, to which these cases are regularly referred for investigation, has the relevant files and dossiers.

Question 26

Please indicate whether detainees are able, if their complaints concerning torture or ill-treatment are dismissed, to refer their cases to the competent judicial authorities through private prosecutions.

141. If a complaint by a detainee who claims to have been the victim of an act or torture or ill-treatment is dismissed, he or she has the right to take action through private prosecution against the alleged perpetrator of the offence. The victim may also institute criminal proceedings by bringing a civil action before the examining magistrate.

142. It should, however, be noted that if the alleged offender is exempt from jurisdiction, none of the above-mentioned (indirect) remedies may be used to appeal against a dismissal decision by the Chief Public Prosecutor.

Question 27

Please indicate what independent body/bodies is/are responsible for visiting the prisons in Luxembourg. Please indicate how often such visits have been carried out since 2002, and the recommendations of such bodies following their visits.

143. Pursuant to article 11 of the grand-ducal regulation of 24 March 1989 on the administration and internal rules of prisons, members of the Chamber of Deputies have access to prisons. The Judicial Commission visited Luxembourg prison on 7 November 2006 and on 28 February 2007.

144. A number of topics were discussed at the meeting with the prison authorities. The parliamentarians did not make any formal recommendations following their visit. The secretary of the Judicial Commission produced a record.

145. The members of the Chamber of Deputies have access to detention centres provided they can first show that they are there in their official capacity.¹ However, special permission from the Minister of Justice is required to enter an individual cell that is occupied or to have contact with a particular detainee.

146. These visitors are accompanied by the prison director or his or her substitute.

147. In addition, Chief Public Prosecutor, prosecutors, chief magistrates, examining magistrates, juvenile judges, the judge advocate general, military prosecutors, members of the prison administration and members of the social protection service have free access to prisons in the performance of their duties or the fulfilment of their tasks.²

148. The Chief Public Prosecutor visits each prison whenever necessary, and at least four times annually, to oversee its functioning and services. He supervises the sentences being served by all convicted detainees. He must ensure the appropriate application of the judicial decision by directing and monitoring the conditions of its enforcement. To that end, it is incumbent upon him to decide the main details of the treatment of convicts and in particular the transfer of convicted detainees to either of the two prison centres. He must visit prisons regularly to check the conditions in which convicts are serving their sentences.

¹ Article 11 of the grand-ducal regulation of 24 March 1989 on the administration and internal rules of prisons.

² Article 12 of the above-mentioned grand-ducal regulation of 24 March 1989.

Article 14

Question 28

Please provide more detailed information on the bill intended to strengthen the rights of victims of criminal offences, introduced in the Chamber of Deputies on 22 May 2003, especially on the type of compensation to which victims of torture would be entitled.

149. Bill No. 5156 aims, among other things, to amend the Act of 12 March 1984 on compensation for certain victims of bodily injury resulting from an offence and the punishment of fraudulent insolvency so as to increase possibilities for compensation for victims of acts of violence on the basis of this legislation.

150. The amendments to this act should not, however, have an impact on the question of the compensation of victims of torture.

151. The Act of 12 March 1984 has a subsidiary character in the sense that compensation on the basis of the act may only be granted if the victim does not have any other means of obtaining sufficient and effective compensation for the injury sustained.

152. In the case of an act of torture within the meaning of the Convention, however, the victim may assert that the State is responsible from the point of view of both the ordinary law of civil responsibility (art. 1382 et seq. of the Civil Code) and on the basis of the provisions of the Act of 1 September 1988 on the civil responsibility of the State and the public authorities.³

153. To the extent that the victim, by arguing the civil responsibility of the State, has the possibility of obtaining compensation from the State for the harm caused, he or she may not claim a settlement of compensation on the basis of the Act of 12 March 1984. The victim would have no reason to prefer compensation by the State on the basis of the Act of 12 March 1984, because the amount that may be paid under these provisions is limited, maximum compensation payable to a claimant being set annually by the grand-ducal regulation (currently 63,000 euros).

³ Article 1 of the Act of 1 September 1988 provides that: “The State and other legal entities of public law shall be accountable, each in the framework of its public service tasks, for any harm caused by the improper performance of their services, both administrative and judicial, subject to the final court decision.

“However, when it would prove inequitable, in view of the nature and purpose of the act which caused the harm, to have the person concerned bear the costs of any such harm, compensation is due even in the absence of proof of an improper performance of service, provided that the harm is special and exceptional and that it is not due to a fault of the victim.”

Compensation for harm suffered in accordance with the rules of the ordinary law of responsibility or with the provisions of the Act of 1 September 1988 on the civil responsibility of the State and the public authorities is not subject to such a limit.

Question 29

Please clarify whether there have been any cases in which victims of torture or ill-treatment have received compensation.

154. To date, there have not been any demands for compensation for acts of torture or ill-treatment within the meaning of the Convention that have been introduced on the basis of the Act of 12 March 1984 on compensation for certain victims of bodily injury resulting from an offence and the punishment of fraudulent insolvency.

Article 15

Question 30

Please clarify whether the Code of Criminal Procedure explicitly stipulates that any statement proven to have been made as a result of torture shall not be invoked as evidence in any proceedings.

155. Under article 260-1 of the Criminal Code, any public official in a position of authority who wilfully inflicts torture within the meaning of the Convention against Torture in such a manner as to cause pain in order to extract information or confessions from an individual or third party; or to inflict punishment for an act which an individual or third party has either committed or is suspected of having committed; or to intimidate or put pressure on an individual or third party; or for any other reason based on any form of discrimination whatsoever shall be punishable by 5-10 years' imprisonment.

156. As torture is a crime, it clearly cannot be invoked as evidence. In keeping with the general principles on criminal matters, all evidence must be obtained in a fair manner.

Article 16

Question 31

Please provide information on the measures taken to prevent the excessive use of force by the police, particularly the use of handcuffs - even during a medical examination.

157. It is a fact that a number of persons detained by the police have complained of an abusive use of handcuffs, either that they were unnecessary or that they were put on too tightly.

158. See our reply to question 18.

159. Handcuffing techniques are regularly taught and reviewed for all police personnel as part of in-service training in police tactics.

160. The standing orders of the grand-ducal police state the following:

“Apart from convicted persons or persons in pretrial detention, handcuffing is still used in the following cases:

“(a) Cases in which the law provides for a person to be imprisoned;

“(b) Cases in which security measures must be taken for police officers or others.”

161. These instructions mean that the application of handcuffs must really be indispensable, their use must be limited in time, and they are rarely used on minors.

162. When the use of handcuffs proves necessary, the competent prosecutor must be informed by means of a written report. The report must not only make mention of the use of handcuffs, but must also indicate the exact circumstances that led the police to use them.

163. If a report is made, every use of handcuffs must be noted and explained.

164. Any inappropriate use of handcuffs is prohibited, for example closing them so tightly that the detainee’s blood cannot circulate normally.

165. With regard to the use of handcuffs during a medical examination, attention is drawn to our reply to question 17.

166. Since the anti-drug division was set up in 1992, police officers have been attending special classes on the proper use of police techniques (response methods, use of firearms, handcuffing, etc.) taught by specialized services from Germany and France (school for customs officers, the police and the gendarmerie).

167. With regard to handcuffing during medical examinations, it should be pointed out that detainees do not wear handcuffs during such examinations. It may happen, however, that a detainee is extremely aggressive towards the police officers and the physician, in which case safety considerations are paramount. There has never been such a case on the premises of the anti-drugs division response team.

Question 32

Please provide information on efforts made by Luxembourg to combat trafficking in persons.

168. In its efforts to combat trafficking in human beings, Luxembourg is in the process of bringing its legislation into line with recent international instruments in the area, in particular

the United Nations Palermo Protocol (2000), the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and the relevant European Union instruments.

169. A working group has been established within the Ministry of Justice to incorporate the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005, which Luxembourg has signed, in domestic law.

170. In this connection, the authorities responsible for prosecuting traffickers and protecting victims have been made aware of the issue through training and coordination.

171. Thus there were three training initiatives in 2006: first, a training course organized by the Ministry of Justice on trafficking in human beings and the identification of victims; and, second, two training courses organized by the Ministry of Equal Opportunity for women's shelters which deal directly with the victims (introduction to the phenomenon and concept of cooperation with the police).

172. At the same time, there have been more selective training courses within the police force itself taught by persons with experience in the area. The setting up of the above-mentioned special investigation team is a natural result of this.

173. This information clearly shows that there has been a growing awareness of the issue in Luxembourg and that focused efforts have been made at several levels to combat this problem.

174. Concerning the efforts made by the grand-ducal police force to combat trafficking in persons, attention is drawn to the establishment of the Special Investigation Team on Trafficking in Human Beings (GES-TEH).

175. The highest priority of the team, which was established on 1 October 2006 and is made up of four police officers, is to conduct large-scale investigations in the area of trafficking in human beings, initially limited to the issues of trafficking and procuring, to support the investigations carried out by the criminal investigation research services (SREC) at the international level, in particular verifications through international police cooperation channels and, in consultation with the judicial authorities, to coordinate national and regional investigations on trafficking in persons. Depending on the progress made in the investigations and the information gathered, the scope of the investigation may be extended to include other forms of trafficking in persons (organized channels of illegal immigration, etc.).

176. The judicial supervision and investigations currently being undertaken focus on three areas:

- (a) Night clubs and bars;
- (b) Street prostitution;
- (c) Private flats.

177. Collecting evidence and tracking down perpetrators by means of investigations and verifications through international police cooperation channels (international letters rogatory, Europol/Interpol requests), the investigators have uncovered violations of article 379 bis (procuring) and 382 (soliciting) of the Criminal Code, the liquor licensing laws, the Labour Act and the Aliens Act.

178. All information (records, reports, verifications, etc.) collected by the various police units are centralized in GES-TEH and forwarded to the Criminal Analysis Service of the Information Office for assessment.

179. It should also be noted that Luxembourg is actively participating in the COSPOL (Comprehensive Operational Strategic Planning for the Police) project on trafficking in human beings in the framework of the Council of the European Union. The relevant plan of action aims to combat Romanian networks for the sexual exploitation of women and children.

Other issues

Question 33

Does Luxembourg envisage ratifying the Optional Protocol to the Convention against Torture? If so, has it established a national mechanism which makes it possible to carry out periodic visits to places of detention with a view to preventing torture or other cruel, inhuman or degrading treatment?

180. Given that Luxembourg is one of the States bound by the European Convention of 26 November 1987 for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and by the two protocols to the Convention, it is subject to an international monitoring mechanism and to visits to detention centres by the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

181. Ratification of the Optional Protocol is not considered to be a matter of priority, since the Protocol institutes arrangements quite similar to those under which Luxembourg is already operating pursuant to the above-mentioned Council of Europe instruments.

Question 34

Please indicate whether Luxembourg has legislation aimed at preventing and prohibiting the production, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please give information about its content and implementation. If not, please indicate whether the adoption of such legislation is being considered.

182. Luxembourg does not have any specific legislation like the one referred to in the question.

183. However, pursuant to article 67 of the Criminal Code, persons who procure weapons, tools or any other instruments used to commit an offence, knowing that they were intended to be used

for that purpose, shall be punished as accomplices to a criminal offence. The same applies to persons who knowingly aid or abet the perpetrator or perpetrators in preparing, facilitating or committing the offence.

184. The penalties applicable to the accomplices to an offence are decided pursuant to the provisions of article 69 of the Criminal Code.⁴

⁴ Article 67 of the Criminal Code:

“The following shall be punished as accomplices of a criminal offence:

“Persons who give instructions to commit an offence;

“Persons who procure weapons, tools or any other means used to commit the offence, knowing that they were intended to be used for that purpose;

“Persons who, in addition to the case provided for in article 66, paragraph 3, knowingly aid or abet the perpetrator or perpetrators in preparing, facilitating or committing the offence.”

Article 69 of the Criminal Code:

“Accomplices incur the penalty immediately below the one that they would have incurred if they had been perpetrators, in accordance with the scale set out in article 52 of this Code. The penalty imposed on accomplices to an offence shall not exceed two thirds that which would be imposed if they were the perpetrators of the offence.”