



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

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## Committee against Torture

Seventy-sixth session

### Summary record of the 1990th meeting

Held at the Palais Wilson, Geneva, on Thursday, 27 April 2023, at 3 p.m.

*Chair:* Mr. Heller

## Contents

Consideration of reports submitted by States parties under article 19 of the Convention  
(continued)

*Eighth periodic report of Luxembourg (continued)*

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention (continued)**

*Eighth periodic report of Luxembourg (continued) (CAT/C/LUX/8; CAT/C/LUX/QPR/8)*

1. *At the invitation of the Chair, the delegation of Luxembourg joined the meeting.*
2. **A representative of Luxembourg** said that although it was not possible to provide precise occupancy rates for police holding cells, that figure was always below 100 per cent, as all cells were only ever occupied by one detainee and were only occupied temporarily.
3. **A representative of Luxembourg** said that the occupancy rate at the migrant detention centre had been 97.5 per cent in 2019–2020, 98 per cent in 2021 and 97.3 per cent in 2022.
4. **A representative of Luxembourg** said that occupancy rates of the Security Unit of the State Socio-Educational Centre at Dreiborn had been 53 per cent in 2019, 35 per cent in 2020, 84 per cent in 2021 and 73 per cent in 2022.
5. **A representative of Luxembourg** said that non-custodial sentences could be imposed in respect of some hate crimes reported through an online hate speech reporting system known as the BEE SECURE Stopline. Once an instance of hate speech had been reported through the system and the perpetrator had been identified, he or she would be summoned by the Office of the Public Prosecutor and questioned by police. If those bodies decided that a non-custodial measure was appropriate, they could decide to halt the criminal investigation and offer the perpetrator the opportunity to participate in an educational programme aimed at helping participants to reflect on their actions and the limits of freedom of expression. The programme also brought perpetrators into contact with victims of hate crimes. The organization conducting the programme would inform the Office of the Public Prosecutor and the police of the perpetrator’s progress, at which point the Office could decide whether it wished to close the case or refer it to the criminal courts.
6. Where the perpetrator was tried and convicted, a judge could hand down a suspended prison sentence and order the perpetrator to participate in the educational programme, in which case the perpetrator would avoid prison if he or she demonstrated good behaviour. Over 90 per cent of participants had not reoffended, which was evidence of the programme’s effectiveness.
7. **A representative of Luxembourg** said that pregnant women in Luxembourg Prison received the same prenatal and postnatal health care as women outside the prison system, including regular check-ups at a hospital maternity ward and postnatal support from midwives. Imprisoned mothers were allowed to live with their infants without restriction and were encouraged to do so. Visits between imprisoned parents and their children were organized through the Treff-Punkt prison service.
8. **A representative of Luxembourg** said that the cost of all medical and psychotherapy care provided to young people placed in the Security Unit of the State Socio-Educational Centre were covered by the State.
9. **A representative of Luxembourg** said that health care and hygiene in prisons had been addressed in the development of the Prison Service Reform Act of 20 July 2018. Before the reform, Luxembourg Prison had employed a doctor and several nurses and had signed an agreement with Luxembourg Hospital for the provision of health-care services to prisoners. However, since the adoption of the Act, prisons must sign agreements with external partners for the provision of any services that fell outside their central remit. The doctor had continued to provide care and monitor hygiene conditions in the prison until his retirement, while the nurses had been reassigned to other State services. While prison directors were responsible for ensuring hygienic conditions in prisons, the Government had not deemed it necessary to expressly include that responsibility in the Act. The Prison Administration could decide to entrust the directors of the country’s three prisons with responsibility for engaging external service providers, or it could contract with a single provider to cover all three prisons.

10. **A representative of Luxembourg** said that two interministerial working groups had been established by the Ministry of Justice, the Ministry of Education, Children and Youth and the Ministry of Health to ensure that adult and juvenile detainees received the psychiatric care they needed and to work towards the establishment of a medical facility offering psychiatric and psychotherapeutic care to prisoners. The discussion as to whether that facility should be internal or external to the prisons was still ongoing.

11. **A representative of Luxembourg** said that the Neuropsychiatric Hospital sent a psychiatrist to the Security Unit of the State Socio-Educational Centre for 20 hours each week to conduct psychiatric and psychotherapeutic assessments of the young residents, who were then referred for outpatient or inpatient care as necessary. The Centre also employed a full-time psychiatric nurse and had signed a cooperation agreement with the National Centre for Child Psychiatry.

12. **A representative of Luxembourg** said that the new legal framework on criminal law applicable to minors enshrined the right to a lawyer for minors in conflict with the law and those subject to judicial protection procedures. A minor could only waive that right in certain cases, depending on the seriousness of the alleged offence, the complexity of the case and the sanctions likely to be applied. Legal assistance was free for minors and the State did not seek to recover legal aid expenses from their parents.

13. **Mr. Dockendorf** (Luxembourg), speaking as head of the delegation, said that his Government had taken note of the Committee's recommendations on combating drug trafficking and preventing violence through the establishment of small detention units. The opening of Uerschterhaff Prison had permitted the relocation of a large number of prisoners, which had already defused some difficult situations.

14. **A representative of Luxembourg** said that, to prevent violence among residents at the Security Unit of the State Socio-Educational Centre, each of its four units accommodated three young people who each had their own room, meaning that contact among them could be limited if needed. Violence was also reduced through individual supervision and awareness-raising activities and through close monitoring during sport and other activities.

15. **A representative of Luxembourg** said that in 2022 there had been 77 reported victims of trafficking for the purpose of sexual or labour exploitation, 74 per cent of whom had been women. Sixty victims of trafficking had already been identified in 2023, most of whom had been subjected to sexual exploitation. One possible reason for that increase was the establishment of a reporting system. The Ministry of Equality between Women and Men was responsible for coordinating assistance for victims of trafficking, including by ensuring their access to psychosocial support and by supporting them in administrative processes. Support was provided irrespective of the victim's sex, gender identity, age and country of origin. Accommodation was also provided to victims.

16. The Government was carrying out awareness-raising campaigns, including through the "Stoptraite" website on the prevention of trafficking in persons. A website developed by the Government on violence against women and domestic violence had been visited 10,000 times in March 2022 alone. The Ministry of Equality between Women and Men and the Ministry of Justice collaborated with two organizations offering training relating to trafficking in persons through the National Institute of Public Administration. The training was aimed at civil society organizations and labour inspectors.

17. **Mr. Dockendorf** (Luxembourg) said that for several years the Ministry of Foreign Affairs had been promoting the so-called "Luxembourg Guidelines" for the harmonization of terminology relating to the protection of children from sexual exploitation and sexual abuse. The Guidelines had been drawn up by the non-governmental organization ECPAT International alongside 18 partners, including United Nations specialized agencies.

18. **A representative of Luxembourg** said that the judicial authorities had not recorded any cases of sexual or other kinds of exploitation in the context of voluntourism. The abduction of minors, the abuse and sexual exploitation of children in prostitution, trafficking in persons and the sale of children, and child pornography were offences punishable under various articles of the Criminal Code, including when they were committed abroad. Victims

could receive support from various government agencies and non-governmental organizations.

19. **Mr. Dockendorf** (Luxembourg) said that the Government was waiting to receive the opinion of the Council of State on the bill concerning the statute of limitations for rape. Once received, the opinion would be examined and the relevant ministry would make any necessary amendments. Luxembourg would continue to contribute to the United Nations Voluntary Fund for Victims of Torture in 2023 and beyond.

20. **A representative of Luxembourg** said that the number of applications for international protection had peaked in 2017–2018 as a consequence of the migration crisis affecting Europe in recent years and the arrival of numerous Syrian refugees since 2015. The Government had received fewer applications for asylum in 2018 in comparison with 2015, partly because asylum-seekers had realized that the process was taking longer than it had before. In the meantime, the security situation in certain countries had stabilized, leading to fewer applications for international protection in 2017 and 2018. The delegation would provide the Committee with updated statistics for the period 2019–2022 in due course.

21. Factors that made asylum-seekers particularly vulnerable, including whether they were unaccompanied minors, elderly or in ill health, was taken into account when making decisions on their applications for international protection. Nonetheless, all applicants must meet the usual conditions in order to be granted asylum. No differentiation was made among asylum-seekers on the basis of their country of origin. The Government did not currently record information on the grounds invoked by lawyers in appeals against expulsion decisions brought before the administrative courts. When such appeals were lodged, they were examined in full compliance with the Convention, in particular article 3.

22. The country had welcomed Ukrainian refugees since early 2022. They had initially been provided with emergency accommodation and had later been able to obtain permanent accommodation, usually in hostels. The Government had been able to effectively address the sudden influx of refugees through the establishment of a “one-stop-shop” service enabling refugees to complete various administrative tasks in one place. In total, 5,088 refugees, including 4,916 Ukrainian nationals, had obtained temporary protection in 2022. Between January and March 2023, 3,633 people had renewed their temporary protection.

23. The competent authorities were aware of the concerns raised regarding allegations of improper practices during the registration of asylum applications by the Directorate of Immigration in the summer of 2020. The Administrative Tribunal had handed down a judgment in the case on 29 September 2022, affirming that it found no evidence of the existence of an institutionalized practice of refusing to register applications for international protection or of attempting to dissuade individuals from applying for international protection. Following an appeal lodged by a non-governmental organization, the Administrative Court had upheld that decision in a judgment of 23 February 2023.

24. The Government recognized the importance of fair and humane asylum procedures. All immigration officials who interviewed asylum-seekers or made decisions on their applications received training on interviewing vulnerable people. Training was also provided on gender-based violence in a migration context, working with victims of trafficking, labour exploitation and non-violent communication. Officials of the National Reception Office received similar training.

25. Police officers specialized in preventing and combating human trafficking received specific training, which covered, *inter alia*, anti-trafficking laws, the modus operandi of traffickers and how to identify and deal with trafficking victims. Police officers responsible for enforcing the removal of illegal aliens by plane attended a week-long mandatory training course organized by the European Border and Coast Guard Agency (Frontex). Training on how to assist victims of female genital mutilation would be dispensed to medical personnel within the Department of Health later in 2023. The opening of a new psychological care unit within the Department in mid-May 2023 would improve the medical and psychological assessment of suspected victims of torture and facilitate their referral to the competent services.

26. The procedure for determining the age of asylum-seekers by examining their secondary sex characteristics was no longer applied. Instead, a bone age assessment consisting of X-rays of the hand, collarbone and teeth was carried out by an expert doctor from the national health laboratory who, after analysing the results obtained, issued a report confirming the asylum-seeker's age.

27. The costs associated with housing applicants for international protection were borne in full by the National Reception Office. The financial aid granted to applicants, which was defined by law, was currently €231. The Supported Integration Programme laid the groundwork for the social and labour market integration of persons who were in the process of applying for or who had already been granted international protection in Luxembourg. New arrivals were assisted in learning the country's languages and in enrolling their children in school.

28. **A representative of Luxembourg** said that the administrative and immigration procedures for unaccompanied foreign minors were established by the National Reception Office, which, in conjunction with the National Children's Bureau, also provided such minors with accommodation, social support and schooling. In accordance with Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, unaccompanied foreign minors under 16.5 years of age were accommodated in a child and family support setting, whereas older minors were placed in the care of the National Reception Office. The congestion in the initial reception facility for unaccompanied foreign minors observed in early 2022 could be explained by the recent large influx of refugees. The National Children's Bureau had since created 75 additional places in accommodation and care structures for unaccompanied foreign minors under 16.5 years of age, which had removed the bottleneck in the system. Minors tended to spend only a short time in initial reception structures before being transferred to a long-term care facility. In 2022, the National Children's Bureau had transferred 81 minors from initial reception to long-term care facilities.

29. Unaccompanied foreign minors arriving in Luxembourg underwent a medical and psychological examination performed by specially trained professionals. Professionals belonging to the Luxembourg Association for Social Paediatrics were trained to deal with minors who were victims of violence and abuse. The costs of psychological support and therapy for minors were covered in full by the National Health Fund.

30. Regarding mental health care specifically, each accommodation facility operated by the National Children's Bureau had a multidisciplinary care team which engaged with unaccompanied foreign minors to identify any specific or pressing mental health needs. Any minors found to need additional support could be referred to an appropriate mental health professional. The staff of accommodation facilities for unaccompanied foreign minors received specialized training, which included training on how to identify victims of human trafficking.

31. **A representative of Luxembourg** said that any extradition requests received by Luxembourg from a State with which it had no extradition treaty would be handled in accordance with article 12 of the Extradition Act of 20 June 2001, which provided that, if the extradition request related to an offence subject to capital punishment under the law of the requesting State, extradition could be granted only if the requesting State gave adequate assurances that capital punishment would not be carried out. In addition, no person could be extradited where there were substantial grounds for believing that he or she would be in danger of being subjected to torture.

32. Effective data collection and reporting were the key to combating and punishing racist hate speech. The BEE SECURE Stopline provided a channel for reporting illegal online hate speech, while the BEE SECURE Helpline provided assistance to persons who were the targets of such hate speech. A campaign to counter online hate speech and to inform the public about freedom of expression and its limits had been launched by BEE SECURE in 2022.

33. According to available data, there had been fewer instances of racism, discrimination and hate speech online in 2022 compared with the previous year, when there had been an upsurge in such behaviour associated with the coronavirus disease (COVID-19) pandemic.

Of the 169 reports received in 2022, 97 had concerned online content that was potentially illegal. From February 2023 onward, most of the online content reported concerned racism and discrimination based on religion, ethnic origin, sexual orientation or xenophobia, constituting hate speech in 73 cases. A total of 23 reports of racial hatred had been received.

34. Regarding the punishment of racist hate speech, as the Criminal Code provided that hatred was an aggravating circumstance, any person who committed a hate crime would be liable to double the maximum custodial sentence and fine imposed by law. Case law on the subject was consistent: the message transmitted need not contain an overt incitement to hatred, violence or discrimination in order to constitute hate speech; it must simply be transmitted in such a way that the recipient could be led to develop feelings of hatred towards a person or group of persons.

35. On 1 June 2022, an interministerial delegate had been appointed to, *inter alia*, coordinate policies to combat racism, antisemitism and hatred against the LGBTIQ+ community and to facilitate exchanges and cooperation between the relevant ministerial departments. The delegate had played a key role in devising the national action plan to combat antisemitism, which, once adopted, would pave the way for the adoption of the national action plan to combat racism. The latter was being drafted with the support of civil society and would hopefully be finalized by the end of 2023.

36. **A representative of Luxembourg** said that a preliminary bill regarding the treatment of intersex children was currently being drafted. Meetings had been set up with medical experts and patients to gather their opinions on the issue. Preliminary findings indicated that the Government should consider banning surgical interventions for variations in sex development and, as a safeguard measure, establishing a committee to determine the action to be taken in individual cases. As the necessary definitions had not yet been laid down, it had not been possible to collect structured data on intersex children. Some ad hoc data were, however, available. Around 10 children considered to be intersex were treated each year. In the previous 12 years, only one intersex child had undergone a sex assignment procedure. The possibility of setting up a national reference centre for intersex issues was currently being explored. The centre would operate as part of an international network of reference centres and thus be able to draw on foreign expertise to ensure that intersex children in Luxembourg received optimal care and that their parents received the best advice and support.

37. **A representative of Luxembourg** said that the use of weapons by members of the security forces was regulated by the Act of 28 July 1973, which set out the circumstances in which weapons could be used and against whom. In short, weapons could be used only in the context of approved security operations, only in cases of absolute necessity and only as a last resort. They must be used in a manner that was proportional and appropriate to the situation, and law enforcement officers must give two advance warnings of their intention to use a weapon, except where it was impossible to do so, such as in cases of self-defence. Discussions on the possibility of overhauling the existing legal framework governing the use of weapons had taken place within the competent government ministry. When a shot was fired, whether accidentally or not, the Inspectorate General of the Police was notified and could launch an investigation if necessary.

38. Body cameras had been introduced under the 2018–2023 coalition agreement in response to a perceived lack of respect for and efforts to obstruct police work, an uptick in verbal threats and physical violence against police officers, complaints filed against police officers and the phenomenon of amateurs filming police activities. The legal framework governing the use of body cameras was strict and ensured respect for individuals' rights. Body cameras must be used in accordance with the principles of proportionality and necessity. The legislative amendments that had been put forward established the obligation for police officers to inform the persons concerned before they started filming unless unforeseen circumstances prevented them from doing so.

39. The police officer wearing the body camera should consult the recordings made only if their police duties required it. Other police officers could consult the recordings only if they had a legitimate interest in doing so in connection with their police duties and only with the authorization of the Director General of the Luxembourg Police. The Inspectorate General of the Police could ask the Director General for access to body camera recordings to

verify that police officers were making proper use of the tool. Such recordings could be used as incriminating evidence during investigations conducted by the Inspectorate General. However, police violence was not a phenomenon that existed in Luxembourg and misuse of body cameras was not therefore a major concern. The police forces of neighbouring countries had been asked to share their experiences of using the devices, and the opinion of civil society had been sought to ensure that their use protected citizens and police officers alike.

40. **Mr. Dockendorf** (Luxembourg) said that a third full-time employee had recently been recruited to the external service for the monitoring of places of deprivation of liberty, although staffing remained low, given the workload. The Advisory Commission on Human Rights had been asked to provide information on the renewal of its members' mandates, which would be submitted to the Committee in writing. His delegation would be grateful for recommendations on how to ensure effective and independent human rights institutions.

41. **Mr. Touzé** (Country Rapporteur) said that he would appreciate clarification regarding reports that unaccompanied minors between the ages of 16 and 18 were not always covered by the guardianship system provided for in the law on the protection of victims of trafficking in persons and that the new law on asylum provided that minors approaching the age of 18 were not supported by an administrator. He wished to have more information on compensation for victims of labour trafficking, which was reportedly rarely requested and often either not granted or not at the level requested by the victim. Lastly, it would be interesting to hear about the police unit specializing in prevention of domestic violence and support for victims.

42. **Ms. Maeda** (Country Rapporteur) said that she would like to know whether the Government was considering amending article 454 of the Criminal Code to add language to the prohibited motives for discrimination. She wished to have clarification on whether the Act of 9 January 1985 on Grave Breaches of the Geneva Conventions of 12 August 1949, which provided for universal jurisdiction over the most serious crimes, could be used to try cases of torture committed abroad by Luxembourg nationals or by persons not present in the country. She would also like to know how many prosecutions had been initiated pursuant to the Act.

*The meeting was suspended at 4.35 p.m. and resumed at 4.50 p.m.*

43. **A representative of Luxembourg** said that the Directorate of Immigration consistently referred unaccompanied minors to the family court for the appointment of an ad hoc administrator, who was a specialist immigration lawyer who would sign the minor's application for international protection. Unaccompanied minors were also assigned a legal administrator, or guardian, who was responsible for day-to-day tasks such as signing consent forms for school trips. The home where the minor was placed was often named as legal administrator. The Act on International Protection and Temporary Protection provided that it was not mandatory to appoint an ad hoc administrator for a minor who was expected to turn 18 before the decision on international protection was made. Such minors could choose their own lawyers and submit an application in their own name.

44. **A representative of Luxembourg** said that prostitution networks operated in Luxembourg owing to its geographical location. Victims of trafficking were physically relocated for their own protection, often outside the country, which was why the number of compensation requests was low. Victims decided themselves how much compensation to request. The final decision was made by the courts, not the Government. A fund had been established to pay compensation, with the amount capped at €63,000.

45. **A representative of Luxembourg** said that the criminal investigation police had a nascent domestic violence unit staffed by two persons. Best practices from abroad were being studied to determine which model to adopt. It was expected that the unit would handle the most serious cases, as determined on the basis of a risk assessment conducted by police officers on the ground.

46. **A representative of Luxembourg** said that the addition of language as a basis for discrimination had been discussed when the Criminal Code had been amended to add hatred as an aggravating circumstance. It had been decided that, in practice, languages were associated with ethnicities and nations. The existing motives for discrimination could

therefore be used to prosecute offences motivated by hatred based on ethnicity or national origin as reflected in the language spoken by the victim.

47. **Mr. Dockendorf** (Luxembourg) said that the Act on Grave Breaches of the Geneva Conventions of 12 August 1949 had been repealed and superseded by the Act of 27 February 2012, which had brought domestic law into line with the provisions of the Rome Statute of the International Criminal Court. Although domestic law, in line with the Rome Statute, ensured the prosecution of the most serious crimes, it no longer provided for universal jurisdiction, except for terrorism offences. The Committee could, of course, recommend that Luxembourg should reintroduce universal jurisdiction for other offences.

48. **The Chair** thanked the delegation of Luxembourg for its comprehensive and pertinent responses.

49. **Mr. Dockendorf** (Luxembourg) said that his delegation wished to thank the Committee both for the constructive dialogue and for its work to prevent one of the worst crimes known to humanity. The absolute prohibition of torture was one of the few peremptory norms of international law and all States had an obligation to make every effort to prevent it at the national and international levels.

*The meeting rose at 5.15 p.m.*