



Child Rights References in the Universal Periodic Review

Summary:

A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Luxembourg - 3rd Session - 2008

2nd December, 3pm to 6pm

National Report

37. The Act of 25 July 2002 instituted the Luxembourg Committee on the Rights of the Child, known as the “Ombuds-Comité fir d’Rechter vum Kand” (ORK), an independent and neutral committee responsible for implementing and promoting the Convention on the Rights of the Child ratified by Luxembourg in 1993.

1. Planned measures to assist children in distress

(a) Implementation of Draft Law No. 5754 on assistance for children

38. This deals in the first place with educational, family, psychosocial and therapeutic services developed to assist children and their families. The priority objectives include the opening of a national children’s bureau, access for all children to the required assistance, promoting the coordination of assistance measures and services, and the collection of data.

(b) Development and diversification of aid and assistance services according to the real needs of children in distress

39. The aim is to develop and diversify social aid measures for children, so as to ensure that the supply of assistance is sufficient to meet demand and that a range of services is available offering varying degrees of protection, from family help to the judicial placing of minors in a host family or an institution.

120. To help schoolchildren newly arrived in Luxembourg, the Ministry has set up the Cellule d’accueil scolaire pour élèves nouveaux arrivants (CASNA) (Educational reception unit for newly arrived pupils). This unit provides information in different languages concerning the Luxembourg school system and the assistance available for children speaking foreign languages (with entry courses or classes teaching the main languages of the school system, namely French, German and Letzeburgish, and special language classes in post-primary education). All new arrivals aged between 12 and 18 must pass through CASNA in order to be integrated in a class or vocation training course suited to their profile.¹²

UN Compilation

2. In 2005, CRC noted with appreciation the adoption of the Act introducing the crime of torture in the Criminal Code; the Act establishing a regime of temporary protection for asylum-seekers; and the Act introducing, inter alia, a new article 384 of the Criminal Code expressly punishing child pornography and providing for the confiscation of all related items.¹⁴

11. CRC in 2005 and CAT in 2007³⁰ noted with appreciation the establishment of a Luxembourg committee on the rights of the child, the “Ombuds-comité,” and CRC recommended strengthening its political, human and financial support.³¹ While noting the reorganization of ministries and the creation of a division for the promotion of children’s rights within the Ministry of Family and Integration, CRC recommended that Luxembourg establish a body at the inter-ministerial level or entrust an existing one within its administration with a clear mandate to coordinate all activities related to the implementation of the Convention on the Rights of the Child.³²

20. In 2005, CRC was concerned about the disparities in the enjoyment of rights experienced by children belonging to vulnerable groups, such as children with disabilities and refugee and asylum-seeking children. It recommended that Luxembourg increase its efforts to ensure non-discrimination and adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.⁵¹

23. In 2005, CRC was concerned that the conditions of work for women and girls arriving in Luxembourg to work in the entertainment sector might lead them to being exposed to prostitution and trafficking in human beings. It recommended strengthening efforts to identify, prevent and combat trafficking in children for sexual and other exploitative purposes.⁵⁶ In 2007, the ILO Committee of Experts noted this recommendation by the CRC and similarly requested Luxembourg to undertake studies with a view to assessing the nature and scope of the problem and to provide information in this respect.⁵⁷ >

25. In 2005, the Special Rapporteur on the sale of children, child prostitution and child pornography noted that the New Technology Department of the Judicial Police had a small IT laboratory to give technical support to the investigations on child pornography on the internet.⁶⁰ On the same issue and while appreciating the measures taken by Luxembourg to prevent and combat child pornography on the Internet, CRC in 2005 recommended taking all appropriate measures to effectively protect children from being exposed to violence, racism and pornography through modern information technologies.⁶¹ In relation to minors who are victims of commercial sexual exploitation, the Special Rapporteur on the sale of children, child prostitution and child pornography noted in 2008 that Luxembourg had stated that these cases were rare, due in part to their small number, but that victims of these abuses were treated as children in need of care and protection, as no specific programmes designed for this target group had been established.⁶² 26. CRC in 2005 and CAT in 2007 recommended that Luxembourg keep children in conflict with the law separate from minors with social or behavioural problems; ensure that minors are never tried as adults; set up an independent monitoring body to inspect regularly juvenile facilities;⁶³ and bring its system of juvenile justice into line with United Nations standards in this field.⁶⁴ 28. In 2005, CRC was concerned that children born anonymously are denied the right to know their parents, and recommended that Luxembourg register and file all information about the parent(s) in order to allow the child to know - as far as possible and at the appropriate time - his/her parent(s).⁶⁶ Also concerned that parents automatically lose parental authority over their children when they are placed in foster care or in institutions by the courts, CRC recommended taking all possible measures to protect parental rights and parent-child relationship and to only use the transfer of parental authority in exceptional circumstances and in the best interests of the child.⁶⁷ It also recommended that placement of children in foster care or in institutions may only be ordered for a fixed period, with the possibility of prolonging the placement for another fixed period, thereby providing for a regular review of the conditions of and the need for placement.⁶⁸ 46. In 2005, CRC recommended that Luxembourg take all necessary measures for an adequate reception of unaccompanied and separated children applying for asylum.⁹⁵ It also recommended that Luxembourg continue identifying systematically, at the earliest possible stage, refugee, asylum-seeking and migrant children entering Luxembourg who may have been recruited or used in hostilities abroad contrary to the Optional Protocol and providing them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration.⁹⁶ 51. In 2005, CRC welcomed the regular financing of projects and non-governmental organizations for the protection and rehabilitation of children in armed conflicts. It also welcomed the substantial contribution of Luxembourg to the budget of the United Nations Relief and Works Agency for Palestine Refugees in the Near East as well as its active participation in multilateral activities aimed at combating the accumulation and proliferation of small arms.¹⁰⁴

Stakeholder Compilation

The Global Initiative to End All Corporal Punishment of Children (GIEACP) noted that corporal punishment is lawful in the home. The right of “paternal punishment” in the Civil Code was abolished in 1939, but there is no explicit prohibition of all corporal punishment by parents. The Government has stated its intention to prohibit corporal punishment at home, and as at May 2007, a bill was pending that would prohibit corporal punishment within the family and in all educational settings. Corporal punishment is already prohibited in schools and in the penal system. There is no explicit prohibition of corporal punishment in alternative care settings.²⁴

Final Report

Concerning the rights of the child, reform on education was being prepared to ensure equal opportunities and a reform of professional training was adopted in November 2008. On the concerns of the Committee on the Rights of the Child that migrant children were disadvantaged by education programmes, the representative affirmed that according to a study undertaken in this area, social and professional category was a more important factor in school success than nationality. The Government offers welcome and special language classes for post-primary teaching.

21. Italy congratulated Luxembourg on its comprehensive national report and asked whether it intends to proceed with the ratification of the Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography. While welcoming the legislative and institutional initiatives taken by the Government of Luxembourg to strengthen the fight against all forms of racial discrimination, Italy recommended that the Government transmit to the Committee on the Elimination of Racial Discrimination its overdue national reports, in order to share its experience in this domain.

22. Malaysia commended the adoption of new legal and policy measures by the Government of Luxembourg aimed at strengthening the protection of the human rights not only of its people, but also of foreigners and asylum-seekers. Malaysia also noted with approval the State’s serious efforts to ratify the Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography. Malaysia was also interested in knowing what has been done to address the issues of the persistence of stereotypical attitudes towards women, mentioned in the observations of the Committee on the Elimination of Discrimination against Women in 2008, as well as of racist and xenophobic incidents, particularly against Arabs and Muslims, and discriminatory attitudes towards ethnic minorities by public officials, quoted in the Committee’s observations in 2005. Malaysia recommended that the recommendations of the Committee on the Elimination of Racial Discrimination be adopted, in particular those calling for all officials coming into contact with minority groups to receive human rights training and the recommendation that any organization promoting or inciting discrimination should be declared illegal and prohibited, and recognition that participation in such organizations is an offence punishable by law.

23. In response to comments and questions put forward by various delegations, Luxembourg mentioned that, regarding conventions that it has not yet ratified, a draft law was tabled on 13 March 2008 for the ratification of the Optional Protocol to the Convention against Torture. The draft law provides for the creation of a general external control mechanism for places of detention and grants particular competence in this area to the mediator, an independent institution with prerogatives to address the Government when rights have not been respected. The mediator has also a function of monitoring prisons. The draft law will be adopted in the next few months. With regard to the Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography, the Government will ratify it at the same time as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The draft law is being elaborated and will be brought before Parliament in the near future. Part of the Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography is also covered by the law on human trafficking, which has already been tabled in 2008.

26. With regard to discrimination against migrant children, Luxembourg stressed that school programmes and welcome and support classes were organized to help them in their studies, particularly children who had language problems. Luxembourg indicated that a new law on assistance to children prohibiting corporal punishment, including in the home, was adopted on 20 November 2008.

30. The Czech Republic expressed appreciation for the national report of Luxembourg as well as for the very informative introductory statement. Specifically it thanked for the information on measures to protect the rights of children of detainees/prisoners and of children/juveniles alleged to have infringed the criminal law. Luxembourg was asked whether there have been any recent changes in rules on maximum time detainees may be held in solitary confinement. While welcoming the fact that Luxembourg had signed the Optional Protocol to the Convention against Torture, the Czech Republic recommended its early ratification and the establishment of its national preventive mechanism accordingly.

33. Egypt expressed its appreciation to Luxembourg for the presentation and the national report. Luxembourg was commended for its well developed institutional and human rights infrastructure and Egypt was interested in having further information on the National Council for Foreigners and Mediator, and on the Ombuds-Comité relating to the rights of children. Egypt also applauded Luxembourg for its commitment to multilateral cooperation, interculturalism and the protection of children in armed conflict. In this regard, Egypt expressed its appreciation for the contributions by Luxembourg to the financing of the United Nations Relief and Works Agency for Palestine Refugees and for the fact that Luxembourg is one of the few States to allocate more than 0.7 per cent of GDP to development assistance. Egypt was interested in obtaining further information on the policy of the Government of Luxembourg with regard to migration, combating racism and xenophobia, in particular what has been done in the area of education and media. Egypt recommended that Luxembourg consider adhering to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and effectively address the difficulties experienced by migrants, particularly migrant women. It also recommended that it ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; strengthen efforts to combat human trafficking and sexual exploitation; strengthen efforts to combat racism, racial discrimination, xenophobia and related intolerance; and implement the recommendation of the Committee on the Elimination of Racial Discrimination in this regard.

37. The Islamic Republic of Iran shared the concerns expressed by various United Nations treaty bodies on a number of issues, including the difficulties experienced by immigrant women, racist and xenophobic incidents, in particular against Arabs and Muslims, violence against women, trafficking in human beings, child pornography and disadvantaged foreign children in educational programmes. It also raised particular cases that need elaboration of measures by the Government of Luxembourg. It recommended that Luxembourg take appropriate measures to tackle practically the problem of trafficking for sexual exploitation in a comprehensive manner. With regard to domestic violence, it recommended that Luxembourg promote the strengthening of the foundations of the family and its associated values in society through appropriate ways and means. The Islamic Republic of Iran also recommended that Luxembourg revisit relevant policies and practices to create better conditions of work for workers and their families.

38. China appreciated the achievements and advanced practices made by the Government of Luxembourg in all aspects of human rights, especially new legislative and administrative measures taken in nationality policy, women's rights, trafficking in human beings and the protection of the rights of the child. China noted that in the protection of the rights of the child, Luxembourg has a very special parental assistance programme, halfway houses, parent helpers and comprehension programme that China has great interest in. China asked for more detail on the operation-model of the programme. It also noted that, in recent years, Luxembourg has taken a series of active measures to prevent and combat discrimination, including the establishment of a centre for equal treatment in 2006. China asked if the initial expectation for this centre had been met, what were the major achievements made and the problems encountered.

40. Luxembourg included aggravating circumstances in the case of a crime coupled with discriminatory behaviour and a 1997 law included provisions for prison sentences of up to two years for any person belonging to an organization aiming at inciting to discriminatory and racist behaviour. Luxembourg is making efforts to deal with the slow pace of the justice system and has increased its judicial staff. Luxembourg stressed that not all asylum-seekers are detained; it is only in specific cases of non-cooperation by asylum-seekers that detention is provided for by the law. A bill is currently being drafted for a specific detention centre separate from prison. No A/HRC/10/72 Page 12 minors may be held in the detention centre for more than 72 hours. With regard to the new immigration law, one single permit allows migrants from non European Union countries to reside and work in Luxembourg. There is ongoing reflection and a debate in Parliament on how to improve the fight against phenomena such as human trafficking and prostitution.

41. With regard to the question of detainees who work in the private sector, there are indeed some cases where people who are on parole are allowed to work. They have the same social rights, are allowed to work outside the prison, have a legal contract, a salary and social security benefits. There is no discrimination against people who are in partial detention or on parole. There is also a washroom in the prison that is run cooperatively with the private sector and people who work in the washroom are paid wages. Luxembourg noted that there is a mediation system for minors in detention and efforts are made to reintegrate them in society, as they have the possibility of

being trained and working. Respect for equality between girls and boys is an educational principle and children are taught about non-violence within the school system.

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45. Slovenia noted the many impressive positive developments and highlighted the fact that Luxembourg allocates more than 0.7 per cent to official development assistance. Slovenia was interested in learning whether Luxembourg is considering introducing temporary special measures to increase the involvement of women in political and public life and in receiving information on the status of adoption of the draft law reforming divorce. It asked questions, also as recommendations, on the provision made for alternatives to custody, both pre-trial and in sentencing, and on the measures implemented to protect the best interests of babies and children affected by parental detention or imprisonment. Slovenia also recommended including a gender perspective in the universal periodic review follow-up process in a systematic and continuous manner.

49. Ghana appreciated the initiatives taken by the Government of Luxembourg, such as the legislation to assist children in distress, the introduction of intercultural mediators in schools, training programmes for prison staff and the establishment of a centre for equal treatment. It requested the delegation to share, if any, the experiences the centre has acquired through its studies on matters related to discrimination and recommended that the Government strengthen measures to grant foreign children and children of asylum-seekers equal access to the same standard of services in the field of education. It also recommended that, in addition to building a new prison and holding centres, the Government should also consider non-custodial ways of addressing the problem of pregnant convicted women and the children of convicted mothers, particularly when the mothers are foreigners or illegal residents, during both the pre-trial and post-sentence periods.

51. Senegal noted that the significant progress made in the protection of children, women and persons with disabilities, as well as the legal arsenal that Luxembourg has for dealing with human rights matters, illustrate its commitment in improving the situation. Senegal encouraged Luxembourg to enhance its efforts in education on human rights. Human rights education is the cornerstone for any lasting success in the promotion and protection of human rights. With regard to intercultural dialogue, Senegal asked for more information on the State's approach and methodology used and envisaged.

Conclusion and Recommendations

1. Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Algeria, Egypt, Mexico), the International Convention for the Protection of All Persons from Enforced Disappearance (Brazil, Argentina), the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention against Torture (Brazil, Argentina, United Kingdom); recognize the competence of the Committee on Enforced Disappearances (Argentina); ratify the Optional Protocol to the Convention against Torture and establish a national preventive mechanism related to it (Czech Republic); and complete the ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Egypt);

3. Consider strengthening policies on human rights and mental health, with special attention to the area of child psychiatry (Brazil);

4. Further develop its law on migrants, refugees and asylum-seekers in line with the principle of non-refoulement (Brazil); stop the practice of releasing minors at the borders (Mexico); bring the policy on detention of asylum-seekers into compliance with conclusion 7 (e) of the conclusions on international protection of refugees, which recommends that expulsion measures should not include detention unless for national security reasons or public order (Canada);

7. Take further steps to improve the rights of women and children; implement the recommendation made by the Committee on the Elimination of Discrimination against Women in 2008 on drafting strategies and programmes to combat prostitution; continue its efforts to combat sexual exploitation of children and continue to take effective measures to protect children from violence, racism and pornography (Russian Federation);

8. Intensify its efforts to combat human trafficking (Azerbaijan, Egypt) and sexual exploitation (Egypt) and prevent human trafficking (Mexico); implement all provisions of the protocol aiming to prevent and punish human trafficking, in particular trafficking in women and children (Canada); take appropriate measures to tackle practically the problem of trafficking for sexual exploitation in a comprehensive manner (Iran (Islamic Republic of));

9. Adopt in French, as in the case of the two other official languages, terminologies which truly reflect common values related to equality between men, women and children (Canada);

12. Take the necessary measures to ban the practice of corporal punishment within the family (France);

13. Find ways improve the detention conditions of minors, including counselling services (France); intensify efforts to secure detention conditions, including care of children and young people deprived of their liberty, which fully meet international human rights standards (Sweden);

14. Adopt provisions regarding alternatives to custody (Slovenia); look into measures to protect the best interests, needs and physical, social and psychological development of babies and children affected by parental detention or imprisonment (Slovenia); in addition to building new prisons and holding centres, consider non-custodial ways of addressing the issue of mothers in detention or imprisonment, during both pre-trial and post-sentence periods, particularly when mothers are foreigners or illegal residents (Ghana);

15. Take all necessary steps to accelerate the enforcement of the law regarding the acceptance and integration of foreigners (France); strengthen measures to grant foreign children and children of asylum-seekers equal access to the same standards of services in the field of education (Ghana);