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.

Liechtenstein – 3rd Session – 2008
DATE OF REVIEW: 5 December - 9.00 a.m. to 12.00 p.m.

National Report
12. The new Children and Youth Act is a good example of how human rights are integrated into national laws and measures. The rights of children pursuant to the Convention on the Rights of the Child and the principle of non-discrimination were explicitly incorporated into the Act and constitute the framework for Liechtenstein’s entire children and youth policy. The draft law was developed in a participatory process, including children and young people as well as adults. Different forms of participation will now be institutionalized. The appointment of an ombudsperson for children and young people originated in a recommendation by the Committee on the Rights of the Child.

20. In connection with child trafficking, Liechtenstein is currently undertaking the legislative amendments necessary for ratification of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. To ensure the protection of children against abusive and illegal adoptions in all cases, additional provisions have to be incorporated into Liechtenstein law. This is scheduled for the second half of 2008, as is subsequent ratification of the Hague Convention. Amendment of the adoption provisions is also a precondition for ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The necessary legal amendments will entail that ratification can be completed in 2009 at the latest. The measures to protect children against sexual abuse were also intensified in recent years. An interdisciplinary expert group was appointed, which is responsible for raising the awareness of the population and advising professionals. In cases of suspicion, the expert group can be called upon to initiate necessary measures. In parallel, sexual criminal law was amended accordingly in 2001. The Code of Criminal Procedure has also been revised, specifying that children affected by sexual crimes be questioned in a sensitive procedure separate from the suspect. Additionally, a Victims Assistance Act was drafted and put into force in April 2008. The fight against sex tourism has also been strengthened, by punishing sexual abuse of children even if the act is committed abroad (§64 StGB). So far, no such cases have been recorded in Liechtenstein.

23. The right to marriage is governed by articles 9 to 11 of the Liechtenstein Marriage Act. To enter into marriage, the spouses must have reached the age of 18 and be of sound mind. Underage and legally incapacitated persons may only marry with the consent of their legal representative. The voluntary nature of marriage is protected by the rules on objection. Liechtenstein law is characterized by the partnership principle and contains no gender-specific differentiations concerning the rights and duties of the spouses. In this connection, the principle of splitting of pension claims between the two spouses should be mentioned, according to which the income of the spouses during the years of marriage is split 50-50 between the two spouses. Thanks to this splitting, the non-working and the working spouse benefit equally from the contributions to old age insurance. Education and child-raising credits are also split in half, in the same way as employment income, during the years of marriage.

24. The right to family life primarily implies the freedom of all members of the family to live together. This right as well as the various rights and duties of family members are set out in the General Civil Code (ABGB). The protection and assistance granted by the State to families in Liechtenstein is guaranteed by legislation in various areas. The ABGB provisions set out the framework for State inventions in the rights of parents. Accordingly, third parties may only intervene in parental rights if permitted to do so by the parents themselves, immediately on the basis of legislation, or pursuant to an official decree. Such a decree, for instance concerning the withdrawal or limitation of parental supervision, may only be issued if the welfare of the child is in danger and may only extend as far as necessary to secure the child’s welfare. Other measures to protect the family include the Family Allowances Act (LGBl. 1986 No. 28), which provides for birth and child allowances for all persons with civil residence or non-self-employment in Liechtenstein, and the Child Support Advance Act (LGBl. 1989 No. 47), pursuant to which the State, under certain conditions, grants advances for the legally
stipulated support of children.

36. Liechtenstein has nine mandatory years of schooling. The Liechtenstein curriculum and the design and further development of school as a whole are based on specified guiding principles applicable to all schools and school levels. According to these principles, school is open to all children and young people free of charge, without regard to origin, religion, or gender, and adopts an open attitude with respect to political, religious, and ideological issues. A legislative amendment in 2007 extended this principle of free schooling to textbooks, school materials, and special schooling events.

37. School pays particular attention to the equality of girls and boys. Its task is to strengthen the young people in their individual qualities and to help them become competent members of society. School shares this responsibility with the family and other institutions. It is recognized that parents have the primary responsibility for the education of children, which is why close cooperation between school and home is a priority.

38. The School Act and the Ordinance of 18 December 2001 on Special Scholastic Measures, Pedagogical-Therapeutic Measures, Special Schooling, and the School Psychological Service (LGBl. 2001 No. 197) constitute the legal basis for the scholastic promotion of disabled and academically weak children. In Liechtenstein, all disabled children and young people, irrespective of age or type and cause of disability, are taught free of charge. Children and young people who, despite integration measures, are unable to follow regular school instruction may attend a special school in Liechtenstein, which is also open to children and young people from neighboring regions.

UN Compilation

3. In 2006, the Committee on the Rights of the Child (CRC) regretted that despite indications in 2001 of the intention to withdraw its reservation to article 7 of the Convention, Liechtenstein still had not done so. CRC further regretted that despite its previous recommendations, the reservation to article 10 (1) had not been withdrawn either.10 CRC recommended that Liechtenstein consider withdrawing its reservations to articles 7 and 10 (1) of the Convention in the near future.11

5. CRC invited Liechtenstein to ratify the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography as soon as possible.13

12. In 2006, CRC was concerned that there was no mechanism that can independently monitor the implementation of the Convention and address violations of the rights of the child.27 CRC reiterated its recommendation to establish an independent, child-friendly monitoring mechanism such as an ombudsman for children in accordance with the Paris Principles.28 In 2007, CERD welcomed the statement of Liechtenstein indicating its plans to establish the Office of Children's Ombudsman.29

26. Concern was expressed by CESCR in 2006, and by the HR Committee in 2004, about the persistence in Liechtenstein of xenophobia and intolerance against persons of different ethnic origin or religion, particularly against Muslims and persons of Turkish origin.52 CESCR called on Liechtenstein to intensify its efforts to promote ethnic and religious tolerance, e.g. by including this subject in school curricula and through training of teachers and public awareness campaigns, and to adopt a comprehensive strategy for the integration of persons of a different ethnic origin or religion.53 In January 2006, CRC had welcomed the inclusion in school curricula of activities on the prevention of exclusion, intolerance and racism.54

27. CERD, in 2007, was concerned about the rise in xenophobic and right-wing tendencies among youths and that a core group of right-wing extremists were becoming increasingly networked with groups abroad.55 CRC also remained concerned about the increase of cases of violence due to right wing groups, including in schools.5

31. CRC was concerned that all forms of corporal punishment are not specifically prohibited by law in all settings where it may occur.69 CRC urged Liechtenstein to prohibit expressly by law all forms of corporal punishment, in particular in the family and in private alternative care settings. It encouraged Liechtenstein to undertake awareness-raising campaigns and education programmes concerning non-violent forms of discipline and participatory forms of child-rearing and education, and to study the prevalence of corporal punishment of children in the family.70

35. CRC welcomed the introduction of a programme aiming at avoiding the penal procedure for a number of minor offences and establishing an educational intervention as an alternative measure and noted the positive evaluation of this method.74 CRC encouraged Liechtenstein to go further with the programme, promoting the use of extra judiciary means as often as possible, as provided for in article 40 (3) (b) of the Convention and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).75

36. CRC recommended that Liechtenstein set by law a clear maximum length for pretrial detention of persons under 18. This should be less than that allowed for adults bearing in mind that detention should be used only as a last resort, for the shortest appropriate time and in appropriate conditions.76

37. Concerned that the father of a child born out of wedlock has no standing to claim custody and that custody is automatically given to the mother,77 CRC recommended that Liechtenstein amend its legislation to provide fathers the opportunity to request custody of their children born out of wedlock, where possible as a joint custody with the mother.78

47. CRC was concerned that due to the size of Liechtenstein, a number of children with special needs, for example with respect to education, health, alternative care and juvenile justice, are sent abroad and fall out of the jurisdiction and protection of Liechtenstein.98 The Committee underlined that children sent to institutions and who receive special care abroad remain under the responsibility of Liechtenstein, which should take all necessary measures to ensure appropriate monitoring and protection of the rights of these children.99
48. Concern was expressed by CESCR and CRC at the high number of adolescents who consume alcohol and drugs. CESCR requested Liechtenstein to continue its education campaigns, in particular for minors, on the risks of tobacco, alcohol and drug consumption and to ensure that adequate counseling services are available to all affected persons. CRC recommended that Liechtenstein, taking into account its general comment No. 4 of 2003 on Adolescent Health and Development, inter alia, ensure that children using drugs and narcotics are treated as victims and are provided with the necessary recovery and reintegration services.

49. CRC remained concerned about little attention given to early pregnancies and recommended that Liechtenstein strengthen measures to provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives.

50. CESCR noted with concern that immigrant children tend to perform poorly in school in comparison to children of Liechtenstein origin, that they are likely to attend the lower-level secondary school and that they are under-represented in tertiary education. CESCR encouraged Liechtenstein to continue reducing linguistic barriers through intensive German-language training for immigrant children, to offer appropriate catch-up classes, and to increase family awareness about the importance of education for future professional careers. It also encouraged Liechtenstein to raise the age at which pupils are assigned to one of the three different levels of secondary school from the current 11 years to a later age, with a view to ensuring that children have reached a sufficient stage of development when that decision is taken.

**Stakeholder Compilation**

14. The Global Initiative to end all corporal punishment of Children (GIECPC) indicated that corporal punishment is lawful in the home. The Criminal Code (1998) establishes penalties for anyone who causes physical or psychological harm to a child (articles 92 and 93). There is no explicit prohibition of corporal punishment in legislation. It added that corporal punishment is prohibited in schools and in the penal system, and that in alternative care settings, corporal punishment is unlawful in state-run institutions and childcare settings outside the family home, but there is no explicit prohibition in privately-run alternative care settings.

18. ECRI noted with concern that several studies based on statistical data, including from the Office of Education, confirmed the disadvantaged situation of children of immigrant origin whose mother tongue is not German and recommended that the authorities of Liechtenstein continue and reinforce their efforts in establishing a school system which guarantees all children of immigrant background whose mother tongue is not German equal opportunities in access to education, including higher education and eventually in access to employment.

**Final Report**

8. In September 2008, the Parliament discussed in a first reading the new Children and Youth Act, which has paved the way for the Government’s proposal for accession to the Hague convention on Protection of Children and Cooperation in respect of Intercountry Adoption. As a party to that Convention, Liechtenstein would be in a position to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The Children and Youth Act also envisages the appointment of an ombudsperson for children, taking into consideration the Paris Principles.

10. The Liechtenstein Parliament has also adopted the Foreigners Act and the new Naturalization Act. According to the latter, citizenship will be granted to foundlings and stateless children. With the entry into force of the Act in February 2009, Liechtenstein will be in a position to withdraw its reservations to article 24 (3) of the International Covenant on Civil and Political Rights and to article 7 of the Convention on the Rights of the Child. It will also pave the way for the State’s accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

22. Liechtenstein indicated that the curricula of primary- and secondary-school levels include measures to better integrate immigrant children. A special focus is placed on intensive German language courses. In order to promote mutual respect and tolerance, religious instruction in German for Muslim children was introduced in primary schools for the 2007/2008 school year as a pilot project. Owing to its success, the project was prolonged for the 2008/2009 year and will, after being evaluated by the relevant authorities, eventually become part of the regular primary school curriculum.

27. France welcomed the fact that Liechtenstein is a party to main human rights instruments. Referring to the concerns expressed by the Committee on the Elimination of Racial Discrimination regarding family reunification and its dependence on the financial capability of the applicant, France enquired whether Liechtenstein intends to ensure greater flexibility in the criteria for family reunification. As noted by France, the Committee also referred to restrictions governing access to citizenship, which is granted after 30 years of permanent residence. With regard to accelerated procedure, which calls for five years of permanent residence and a positive vote from the municipality of the applicant’s residence, the Committee indicated that the latter requirement is not based on objective criteria and could be discriminatory. France asked whether Liechtenstein intends to introduce flexibility in the legislation to facilitate access to citizenship. In relation to the indication by the Committee on the Rights of the Child that fathers of children born out of wedlock are not able to seek custody of their children, which is automatically given to mothers, France asked whether national legislation could, in the medium term, grant fathers the opportunity to seek custody of their children born out of wedlock. France also referred to the Committee on the Rights of the Child, which indicated that all forms of corporal punishment were not explicitly banned in all places, particularly within the family, and recommended that Liechtenstein prohibit by law all forms of corporal punishment for children, without exception. While welcoming the Government’s decision to establish an ombudsman for children, France recommended that Liechtenstein consider establishing an independent mechanism mandated to consider complaints of child rights violations as soon as possible. France also asked whether the Government plans to become a member of the International Labour Organization (ILO).

31. Italy, bearing in mind the State’s outstanding record with respect to the rights of the child, recommended that Liechtenstein ratify the
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which it signed in 2000. Recalling the recommendations by the Council of Europe Human Rights Commissioner that Liechtenstein address the situation of foreign spouses who are victims of domestic violence and wish to continue residing in the country after separation from their partners, Italy enquired whether Liechtenstein has taken any measures to follow up on this recommendation, in particular by allowing resident permits of foreign spouses to be independent of marital relationship.

38. With regard to the issue of fathers requesting custody of their children, the delegation indicated that, under current provisions, mothers are entrusted with the custody of their children born out of wedlock, and that it is not possible for fathers alone to apply for joint custody. However, fathers can participate in the fostering and education of their children, and have the right to information and comment.

44. Norway highlighted the State’s goal of reaching an ODA share of 0.7 per cent of its gross national income by the end of 2009. Norway drew attention to the concerns expressed by the Committee on the Elimination of Discrimination against Women about the persistence of stereotypes regarding the roles of women and men in society and the family. It recommended that Liechtenstein follow up on its recommendations, namely to put in place a comprehensive policy with the aim of overcoming traditional stereotypes regarding the roles of women and men in society and the family. Also noting the concern of the Committee about the continued underrepresentation of women in elected and appointed bodies, Norway echoed the Committee’s recommendation that special measures be taken to accelerate women’s participation at all levels and in all areas of public life. Norway also wished to learn more about the cooperation of the authorities with non-governmental organizations, in particular with respect to the promotion of gender equality. In relation to the concern expressed by the Committee on Economic, Social and Cultural Rights that immigrant children tend to perform poorly in school, are likely to attend lower-standard secondary schools and are underrepresented in tertiary education, Norway enquired about measures taken or planned to address this problem, to promote the integration of these children, and to follow up on the relevant Committee’s recommendations.

57. Guatemala enquired about the way cases are dealt with when prisoners have children and about arrangements and measures adopted as an alternative to custody both before and after trial or sentencing. It also enquired about the measures taken to ensure that the situation of pregnant women or mothers of babies or young children is properly handled.

58. Bangladesh noted concerns that have been expressed about the situation of women and children, in particular those of immigrant origin. Persistence of xenophobia and intolerance against people of different ethnic origin or religion, particularly against Muslims, continue to be an issue of concern. Incidents of incitement to racial hatred by right-wing extremists are another worrisome development. The existence of a penal provision prohibiting racial organizations would make a difference, as the Committee on the Elimination of Racial Discrimination recommended. Bangladesh noted that many positive steps have been taken by the Government, particularly on the integration of Muslims into society. Bangladesh recommended that Liechtenstein continue its efforts to improve the situation of migrants, at the legal, judicial and administrative levels; establish a national human rights institution, in accordance with the Paris Principles; and ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

Conclusions and Recommendations

3. Ratify the Optional Protocol to the Convention on the Rights on the Child on the Sale of Children, Child Prostitution and Child Pornography (Bangladesh, Italy, Mexico);

24. Prohibit by law all forms of corporal punishment of children, without exception (France);

25. Give priority to non-custodial measures when sentencing or deciding on pre-trial measures, in particular in relation to the role of the primary carer of a child, and identify and implement measures to protect the best interests, needs and physical, social and psychological development of children affected by parental detention or imprisonment (Slovenia);