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**SUPPLEMENTARY REPORT TO
THE 3RD AND 4TH NATIONAL REPORT (2001-2009)
ON CHILDREN'S RIGHTS IN LUXEMBOURG**

Produced by:

The RADELUX Group

Luxembourg NGO Alternative Report to
the 3rd and 4th Government Reports
on children's rights in Luxembourg

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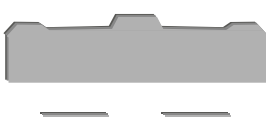
Contents

Introduction	5
Participation of civil society via the RADELUX Group	5
Acknowledgements	6
Methodology	7
Preparatory phase	7
Orientation of the supplementary report and of the additional report thereof on trans and intersex children	7
Public appeal for contributions and witness statements	8
Online survey "Your voice for the Rights of the Child"	8
1. General measures of implementation (Articles 4, 42 and 44.6)	10
1.1. Changes between 2001 and 2012	10
1.2. Information and awareness-raising	12
2. The definition of "child" (Article 1)	13
3. General principles (Articles 2, 3, 6 and 12)	14
3.1. Reservations in relation to Articles 2 and 6	14
a) Reservations in relation to Article 2	14
b) Reservations in relation to Article 6 – The right to life – Pre-natal testing	14
3.2. Discrimination	15
3.3. Discrimination against trans and intersex children	15
3.4. The child's best interests	16
3.5. A child's right to be heard within a reasonable time	19
3.6. Participation of young people at school	21
4. Civil liberties and rights (Articles 7, 8, 13, 14, 15, 16, 17, 19 and 37 a)	23
4.1. Access to appropriate information	23
4.2. Torture and other cruel, inhuman or degrading treatment	23
4.3. Female Genital Mutilation	25
4.4. Reservations in relation to Articles 7 and 15	25
4.4.1. Registration at birth and the right to a name	25
4.4.2. The right to freedom of association and the freedom of assembly	26
4.5. The right to know the identity of one's biological parents	26
4.6. Respect for trans and intersex children's gender identity	27
5. Family environment and alternative protection (Articles 5, 9, 10, 11, 18, 20, 21, 25 and 27.4)	29
5.1. Temporary or permanent placement of children outside the family environment	29
5.2. Placement of newborn babies	29
6. Health and well-being (Articles 18, 23, 24, 26 and 27)	30
6.1. Prejudice with respect to disability and epileptic children	30
6.2. Suicide	30
6.3. General well-being of children in Luxembourg	31
6.4. Reducing the number of children who are victims of road traffic accidents	31
6.5. Maternal breastfeeding	32
7. Education, leisure, recreational and cultural activities (Articles 28, 29 and 31)	33
7.1. The right to education	33
7.2. Participation of epileptic children in leisure and recreational activities	33
8. Special measures to protect children (Articles 22, 30, 32, 33, 34, 35, 37, 38, 39 and 40)	34
8.1. For better integration into schools of children with special needs	34
8.2. Lack of accommodating structures for children with special needs	35
8.3. Children in conflict with the law	35
9. Optional protocol on the sale of children, child prostitution and child pornography	36
9.1. Sexual exploitation of children	36
9.2. Child sex trafficking	39
Schedules	
Schedule 1: The Luxembourg Government's reservations concerning Articles 2, 6, 7 and 15 of the ICRC	43
Schedule 2: Themed glossary on gender, trans and intersex	44
Schedule 3: Information and exchange sessions with ministries during the preparatory phase	46
Schedule 4: Results of the online survey (not translated)	

List of abbreviations and acronyms

AAPE	<i>Association d'Aide aux Personnes Epileptiques</i> a.s.b.l.
AEF	Law dated 16 th December 2008 relating to assistance for children and families
ALPC	<i>Association Luxembourgeoise des Pédagogues Curatifs</i> a.s.b.l.
ANCES	<i>Association Nationale des Communautés Educatives et Sociales</i> a.s.b.l.
Art.	Article
CCDH	<i>Commission Consultative des Droits de l'Homme</i> – Luxembourg
CGJL	<i>Conférence Générale de la Jeunesse du Luxembourg</i> a.s.b.l.
CRC	Committee on the Rights of the Child
DGD	Day of General Discussion held annually, in September, in Geneva
ECPAT	ECPAT Luxembourg a.s.b.l. (E nd C hild P rostitution, Child Pornography A nd T rafficking of children for sexual purposes)
FED	<i>Femmes en Détresse</i> a.s.b.l.
GC	General Comment on a theme: commentary, text for CRC interpretation, concerning certain articles
HRC	Human Rights Council
ICRC	United Nations International Convention on the Rights of the Child
NGO	Non-Government Organisation
NGO Group	NGO Group for the Convention on the Rights of the Child (Geneva)
ONE	<i>Office National de l'Enfance</i> [National Children's Office] (introduced by the AEF Act)
OPAC	Optional Protocol on the involvement of children in Armed Conflict
OPIC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure (opened for signature on 28 th February 2012)
OPSC	Optional Protocol on the Sale of Children, child prostitution and child pornography
ORK	Ombudskomité fir d'Rechter vum Kand/Ombudsman's Committee for children's rights in Luxembourg
Pre-session	Committee on the Rights of the Child pre-session work group
RADELUX	<i>Rapport Alternatif des ONG luxembourgeoises au 3e et 4e rapport gouvernemental sur les Droits de l'Enfant</i>
RADELUX Group	NGO Group, at the national level, formed to produce this RADELUX report
TGL	Transgender Luxembourg
UNISEC	Government <i>Unité de sécurité au Centre Socio-Educatif de l'État</i> (Dreiborn/Schrassig)
UNO	United Nations Organisation
UPR	Universal Periodic Review: consists of reviewing, every four years, work done by all of the 192 UN member states in the field of human rights. Luxembourg was examined on 2 nd December 2008 in Geneva (documents A/HRC/10/72 and A/HRC/10/72/Add.1 dated 17 th March 2009). The next examination will take place on 24 th January 2013 at the 15 th meeting of the Universal Periodic Examination Work Group (21 st January – 1 st February 2013).

Pictograms used in this document:



Palais Wilson: This pictogram represents the observations and recommendations of the Committee on the Rights of the Child (CRC) instituted by the International Convention on the Rights of the Child (ICRC). The Committee examines national reports, comments on progress concerning the implementation of children's rights at national level and sets out its "concerns" and "recommendations" in its "Concluding Observations". This report relates to the "Concluding Observations" adopted on 28th January 2005 by the CRC (document CRC/C/15/Add. 250) – The Committee meets, and has its Secretariat, at the "Palais Wilson" in Geneva (CH). The building bears the name of the US President Woodrow Wilson (1856-1924), who promoted and founded the League of Nations (1919). Since 1998, it has housed the United Nations High Commissioner for Human Rights and the Committee on the Rights of the Child.



RADELUX logo with magnifying glass: This pictogram represents a finding observed or respectively the analysis of facts and situations observed by the RADELUX Group. The magnifying glass symbolises the mission to observe and to analyse.



RADELUX logo with microphone: This pictogram represents the presentation of a witness statement produced as part of this report, a case study, a real situation or the results of the minors' online survey.

RADELUX logo with loudspeaker: This pictogram highlights the RADELUX Group's recommendations and desiderata.

ORIGINAL LANGUAGE: FRENCH. This report may be downloaded in French and English at www.radelux.lu and may also be ordered by sending an e-mail to info@radelux.lu stating the number of copies.

Introduction

The Grand Duchy of Luxembourg signed the Convention on the Rights of the Child on 21st March 1990 and ratified it in the Act dated 21st December 1993. Pursuant to paragraph 1b) of Article 44 of the Convention, *members are committed to submitting to the Committee on the Rights of the Child (CRC), every five years, a periodic report on the implementation of said Convention.* In 2010, the Luxembourg Government issued a 3rd and 4th combined report which contains the main measures adopted by Luxembourg since the last report, produced in 2002¹, including the Committee's recommendations. The combined report was produced in 2010 by the Department for the Rights of the Child within the Ministry for the Family and Integration, and assembles the written contributions of nine ministries. It will be examined by the CRC at the 63rd and 64th meetings from 2nd February 2013.²

Participation of civil society via the RADELUX Group

This RADELUX Group report constitutes a supplementary report to the aforementioned Government report. The RADELUX Group's first choice was to produce an alternative report, hence the name RADELUX. However, the choice was reviewed in favour of a supplementary report in order to concentrate on certain issues and take into consideration the human resources available.

The report is the result of an active and open participation process by stakeholders within civil society and non-governmental organisations monitoring children's rights in Luxembourg enabling representatives of community groups, services, institutions and NGOs from the socio-educational and medico-social sector, the not-for-profit sector and/or the academic sector to take part in the assessment and evaluation of the current situation as well as the future prospects in regards to children's rights in Luxembourg.

The following Luxembourgish NGOs participated in the process or supported the RADELUX approach:

- *Association d'Aide aux Personnes Epileptiques* a.s.b.l. (AAPE)
- *Association Luxembourgeoise des Pédagogues Curatifs* a.s.b.l. (ALPC)
- *Association Nationale des Communautés Éducatives et Sociales* a.s.b.l. (ANCES)³
- *Conférence Générale de la Jeunesse du Luxembourg* a.s.b.l. (CGJL)
- ECPAT Luxembourg a.s.b.l.
- *Femmes en Détresse* a.s.b.l. (FED)
- *Initiativ Liewensufank* a.s.b.l.
- Info-handicap
- elisabeth
- Family Planning – Ekippl ESA
- *SOS – Villages d'Enfants Monde* (SOS-VE)
- Transgender Luxembourg (TGL)
- UNICEF – Luxembourg

Other individual participations and contributors:

- *Maître* Nathalie Frisch, ETUDE AS AVOCATS
- Jean-Paul Reuter, social co-ordinator for the Town of Differdange
- *Association nationale des Victimes de la Route* a.s.b.l. (AVR)

¹ The 3rd and 4th combined Government reports, previous reports and CRC recommendations may be viewed on the website of the Ministry of Family Affairs and Integration (www.mfi.public.lu/publications/index.html)

² As specified in the current meetings schedule (<http://www2.ohchr.org/english/bodies/crc/sessions.htm>)

³ ANCES held a first conference in regards to the 3rd and 4th Government report on the Rights of the Child, which took place on 15th March 2011.

“Critical friends”/observers:

- Ombudscomit  fir d’Rechter vum Kand (ORK)
- University of Luxembourg, INSIDE Research Unit focusing on “Social Inclusion”

Following a meeting held on 28th September 2011, the RADELUX Group formed a steering committee in which the following organisations participated:

- *Association Nationale des Communaut s  ducatives et Sociales* a.s.b.l. (ANCES), represented by Charel Schmit
- *Conf rence G n rale de la Jeunesse du Luxembourg* a.s.b.l. (CGJL), represented by Sandra Britz
- ECPAT Luxembourg a.s.b.l (ECPAT Luxembourg), represented by Hannah Bristow
- Transgender Luxembourg (TGL), represented by Erik Schneider
- *Initiativ Liewensufank a.s.b.l.*, represented by Maryse Arendt, and the ALPC, represented by Marie-Paule Max, joined the production team.

The RADELUX project received public financial support from the Ministry of Family Affairs and Integration to cover the costs related to co-ordination, page layout and printing of this report as well as the costs of organising the national conference in December 2011. The initiative was coordinated by ANCES via the project co-ordinator, Sonia Ferreira.

This report was approved in November 2012 by the following associations/NGOs:

- *Association d’Aide aux Personnes Epileptiques* a.s.b.l. (AAPE)
- *Association Luxembourgeoise des P dagogues Curatifs* a.s.b.l. (ALPC)
- *Association Nationale des Communaut s  ducatives et Sociales* a.s.b.l. (ANCES)
- *Conf rence G n rale de la Jeunesse du Luxembourg* a.s.b.l. (CGJL)
- ECPAT Luxembourg a.s.b.l.
- Initiativ Liewensufank a.s.b.l
- Info-handicap
- Transgender Luxembourg (TGL)

For ease of reading, the names in this report are written either in the masculine form, or in the feminine form, or in the mixed form for reasons of gender sensitivity. Witness statements incorporated in the report are anonymous; the name and gender of each child has been modified.

Acknowledgements

The RADELUX Group would firstly like to thank all of the minors who took part in the survey, who were willing to describe their situation, as well as all those organisations and institutions which contributed directly and/or indirectly to collecting information and data. We would also like to thank all those who have been associated with the RADELUX process, and thus demonstrated a particular interest concerning the issue of children’s rights.

Methodology used to produce the report

a) Preparatory phase

In a preliminary phase (autumn/winter 2011/2012), the RADELUX Group organised information sharing sessions with three Luxembourg ministries; the Ministry of Family Affairs and Integration (MFI), the Ministry of Health (MS) and the Ministry of National Education and Professional Training (MEFP); to assess the situation and to explore sensitive subjects.⁴ Unfortunately it was not possible to organise a similar meeting with the Ministry of Justice (MJ) during this timeframe.

On December 7th, 2012 and December 8th, 2012, the RADELUX Group organised a conference on children's rights in Europe and a national conference on "NGO Participation in Monitoring of Children's Rights – Experience and Good Practices" with the following delegates: Dr. Maria Herczog, member of the CRC; Marie Anne Rodesch-Hengesach, Chairman of the ORK; Maarit Kuikka, Central Union for Child Welfare (Finland); Roisin Fegan, NGO Group for the Convention on the Rights of the Child (Geneva); and Sandra Britz, CGJL.⁵

b) Orientation of the supplementary report and the additional report thereof on trans and intersex children

Initially, the RADELUX Group had formed the shared objective of producing an alternative report, hence the name of the Group, "RADELUX", which means *Rapport Alternatif des ONG luxembourgeoises au 3e et 4e rapport gouvernemental sur les Droits de l'Enfant*.

However, the dynamics of the group changed this focus while producing the report; the group considered it important not to repeat any information which had already been included in the 2010 Government report or in reports and compilation studies on the situation with regard to young people in Luxembourg respectively.⁶ Taking a critical but also constructive approach, the RADELUX Group wanted to concentrate on certain issues so that it could formulate concrete and feasible recommendations to the CRC and the Luxembourg Government. This report, which is embedded in the every day experiences of the NGOs operating on the ground, is also geared towards actions, which need to be taken in the future and which require a renewed and widespread mobilisation to ensure that the respect of children's rights becomes a reality in Luxembourg.

This report also features an additional report on the the situation of minors who are trans and intersex.⁷ In fact, the RADELUX Group has noticed that the question of trans and intersex children's rights has so far not been explored in detail yet. We therefore believe that it is an emerging theme, not only in Luxembourg, but also beyond the country's borders at the international level, where the theme is discussed as little as it is in Luxembourg. The RADELUX Group has therefore decided to broaden this report by attaching an additional report providing detailed expertise on the subject, which is to be considered in light of the situation in Luxembourg. The RADELUX Group passes this expert report on to the CRC with a view to encouraging the CRC to organise at some point in the future, a day of general discussion on the subject of the rights of minors who are trans and intersex, and more specifically, to produce a General Comment on the matter.

⁴ Brief minutes of these meetings may be found in Schedule 3.

⁵ A conference report was published: Wies, Stéphanie: Der alternative NRO-Bericht zur Implementierung der UN-Kinderrechtskonvention in Luxemburg. In: "arc | archiv fir sozial aarbecht, bildung an erzéiung" number 122 (2012), pages 13-16.

⁶ Such as, for example, the "National Report on the situation of young people" by the Ministry of Family Affairs and Integration, Luxembourg, 2010.

⁷ See Schedule 2 of this report: the themed glossary.

c) Public appeal for contributions and witness statements

In order to draft the supplementary report, a wide public call for written contributions and testimonies was launched. This call was addressed to an audience informed on and sensitive to children's rights such as active members of youth organisations and professionals in the socio-educational and teaching sector as well as civil society.

Three criteria guided the data collection process:

- 1. Supplimentarity/complementarity of the Government report:** the contribution covers an aspect, a theme or a subject which is not mentioned, at all or not sufficiently, in the Government report.
- 2. Divergence in opinion from the Government:** the contribution reflects a view/opinion/interpretation which differs from those expressed by the Government in its report.
- 3. Realistic prospects and feasible proposals:** the contribution provides a vision for the future; proposals may, if necessary, be put in place over the next 5 years (the period until the next report is due). These realistic, feasible proposals may be adopted by the Committee on the Rights of the Child as Government recommendations.

d) Online survey "Your voice for the Rights of the Child"

In line with the ICRC's participation-orientated philosophy (Art. 12) and in order to involve the children themselves in the process of monitoring the implementation of children's rights in Luxembourg, the RADELUX Group created an online survey, which was circulated on the Internet and social networking sites. The questionnaire was produced using the Survey Gizmo software to obtain statistics and collate qualitative data.⁸ This data is featured throughout the supplementary report to illustrate and consolidate certain points: for example, to illustrate an aspect using a statistic or a witness statement, or indeed, to introduce a new subject for discussion/concern in the report.

Target population:

The questionnaire was aimed at children aged 6 to 18, and young people up to the age of 25. The group added the 19 to 25 age bracket as it felt it was necessary and important to get the view from people who were children between the years of 2001 and 2009, the reference period for the government report.

Participant profile:

124 children/young people began completing the questionnaire; however perhaps, due to the complexity of language and the length of the questionnaire, only 77 participants completed it, half of them children, and the other half aged over 18.⁹

53 participants were Luxembourg nationals and 12 were non-Luxembourg nationals. This result is, however, not representative of the reality in Luxembourg, where the proportion of foreign children is much higher.

59.4% of participants lived with their parents, 30.4% of children lived either with their mother or with their father, and 2.9% of children lived in a children's home.

Precautions:

Of the 77 children/young people taking part in the questionnaire, 13 did so with the help of a member of their family (father, mother, brothers, etc.). Although the questionnaire results are not representative of the whole target population, they will still be used as examples and testimonies throughout this report.

⁸ The CGJL provided technical support and produced the online questionnaire.

⁹ This finding would enable us to improve the questionnaire if at some point the group proposed to reconduct such an exercise.

The effect of raising awareness among young people

The online questionnaire has certainly reinforced young people's awareness of children's rights in Luxembourg. To the first question "Have you heard of "Rights of the Child" before?", 69/77 children answered *yes*, whilst 8/77 answered *no*. More specifically, the eldest (aged 17 upwards) answered *no*; this result may suggest that new generations are better informed about the Rights of the Child than previous generations. Moreover, when asked where they had heard of the Rights of the Child, most (51/77) answered "at school", whilst, for example, 3 participants cited institutions/associations. Only 2 children answered "through my parents".



RADELUX Group's recommendation to the Luxembourg Government

- 1. To promote the rights of the child further in the media and institutions as well as within families themselves and in schools.***
- 2. As the target population for this awareness-raising was minors, awareness should also be raised amongst parents. (See also point 1.2)***

To the question "What do you think should be done in Luxembourg to improve the process of implementing the Rights of the Child?", specific, relevant answers were given:

Witness statements from minors/online questionnaire citations:

"It is difficult to say. Children should not be frightened to speak out if their rights are not respected. They need a point of contact at school, for example, whom they trust and who acts with the utmost discretion. So there need to be major awareness-raising campaigns in their schools, but also perhaps on buses, with an easy-to-remember telephone number, one which does not appear on the telephone bill!" Children who are mistreated must be able to trust someone who can help them!"

"Make them better known, I find that people are not sufficiently informed about these rights"

"Listen to children more"

"Awareness raising and better control"

"Give more time to mums and dads to be with their children and prevent children from having to go to canteens"

"People must be better informed about the Rights of the Child"

"Be more tolerant towards immigrants"

"Monitor more closely the living conditions of children whose parents are involved with legal proceedings/the social services..."

"Telephone (numbers) for minors, where you can immediately obtain the right help, somewhere you can go with a "peer"

"Raise awareness amongst Luxembourgish citizens on the subjects of sexual orientation and gender and make them realise that, even in Luxembourg, children's rights are violated and mishandled"

"Take children and young people and their claims seriously, and invest more money in helping them"

1. General measures of implementation

1.1 Changes between 2001 and 2012

a) Considerable changes to be made to legislation

The RADELUX Group notes with satisfaction that the Government has taken measures and has adopted legislative provisions banning corporal punishment within the family and within children's homes, especially through the Law of 16th December 2008 relating to assistance for children and families (AEF).

During the reference period and the period from 2009 to 2012, considerable changes have been made in regards to legislation directly governing children. Thus, the following acts have had a direct impact on the situation regarding children's rights:

- Law dated 16th December 2008 relating to assistance for children and families – setting up the the National Children's Office, and introducing new social services and legislation on the principle of non-violence in the care of children growing up in alternative, residential and institutional care.
- The Grand Ducal Regulation dated 20 July 2005 concerning the grants given to childcare providers ("maisons-relais") and the Grand Ducal Regulation dated 13 February 2009 putting into effect a childcare welfare payment ("chèque 'service-accueil'") thus enabling the expansion of services with the possibility of providing day care for small children.
- The Law of 4th July 2008 on young people – the creation of the youth parliament for example.
- Laws in regards to education system reforms, especially the Law dated 6 February 2009 on the organisation of primary education, the Law dated 6th February 2009 on compulsory education (including compulsory education up to the age of 12 from the age of 4), the Law dated 19th December 2008 on the reform of professional training, the Law of 15 July 2011 on access to academic and professional qualifications for students with special educational needs.

The RADELUX Group welcomes the Bill on parental responsibility, which was submitted on 11th April 2008, which foresees that parents can opt for new rules governing shared parental responsibility. However, the Bill has not yet been adopted. The same applies to the amendments which were expected to be made following the parliamentary debates of the special "Jeunesse en Détresse" committee: the Bill 5,351, taken account of the motivation of the law dated 10 August 1992 on the protection of young people, has not yet been adopted by the Chamber of Deputies.¹⁰

It is also regrettable that parliamentary work on the reform of divorce proceedings – Bill 5,155 submitted on 20th May 2003 – has not yet produced any solid results, delaying the legal improvements which are necessary for an increasing number of minors affected by divorce.

The considerable efforts being made in the education system, public health services and social security, education and family affairs services have unfortunately not been matched with the necessary reforms to the legal system in terms of civil law and the organisation of the judiciary, in the light of a justice system which is child friendly.¹¹

The Chamber of Deputies is now preparing to reform the current Constitution which will result not only in a complete reworking of the text of the Constitution¹², but will also introduce new

¹⁰ Parliamentary document 5,351 – Bill relating to the amended Law of 10 August 1992 relating to the protection of young people.

¹¹ See especially the "Directives on justice adapted to children" adopted by the Council of Europe Committee of Ministers on 17th November 2010.

¹² Parliamentary document 6030: Proposal to review the Constitution with an amendment and a new Constitutional order.

provisions relating to social policies, such as the Government's obligation to ensure access to housing.¹³

At present, the commission charged with organizing the revision does not intend to introduce children's rights into the chapter on fundamental rights (new Articles 11 to 41), as is the case in the European Union's Charter on Fundamental Rights, nor will it include notions on the inclusion of people with disabilities or sustainable development. .¹⁴

The RADELUX Group is concerned that the repeated proposal^{15, 16} to grant the rights of the child specific constitutional recognition, may eventually not be adopted by Parliament. Other provisions also affect children's rights, such as the removal of medical and social assistance as stated in the current Article 23 concerning public education.¹⁷

The setting up of an Ombudsman's Committee for children's rights in Luxembourg (ORK) has greatly helped in raising awareness and respect for issues affecting children in all areas. ORK has contributed, through its groundbreaking role in this area, to the institutionalization of mediation within public policy and administrative practices. Once both mandates of ORK have ended, it is urgent to grant the organisation the same legal standing and operational resources as have been given to similar organisations that have been set up subsequently.¹⁸

b) Recommendations still not acted upon from the first CRC review of 1996

At present, the Government of Luxembourg has not yet acted upon a number of recommendations which were made by the CRC during its first country review in 1996:

- re-examination of reservations concerning Articles 2, 6, 7 and 15 of the ICRC
- absence of any global strategy in favour of children
- use of the expressions "legitimate child" and "illegitimate child" (natural) in the Code Civil.
- the right of a child born to an anonymous mother to know their parents
- absence of the appropriate infrastructures for the detention of children.

c) Recommendations not made between 2001 and 2012

Collection of data:

- *develop a comprehensive system for the collection of comparative and disaggregated data on the Convention. This data should cover all children below the age of 18 years and should be disaggregated by groups of children who are in need of special protection.*
- *develop indicators to effectively monitor and evaluate progress achieved in the implementation of the Convention and assess the impact of policies affecting children .¹⁹*

We should welcome the introduction of the Law dated 4th July 2008 on young people, the Government has the instrument of a five-yearly report to assess the situation of young people

¹³ Review Proposal (PD 60.30): "Art. 37. The Government ensures that everyone can live in appropriate housing".

¹⁴ (Review 29.03.2007) Art. 11 (...) (5) The law shall govern the principles of social security, the protection of health, the rights of workers, the fight against poverty and the social integration of citizens with a handicap.

¹⁵ Annual report 2010 - Ombuds-Comité fir d'Rechter vum Kand : " ORK address the Chamber of Deputies to recall its recommendation contained in the 2004 report and insists that, in the context of the ongoing drafting of a new Constitution, children's rights should be enshrined in the Constitution, as well as other concerns or objectives of constitutional value ."

¹⁶ ANCES' press release from 18.11.2011 : „Children's rights must be enshrined in our Constitution!"

¹⁷ (PD 60.30): The proposal has been made to delete the sentence: "Medical and social care will be governed by the Act" in current Article 23.

¹⁸ The mediator (Act dated 22nd August 2003 instituting a Mediator)

¹⁹ Paragraph 17 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

in the country. The first report²⁰ summarises and compiles knowledge gained through diligent research into the situation surrounding the young people in Luxembourg over the last ten years. However, the situation in terms of minors of other ages (infants and pre-school children) is only partially considered, as is the situation in terms of minors placed with families or in institutions, affected by orders, more specifically minors who have come into contact with the legal system or those requiring special protection. Direct consultation with minors at a national level has not been carried in order to prepare of this national report. The structured dialogue approach to youth policy may serve as an example for implementing an all-round policy on children's rights.

For the first time in Luxembourg, the online questionnaire designed by the RADELUX Group offered participants the opportunity to tick "male", "female" or "other" when answering the question: "What sex are you?". Four children answered "other", three aged eight and one aged sixteen. Research in other countries has shown that trans and intersex children are represented in each age bracket, some even identify themselves even as "other" as soon as they start talking. Further research is necessary to gain an overall view of issues affecting these children, most of whom do not talk about this topic themselves, as they do not feel secure enough in their surroundings.²¹

Recommendations:

- 3. The principles behind children's rights need to be considered in full at the time of the review and drawing up the new order for the Luxembourg Constitution.**
- 4. Begin a structured dialogue for implementing an all-round children's rights policy.**
- 5. Promote studies, assessments and inter-disciplinary research on the situation of all minors, especially in the field of small children and minors placed in alternative, residential or institutional care, or in minors in conflict with the law – at the same time encouraging direct consultation with minors.**
- 6. Consider trans and intersex children as groups requiring special protection. Inter alia, it appears that they particularly run the risk of violence and suicide.²²**
- 7. Include the situation of children and adolescents who do not identify themselves as either "boy" or "girl" / "male" or "female" in any of the studies carried out on children's issues, especially in the next national Report on the situation affecting young people in Luxembourg²³ and in the next study examining trauma-related risk factors in the young.²⁴**



1.2. Information and awareness-raising:

Article 44.6

Raising awareness amongst the general public and children is one of the main objectives behind promoting children's rights.

According to Article 44.6 of the ICRC, State parties should disseminate their reports widely in their own countries. The introduction to the report produced by the Ministry of Family Affairs

²⁰ "National Report on the situation of young people" by the Ministry of Family Affairs and Integration, Luxembourg, 2010.

²¹ See the additional report on the rights of trans and intersex children in Luxembourg.

²² See the additional report.

²³ Article 15 of the Law dated 4th July 2008 on young people (Memorial A no. 109 dated 25th July 2008, p. 1534) says that the Minister of Family Affairs sends a report every five years on the situation regarding youth in Luxembourg to the Chamber of Delegates (Parliament). The next report will be produced in 2015.

²⁴ Action 5.4 of the Jugendpakt 2012-2014

and Integration in 2010 states that “hard copies of the report would be disseminated within the concerned ministerial departments, communal bodies and associations working in the interests of the Rights of the Child”. The RADELUX Group encourages ministerial departments to ensure wide dissemination of the report, especially to civil society actors; which has not been carried out in its entirety to date.

Although certain documents are written in German and Luxembourgish – particularly documents in language designed for children - the text of the Act on approval of the Convention on the Rights of the Child is written in French, with German and Luxembourgish translations unavailable.



Recommendations:

- 8. The RADELUX Group encourages ministerial departments to distribute periodic reports and the CRC’s Concluding Observations more widely, at the same time providing German and Luxembourgish versions of these documents more frequently.***

2. The definition of “child” (Article 1)

In principle, the legal age (of majority) is 18. The Luxembourg Code Civil defines a minor as “an individual of either sex who has not yet reached the age of 18” (Art. 388 of the Code civil, Act dated 6th February 1975).

The Bill 4137 concerning the promotion of children’s rights, submitted in March 1996, and finally leading to the Act dated 25th July 2002, concerning the setting up of a Luxembourg Committee on the Rights of the Child, called “Ombuds-Comité fir d’Rechter vum Kand” (ORK) specifies in its Article 2 the following definition, even though it does not mention sex: “The ORK’s mission is to ensure the safeguarding and promotion of children’s rights and interests, in other words of those of people below the age of eighteen”.

Recommendations:

- 9. In Luxembourgish law, terminology disregards children in categories other than male and female, which can constitute a discrimination against a child of another sex. One way of rephrasing the definition of a child in the Civil Code could be as follows : The Luxembourg Code Civil defines a minor as an individual, regardless of sex and gender, who has not yet reached the age of 18”.***
-



3. General principles (Articles 2, 3, 6 and 12)

Article 2

3.1. Reservations in relation to Articles 2 and 6

a) Reservations in relation to Article 2

The Committee notes with concern that the Government has not withdrawn its reservations concerning Articles 2, 6, 7 and 15 of the Convention.²⁵

The terminology “legitimate child” and “illegitimate child” (natural) is still being used in the Code Civil, even though the Government considered, during its evaluation and assessment of the last periodic report, to delete them; however the terminology is still in use in some administrative documents.

Example of a situation:

In an official form (administrative document) on the subject of perinatal mortality (grey sheet with an ABC section) given by the doctor at the maternity unit or by the Registrar, the term “illegitimate child” is mentioned in section B of the sheet. The sheet must be provided to the registry office by the informant/(mother/father).

Such a situation is particularly traumatic when the parents learn that their deceased child is classified as illegitimate.

- Recommendations remain the same as in 2002.

Article 6, 23
et 29

b) Reservations in relation to Article 6 – The right to life - Prenatal test

Prenatal ultrasound testing and amniocentesis are widely used in Luxembourg.²⁶ Out of 1,860 births, amniocentesis has been performed 212 times at the *Centre Hospitalier de Luxembourg*. With some 6,000 births per year, it could be assumed that amniocentesis has been performed about 500 times. These test methods are very commonly used, with no in-depth information given to pregnant women. Their purpose is to detect genetic changes or visible changes in the physical development, even though the child may be in good health. When the results reveal something unusual compared with the norm – as is the case, for example, for Turner syndrome or Trisomy 21 - women are very often very quickly directed towards the option of a “therapeutic” termination of the pregnancy. This is problematic because the woman must make the decision alone and thus assume responsibility, while she finds herself in an environment which denies diversity.

The Liewensufank association can attest how difficult this decision is for some women, who have agreed to terminate their pregnancy following the medical advice given to them and have then seen their reproductive health affected (experiencing difficulty falling pregnant again, miscarriage).

Recommendations:

- 10. Give pregnant women time (minimum of one week) for reflection as they are in a situation of shock and denial (24 to 72 hours) after the announcement, so that they can decide whether or not to terminate the pregnancy.**
- 11. Offer pregnant women systematically counselling in an out-of-hospital facility likely to offer neutral consultations and provide them with all of the**

²⁵ Paragraph 8 of the CRC’s Concluding Observations (document CRC/C/15/Add.250 dated 31st March 2005)

²⁶ CHL 2011 activity report p. 29.



information they need for an informed consent; offer them neutral assistance when they make their decision and beyond.

12. The Government, institutions, etc. should create an environment (e.g.: awareness-raising campaign, setting up of infrastructures) which favours diversity. This will mean that the mother-to-be does not feel "alone in her responsibility to bear a child (rejected/disowned) by society".

13. A prenatal test suggesting intersexuality must not automatically lead to abortion for medical reasons, proposed by the doctor.

Article 2

3.2. Discrimination

The Committee recommends that the State party increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.²⁷

A few results from the questionnaire "Your voice for the Rights of the Child!"

When asked the question "Have you ever felt discriminated against (treated unfairly or inequitably)?", 30 minors answered *yes* and 47 of them said *no*.

The most common answers were discrimination at school (4/77), discrimination by teachers (5/77), discrimination on grounds of nationality (4/77), and bullying (4/77).

Other forms of discrimination were evoked, such as physical discrimination against a minor, discrimination on grounds of beliefs and religion, discrimination on grounds of sexual orientation, and peer group discrimination.

Citations from the online questionnaire:

"At nursery school, my teacher was unfair. She was very strict with some children, who would stand out from the others because of their origin, their physical appearance or speech problems"

"Public and other bodies often treat children like urchins. Often, people do not take children/the young seriously"

"Because of my gender, I feel like a girl, but I was born in a boy's body; a lot of people find it difficult (and do not want) to accept me as a girl; I am rejected by society"

Article 2

3.3. Discrimination against trans and intersex children²⁸

Luxembourg law ignores the existence of intersex people. Legal provisions which only mention children "of either sex" or men and women, as holders of rights, constitute indirect discrimination on the grounds of sex: this formulation, which appears neutral, leads to unjustified differentiation in treatment of intersex people who do not belong – or do not feel that they belong – in either of these two categories. The same is true in administrative practice, in which only "male" or "female" sex is registered on the newborn's birth certificate, yet there is a multitude of forms of intersexuality and morphological and functional expressions between the male and female sexes. Well, firstly, the obligation to declare male or female sex to the registry office within five days of birth places a huge strain on parents, who are often in a state of shock²⁹ and, secondly, no-one can predict with which category intersex children will identify as they grow up. Though some will in fact identify with the sex assigned to them at birth, this will not be the case for all of them: some will identify with the

²⁷ Paragraph 20 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

²⁸ Source: Transgender Luxembourg

²⁹ Kriegler, Julia Marie, representative of the XY Women's Parents Group: *Communication on the parents' perspective*, a public event on the theme of intersexuality before the Committee of the Family, Senior Citizens, Women and Youth, Bundestag (original language: German), 25th June 2012, and Bouvattier, Claire: *Communication Determination of human sex: the hormonal aspect*, in the symposium "Does my body have a sex? Determination of sex and gender constraints", 22nd – 23rd June 2011, Paris, organised by the Emilie du Châtelet Institute, <http://www.institutemilieduchatelet.org/Colloques/colloque-sexe.html>.

so-called "opposite" sex or even some other way – a multitude of identities is lived by intersex people in their diversity³⁰. In this case, the mention of sex which appears on their identity documents does not correspond to their gender identity or to their gender expression³¹, or even to their appearance, which may result in the identity card not fulfilling its function of identification which can lead to discrimination³².

Also, for trans children and adolescents, the sex stated on their birth certificate will not correspond to their gender identity or to their gender expression, or even to their appearance, which may result in the identity card not fulfilling its function of identification and in those minors being discriminated against.

Recommendations:



- 14. In terms of the registry office: Create a new birth certificate category which does not mention the child's sex, applicable to ALL children – otherwise a new stigma will be created - up to the age of 18, or if the child themselves becomes a parent while they are still a minor, until their own child is born. -- - Guarantee respect for people's private life, whose recorded sex on Civil Register has been rectified, by issuing extracts from birth certificates which do not mention the change.**
- 15. In terms of mention of sex on identity documents: Remove any mention of sex, especially on the future identity card, specified in the draft Act on identification of individuals³³. --- If this proposal is not used, mention the sex only on the biometric chip of the identity card, whose details will not be visible to the naked eye.**
- 16. In terms of the Constitution: As part of the Constitutional review process underway³⁴, make sure that the future Constitution, whatever formulation is finally used, grants full legal recognition to trans and intersex people and guarantees equality to any individual, whatever their biological sex, gender identity and gender expression.**
- 17. In terms of anti-discrimination legislation: Ensure that the ban on sex discrimination is interpreted as also including any discrimination on grounds of biological sex, gender identity and gender expression.**
- 18. In terms of national bodies responsible for observation of human rights: Ensure that their mandate includes combating discrimination on grounds of biological sex, gender identity and gender expression.**

Article 3

3.4. The child's best interests³⁵

Strengthen efforts to ensure that the general principle of the best interests of the child is understood and appropriately integrated in all legal provisions, in judicial and administrative decisions, as well as in projects, programmes and services affecting children.³⁶

³⁰ Schweizer, Katinka: "Intersexualität anerkennen statt auszulöschen", in: *Dokumentation: Intersexualität im Diskurs*, German Ethics Council, 2012, p. 29-30.

³¹ See Schedule 2: glossary

³² The risk of discrimination against people whose appearance corresponds to neither sex on their identity documents has been stressed by Hammarberg, Thomas: *Human rights and gender identity*, Council of Europe, 2009, p. 16 and 40-41.

³³ Draft Act no. 6,330 on identification of individuals, in the national register of individuals, on the identity card, on communal registers of individuals, filed with the Chamber of Delegates on 15th September 2011.

³⁴ Review proposal including amendment and a new order within Constitution, no. 6030, filed with the Chamber of Delegates on 21st April 2009.

³⁵ Source: Transgender Luxembourg.

³⁶ Paragraph 24-25 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005).

The issue at stake here is determining whether the medical “normalisation” of the genitalia and atypical sex characteristics of intersex children seeking to give them *the appearance* of male or female genitalia is taking place in the children’s best interests.

This type of medical practice, which has been contested a lot recently³⁷, has become commonplace since the ’70s, based on non-scientifically-proven theory³⁸. These practices entail medically assigning a sex to a child by means of surgery and/or hormone treatment. Disputed medical acts are ones carried out on healthy organs, seeking to match the child’s appearance with the sex chosen for them, although their life and health are not placed under threat: these acts are therefore of a “cosmetic” rather than a therapeutic nature.

They are motivated by the desire to adapt the child’s body to a social norm according to which there are only two biological sexes, thus denying intersexuality. The postulate of binarity of the sexes is thus put forward in absolute defiance of intersex children and their rights. One of the arguments which favours maintaining these practices is the split invoked between the interests of the child and those of their parents. The term (psycho)social urgency is recurrent in debates on the subject. If there is any psychosocial urgency, it only concerns parents (but not the newborn baby). Two types of response are therefore appropriate: the first is psychological support to parents and the second consists in raising awareness of intersexuality on a national scale.

It is in no way in the child’s best interests to undergo, with a view to relieving the psychological distress of third parties, in other words, the parents, operations without the child’s consent, some of which have to be considered as mutilation and sterilisation, and give rise to practices which amount to rape on medical advice in the event of vaginal dilation of the neo-vagina.

A second argument often put forward is that conformation of the child’s body to the male or female sex encourages social integration. This goal has not been reached: the German Ethics Council has noticed that the social integration of intersex people has been limited³⁹. Moreover, a significant number of them are dissatisfied with medical treatment and report that they are a source of trauma and depression and make it difficult to forge social relations⁴⁰. The German Ethics Council has acknowledged the bodily and psychological suffering caused by medical treatment and recommends that a compensation fund be set up⁴¹.

Furthermore, there is the question in regards to determining when the child is capable of making their own decisions concerning medical treatment with a view to making their sex characteristics appear more “male” or “female”. Article 12 of the International Convention on the Rights of the Child does not give any sufficient guarantees concerning this as the forces present are unequal: witness statements from Germany, France and Belgium, amongst others, demonstrate the insistence of the medical authorities towards “normalisation” of intersex bodies. Similarly, there is no guarantee that the child’s opinion will be “freely” expressed, or that their consent will be “informed”.

The medical treatment to which an intersex adolescent “consents” at that age is not usually provided on their own initiative, but is provided by medical authorities which consider it as obvious, without taking sufficiently into account the ethical issues and medical consequences.

³⁷ The German Ethics Council, in its 2012 report on intersexuality, and the German Bundestag, in its conferences dated 18th June 2012 and 25th June 2012, were especially taken by this issue; see also *Parallel Report to the 5th Periodic Report of the Federal RUPRblic of Germany on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, Association of Intersex People/XY Women, Humboldt Law Clinic: Human Rights, 2011, and Moron-Puech, Benjamin: *Intersexuals and the law*, dir. Dominique Fenouillet, Mémoire Université Paris II, February 2011.

³⁸ Beh, Hazel Glenn, and Diamond, Milton: *An Emerging Ethical and Medical Dilemma: Should Physicians Perform Sex Assignment on Infants with Ambiguous Genitalia?*, 2000, <http://www.hawaii.edu/PCSS/biblio/articles/2000to2004/2000-emerging-ethical-dilemma.html>.

³⁹ German Ethics Council: *Intersexuality. A Report*, 2012, p. 83-85.

⁴⁰ German Ethics Council: *Intersexuality. A Report*, 2012, p. 74.

⁴¹ German Ethics Council: *Intersexuality. A Report*, 2012, p. 176.

“For as long as there is no social representation that you can live with a different body, there will be no informed consent, given that there will be no guarantee that the people mandated to obtain the consent will highlight the diversity of the possibilities”⁴².

What is the situation in Luxembourg?

Case study


An intersex person from Luxembourg told Transgender Luxembourg that she/he “was not satisfied with the sex which had been assigned to her/him at birth”, but Transgender Luxembourg did not receive any further information.

It would appear that surgical operations seeking to assign male or female sex to a child whose sex organs are atypical do not take place in Luxembourg and that these children are sent abroad, but there is no documentation to support this.

Analysing the SUSANA⁴³ form should provide initial information on the subject as it includes a field for entering the reason for transfer to a foreign hospital, as well as the hospital’s name. Knowing hospital names is essential to finding out how Luxembourg’s children are treated.

In addition, we are not aware that in Luxembourg there are any medical procedures in writing for children with atypical development of sex organs. In the absence of such procedures, it is not possible to determine what the medical practices are or guarantee respect for intersex children’s rights.

Recommendations:

- 
- 19. Always assess all medical measures taken in cases where intersex children’s health was not directly placed under threat and produce a report on the health status of intersex children.**
 - 20. Expressly ban hormonal-surgical treatment seeking to assign a sex to an intersex child, under the obligation in Luxembourg to take every effective, appropriate measure to abolish traditional practices prejudicial to children’s health (Article 24, para. 3 ICRC). The ban must also extend to sending these children abroad to undergo such treatment.**
 - 21. Draw up medical procedures on medical care to children whose sex organs do not meet generally accepted standards, considering current knowledge and children’s rights.**

⁴² Guillot, Vincent, interview held on 9th September 2012 with Transgender Luxembourg.

⁴³ Form used to assess the health of newborn babies. It includes three boxes relating to child sex: “male”, “female” and “indeterminate”.

3.5. A child's right to be heard within a reasonable time⁴⁴

- *promote and facilitate, within the family, schools and institutions, as well as in judicial and administrative procedures, respect for the views of children and their participation in all matters affecting them.*

- *provide educational information to parents, teachers and headmasters, government administrative officials, the judiciary, children themselves and society at large, with a view to creating an encouraging atmosphere in which children can freely express their views.*⁴⁵

Concerning implementation of Article 12 of the Convention in Luxembourg law, it is true that Luxembourg has now made huge progress by introducing to its Code Civil Article 388-1, which generalises on hearing minors in proceedings which concern them. However, this is only one option. It is merely, in principle, an obligation when the minor requests it. Children are only heard when they are capable of discernment.

However, the following are a few points which are problematic in practice:

1. Reasonable time:

In the context of proceedings before the Guardianship and Youth Court, the judge is faced with all kinds of issues: issues relating to protection of minors, but also issues concerning minors who have committed offences. The former have been exposed to psychological or physical trauma in their families; the latter, having committed offences, would have been prosecuted had they been of age when they committed the offence. In both types of case, the judge in the Guardianship and Youth Court will rule applying the same law (the 1992 Act on Protection of Young People). For the City of Luxembourg, only five judges are in place at the Guardianship and Youth Court, two of whom are exclusively responsible for guardianship (one for minors and one for those of age). This means that for months, the situation surrounding the minor stagnates or they are even distanced from their family for months, whilst a fast appearance could, for example, bring about a *quid pro quo* and enable the child to rebuild their family environment quickly, more specifically to reduce the rights of a parent whose close proximity harms the child.

Moreover, the Guardianship and Youth Court often has to deal with guardianship issues. In light of the number of cases the judge has to handle, the cases may be published much later, even reporting on cases five or six months later. This time is quite often used by the parent or guardian to "work" on their child, or even brainwash them, in order to orientate their future statements before the judge, whether or not the parent is present at the hearing.

2. Capacity for Discernment:

In practice, it is very difficult to determine a child's age of reason. Accordingly, the Convention is open where this matter is concerned and allows member countries to decide how they wish to apply the text. This lack of determination is felt in other areas of the law. This is illustrated by criminal law which, in Luxembourg, does not apply to minors under 16. For minors aged 16 to 18, matters are left to the judge's discretion. However, minors are civilly liable from the moment they are born, and the age of reason therefore has no impact.

Every child develops at their own pace. It is therefore impossible to lay down any rule allowing the age of reason to be determined and generalised for all children. However, some children, whom the judge could hear, are not heard because the judge, having not seen the child, considers that they are not capable of discernment. Frequently, they quite simply base themselves on the child's real age when agreeing or refusing to hear them.

3. The minor's statement:

One particular subject which also to a large extent concerns the minor, is **parental divorce** which has a direct impact on them. Judges believe that children do not form part of divorce proceedings, but are merely affected by them. In a divorce, they will be heard only if they are mature and show the necessary discernment for this. On the flipside of this the child's right to

⁴⁴ Source: *ETUDE AS AVOCATS* (legal practice)

⁴⁵ Paragraph 27 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

be heard in divorce proceedings is that the child is subject to a significant amount of pressure, difficult for a minor to manage, whatever their age. In a divorce brought about through misconduct, or in the context of proceedings before the guardianship judge, the parents try to influence the child's behaviour during the hearing, the purpose of this being to obtain a ruling which is favourable to them. As for the children, they find themselves in a game of tug-of-war with their parents, which imposes on them a degree of responsibility which is difficult to bear, especially where very young children are concerned. They often feel that they are being dragged towards one or the other parent, which explains why it is so difficult to determine whether the child is free to speak and free from any outside constraint. Moreover, appearing before a Court, seeing the judges and lawyers in their finery, often gives children the impression that they themselves are guilty, and have made a mistake for which they will be punished. And the parents are generally present, which does not necessarily improve the child's situation.⁴⁶

Recommendations:



- 22. Find the balance between the child's right to be heard and protection of a child who could be faced with pressure.**
- 23. Automatic appointment of a lawyer for the child in divorce proceedings or for guardianship issues to be recommended.** (Recall here that, pursuant to the amended Law of 10th August 1991 on the Legal Profession, a lawyer is available to them free of charge through legal aid, which guarantees the lawyer's independence when faced with the parents. The child may speak freely to their lawyer, who is only there to defend the child's interests).
- 24. Although the text stipulates that minors should be heard in the *Chambre de Conseil* (a room where non-public court proceedings are held), it should go further and encourage judges to hear children behind closed doors, preferably in an office rather than a courtroom.**
- 25. In civil matters, as soon as one of the parties requests it, require the judge to hear the child to decide whether or not they are capable of discernment, and if so, hear them directly on matters which concern them.**
- 26. Children who are heard by the judge should always be heard in the absence of their parents and their counsels; only the presence of the lawyer or the minor's ad hoc administrator should be tolerated.**
- 27. As to a reasonable time, the only long-term solution as we see it is investment. There is scope to create new posts, or even to divide the Youth Court into several departments, each of which would have its own field of predilection (custody of children, ill-treatment, children who have committed offences specified in the Criminal Code, etc.).**

Case study concerning reasonable time

"In one of the cases at the *ETUDE AS AVOCATS* (a lawyer's practice), the hearing in childcare case was postponed by five months; the notification of the hearing planned on 16th November 2011 was issued on 16th June 2011".

⁴⁶ Sources:

- 1) Luxembourg legislation on the subject (Act dated 10th August 1992) on Protection of Young People, Act dated 10th August 1991 on the Legal Profession, Art. 388-1 and inherent jurisprudence.
- 2) 3) *ETUDE AS AVOCATS* (legal practice).
- 4) *ETUDE AS AVOCAT*, more specifically, the witness statements of participants in conferences on hearing children speak (Luxembourg Bar Conference dated 29th May 2012, the speaker *Maitre* Valérie Dupong) and the one entitled "The child subject to the law: a new posture", held by Jean Zermatten on 7th September 2012, from which it was quite clear that the lawyers in the place are faced with recurrent problems:
 - According to litigation lawyers, even divorce lawyers, the reticence of judges to hear children in civil proceedings.
 - According to minors' lawyers, the recurrent finding of pressure placed on children, ranging from a few cases to the psychiatric internment of minors subject to suicidal thoughts.

Case study concerning pressure imposed before the guardianship judge

In one case, two children aged 7 and 14 were heard by the guardianship judge.

The 7-year-old girl was sobbing and was so profoundly affected by the situation as she thought she had done something wrong. She had to be comforted by the judge for a long time before she could make her statements, hidden in the arms of her mother.

As for the boy, he was in a game of tug-of-war with his parents, so that the experience before the judge were quite destabilising for him”.

Case study examining pressure imposed during a divorce

“In a case of divorce by mutual consent (which changed to at-fault divorce and then to a divorce of mutual consent once again) it looked like as if the mother used to tell her five-year-old daughter that her father preferred his new partner’s child.

Article 12

3.6. Participation of young people at school

Participation of young people is closely linked to the concept of citizenship. The participation and commitment of young people do not just happen by themselves. They require acquisition of skills and information. School is just one privileged place for developing the necessary skills and experimenting with them as people learn to take responsibility.

The Student Council is the structure representing young people in secondary education. Its purpose is to guarantee the inclusion and active participation of students in the designing of their school environment.

The organisation and set up of student councils is subject to the Grand Duchy regulations dated 1st August 2001. They stipulate that it is compulsory to create a student council in every secondary education institution; its members must be elected by student of that particular school and the members hold office for a period of 2 years.

The regulations also specify that it is the school’s duty, at the beginning of each school year, to notify its students of the existence of the student council, its rights and obligations as well as providing a space where the student council can meet. This process is even more important taken into account that several studies have shown the positive effects a participatory approach has on the school environment and atmosphere as well as the rapport between students.⁴⁷

Witness statement⁴⁸

“The skills and competences of children at school must not be underestimated. You get the impression students take responsibility at a very late stage... So, at primary school, we would like to see projects which encourage skills such as taking responsibility and critical thinking”.

The reality in schools is very different though:

- absence of elections in certain schools;
- students are often ill-informed on the existence of a student council and what it does;
- student councils are neither aware of their rights, nor their duties;
- lack of support to the council’s activities
- councils and their decisions are not taken seriously or worse even blocked, leading to a loss of motivation amongst its members and consequently to the dissolution of the student councils ;
- lack of communication between the school management and the student council

These are merely a few points taken from discussions with members of different student councils during a “Student Council Day”, organised by the *Service National de la Jeunesse* (SNJ) [National Youth Service] in cooperation with the *Conférence Générale de la Jeunesse du Luxembourg* (CGJL) [Luxembourg General Youth Conference] and the *Conférence Nationale des Élèves* (CNEL) [Luxembourg National Students’ Conference].

⁴⁷ For example: Diedrich, Martina (2008): *Demokratische Schulkultur. Messung und Effekte*. Münster (Waxmann) 2007; Abs, Hermann Josef; Roczen, Nina; Klieme Eckhard (2007): *Abschlussbericht zur Evaluation des BLK-Programms „Demokratie lernen und leben“*. Frankfurt (*Deutsches Institut für Internationale Pädagogische Forschung*). (Materialien zur Bildungsforschung, Bd. 19).

⁴⁸ Reporter at the workshop “Is my opinion not worth anything?” at the Young People’s Convention “Equal opportunities for all young people - now!”, November 2007.

Witness statements⁴⁹

"The Student Council is not visible enough"

"School management support also depends on the make-up of the Student Council of the students' union"

"Young people do not know how far they can go as a Student Council"

"No-one knows who is responsible for the Student Council"

"The school management does not do anything"

The *Conférence Nationale des Élèves* (CNEL) is the body for national student representation in Luxembourg. Each student council is supposed to appoint two students to represent respective students within the CNEL. But many obstacles and complications now paralyse the work of the CNEL.

Recommendations:



- 28. The RADELUX Group is asking the Government to sign up to the "Revised European Charter on the Participation of Young People in Local and Regional Life" and to embark on developing a democratic school, in this context, especially asking to:***
- 29. promote student participation by granting greater autonomy to Student Council including them throughout the decision-making process;***
- 30. foster a real partnership and a framework for support, in the form of coaching and assistance to student council as necessary, by appointing a contact within each institution;***
- 31. raise awareness and train the school management and teaching staff to take a participation-oriented approach to life within the institution;***
- 32. notify students of their opportunities to participate and inform student councils about their rights and duties;***
- 33. grant more autonomy, support and assistance to the Conférence Nationale des Élèves by allocating an annual budget covering the staffing costs of a full-time post, thus guaranteeing them assistance and professional coaching provided by an independent, experienced youth structure. The allocated budget should also cover the costs of the different activities.***

⁴⁹ Report at the "Students' Union Day" held on 17th February 2009

4. Civil liberties and rights (Articles 7, 8, 13, 14, 15, 16, 17, 19 and 37a)

4.1. Access to appropriate information

- Prevent children from becoming exposed to violence, racism and pornography by mobile phone, films, video games and the Internet.
- Embark on programmes and find ways of raising children's and their parents' awareness of information and material which could adversely affect a child's well-being.⁵⁰

The RADELUX Group has found with satisfaction that campaigns to raise awareness of use of new technologies, especially the Internet, are being pursued in many establishments, institutions and associations. Schools, children's homes and scout groups are examples of places where the problem of poor use of new technologies is a reality. Discrimination, violence and sexual harassment are themes which affect many children in Luxembourg, especially over the Internet.

An example of an awareness campaign is that being pursued by the BEE SECURE project run by the *Service National de la Jeunesse* (SNJ), which is intended for both children and parents. Its main theme is "How to enable children to use the Internet safely".

Results from the online questionnaire:

According to the online RADELUX questionnaire, 28 out of 70 young people spend between 1 and 3 hours per day on the Internet and 13 out of 70 young people spend more than 3 hours per day. 53.3% therefore spend at least an hour per day on the Internet.

When they are asked whether they have already received sexual advances/sent sexual messages online, 27 out of 69 young people said *yes*. Describing the situation in which they received the advances, many mention experiences they have had in chat rooms and through spam they have received by e-mail. However, the following witness statements mention real sexual harassment on the Internet (10 out of 69 participants):

Witness statements provided/Citations given in the questionnaire:

- 1) "A stranger sent me a message on Facebook asking me if I wanted to have a sexual relationship with him"
- 2) "Messages on Facebook from my classmates asked me whether I wanted to fuck"
- 3) "A 16-year-old boy sent me a photo of his ..."
- 4) "It was vile"

8 children/young people out of 69 were offered gifts in exchange for nude photos or sexual relations. Here is one witness statement:

"He wanted to have pictures of me stark naked, and in return, he would give me money, but I would not have been so stupid as to do that, and that remains the case"

Article 19

4.2. Torture and other cruel, inhuman or degrading treatment

The Committee is still deeply concerned at the use and length of this isolation and at the very harsh conditions depriving the child of almost all contact with the outside world and of any outdoor activity .

The Committee recommends that the State party develop and implement alternative disciplinary sanctions in order to avoid as much as possible the use of solitary confinement, to further reduce the length of this confinement and to improve its conditions, inter alia, by providing persons under 18 with access to an outdoor area for at least one hour a day and

⁵⁰ Paragraph 31 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005).

*giving them access to some kind of recreational facilities. Furthermore, the Committee urges the State party to include, in its next periodic report, specific and detailed information on the use and the conditions of this solitary confinement.*⁵¹

In 2011, deprivation of freedom shocked public opinion:


Case study of inhuman treatment

"In December 2011, two children aged 12 and 13, accused of stealing, were detained for two weeks at the Schrassig penitentiary (minors' section of an adult prison), seen as scandalous according to public opinion"

This issue has been well known for many years. Minors are regularly incarcerated in institutions for adults in Luxembourg, if they are over the age of 15, are recidivist and are involved in crimes such as rape and drug offences. We will have to wait until the Security Unit in Dreibern is up and running before we can remedy these situations. The Luxembourg Government lacks suitable support structures for minors with specific issues. The judges at the Guardianship and Youth Court in regards to the prison administration reform recently questioned the intentions of the legislative powers when those decided on the construction of this security unit in 2004.⁵²

The exclusive report from the external inspector on affairs related to the State's Socio-Educational Centre, provides a current, relevant analysis of legal implications, professional practices and the living conditions of minors accommodated at the Centre.⁵³

Recommendations:

- 
- 34. Avoid inhuman and degrading treatment of minors placed or accommodated in public authority-run institutions and make the implied parties more accountable.**
 - 35. Define – within the action plan to combat homelessness – a policy and use procedures which are clear to unaccompanied minors (MINA) living, temporarily or permanently, in Luxembourg.**
 - 36. In the short term: Analyse and bring into line legal implications and international standards (Beijing Rules)⁵⁴ concerning deprivation of privacy in Luxembourg institutions accommodating minors, including UNISEC which will be up and running shortly.**
 - 37. In the medium term: Ensure the consistency and complementarity of support systems and measures governed by and interfered with by two co-existing laws: the Law on Protection of Youth (1992) and the Law relating to assistance for children and families (2008).**
 - 38. Set up a committee of national and international experts to assess the overall advantages and disadvantages of applying the current protection system in Luxembourg to enable a background debate on future orientation and reform in the minors' justice system.**
 - 39. Associate NGOs with the surveillance committees of centres and institutions where minors are deprived of their freedom (in different ways and using different procedures)**

⁵¹ Paragraph 32 and 33 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

⁵² Draft Act 6,382 on reform of prison administration. Report on the parliamentary committee meeting dated 17th October 2012:
http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/163/109/116028.pdf. Act dated 16th June 2004 on State Socio-Educational Centres.

⁵³ External Control report on places which deprive of freedom:
http://www.celpl.lu/doc/doc_accueil_124.pdf

⁵⁴ Set of United Nations minimum rules concerning administration of justice for minors: Beijing Rules (1985) - <http://www.ipji.org/fr/ressources/normes-internationales/>

4.3. Female Genital Mutilation (FGM)

Female genital mutilation/excision covers any procedures seeking to partially or completely remove a girl's or woman's external genitalia, or damage them in any other way, for cultural or non-therapeutic reasons⁵⁵. Although most genital mutilation takes place in African countries, it also takes place in European countries.

In Luxembourg, any kind of mutilation is banned by law. The Criminal Code covers all kinds and all types of mutilation, but does not within this term specify female genital mutilation. Luxembourg law punishes "voluntary bodily harm" (Art. 398 – Art. 410 of the Criminal Code). The punishments are increased, especially in the event of serious mutilation. Accordingly, it can be argued that female genital mutilation is criminally punishable when it is termed serious mutilation. However, this matter is ultimately left for consideration by the judge. Genital mutilation is specifically banned by the Law dated 16th December 2008 relating to assistance for children and families.

Article 2, paragraph 3 of the Law dated 16th December 2008 relating to assistance for children and families stipulates thus: "Especially in families and educational communities, physical and sexual violence, inter-generation transgressions, inhuman and degrading treatment and genital mutilation are banned".

Belgium explicitly punishes genital mutilation in its criminal law.⁵⁶ Art. 409 of the Belgian Criminal Code: "(1.) Anyone who has engaged in, facilitated or encouraged any form of mutilation of the genitalia of any female, with or without that person's consent, will be sentenced to 3 to 5 years' imprisonment. Any attempt is punishable with 8 days' to a year's imprisonment. (2.) If mutilation is carried out on a minor or in a bid to obtain money, the penalty will be 5 to 7 years' imprisonment".

Moreover, professional confidentiality may be lifted to protect a little girl: Art. 458a of the Belgian Criminal Proceedings Code: Art.10b: "If mutilation has been performed on a minor, in Belgium or in any other country, anyone who participated in it will be prosecuted in Belgium".⁵⁷

In Luxembourg, no action will be taken to prosecute mutilation which is carried out on girls/women while they are on holiday, for example, in their country of origin.



Recommendations:

40. Develop legislation in Luxembourg based on Belgian law to punish female genital mutilation undertaken either within the country, or outside the country.

4.4. Reservations in relation to Articles 7 and 15

Reservation⁵⁸ : The Committee notes with concern that the Government has not withdrawn its reservations concerning Articles 2, 6, 7 and 15 of the Convention.⁵⁹

4.4.1. Registration at birth and right to a name⁶⁰

During birth registration procedures, some persons involved are confused or ill-informed and refuse to register stillborn children (lifeless child certificate) for reasons of viability (whilst the 2005 Law on the name of the child no longer defines a viability threshold) or words used incorrectly on the medical certificate (the word "foetus" at x weeks leads to refusal, whilst the

⁵⁵ WHO/FNUAP/UNICEF common declaration, 1997, p 3.

⁵⁶ http://www.gams.be/index.php?option=com_content&view=article&id=51&Itemid=54&lang=fr

⁵⁷ See PDF:

http://www.gams.be/index.php?option=com_content&view=article&id=51&Itemid=54&lang=fr

⁵⁸ Paragraph 8 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005).

⁵⁹ Reservations concerning Articles 2, 6, 7 and 15 of the Convention (appended).

⁶⁰ Source: Initiativ Liewensufank asbl.

term “stillborn child” for the same gestational age is accepted) or missing papers (whilst they are not defined clearly). It is an unbearable situation for bereaved parents to see themselves denied the opportunity to give a name to the deceased child and for society to acknowledge it.

This non-uniform treatment of name registration causes equal treatment problems. The right to a name is not observed. The difficulty of registering a stillborn child also poses a problem to brothers and sisters.



Recommendations:

- 41. Clear procedure, in writing, to be sent to all persons involved: midwives, gynaecologists and paediatricians, maternity unit managers, registry offices.**

Article 15

4.4.2. The right to freedom of association and the freedom of assembly

Reservation⁶¹ : The Committee notes with concern that the Government has not withdrawn its reservations concerning Articles 2, 6, 7 and 15 of the Convention.⁶²

The RADELUX Group would like the Government to withdraw its reservation concerning Article 15. Freedom of association and of peaceful assembly is not only a right which children/young people should have, but also it constitutes something positive, a working instrument in the field of social affairs, education, etc.. Student Councils are just one of many examples of “peaceful assembly places”. In terms of the right to form an association, many minors form groups in Luxembourg (dance groups, music groups, singing groups, etc) and perform, sometimes for money. However, there is no legal framework for these groups.

Case study

“The AVR (*Association Nationale des Victimes de la Route* [National Association of Road Traffic Accident Victims]) brings together victims, including many young people, who have experienced or suffered road traffic accidents. They meet regularly, to share a moment, talk and help each other. Professionals say that the help which children/young people give each other is important and should not be underestimated. The solidarity group also creates initiatives devised by young people. For example, some of these people tell their stories at conferences held in schools. It does appear that these stories are a very good way of raising awareness of alcohol and drugs behind the wheel”.



Recommendations:

- 42. Create a legal framework for Luxembourg which will give children the opportunity to form associations; why not even create an association under specific conditions.**

Article 7

4.5. The right to know the identity of one’s biological parents⁶³

Prevent and eliminate “anonymous” childbirth.

In case anonymous births continue to take place, take the necessary measures so that all information about the parent(s) are registered and filed in order to allow the child to know - as far as possible and at the appropriate time - his/her parent(s).⁶⁴

The CRC’s previous recommendations have not yet been put into practice.

⁶¹ Paragraph 8 of the CRC’s Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005).

⁶² Reservations concerning Articles 2, 6, 7 and 15 of the Convention (appended).

⁶³ Source: *Initiativ Liewensufank a.s.b.l.*

⁶⁴ Paragraph 29 of the CRC’s Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

In the Grand Duchy of Luxembourg, the anonymous childbirth policy is legally authorised. No assistance is given to mothers who decide not to keep their child. However, assistance would mean that aid could be offered and tailored to each mother, even years after childbirth; for example, after the birth of the child, or even over the next few years, the mother could place a letter in a special archive. As such a form of archiving currently does not exist in Luxembourg, the situation deprives the child, born anonymously, of information on their parents, when it reaches adolescence or indeed adulthood.

Neither is setting up a baby-hatch or safe haven to be encouraged. In fact, unlike a number of preconceptions, it has not been demonstrated that baby-hatches and safe havens prevent the death of certain babies, for example, babies found dead in dustbins.⁶⁵ Unassisted childbirth which precedes recourse to baby-hatches and safe havens places the lives of the mother and baby at risk.⁶⁶

The practice of medically-assisted procreation with use of donor gamete(s) creates a new generation of children who do not know their biological parent(s). In Luxembourg there are children, who have been born as a result of such practices, but their biological origins cannot be traced.⁶⁷

Recommendations:

- 43. Use a clear procedure and clear vocabulary to assist mothers who want to have an anonymous childbirth and appoint a data archiving service (for example, the Ombudskomité fir d'Rechter vum Kand).**
- 44. Follow the example of countries which, like Switzerland, Germany, the United Kingdom, Sweden and others, have abandoned the principle of anonymity of gamete donation.⁶⁸**

Article 8

4.6. Respect for trans and intersex children's gender identity⁶⁹

The parents of, and more generally those surrounding, a trans or intersex child are faced with the question of determining whether it is in the child's interests to express one's gender identity in the way they would wish (clothes, change of first name, games, activities, etc.). Some recent research concerning trans children shows that only educational practices which support children as they express their gender identity have a positive impact on their well-being and development. However, rejecting, banning and punishing behaviour of children which corresponds to their gender identity, brings with it significant risks to psychological and physical health, increases the risk of suicide, drug-taking, depression and the risk to children of contracting HIV and finding themselves on the streets. A significant number of children placed in care or adopted, and even children who flee from home or have no fixed abode, are gender variant⁷⁰.

For trans and intersex children, respect for gender identity implies that the children are entitled to bear a first name (different to the one registered on their birth certificate), matching their gender identity, and are entitled to respect for this first name by those around them. This also implies that the children are entitled to be called by their first name (male, female or even neutral as in German) matching their gender identity (rather than the sex registered on their birth certificate) and to participate in activities associated with it.

In the education system, the question of children's gender and first name arises (school enrolment forms, class registers, school records, exercise books, qualifications, etc.), and the

⁶⁵ The example of babies found in dustbins is an example taken from neighbouring countries. The situation has not occurred in Luxembourg to date.

⁶⁶ Sources: case of research into the origins of trauma described in the *Ombuds-comité fir d'Rechter vum Kand* report.

⁶⁷ Arthur Kermalvezen: *Born to an unknown spermatozoid*. 2010. And www.pmanonyme.asso.fr

⁶⁸ Idem Page 212 and <http://www.pmanonyme.asso.fr/aspectslegislatifs.php>

⁶⁹ Source: Transgender Luxembourg

⁷⁰ Brill, Stéphanie, Pepper, Rachel: *Wenn Kinder anders fühlen, Identität im anderen Geschlecht, Ein Ratgeber für Eltern*, ed. Reinhard, Munich, p. 85-117 and references on the website "Family Acceptance Project", <http://familyproject.sfsu.edu>.

question of the child's participation in non-mixed activities (sport) or the use of non-mixed places (toilets, changing rooms). The witness statement below illustrates feelings on the subject of a trans adolescent who has transitioned from a male social role to a female role; no-one can guess her transidentity, as she passes as a girl. The school has been informed of her transidentity and has banned her from using the girls' toilets and changing rooms for sport:

Witness statement:

"I hate going to the boys' toilets at school. As a consequence, I drink hardly anything when I have to go to school and when I am there. Changing is unbearable too, because I have to go to the store room. (...) I am simply standing apart; in fact, there is no place for me at school. Is there anywhere for me in society? In due course, I will leave Luxembourg, and go elsewhere, somewhere where no-one knows me. Maybe I will feel wanted elsewhere."

Recommendations:



- 45. Adopt regulations which acknowledge trans and intersex minors' rights to respect for their gender identity – quite apart from any medical treatment relating to their sexual characteristics – based on the Argentinian Law on the right to gender identity⁷¹.**
- 46. Provide financial support to specialist association-type structures, both concentrating on assisting children and childcare and education system professionals, and assisting trans and intersex people and their families. These services must rely on the expertise of people with personal experience of issues relating to intersexuality and transidentity.**

⁷¹ See, in the Schedule, the additional report on the rights of trans and intersex children.

5. Family environment and replacement protection (Articles 5, 9, 10, 11, 18, 20, 21, 25 and 27.4)

Parental responsibilities⁷² : provide more protection for parents' rights and parent-child relationship so that the transfer of parental authority be used only in exceptional circumstances and in the best interests of the child.

Periodic examination of placement⁷³ : currently, a periodic examination takes place every three years: placements are made for an open-ended period.

introduce the rule that placement of children in foster care or in institutions may only be ordered for a fixed period, e.g. one year, with the possibility of prolonging the placement for another fixed period, which should provide for a regular review of the conditions of and the need for placement.

5.1. Temporary or final placement of children outside the family environment

Due to the creation of the *Office National de l'Enfance* (ONE) [National Children's Office] within the framework of the Law relating to assistance for children and families (AEF), the situation concerning placement of minors outside their family environment is changing considerably. So for example, periodic examination to provide AEF will take place after a six-month period. An evaluation of the new system on the provision of assistance to children and families will only be possible in a few years' time, as the law only came into effect in 2011. In general, we note a lack of continuity of measures and assistance in the event of transition of minors between different support and protection systems (transitions between: socio-educational centres, youth justice system, placements abroad, the national education system, health-psychiatry services).

Recommendations:

47. Improve transitions of minors between different support and protection systems, especially through the generalisation of a transversal reference coordinator for each minor, through a better exchange of information, and thanks to a legislation, which better gives the principle of the professional secret and information sharing. See also the recommendations in Chapter 4.2 on inhuman treatment.



Article 25

5.2. Placement of newborn babies⁷⁴

In Luxembourg, the number of infants and newborn babies placed by the judge is high⁷⁵. Often, existing centres do not have the resources necessary to look after young children sufficiently and professionally, the staff's turn-over does not allow the child a stable attachment.

Case study

"For several months, a baby (who was still being weaned) had to stay in the maternity unit because a place had not been found for her. Lack of time of the nurses and isolation in the cot no doubt worsened the little girl's pathological symptoms".

⁷² Paragraphs 34 and 35 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

⁷³ Paragraph 37 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

⁷⁴ Source: *Association Luxembourgeoise des Pédagogues Curatifs* asbl

⁷⁵ Statistics: Maison Françoise Dolto: 19 boarders, 18 of them children under 3 (Situation as at 1st October 2012; Source: 2012 ORK report)



Recommendations:

- 48. Support pregnant women who could see their child placed, to prevent placement immediately after childbirth (recommendations 47, 39, 55).**
- 49. Identify more foster care families and people suitable for looking after a child, and further raise awareness amongst families for this work.**
- 50. Accordingly, give young children a stable bonding.**

6. Health and well-being (Articles 18, 23, 24, 26 and 27)

Article 23

6.1. Prejudice against handicap and epileptic children⁷⁶

In Luxembourg there are no structures suitable for caring for children with severe epilepsy. To obtain adequate treatment for their illness, specialist help, education and even adapted treatment, children suffering from this type of epilepsy find themselves separated from their families and have to live in unfamiliar contexts (for example abroad in bordering countries). People are still ill-informed about epilepsy. One consequence of this is that children acknowledged as having a disability are either excluded from job training, or excluded from education, or even faced with the prejudice to simulate a handicap outside of their seizures. A second consequence is that they are often denied social integration and access to leisure activities.

Epilepsy diagnosis and medical treatment to children are often unsatisfactory (long waiting times, language barriers, shortage of adequately trained doctors, and insufficient parent information on the illness and treatment).⁷⁷

Recommendations:

- 51. To give epileptic children the chance to live a full, decent life, to become independent and ensure their dignity, the following is needed: suitable structures and infrastructures, high performance medical care, co-operation between doctors, parent information and removal of prejudices.**



Article 24

6.2. Suicide

*Many children from Luxembourg are treated in institutions offering psychiatric assistance to minors in bordering countries, owing to the reported lack of an adequate care system, in particular child and juvenile psychiatry, in Luxembourg.*⁷⁸

*The Committee recommends that the State party use the results of the comprehensive study recently undertaken to address the issue of suicide among the youth as a basis for the formulation of adolescent health policies and programmes. It further recommends that the State party continue to improve the quality and capacity of child and juvenile psychiatry in the country, paying special attention to mental health provisions, both preventive and interventional.*⁷⁹

Results from the questionnaire "Your voice for the Rights of the Child!"⁸⁰

In the online questionnaire, three questions were asked on the topic of suicide: According to the results, 39/68 participants have never thought of committing suicide. 20/68 have already thought about it between once and 5 times, 2/68 have considered it 6 to 9 times, and 7/68 have thought about it more than 10 times. 60/69 participants answered that they had never attempted suicide. 9/69 participants have attempted suicide once to 5 times.

⁷⁶ Source: AAPE (*Association d'Aide aux Personnes Epileptiques*)

⁷⁷ Witness statements received by the AAPE a.s.b.l. (*Association d'Aide aux Personnes Epileptiques*)

⁷⁸ Paragraph 44 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

⁷⁹ Paragraph 45 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

⁸⁰ Appended

The results show that one third of children/young people who have thought of committing suicide actually went ahead with it. Furthermore, questionnaire participants begin to consider suicide at the age of 14.⁸¹

Why do people want to commit suicide?"/2 witness statements

"I thought I was not entitled to live, that my life was wasted"

"Family problems"

Recommendations:

52. The place of young people in society needs to be recognised, as does the family life in which the young person lives. Develop high quality services which make it possible to balance "family life" and "professional life". The family is what is most important to young people in difficult situations.

53. More attention needs to be paid to adolescents/young people in political campaigns/speeches.

54. Invest financially in developing values which concern family life, children and youth.



Article 24

6.3. General well-being of children in Luxembourg – online questionnaire results

Findings – a few results from the questionnaire

54 out of 75 participants said *yes* when asked whether they feel good about themselves. For those who do not feel good about themselves, the reason is largely their physical appearance.

Their concerns are many, especially in terms of their studies and training (20/77 participants), concerns relating to family issues (7/77) and the future in general (economic crises, finding work, etc.) (10/77). Other concerns have been cited, such as discrimination, health problems and world politics, and 17/77 children and young people said they had no concerns at all. Moreover, it was essentially older children (aged 14 upwards) who said they had concerns⁸².

Recommendations:

55. The Luxembourg Government must continue with studies about young people, especially where the general well-being of children is concerned, such as for example, the HBSC study.⁸³ These studies are an excellent way of taking action, starting programmes and raising awareness.

56. Social statistics and indicators concerning minors' well-being should be covered in official reports, especially socio-economic reports and the STATEC social cohesion report.



Article 24

6.4. Reducing the number of children who are victims of road traffic accidents

Strengthen as much as possible its efforts to reduce the number of casualties among children caused by traffic accidents, inter alia, by raising awareness through educational campaigns.⁸⁴

The National association of Road Traffic Accident Victims believes that the Government, Communes, LEADER⁸⁵, etc. have helped to prevent road traffic accidents by putting in place bus transport at night: late night bus (free) and even night rider (for which a charge does

⁸¹ The participants are not representative of the Luxembourg population, but the results represent a random sample of the population.

⁸² Participants are not representative of the Luxembourg population, and the result does not represent a random sample of the population.

⁸³ In 2006, the Ministry of National Education and Professional Training and the Ministry of Health and the Family published the results of Luxembourg's first participation in the study "Health Behaviour of School-aged Children (HBSC)". The study was carried out a second time in 2009/2010.

http://www.men.public.lu/actualites/2009/08/090806_agence_qualite/090806_hbsc/index.html

⁸⁴ Paragraph 43 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

⁸⁵ LEADER means "*Liaison Entre Actions de Développement de l'Economie Rurale*", a European Union initiative seeking to establish ties between projects and players in the economy and the rural medium.

apply). RADELUX recommendations are, however, the same as in 2001. Additionally statistical datae would help to identify the impact of the different campaigns aimed at reducing the number of minors victims of road traffic accidents.

Article 24e

6.5. Breastfeeding⁸⁶

The Grand Duchy of Luxembourg's study on infant nutrition⁸⁷ shows that in 2008, breastfeed rates went down or stagnated when compared to rates in 2002, despite an action plan, which was developed in 2006 and again in 2011. According to the study, 63% of mothers who weaned their babies early would have preferred to continue breastfeeding.⁸⁸ However, there was a lack of support and information given to them.

Furthermore, parents do not receive all the necessary information, and are not always aware of the benefits of breastfeeding or the benefits in terms of the health and development of their infants.

Recommendations:

57. The aforementioned study suggests the paths to take to inform and support mothers and parents, but the implementation of the recommendations in the action plan also requires significantly more staff resources and budgetary contributions so that children can achieve the best possible health.



⁸⁶ Source: Initiativ Liewensufank a.s.b.l.

⁸⁷ Ministry of Health, Alba Study 2008

⁸⁸ Sources: <http://www.ms.public.lu/fr/actualites/2011/09/07-alba/index.html>,
<http://www.ms.public.lu/fr/actualites/2011/09/07-alba/index.html>

7. Education, leisure, recreational and cultural activities

7.1. The right to education⁹⁰

Article 28

- *Improve and/or expand the facilities and opportunities for education in the country.*
- *take all necessary steps to put an end to the practice of placing children with learning disabilities and/or behavioural problems in facilities for mentally and physically disabled children.*⁸⁹

The high rate of school dropout in Luxembourg⁹¹ demonstrates that the education system is not adapted to the realities of society. Even more so when taking into account that especially students, with a migrant background, drop out of school. The importance given to languages in the school curriculum does not allow these students to reach the same level as their peers or manage to gain their final school qualification. Many of the school drop outs then leave Luxembourg to continue their studies in one of the neighbouring countries with a monolingual education system.⁹² However such measures make it difficult for them to reintegrate in the Luxembourgish society upon their return to Grand Duchy.

Recommendations:

- 58. Reform of secondary education and especially language teaching is necessary, to enable underprivileged children to finish their studies and increase their chances in the labour market.**



Article 31

7.2. Participation of epileptic children in leisure and recreational activities⁹³

The following example illustrates the situation of epileptic children in Luxembourg; but the same situation could hold true for children with disabilities.

When registering for recreational activities, some questionnaires do not require further information on the extent of the child's epilepsy, and there is merely a box asking whether or not the child suffers from epilepsy, *yes* or *no*. However, according to medical opinions, epilepsy manifests itself in many different ways; many of them do not mean that the child cannot participate in extra-curricular activities.

But certain leisure activities (for example, holiday camps and swimming facilities) do not allow children with epilepsy to take part, without assessing the extent of a child's epilepsy and possible risks adequately and in detail.

Because of lack of knowledge and stereotypes, children with epilepsy are stigmatised and excluded from leisure activities.

Recommendations:

- 59. To prevent stigmatisation, awareness must be raised within structures proposing leisure activities so that a case-by-case assessment is done and support and assistance is needed so that even severely epileptic children can participate in the leisure activities of their choice.**



⁸⁹ Paragraph 49 of the Concluding Observations of the Committee on the Rights of the Child.

⁹⁰ Source: *Association Luxembourgeoise des Pédagogues Curatifs* a.s.b.l.

⁹¹ Figures are available at www.men.lu in the annual statistical publications

⁹² Figures are available at www.men.lu in the annual statistical publications

⁹³ Source: AAPE (*Association d'Aide aux Personnes Epileptiques*)


8. Special measures to protect children (Articles 22, 30, 32, 33, 34, 35, 37, 38, 39 and 40)

8.1. For better integration into schools of children with special needs ⁹⁴

The SCAP⁹⁵, a department with a whole host of comprehensive tasks, on average receives 500 new requests for consultations from parents who are seeking support for their children, who have attention, concentration and psychomotor difficulties. These difficulties are especially noticeable at school. The SCAP is the only department in Luxembourg which offers “virtually” free assistance (minimal contribution to costs) to young children and adolescents with such difficulties. As the department is not prepared for such large numbers, families are faced with a one- or even two-year waiting period. As far as specialist medical practitioners are concerned, the situation is equally appalling. Parents often find themselves resorting to freelance therapists, and still incur significant expense which is not covered by health insurance. Families who cannot meet these costs therefore have to wait, and waste a lot of time crucial to their child’s development. As the SCAP does not operate within school buildings, parents have to travel with their child to SCAP premises, so that they can receive weekly therapy (sometimes two hours’ travelling time for an hour’s treatment). Cross-disciplinary teams are the officially recognised institution looking after these children at primary school level. But with their limited resources, they cannot meet the population’s needs.

Moreover, many families can no longer manage their child’s difficult behaviour. Deprived of professional psycho-educational support, situations worsen, sometimes to the extent that the parents risk losing the care of their child and seeing the child placed in an alternative care setting by a judge. To prevent such drama being caused to children, support services given to these families need to be strengthened and given more resources (for example, FARE, PAMO). Possible aggravations can be prevented, when the necessary support services work with parents, guiding them as they care their children at home.

Recommendations:

- 
- 60. Teams must be strengthened by recruiting more professionals; the teams have to be multi-disciplinary so that they can ensure that every child is cared for in a manner which meets its requirements. To prevent further stigmatisation, children should be prevented from having to leave class to attend one-to-one sessions.**
 - 61. Thus, members of the multi-disciplinary team should be present in schools and work directly with teachers.**
 - 62. In order to prevent parents from spending a lot of money on sometimes relatively unscrupulous therapists who take advantage of the parents’ difficult situation, the costs of essential therapies should be covered, including ergotherapy, speech therapy (especially in the event of dyslexia and dyscalculia) and psychotherapy. Whilst such children are capable of receiving “normal” schooling, they must be offered the necessary support.**
 - 63. An in-depth study of these requirements is needed. The number of children waiting for support and the amount of time spent waiting for psychiatrists and other professionals in the sector, not to mention the costs of intervention, etc., must be assessed. In addition, it is important that the Luxembourg Government fulfills its obligation to ensure that young people under 16 receive teaching and education, even under difficult living conditions.**

⁹⁴ Source: Association Luxembourgeoise des Pédagogues Curatifs.

⁹⁵ Service de Consultation et d’Aide psychomotrice

Case study⁹⁶

At the age of 13, Kevin* was involved in a road traffic accident; he was seriously injured and spent 10 months in a specialised hospital abroad. He returned to the Rehazenter in Luxembourg in September the following year. Physically highly dependent, he is receiving therapy. The boy has no cognitive impairments, is unharmed, but he is not receiving any schooling, even though he is at the age where schooling is compulsory. After a few weeks, health problems set in and Kevin had to be admitted to the CHL (Centre Hospitalier Luxembourg – a Luxembourgish hospital). As he is not in a paediatric ward, Kevin has not been able to attend any school lessons, even though the general hospital and the paediatric ward are all part of the CHL. Following our intervention, lessons should have been arranged, but Kevin was again transferred to Rehazenter, which still does not provide him with schooling.

AVR is doing everything within its power to enrol Kevin in a specialist school from September next year onwards and is helping to solve his practical problems. Kevin is allowed to participate in school and social life for a strict minimum of 6 hours per week, and he is at school three times a week for two hours each, after two years away from school.

His school could provide the young man with so much more than education: Therapy and a social life, but Kevin has been deprived of this. *The person's name and gender have been changed

8.2. Lack of accommodating structures for children with special needs

*The Committee is concerned about the information that many children from Luxembourg are treated in institutions offering psychiatric assistance to minors in neighbouring countries, owing to the reported lack of an adequate care system, in particular child and juvenile psychiatry, in Luxembourg.*⁹⁷

There are no adequate structures for dealing with sexual offenders who are minors with special needs in either psychological or even psychiatric terms.

A professional's witness statement⁹⁸

"In the course of my work, I determined that there are no adequate structures in Luxembourg for young people between 10 and 18 who show sexual behavioural problems. In fact, the problem was visible in a young boy who had sexually abused another child within his Children's Home. Even after the event, there was no way of getting the boy away from his Children's Home immediately. After intervening in a particular way, he was transferred to the psychiatry department, but returned to the group after less than a week. The situation was untenable for the other children, especially for the child who had been abused.

Even though the child concerned has been treated by a psychiatry department since, it is quite clear that the solution is not in any way satisfactory and is not the appropriate solution to the issue at hand.

The fact that adequate structures for dealing with this child do not exist in Luxembourg does cause a serious problem, not only for the child himself, but also for other children on whom the situation has had a traumatic effect". K.F.

8.3. Children in conflict with the law

Delinquent adolescents are always being deprived of their freedom in Luxembourg, despite the fact that all experiences abroad clearly demonstrate that teaching them and providing therapy to them are much more fruitful than locking them away. In Luxembourg, we need to intensify our social work with this population. *(See the recommendations inherent to this in Chapter 4.2 concerning inhuman treatment)*

⁹⁶ Example given by the AVR National Association of Road Traffic Accident Victims.

⁹⁷ Paragraph 44 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

⁹⁸ Source: *Association Luxembourgeoise des Pédagogues Curatifs* a.s.b.l.

9. Optional protocol on the sale of children, child prostitution and child pornography

*In the light of article 19 of the Convention, the Committee recommends that the State party undertake a study on violence, more particularly on sexual abuse and violence, in order to assess the extent, causes, scope and nature of such practices.*⁹⁹

9.1. Exploitation of minors for sexual purposes¹⁰⁰

Legislation

In 2011, the Government of Luxembourg ratified the following international conventions relating to the sexual exploitation of children:

- The *Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (ratified on 2nd September 2011)¹⁰¹
- The *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (ratified on 9th September 2011)¹⁰²

Lack of accurate data and monitoring of the issue

In 1996, at the First World Conference on the sexual exploitation of children, the Luxembourg Government adopted a National Action Plan (NAP) to combat the sexual exploitation of children¹⁰³. The NAP contains provisions for a certain amount of preventative action, but it is now out of date. No information is available on the implementation and impact of the NAP given that no evaluation of the impact has been carried out by the Ministry of Family Affairs, the government body responsible for ensuring the implementation of the NAP¹⁰⁴.

Increasing accounts of child sexual exploitation in Luxembourg are emerging. However, this information is often anecdotal and there is no accurate or scientific data. These accounts include the following situations: concert tickets or prepaid mobile phone cards in exchange for nude photos or for posing nude in front of a webcam; sexual violence between young people filmed by mobile phone and then posted on the internet¹⁰⁵; entrance to nightclubs negotiated in exchange for sexual relations with a member of staff/the management.

In particular, there is a lack of knowledge and accurate data on the risks posed by new technologies and their use by children and young people in Luxembourg.

Lack of resources

There is a lack of resources at several levels for combating images of child sexual abuse on the internet, for example, within the police force and judicial authorities as well as

⁹⁹ Paragraph 41 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005)

¹⁰⁰ Source: ECPAT Luxembourg a.s.b.l.

¹⁰¹ United Nations. <http://treaties.un.org/>

¹⁰² Council of Europe.

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=FRE>

¹⁰³ Committee on the Rights of the Child, Consideration of reports submitted by State Parties under Article 44 of the Convention – Concluding observations: Luxembourg. 31st May 2005

<http://www.unhcr.org/refworld/publisher,CRC,CONCOBSERVATIONS,LUX,43f305330,0.html>

¹⁰⁴ ECPAT Luxembourg. Government Progress Report by country: Luxembourg, 2010.

¹⁰⁵ Ombuds-Comité fir d'Rechter vum Kand. 2009 Report to the Government and Parliament.

organisations combating this problem, such as LISA-Stopline. Two agents from the police force's Youth Protection Section are allocated full time to analysing and investigating images of child sexual abuse on the internet.¹⁰⁶ They work closely with the reporting service, LISA-Stopline. LISA-Stopline receives the reports and carries out a preliminary analysis. If LISA-Stopline believes that it is dealing with an image of child sexual abuse, a report is sent to the agents at the Youth Protection Section, so that they can carry out a second analysis and open an enquiry if necessary. The European Union recommends that images found of abuse be removed within 48 hours. Although the co-operation is effective and the timeframe is usually respected, it is, however, sometimes difficult to comply with the deadline due to the limited human resources of the police and LISA-Stopline¹⁰⁷.

Groups at risk

Children who are seeking asylum, are unaccompanied, are refugees or do not have the legal documents required, are especially vulnerable to sexual exploitation¹⁰⁸. The case of a young Ecuadorean referred to in the 2009 report of the Ombudsman for the Rights of the Child (*Ombuds-Comité fir d'Rechter vum Kand*) presented to the Luxembourg Government and Parliament shows that it is not certain whether minors in such situations receive adequate protection (please see case study 3 below)¹⁰⁹.

Risks posed by new technologies

New technologies (the internet, mobile phones, online games) present unprecedented risks for children and youth. In Luxembourg, most children receive their first mobile phone or even their first computer before the age of 9¹¹⁰. Young people's use of the internet is on the increase. According to the European survey "EU Kids Online", 93% of children aged 9 to 16 uses the internet once a week and 60% of children aged 9 to 16 uses the internet every day or almost every day. As Luxembourg has not, to date, participated in the European initiative, little is known about the "online" behaviour of children and young people in Luxembourg, but in view of these young people's privileged access to new technologies, it is possible to affirm, without too much margin for error, that the use of the internet amongst the young is at least as high as amongst their European counterparts. However, a survey of this behaviour has yet to be carried out in Luxembourg. This is important, since the United Nations Human Rights Council believes that there may be over 750,000 sexual predators worldwide permanently connected to the internet¹¹¹, which poses a real risk to the children and young people who use new technologies.

Child abuse images

New technologies such as the internet have also contributed towards a significant increase in the distribution of images of child sexual abuse. The United Nations Human Rights Council believes that 200 new images of child sexual abuse are placed in circulation every day. Resources for combating this scourge are never sufficient and it is essential to encourage people who witness such images to report them. In September 2011, ECPAT Luxembourg commissioned a national survey into the public perception of child sexual exploitation. 21% of people surveyed confirmed that they had come into contact with online images of child pornography by chance. An excellent tool for reporting online images of child sexual abuse has existed since 2005: LISA-Stopline. However, this tool is not well-known by the general

¹⁰⁶ Ombuds-Comité fir d'Rechter vum Kand. 2009 Report to the Government and Parliament.

¹⁰⁷ BEE SECURE Advisory Board Meeting, July 2012

¹⁰⁸ Children's Rights Information Network, Child Rights references in universal periodic review. 2009. <http://www.crin.org/resources/infodetail.asp?ID=19641>

¹⁰⁹ Ombuds-Comité fir d'Rechter vum Kand. 2009 Report to the Government and Parliament.

¹¹⁰ Ombuds-Comité fir d'Rechter vum Kand. 2009 Report to the Government and Parliament.

¹¹¹ Promotion and protection of all human, civil, political, economic, social and cultural rights, including the right to development. Report presented by Mme. Najat Maalla M'jid, Special reporter on the sale of children, child prostitution and child pornography at the 12th meeting of the Human Rights Council.

public in Luxembourg, as only 3% of the aforementioned people notified LISA-Stopline. Moreover, only 3% reported the incident to the police.¹¹²

Child sex tourism

The national survey on the perception of child sexual exploitation also showed that 56% of those questioned think that child sex tourism is practised by tourists from Luxembourg. 6% of those surveyed suspected witnessing a case of sex tourism involving a minor in a tourist destination. 38% of witnesses to cases of child sex tourism would have liked to have done something, but did not know who to report it to or how. 34% of people who had not witnessed child sex tourism would like to be able to report it using an online form or hotline/freephone. A mechanism for reporting other forms of child sexual exploitation, such as sex tourism involving children, is lacking.

Recommendations:



- 64. An evaluation and update of the National Action Plan (NAP) against child sexual exploitation. The NAP could be incorporated into a global national plan for children (as recommended by the Committee on the Rights of the Child) or other relevant policies such as the National Plan for sexual and emotional health or the National Plan for Youth. However, it is important that the topic of child sexual exploitation is not lost or diluted and that it remains a distinct component of a more global strategy. It is also crucial that any actions taken are evaluated.**
- 65. A study of the "online" behaviour of children and young people in Luxembourg in order to identify at-risk behaviour. The results of the study should be incorporated into information and awareness-raising campaigns targeting children, young people and parents.**
- 66. A study on the prevalence of child sexual exploitation and the key risks for children in Luxembourg.**
- 67. The development of a mechanism for reporting cases of child abuse committed by travellers abroad, as well as campaigns to raise travellers' awareness of their existence.**
- 68. A system for blocking images of child sexual abuse developed in collaboration with Internet Service Providers.**
- 69. Awareness-raising campaigns to increase the visibility of the LISA-Stopline reporting mechanism.**
- 70. The allocation of sufficient resources to the police and LISA-Stopline (financial, human and legal) for combating online images of child sexual abuse.**
- 71. The allocation of sufficient resources to the BEE SECURE project for awareness-raising actions and campaigns in junior schools.**

Case study 1:

"Yolande, aged 15, lived through a horrific experience: she was first bullied, inebriated by force and then raped by two adolescents in the school grounds after lessons; a third youth filmed the attack and the images were made public and visible".¹¹³

Case study 2:

"Véronique posted on the internet a photo of herself posing naked, not knowing that her picture risks being transferred to other sites and reused. Young prepubescent girls are regularly asked to show

¹¹² National survey into perception of child sexual exploitation, 2012. ECPAT Luxembourg.

¹¹³ Ombuds-Comité fir d'Rechter vum Kand. 2009 Report to the Government and Parliament.

their chest, using a camera set up close to a computer, a “webcam”, which is now part of standard IT equipment used by young people. They are either filmed close-up or have sent compromising photographs and are unaware of the danger to which they are exposed. In return, they are offered concert tickets, prepaid cards for mobile phones etc.... The photos are often downloaded by adults and used as a means of blackmail after the event. The child has become involved in child pornography without realising it”.¹¹⁴

Case study 3:

“A young Ecuadorean was mistreated by his mother’s partner and so left home. The youth’s family was living in Luxembourg illegally. He lived with friends but risked ending up living on the streets. The State Prosecutor’s Office was informed of the youth’s situation but the judge responsible for the case did not want to take any measures to protect the minor. He invoked his incompetence to act given the youth’s illegal situation leaving nothing but the government executive to protect him”.¹¹⁵

Article 34,
35, 39

9.2. Child sex trafficking¹¹⁶

Legislation

The Luxembourg Government made considerable progress in 2009 with respect to both national and international legislation on the trafficking of persons, especially children.

The RADELUX Group welcomes the Luxembourg Government’s ratification of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (ratified on 20th April 2009)¹¹⁷, as well as the *Council of Europe Convention on Action against Trafficking in Human Beings* (ratified on 9th April 2009)¹¹⁸.

In addition, the Luxembourg Government passed the Act of 13th March 2009 on trafficking in human beings¹¹⁹ and the Act of 8th May 2009 concerning the support, protection and safety of victims of human trafficking¹²⁰. However, the government has not yet put regulations in place which define the application of the aforementioned Conventions/Acts, especially with respect to victim support and the role played by non-governmental organisations.

Lack of data

An informal working group on trafficking in human beings was created pursuant to the Act of 8th May 2009 concerning the support, protection and safety of victims of trafficking. The working group includes representatives of the police force’s Youth Protection Section, the State Prosecutor’s Office and non-governmental organisations authorised by the government to offer services to victims of trafficking¹²¹. However, the group’s work is not public and there is no *National Rapporteur* or other independent mechanism in Luxembourg responsible for monitoring activities to combat trafficking in human beings.

There is also a lack of centralised and disaggregated data concerning the trafficking of human beings, especially minors. The information available is sometimes contradictory, incomplete

¹¹⁴ Ombuds-Comité fir d’Rechter vum Kand. 2009 Report to the Government and Parliament.

¹¹⁵ Ombuds-Comité fir d’Rechter vum Kand. 2009 Report to the Government and Parliament.

¹¹⁶ Source: ECPAT Luxembourg a.s.b.l and Femmes en Détresse a.s.b.l.

¹¹⁷ United Nations, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=fr

¹¹⁸ The Council of Europe:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=&CL=FRE>,

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=&CL=FRE>

¹¹⁹ Collection of legislation: Record dated 20th March 2009 - A – No. 51 (Trafficking of human beings)

¹²⁰ Collection of legislation: Record dated 9th June 2009 - A – No. 129 (Protection, support and safety of victims of human trafficking)

¹²¹ State of progress by country, Luxembourg, Stop child trafficking, ECPAT Luxembourg and ECPAT International

and confusing. For example, the Luxembourg Government has declared that no cases of child trafficking have ever been identified in Luxembourg¹²². However, the United Nations Office on Drugs and Crime stated in its 2009 report on human trafficking that a victim who was a minor had been involved in a case of trafficking¹²³. The US State Department's 2009 Trafficking in Persons Report also states that children who are victims of trafficking were placed in a centre for young people and received specialist support¹²⁴. Furthermore, the 2010 annual report of the organisation *Femmes en Détresse* says that its ViSAVi¹²⁵ service assisted a minor who was a victim of trafficking¹²⁶.

The Act of 8th May 2009 concerning the support, protection and safety of human trafficking victims envisages the creation of a Committee on human trafficking, tasked with ensuring the monitoring and co-ordination of activities to prevent and assess the phenomenon of trafficking, as well as to centralise and analyse statistical data. However, the aforementioned Committee has not yet been put in place in Luxembourg¹²⁷.

Lack of adequate structures for accommodating victims who are minors

The 2010 annual report of the organisation *Femmes en Détresse* concludes that there is a "shortage of adequate structures for accommodating victims who are minors and victims with special psychological and psychiatric needs". Victims of human trafficking for sexual purposes, especially those who are minors, have very specific psychological needs. The inexistence of suitable structures resulted in the placement of a minor presumed to be a victim of trafficking for sexual purposes, in a detention centre (from 17th March to 8th June 2010)¹²⁸. (Please see below the case study provided by the ViSAVi service of the organisation *Femmes en Détresse*).

Case of a 17-year-old girl from a non-EU country:

A young girl was found in the street by the Luxembourg police in early 2010.

She appeared disorientated and seemed not to know in which country she found herself. She was then immediately placed in the care of a juvenile psychiatric unit. The girl told the police that she had been forced into prostitution in Paris and was therefore identified by the same as a victim of human trafficking.

Some time later, the girl was transferred to a shelter for girls, and then readmitted to the juvenile psychiatric unit as she had been self-harming.

The girl was then placed in a government-run socio-educational centre. However, the staff at the centre considered that the girl was no longer manageable and posed a danger to both herself and the other residents of the centre, so she was placed one month later in the penitentiary centre in Schmassig, by decision of the judge responsible for legal guardianship. She was transferred to the penitentiary centre by police, where she stayed for almost 3 months.

After a 4-week stay in prison, the young girl had to appear at the Youth Court. She had to wear handcuffs for the whole journey, and they were only removed when the judge ordered this. The girl was accompanied by her lawyer and a translator. But the girl did not say a word during the hearing and did not respond to the judge's questions. She was then returned to the penitentiary centre, where she continued to self-harm throughout her incarceration. She was eventually transferred to another juvenile psychiatric unit.

Finally, the girl expressed her wish to return to her country of birth. With the help of the IOM¹²⁹, she went to the embassy of her country of origin, but still refused to speak or provide any information about herself.

After 8 months of staying in different institutions in Luxembourg, she escaped after an unaccompanied

¹²² Thematic Study on Child Trafficking – Luxembourg, *European Union Agency for Fundamental Rights*, F. Moyse, July 2008; Trafficking in Persons Report 2012, US State Department.

¹²³ 2009 Global Report on Trafficking in Persons, UNODC

¹²⁴ Trafficking in Persons Report 2009, US Department of State

¹²⁵ www.fed.lu/visavi

¹²⁶ 2010 annual report from the organisation Femmes en Détresse a.s.b.l.

¹²⁷ Ministry of Equal Opportunities, e-mail dated 6th February 2012

¹²⁸ 2010 annual report from the organisation Femmes en Détresse a.s.b.l.

¹²⁹ International Organisation for Migration

outing. She was found in a country bordering Luxembourg. She was then taken to a centre for unaccompanied foreign minors. But soon afterwards, she escaped again.

The frequent changes of accommodation did nothing to stabilise this young girl, who had experienced many traumatic situations according to her own personal accounts.

Incarcerating a minor who had been identified as a victim of trafficking in an adult prison certainly does not promote this child's self-respect or dignity. Such an imprisonment can not under any circumstances guarantee the child's psychiatric rehabilitation or her social reintegration.

Lack of police training

There is a lack of training specific to human trafficking for police personnel. The US State Department's 2012 Trafficking in Persons Report states that the Luxembourg Government did not provide any training on combating trafficking in 2011. Neither do the annual reports of the Grand Duchy's police for the years 2009, 2010 and 2011 make any mention of training specific to human trafficking followed by police officers¹³⁰. Nevertheless, the *Council of Europe Convention on Action against Trafficking in Human Beings* (ratified by Luxembourg on 9th April 2009) requires that "Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying victims, including children". Moreover, the Act of 8th May 2009 concerning the support, protection and safety of victims of trafficking in human beings also stipulates training police officers who specialise in prevention and combating of human exploitation.

Recommendations:



- 72. The establishment of regulations defining the application of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*.**
- 73. The definition of procedures for providing assistance to victims and of the role of non-governmental organisations.**
- 74. The establishment of adequate structures with the capacity to accommodate victims who are minors and victims with special psychological and psychiatric needs.**
- 75. The creation of a Committee on human trafficking, tasked with monitoring and co-ordinating activities to prevent and evaluate the phenomenon of trafficking in Luxembourg. The work of this Committee should be transparent and be undertaken in collaboration with the associations and non-governmental organisations concerned.**
- 76. The establishment of a centralised system for the collection, analysis and disaggregation of data on human trafficking, especially minors. Data should be published and distributed transparently and regularly (for example, annually).**
- 77. The implementation of regular training specific to combating human trafficking for the personnel of competent services (police and structures which care for victims), which take into consideration the specific needs of children.**
- 78. The definition of formal procedures for the proactive identification of victims of trafficking within vulnerable groups.**
- 79. Awareness-raising campaigns targeting vulnerable groups who could be victims of trafficking (e.g. street children, unaccompanied children), and which promote the helpline for minors in difficulty (Tel. 116 111).**
- 80. The establishment of a National Reporteur on trafficking in human beings.**

¹³⁰ Nor do Grand Duchy police activity reports for the years 2009, 2010 and 2011 cite any specific training in personal treatment undertaken by police officers.

Schedule 1: Luxembourg Government reservations concerning Articles 2, 6, 7 and 15 of the ICRC

Reservations were produced for ICRC ratification by the Chamber of Delegates in 1993.¹³¹ Since then, the CRC has reiterated its concerns about the Luxembourg Government's ability to maintain these reservations.¹³²

The respective Article of the ICRC	Content of the reservation (as specified in the Act dated 20 th December 1993)	Parliamentary Committee report, PD 3608: comment on the Articles of the ICRC:
<p>Article 2</p> <p>1. Governments shall observe the laws which are specified in this Convention and guarantee them to any child within their jurisdiction, without distinguishing them in any way, regardless of consideration of race, colour, sex, language, religion, political opinion or other matter relating to the child or their parents or legal representatives, their nationality, ethnic or social background, financial situation, incapacity, birth or any other situation.</p> <p>2. Governments shall take every appropriate measure so that a child is actually protected from any form of discrimination or penalty motivated by their legal situation, activities, opinion declared or their parents', legal representatives' or family members' convictions.</p>	<p>(Art. 2) "1) The Luxembourg Government believes that it is in the interests of families and children to retain the provisions of Article 334-6 of the Civil Liberties Code, which states thus: Art. 334-6. If, at the time of conception, the mother or father is joined together in marriage to another person, the marital child can only be raised in the marital home with the consent of their guardian's spouse.</p> <p>2) The Luxembourg Government hereby declares that this Convention does not require any change to the legal status of children born to parents subject to an absolute ban on marriage, this status justified in the interests of the child, as specified in Article 3 of the Convention".</p>	<p>"In its supplementary report dated 22nd June 1993, the Government Council does, however, stress the discriminatory nature of this provision in the eyes of children born through adultery and also acknowledges that, in itself, distancing a child from the family home is not justified in the child's best interests. This provision is therefore incompatible with Article 2 of the Convention which devotes in general terms the principle of non-discrimination against children in any way whatsoever, and with Article 9 which does not allow consideration of issues other than a child's best interests, whilst the Committee had invoked the criterion of peace at home to motivate the retention of said Article in the Civil Code.</p> <p>The Legal Committee and the Family Committee have ruled to remove this Article from the Civil Code".</p> <p>"If between the child's natural mother and father, there is a ban on marriage as specified in Articles 161 and 162 for a relationship-related reason, and the relationship has already been established with one of them, any relationship with the other is banned". In the opinion of the Government Council, this exception is justified in the child's best interests, as they could be faced with psychological and social problems if they officially proclaim too close a family tie between their parents".</p>
<p>Article 6</p> <p>1. Governments hereby acknowledge that all children have an inherent right to life.</p> <p>2. As far as possible, Governments ensure the stability of the child's upbringing.</p>	<p>"3) The Luxembourg Government hereby declares that Article 6 of this Convention does not constitute an obstacle to the application of Luxembourg legal provisions on sexual information, prevention of illegal abortion and regulation of interruption of pregnancy".</p>	<p>"Some members of the Foreign Affairs Committee believe that removing this reservation brings with it the risk of jurisdictions declaring the 1978 Act on sexual information, prevention of illegal abortion and regulation of interruption of pregnancy against the Convention, especially because of the ambiguity of the definition of the child as specified in Article 2 of this Convention. In consideration of the degree of uncertainty, several members of the Committee have declared themselves in favour of retaining the reservation, whilst other members are opposed to it".</p>
<p>Article 7</p> <p>1. A child is registered as soon as they are born, and from that moment, they are entitled to a name, they are entitled to acquire a nationality and as far as possible, they are entitled to know their parents and be brought up by them.</p> <p>2. Governments ensure that they implement these rights in accordance with their national legislation and the obligations which are imposed upon them by international laws applicable to the subject, especially in the event of their failure, when the child will find themselves stateless.</p>	<p>"4) The Luxembourg Government believes that Article 7 of the Convention does not constitute an obstacle to legal proceedings concerning anonymous childbirth which is considered in the child's interests, as specified in Article 3 of the Convention".</p>	<p>"Concerning entitlement to know one's parents, Luxembourg legislation acknowledges the principle as it enables biological truth to be established in terms of ascendancy. Nevertheless, those behind the draft Government Act propose formulating a reservation on the subject, given that our legislation on anonymous childbirth does not enable children to determine who their biological parents are, but the practice is justified in the child's interests.</p> <p>The Government Council hereby declares that it agrees with the reservation, at the same time suggesting that the matter be referred to the National Ethics Consultation Committee for Life Sciences and Health for an opinion. Moreover, the Government Council says that cases of artificial insemination with an anonymous donor have yet to be examined in terms of their compliance with the provisions of this Convention. When examining the Article, the Foreign Affairs Committee ruled in favour of retaining the reservation (...)"</p>
<p>Article 15</p> <p>1. Governments acknowledge the Right of the Child to freedom of peaceable meetings.</p> <p>2. Exercising of these rights is only subject to restrictions laid down by the law necessary in a democratic society, in the interests of national security, public safety or public affairs, or to protect public health or morality, or the rights and liberties of others.</p>	<p>"5) The Luxembourg Government hereby declares that Article 15 of this Convention does not compromise the provisions of Luxembourg legislation governing capacity to exercise rights".</p>	<p>"This Article acknowledges the child, their right to associate and their right to hold peaceable meetings. The restrictions specified in the second paragraph concern the formulation of the third paragraph of the previous Article. In its report, the Government Council proposes a reservation in relation to the Article in terms of Luxembourg legislation governing capacity to exercise rights. According to the Government Council, the reservation would be imposed so that minors are not given the right to represent an association in acts in civil life or justice. The Foreign Affairs Committee is rallying towards this Government Council proposal (...). The Family Committee believes that the reservation proposed by the Government Council is superfluous".</p>

¹³¹ Act dated 2^{0th} December 1993 on 1) approval of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20th November 1989 2) amendment of certain provisions of the Civil Code.

¹³² Paragraphs 8 and 9 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005) 9. The Committee believes that the reservations concerning Articles 2, 6 and 15 are there for no reason and that the one concerning Article 7, which seems incompatible with the subject and purpose of the Convention, could also be worthless if the Government applied the Committee's recommendation which appears in paragraph 29 of this document. Consequently, the Committee is renewing its previous recommendation to the Government (CRC/C/15/Add. 92, para. 23) to re-examine its reservations with a view to removing them.

Schedule 2: Themed glossary on gender, trans and intersex

Gender expression	<p>A series of signs, visible to others, associated with belonging to a given gender. This may include <i>inter alia</i> the way a person dresses, speaks and behaves. The concept serves to distinguish a person's feelings about their gender identity from what they demonstrate through their outside appearance. Gender expression may coincide with gender identity, but not necessarily. For example, when a trans child whose biological sex is male and whose gender identity is female is not allowed by their parents to wear female clothing, their gender expression does not match their gender identity.</p> <p>Gender expression may be related to a particular thought process founded on a binary gender model, or be outside it.</p>
Gender	<p>A polysemic term with no agreed definition. Two possible definitions may be:</p> <ol style="list-style-type: none">1. Initially, 'gender' was distinguished from the common concept of 'sex' to refer to the social differences between men and women, differences not directly connected with biology¹³³. In this interpretation, 'gender' is synonymous with 'social sex'.2. Currently, the term 'gender' is also used as follows: "hierarchical system for categorising sex (men/women) and the values and representations which are associated with them (male/female)"¹³⁴.
Gender identity	<p>Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms¹³⁵.</p>
Trans	<p>Abbreviation commonly used to refer to people whose gender identity and/or gender expression are different to the sex assigned to them at birth. The term covers a whole variety of people, especially transidentified people, transsexuals, transgender, transvestites, those of varying sex, of dubious gender, etc.</p> <p>Trans girl or adolescent: a biologically male person whose gender identity is that of a female. Referring to such people as female is <i>de rigueur</i>, since it matches their identity as they see it – regardless of any change of sex at the registry office or any bodily change. A trans girl or adolescent may identify with the gender binary model, but not necessarily.</p> <p>Trans boy or adolescent: a biologically female person whose gender identity is that of a male. Again, referring to such people as male is <i>de rigueur</i>. The above explanations concerning trans girls apply here too.</p>
Trans-identified person	<p>A trans person whose gender identity does not match the sex which was assigned to them at birth or the social expectations associated with that sex.</p>
Transidentity	<p>Trans-identity, as opposed to "transsexuality", is a term which has been used to emphasize identity rather than sexuality and refers to having a</p>

¹³³ Bereni, Laure, Chauvin, Sébastien, Jaunat, Alexandre, Revillard, Anne, *Introduction aux Gender Studies, Manuel d'études sur le genre*, ed. de Boeck, Brussels, 2008, p. 16.

¹³⁴ *Idem*, p. 7. See Chapter 1 of this work, entitled "Sex and Gender".

¹³⁵ *Principles of Jogjakarta*, p. 6, <http://www.yogyakartaprinciples.org>.

gender identity which does not match the sex assigned at birth or the social expectations associated with that sex.

Intersex

Person whose sexual characteristics are atypical or which do not conform to generally accepted norms.

Intersexuality (in humans)

A range of anatomical conditions that do not fall within standard male and female categories. They may be the result of variations in an individual's chromosomes, hormones, gonads, or genitalia. For example, having one ovary and one testis, or gonads that contain both ovarian and testicular tissue, are both intersex conditions. Chromosomal patterns that are XXY or XO instead of XX or XY are also intersex conditions. The genitalia of some but not all intersex individuals are not clearly identifiable as male or female. Intersex conditions may not become apparent until puberty or later, when there is a desire to have a child. Intersex is not itself a medical condition. It is better understood as a label used to describe biological variety.¹³⁶

¹³⁶ *Sexual Orientation, Gender Identity, and Justice*, p. 137; definition slightly altered by Transgender Luxembourg.

Schedule 3: Information and exchange sessions with ministers during the preparatory phase

The following themes were discussed during information and exchange meetings

- a) Ministry of Health (7.11.2011)
- *Dr. Yolande Wagener, Division Chief Medical Officer, represented the Ministry of Health*
 - Question of the child's and family's dignity when faced with a rare disease (e.g.: "Save Emilie Lahr"). Protect children's integrity, prevent child exposure and exposure to the media
 - Sexual and affective education; raising awareness of abortion, prevention of rape
 - Keeping childbirth away from the media
 - Prevention: alcohol, tobacco, drugs
 - How do you prevent newborns from being placed? – support to pregnant women who may wish to "abandon their children"
- b) Ministry of National Education and Professional Training (14.11.2011)
- *Joseph Britz, professor-attaché, represented the Ministry of National Education and Professional Training*
 - Dropping out of school and academic failure
 - Question of "reasonable" special arrangements for children with particular problems (Attention Deficit Hyperactivity Disorder (ADHD), dyslexia, etc.): Integration of children, inclusion of migrant children, training of teachers and professors and proposal of a real service to such children
 - Specific measures for children with special needs, to meet their needs
 - How to integrate children with special needs into the Luxembourg education system
 - Is there a service in Luxembourg for notifying parents (and even their children) of available support services?
 - Is there any support (social and/or legal) for parents of special-needs children to prepare to go from junior school to senior school?
 - Question of the French language in reform of the education system: what should be done to ensure that French-speaking children can attend French classes near where they live?
 - Question of support to parents of handicapped children
 - Teacher training, so that their work stands out from the crowd
 - Students' unions which do not meet expectations
- c) Ministry of Families and Integration (14.11.2011)
- *Represented by Nico Meisch, Top Government Advisor, and Claude Janizzi, Management Advisor*
 - Question of the quality of service cheques
 - Setting up of a quality control service
 - Questions concerning the security unit (UNISEC) of the State Socio-Education Centre in Dreibern
- d) Ministry of Justice
- Our request for an information and exchange meeting has not been answered.
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