



Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the combined third and fourth periodic reports of Luxembourg, adopted by the Committee at its sixty-fourth session (16 September – 4 October 2013)

1. The Committee considered the consolidated third and fourth periodic reports of Luxembourg (CRC/C/LUX/3-4) at its 1836th and 1837th meetings (see CRC/C/SR.1836 and 1837), held on 30 September 2013, and adopted, at its 1845th meeting, held on 4 October 2013, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the consolidated third and fourth periodic reports of the State party (CRC/C/LUX/3-4) and the written replies to the list of issues (CRC/C/LUX/Q/3-4/Add.1), which allowed for a better understanding of the situation of children's rights in the State party. The Committee expresses appreciation for the constructive dialogue held with the high-level and multisectoral delegation of the State party.

II. Follow-up measures undertaken and progress achieved by the State party

3. The Committee welcomes the adoption of the following legislative measures:

(a) Law of 21 February 2013 on the combat against sexual abuse and sexual exploitation of children.

(b) Law of 8 May 2009 on assistance, protection and safety of human trafficking victims.

(c) The Compulsory Education Act of 6 February 2009 which sets the length of compulsory education to 12 years, from age 4 to 16, and encourages retention of students with learning difficulties or behavioural problems in the school system.

(d) The Act of 16 December 2008 on support for children and the family establishing a legal framework for child welfare, creating the National Children's Bureau (ONE), and expressly prohibiting corporal punishment.

(e) The Act of 4 July 2008 establishing the National Youth Assembly as the main channel for young people to be heard in society.

- (f) The Act of 5 May 2006 on the right of asylum and additional forms of protection which introduced substantial changes in the right of asylum, in particular the “subsidiary protection” status.
4. The Committee notes with appreciation that since the consideration of its second periodic report in 2005, the State party has ratified or acceded to:
- (a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (September 2011);
 - (b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol (September 2011);
 - (c) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (September 2011);
 - (d) The Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (“Palermo Protocol”) (May 2008).
5. The Committee also welcomes the following institutional and policy measures:
- (a) The National Children’s Bureau (Office National de l’Enfance- ONE) (2011);
 - (b) The National Youth Assembly (2009);
 - (c) The introduction of the “childcare service voucher” (2009).
6. The Committee notes with appreciation the reforms to raise the minimum age of recruitment into the army of the State party.
7. The Committee also notes with appreciation that the latest statistics on official development assistance (ODA) rank the State party first among OECD Member states with an ODA representing 1% of its gross national income.

III. Main areas of concern and recommendations

A. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)

The Committee’s previous recommendations

8. The Committee, while welcoming the State party’s efforts to implement its concluding observations of 2005 on the second periodic report of the State party (CRC/C/15/Add.250), notes with concern that some of the recommendations contained therein have not been fully addressed.

9. **The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations under the Convention that have not been implemented or sufficiently implemented, particularly those related to reservations, anonymous birth, a comprehensive policy for children, and quality education for all children.**

Reservations

10. The Committee regrets that, notwithstanding its previous recommendation (CRC/C/15/Add.250, para. 8), the State party still maintains its reservations to articles 2, 6, 7 and 15, some of which seem incompatible with the object and purpose of the Convention.

11. **The Committee reiterates its previous recommendations (CRC/C/15/Add.250, para. 9) urging the State party to consider withdrawing its reservations to the Convention.**

Legislation

12. The Committee welcomes efforts undertaken by the State party to pass new legislation to implement the Convention and notes with interest information about bills undergoing consideration which would reform legislation on the rights of the child. However, the Committee is concerned by the slow advance of these efforts and the lack of guidelines to ensure the consistent application of domestic legislation.

13. **The Committee urges the State party to expeditiously undertake the necessary legislative reviews and reforms to ensure the full incorporation of the principles and provisions of the Convention into domestic legislation. It also encourages the State party to provide clear guidelines for the consistent application of this legislation.**

Comprehensive policy and strategy

14. The Committee remains concerned about the absence of a comprehensive policy on children in the State party and of a comprehensive strategy for implementing the Convention as a whole.

15. **The Committee recommends that the State party prepare a comprehensive policy on children and, on the basis of the policy and in consultation with children and civil society, that it develop a comprehensive strategy for the overall realization of the principles and provisions of the Convention. The Committee further recommends that the State party allocate adequate human, technical and financial resources for their implementation.**

Coordination

16. The Committee notes with appreciation the creation of the National Children's Bureau (Office National de l'Enfance- ONE) and the setting up of an inter-ministerial child rights coordination body. Nevertheless, the Committee is concerned about the possible overlaps in coordination efforts, that the ONE has not been given a clear and authoritative mandate and that it does not have the sufficient human, technical and financial resources for its effective functioning.

17. **The Committee encourages the State party to further strengthen the authority and mandate of the ONE to ensure its functioning at all levels, including inter-ministerial levels. It recommends that the State party clearly specify mandates in relation to the coordination of the implementation of the Convention of both bodies to prevent possible overlaps. Furthermore the State party should ensure that the ONE is provided with the necessary human, technical and financial resources for its effective operation.**

Data collection

18. The Committee reiterates its concern about the inadequate data collection system on child-related data.

19. **In line with its previous recommendation of 2005, the Committee recommends that the State party continue and strengthen its efforts to develop a comprehensive system for the collection of comparative and disaggregated data on the implementation of the Convention (CRC/C/15/add.250, par. 17).**

Independent monitoring

20. While welcoming the work of the Consultative Commission on Human Rights (CCDH) with regard to the rights of the child, the Committee is nevertheless concerned that the CCDH has not been provided with the immunities required for it to fully function in compliance with the Paris Principles. It notes with appreciation the work of the Ombuds Committee for Child Rights (ORK), but is concerned as to the transparency and impartiality of the selection and appointment process of its President and members. Furthermore, the Committee reiterates its concern about the insufficiency of the resources (CRC/C/15/Add.250, par. 14) allocated to the ORK.

21. Taking into account the Committee's General Comment No. 2 (2003) on the role of independent human rights institutions, the Committee recommends that the State party ensure the full independence of the CCDH by ensuring that the mandate and immunities provided to it are in full compliance with the Paris Principles. With regard to the ORK, the Committee also recommends that the State party:

(a) consider taking measures to ensure that the selection and appointment processes are transparent and impartial, including through meaningful consultations with children and civil society; and

(b) undertake efforts to inform children of the availability of complaints mechanisms and their confidentiality.

B. General principles (arts. 2, 3, 6 and 12 of the Convention)**Non-discrimination**

22. The Committee acknowledges information by the State party's delegation that, in practice, discrimination against children born out of wedlock never happens. Nevertheless, it is concerned that the State party continues to have legislation that might result in discrimination against children born out of wedlock (CRC/C/15/Add.250, par. 22). The Committee takes note that a draft law on parentage will eliminate current distinctions with regard to children born out of wedlock.

23. The Committee reiterates its recommendation CRC/C/15/Add.250, par. 23) and urges the State party to expeditiously undertake the necessary legislative reforms for eliminating discrimination against children born out of wedlock.

Best interests of the child

24. The Committee welcomes the inclusion of the principle of the best interests of the child into Act of 16 December 2008 on support for children and the family. However, the Committee is concerned about the lack of adequate guidelines and procedures for implementing the right of the child to have his or her best interests taken as a primary consideration in actual practice and throughout all State party institutions, bodies, policies and programmes.

25. The Committee draws the State party's attention to its General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration and recommends that the State party strengthen its efforts to ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area, and

to disseminate these to the public, including public and private social welfare institutions, courts of law, administrative authorities and legislative bodies.

Respect for the views of the child

26. The Committee welcomes the National Youth Assembly but is concerned that a similar channel for children under the age of 13 years to express their views in the public domain does not exist. While noting with appreciation the appointment by courts of lawyers for children, the Committee is concerned that the right of the child of any age to be heard in judicial and administrative proceedings is not sufficiently respected as it is not compulsory for judges to listen to a child.

27. **In view of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:**

(a) **Continue promoting and facilitating the principle of respect for the views of the child notwithstanding his or her age within the family, schools, institutions and the community;**

(b) **Ensure the right of the child to be heard in relevant legal and judicial proceedings, including by continuing to facilitate systems and/or procedures for social workers and courts to comply with the principle;**

(c) **Continue to 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 where children can freely express their views; and**

(d) **Systematically consider the views of the child in formulating laws and policies that may affect them.**

C. Civil rights and freedom (arts.7, 8, 13-17, 19 and 37 (a) of the Convention)

Anonymous birth and preservation of identity

28. The Committee takes note of the steps taken by the State party, including the bill on parentage (*projet de loi portant réforme de la filiation*), to reconcile anonymous birth with the preservation of the identity of a child and the right of a child to know his or her origin. Nonetheless, the Committee notes with concern that the registration and archiving of information about the child to facilitate research about his or her origins at a subsequent date are still not carried out, and that according to the bill, the right of the child to obtain information will be dependent on the consent of the mother.

29. **The Committee reiterates its recommendation to the State party and urges it to take the necessary measures so that all information about the parent(s) is registered and filed, in order to allow the child to know, to the extent possible and at the appropriate time, his or her parents (CRC/C/15/Add.250, par. 29), and to remove the requirement of the mother's consent. Furthermore, the Committee urges the State party to increase its efforts to address the root causes leading parents to choose to use anonymous birth, including the provision of family planning, counselling and social support for unplanned pregnancies and the prevention of at-risk pregnancies.**

D. Violence against children (articles 19, 37 (a) and 39 of the Convention)**Freedom of the child from all forms of violence**

30. While welcoming the State party's efforts to combat violence against children at school, on the Internet, and in other contexts, the Committee is concerned about the lack of information, including statistics, about the extent of violence against children in the family, including corporal punishment, in the State party.

31. **Recalling the recommendations of the United Nations study on violence against children of 2006 (A/61/299), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee further recommends that the State party take into account general comment No. 13 (2011), and in particular, that it:**

(a) **develop a comprehensive national strategy to prevent and address all forms of violence against children, especially in the family, and promote alternative discipline strategies;**

(b) **adopt a national coordinating framework to address all forms of violence against children, including on the Internet;**

(c) **cooperate with the Special Representative of the Secretary-General on violence against children and other relevant United Nations institutions.**

E. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)**Family environment**

32. The Committee welcomes the efforts undertaken by the State party to ensure that both parents have common responsibilities for the upbringing and development of the child. It also notes the State party's 2006 draft Bill on parental responsibility but is concerned that it has not yet been adopted.

33. **The Committee urges the State party to expedite the adoption of the bill on parental responsibility to ensure that parents equally share legal responsibility for their children, in accordance with article 18, paragraph 1, of the Convention.**

Children deprived of a family environment

34. The Committee takes note of efforts to improve the situation of children deprived of a family environment introduced by the Act on support for children and the family (16 December 2008). It also takes notes that the Youth Protection Bill of 2003 aims at reducing the time frame for the optional review of placement measures and for compulsory legal review and would improve the system of measures for the protection of children in the Youth Protection Act of 1992, when finally adopted. Nevertheless, the Committee is concerned about the prolonged delay in the adoption process and the lack of clarity whether the same measures exist for children not covered by the Act (under 12 years old) (CRC/C/15/Add.250, pars. 34 and 36). The Committee also expresses its concern about:

(a) The persistence of court-ordered placements of children in State care institutions and the low number of foster families;

(b) the deprivation of parental rights and responsibility over children when the children are placed in institutions or foster care;

(c) the use of police intervention at home or schools for numerous and persistent cases of court-ordered placements of children.

35. **Recalling the Guidelines for the Alternative Care of Children annexed to the United Nations General Assembly resolution 64/142 of 20 December 2009, the Committee calls upon the State party to expedite the adoption of the youth protection bill. It also reiterates its recommendation to the State party to ensure that the right to family for children in placements are protected and that re-assumption of parental responsibility is guaranteed for all children when it is in their best interests (CRC/C/15/Add.250, par. 35). It recommends that the State party take into consideration the Common European Guidelines on the Transition from Institutional to Community Based Care and:**

(a) **ensure sufficient alternative family and community based care options for children deprived of family environment;**

(b) **ensure that placement in institutional care is used only as a last resort and that adequate safeguards and clear criteria based on the needs and best interests of the child are used to determine whether a child should be placed in institutional care;**

(c) **regularly review placement measures and monitor all placements in care institutions;**

(d) **establish a rigorous system of monitoring the services provided by care institutions, especially by nongovernmental care institutions; and**

(e) **increase training activities for the police so as to ensure that they carry out court-ordered judgements in accordance with the best interests of the child.**

F. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

Children with disabilities

36. While noting with appreciation the efforts made by the State party to improve the inclusive education of children with disabilities, the Committee is nevertheless concerned that:

(a) the decision whether a child with a disability should study in a mainstream or special education centre remains at the discretion of his or her parents, leading to a possible conflict of interests between the protective desire of parents and the best interests of the child;

(b) the majority of children with disabilities persists in the special education system; and

(c) information on the measures taken to increase accessibility of physical, social or economic structures for children with disabilities to exercise their rights on an equal basis with other children, especially in the areas of the rights to health, leisure, play and culture, is absent.

37. **Taking into account general comment No. 9 (2006), the Committee recommends that the State party:**

(a) **take measures so that the best interests of the child are the primary consideration when deciding the education system to be followed by each child with**

disabilities and, to this end, recommends that children be evaluated by interdisciplinary teams;

(b) strengthen the resources of mainstream schools so that they can include as many children with disabilities as possible and that it carry out a review of the situation of children enrolled in the special education system with a view to their incorporation into the mainstream education system, when possible; and

(c) revise legislation, policies and practices in the areas of health, leisure, play, culture, and architecture to eliminate physical, economic, legal and cultural factors that may prevent children with physical, sensorial, mental or psychosocial disabilities to exercise all their rights in conditions of equality with other children.

Mental health

38. While noting the “2010 National mental health plan for children and adolescents,” the Committee is concerned about the delays in its implementation. The Committee also reiterates its concern regarding inadequacies in the child psychiatric services in the State party to prevent and respond to attempted suicides and suicide of adolescents (CRC/C/15/Add.250, par. 44). It also notes with concern the indiscriminate diagnosis of mental health problems and use of psychotropic medication, instead of undertaking comprehensive screening and providing access to psychosocial support and counselling services.

39. **The Committee urges the State party to implement the National mental health plan for children and adolescents. In doing so, the State party should ensure the provision of adequate human, technical and financial resources for parents and professionals working with or for children to address the issue of suicide and its related root causes. It also recommends that the State party ensure that children with behavioural disorders, as well as their parents and teachers, have access to a wide range of psychological and educational measures instead of drug therapy.**

Adolescent health

40. The Committee notes with appreciation the efforts undertaken by the State party to prevent and reduce alcohol consumption and smoking among adolescents. While welcoming the actions foreseen under the National Program for the Promotion of Emotional and Sexual Health to protect and promote sexual health, the Committee notes with concern that adolescents are often not informed about the sexual health services available to them, including the medical and psychological services available in cases of underage pregnancies.

41. **Referring to its general comment No. 4 (2003), the Committee encourages the State party to implement the National Program for the Promotion of Emotional and Sexual Health and that it continue to strengthen efforts to disseminate information. It also recommends that the State party continue the implementation of appropriate programmes and strategies for preventing and addressing unwanted pregnancies. It requests information on the National Program on Sexual and Emotional Health in the next periodic report of the State party.**

G. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)

Education, including vocational training and guidance

42. The Committee welcomes the efforts of the State party in the sphere of education, including the education reform, second-chance schools, and the many efforts to face the language challenge with regard to foreign students. However, the Committee is concerned that several groups of children, notably children of migrant workers, asylum seeking and refugee children continue to have problems related to language, a factor that is reflected in the high drop-out rates either in mainstream schools or alternative educational facilities, and cannot fully enjoy their right to education.

43. **Taking into account its general comment No. 1 (2001) on the aims of education, and reiterating its previous recommendations (CRC/C/15/add.250, paras. 49 and 51), the Committee calls upon the State party to:**

(a) **continue investing the necessary resources to improve and/or expand schooling facilities and opportunities to ensure the right of all children, including of migrant workers, asylum seeking and refugee children, to access quality education in the State party;**

(b) **continue its efforts to ensure that language does not become an obstacle in education, including through the provision of support classes and welcome units to provide assistance to children and their families in regard to languages.**

H. Other special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)

Unaccompanied children

44. The Committee notes with concern the lack of available places in special reception centres for unaccompanied children and that a significant number of them leave the State party prior to completing the asylum procedure or the initial decision of the competent authority. The Committee also notes with concern that the 28 May Act on the centres de retention and the 1 July 2011 Act implementing the EU Returns Directive explicitly allow detention of unaccompanied children pending removal from the State party. The Committee is further concerned that the State party has not put in place a mechanism to identify at an early stage children who may have been involved in armed conflict abroad or victims of crimes, nor a procedure for their protection, recovery and reintegration.

45. **The Committee recommends that the State party take into account its General Comment no. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin and:**

(a) **carry out effective measures to safeguard the rights of unaccompanied children in its territory and that it initiate timely, practical and appropriate measures for preventing the disappearance of unaccompanied asylum-seeking children;**

(b) **adopt legislation for unaccompanied children not to be detained; and**

(c) **consider establishing mechanisms to identify, at an early stage, children among refugees and asylum seekers coming from countries where armed conflicts exist and who may have been involved in armed conflict and/or countries where they may have been exploited by criminal groups in order to ensure their protection, recovery and reintegration.**

Sexual exploitation, trafficking and abuse

46. The Committee welcomes that the State party facilitates the granting of residence permits to child victims of trafficking as well as its efforts to combat and raise awareness of trafficking in children, sexual exploitation and sex tourism. Nevertheless, the Committee is concerned about the lack of data concerning the phenomenon, the gaps in the legislation on sexual exploitation of children, including the lack of a clear definition of “child pornography” and “child prostitution” in the legislation of the State party.

47. **The Committee reiterates its recommendation (CRC/C/15/Add.250, par. 58) to the State party to:**

(a) **continue and strengthen its efforts to identify, prevent and combat trafficking in children for sexual and other exploitative purposes;**

(b) **undertake data collection and a study to assess the nature and magnitude of the situation in the State party with the adequate resources to undertake it;**

(c) **ensure that any services facilitated for the prevention, recovery and reintegration of child victims of trafficking take into account the outcome documents adopted at the 1996, 2001 and 2008 World Congress against Commercial Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro;**

(d) **expedite the presentation of its initial report to the Optional Protocol to the Convention on the sale of children child prostitution and child pornography and related matters.**

Follow-up to the Committee’s previous concluding observations and recommendations on the Optional Protocol on the Involvement of Children in Armed Conflict (2007)

48. **The Committee recalls its prior recommendations to the State party under the Optional protocol to the Convention on the involvement of children in armed conflict (CRC/C/OPAC/LUX/CO/1) and requests that the State party provide follow-up information in its next periodic report on the efforts undertaken to:**

(a) **formally criminalize the recruitment of children in hostilities; and**

(b) **establish extraterritorial jurisdiction for the violation of the provisions of the Optional Protocol on the Involvement of children in armed conflict regarding the recruitment and involving of children in hostilities when they are committed by or against a person who is a citizen of or has other links with the State party as required by article 4 of the Optional Protocol.**

Administration of juvenile justice

49. Noting that in the State party children who have committed an offence are considered victims, the Committee however regrets that:

(a) there is no juvenile justice system in place that would allow judges to deal with such children in a child appropriate manner, including diversion measures to reconcile such children with society;

(b) in spite of the reform in prison administration and the detention unit for juveniles to open soon, juveniles are still detained in the State Penitentiary (CPL) where psychological assistance, supervision, academic instruction and activities are minimal;

(c) the State’s Socio-Educational Centres (CSEE) are entrusted with children with a wide range of needs and do not have the sufficient resources to adequately deal with them (CRC/C/15/Add.250, par. 60);

(d) information on the work of the Ombudsperson (Mediateur de Luxembourg), in its capacity of official monitoring mechanism mandated to cover children in places of detention, was not available to the Committee.

50. The Committee also reiterates its concern that the possibility of a child to be kept in solitary confinement for up to 10 days as a means of punishment for children deprived of liberty continues to exist (CRC/C/15/Add.250, par. 33) even though it has almost never been used since the consideration of the last periodic report of the State party.

51. The Committee urges the State party to bring its juvenile justice system fully into line with the Convention, in particular articles 37, 39 and 40, and with other relevant international standards, and refers it to the Committee's general comment No. 10 (2007). In particular, the Committee urges the State party to:

- (a) consider restorative justice practices and develop diversion mechanisms and alternatives to detention and punishment to prevent recidivism;
- (b) stop placing juveniles in the State Penitentiary and to rapidly open the new detention unit for juveniles;
- (c) provide sufficient resources for the new detention unit to be fully operational;
- (d) provide the CSEEs with the necessary human, technical and financial resources to adequately carry out their work with children with a wide array of needs;
- (e) take immediate measures to ban solitary confinement of children.

I. Ratification of international human rights instruments

52. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the core human rights instruments to which it is not yet a party, in particular the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and the International Convention on the Rights of Migrant Workers and Members of their Families.

K. Follow-up and dissemination

53. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, inter alia, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court and local authorities for appropriate consideration and further action.

54. The Committee further recommends that the combined third and fourth periodic reports and the written replies by the State party and the related recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and the Optional Protocols thereto and of their implementation and monitoring.

L. Next report

55. The Committee invites the State party to submit its next combined fifth and sixth periodic reports by 5 October 2019 and to include in it information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr. 1) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. The Committee urges the State party to submit its report in accordance with the guidelines. In accordance with General Assembly resolution 67/167 of 20 December 2012, in the event a report exceeding the page limitations is submitted, the State party will be asked to review and resubmit the report in accordance with the above-mentioned guidelines. The Committee reminds the State party that if it is not in a position to review and resubmit the report, translation of the report for purposes of examination of the treaty body cannot be guaranteed.
