

## Submission by the United Nations High Commissioner for Refugees

### For the Office of the High Commissioner for Human Rights' Compilation Report

#### Universal Periodic Review: *Fourth Cycle, 43<sup>rd</sup> Session*

## LUXEMBOURG

### I. BACKGROUND INFORMATION

Luxembourg ratified the *1951 Convention relating to the Status of Refugees* in 1953 and its *1967 Protocol* in 1971 (hereinafter jointly referred to as the *1951 Convention*). Luxembourg ratified the *1954 Convention relating to the Status of Stateless persons* and the *1961 Convention on the Reduction of Statelessness* (the *1954 Convention* and the *1961 Convention*, respectively) in 1960 and 2017, respectively. Several pieces of relevant national legislation have been adopted thereafter<sup>1</sup>.

In 2021, Luxembourg hosted 1,765 asylum-seekers, 6,011 refugees and 196 stateless persons. Some 1,250 persons applied for asylum in 2021, a 7% increase compared to 2020. The top countries of origin of applicants were Syria (31%) and Eritrea (20%), followed by Afghanistan (9%). A total of 56 unaccompanied and separated children (UASCs) applied for international protection in 2021 (nine more than in 2020), the majority of whom hail from Afghanistan, Eritrea and Syria. Between January-August 2022, 1,320 persons applied for asylum, an 84% increase compared to the same period in 2021. From March-August 2022, 4,755 persons fleeing Ukraine applied for temporary protection (94% Ukrainians). By 31 August 2022, the authorities had granted temporary protection to 4,523 persons.

### II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

**Linked to 3rd cycle UPR recommendation no. 106.148 (on identification of vulnerable persons):** “Ensure that vulnerable persons among those seeking international protection are promptly identified as they come into the offices of the Luxembourg Reception and Integration Agency (Canada)” and **no. 106.146 (on integration):** “Continue efforts to promote refugee integration and fair employment of immigrants (Republic of Korea)”

UNHCR wishes to underline the 2018—2023 governmental program<sup>2</sup> in its aspects relating to a fast and efficient asylum system, with reference to identification of vulnerable persons; an enhanced UASC protection system; the empowerment of persons of concern; and improved access to housing and work. These commitments are in line with Luxembourg's longstanding mobilization in favor of refugees at national, international and EU levels, as further evidenced in 2022 with the reception of persons fleeing Ukraine.

### III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

#### Challenges linked to outstanding 3rd cycle UPR recommendations

##### Issue 1: Detention of children

**Linked to 3rd cycle UPR recommendation no. 106.77:** “Repeal all measures that involve the placement of children in solitary confinement and replace these with legislation that is in compliance with the Convention on the Rights of the Child and the best interests of the child (Spain).”

Luxembourg does not detain persons who apply for asylum at the border. Asylum-seekers detained in Luxembourg mainly belong to two categories: asylum-seekers falling under the Dublin III procedure and rejected asylum-seekers pending their return to their country of

origin or a third safe country. The 2015 asylum law<sup>3</sup> foresees the possibility to detain children as a measure of last resort and as briefly as possible when it has been established that less coercive measures cannot be applied effectively. UASC can also be detained by law in exceptional circumstances<sup>4</sup>, and in an appropriate facility adapted to the needs of their age<sup>5</sup>. While families with children could previously only be held for a maximum of 72 hours, new legislation adopted in 2017 extends this limit to 7 days<sup>6</sup>.

UNHCR reiterates that children should not be detained for immigration related purposes, irrespective of their legal/migratory status or that of their parents, and detention is never in their best interests. Appropriate care arrangements and community-based programmes should be put in place to ensure adequate reception of children and their families<sup>7</sup>.

This issue has been acknowledged in the Luxembourg governmental program for 2018-2023 which foresees the creation of a specific structure for the detention of women, families and vulnerable persons and the subsequent amendment of the legislation in the field of detention to guarantee that children will no longer be placed in the detention centre by the airport<sup>8</sup>. However, to date, the detention of children in this centre continues in Luxembourg due to the absence of a specific detention structure for vulnerable persons.

**Recommendation:**

UNHCR recommends that the Government of Luxembourg:

- a) Amend legislation to end the use of immigration detention for children, irrespective of their legal status, and ensure that alternatives to detention are enshrined in law and implemented in practice.

**Additional protection challenges**

**Issue 2: Best interests of the child**

UNHCR welcomes Luxembourg's progress made in terms of consideration of the best interests of the child, with the establishment of a panel exclusively dedicated to the assessment of the best interests of the child. However, UNHCR wishes to highlight the importance that decisions concerning the welfare of a child be taken by an independent child protection body that has the expertise and training to consider the best interests, and avoid the risk of a conflict between the child's best interests and national migration policy.<sup>9</sup> UNHCR reiterates its recommendation, in accordance with the UN Committee on the Rights of the Child<sup>10</sup>, that the best interest assessment should be carried out in a multidisciplinary manner by actors independent of the migration authorities, in particular with the effective involvement of child protection and child support authorities and other relevant actors, such as parents, guardians and legal representatives, as well as the child.

**Recommendations:**

UNHCR recommends that the Government of Luxembourg:

- a) Ensure that except for the decision on the asylum application, all decisions concerning children are taken by a child protection body, particularly those related to the assessment and determination of the best interest.

**Issue 3: Reception conditions of asylum-seekers**

As of September 2022, the National Reception Agency (ONA – Office national de l'accueil) runs 55 regular reception structures with a capacity of 4,472 beds, of which 95,7% are occupied (plus, an additional 15 reception structures for refugees from Ukraine). The occupancy rate of reception centre for asylum-seekers at the end of 2021 was 84,5%, compared to 78,4% in 2020. In 2021, 44% of residents staying in these centres had received international protection but were unable to find housing on the private market, a critical issue in the last few years, even before the beginning of the war in Ukraine in 2022. Beneficiaries of international protection currently spend an average of 600 days in reception facilities.

To improve the reception quality, the Government has supported the ONA by more than doubling the staff of the agency (from 70 employees in 2018 to over 150 at September 2022, with plans for additional increases in light of the Ukrainian situation).

The quality of reception conditions can differ greatly from one centre to another and UNHCR continues to advocate for improvement of reception conditions in all centres, with more space, recreational activities, supervised and trained staff, and interpreters. Additionally, despite encouraging new legislation on reception conditions adopted on 18 December 2015<sup>11</sup>, the identification of and response to persons with specific needs remains difficult.

**Recommendation:**

UNHCR recommends that the Government of Luxembourg:

- a) Improve to the extent possible the quality of reception conditions made available to asylum-seekers, including by hiring additional staff provided with adequate training, establishing a framework for the identification and response to asylum-seekers with specific needs, and ensuring that temporary reception centres remain used for short stays of asylum-seekers.

**Issue 4: Stateless persons**

While Luxembourg is party to the *1954 Convention* and the Minister of Immigration and Asylum is competent to determine whether a person is stateless, statelessness determination procedure is not specified in the legislation. Administrative instructions on how to apply for a statelessness status were adopted and have been clarified, notably through the elaboration of a specific application form<sup>12</sup>. Stateless applicants are “not allowed to stay in Luxembourg while (their) application for statelessness status is under consideration, and a removal order may be issued if the applicant is in an irregular situation. In practice, however, the application for statelessness status is considered before any removal (...) Being recognized as a stateless person does not entail an automatic right to a residence permit.”<sup>13</sup> There are currently no plans to draft and adopt legislation on statelessness.

UNHCR maintains that statelessness determination procedures should be formalized in law. Establishing procedures through legislation ensures fairness, transparency and clarity. Procedural guarantees including those on due process<sup>14</sup> are fundamental elements of statelessness determination procedures. In addition, formalization in law would allow clarification of the rights and obligations of applicants and those recognized as stateless, notably as regards the right to stay during the procedure and after recognition.

**Recommendation:**

UNHCR recommends that the Government of Luxembourg:

- a) Adopts legislation establishing a fully-fledged statelessness determination procedure and introducing a residence permit for persons recognized as stateless, to grant them rights guaranteed by the *1954 Convention relating to the Status of Stateless persons*.

**Issue 5: Family reunification**

The family is the fundamental unit of society entitled to protection by society and the State. UNHCR reiterates the crucial importance of family unity and reunification with family members of persons recognized to be in need of international protection.<sup>15</sup>

While there have been improvements related to family reunification in Luxembourg, certain challenges remain.

As per article 69 of the Law of 29 August 2008 on free circulation and immigration<sup>16</sup>, in Luxembourg, beneficiaries of international protection are subjected to a deadline of six

months following their positive asylum decision to submit their application for family reunification. If this deadline is missed, more demanding requirements, such as evidence of accommodation, sickness insurance, and stable and regular resources, will be applied to them. While UNHCR welcomes the extension of this deadline from three to six months, which took effect on 5 July 2021<sup>17</sup>, this extended deadline nevertheless remains too short for many beneficiaries of international protection to trace their family and provide the necessary documentation in support of their application. Deadlines can pose a significant barrier to effective access to family reunification since many beneficiaries of international protection, due to their particular circumstances, might not be able to meet more demanding maintenance requirements. UNHCR continues to encourage EU Member States not to apply time limits to the use of more favourable conditions granted to refugees, in recognition of their specific situation.

Additionally, despite the deadline extension to six months, UNHCR maintains that an incomplete application submitted within this deadline should still be considered under the more favourable conditions listed above, which is not always the case in Luxembourg. As many beneficiaries of international protection are unable to meet the full requirements within the six months limit, the current law and the practice may thus be barring *de facto* their access to family reunification.

Moreover, UNHCR is concerned about recent practices related to UASC seeking to reunite with their parents. At present if the child is physically present in Luxembourg with a relative, such as an adult sibling or an aunt/uncle, that relative will be given the option to ask for guardianship of the child in order for them to remain together and live in the same reception centre in Luxembourg. However, this then leads Luxembourg to not consider the child as unaccompanied for the purpose of family reunification with his/her parents, and the child therefore is not exempted from more demanding reunification requirements (i.e. proving that his/her parents are dependent on him/her and that they are deprived of any family support in their country of origin). This restrictive approach has given rise to concerning practices where the family member present in Luxembourg sees no other option than to terminate their guardianship and physically separate from the child, for the child to have effective access to family reunification with his/her parents.<sup>18</sup> UNHCR believes that separated children cared for by family members must be supported to remain with these families, where in their best interests, until they can be reunified with parents or caregivers. UNHCR therefore encourages Luxembourg to allow children to apply for family reunification with their parents under more favourable conditions, even if they are not completely alone (unaccompanied) in Luxembourg.

In Luxembourg, family reunification is granted to the nuclear family (spouse, minor and single children and parents of UASC) and may be granted under conditions to dependent parents of an adult refugee, single adult children and the legal guardian or any other family member of an unaccompanied child<sup>19</sup>. UNHCR is concerned about the narrow interpretation of the notion of family and the high level of dependency required by Luxembourg to be eligible for family reunification. UNHCR encourages States to adopt a more inclusive definition, beyond what is known as the traditional “nuclear family”, including for the purpose of family reunification<sup>20</sup> and urges states to apply a broader definition of dependency, namely one that includes not only financial but also physical, psychological and emotional attachment. What constitutes a family must be determined on a case-by-case basis guided by the dependency principle, requiring an open, flexible approach and broad interpretation, considering biological and social connections, cultural variations as well as physical, emotional and economic ties or dependency factors.

Finally, the 2008 immigration law<sup>21</sup> foresees that a decision on the family reunification request should be rendered within nine months of the submission of the application. The law, however, allows that this time limit can be extended in exceptional cases linked to the complexity of the examination of the request. Due to this possibility, beneficiaries of

international protection sometimes wait for an answer on their family reunification request for more than a year. In some cases, years may have already passed from the time of flight, and after going through a lengthy asylum process, before a beneficiary of international protection could even start the onerous family reunification process<sup>22</sup>. UNHCR's Executive Committee (ExCom) has called for the reunification of separated refugee families to be undertaken "with the least possible delay" and applications for family reunion of families of persons in need of international protection should be dealt with fairly, in a positive humane and expeditious manner.

### Recommendations:

UNHCR recommends that the Government of Luxembourg:

- a) Facilitate the reunification of families of beneficiaries of international protection, in order to better fulfil its obligations, by *inter alia*:
- b) Not applying (strict) time limits to request family reunification under the "more favourable conditions" foreseen in Article 69(2) of the 2008 immigration legislation and accepting completion of the family reunification application after the time limit has elapsed;
- c) Allowing separated children – cared for by family members or friends – who apply for family reunification with their parents, to be exempted from more demanding requirements;
- d) Considering the actual composition of the family unit and relationships of dependency to promote a reunification including with dependent extended family members; and
- e) Ensuring that the family reunification process for beneficiaries of international protection, including the decision-making stage, takes place with the least possible delay.

**UNHCR MCO Belgium  
October 2022**

<sup>1</sup> On 18 December 2015, new laws on the asylum procedure and reception conditions of asylum-seekers, transposing the relevant EU recast Directives, were adopted (*Loi du 18 décembre 2015 relative à la protection internationale et à la protection temporaire; Loi du 18 décembre 2015 relative à l'accueil des demandeurs de protection internationale et de protection temporaire*, available at <http://data.legilux.public.lu/eli/etat/leg/loi/2015/12/18/n15/jo>). The temporary protection mechanism was activated on 8 March 2022. The 29 August 2008 legislation on immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*, available on : <http://data.legilux.public.lu/eli/etat/leg/loi/2008/08/29/n1/jo>) is also applicable to persons of concern, notably as regards family reunification and detention. The 2009 legislation on the detention centre (*Loi du 28 mai 2009 portant création et organisation du Centre de rétention*, available on : <http://data.legilux.public.lu/eli/etat/leg/loi/2009/05/28/n1/jo>) is also relevant as regards the detention of children.

<sup>2</sup> *Accord de coalition en vue de la formation d'un nouveau gouvernement*, signed on 3 December 2018, available on: <https://gouvernement.lu/fr/publications/accord-coalition/2018-2023.html>

<sup>3</sup> Law of 18 December 2015 on international and temporary protection.

<sup>4</sup> Article 22(1) of the 2015 Asylum legislation.

<sup>5</sup> Article 120 (1) of the 2008 Immigration legislation.

<sup>6</sup> Article 6(3) of the 2009 legislation on the detention centre.

<sup>7</sup> See "UNHCR's position regarding the detention of refugee and migrant children in the migration context", January 2017, available on : <https://www.unhcr.org/protection/detention/58a458eb4/unhcrs-position-regarding-detention-refugee-migrant-children-migration.html>

<sup>8</sup> <https://gouvernement.lu/fr/publications/accord-coalition/2018-2023.html> (p.233).

<sup>9</sup> UN High Commissioner for Refugees (UNHCR), *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, July 2017, disponible en anglais sur: <https://www.refworld.org/docid/59633afc4.html>

<sup>10</sup> Observation générale conjointe no 3 (2017) du Comité pour la protection des droits de tous les travailleurs migrants et des membres de leur famille et no 22 (2017) du Comité des droits de l'enfant sur les principes généraux relatifs aux droits de l'homme des enfants dans le contexte des migrations internationales, 16 novembre 2017, page 8, disponible sur : <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/343/60/PDF/G1734360.pdf?OpenElement>

<sup>11</sup> The new legislation reduces from 9 to 6 months the delay for an asylum-seeker to be granted access to work following the introduction of his/her asylum claim; includes multiple references to the need to ensure the best interests of the child at all stages of the procedure and strengthened ONA's capacity by increasing the number of

staff and providing them with appropriate training.

<sup>12</sup> Available on: <https://guichet.public.lu/fr/citoyens/immigration/cas-specifiques/apatrie/demande-statut-apatride.html#bloub-7>

<sup>13</sup> Replies of Luxembourg to the list of issues in relation to its second periodic report, paras 84-86, 23 July 2021

<sup>14</sup> For more information on this, including on necessary safeguards, see: UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, paras. 71-77, available at: <https://www.refworld.org/docid/53b676aa4.html>

<sup>15</sup> While the 1951 Convention is silent on the question on family reunification and family unity, the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons recommends that Member States “take the necessary measures for the protection of the refugee’s family, especially with a view to (...) [e]nsuring that the unity of the refugee’s family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.” UNHCR’s Executive Committee (“ExCom”) has adopted a series of conclusions that reiterate the fundamental importance of family unity and reunification and call for facilitated entry on the basis of liberal criteria of family members of persons recognized in need of international protection. See also UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 16(3) available at: <http://www.unhcr.org/refworld/docid/3ae6b3712c.html> ; and UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 23(1), available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>.

<sup>16</sup> Loi du 29 Août 2008 1) portant sur la libre circulation des personnes et de l’immigration ; 2) modifiant : la loi modifiée du 5 mai 2006 relative au droit d’asile et à des formes complémentaires de protection ; la loi modifiée du 29 Avril 1999 portant création d’un droit à un revenu minimum garanti ; le Code du travail, le Code pénal ; 3) abrogeant : la loi modifiée du 28 mars 1972 concernant 1. l’entrée et le séjour des étrangers ; 2. le contrôle médical des étrangers ; 3. l’emploi de la main-d’œuvre étrangère ; la loi du 28 Octobre 1920 destinée à endiguer l’affluence exagérée d’étrangers sur le territoire du Grand-Duché, art. 69 (2)

<sup>17</sup> Article 9 de la Loi du 16 juin 2021 portant modification de la Loi modifiée du 29 août 2008 sur la libre circulation des personnes et l’immigration, qui remplace le mot « trois » par « six » à l’article 69(3) de la loi du 29 août 2008, op.cit., disponible sur : <http://data.legilux.public.lu/eli/etat/leg/loi/2021/06/16/a490/jo>

<sup>18</sup> The [Luxembourg Administrative Court recently annulled a family reunification refusal](#) concerning a Syrian child refugee – whose brother had been appointed as her legal guardian - with her parents, noting that such a refusal would constitute a disproportionate interference with the appellant’s right to respect for private and family life in violation of Article 8 ECHR while disregarding the child’s best interests guaranteed by Article 24 of the Charter of Fundamental Rights.

<sup>19</sup> Loi du 29 Août 2008, op.cit., article 70.

<sup>20</sup> UNHCR’s *Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union* (Directive 2003/86/EC), February 2012, available on <https://www.unhcr.org/4f54e3fb13.pdf> , pages 7-8.

<sup>21</sup> Loi du 29 Août 2008 portant sur la libre circulation des personnes et de l’immigration, op.cit., article 73(6)

<sup>22</sup> See also UNHCR’s Response to the European Commission Green paper, op. cit., p. 13.