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HUMAN RIGHTS COUNCIL  
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**UNIVERSAL PERIODIC REVIEW**

**Report of the Working Group on the Universal Periodic Review**

**LUXEMBOURG**

**Addendum**

**Views of Luxembourg concerning the recommendations and/or conclusions,  
voluntary commitments and replies presented by the State under review\***

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\* The present document was not edited before being sent to the United Nations translation services.

## **RESPONSES OF LUXEMBOURG TO THE RECOMMENDATIONS MADE BY THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW**

### **Recommendation 1**

1. Luxembourg undertakes to take these recommendations into account and to complete the various ratification processes as soon as possible.
2. With regard to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, however, major legal obstacles connected with the European Community's competence in matters relating to migrant workers currently preclude ratification by Luxembourg. Luxembourg would like a study to be carried out within the European Union to identify possible ways of facilitating ratification of the Convention. Like its European partners, Luxembourg will continue to take an active part in the international community's consideration of the question of migrant workers.
3. The competent authorities in Luxembourg are currently elaborating preliminary draft legislation with a view to the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance.
4. The draft law relating to the adoption of the Optional Protocol to the Convention against Torture has been submitted to the Chamber of Deputies.

### **Recommendation 2**

5. The drafting of the national report has already enabled the competent authorities to consult the independent bodies that are monitoring respect for human rights in Luxembourg, as well as the associations and organizations of civil society involved in promoting human rights. Luxembourg undertakes to continue these consultations regularly with a view to ensuring appropriate follow-up of the universal periodic review report.

### **Recommendation 3**

6. The Luxembourg Government, aware of the human rights implications of care for the mentally ill, has undertaken through legislative reforms to strengthen the fundamental rights of persons placed in psychiatric institutions without their consent. Legislation amending the current system of institutionalization of persons suffering from mental disorders should be adopted soon. This legislation will update the current arrangements so as to take account of the latest international recommendations in the field and will make involuntary institutionalization of a person suffering from mental disorders subject to the decision of a court and amenable to appeal at any time in the proceedings. Involuntary treatment and measures of seclusion and restraint will be very carefully circumscribed and will be used only as the last resort, when absolutely necessary.
7. In the field of child psychology, Luxembourg has tried to bolster the number and quality of facilities for the care and therapeutic follow-up of children suffering from mental or behavioural disorders. These efforts will be pursued so as to ensure that psychological treatment for children is of good quality and keeps pace with medical progress.

#### **Recommendation 4**

8. Regarding the recommendation that Luxembourg should develop its legislation on immigration and international protection in line with the principle of non-refoulement, Luxembourg considers its legislation, both on immigration and on the right of asylum, to be perfectly in line with the principle of non-refoulement.
9. As to the recommendation on stopping the practice of releasing minors at the borders, there is no such practice in Luxembourg.
10. Lastly, on the recommendation concerning detention measures, Luxembourg will soon be transposing into its own legislation the European Union's Return Directive. As to the detention of applicants for international protection, discussions are currently under way in European institutions.

#### **Recommendation 5**

11. Luxembourg undertakes to transmit the reports due to the Committee on the Elimination of Racial Discrimination (CERD) as soon as possible.
12. Regarding organizations promoting or inciting discrimination, article 18 of the legislation of 21 April 1928 states that "The civil court with jurisdiction in the place where an association has its headquarters may, at the request of one of the association's members, any interested third party or the public prosecutor, order the dissolution of an association that is unable to fulfil its commitments or that uses its property or the earnings from its property for purposes other than those for which it was founded or that constitute grave breaches of its statutes, the law or public order".
13. The reference to breaches of the law thus includes breaches of articles 454 and 455 of the Criminal Code.
14. Courses on human rights are provided for prison administration staff, including as part of staff training.

#### **Recommendation 6**

15. The recommendations on developing a coherent strategy and plan of action to prevent and eliminate all forms of violence against women, particularly women of the immigrant community, and the recommendations on prostitution and human trafficking, will be incorporated into the second National Action Plan on Gender Equality 2009-2013.
16. In the interests of rationalizing its human and financial resources, the Government intends to bring together in a single plan all the activities designed to implement the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Platform so as to better harmonize policy actions to promote gender equality.
17. The family, in its various forms, plays an essential role in society. The Luxembourg Government is endeavouring to create appropriate conditions so that families may fulfil their role.

### **Recommendation 7**

18. Luxembourg commits itself to carrying out these recommendations; see also under paragraph 6 above.

### **Recommendation 8**

19. Cf. paragraphs 34 to 40 of the national report.

### **Recommendation 9**

20. Luxembourg uses precisely the same terminology as do all the international conventions to which it is a party. It is thus not in a position to undertake a commitment on this subject at this point, but it will take into account the ongoing discussion in the relevant forums and remains open to the idea of adopting phraseology in line with the principles of non-discrimination.

### **Recommendation 10**

21. The responsibility for systematic monitoring of the inclusion of a gender perspective in the review follow-up process falls upon the ministry that coordinates implementation efforts. After the legislative elections to be held on 7 June 2009, a decision to that effect could be included as one of the measures under chapter 9, "Fundamental rights", in the National Action Plan on Gender Equality 2009-2013.

### **Recommendation 11**

22. In Luxembourg, all religious communities and philosophical convictions are treated on an equal footing. As to the application of article 22 of the Constitution (conventions entered into with religious communities), Luxembourg applies criteria of respect for public order and the relatively representative nature of the community concerned. All beliefs and non-beliefs are automatically recognized by the constitutional system in Luxembourg, in conformity with the European Convention on Human Rights. The existence of a convention does not confer additional civil liberties on the community concerned.

### **Recommendation 12**

23. The texts of a general nature in the Criminal Code set out a general prohibition not only of deliberate assault and battery, irrespective of the forms and consequences, but also of minor acts of violence and assault (articles 401 bis and 563,3).

24. In order to fulfil various recommendations, including those in the Convention on the Rights of the Child, the legislation of 16 December 2008 on assistance to the child and the family (Official Gazette A-No. 192 of 22 December 2008) makes reference, for example in article 2, paragraph 3, to the important principle incorporated in Luxembourg legislation of prohibition of all forms of violence, including within families and educational communities: "Within families and educational communities in particular, physical and sexual violence, intergenerational sexual transgressions, inhuman and degrading treatment and genital mutilation are prohibited."

### **Recommendation 13**

25. Article 11 of the legislation of 16 June 2004 on reorganization of the State Socio-Educational Centre (CSEE) governs admission to the Security Unit.
26. Contrary to the arrangements that apply to other units of the CSEE, admission to the Security Unit may be ordered only by the judicial authorities. In view of the Security Unit's particularly sensitive purpose, the infrastructure allocated to it and the need to ensure heightened security for detainees and to give them a satisfactory educational and therapeutic environment, the number of minors admitted cannot exceed 12.
27. In principle, detention in the Security Unit must be of limited duration. Although the objective is to create a good environment, prolonged detention might jeopardize the prospects for family, educational, social, professional and cultural integration. The purpose of the Security Unit is accordingly one of preservation and protection - to prevent minors from running away, to preserve them from the temptation and consumption of psychotropic substances and to protect them from delinquency and the commission of serious crimes.
28. Cf. also the national report, paragraph 44.

### **Recommendation 14**

29. Please refer to the statement by the Minister on 2 December 2008 during the consideration of Luxembourg's report.
30. There are no special legislative provisions regarding children of detainees. The prison authorities handle these situations on a case-by-case basis (there is only one case at present) to see what would be best for the child concerned. This is why legislation in this area is not advisable, as any new text entails new constraints and might limit the actions of those involved, whereas up to now they have had considerable room for manoeuvre. Obviously, such customized service can work only in a small country like Luxembourg, where the situations just described rarely occur.
31. Being in custody has no impact on parental rights. The detainee's parental authority is not diminished by his or her detention. If the child lives with a person who is not under detention, visiting rights may be accorded for the child and the detained parent within the premises of the prison. There is a special service, called the "*Treffpunkt*", which organizes such visits. If the child lives with a parent who is under detention, the juvenile judge or, in his or her absence, the prosecutor's office, will order temporary childcare on the basis of the legislation on protection of children (of 10 August 1992) so as to place the child with a reliable person or in alternative care. There have been cases - for example, when mothers of infants were under preventive detention - when it was decided to leave the child with the mother (if she was breastfeeding, for instance). However, should the detention be prolonged, it would not be in the interests of the child to remain in a prison environment, and a temporary childcare measure will be adopted.
32. Excerpts from the Grand Duchy regulation of 24 March 1989 concerning the administration and operation of penitentiary establishments:

33. Art. 130: When a physician discovers that a female detainee is pregnant, he or she drafts a medical certificate indicating the approximate delivery date and informs the director of this. The latter rapidly informs the Procurator-General and, if necessary, the arresting authority of the state of the detainee.
34. The director is required to carry out the instructions given to him.
35. In the event of an emergency, the director himself gives orders for the detainee to be transported to the closest maternity clinic and informs the competent authorities of this action.
36. When a female detainee gives birth in a detention facility, the director reports the birth to the competent civil registry official in accordance with articles 55 and 56 of the Civil Code. If the child is born in prison, the birth certificate must not so indicate.
37. Art. 142. A director may not refuse admission to a woman accompanied by a child totally dependent on her care or likely to give birth during her detention, unless she deliberately surrenders while pregnant or caring for a dependent child.
38. Children admitted with their mothers may be kept by them in their room or cell; they must always have a separate bed there.
39. Children who can be separated from their mothers are not admitted.

#### **Recommendation 15**

40. The legislation of 16 December 2008 on the acceptance and integration of foreigners in the Grand Duchy of Luxembourg (Official Gazette A No. 209 of 24 December 2008) provides for the establishment of a Luxembourg Acceptance and Integration Office (OLAI) whose purpose is to organize the acceptance into the country of newly arrived foreigners; facilitate the integration of foreigners by applying and coordinating, together with municipalities and organizations of civil society, the acceptance and integration policy, of which combating discrimination is an essential element; and provide social aid to foreigners who are not entitled to existing benefits and to applicants for international protection as defined by the legislation of 5 May 2006 on the right of asylum and complementary forms of protection.
41. OLAI is responsible, among other things, for developing a draft national multi-year plan of action in favour of integration and against discrimination, setting out the main strategic lines of action and the political measures being implemented and to be implemented. The minister submits the draft plan to the Government for approval. The Government then outlines a global strategy and decides on specific measures for integration and against discrimination.
42. This legislation also envisages an acceptance and integration contract to be proposed to foreigners legally resident in Luxembourg and containing mutual undertakings by the State and the foreigner aimed at facilitating his or her integration.
43. In Luxembourg, any child who is in the age group for which schooling is compulsory (4-16 years) and resides in the Grand Duchy must be enrolled in school, irrespective of nationality or status. Thus a child cannot be refused admission to school on grounds of race, gender, language or religion.

44. The country is officially trilingual (Luxemburgish, French and German), all three languages play an important role in schooling and German and French are the languages of instruction at the basic educational level, and accordingly the Minister of Education has over the years redoubled efforts to facilitate the scholastic integration of newly arrived students and speakers of foreign languages (cf. national report).

#### **Recommendation 16**

45. There are no particular difficulties in Luxembourg with the working conditions of migrants, both men and women. Luxembourg's legislation on the right to work applies on an equal and non-discriminatory basis to all workers in its territory. Equal treatment for men and women is also guaranteed by the Labour Code. Neither the Government nor the domestic courts have any information on possible difficulties in this area. We accordingly see no need for positive discrimination with regard to working conditions, since all workers are treated on an equal basis.

#### **Recommendation 17**

46. Luxembourg will ensure that the goals set in resolution 9/12 are attained.

#### **Recommendation 18**

47. Luxembourg will continue to strengthen its development cooperation policy with a view to combating poverty and helping developing countries to achieve the Millennium Development Goals. Luxembourg's official development assistance was 0.7 per cent of the GDP in 2000 and topped 0.9 per cent in 2007, and it will continue its efforts to reach 1 per cent in years to come.

48. Luxembourg will also continue to encourage its partners in the European Union and the Development Assistance Committee of the Organization for Economic Cooperation and Development to meet the commitments they have made within the United Nations and the European Union concerning ODA.

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