



ACAT Luxembourg¹'s and FIACAT's concerns regarding torture and ill-treatment in Luxembourg

**Observations to the Human Rights Council in the prospect of the examination of Luxembourg within the Universal Periodic Review
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ACAT Luxembourg and FIACAT would like to bring to the Council's attention the situation of detainees, asylum seekers and foreigners under a deportation order, in the Grand-Duchy of Luxembourg.

1) Minors in difficulty placed in open and closed detention regimes: ongoing problems

(a) Placement of minors in an adults' prison

ACAT Luxembourg and FIACAT are concerned by the practice of placing minors in the Luxembourg Prison Centre ("Centre pénitentiaire de Luxembourg"- CPL) as a disciplinary measure. This practice was repeatedly criticized by the Committee against Torture (CAT)². The European Committee for the Prevention of Torture has also repeatedly insisted since its first visit to the Grand-Duchy in 1993, on the demand to maintain minors in separate establishments from adult prisons³. In the report on his visit to Luxembourg in February 2004, Álvaro Gil-Robles, Council of Europe Commissioner for Human Rights, called on the Luxembourg Government "*to prioritise the construction of a building specially earmarked for young detainees in order to keep them separate from the main prison, which cannot be considered a suitable environment for minors*"⁴. He also expressed concern about the fact that "*young people are not kept completely separate from the adult prisoners, and that contact between both groups is common, with the youngsters using certain facilities intended for the adult prisoners*"⁵.

A law reorganising the State Socio-Educational Centres ("Centres socio-éducatifs de l'État" – CSEEs) was passed on 16 June 2004, providing a legal basis for the building of the Dreibern security unit '*which is scheduled for mid-2005*' has still not been implemented, even though

¹ ACAT Luxembourg is a human rights organization, created in 1985, whose mission is to oppose capital punishment, to intervene for victims of torture and to remain watchful on human rights issues both internationally and at national level, in particular regarding the treatment of refugees and detainees. ACAT Luxembourg is affiliated to the FIACAT (International Federation of Action by Christians for the Abolition of Torture)

² in 1999, 2002 and 2007

³ CPT/Inf (93), §60 – CPT/Inf (97), §47 and CPT/Inf (2004), §36

⁴ Report of Mr Álvaro Gil-Robles, Commissioner for Human Rights, on his visit to the Grand-Duchy of Luxembourg, 2-3 February 2004 (CommDH(2004)11), § 15.

⁵ Ibid, § 14.

the Government of Luxembourg had later promised that building would start in 2008; to date, the building work on this unit has still not started. Technical difficulties and other problems relating to authorisations from the relevant local authorities have been mentioned as reasons for these delays.

In addition, it seems that the security unit project only concerns the male juvenile population. ACAT Luxembourg and FIACAT fear that this will mean no change for the female juvenile detainees at the CPL who are even more exposed to contacts with the adult population because of their small numbers.

(b) Appeal procedures against the risk of arbitrary punishment

In its 9th General Report, the European Committee for the Prevention of Torture (CPT) pointed out that ‘Effective complaints and inspection procedures are basic safeguards against ill-treatment in juvenile establishments’⁶ It added: ‘Juveniles should have avenues of complaint open to them, both within and outside the establishments’ administrative system, and be entitled to confidential access to an appropriate authority’⁷.

The law of 8 August 2000 on the enforcement of custodial sentences provides for appeals against disciplinary measures taken in the CPL to be made to a prison commission which does not include the judge who took the measure being appealed against. However, in the CSEEs, there is no possibility of appealing against disciplinary measures, including isolation, to an authority outside the establishment’s administrative set-up. The Government’s report refers in this connection (§190) to a complaints procedure before the Chairman of the Supervision and Coordination Commission (‘Commission de surveillance et de coordination’) and appeals to the youth judge, but it is important to point out that these people are, by their very positions, already involved in the taking of the penalty decision.

2) Unacceptable conditions of detention at the Luxembourg Prison Centre (‘Centre pénitentiaire de Luxembourg’) – CPL

(a) Overcrowding

Between January 2002 and January 2006, the prison population rose from 341 to 735 persons, 667 of whom were detained at the CPL. At the end of 2006, the figure was estimated to be between 670 and 700. The establishment can only reasonably hold 550 detainees⁸.

As the Deputy State Prosecutor wrote in her presentation of statistics relating to prison establishments (January 2006), ‘*the CPL is a hotch-potch prison, containing men and women, sentenced and remand inmates, minors and administrative detainees placed in the provisional holding centre. In view of the CPL’s infrastructure and the high occupation rate, it is no longer possible satisfactorily to keep the various categories of prisoners or fully comply with their detention regimes*’.

This overcrowding problem exacerbates or causes many other problems affecting the CPL prison: lack of privacy, tensions between detainees and between personnel and detainees, high rate of violence, racist comments and behaviour, lack of activities, shortage of personnel, and difficulties in finding availability for staff training sessions.

(b) Problems specific to the women’s section

According to the Ombudscommittee on the Rights of the Child (ORK)’s 2006 report, ‘*two young mothers were imprisoned on remand at the beginning of October 2006 with their children aged two-and-a half and sixteen months respectively at the prison in Schrassig. The two women shared the same cell with their two children who spent 5 days a week locked up all day, with an hour’s permission to go out into the prison yard. The prison is overcrowded*

⁶ 9th General Report on the CPT’s activities, CPT/Inf (99) 12 [EN], § 36

⁷ Ibid.

⁸ On the evolution of Luxembourg’s prison population between 2000 et 2007, see graph from the Ministry of Justice at www.police.public.lu/actualites/a_connaitre/administration/2007/03/20070327/20070327-pdf.pdf

and has neither the infrastructure nor the material or personal resources to cater for young children with their imprisoned mothers. Very young children have no choice but to run around in the corridor, surrounded by keys and the locking and unlocking of door⁹s. ACAT and FIACAT consider that catering for children of imprisoned women calls for a more appropriate solution.

(c) Allegations of arbitrary and racist behaviour

ACAT has also received a large number of allegations of arbitrary behaviour and racist insults by warders in the prison, especially against African detainees. These allegations confirm the criticisms that were made in 2004 by the European Committee for the Prevention of Torture. These facts ‘*suggest that relations between the staff and detainees in the establishment are generally strained*¹⁰’. The CPT recommended that supervisory staff ‘*remind their colleagues that ill-treatment and insults are not acceptable and will be severely penalised*’. There seems to have been no change in this situation.

(d) Inadequate training of prison warders

The Luxembourg political authorities and the CPL management willingly acknowledge that the tension and other problems within the prison are partly due to the lack of training among the warders. They are generally recruited at the age of 20 via the ‘*Härebierg*’ military centre, have a limited school education and are only given a six-week initial training course, followed by two years’ probation. 30-100 hours’ ongoing training is also scheduled but rarely provided owing to the staffing problems. The management is reluctant to allow staff members to attend such periods of training if this means an additional workload for the rest of staff.

There is an urgent need for warders to be provided with adequate training. No such measures are planned. An initial attempt was made a few years ago but failed because the teachers were unsuited to the practical realities of the prison environment and the academic level of prison warders.

ACAT and FIACAT also underline the need to recruit a sufficient number of supervisory staff and to broaden the recruitment base, in particular by opening certain positions to foreign nationals in order to ensure greater cultural and language diversity among the personnel, given that over 70 % of Luxembourg prison population is of foreign origin¹¹.

(e) Inadequate access to medical care

In 2005/2006 some female detainees waited for more than eight months before they could have access to external medical care. Medical test results which should have led to further tests were filed by CPL doctors without any follow-up treatment being arranged¹².

(f) Failure to provide copies of the prison regulations

Article 334 of the Grand-Ducal Regulation on the administration of and internal arrangements for prisons stipulates that the prison regulations shall be made available to each prisoner.

Although some extracts from the regulations are posted on walls (only in German), the text is not systematically made available in accordance with Article 334. This situation has led to some confusion among many detainees as to their rights and obligations, and in particular a lack of information as regards the reasons for certain disciplinary measures imposed on them.

⁹ Ombuds-Comité fir d’Rechter vum Kand (ORK), 2006 Report (<http://www.ork.lu/PDFs/rapport2006.pdf>), Section 12 ‘*Réflexions sur l’accueil d’enfants avec leur mère incarcérée*’, pages 62-63.

¹⁰ CPT report to the Government of the Grand-Duchy of Luxembourg, CPT/Inf (2004) 12, § 35.

¹¹ See OECD statistics at <http://www.oecd.org/dataoecd/4/30/38148889.pdf>

¹² INFO PRISON : detainees support association, and testimonies from visitors

3) The situation of administrative detainees at the CPL

Foreigners placed in custody under the law on the entry and residence of foreigners¹³ are held in a section of the CPL prison. This situation has been criticised in particular by the European Committee for the Prevention of Torture (CPT) which emphasised in 2004, following its most recent visit to Luxembourg, the principle that '*a prison is not an adequate place to hold persons who have neither been found guilty nor been prosecuted on any criminal charges*'¹⁴.

A plan to build a holding centre for illegal immigrants outside the prison (Bill 5654 of 19 December 2006), expected to be completed in the autumn 2008 according to government promises¹⁵, is still no more than a project.

ACAT and FIACAT welcome nonetheless the permission granted by the authorities in November 2006 for some authorised NGOs, among them ACAT, to visit administrative detainees twice a week.

As regards implementation of administrative detention measures, ACAT and FIACAT are concerned that some detainees are not informed in a language that they understand about their legal status, their rights and means of appeal, for lack of relevant interpreters and available written documents. As a result, some illegal immigrants might wait for several days, or even weeks, before obtaining legal assistance.

No copy of the regulations applied in this unit of the CPL is currently available for the persons who are held there. It seems for example that the same disciplinary measures are applied to administrative detainees and prison detainees, with the possibility to place them in isolation for several days by management decision.

ACAT and FIACAT are also concerned about the practice of organizing meetings between foreign nationals in administrative detention and representatives of their embassy, against their will, for identification purposes, even though they might have motives to fear for themselves or their families back in their countries if it is established that they have applied for asylum in Luxembourg or simply left their country illegally. This is the case for Chinese nationals in particular. On 19 February 2008, an asylum seeker, Mr YU Sze Kong, was forced to meet with representatives of the Chinese Embassy, after leaving China illegally a few months earlier, to seek refuge in Europe¹⁶.

Foreign detainees with no legal status who have completed their prison sentence are often placed for an additional period of administrative detention of up to three months because the authorities have failed to take measures to organize their return during their time in detention.

4) Concerns relating to the treatment of asylum seekers

Luxembourg's policy vis-à-vis asylum seekers is the object of attention from the 'Collectif réfugiés Luxembourg – Lëtzebuurger Flüchtlingsrot' (LFR) coalition of associations, of which ACAT is a member, along with a dozen other human rights or humanitarian organisations.

(a) Forced expulsions

At least one person was subjected to police violence during an attempt to expel him by force. Mr. Mamadou Aliou Diallo, a Guinean national, was placed again in administrative detention after the failure of the expulsion operation without undergoing adequate medical examination even though he showed obvious signs of violence. ACAT and FIACAT call for a thorough medical examination to be systematically and immediately carried out on the deportee each time a forced return operation has failed¹⁷.

¹³ The modified law of 28 March 1972 on the entry and residence of foreigners

¹⁴ CPT report to the Government of the Grand-Duchy of Luxembourg, CPT/Inf (2004) 12, § 57.

¹⁵ Answer to CAT's question 5, 23 March 2007

¹⁶ See annex n°1 : letter from the "Collectif réfugiés" to Luxembourg Minister of Foreign Affairs

¹⁷ See annex n°2: Letter from ACAT-Luxembourg to the Minister of Foreign Affairs regarding the Diallo case. 4

ACAT and FIACAT also insist on the need to provide accompaniment by independent observers during all deportation operations, and to define precisely the observers' mandate as well as an official code of conduct for the security forces in charge of those operations.

(b) Return of asylum seekers to countries where they risk being subjected to torture or ill-treatment

On 7 March 2005, in a commentary addressed to the Luxembourg Foreign Minister about the bill on the right of asylum and supplementary forms of protection, the Office of the UN High Commissioner for Refugees (UNHCR) expressed its '*deep concern*' in relation to Article 6(12) of this bill. Despite the repeated concerns expressed by the UNHCR on the subject, the article in question was adopted in May 2006 without amendment to the criticised provisions. Article 6(12) of the law of 5 May 2006 stipulates the following: '*By way of exception from the above, an applicant for asylum may be handed over or, where appropriate, extradited either to another European Union Member State by virtue of the obligations deriving from a European arrest warrant or for other reasons, or to a third country, or to an international criminal tribunal or court*'.

We share the UNHCR's view that such a provision can have extremely serious consequences and is contrary to Article 3 of the Convention against Torture.

(c) List of safe countries of origin

Luxembourg has acquired, by way of a Grand-Duchy Regulation of 21 December 2007, published officially on 31 December 2007, a list of safe countries of origin whose nationals will have their asylum application examined within a speedy procedure. ACAT and FIACAT are concerned about the risk for those persons to be deprived of certain guarantees that their application for international protection will be examined thoroughly, objectively and on an individual basis.

5) Establishment of a national visiting body for places of detention, in line with the Optional Protocol to the Convention against Torture

On 13 March 2008, Luxembourg's Minister of Justice, Mr Luc Frieden, tabled bill n°5849, which establishes the frame for the government's decision to set up an independent control body for all places of detention in Luxembourg, by virtue of the Optional Protocol to the Convention against Torture (OPCAT).

At this stage, Luxembourg still needs to ratify officially the OPCAT, and the national visiting body, which is due to be entrusted to the Office of the Ombudsman, has not been formally established.

ACAT is concerned about the foreseen delays (more than one year, according to our information), to implement the provisions of the bill.

Recommendations to the Luxembourg State:

- Finally start the building of the Dreibern security unit for minors in order to put an end to the placement of minors in the Luxembourg prison for adults;
- Improve the training of security forces and warders in human rights issues and particularly as regards the prevention of ill-treatment and racist behaviour;
- Improve access to information on their rights and means of appeal for detainees, and foreigners in particular;
- Improve the monitoring and control of operations to forcibly return illegal foreign nationals ;
- Ratify the OPCAT as soon as possible.

Annexes:

- Annex n°1 – Letter from the Collectif réfugiés to the Luxembourg Minister of Foreign Affairs
- Annex n°2 – Letter from ACAT-Luxembourg to the Minister of Foreign Affairs regarding the Diallo case.