



LUXEMBOURG

ISSUES RELATED TO IMMIGRATION DETENTION

Submission to the United Nations Committee on the
Rights of the Child

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THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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Issues concerning immigration detention

The Global Detention Project (GDP) welcomes the opportunity to provide information about Luxembourg to the Committee on the Rights of the Child (CRC) for consideration as part of the List of issues prior to the submission of the combined fifth and sixth periodic reports. The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State Party's laws and practices relating to detention for migration-related reasons.

This submission is made under Article 45(a) of the Convention on the Rights of the Child and addresses implementation of Article 3(1) and Article 37 (b)(c)(d) in the context of immigration detention. It is informed by the 2017 Joint General Comment (JGC) of the Committee on Migrant Workers and the CRC (CMW/C/GC/4-CRC/C/GC/23) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return.

Unaccompanied children

Upon the examination of the combined third and fourth periodic reports of Luxembourg from October 2013, it is apparent that in its Concluding Observations (CRC/C/LUX/CO/3-4), the Committee expressed concern at the lack of available places in special reception centres for unaccompanied children. The Committee also noted with concern that the Act of 28 May on the *centres de retention* and the Act of 1 July 2011 explicitly allowed detention of unaccompanied children pending removal from the State party (§44). The Committee thus recommended that Luxembourg adopt legislation to prevent the detention of unaccompanied children (§45(b)).

Despite the Committee's recommendation, Luxembourg's legislation still allows for the detention of unaccompanied children, albeit subject to restrictions. Under the Immigration Law (*Loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*), unaccompanied children can be detained in an "appropriate place" that is adapted to their needs, their best interest should be taken into account (Article 120(1)), and they should be assisted by an "ad-hoc administrator" (Article 103). Children falling under the scope of the Asylum Law (*Loi du 18 décembre 2015 relative à la protection internationale et à la protection temporaire*) may be detained as a measure of last resort and after it has been established that other less coercive measures cannot be applied effectively. The detention of children should be as short as possible, every effort should be made to ensure that they are placed in adequate accommodation, and the best interests of the child should be taken into account. Unaccompanied children may only be detained in exceptional circumstances (Article 22(1)).

In her 2014 report, the Luxembourg Ombudswoman raised concern that the law did not set a time limit for the detention of unaccompanied children in return

proceedings, nor did it establish a safeguard that their detention is to be a measure of last resort.¹ However, an Administrative Court interpreted Article 6(3) of the Law concerning the Detention Centre (*Loi du 28 mai 2009 portant création et organisation du Centre de rétention*)—which explicitly addresses families with children—as also applying to unaccompanied children.²

Although the law allows for the detention of unaccompanied children, reportedly this rarely occurs.³ Unaccompanied children have typically been initially housed in the “Don Bosco” reception centre. With a capacity of 150, the centre is managed by the Red Cross and the Ministry of Family Affairs and accommodates newly arrived asylum applicants for four to six weeks.⁴ After this, they are placed in various facilities depending on their age: children below the age of 16 are placed in orphanages, children aged 16 to 16 and a half are placed in reception centres run by the Red Cross (for instance the reception centre in Eich or (as of 2016), Lily Uden),⁵ and those aged 16 and half to 18 are placed in centres run by Caritas.⁶ If there are no available places in orphanages, children under the age of 16 may also be placed in reception centres. Some of these facilities are not specifically designed for unaccompanied children and they host both adult and child asylum seekers.⁷ Since the autumn of 2016, at least two new centres dedicated to unaccompanied children have been brought into operation: a 10-person reception centre, St Martin Jeunes, for unaccompanied boys aged between 12 and 18, run by the Fondation Maison de la Porte Ouverte, and nine-person Villa Nia Domo managed by the Red Cross.⁸

In line with the JGC, according to the principle of the child’s best interest, children should never be detained for reasons related to their migration status. Consequently, immigration detention of children should be prohibited by law and its abolishment ensured in both policy and practice. Unaccompanied children are entitled to special protection and assistance from the state in the form of alternative care and accommodation (§5, 11, and 12).

¹ Ombudsman, Rapport du contrôleur externe relatif au Centre de rétention, Luxembourg, 2014, <http://www.ombudsman.lu/uploads/RV/RV8.zip>

² University of Luxembourg (EMN National Contact Point Luxembourg), Policies, Practices and Data on Unaccompanied Minors in 2014, 2014, <https://bit.ly/2H7OsYZ>

³ Ana-Marija Soric (Caritas), Email exchange with Izabella Majcher (Global Detention Project), October 2018; University of Luxembourg (EMN National Contact Point Luxembourg), The Effectiveness of Return in EU Member States: Challenges and Good Practices Linked to EU Rules and Standards: Luxembourg, 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/18a_luxembourg_effectiveness_of_return_final_en.pdf

⁴ Luxembourg Red Cross, “1er Accueil,” Website, <http://www.croix-rouge.lu/1er-accueil/>

⁵ Luxembourg Red Cross, “Structures d’Accueil,” Website, <http://www.croix-rouge.lu/structures-daccueil/>

⁶ Ana-Marija Soric (Caritas), Email exchange with Izabella Majcher (Global Detention Project), October 2018; University of Luxembourg (EMN National Contact Point Luxembourg), Policies, Practices and Data on Unaccompanied Minors in 2014, 2014, <https://bit.ly/2H7OsYZ>; Info MIE, “Luxembourg - Foyer pour mineurs non-accompagnés,” Website, August 2016, <http://www.infomie.net/spip.php?breve1516&lang=fr>

⁷ University of Luxembourg (EMN National Contact Point Luxembourg), Policies, Practices and Data on Unaccompanied Minors in 2014, 2014, <https://bit.ly/2H7OsYZ>

⁸ Fondation Maison de la Porte Ouverte, “Accueil de mineurs non accompagnés,” Website, <http://fmpo.lu/services/accueil-de-mineurs-non-accompagnes/>; Le Quotidien, “Deux nouveaux foyers pour les réfugiés mineurs non accompagnés,” Website, 26 November 2016, <http://www.lequotidien.lu/luxembourg/deux-nouveaux-foyers-pour-les-refugies-mineurs-non-accompagnes/>

The GDP recommends that the Committee ask the government of Luxembourg the following key question about the detention of unaccompanied children:

- Are unaccompanied children detained in practice?
- What is the maximum permissible length of detention for unaccompanied children?
- If unaccompanied children are detained, are they placed in a separate section of the detention centre? What child-specific conditions and assistance are afforded to them?
- If unaccompanied children are not detained, in which centres are they placed? Are the centres dedicated exclusively to children?
- Does the government envisage prohibiting the detention of unaccompanied children in line with the JGC?

Families with children

The guarantees described above under the Asylum Act are not limited to unaccompanied children. Hence, accompanied children may also only be detained as a measure of last resort, when less coercive measures cannot be applied effectively, and for the shortest time possible. Every effort should be made to place them in adequate accommodation and their best interests should be taken into account (Article 22(1)). Pursuant to the Law concerning the Detention Centre, families with children should be placed in a separate section of the detention centre (Article 6(3)).

In March 2017, the maximum length of detention for families with children was extended from three to seven days (Law concerning the Detention Centre, Article 6(3)), although reportedly families tend to be detained for no more than 24 hours prior to expulsion.⁹ The reason provided for this extension was to enhance the organisation of returns and to ensure that they are carried out “successfully.”¹⁰ The Council of Europe Commissioner for Human Rights expressed concern over this extension and called on the country to develop “alternatives to detention” in their domestic law and policies and, ultimately, to put an end to the detention of migrant children.¹¹

For several years, Luxembourg has planned to set up an open reception centre for families where they can be accommodated prior to their expulsion (*Maison retour*).¹² This facility has not yet been established.¹³

⁹ University of Luxembourg (EMN National Contact Point Luxembourg), "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Luxembourg," 2014, <https://bit.ly/2Glzycp>

¹⁰ University of Luxembourg (EMN National Contact Point Luxembourg), "The Effectiveness of Return in EU Member States: Challenges and Good Practices Linked to EU Rules and Standards: Luxembourg," 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/18a_luxembourg_effectiveness_of_return_final_en.pdf

¹¹ Council of Europe Commissioner for Human Rights, "Luxembourg Should Not Extend the Period of Detention of Migrant Children but Work to Eliminate the Practice: Statement," 6 February 2017, <https://bit.ly/2uXU2Z5>

¹² University of Luxembourg (EMN National Contact Point Luxembourg), "The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Luxembourg," 2014, <https://bit.ly/2Glzycp>

In line with the JGC, according to the principle of the child's best interest, children should never be detained for reasons related to their parents' migration status. Consequently, family immigration detention should be prohibited by law and its abolishment ensured in policy and practice. The need to keep family together is not a valid reason to justify the detention of a child. Authorities should opt for non-custodial solutions for the entire family (§5, 11, and 12).

The GDP recommends that the Committee urge the government of Luxembourg to address the following questions concerning families:

- How many families with children were detained in 2015, 2016, and 2017?
- Does the detention centre have a specific section for families? How does it ensure their privacy? What child-specific conditions and assistance is afforded to those that are detained?
- Did the extension of the maximum length of detention for families enhance the organisation of returns?
- Is the open centre for families prior to their expulsion (*Maison retour*) already in operation? Will the families placed in this centre be allowed to freely come and go?
- If families are not placed in detention or housed in the open *Maison retour*, where are they accommodated?
- Does the government envisage prohibiting the detention of families with children in line with the JGC?

¹³ Ana-Marija Soric (Caritas), Email exchange with Izabella Majcher (Global Detention Project), October 2018.



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