



Fédération internationale de l'Action des chrétiens pour l'abolition de la torture
International Federation of Action by Christians for the Abolition of Torture
Federación Internacional de la Acción de los Cristianos para la Abolición de la Tortura



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Joint alternative report by FIACAT and ACAT Luxembourg on implementation by Luxembourg of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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EXECUTIVE SUMMARY

Article 3: Situation of asylum-seekers

A. Asylum-seekers and the consular authorities of their own country

ACAT Luxembourg became aware in 2010 of several cases in which the identity of asylum-seekers and the rejection of their applications were notified to the consular authorities of their country of origin.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Take all necessary measures to ensure that asylum-seekers are not reported to the consular authorities of their own country against their will.**

B. Absence of psychologists during interviews with asylum-seekers

There is no provision in Luxembourg legislation for a psychologist to be present during interviews with asylum-seekers who are psychologically vulnerable or are victims of torture.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Ensure that a psychologist is present during interviews with asylum-seekers who are psychologically vulnerable or are victims of torture.**

C. The reception of foreigners

The reception office for asylum-seekers was temporarily closed in 2011 following an unusually large influx of applicants. Another consequence of this influx was that applicants were housed in very short-term accommodation. Furthermore, the Grand-Ducal Regulation of 8 June 2012 has considerably decreased the amount of social assistance given to those seeking international protection.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Ensure that sufficient resources are budgeted for to provide for asylum-seekers even if there is a greater-than-usual influx;**
- **Ensure that asylum-seekers are adequately housed from the time they arrive.**

D. Situation of rejected asylum-seekers

Rejected asylum-seekers who cannot return to their own country for administrative, logistical or safety reasons have no legal status in Luxembourg and are not provided for. Some of them may be held in detention.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Ensure that rejected asylum-seekers are not held in detention if they do not represent a threat;**

- **Create a legal status for rejected asylum-seekers unable to return to their own countries for reasons beyond their control.**

E. Return to their own countries of people needing medical care

ACAT Luxembourg would like to draw attention to several cases where people suffering from medical conditions and needing special treatment were returned to their countries of origin even though this treatment was not available there.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Should not return people needing medical care to their countries of origin if they cannot receive the appropriate treatment there.**

Article 10: Training programmes

The training given to prison staff has been improved in terms of quantity, frequency and content since the Committee's last review. However, training on the 1999 Istanbul Protocol is still not included. In addition, the training of security forces and officials in contact with minorities could be further improved.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Provide training on the Istanbul Protocol for civil or military staff responsible for law enforcement, medical staff, public officials and any other person involved in the custody, questioning or treatment of detainees;**
- **Increase the number of hours of anti-discrimination training and training in the rights of minorities.**

Article 11: Legality of arrest and detention

A. Administrative detention

The administrative detention of people who are to be removed from the country is common practice in Luxembourg, and can last for up to one year. Prisoners who have completed their sentence but whose removal has not been organised at the appropriate time can also, under certain circumstances, be held for up to one year. Furthermore, the 2007 and 2009 laws on the new Detention Centre have increased detention times and made it possible to hold in detention families with children.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **No longer routinely place persons liable to be removed from the country in administrative detention except in cases of behaviour that could compromise national security or public order;**
- **Reduce the time allowed in administrative detention and ban detention of families with children.**

B. Detention of people suffering from psychological disorders

ACAT Luxembourg has reported several cases in which people suffering from psychological disorders have been placed in the Detention Centre even though the Centre cannot provide the specialised monitoring they require. In particular, ACAT Luxembourg has drawn the attention of the Luxembourg authorities to the case of Mr Aboudou, who was placed in the Detention Centre even though he was suffering from severe psychological disorders and was the victim of violence on the part of a law enforcement officer during an expulsion attempt.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- Ensure that illegal migrants who are suffering from psychological disorders are monitored by specialists and that they are held in a suitable institution and not in the Detention Centre;
- Take all necessary steps to ensure that Mr Aboudou receives ongoing medical attention appropriate to his psychological condition, along with suitable treatment and undertake an independent and impartial investigation of the events of 26 June 2013 in Paris.

Article 16: Other cruel, inhuman or degrading treatment or punishment

A. Segregated detention of minors and adults

Construction of the Secure Unit for minors in the Socio-Educational Centre at Dreibern is almost finished. This unit will have a capacity of 12 places divided into four units for boys and girls. Although Bill 6382 on reform of the Penitentiary Administration reinforces the principle of separating minors from adults, it still includes an exception to this principle. Furthermore, girls are still housed in the Penitentiary Centre for adults.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- Ensure that the principle of separating minors and adults is strictly respected, in particular by amending Bill 6382 on reform of the Penitentiary Administration so that no exception is made to the ban on placing a minor in a prison for adults;
- Complete without delay construction of the Socio-Educational Centre at Dreibern;
- Bring the detention conditions of girls into line with international standards without delay and ensure, in particular, that they are not housed in the adult prison.

B. Detention conditions in the Luxembourg Prison Centre (CPL)

Overcrowding in the CPL has been much reduced and had almost disappeared by 22nd March 2013. The problems of violence that existed in the women's section have largely been resolved but there are still problems of solitary confinement for excessively long periods and the detention of mothers with young children.

Health services within the CPL have greatly improved. However, some problems still exist with access to external medical care, for which detainees sometimes have to wait several months.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- Reduce the time in isolation for the purposes of investigation, research, protection and the preservation of evidence;

- Create a special facility for women detained with young children;
- Have more specialised doctors present within the Luxembourg Prison Centre;
- Improve access to external medical care, in particular by making police escorts more readily available for detainees considered dangerous.

C. Discrimination against foreign defendants

Several allegations of racist or xenophobic behaviour have been noted since the Committee's last review, and there is still a high percentage of foreign nationals amongst detainees (75%).

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- Conduct a detailed study of discrimination against foreigners as regards sentencing;
- Investigate all allegations of racist or xenophobic behaviour and prosecute the perpetrators.

D. Victims of human trafficking

Victims of human trafficking are frequently held in detention for several months when they are apprehended by the police. They often fear reprisals and therefore refuse to collaborate with the authorities, thus allowing the perpetrators to go unpunished.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- Set up a system for the protection and social care of victims of human trafficking and cease placing them in detention;
- Prosecute those responsible for human trafficking.

AUTHORS OF THE REPORT

FIACAT

The International Federation of Action by Christians for the Abolition of Torture, FIACAT, is an international non-governmental human rights organisation, set up in 1987, which works towards the abolition of torture and the death penalty. The Federation brings together some thirty national associations, the ACATs, present on four continents.

- **FIACAT represents its members in international and regional organisations**

It enjoys Consultative Status with the United Nations (UN), Participative Status with the Council of Europe and Observer Status with the African Commission on Human and Peoples' Rights (ACHPR). FIACAT is also accredited to the International Organisation of la Francophonie (OIF).

By referring to international bodies the concerns of its members working on the ground, FIACAT aims to encourage the adoption of relevant recommendations and their implementation by governments. FIACAT works towards the application of international human rights conventions, the prevention of torture in places of detention, and an end to enforced disappearances and impunity. It also takes part in the campaign against the death penalty by calling on states to abolish capital punishment in their legislation.

To give added impact to these efforts, FIACAT is a founding member of several campaigning coalitions, in particular the World Coalition against the Death Penalty (WCADP), the International Coalition against Enforced Disappearances (ICAED) and the Human Rights and Democracy Network (HRDN).

- **FIACAT boosts the capacities of its ACAT network in thirty countries**

FIACAT assists its member associations with their organisation, supporting them so that they can become important players in civil society, capable of raising public awareness and having an impact on the authorities in their country.

It coordinates the network by promoting discussions, proposing regional and international training events and joint campaigns, thus supporting the activities of the ACATs and providing them with exposure on the international scene.

- **FIACAT, a network of Christians united in the struggle against torture and the death penalty**

FIACAT's mission is to awaken churches and Christian organisations to the issues of torture and the death penalty and persuade them to work to have them abolished.

ACAT Luxembourg

A non-governmental organisation, independent of churches and political parties, the ACAT is an ecumenical association whose mission is to fight against the death penalty, act on behalf of the victims of torture and ensure respect for human rights in the world and in its own country, in particular as regards refugees and prisoners. ACAT's action is based on the gospel and the Universal Declaration of Human Rights.

INTRODUCTION

With a view to the forthcoming review of the 6th and 7th reports on Luxembourg by the United Nations Committee against Torture, ACAT Luxembourg and FIACAT wish to share with the Committee their concerns regarding certain aspects of Luxembourg's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the follow-up of the Committee's recommendations of 16 July 2007.

ACAT Luxembourg and FIACAT welcome the progress made since 2007 in applying the Committee's recommendations, which meet the long-standing demands of ACAT Luxembourg, namely:

- a significant reduction in the number of detainees in the Luxembourg Prison Centre (CPL), which suffered from chronic overcrowding for years;
- the creation in September 2011 of a Detention Centre under the Act of 28 May 2009, which puts an end to the detention in prison of persons in administrative detention;
- ratification of the Optional Protocol to the Convention against Torture and the resulting appointment of the Mediator as the national preventive mechanism;
- the building, currently in its final stages, of a closed Secure Unit for minors at Dreibern, which guarantees that minors are strictly separated from adult detainees;
- the improvement, to some extent, in the training in human rights provided to prison staff of the CPL and the new Detention Centre.

However, although no cases of torture, strictly speaking, can be reported, as we underlined as long ago as our observations of 6 March 2002, mention must be made of inhuman treatment, degrading detention conditions and the risk of the violation of physical and moral integrity. Indeed, problems remain with the separation of adults and minors in prison, the treatment of asylum-seekers, discrimination against foreign defendants and the detention conditions in the Luxembourg Prison Centre (CPL).

In addition, even though, on 26 September 2013, ACAT Luxembourg was invited, along with all relevant stakeholders, to a consultation meeting organised by the Luxembourg Ministry of Foreign Affairs with a view to the drafting of the report to the Committee against Torture, it regrets that this consultation was in effect symbolic, since it was not organised in such a way as to allow a genuine discussion with the relevant authorities. It considers that this meeting was unsatisfactory partly because such exchanges are very spasmodic, and partly because, contrary to what was the case in previous years, there were no regular meetings between government representatives and representatives of civil society to assess the human rights situation in Luxembourg, in particular regarding the prevention of torture and inhuman treatment. In fact, this was the only meeting between the government and civil society on this topic.

IMPLEMENTATION BY LUXEMBOURG OF THE CONVENTION AGAINST TORTURE

I. Situation of asylum-seekers (Article 3)

A. Asylum-seekers and the consular authorities of their own country

Reference should be made to an incident in 2010. In connection with the planned repatriation of rejected asylum-seekers from Gambia, on 5th August 2010 the competent department of the Directorate for Immigration contacted the Gambian consular authorities in Brussels by mail, giving the identity of the people concerned and noting that they were rejected asylum-seekers. Of the seven people on this list, on 17th June 2013 one obtained refugee status confirmed by the administrative tribunal following a fresh asylum application.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Take all necessary measures to ensure that asylum-seekers are not reported to the consular authorities of their own country against their will.**

B. Absence of psychologists during interviews with asylum-seekers

During interviews with asylum-seekers who are psychologically vulnerable and/or are victims of torture, it is important to ensure that a psychologist is present. Contrary to existing practices in other countries, in particular Belgium, there is no provision for this in Luxembourg legislation.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Ensure that a psychologist is present during interviews with asylum-seekers who are psychologically vulnerable or are victims of torture.**

C. The reception of foreigners

Regarding the reception and integration of foreigners in Luxembourg, ACAT Luxembourg and FIACAT wish to refer to the temporary closure from 30 September until the end of the first week of October 2011 of the reception office for asylum-seekers, which is responsible for receiving applications for international protection. This closure made it impossible for several days to lodge new applications for asylum in Luxembourg. New arrivals thus had no access to even minimal reception conditions. This closure was decided upon in reaction to an unexpectedly large influx of asylum-seekers for which Luxembourg was not prepared. Furthermore, and for the same reasons, for several weeks new arrivals were housed in very poor conditions, on camp sites or in other inappropriate structures.

ACAT Luxembourg and FIACAT are also concerned about the new measures set out in the Grand-Ducal Regulation of 8 June 2012, which reduce considerably the amount of social support for those applying for international protection, which will lead to greatly increased hardship.

ACAT Luxembourg and FIACAT recommend that the Ministries responsible for processing asylum applications and new arrivals should not be caught unawares again but should plan emergency solutions for any abnormal influx. They recommend that the Luxembourg authorities ensure that those applying for international protection have the means to prevent their falling into poverty.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Ensure that sufficient resources are budgeted for to provide for asylum-seekers even if there is a greater-than-usual influx;**
- **Ensure that asylum-seekers are adequately housed from the time they arrive.**

D. Situation of rejected asylum-seekers

Applicants for international protection whose application has been definitively rejected are not always removed from the country, especially when return to their country of origin is problematic for administrative, logistical or safety reasons. In such cases, pressure is frequently exerted on rejected asylum-seekers to persuade them to leave the country. For example, they may be evicted from their accommodation. In an irregular situation and without any social protection, rejected asylum-seekers remain in an administrative vacuum that could become very worrying if, for example, there are health problems. Some of those people are held in detention and freed after a few months for lack of any way of removing them from the territory. When they leave the Detention Centre, they go back to their initial situation, without status or social support and without being able to seek protection from another European Union country.

According to Ministry of Foreign Affairs statistics, the number of people placed in detention was 305 in 2012, 243 in 2013 and 392 in 2014.

ACAT Luxembourg and FIACAT recommend adoption of a legal status (such as stateless or humanitarian) for rejected asylum-seekers who cannot return to their country of origin for reasons beyond their control, in order to allow them to provide for themselves and ensure access to basic social support, at least.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Ensure that rejected asylum-seekers are not held in detention if they do not represent a threat;**
- **Create a legal status for rejected asylum-seekers unable to return to their own countries for reasons beyond their control.**

E. Return to their own countries of people needing medical care

ACAT Luxembourg and FIACAT are concerned about the return to their countries of origin of persons who have a medical condition needing special treatment that is not available in their countries or too expensive for them to obtain it.

In particular, ACAT Luxembourg knows of the case of an Angolan woman who was forcibly returned to her country in April 2012 even though she had to undergo surgery to remove a pin that had been placed in her arm after an accident in Luxembourg. The doctor at the Detention Centre refused to issue a certificate attesting to severe health problems, despite the intervention of the surgeon who had inserted the pin and who insisted it should be removed as soon as possible.

Even though efforts are made to give drugs to sick people when they leave the country, some chronic pathologies requiring long-term treatment should be taken into account when the decision is taken to remove people to a country where it is difficult for them to get the treatment they need.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Should not return people needing medical care to their countries of origin if they cannot receive appropriate treatment there.**

II. Training programmes (Article 10)

In its 2010 report, the CPT stressed the improvement in the training provided to prison staff. It reported, in fact, that two-month courses had been introduced in partnership with the National Institute for Public Administration for all newly-recruited prison officers and the initial training period ("stage") had been extended from one to two years (with additional training sessions for a total of 120 hours). It also noted that further training sessions were offered to all prison staff on topics such as stress control, communication or mediation.

However, with regard to question 8 addressed by the Committee against Torture to the Luxembourg government on the training of doctors in the detection of signs of torture and ill-treatment, ACAT Luxembourg and FIACAT consider that it is not sufficient to assume that the training acquired by doctors abroad includes the development of such competence. According to our information, there is no provision in Luxembourg for the 1999 Istanbul Protocol, a fundamental instrument in the fight against torture, to form an integral part of doctors' training.

Some incidents at the CPL regarding the medical checks carried out when detainees return after a failed expulsion attempt illustrate the lack of rigour of some of the staff in this respect.

A case in point dating from 2008 was mentioned in our letters to the Ministry of Justice and the Medical Association of 9 November 2010. In this case, Mr Mamadou Aliou Diallo from Guinea was subjected to violence at Roissy Charles de Gaulle Airport (France) during his removal from Luxembourg. When he returned to the Detention Centre in Schrassig, the day after the incident, Mr Mamadou Aliou Diallo was examined by a Luxembourg doctor. As was pointed out by the French National Commission on Security Ethics¹, the medical certificate issued following this examination does not refer to any signs of violence or traumatic injury even though there were several witnesses who confirmed seeing obvious signs of physical abuse on Mr Mamadou Aliou Diallo.

ACAT Luxembourg and FIACAT consider that the training in human rights and discrimination given to members of the security forces and officials who come into contact with minorities could be improved if there were a significant increase in the number of hours spent on such issues in their initial training and if prison staff, among others, were given more opportunities to attend such training.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Provide training on the Istanbul Protocol to civil or military staff in charge of law enforcement, medical staff, officials and any other person involved with the custody, questioning or treatment of detainees;**
- **Increase the number of hours of anti-discrimination training and training in the rights of minorities.**

III. Legality of arrest and detention (Article 11)

A. Administrative detention

¹ Opinion of 13 September 2010 n°2009-33

According to Articles 119 and 120 of the Foreign Nationals Act, illegal immigrants awaiting expulsion may be placed by ministerial decision in a closed facility for up to one month, renewable three times for a period of one month each time. The maximum period of detention is therefore four months. In addition, foreign nationals denied entry at the airport in Luxembourg can be held in the waiting zone until their removal on the next available flight to the country from which they came. The maximum wait at the airport is 48 hours. If longer, the foreign nationals concerned have to be placed in detention in a closed facility.

ACAT Luxembourg and FIACAT deeply regret the use of administrative detention for people subject to removal even when they do not constitute a threat to national security or public order. According to Ministry of Foreign Affairs figures for 2014, 77 of the 392 immigrant detainees were removed from Luxembourg territory. Many stay in the closed facility for six months and, in some cases, even a full year, despite it was clear from the beginning that the person concerned cannot be removed (for example, if it is impossible to determine nationality or if the person has no identity documents). In addition, if removal of a person seeking international protection and transferred to the airport is unsuccessful, he or she may return to the Detention Centre for six months. House arrest is very rarely used and in Luxembourg law there is no alternative to the detention of immigrants. Yet the Consultative Commission on Human Rights (CCDH) stated in its opinion of 31st March 2009 on Bill 5947 on the creation of the Detention Centre that: *“In any case, before there is any resort to detention, alternative measures should be considered and every detention decision should be motivated by considerations of necessity, fairness and proportionality (our translation).”*

In such cases, being held in detention is equivalent to a punishment and is perceived as such by detainees, even though, according to the legislation, this administrative measure is intended solely to prepare and organise transfer to another country.

Furthermore, ACAT Luxembourg and FIACAT are concerned about the widespread practice of holding immigrant prisoners who have served their sentence and whose removal has not been organised at the appropriate time. If return to their own countries is possible, ACAT Luxembourg and FIACAT consider that the necessary steps should be taken during their time in prison. The fact that return is impossible does not justify detention.

In some circumstances, asylum-seekers may also be held in a closed facility. The initial placement may be ordered for a maximum of three months, renewable for three-month periods. The total length of detention may not exceed 12 months.

Mention should be made of adoption of the Act of 24 August 2007 on the construction of the Detention Centre and of that of 28 May 2009 creating and organising the Detention Centre. Since the new Detention Centre began operating in September 2011, living conditions and the psycho-social support of detainees have improved markedly but ACAT Luxembourg and FIACAT are worried about the extension of periods of detention and the possibility of detaining families with children (even though, according to the law, they may not be held in the Centre for more than 72 hours).

ACAT Luxembourg and FIACAT recommend limiting the length of detention to the time strictly necessary for the organisation of transfer to the country of destination and avoiding as far as possible any additional deprivation of liberty for people who have served their prison sentence.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **No longer routinely place persons subject to removal in administrative detention except in cases of behaviour that might compromise national security or public order;**

- **Reduce the length of time in administrative detention and ban detention of families with children.**

B. Detention of persons suffering from psychological disorders

ACAT Luxembourg and FIACAT are concerned about the detention in the new Detention Centre for illegal immigrants of persons suffering from mental disorders who need special monitoring that cannot be adequately provided by the staff of the Centre.

As an example, on 7 November 2011, an Algerian man, whose psychological fragility was known by the staff, harmed himself after being placed in isolation, as decided without the prior opinion of a psychiatrist. Only people with mental disorders whose behaviour is a threat to the security or order of the Detention Centre are occasionally transferred temporarily to hospitals.

Mention could also be made of the case of Mr Aboudou, who was confirmed to be suffering severe mental disorders and was placed in the Detention Centre with a view to his return to Togo. As ACAT Luxembourg pointed out in a letter of 17 July 2013 to the Minister for Immigration, Mr Aboudou had been suffering from severe mental disorders for several years. His state of health had been confirmed by the statement of 17 May 2013 by Mr Eric Joachim, the head of the competent police department, who referred to the “*many medical/psychological reports and examinations*” certifying that there was no doubt that Mr Aboudou was suffering from “*mental disorders*” (our translation).

In such circumstances, the main priority should be to ensure that Mr Aboudou was treated for his condition which, according to his doctors, was chronic psychosis and paranoid schizophrenia. The Detention Centre is not suitable for him in this condition and his return to Togo is out of the question when there is no guarantee of continued medical treatment.

ACAT Luxembourg and FIACAT are even more alarmed by information according to which, during the second attempt to return Mr Aboudou to Togo on 26 June 2013, Commissioner Eric Joachim punched him while he was handcuffed, causing injury to the left eyebrow. These facts are attested by both the complaint lodged on his behalf by his lawyer Mr Edévi Amegandi on 1st July 2013 and by the certificate of “assault and battery” issued by Dr Michel Schon, a doctor at the Hospital Centre in Luxembourg, on 28 June 2013, which testifies to a wound on the left eyebrow.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Ensure that illegal migrants suffering from psychological disorders are monitored by specialists and that they are held in a suitable institution and not in the Detention Centre;**
- **Take all necessary steps to ensure that Mr Aboudou receives ongoing medical attention appropriate to his psychological condition, along with suitable treatment, and undertake an independent and impartial investigation of the facts of 26 June 2013 in Paris.**

C. Inhuman detention conditions

According to the information gathered by ACAT Luxembourg from detainees, some people isolated for their own safety (suicide risk) or for other reasons ended up in a cell lit 24 hours a day in order to allow camera surveillance. The management of the Detention Centre maintained that such measures were taken to protect the people concerned. However, this situation could affect their physical and mental health. ACAT Luxembourg and FIACAT are glad that this problem has now been solved.

IV. Other cruel, inhuman or degrading treatment or punishment (Article 16)

A. Detaining minors in a prison for adults

Although ACAT Luxembourg and FIACAT have for years been expressing their dismay at the long delay in the construction of the secure unit for minors within the Dreibern Socio-Educational Centre (which should have been built by 2010), they now welcome completion of the work in 2014. This Unit should put an end to the placement of minors in adult prisons for disciplinary reasons, in violation of international standards on the rights of children. According to Articles 3 and 11 of the Act of 16 June 2004 reorganising the State Socio-Educational Centre, a secure unit of 12 places is planned with four units for boys and girls. This capacity should more than meet current requirements. However, the Mediator, Lydie Err, regrets that minors are still detained in the Schrassig Prison because the Unit in Dreibern has still not opened. This delay is said to be due to an objection raised by the Luxembourg Advisory Commission on Human Rights (CCDH). In its opinion of 4 November 2014 on Bill 6593, the CCDH expressed its regret that neither the Bill nor the draft Grand-Ducal Regulations set out precise conditions for the entry and exit of minors placed in the Dreibern secure unit. It considers it essential to establish clear rules governing placement in the secure unit. Indeed, in the absence of admissibility criteria there is a risk of too easy recourse to this disciplinary provision.

An important issue remains in this respect. Article 10 of Bill 6382 on the reform of the Penitentiary Administration, which states that minors will no longer be admitted to penal establishments, provides for one exception. It refers to the Act of 10 August 1992 on the protection of young people, Article 32 of which states that “*if the minor has committed an offence and was over 16 at the time, the public prosecutor at the Juvenile Court may, if he deems custody, safeguarding or education inappropriate, apply to the Juvenile Court Judge for authorisation to apply normal procedures*” (our translation). In this case, the young person could be judged by an adult court and detained in prison. ACAT Luxembourg and FIACAT fully share the CCDH’s concern that there should be no exception to the rule in Article 10 of Bill 6382. There is “*no reason to place a minor in an adult prison*”². This statement is in line with the position repeatedly expressed by the European Committee for the Prevention of Torture (CPT). ACAT Luxembourg and FIACAT consider that the reasons given for the detention of minors in such a prison are contrary to international standards, in particular those of the Convention on the Rights of the Child (Article 37(c) of the Convention). This Bill has been submitted to the Council of State which issued an opinion on 11 November 2014 requiring amendments to specify the conditions under which a minor could be detained in the CPL.

ACAT Luxembourg and FIACAT also urge that account be taken of girls who continue to be held in the CPL and that ways be found without delay to bring their detention conditions into line with international standards.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Ensure that the principle of separating minors from adults is strictly respected, in particular by amending Bill 6382 on reform of Penitentiary Administration so that no exception is made to the ban on placing a minor in a prison for adults;**
- **Complete without delay construction of the Socio-Educational Centre at Dreibern;**

² Opinion of the CCDH on Bill 6381 on reform of the enforcement of sentences and Bill 6382 on reform of the Penitentiary Administration (Opinion 03/2013): point 4: Minors in prison, p.8. Our translation.

- **Bring the detention conditions for girls into line with international standards without delay and ensure, in particular, that they are not housed in the adult prison.**

B. Detention conditions in the Luxembourg Prison Centre (CPL)

- Prison population

During its 2009 visit, the CPT noted that the CPL held 616 detainees for a capacity of 598 (293 prisoners already sentenced (of whom 13 were women), 306 prisoners on pre-trial detention (of whom 17 were women, 5 male minors and 12 foreign detainees). ACAT Luxembourg and FIACAT have noted a significant reduction in the number of detainees at the CPL. On 22nd March 2013, the CPL held 598 detainees for 597 beds.

- Issues specific to the women's section

The issue of the unhealthy environment in the CPL women's section for several years owing to the abuse of authority by some of the officers (abusive searches and excessive sanctions) seems to have been solved, by and large.

There is still a structural issue that leads to the de facto isolation of some detainees. Owing to the very small number of women at the CPL (around thirty), any separation of detainees for investigation purposes results in isolation.

This isolation may at times last up to 10 months, according to the decision of the examining magistrates, thus creating a risk to the mental health of the person concerned.

Some examining magistrates seem to demand excessive periods in isolation for the purposes of investigation, research, protection and preservation of evidence. The length of such segregation should be reduced.

Furthermore, mothers in detention with young children, who thus need placement in a special facility, also face the problem of isolation. In its opinion of 14 May 2013 on Bill 6381 on the reform of the enforcement of sentences and Bill 6382 on reform of the Penitentiary Administration, the CCDH recommended creation of a special facility to house women in detention with young children.

- Problems of access to medical care

During its 2009 visit, the CPT noted that health services at the CPL had been improved in terms of staff, premises and equipment. In particular, the delegation noted that the new psychiatric unit in its infancy in 2003 had become a genuine medical and psychological prison service (SMPP). In addition, the Centre for somatic treatment contained four consulting rooms and a ten-bed infirmary in the administrative building (G), as well as an annex on the ground floor of the P2 building with equipment for radiography and ultrasound. The SMPP, with a total capacity of 21 beds, was located on the first floor of the P2 building. It was divided into two sections: a closed section with five individual rooms and an “open section” with 10 individual rooms, a double room and a three-bedded room. In the “open section”, the cells were left unlocked for half of the day.

Regarding the staff in charge of somatic care, there were 2.5 full-time posts divided between seven general practitioners. Since 2003, the number of nursing posts had increased from 14 to 15.5 full-time equivalents and the pharmaceutical staff had doubled. A nurse was present 24 hours a day and a general practitioner was on call at night and on weekends.

The team responsible for psychiatric treatment was made up of 2.5 full-time psychiatrist posts (1.5 in 2003) and a full-time psychologist post (one half-time post in 2003). Also, the number of nursing posts had risen from 8 to 12 full-time posts, including that of head nurse. There were also two full-time occupational therapists.

However, one psychiatrist post and at least one of the nursing posts were vacant at the time of the CPT visit.

Regarding specialised care, several specialist doctors (a dentist, a gynaecologist and a specialist in communicable diseases) gave regular consultations in the Centre. Nevertheless, according to those in charge of the CPL nursing service, the presence of a dentist for two half days a week was far from sufficient.

But the system of access to medical care is not operating perfectly. Detainees have in some cases to wait for several months before gaining access to external medical care. As the CPT noted in 2009, there were still problems with the availability of police escorts for detainees considered dangerous who were to be transferred to hospitals for specialised treatment. This problem, raised in our previous conclusions³, is still relevant.

For example, a woman who was several times refused a mammogram despite the fact that her doctor had prescribed regular examinations every six months because of a risk of cancer, died of cancer three months after leaving prison⁴.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Decrease the time in isolation for the purposes of investigation, research, protection and the preservation of evidence;**
- **Create a special facility for women detained with young children;**
- **Have more specialised doctors present within the Luxembourg Prison Centre;**
- **Improve access to external medical care, in particular by making police escorts more readily available for detainees considered dangerous.**

C. Discrimination against foreign defendants

For years it has been claimed by civil society groups and those who have to do with prisons that foreign detainees were being disadvantaged by the Luxembourg sentencing system⁵. There is a widespread view amongst those involved in the legal system that sentences are too severe and too long for non-residents. It is regrettable that there are no statistics on sentences handed out to residents and non-residents. ACAT Luxembourg and FIACAT consider that the Luxembourg government or the CCDH should launch a detailed study on this point and devise solutions if necessary.

During its 2009 visit the CPT also heard various allegations that detainees were victims of racist or xenophobic insults from prison staff.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

³ ACAT Luxembourg's contribution to CAT 2007.

⁴ See also ACAT Luxembourg's report to the CPT in 2009 (cases of 2007 and 2008).

⁵ This point was raised in 2007 by Professor Stephan Braum in the study entitled: *Foreigners in European Prisons*, A.M. van Kalmthout, Femke B.A.M. Hofstee-van der Meulen, Frieder Dünkel 2007; Chapter on Luxembourg by Stefan Braum

This study states that “*In some criminological research studies it has been proven that foreigners are more often, and much more readily, criminalised than Luxembourg nationals, both as regards the criminal investigation and the serving of a sentence... They are more often accused, more often sentenced and, finally, less often released.*” (our English version)

- **Conduct a detailed study of discrimination against foreigners as regards sentencing;**
- **Investigate all allegations of racist or xenophobic behaviour and prosecute the perpetrators.**

D. Victims of human trafficking

Illegal workers exploited by criminal networks may be arrested by the police and held in detention for periods as long as several months. These people usually fear reprisals if they divulge any information that could enable those responsible for human trafficking to be identified and prosecuted. This is why they often refuse to collaborate with the authorities and to provide any information at all. This means their being held longer in detention whilst those responsible for human trafficking go scot-free. Once released, the victims of human trafficking more often than not return to their original situation. Some of them have been held in detention several times, over a period of months or years.

ACAT Luxembourg and FIACAT regret that victims of human trafficking, whether men or women, are held in detention and return to their previous situation once released when they need protection and social support.

ACAT Luxembourg and FIACAT would urge the Committee against Torture to recommend that the State party:

- **Set up a system for the protection and social care of victims of human trafficking and cease placing them in detention;**
- **Prosecute those responsible of human trafficking.**