

## RADELUX<sup>1</sup> National Seminar – 8<sup>th</sup> December 2011

### *NGO participation in the process of child rights monitoring – experiences and good practice*

#### Participants:

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<sup>1</sup> Rapport Alternatif des ONG luxembourgeois au 3<sup>e</sup> et 4<sup>e</sup> rapport gouvernemental sur les Droits de l'Enfant à l'adresse du Comité des Droits de l'Enfant

## **Introduction to the work of the Committee on the Rights of the Child**

***Marie Herczog (EUROCHILD & member of the Committee on the Rights of the Child)***

The Committee for the UN Convention on the Rights of the Child (CRC) is one of eight treaty bodies. It has 18 experts and reports to the United Nations General Assembly through ECOSOC every two years. It is not a judicial body. Its main function is monitoring the implementation of the CRC but it has limited resources and so it is essential that NGOs take part in reporting and monitoring procedures to complement government (State Party) reporting.

The CRC committee's process and activities:

- Pre-sessional working group (in which NGOs, Ombudspersons, children, etc. are able to participate)
- Session with the State Party (observers are permitted)
- Drafting of concluding observations and recommendations which are sent to the State Party (the State has an obligation to disseminate these conclusions and recommendations)
- Legislation and jurisprudence: the CRC committee carries out in-depth review and analysis of the CRC's articles and has so far produced 13 general comments which can be accessed on its website. The composition of the committee changes constantly so it is helpful to have new perspectives. The general comments are also an excellent resource.
- The Committee also normally organises a day of general discussion each year. State parties, NGOs, experts, UN agencies and children are able to take part in these days from which conclusions are drawn. The last such day took place on 30<sup>th</sup> September 2011 and dealt with the subject of the children of incarcerated parents.
- The Committee also sometimes follows up CRC reporting through country visits, seminars, conferences and expert meetings (involving academics, UN agencies, other international organisations,...) For example, Marie Herczog was invited to Finland to meet directly with children in order to gain their perspective and to complement the alternative report developed by Finnish NGOs. However, the UN lacks resources to be able to organise such events on a regular basis.
- Each Committee member also maintains other activities and roles. For example, Maria Herczog is a member of INTRAC and carries out research, particularly in the area of child abuse and the quality of care.

The UN Convention on the Rights of the Child (CRC):

- The UN CRC was adopted on 20<sup>th</sup> November 1989. It entered into force on the 2<sup>nd</sup> September 1990.
- 193 States have ratified the CRC to date. Only the USA, Somalia and South Sudan have not yet ratified the convention.
- 2 Optional Protocols to the CRC have also been opened for signature and ratification: the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography. 150 countries have ratified these two protocols. A third Optional Protocol regarding a formal complaints procedure for violations of children's rights will be ready for ratification in January 2012.
- The committee has so far received 600 reports and has considered and provided feedback on 450 reports.
- The Committee consists of 18 experts. The number of experts was raised from 10 to 18 members due to an increased workload. It sometimes sits in two separate chambers in order to accelerate its progress. However, all 18 members have to come together to agree on the final concluding observations and recommendations.
- The CRC Committee cannot sanction the State Party. It is not directly linked to the International Court of Justice and the EU Court does not consider the CRC as its legal framework.

The following processes feed into CRC monitoring and working methods:

- Dialogue with the State parties (complemented by supplementary/shadow/alternative reports, Ombudspersons, NGOs etc.)
- Universal Periodic Reporting (UPR): The UPR is a mechanism of the Human Rights Council which comprises State representatives and individual experts. The UPR includes a State report in addition to a compilation of NGO reports & reporting from UN agencies. It is more political than the CRC process. Women's lobbies are strong with respect to UPR reporting. However, issues concerning children, older people and the disabled are not sufficiently addressed within this process.
- UNICEF reporting
- Optional Protocol reporting: State parties must report on Optional Protocols within two years of ratification. Following this, Optional Protocol reporting must be incorporated into the CRC reporting process.

The mandatory steps of the CRC reporting process:

- State party (government) submits its report.
- A pre-sessional working group is held, following which the Committee sends a list of issues to the State Party. NGO delegations may take part in the pre-sessional working group. (Sometimes it is unclear how some actors should be categorised. For instance, some ombudspersons consider themselves to be part of civil society and some are considered to be closer to the government).
- The State Party must respond to the list of issues in writing.
- The main session is held in Geneva and is a public dialogue between the Committee and the State Party delegation which may be observed by outsiders. The State Party may form its delegation as it wishes. However, the CRC Committee welcomes inter-sectoral delegation members (e.g. Justice, Welfare, Education and Health sectors), with concrete involvement in strategic decisions so as to enable a more fruitful discussion on children's rights. It is recommended that the delegation be led by a high level official as this will have a bigger impact on policy making and implementation.
- The Committee drafts its concluding observations and recommendations.
- Follow-up (the CRC Committee admits that this is the weakest point in the process due to a lack of resources).

The following clusters provide the structure for the reporting format and the dialogue held with State Parties:

- General measures of implementation
- Definition of the child
- General principles
- Civil rights and freedoms
- Family environment & alternative care
- Basic health & welfare
- Education, leisure & cultural activities
- Special protection measures

During the Session between the Committee on the Rights of the Child and the State Party, the first four points are discussed in the morning and the last 4 points are discussed in the afternoon.

Concluding observations and recommendations:

The concluding observations and recommendations (COR) are based on dialogue and reference material and refer to the concluding observations and recommendations from the previous reporting period. They seek constant improvement (there are minimum standards but the COR also need to be appropriate and specific to the country context as well as strategic.) The COR also focus on emerging issues (e.g. business and child rights, the impact of climate change & the environment on child rights, migration, transgender issues and new family dynamics...) The CRC Committee works with UNICEF to develop indicators and measures of progress. Indicators are also developed by the Fundamental Rights Agency. Indicators for rights in early childhood can be found on the UN CRC website. One of the main challenges faced by the CRC Committee is the lack of aggregated, comparable and standard data.

Follow-up:

- The concluding observations and recommendations are communicated by the CRC Committee to the State party with a request to disseminate them widely (government, supreme court, parliament, civil society, media)
- The concluding observations and recommendations are also forwarded to all UN agencies concerned.
- A key role of UNICEF and civil society is the dissemination of the concluding observations and recommendations to the media, decentralised levels of government, children, etc....
- Material is available for training, courses and seminars.
- This step is not a strength of the Committee on the Rights of the Child and they therefore rely on representatives from the Civil Society.

### **The situation of the rights of the child in Luxembourg**

***Marie-Anne Rodesch-Hengesch (Ombudswoman for Luxembourg)***

The Luxembourg government adopted the UN Convention on the Rights of the Child in 1993 but maintained five reservations (concerning (i) a new spouse's consent for a child that is not theirs to be raised in the conjugal home (ii) the legal status of children born to parents between whom marriage is prohibited (marriage between close relatives) (iii) voluntary pregnancy termination (iv) anonymous birth and (v) the capacity of children to exercise their right to association. Luxembourg has also signed and ratified the two Optional Protocols.

The Ombudscomité fir d'Rechter vum Kand (ORK) was created as a neutral body by the 2002 law and attributed the role of analysing the mechanisms in place to protect children's rights. It is also responsible for providing views on draft laws and for monitoring the implementation of the CRC.

ORK participates in public debates, conference and seminars in addition to carrying out training and awareness-raising in schools, explaining its role directly to the pupils. It compiles an annual report with recommendations which it presents to parliament each year. It also has the power to contact the State Prosecutor directly concerning specific cases where the rights of the child are not being respected. Children are also able to make complaints directly to the Ombudswoman who is available at set times each week to receive children and their families.

ORK Luxembourg is a committee comprising 6 people of which Marie-Anne Rodesch-Hengesch (a former social worker) is President. The committee is multidisciplinary and includes a psychologist, a nurse, a teacher, a journalist and a lawyer. The Committee has to submit an annual report to the Government and the Parliament on a specific child rights' theme with recommendations.

There are 114 100 minors resident in Luxembourg and this number is rising at about 1000 per year due to immigration. The following are some of the challenges regarding child rights in Luxembourg:

- Children often have to be taken into alternative care outside of the country because there are not enough facilities or foster families in Luxembourg.
- Children are often detained the country's adult prison. For example, there are two Roma children currently being detained for theft. A security unit for children is under construction in Dreiborn but is not yet finished. However, Mr Nico Meisch (Ministry of the Family) informed those present that a refuge targeting street children is due to open in February.
- 5000 children attend school in neighbouring countries (school failure in Luxembourg is high in Luxembourg) and 50% of Luxembourg's pupils are from immigrant families. Language can therefore sometimes be an issue in education.
- Between two and five anonymous births take place each year.
- There are several hundred unaccompanied minors in Luxembourg. Levels peaked between 2001 and 2003 but are now decreasing.

## **Experiences in youth consultation in Luxembourg**

***Sandra Britz (Conférence Générale de la Jeunesse Luxembourgeoise)***

The law of 4<sup>th</sup> July 2008 provided the framework for the creation of a National Assembly of Youth in Luxembourg. The Conférence Générale de la Jeunesse Luxembourgeoise (CGJL) was given responsibility for planning and implementing this project which was launched in 2009. The CGJL is an umbrella organisation with 27 members and promotes youth participation and the active and responsible citizenship of youth.

Youth consultation is carried out via various means. A youth convention is organised once a year and 4-5 workshops involving experts are also organised each year. The average age group is between 13 and 20 years old. The results of the conventions are presented in plenary with national politicians.

Online and paper surveys are carried out within the framework of the “Structured Dialogue of the EC”. In addition, the National Assembly of Youth uses an “info-mobile” which is a vehicle equipped with a stereo, microphone, TV and laptop which travels all over the country to reach children and youth from different backgrounds and with different perspectives. It runs quizzes, information sessions and consultations.

The Youth Parliament has one plenary session per year as well as a summit in July and four thematic commissions (foreign affairs, education and health, environment and economics) which meet every two weeks. There are 50-60 active participants in addition to members who are less involved. The Youth Parliament constitutes a youth lobby with a direct link into national politics.

The objectives are: to give youth a common voice; to enable youth to express their thoughts, ideas and needs; to create a link between youth and politics; and to create a space for long-term participation.

## **The role of NGOs in the CRC monitoring process**

***Roisin Fegan (NGO Group for the Convention on the Rights of the Child)***

Entry points for NGOs in the CRC reporting process:

- National consultations carried out during the drafting of the State report: the CRC committee encourages the State Party to consult with civil society when drafting the report.

- NGO alternative report(s): one report may be drafted by a coalition of NGOs or individual NGOs can draft their own report. An NGO may also contribute to the report drafted by a coalition as well as draft its own report. Attention: the page limit of an alternative report is 30 pages. Although other documents can be referenced within the report, it is not possible to attach limitless annexes. Please note that the report should be **evidence-based**.
- Pre-sessional working group meeting: this is a confidential and private meeting between the CRC Committee and NGO stakeholders (3 hours).
- Written replies from the State Party to the CRC: NGOs often wait to see these replies and may then choose to submit additional information to the Committee.
- CRC Committee main session: NGOs are welcome to observe the CRC Committee session with the State Party but are not permitted to take part. The CRC Committee is hoping to introduce web casting in the near future.
- Following up the concluding Observations and Recommendations: the CRC Committee has no formal follow-up mechanism and the concluding Observations and Recommendations provide a useful advocacy tool for NGOs. It is also best that NGOs be active from the beginning of the process so that they can be involved in the implementing and/or following up the recommendations.

The role of the NGO Group for the Convention on the Rights of the Child:

- To facilitate interaction between the CRC Committee and child rights NGOs
- To provide technical support through the reporting cycle
- To produce CRC reporting guides including on child and youth participation

#### **Experience of NGO reporting in Finland**

***Maarit Kuikka (Central Union for Child Welfare)***

The Central Union for Child Welfare (CUCW) was founded in 1937 and is an NGO umbrella organisation with 130 members. Three quarters of the members are NGOs and one quarter is municipalities. It is fully independent from the government. It receives no funding from government authorities but works in close cooperation with them.

The CUCW's mission is to provide expertise, carry out lobbying and to promote partnership and networking through the following activities:

- Advocacy & lobbying (opinion polls, surveys, reacting to government papers, producing position papers)

- Communication
- Library and information
- Journal (subscriptions contribute to funding CUCW)
- Annual seminars, training courses, discussion forums, advisory boards
- International activities (e.g. Eurochild)
- Partnership in projects
- Fundraising

CUCW raises awareness on the rights of the child, takes part in the CRC reporting process and monitors the government’s progress, always using the best interests of the child as a guiding principle.

### **Children’s Consultation**

CUCW ensured the involvement of children in their reporting process in the following ways:

- Preparation of child friendly material
- Meeting organised between country rapporteur, a group of 20 children and interpreter – during this meeting the children could talk to the country rapporteur in personal in-depth conversations (story telling)
- The children’s group included representatives from the Roma, Sami, Finnish Children’s Parliament, Survivor’s groups (survivors of alternative care), regional youth council, young advisors of Ombudsperson for children.

### Finland’s 4<sup>th</sup> Periodic Review:

2008	The State Party (Finnish government) submits its report to the CRC Committee and the NGO Group on the Rights of the Child informs CUCW.
Oct 2009	CUCW holds a preliminary meeting and decides to submit a supplementary report. (A supplementary report examines the government’s report, identifies the gaps and addresses these gaps in its report. An NGO alternative report has a distinct structure).
Nov 2009	CUCW receives initial feedback from its members after asking them what issues they would like to see raised in the report and sets up a steering committee which includes four CUCW members plus two actors external to the CUCW. CUCW recommends a steering committee of 6 people and delegating the drafting of the report itself to 3 people <u>maximum</u> .

Dec 2009	Consultation and first draft of the supplementary report.
Feb 2010	Feedback from CUCW members on the first draft of the supplementary report and a second steering committee meeting.
Mar 2010	Consultation and second draft of the supplementary report.
May 2010	Supplementary report completed for translation and proof reading.
Nov 2010	Supplementary report sent to the CRC Committee in Geneva. The report points out positive facts to start with and then outlines issues for concern.
Feb 2011	An NGO delegation was then set up to take part in the pre-sessional working group with the CRC Committee in Geneva. The delegation consisted of 8 members (6 CUCW members, the chair of the National Youth Council and the Ombudsperson) and held two meetings prior to the pre-session to assign the main themes and responsibilities as well as to prepare an introductory statement. Following the pre-session, joint press releases were released. CUCW recommends a good-sized delegation, if possible, in order to allow a fair distribution of topics and responsibilities.
May 2011	Consultation with youth and children in Finland :  Instead of inviting children to Geneva to take part in the pre-sessional working group, CUCW invited the UN CRC Committee rapporteur to Finland to consult directly with children (particularly those from minority groups, children in care, members of the Finnish Youth Council and the Survivors Group). CUCW cooperated with the Finnish Ombudsperson for children as well as UNICEF Finland to organise these consultation. The consultations were carried out in an informal setting using child friendly material and interpreters when necessary.
9th June 2011	The main session between the CRC Committee and the State Party was held. CUCW was present as an observer.
20 <sup>th</sup> June 2011	The CRC Committee published its concluding observations and recommendations. CUCW released a joint press release with the Finnish Ombudsperson and disseminated the information to its members.

The challenge is now to keep the discussion going and to keep the advocacy work alive until the next report (2017). Opportunities to follow up on the CRC Committee's observations and recommendations include Finland's Universal Periodic Review (UPR) due in 2012 and its national elections due in 2015.

### Golden Nuggets of Advice from Maarit Kuikka to the RADELUX group:

- Be as open and as inclusive as possible (this will lead to a more profound rapport)
- Keep the writing group small: 2-3 people are enough
- Create thematic cluster groups with experts
- Decide whether you want to write an alternative or a supplementary report.

⇒ *Nico Meisch of Luxembourg's Ministry of the Family made reference to the current developments in Luxembourg with respect to alternative care and quality standards as well as the new law on the child and family welfare which will see a move from financing NGO structures to financing specific services. Most of the service-provider NGOs directly affected by this new law were **not** present at the seminar and do not appear to be participating in this process.*

### The methodology of alternative reporting

*Roisin Fegan (NGO Group for the Convention on the Rights of the Child)*

NGO alternative reporting provides:

- A tool for monitoring the implementation of the CRC and its optional protocols.
- An opportunity for NGOs to work together and to gather information on the situation of children in the country.
- A chance to identify successes but also to note gaps and challenges in implementation as well as highlight priorities for the implementation of the CRC.
- An opportunity to make recommendations on how the government could or should address certain issues.
- An opportunity to establish a (permanent) national coalition on the rights of the child, not just to prepare the report but also to monitor the government's progress and implementation of the concluding observations and recommendations that come out of the process.

Working as a coalition:

- It is recommended to set up a national group or coalition to prepare the alternative report.

- However, it is important to bear in mind that the different members of the coalition will have different expertise and may have varied capacity.
- It is important to develop a structure that works for you and is appropriate to the context (formal/informal, size, leadership & coordination...)
- It may be necessary for certain members to compromise their interests/agendas in order to reach a consensus for the report. In this case, members can submit a separate report to convey their specific concerns or reference to specific documents can be made within the alternative report).
- It is important to find ways to include information from smaller members that may have less human resources but may have valuable information.
- It is important to define the roles of the coalition members as well as its budget and funding sources.
- It is recommended to develop capacity within the coalition to monitor the implementation of the CRC (the report is not the end result but just a milestone in the process).
- It is important to ensure ownership of the process and the report by all members of the coalition.

⇒ *The Hungarian experience: An informal group was set up to draft the alternative report. The responsibility for drafting the text for each cluster was assigned to different members of the group. The texts were then submitted to an editorial committee.*

The alternative reporting structure & methodology:

- The report should be divided into the following eight clusters:
  1. General measures of implementation
  2. Definition of a child
  3. General principles
  4. Civil rights & freedoms
  5. Family environment & alternative care
  6. Basic health & welfare
  7. Education, leisure & cultural activities
  8. Special protection measures
- The report should be no longer than 30 pages.

- The report should include some information on the implementation of the previous concluding observations and recommendations, gaps in the State Party's report, analysis and recommendations.
- The report should be evidence-based (vary sources of data – State, academics, UN, NGOs).
- The report should be submitted in English.
- The report should include information on the implementation of the Optional Protocols (the Optional Protocol on Armed Conflict can be addressed even if the country is not in conflict – examine ages of recruitment, asylum seekers, international cooperation, etc.... see Australia's factsheet which is well done.)

Tips to make the report user-friendly:

- Include a cover page!
- List the members of the coalition.
- Include a table of contents with page numbers.
- Make recommendations that stand out in each section (recommendations that can be implemented in 5 years and that are measurable and specific).
- Prioritise which are the key recommendations (try not to make too many).

Possibilities for involving children and youth:

- A child-led organisation could produce a separate report, accompanied in the process by adults.
- An NGO could write an alternative report using information gathered through a survey or study conducted with children.
- Children are welcome to attend the pre-sessional working group ***BUT*** this should be considered carefully beforehand to avoid raising false hopes or upsetting the children. It is possible to arrange for this to be done in an informal environment and/or media such as DVDs can be used.
- Additional meetings between children and CRC Committee members can be arranged (as was organised by CUCW in Finland).

### **Luxembourg alternative reporting calendar:**

1 <sup>st</sup> July 2012	Deadline for the alternative report (send one electronic copy and 23 hard copies to the NGO Group for the Rights of the Child)
October 2012	Pre-sessional working group (private & confidential meeting). For maximum impact: <ul style="list-style-type: none"><li>▪ Bring at least 2 experts (for example a legal and a policy expert)</li><li>▪ Identify and clarify the main issues</li><li>▪ Provide constructive analysis</li><li>▪ Help set national priorities</li><li>▪ Provide appropriate recommendations</li><li>▪ Make suggestions to the CRC Committee for ways in which they could approach sensitive issues directly with the State Party</li></ul>
January 2013	Main session with the State party

### **Conclusions and recommendations:**

- It is important to involve as many NGOs as possible, particularly those targeting vulnerable children.
- It is necessary to collate information and to define gaps.
- The Luxembourg coalition could submit an application to Eurochild for capacity building on how to form a coalition. Eurochild can also provide a toolkit on child participation.
- Consult UNICEF's Implementation Handbook for the Convention on the Rights of the Child.
- Refer to the Charter of Children's Rights in Care.
- Look at other treaty recommendations to see if child protection issues crop up.
- Propose a general discussion day on transgender issues.