

1 Centre LGBTIQ+ Cigale

2 16, rue Notre Dame

3 L-2240 Luxembourg

4 info@cigale.lu

5 www.cigale.lu

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7 **Submission by Centre LGBTIQ+ Cigale**

8 **For the Office of the High Commissioner for Human Rights' Compilation Report**

9 **Universal Periodic Review: May 2023, 43rd session**

10 **LUXEMBOURG**

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12 *The Centre LGBTIQ+ Cigale is a community space for LGBTIQ+ people based in Luxembourg City. It offers a*

13 *variety of professional services related to all questions regarding sex, gender, and sexual orientation.*

14 *Centre Cigale is mainly aiming at the following people and structures:*

15 *- transgender, lesbian, gay, bisexual, intersex, asexual and queer (LGBTIQ+) people and*

16 *- their environment, regardless their age or cultural background*

17 *- schools, high schools, youth centers and any other structures addressing children and youngsters*

18 *- professionals working in any social or educational domains*

19 *- every other person who is interested in LGBTIQ+ topics*

20

21 *The main services offered by Cigale are the following:*

22 *- information, advice, and social pedagogical support*

23 *- activities and projects*

24 *- community groups*

25 *- support groups*

26 *- weekly free HIV/STI screenings*

27 *- awareness raising workshops related to LGBTIQ+ topics for high schools, youth centers, etc.*

28 *- various training offers for professionals working in any kind of social or educational field*

29 *- library specialized in LGBTIQ+ topics*

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32 **I. BACKGROUND INFORMATION**

33 Luxembourg has implemented several equality and non-discrimination laws related to sexual

34 orientation and gender identity related to Employment, Goods and Services, Education,

35 Health and has put in place an Equality Body Mandate (CET) as well as a National Action

36 Plan regarding LGBTI people¹. Since 2018 medical interventions are no longer necessary to

¹ *Plan d'action nationale pour la promotion des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes*, by the Ministry of Family, Integration and the Greater Region of Luxembourg, published in July 2018:

<https://mfamigr.gouvernement.lu/dam-assets/publications/plan-strategie/lgbti/Plan-d-action-LGBTI.pdf>



37 change one's name and gender marker in legal documents.²

38 However, LGBTIQ+ individuals are not protected by the Luxembourgish constitution. This
39 needs to change if we want to archive full and lasting equality for all members of society.
40 Sexual orientation, gender identity and sex characteristics must be explicitly mentioned.

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42 Nevertheless this is not the only issue regarding LGBTIQ+ rights in Luxembourg.

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48 **II. KEY ISSUES, CHALLENGES AND RECOMMENDATIONS**

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50 **1. Missing laws protecting intersex people**

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52 Intersex people in Luxembourg are virtually invisible, and laws that protect them are non-
53 existent. Intersex people are currently not supported or covered by hate crime laws or respective
54 policies. There is almost no education about the subject.

55 Intersex people have minimal bodily autonomy. There are still no laws protecting intersex
56 children from non-vital medical interventions (surgical as well as hormonal) which are primarily
57 happening to make them fit into the binary system. According to the intersex community, non-
58 consensual medical interventions are a source of suffering and trauma instead of helping the
59 person in question.

60 If fallen victim to such practices, intersex people have no means to demand justice. As there are
61 no protective laws, they cannot report medical abuse and demand reparations.

62 As a community centre, Centre LGBTIQ+ Cigale has witnessed cases where intersex individuals
63 have been seen as a curiosity by medical professionals, touched without consent, and talked into
64 treatments that are unnecessary for their health but rather try to make them fit into binary norms.
65 In combination with a lack of information about intersex health, this violates their human dignity
66 and their right to self-determination.

67 To diminish discrimination based on sex characteristics is part of the National Action Plan.
68 However, apart from it being written down in the plan, the Ministry of Family has yet to give an
69 update on the progress they have made regarding this subject since the creation of the action plan
70 in 2018 (which is running until the end of 2022).

² Loi du 10 août 2018 relative à la modification de la mention du sexe et du ou des prénoms à l'état civil et portant modification du Code civil: <https://legilux.public.lu/eli/etat/leg/loi/2018/08/10/a797/jo>

71 *We are asking the Ministry of Family for clarity on their intent to add anti-discriminative*
72 *policies based on sex characteristics within laws and the constitution (on topics such as*
73 *Employment, Goods & Services, Education and Health) as well as adding it to the Equality Body*
74 *Mandate of the CET and to elaborate a law against hate crime based on sex characteristics. If*
75 *insufficient progress has been made, we urge the Ministry of Family to invest more resources*
76 *into this part of their action plan.*

77 *We urge the ministries of Health and Justice to immediately ban all non-vital medical*
78 *interventions before the age of informed consent to prevent further harm. Furthermore, we*
79 *demand a depathologization of intersex individuals. Intersex bodies are not “sick”, so they do*
80 *not need to be “cured” or “fixed”. If an intersex person wants to change something about their*
81 *body, it must be an informed and self-determined decision. Finally, those who have suffered*
82 *medical abuse should be allowed to finally get recognition for what has been done to them and*
83 *get reparations.*

84 *Intersex people demand self-determination. There must be a possibility for a third option on*
85 *official documents like the birth certificate for people who do not fit into the binary idea of sex.*
86 *Intersex individuals should be able to freely choose or change their gender marker that fits their*
87 *gender identity (see chapter 2, “Nonbinary Recognition”).*

88 *We demand transparency. There are no publicly available demographics on the intersex*
89 *community in Luxembourg and, nor figures on non-vital medical interventions performed on*
90 *intersex children. Regarding visibility, we also demand numbers regarding discrimination and*
91 *hate crime cases against intersex individuals.*

92 *We recommend training for medical professionals on intersex issues. Unfortunately, not even*
93 *specialists like endocrinologists or gynaecologists are trained to treat intersex people*
94 *respectfully.*

95 *We strongly advise the Luxembourgish government to look into the possibilities of publicly*
96 *funding research on intersex health care to meet the specific needs of the intersex community.*

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98 **2. Nonbinary recognition**

99 Similar to intersex issues, nonbinary people are a population which is not considered much in
100 Luxembourg. In an answer to a parliamentary question³, the Ministry of Health considered
101 nonbinary issues as covered in intersex and binary transgender issues and not as a necessary
102 subject to be treated separately and in-depth. There seems to be little to no knowledge about the
103 different needs of binary and nonbinary transgender people.

104 Another issue for nonbinary people is their civil status. To date, it is impossible to choose a third
105 option on official documents in Luxembourg. There are still only two binary male and female
106 options regarding gender markers which remove nonbinary people from existence.

107 We can choose our gender marker on official documents, as we understand things. There still
108 seem to be difficulties in understanding the difference between sex and gender. The body (sex)
109 does not determine a person’s gender. Considering this, an intersex person can have a binary or a
110 nonbinary gender identity, even if their body is not binary. Not every intersex person does

³Question Parlementaire N°4521: Situation des personnes non binaires et intersexes au Luxembourg
<https://www.chd.lu/fr/question/21748>

111 automatically identify as nonbinary and wants a third gender marker option on their papers.
112 This also urges the question of whether we still need gender markers on official documents at all
113 or if they can be abolished entirely, as it will be the case, for example, in the Netherlands.
114 *We recommend an awareness campaign and specific training about nonbinary realities and*
115 *needs for medical health professionals and for people who take political decisions on the matter.*
116 *We call on Parliament to consider the difference between sex and gender, respectively, the*
117 *general need for a gender marker when working on the intended constitutional reform and to*
118 *clarify this matter to prevent the forthcoming reform from becoming obsolete even before it*
119 *enters into force. Since 2021, there has been no update on the project by the Ministry of Justice,*
120 *so transparency on the project status is asked to know when the law will be voted on.*

121

122 **3. Depathologization of trans people**

123 Since 2022 being a transgender individual is no longer seen as a mental disorder. Instead, the
124 WHO replaced the diagnosis by the more technical term of gender incongruence and listed it as a
125 condition of sexual health in the ICD-11. As stated by the WHO, this “*should ensure*
126 *transgender people’s access to gender-affirming health care, as well as adequate health*
127 *insurance coverage for such services.*”⁴ Nevertheless, the National Health Fund (CNS) requires
128 in its statutes (Annexe C) "a detailed medical report by a doctor specializing in psychiatry".

129 *We recommend that the Ministry of Health removes this obligation from the statutes to avoid*
130 *further gatekeeping and pathologizing of transgender individuals.*

131 *Of course, people should not be left alone in the process. Professional counselling by experts*
132 *trained in gender diversity matters⁵ should receive better funding to accompany transgender*
133 *individuals on their journey.*

134

135 **4. Discrimination towards same-sex and transgender parents**

136 *4.1 Restrictive recourse to Medically Assisted Procreation (MAP) for LGBTIQ+ families*

137 Currently, there is no legal framework around medically assisted procreation in Luxembourg,
138 leaving it to fertility centres to set their own rules. Although this applies to both heterosexual and
139 same-sex families, this creates even more uncertainties to female same-sex couples given the
140 peculiarity of their situation, as further described below.

141 Recourse to MAP (Medically Assisted Procreation) has a high cost for female couples (cost of
142 the sperm and, if applicable, the costs of care abroad and of travel to the country of treatment),
143 which is added to the costs related to legal fees incurred by the adopting same-sex parent (which
144 can amount to several thousand euros).

145 To date, Luxembourg law prohibits recourse to surrogacy, effectively preventing male partners
146 and certain transgender families from legally having a family. Furthermore, as there is no legal

⁴ Gender incongruence and transgender health in the ICD:

<https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd>

⁵ Such as offered at Centre LGBTIQ+ Cigale

147 framework around MAP, the rights of the non-carrying parent over semen in case of the death of
148 the carrying parent are also uncertain.

149 The legal framework for establishing parentage regarding the non-carrying mother of a female
150 same-sex couple often lacks clarity and is currently almost non-existent for certain families given
151 the diversity of nationalities present on the territory of Luxembourg, as further detailed below.

152

153 *4.2 Legal hurdles regarding the establishment of parentage for LGBTIQ+ families*

154 Whilst since the entry into force of the Act of July 4th 2014, it has become easier for female
155 same-sex partners to adopt the child of their spouse, the non-biological parent of a female same-
156 sex couple planning together for a family still is denied any parental rights over their child at
157 birth and must go through adoption to be legally recognized as the child's parent. The Act of July
158 4th 2014 did not offer to the non-biological mother automatic recognition of parenthood that
159 male partners of heterosexual couples benefit from through presumed paternity. The Act of July
160 4th 2014 effectively created direct discrimination between same-sex married partners and
161 heterosexual partners towards their children.

162 In addition, the legal framework governing adoption in Luxembourg does not currently open this
163 route to establishing filiation to all women depending on whether they are married or not, single
164 or in a couple, or transgender. Adoption is, as of today, only accessible to married couples,
165 making it compulsory for same-sex couples to get married in order to be eligible.

166 The surviving parent of a female same-sex couple who is not married to the deceased partner and
167 did not complete or was barred from completing the adoption procedure over their child finds
168 themselves deprived of parentage rights over their child.

169 Under article 370 of the Luxembourg Civil Code, the national law of the adopting parent should
170 prevail, subject to conflict of laws exceptions. This causes multiple issues for same-sex female
171 couples, with one of the mothers being a national from a country that does not recognize rights
172 for LGBTIQ+ families.

173

174 *4.3 Discrimination of LGBTIQ+ families towards other parental leave*

175 As it currently stands, unlike fathers in heterosexual couples, Luxembourg law does not grant
176 parental leave for the second mother of a female same-sex couple who has not adopted their
177 child. As there is no national legal framework, private companies are thus empowered to decide
178 on whether to grant parental leave to the non-carrying mother working for the company. This
179 adds additional stress to the new parents, making it more burdensome for the carrying mother.
180 She does not benefit from their partner's presence for the first few days of the baby and it
181 deprives the second parent of the chance to care for their family from the very beginning of their
182 child's life.

183 When the adoption process is completed, the adopting parent is entitled to adoption leave of 10
184 days, which they only are entitled to after at least two to three months and not at birth, which is
185 the required standstill period to complete the adoption procedure.

186 *We recommend that same-sex parentage should be (i) granted to the non-carrying parent from*
187 *the child’s birth, (ii) disconnected from the need to adopt and (iii) opened to non-married same-*
188 *sex couples and transgender families.*

189 *We demand that the non-carrying mother of a female same-sex couple should benefit from*
190 *parental leave from the child’s birth, just like male parents in heterosexual couples.*

191 *Luxembourg’s conflict of law regime governing same-sex parentage should (i) factor in*
192 *situations where the national law of the adopting parent or the child forbids same-sex parenting*
193 *and (ii) facilitate the establishment of parentage towards the non-carrying parent in*
194 *Luxembourg.*

195

196 **5. Lack of education about LGBTIQ+ issues**

197 Discovering one’s own gender identity and sexual orientation is part of every human’s
198 development. Each person must have the possibility to acquire knowledge about gender and
199 sexual diversity to be able to develop their own identity. As the convent states, it is the duty of
200 education to teach about it.

201 As stated in the national law⁶, discrimination against people based on their gender or sexual
202 orientation in Luxembourg is prohibited. People must be educated about the subject to guarantee
203 this right of non-discrimination.

204 The high amount of bullying that is taking place in Luxemburgish schools illustrates the problem
205 very well. 92% of all pupils have already witnessed negative comments or behaviours towards
206 queer people in their school. Furthermore, 69% of LGBTIQ+ pupils have been targets of hate
207 and bullying themselves⁷. Luxembourg’s strategy is to offer support to the victims. However,
208 this approach fails to address the main problem: educating all students about gender and sexual
209 diversity as part of the curriculum. LGBTIQ+ sensitive education would raise empathy and
210 understanding, which is the only way to prevent bullying effectively.

211 International studies have shown that education on these issues significantly decreases
212 homophobic and transphobic bullying, discrimination, and violence. Thus, queer people
213 experience school as a safer space to be themselves⁸.

214 Additionally, gender and sexual diversity education informs LGBTIQ+ youth about their
215 possibilities and rights. This gives them a feeling of validation, acceptance, and information on
216 where they can seek support if needed. Statistically, there are LGBTIQ+ people in every class.
217 Our educational system cannot continue to deny this reality and actively ignore the issues.

218 In this context, we asked young people at Centre LGBTIQ+ Cigale if they learned anything
219 about the subject in school; most of them negated—some experienced attempts to address it

⁶ Act of November 28th 2006, on equal treatment: <https://legilux.public.lu/eli/etat/leg/loi/2006/11/29/n1/jo>

⁷ Page 11 of the “*Plan d’action national pour la promotion des droits des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes*”

⁸ Gegenfurtner, Andreas / Gebhardt, Markus (2017): Sexuality education including lesbian, gay, bisexual, and transgender (LGBT) issues in schools. In: Educational Research Review, year’s issue 22, 215-222.

220 awkwardly and superficially by ill-educated but well-meaning teachers. Hence, the course
221 provides an opportunity to teach gender and sexual diversity. However, this content is clearly
222 optional and dependent on the teacher’s willingness and knowledge to address it.

223 *Teachers should be trained on gender and sexual diversity. This training should not only be*
224 *theoretical but also aim at teaching them to reflect on their own prejudices.*

225 *Gender and sexual diversity should be compulsorily included in the “Life and Society” program.*

226 *School books should be updated on LGBTIQ+ subjects, thus removing harmful content and*
227 *aiming to depict and represent LGBTIQ+ identities and realities realistically.*

228

229 **6. Absence of proper, effective observation and investigation of hate crimes against**
230 **LGBTIQ+ individuals**

231 In recent years Luxembourg made some progress in anti-discrimination and tackling hate crimes.
232 Since 2016/2018, discriminating against people based on their sexual orientation and gender
233 identity has been punishable. Nevertheless, there is still a need for greater legal protection of
234 victims, a better understanding by professional observers of hate crimes, and as enhanced
235 knowledge and resources available to support structures.

236 There is a lack of specific figures and national statistics when it comes to discrimination and hate
237 crime cases against members of the LGBTIQ+ community. The Luxemburgish police does not
238 specify hate crimes against LGBTIQ+ individuals, and with complaints being recorded
239 falsely/incomplete, it hinders gathering critical information for awareness campaigns. This leaves
240 the impression that complaints are not taken seriously.

241 The CET reported 9 cases of discrimination based on sexual orientation and 8 cases based on
242 gender identity in 2021. Specific numbers on discrimination and hate crimes against transgender
243 individuals are only available on request as the CET does not distinguish between discrimination
244 against (cis) women and transgender people. Instead, they are summarized as discrimination
245 based on gender.

246 A lack of numbers can also mean communities do not seek help when they experience violence.
247 They need a space where they feel safe, listened to and taken seriously. Cases need to be
248 investigated.

249 In order to report violations, there must be protection laws first. Intersex individuals ca not report
250 discrimination and hate crimes because they are not yet protected against them.

251 *Adopt a distinction between gender-based violence against (cis)women and violence against*
252 *transgender individuals at CET. Generally, reflect the used language on the website too.*

253 *Make violence based on sex characteristics illegal and include it at CET.*

254 *Ensure that systematic training is provided to the police, the judiciary, and the observers of hate*
255 *crimes, regarding the identification, investigation of hate crimes and treatment of victims.*

256 *We also urge the police in Luxembourg to include violence against LGBTIQ+ people as a part of*
257 *complaints and incidents within their reports to allow for national statistics.*