



FINLAND: FOLLOW-UP PROCEDURE TO THE FORTY-SIXTH SESSION OF THE COMMITTEE AGAINST TORTURE

INTRODUCTION

In June 2011, the Committee against Torture (the Committee or the Committee against Torture) expressed concern over Finland's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). We submit this briefing to assist the Committee in identifying ongoing areas of concern related to some of the priorities identified for follow-up. This submission focuses on steps taken towards the implementation of the recommendations contained in Paragraphs 8, 15 and 17 of the Concluding Observations (UN doc.CAT/C/FIN/CO/5-6). In addition, it also raises concerns relating to Paragraphs 7 and 10 of the Concluding Observations and about the apparent use of Finland's territory, airspace and flight records systems in connection with the US-led rendition and secret detention programs.

PARAGRAPH 7: STATUTE OF LIMITATIONS FOR THE CRIME OF TORTURE

“The Committee recommends that the State party ensure that acts of torture are not subject to any statute of limitations.”

To date, to Amnesty International's knowledge, Finland has taken no steps to remove the statute of limitations for the crime of torture, which Chapter 8, Section 1 of the Criminal Code provides.

PARAGRAPH 8: FUNDAMENTAL LEGAL SAFEGUARDS

“The Committee recommends that the State party ensure that all persons deprived of liberty are provided with fundamental legal safeguards from the very outset of detention, such as access to a lawyer, preferably of their choice, notifying their family of their detention and being examined by an independent doctor, preferably of their choice.”

Finland has not taken any steps to guarantee the right of access to a lawyer from the very outset of detention in cases where individuals are deprived of liberty in connection with “minor [criminal] offences” (“vähäiset rikokset”). The Criminal Investigations Act¹ provides an obligation to inform suspects of their right to access to a lawyer before an interrogation, except when suspected of minor offences. Further, while the same Act² also provides that a suspect

¹ Chapter 4, section 10 of the Criminal Investigations Act 805/2011, in force 1.1.2014

² Chapter 4, section 3 of the Criminal Investigations Act 805/2011, in force 1.1.2014

has the right not to incriminate oneself, there is no provision requiring the police to inform suspects of their right to remain silent and of their right not to incriminate themselves.

However, in a positive development, in May 2012, the Finnish Supreme Court handed down judgment in a case concerning the right of access to a lawyer and the exclusion of self-incriminating evidence obtained during interrogations without the presence of a lawyer. The person concerned, known as “A”, was detained on suspicion of committing drugs offences. A’s counsel of choice was not present during his interview with the police which were conducted in English, without the presence of an interpreter, since A did not understand Finnish. According to the written record of the police interrogation, before the start of the interview A had been informed of his right to contact a lawyer, but not of his rights to remain silent and against self-incrimination. Moreover, the Police knew that A had not consulted his lawyer prior to being interviewed. The Supreme Court considered that A had not been fully and unambiguously notified of his rights, including his right to consult his lawyer prior to being interviewed by the police; and that he had not been aware of the consequences of waiving this right. The Supreme Court concluded that A’s right to prepare his own defence and his right against self-incrimination had been violated. In light of this, the Supreme Court ruled that the statements A made during the preliminary investigation should not be used against him as proof of his guilt. The prosecutor had instead argued that A’s statements during the preliminary investigation should be admitted in Court as evidence but that their weight should be reduced in light of the manner in which they had been obtained. However the Supreme Court concluded that a violation of the rights of the accused at trial could only be avoided by ruling the self-incriminating statement inadmissible.³

PARAGRAPH 10: NON-REFOULEMENT

“The Committee recommends that the State party guarantee a suspensive in-country right of appeal and respect for all safeguards and interim measures with regard to asylum and deportation procedures pending the outcome of the appeals to the Helsinki Administrative Court and the Supreme Administrative Court. The Committee would like to request information on whether deportation operations are monitored by an independent body.”

Finnish law does not provide for a suspensive in-country right of appeal in all asylum cases. In ordinary asylum cases, applicants have the right to remain in the country throughout the examination of their claims, including pending appeals, except at the final instance before the Supreme Administrative Court, unless the latter suspends removal. Appeals do not have a suspensive effect, *inter alia* when the applicant has filed a new application raising no novel grounds; when the asylum application has been dismissed due to the Dublin regulation; when the applicant has arrived from a “safe country” or if the application has been dismissed as “manifestly unfounded”.

In one case known to Amnesty International the authorities removed an individual despite the fact that his application for interim measures requesting Finland to halt his removal was still pending with this Committee. In that case an asylum-seeker from Russia had had his case turned down at first and second instances. In August 2012 while he had appealed to the Supreme Administrative Court, the Finnish immigration authorities moved to enforce his removal from the country, something that they could do without awaiting the outcome of his appeal before the Supreme Administrative Court given that appeals to the latter are not suspensive. Because of this, he had applied to this Committee for interim measures suspending his removal. However, in August 2012 he was forcibly returned to Russia while his appeal was pending before the Supreme Administrative Court and notwithstanding his pending application before this Committee. On the day of his removal, after he had been forcibly sent back to Russia, this Committee granted him interim measures requesting Finland to refrain from removing him pending substantive consideration of his complaint under the Convention.

³ KKO 2012:45, para. 44-47.

Further, Amnesty International is concerned at reports that the Finnish authorities prevented him from contacting his lawyer to inform her that he was being removed.

PARAGRAPH 15 AND 17 - PRE-TRIAL DETENTION AND DETENTION AND ILL-TREATMENT OF ASYLUM-SEEKERS, IRREGULAR MIGRANTS AND OTHER ALIENS

“The Committee recommends that the State party limit to the extent possible the stay of remand prisoners and aliens in preventive detention, in particular in police and border-guard detention facilities, and comply with the recommendations made in November 2010 by the working group set up by the Ministry of Justice to introduce a legislative amendment allowing for remand prisoners to be moved more quickly from police stations to regular prisons than is the case at present. [...]”

“The Committee recommends that the State party consider alternatives to the frequent detention of asylum-seekers and irregular immigrants, including minors and other vulnerable persons, and that it establish a mechanism to examine the frequent detention of such persons. It recommends that the State party consider increasing the use of non-custodial measures, use detention as a last resort and ensure that administrative detention of unaccompanied children is not practised. The Committee requests the State party to ensure that the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment be applied to asylum-seekers in administrative detention. In addition, it would appreciate receiving information on the number of asylum-seekers and irregular immigrants in detention, how frequently they are detained and the average length of their detention.”

Amnesty International continues to be concerned about Finland’s frequent resort to detaining foreign nationals solely for immigration purposes, and, in particular, in respect of asylum-seekers and unaccompanied or separated children. In general, Amnesty International opposes the use of detention solely for immigration control purposes.

Finland continues to detain unaccompanied or separated children solely for immigration purposes despite a commitment made by the government in 2011⁴ to end the practice. In 2010, Finland held at least three unaccompanied children for an average time of 16,5 days; in 2011, Finland held four unaccompanied children for an average of 20,8 days and in 2012 at least four unaccompanied children were held for an average of 12 days. These numbers do not include those children who may have wrongly been aged- assessed as adults and who may later have been correctly identified as children. In addition, children are held with their parents, both in the Metsälä Detention Unit and police holding facilities. In 2012 the average length of detention in Metsälä was 10,7 days for minors held with their parents. Amnesty International considers that children, and, in particular, unaccompanied or separated children, should never be detained solely for immigration purposes given that immigration detention cannot be said to be in their best interests, ever. The detention of children solely for immigration purposes, whether they are unaccompanied, separated or held together with their family members, can never be justified and represents an abject failure of the obligation to respect, care for, and protect children’s human rights.

Finland continues to detain asylum-seekers and migrants in the Metsälä Detention Centre for aliens situated in Helsinki and in police holding facilities across the country.

There continues to be a lack of comprehensive and reliable statistics concerning the detention of asylum-seekers and others held solely for immigration purposes. While the Metsälä Detention Unit has provided Amnesty International with detailed statistical data on average length of detention, gender of detainees, and the status of children in detention, namely whether they were accompanied or not⁵, the data provided to the organization by the police disclosed no such information. Amnesty International analyzed the data obtained and

⁴ Programme of Prime Minister Jyrki Katainen’s Government, 22 June 2011, page 47.

⁵ Letter from National Police Board on 15 February 2013, ref 2020/2013/605, on file with Amnesty International.

concluded that indeed there may be instances of double-counting since some individuals may spend time both in police facilities and in Metsälä. In conclusion, the organization is concerned that currently in Finland no reliable figures are available about the total number of those detained solely for immigration purposes, including asylum-seekers. Further, since it appears that some unaccompanied or separated children were initially incorrectly assessed as adults, it is therefore possible that an unknown number of unaccompanied or separated children, including child asylum-seekers, may have been detained solely for immigration purposes, including in police facilities.

Based on the data available to Amnesty International, the organization has concluded that the detention capacity of the Metsälä Detention Unit continues to be below the total number of individuals who are detained each year. The Detention Unit can hold up to 40 individuals at any given time, but it has been full for the past several years. As a result, the majority of detained asylum-seekers and migrants are placed in police holding facilities. Amnesty International is concerned that foreign nationals detained solely for immigration purposes have been held in police cells, including in some cases for protracted periods. Some are held in police cells throughout their detention, while others may later be transferred to the Metsälä Detention Unit, if there is space available. In 2012, at least 410 foreign nationals, including asylum seekers were detained in Metsälä,⁶ while 1287 were held in police holding facilities⁷. Currently there does not seem to be a method to account for the potential double counting in the statistics. The average length of detention in Metsälä was 29, 3 days for adults.

Amnesty International continues to receive reports that particularly vulnerable asylum-seekers are being detained solely for immigration purposes. These include pregnant women, persons with serious medical conditions, persons suffering from mental illness or trauma related to torture or ill-treatment, and women who have suffered serious violence.

The Aliens Act continues to feature a provision that allows for the preventive detention of foreign national, including asylum-seekers.⁸ In 2012 the Ministry of Interior presented a draft bill to end the detention of unaccompanied or separated children and limit the detention of accompanied children. However, if adopted and implemented in its current form the draft legislation will continue to provide for the preventive detention of children with their adult family members if the latter is/are to be held in preventive detention not for a crime already committed but if they are suspected of the possibility of committing a crime. Amnesty International continues to be concerned that Finnish immigration legislation would thus continue to provide for the preventative detention of foreign nationals. The organization considers that such detention is inconsistent with the right to liberty and security of person.

CIA SECRET DETENTION AND EXTRAORDINARY RENDITION

In October 2011, Amnesty International published new evidence that a number of aircraft connected to the US Central Intelligence Agency's (CIA) rendition and secret detention programs had landed in Finland between 2001 and 2006.⁹ Previously, only three suspected rendition flights had been documented as having landed in Finland.¹⁰ In response to the information from Amnesty International, the Ministry of Foreign Affairs released new information recording 250 landings in Finland by aircraft linked to the CIA rendition

⁶ Statistics received from the Metsälä Detention Unit, on file with Amnesty International.

⁷ Statistics received from the National Police Board, on file with Amnesty International.

⁸ Aliens Act, Section 121 sub-paragraph 3

⁹ Press release by Amnesty International Finland, "Amnesty löytänyt lisää Suomen kautta kulkeneita mahdollisia vankilentoja", 10 October 2011.

¹⁰ United Nations Human Rights Council, "Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances" (UN Joint Study on Secret Detention), (UN Doc: A/HRC/13/42) 19 February 2010. See also the response by Finland to a written question at the Nordic Council of Ministers (Kirjallinen kysymys, CIA-lennoista Pohjoismaissa, E8/2007 Dnro: 07-392-01), 2 April 2007.

programmes.¹¹ This, together with the other evidence described below, suggests that Finnish territory, airspace and flight records systems were used by the US CIA rendition and secret detention programmes.¹²

There are also documented links between Finland and Lithuania, where the authorities have acknowledged that two secret CIA detention sites were established between 2002 and 2004.¹³ For example, on 20 September 2004 a Boeing 707 aircraft with the tail number N88ZL arrived from Bagram, Afghanistan and landed at Helsinki-Vantaa airport in Finland with 13 passengers on board. That aircraft is also reported to have landed in Lithuania, on its way from Bagram, on the same day it was photographed in Finland.¹⁴ The aircraft departed the next morning to Washington DC¹⁵ and then onward to Miami¹⁶. A few days later the US Department of Defense stated that new detainees had been transferred to the detention centre at Guantánamo Bay. The 2010 UN Joint study on global practices in relation to secret detention in the context of countering terrorism also noted that a flight carrying detainees to Guantánamo Bay landed in Lithuania on 20 September 2004.¹⁷

The UN Joint study further noted that “dummy” flight plans had been filed in other countries in order to conceal flights to Lithuania.¹⁸ In press reports, Finland was mentioned as one of the countries where “dummy” flight plans were filed.¹⁹ The aviation data released by the government of Finland contained a record of a Boeing 737 aircraft with the tail number N733MA and registered to Miami Air, which supposedly landed in Helsinki at 20.37 on 25 March 2006 en route from Porto, Portugal.²⁰ Lithuanian authorities had acknowledged in a parliamentary report in 2009 that the aircraft had landed in Palanga, Lithuania at 22.25 and that it had arrived from Porto.²¹ Media reports suggested that the plane could have landed in both countries.²² Faced with questions about this particular flight, the Finnish authorities confirmed that the aircraft had never landed in Finland, and that the marking for N733MA referred to a flight plan that had never been realized.²³ This “dummy” flight plan appeared to

¹¹ Press release by the Ministry for Foreign Affairs of Finland, “Flight information requested by Amnesty International released on human rights grounds”, 3 November 2011, available at:

<http://formin.finland.fi/public/default.aspx?contentId=233396&nodeId=23&contentlan=1&culture=fi-FI> (accessed 29 April 2013).

¹² For further information regarding these flights see Amnesty International public statement, Finland: Further investigation into USA rendition flights needed (Index EUR 20/001/2011) 9 November 2011.

¹³ For further information, see Amnesty International, Lithuania: Unlock the truth: Investigate secret prisons now (Index EUR 53/002/2011) 29 September 2011.

¹⁴ The aircraft was photographed on the runway in Finland by three flight enthusiasts. See:

http://www.airliners.net/search/photo.search?aircraft_genericsearch=&airlinesearch=&countrysearch=Finland&specialsearch=&keywords=N88ZL&sort_order=photo_id+desc&page_limit=15&daterange=&range=&thumbnails=&engine_version=6.0 (accessed 29 April 2013). See also Matthew Cole, “Lithuanian President Announces Investigation into CIA Secret Prison”, ABC News, 21 October 2009, available at: <http://abcnews.go.com/Blotter/lithuania-investigating-secret-cia-prisons/story?id=8874887> (accessed 29 April 2013).

¹⁵ The arrival and departure of this plane was also noted in the aviation data released by the Ministry for Foreign Affairs and the Ministry of Transport and Communications on 3 November 2011, see <http://formin.finland.fi/public/default.aspx?contentId=233396&nodeId=23&contentlan=1&culture=fi-FI> (accessed 29 April 2013)

¹⁶ Nachweisliche Schweizer Landungen von Jets, die in Guantánamo waren, Blick, 1 February 2006, <http://www.blick.ch/news/ausland/nachweisliche-schweizer-landungen-von-jets-die-in-guantanamo-waren-id1672523.html> (Accessed 29 April 2013)

¹⁷ UN Joint Study on Secret Detention, paragraph 120.

¹⁸ UN Joint Study on Secret Detention, paragraph 120.

¹⁹ “Secret CIA prison revealed in Lithuania” EUobserver.com, 20 November 2009, available at: <http://euobserver.com/13/29029> (accessed 29 April 2013).

²⁰ See aviation data released by the Ministry for Foreign Affairs and the Ministry of Transport and Communications <http://formin.finland.fi/public/default.aspx?contentId=233396&nodeId=23&contentlan=1&culture=fi-FI>

²¹ Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence concerning the alleged transportation and confinement of persons detained by the Central Intelligence Agency of the United States of America in the territory of the Republic of Lithuania”, 22 December 2009, p. 4 http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_k=2 (accessed 29 April 2013)

²² Suspected CIA prisoner rendition plane “disappeared” in Helsinki in March 2006, Helsingin Sanomat, 1 November 2011 (accessed 29 April 2013)

²³ Elina Kalliokoski, a representative of Finavia, confirmed to Helsingin Sanomat that the flight had never landed in Finland, see Suomi saattoi olla CIA:n valekohde, Helsingin Sanomat, 4 November 2011. Article on file with Amnesty International.

confirm earlier reports that Finland had been used as a destination to conceal flights to and from the secret detention facility in Lithuania. Former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin stated to news media that “dummy” flight plans had been used in the rendition programme and that Helsinki had been used as a “dummy” destination for flights to Lithuania.²⁴ Lawyers for Abu Zubaydah, a so-called “high value” detainee currently detained at Guantánamo Bay, have alleged that there is a link between the 25 March 2006 flight and Abu Zubaydah’s departure from a secret detention site in Lithuania.²⁵ They also allege that a series of steps – including the lodging of “dummy” flight plans -- were taken to ensure that the precise flight on which Abu Zubaydah was transported out of Lithuania could not be identified.

In September 2012, the European Parliament called on EU Member States such as Finland to “disclose all necessary information on all suspect planes associated with the CIA and their territory”.²⁶

In 2012, the Parliamentary Ombudsman initiated an investigation into the use of Finnish territory, airspace and flight records systems in the CIA rendition programme. Among other things, the Ombudsman has the power to review classified information, to issue public reports on human rights violations or other abuses by government officials, and to lay charges against any state actor who may have committed crimes in the course of official duties. In November, the Ombudsman sent detailed written requests for information to fifteen government agencies and requested responses by 28 February 2013.²⁷ In March 2013, the Finnish Ministry for Foreign Affairs published its response to the Ombudsman’s inquiry.²⁸ No other agency to date has made its response public.

Finland must conduct an independent, impartial, thorough, and effective investigation into the apparent use of Finnish territory, airspace, and flight records systems in the US-led rendition and secret detention programmes. In doing so, it must also reach out to other governments which may have information relevant to its investigation, in particular the government of Lithuania. In this regard, Finland should make full use of article 9 of the Convention against Torture, and other treaty provisions for international mutual legal assistance. Finland must fully co-operate with UN Special Procedures mandate holders on the issue of secret detention in the context of counter-terrorism operations, including by providing them with relevant information on the subject.

If investigations find that agents of the US government, the Finnish government, or any other government committed human rights violations within Finnish territory or jurisdiction as part of the US government’s rendition and secret detention programmes, Finland must take steps to ensure that the responsible individuals and governments are held accountable. In this regard, anyone credibly alleged or otherwise reasonably believed to have been responsible for crimes under international law must be brought to justice through effective criminal investigation and, if there is sufficient admissible evidence, prosecuted in a fair trial. Anyone who alleges that

²⁴ Suomi saattoi olla CIA:n valekohde, Helsingin Sanomat, 4 November 2011. Article on file with Amnesty International.

²⁵ See Crofton Black, “New flight data, emerging from an unwilling Finnish government, raises more questions than it answers,” Reprive, Nov. 1, 2011, available at

http://www.reprive.org.uk/articles/2011_11_01_new_flight_data_emerges/ (accessed on 29 April 2013) and Abu Zubaydah v Lithuania, Additional filings by the applicant, 10 September 2012, paras 17-25, available at <http://www.interights.org/abu-zubaydah-v-lithuania/index.html> (accessed on 29 April 2013)

²⁶ European Parliament resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report (2012/2033(INI)), para 17, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0309&language=EN> (accessed 29 April 2013)

²⁷ Oikeusasiamies pyytää selvityksiä CIA:n vankilentoasiassa, <http://www.oikeusasiamies.fi/Resource.phx/pubman/templates/2.htm?id=929> (accessed on 29 April 2013)

²⁸ Report of the Ministry for Foreign Affairs to the Parliamentary Ombudsman concerning rendition flights, Statements 3/1/2013, available at <http://formin.finland.fi/public/default.aspx?contentid=271313&nodeid=15145&contentlan=2&culture=en-US> (accessed 29 April 2013)

they were a victim of human rights violations for which Finland would be responsible must be provided with access to an effective remedy and, if their claim is established, receive effective redress.

Currently, the Finnish Security Intelligence Service operates without any parliamentary oversight. However, the new data on rendition flights signals the need for Finland to bring all its intelligence activities under independent, parliamentary oversight.