



FINLAND

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST
TORTURE

68TH SESSION, 11 NOVEMBER-6 DECEMBER 2019

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First published in 2019

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: EUR 20/0560/2019

Original language: English

amnesty.org

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INTERNATIONAL**



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1. INTRODUCTION

Amnesty International provides the below information to the United Nations Committee against Torture (the Committee) ahead of the adoption of the list of issues prior to reporting in advance of the 8th periodic report of Finland.

This submission sets out some of Amnesty International's key concerns about the fulfilment of Finland's obligations to respect and protect against acts of torture and other ill-treatment under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including to take every reasonable precaution to prevent, stop, punish and ensure remedies for human rights violations committed by non-state actors. This briefing sets out Amnesty's concerns with regard to the statute of limitations for the crime of torture, violence against women, human trafficking, asylum seekers, refugees and migrants, rehabilitation of survivors of torture, admissibility of evidence obtained through torture or other ill-treatment, use of force by law enforcement officials, counter-terrorism, forced sterilization of transgender persons and issues specific to intersex people.

2. STATUTE OF LIMITATIONS FOR THE CRIME OF TORTURE (ARTICLES 1, 2 AND 4)

Finland has not amended its legislation in accordance with the recommendations included in the Committee's Concluding Observations from 2017. The Criminal Code continues to subject acts of torture to a statute of limitations. The Criminal Code attaches a statute of limitations to the maximum penalty of a given crime. As the crime of torture carries a minimum penalty of two years and a maximum penalty of twelve years imprisonment,¹ it is subject to a statute of limitation of twenty years.² Furthermore, "petty war crimes",³ which carry a minimum penalty of a fine and a maximum penalty of two years imprisonment, are subject to a statute of limitation of five years.⁴

When torture was criminalized in 2009 the Government Bill noted that the penalties set for the crime of torture were compared to the penalties for crimes against humanity and war crimes. At the time, law makers considered that the penalty for the crime of torture should be lower than the penalties for crimes against humanity and war crimes due to the extraordinary circumstances in which crimes against humanity and war crimes take place. Crimes against humanity and war crimes carry a maximum sentence of life imprisonment and are therefore not subject to a statute of limitations. If torture was committed as a crime against humanity or war crime, it would not be subject to a statute of limitations.⁵

¹ Criminal Code, Chapter 11, Section 9 (a),

² Criminal Code, Chapter 8, Section 1, sub-section 2 (1).

³ Criminal Code, Chapter 11, Section 7.

⁴ Criminal Code, Chapter 8, Section 1, sub-section 2 (3).

⁵ HE 76/2009, page 32.

3. VIOLENCE AGAINST WOMEN (ARTICLES 2, 14 AND 16)

3.1 NATIONAL ACTION PLAN ON VIOLENCE AGAINST WOMEN

The Committee recommended in January 2017 that Finland draw up a new national action plan to reduce violence against women, ensuring that it receives adequate funding, and effectively implement the key provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).⁶

A committee on combating violence against women and domestic violence (i.e. Administrative Committee) was set up to promote and monitor the implementation of the Istanbul Convention in 2017.⁷ However, the Administrative Committee in question has not been properly resourced. The work of the Administrative Committee is conducted within the budgetary constraints of the existing budgets of various ministries and relies on the human resources of existing bodies. In addition, neither women's, nor victims' support organizations are represented in the Administrative Committee.⁸

While action plans to combat violence against women have been developed (for example the Finnish Action Plan for the Istanbul Convention for 2018–2021, action plan for preventing female genital mutilation 2017-2020)⁹, a continuous lack of resourcing of these plans impede their implementation.

Finland must allocate earmarked funding to effectively prevent and combat violence against women. The government must also ensure that women's rights organisations and NGOs providing victim support can meaningfully participate in the Administrative Committee tasked with coordinating the implementation and monitoring of the Istanbul Convention.

3.2 SHELTERS FOR VICTIMS OF INTIMATE PARTNER VIOLENCE AND DOMESTIC VIOLENCE

The Committee recommended that Finland provide safe and adequately funded shelters for

victims and their children, including for victims of so-called honour-based violence, throughout the country. While Finland has indeed increased funding for victim shelter services, the risk for unexpected costs still rests with the service provider and funding remains insufficient to cover the number of needed family places. According to the National Institute for Health and Welfare, clients were referred to another shelter, potentially hundreds of kilometres away, due to lack of space 1905 times in 2018. The regional coverage of the shelter network has been improved, and the number of family places has grown from 123 to 179 in three years. In 2019, the number of places is still increasing to 202. That is still less than half of the per-capita provision recommended by the Council of Europe, according to which there should be 550 family places in victim shelters in Finland.¹⁰ According to the National Institute for Health and Welfare, the annual cost of a shelter network compatible with the recommendation is approximately 40 million euros.¹¹

Out of the 28 shelters in Finland, most are maintained by NGOs and funded by the State. NGOs are not permitted to use state funds allocated for shelters on services for clients who are not staying in the shelters, but seek help and support as external clients. This

⁶ UN doc.CAT/C/FIN/CO/7/Add.1

⁷ https://stm.fi/en/article/-/asset_publisher/valtioneuvosto-asetti-toimikunnan-naiisiin-kohdistuvan-vakivallan-ja-perhevakivallan-torjumiseksi

⁸ There is a sub-committee where NGO's have representation, but it is subordinate to Administrative Committee and has neither access to decision making processes nor an advisory role. The mandate of the sub-committee is restricted to formulate recommendations to the regional and municipal authorities on how to organize structures and policies that prevent violence.

⁹ Finnish Action Plan for the Istanbul Convention for 2018–2021

https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/160403/18_2017_Istanbulin%20sopimuksen%20tps%202018-21%20englanti.pdf and the action plan to prevent FGM https://stm.fi/en/article/-/asset_publisher/stm-rahoittaa-uuden-toimintaohjelman-naisten-sukupuolinten-silpomisen-estamiseksi

¹⁰ The new government program (published on 3.June.2019) promises to increase the number of shelter places to meet the recommended standards of the Council of Europe – which in Finland is about 550 shelter places:

https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161662/Osallistava_ja_osaava_Suomi_2019_WEB.pdf?sequence=1&isAllowed=y

¹¹ A report on the current status of the shelter services and the need for development in Finland. Selvitys turvakotipalvelujen nykytilasta ja tarpeesta: <https://www.iulkari.fi/bitstream/handle/10024/134562/Turvakotiselvitys%2015.8.2014%20Copy.pdf?sequence=1&isAllowed=y>

impedes the development of services for victims of violence who need support, but who do not wish to stay in the shelter. Concretely this means that early intervention and prevention services, peer support groups for victims of violence, programmes for perpetrators and outreach services are not provided nationwide nor systematically due to lack of funding. Effective prevention of violence requires these kinds of services as well as shelter services.

3.3 PROTECTION OF VICTIMS OF GENDER-BASED VIOLENCE

The Committee recommended that Finland ensure that victims of domestic violence benefit from protection, including restraining orders, and have access to medical and legal services, including counselling, as well as redress, including rehabilitation.

Serious challenges remain in fulfilling this recommendation. Since the beginning of 2016, the cost for applying for a restraining order has been 250-260 euros. This sum is payable only if the application is refused. The introduction of this fee places undue financial burden on the victim and complicates in particular access to help and legal services for the most vulnerable victims. Statistics suggest that the number of applications for a restraining order has decreased since the introduction of the fee.¹²

Mediation remains widely used in cases concerning crimes of domestic violence and violence against women.¹³ The number of domestic violence cases referred to mediation was 2,482 in 2017.¹⁴

The outcome of mediation in cases concerning violence by intimate partners or domestic violence is unpredictable. The Government Action Plan for Gender Equality 2016–2019 stated that mediation would be undertaken in cases of violence against women and domestic violence only after careful consideration and in accordance with international conventions and obligations. However, research conducted by the National Institute of Health and Welfare (2018) revealed that these international obligations are not always fulfilled.¹⁵

The research revealed that 88% of domestic violence crimes referred to mediation involved intimate partners, typically a male suspect and a female complainant. Most typical crimes referred to mediation in case of intimate partner violence or domestic violence were assaults and aggravated assaults. These crimes include cases of suffocating, other crimes where mental and bodily harm was severe and in some cases there were reports of sexual violence.¹⁶

A typical content of an agreement resulting from mediation is an apology, a promise to end using violence or/and a promise to seek treatment. Only in 8% of cases monetary compensation was agreed on, and the amounts involved were small.¹⁷ Thus, the perpetrator of a serious violent crime can get away with a mere apology if the victim is a woman and the violence is used in the context of an intimate relationship.¹⁸

The majority of police and prosecutors who responded to the questionnaire referred domestic and intimate partner violence to mediation. Both the police and the mediation offices often failed to refer victims to appropriate support services.¹⁹

Amnesty International opposes the common use of mediation in domestic violence cases as these are often not appropriate methods to deal with crimes of violence against women. Mediation may undermine the principle of equal protection of the law, and frequently leads to repeated re-victimization of women at risk. Although mediation is not mandatory, the continued rise in the number of cases referred to mediation indicates a worrying trend where the best interests of the victim may not always be adequately considered. Finland must provide clear guidelines on the use of mediation, including appropriate safeguards and ensuring that mediation is used sparingly in domestic violence cases and only when it is in the best interest of the victim and that it is practiced only by mediators who have received special training in dealing with issues of domestic violence in the context of mediation. Mediation should not be used as an

¹² Table 1 on page 14 of a report on restraining orders by the Ministry of Justice. Arviomuistio lähestymiskiellon valvonnan tehostamiseksi (in Finnish only): http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161465/OMSO_2019_04_Arviomuistio_lahestymiskiellon_valvonnan_tehostamiseksi.pdf?sequence=1&isAllowed=y

¹³ According to National Institute of Health and Welfare the number of intimate partner violence cases referred to mediation has doubled since 2010: <https://thl.fi/en/web/thlfi-en/services/special-government-services-in-social-welfare-and-health-care/mediation-in-criminal-and-civil-cases>.

¹⁴ According to the National Institute for Health and Welfare, 16% of all cases referred to mediation were cases of domestic violence. Page 26, Mediation of domestic violence crimes – Current situation and development proposals. National Institute for Health and Welfare (THL). Discussion Paper 2/2019. 94 pages. Helsinki, Finland 2019. ISBN 978-952-343-269-7. Abstract in English. http://www.julkari.fi/bitstream/handle/10024/137475/URN_ISBN_978-952-343-269-7.pdf?sequence=1&isAllowed=y [hereafter Mediation of domestic violence crimes]

¹⁵ Mediation of domestic violence crimes. The research was based on surveys to the police and prosecutors and interviews with mediators, The responses and interviews covered every police district and mediation district and almost all prosecution offices. The research also used official documents on mediation cases from every mediation office on mainland Finland.

¹⁶ Page 30, Mediation of domestic violence crimes

¹⁷ Page 32, Mediation of domestic violence crimes

¹⁸ The study revealed that in one quarter of mediated cases referred to mediation by the police, there was no criminal investigation at all. Also, 71% of the prosecutors who referred intimate partner violence cases to mediation, considered mediation to affect their decision on pressing charges. Pages 27, 29, Mediation of domestic violence crimes

¹⁹ Pages 27-28, 31-32, Mediation of domestic violence crimes

alternative to criminal proceedings when this is not appropriate and not in the victim's best interests and it should not impede access to justice for victims.

3.4 FORCED MARRIAGES

The Committee recommended that Finland include forced marriage as a distinct criminal offence in the Criminal Code. Contrary to the follow-up report by Finland, the current legislation is not adequate, as noted in an exploratory memo from October 2017 commissioned by the Ministry of Justice.²⁰ The assumption that other crimes, such as trafficking in human beings, should cover forced marriage is incorrect.

3.5 SEXUAL VIOLENCE AND THE DEFINITION OF RAPE

Studies suggest that every year 41,000-62,000 women in Finland experience sexual violence.²¹ The support service network for victims of sexual violence is very poor and under-resourced.²² Only three Sexual Assault Support Centres are in operation, one in Helsinki (the capital), one in Turku and one in Tampere (operational since 10 June 2019).

The attrition rate for sexual violence cases is very high: less than 10% of all rapes are reported to the police and of those reported, only around 50% result in a trial.²³ As a result, most perpetrators are never held to account for their crimes. Legislative changes are needed to adequately protect access to justice for victims of sexual violence. Rape continues to be defined through the physical violence used or threatened by the perpetrator or the helpless state of the victim rather than the lack of the victim's consent.²⁴

The current legislation does not sufficiently protect institutionalized or hospitalized individuals from sexual violence. Situations where a person abuses a position of authority and commits sexual violence against a person towards who he has a duty of care are defined as sexual abuse, not rape, and carry a lesser sentence.²⁵ Abusing a position of authority thus effectively plays out as a mitigating factor.

²⁰ Pakkoavioliittojen esiintyminen ja ilmitulo Suomessa, Study commissioned by Ministry of Justice, 18.10.2017, <https://oikeusministerio.fi/documents/1410853/4750802/Avioliittoon+pakottaminen+-+selvitysmuistio+2017+HY.pdf/8b68f4a4-8c0e-43e0-9314-a40af9e4c56f/Avioliittoon+pakottaminen+-+selvitysmuistio+2017+HY.pdf.pdf>

²¹ According to the national crime victim survey 2017, p. 6, 2.2% of women had experienced sexual violence in the 12 months preceding the survey; https://helda.helsinki.fi/bitstream/handle/10138/260559/Katsauksia_31_Danielsson_N%c3%a4si_2018.pdf?sequence=1&isAllowed=y. According to the EU Fundamental Rights Agency, Survey on violence against women in EU, published in 2014, 3% of women had experienced sexual violence in the 12 months preceding the survey; <https://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey?mdq1=country&mdq2=414&plot=inCountry&cntryName=Finland>. In 2017, there were 2,050,912 women aged 15-74 in Finland, according to Statistics Finland, table Population, Population structure, Population according to age (5-year) and sex, http://pxnet2.stat.fi/PXWeb/pxweb/en/StatFin/StatFin__vrm__vaerak/statfin_vaerak_pxt_11rc.px?rxid=a6d63286-0fb1-4ca5-b57c-e4a50eef917b

²² Suvi Nipuli & Katriina Bildjuschkin, Hoitoketju seksuaalisuutta loukkaavaa väkivaltaa kokeneen auttamiseksi [Chain of care to help victims of sexual violence], National Institute for Health and Welfare (THL), 2016, https://www.julkari.fi/bitstream/handle/10024/130504/URN_ISBN_978-952-302-625-4.pdf?sequence=1,

²³ Institute of Criminology and Legal Policy, Crime Trends in 2016, page 91, table 3. <https://helda.helsinki.fi/handle/10138/191756>. Summary of sexual offences in English, page 298. See also Amnesty International report (2019): Fighting the lottery: Overcoming barriers to justice for women rape survivors in Finland; <http://bit.ly/fightingthelottery>

²⁴ Criminal Code, Chapter 20, sections 1 and 2. <https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf>

²⁵ Criminal Code, Chapter 20, sections 1 and 5 : A person who is found guilty of sexual abuse shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years. In rape cases the sentence is imprisonment for at least two years and at most ten years. <https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf>

4. HUMAN TRAFFICKING/ TRAFFICKING IN PERSONS (ARTICLES 2, 12, 13 AND 16)

Victims of trafficking are a particularly vulnerable group whose members are frequently not recognised and often do not have access to services they are entitled to under national law. Women who are victims of trafficking, especially those trafficked for sexual exploitation, are not recognized as such. According to a new report by the Non-Discrimination Ombudsman²⁶ and the European Institute for Crime Prevention and Control (HEUNI),²⁷ the identification of victims is hampered by a lack of expertise about trafficking as well as a lack of resources at the municipal level and among the police, and a lack of resources and trust towards the official assistance system in non-governmental organizations in the field. Also, uncertainties about the victim's legal status and conflicts between different legal processes hamper the identification of victims.²⁸ The new report by the Ombudsman, the Finnish National Rapporteur on trafficking, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA),²⁹ and several non-governmental organizations have stressed the need for more systematic training and guidelines for professionals who may encounter victims of trafficking to identify and support them.

According to the National Rapporteur on Trafficking, potential victims of trafficking are often not referred to the Finnish assistance system for victims of trafficking, and in some cases, they have been deported from Finland without receiving any assistance.³⁰ Amnesty International is concerned that the Aliens Act currently allows deportations of non-EU citizens suspected of selling sex.³¹ This section of the Aliens Act provides that if there are reasonable grounds to suspect that a person may sell sexual services, they can be removed from the country and/or banned from re-entering it. The provision raises the threshold for victims to report trafficking to the police, as well as other kind of violence, therefore hampering the identification of and provision of assistance to victims of trafficking.³²

Both identification and access to support is strongly linked to criminal proceedings. Identification is done primarily by a preliminary investigation official or by the prosecutor as part of their criminal investigation, and a victim of trafficking can receive support only as long as they cooperate with the investigation. The report by the Equality Ombudsman and HEUNI stressed the need to decouple assistance from criminal proceedings and the need for a separate, victim-centred law on identification of and assistance to victims of

²⁶ As the National Rapporteur on Trafficking in Human Beings, the Non-Discrimination Ombudsman monitors instances of human trafficking, oversees action against human trafficking and issues proposals, recommendations, statements and advice relevant to developing anti-trafficking work and promoting the status and rights of victims of human trafficking. The Ombudsman provides legal advice and can also assist victims of trafficking and related crimes in securing their rights.

²⁷ Non-Discrimination Ombudsman and the European Institute for Crime Prevention and Control, *Tuntematon tulevaisuus: selvitys ihmiskaupan uhrien auttamista koskevan lainsäädännön toimivuudesta [An unknown future: A report on the effectiveness of legislation concerning assistance for victims of human trafficking]*, 16.3.2018, www.heuni.fi/material/attachments/heuni/projects/sY6sAotTr/FINAL_Tuntematon_tulevaisuus_selvitys_ihmiskaupan_uhrien_auttamista_koskevasta_lainsaadannosta.pdf

²⁸ For example, a trafficking victim who is seeking asylum may be called to an asylum interview so quickly, that there is no time to investigate the person's trafficking victim status. The victim may also be too traumatized to be able to provide a coherent account of their situation. In addition, the identification of a victim of trafficking requires them to provide sufficient detail about their situation. Any emerging inconsistencies between the statements given in the context of the asylum application and those given in the context of the trafficking victims' assistance system may impact negatively on the victim's asylum application.

²⁹ Doc No. GRETA (2015)9: Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland, first evaluation round. Adopted on 15 June 2015 at the 16th meeting of the Committee of the Parties, Doc No. THB-CP (2014)RAP16.

³⁰ A report from the National Rapporteur on trafficking revealed that a Nigerian female victim of trafficking for sexual exploitation had been deported to Italy where no adequate support system exists. The report examined decisions made by the Finnish Immigration Services in 2015-2016. According to the report no sufficient, individual investigations into victims' (and their children's) circumstances were made to assess the risk of re-victimization before deportation https://www.syrjinta.fi/documents/10181/36404/nigerialaiselivitys_verkkoon_FINAL.pdf/1b136c3b-e80f-4b57-bedc-339f4a12e68b.

³¹ Chapter 9 section 148 subsection 6 of the Aliens Act <http://www.finlex.fi/fi/laki/kaannokset/2004/en20040301.pdf>.

³² During the consultation process for Amnesty International's sex work policy in 2014 Amnesty Finland interviewed a wide range of civil society actors as well as sex workers themselves. The discriminatory effects of the current Aliens Act were the most commented issue during the circle of interviews. <https://frantic.s3.amazonaws.com/amnesty-fi/2014/06/Amnestyn-Suomen-osaston-vastaus-kansainv%C3%A4lliselle-sihteerist%C3%B6lle-060602014-FINAL.pdf>.

trafficking.³³ Some victims do not wish to enter the official assistance system, as they do not consider it to provide them with the assistance they need.³⁴ The process is uncertain and unclear and this creates barriers for victims of trafficking to seek and receive support to which they are entitled.

5. ASYLUM SEEKERS, REFUGEES AND MIGRANTS (ARTICLES 3 AND 16)

5.1 NON-REFOULEMENT AND ACCESS TO FAIR ASYLUM PROCEDURES

Amnesty International remains concerned that the legislative changes to the Aliens' Act from 2016 continue to place asylum seekers at risk of human rights violations such as refoulement. Finland has not amended its legislation and practice in accordance with the recommendations presented by the Committee in its Concluding Observations from 2017. Legislation continues to place asylum seekers at high risk of being subjected to refoulement. Furthermore, new legislative changes have been introduced that present an even higher risk of asylum seekers being returned without a thorough assessment of their cases.

Legislation restricting the right of asylum seekers to fair and effective asylum determination procedures entered into force in September 2016. In particular, the right to appeal has been restricted. The deadlines for lodging appeals in ordinary cases were cut from 30 days to 21 days before the Administrative Court of Helsinki and from 30 days to 14 days for an application for leave to appeal before the Supreme Administrative Court.³⁵ Further, the right to appeal a case pertaining to the Aliens Act to the Supreme Administrative Court was restricted. Previously, the Supreme Administrative Court could consider appeals if it was "important for the application of the Act to other similar cases, or for the sake of consistency in legal practice, to submit the case to the Supreme Administrative Court for a decision or if there is some other weighty reason for giving the leave."³⁶ The last part of the sentence was amended so that appeals are currently restricted to situations where there would be particularly serious grounds for giving the leave,³⁷ thus adding a further qualifier for appeals concerning the Aliens Act.

Applicants in ordinary asylum determination procedures enjoy the right to stay in the country for the first appeal before the Administrative Court, but do not enjoy this right where they seek leave to appeal from the Supreme Administrative Court, unless the Court separately stays an expulsion. However, appeals do not have a suspensive effect even in the Administrative Court 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 these cases, the applicant can be removed from the country after seven days from receiving the decision from the Immigration Service.

Asylum seekers' rights were even further restricted in June 2019 when the suspensive effect of subsequent applications was limited by amendments to the Aliens Act.³⁸ New amendments set the threshold for admissibility of the first subsequent application higher than previously. The legislation now involves a limit of "well-founded grounds" for not having previously presented the arguments for asylum in order for the subsequent application to be taken into consideration by authorities.³⁹ The risk of refoulement has been increased as these new amendments enable a decision to remove the applicant from the country (which is issued on the basis of the first negative decision on asylum) to be enforced directly despite a subsequent application if the subsequent application does not fulfil the criteria for admissibility and is considered to be submitted only for the purpose of delaying the return.⁴⁰ Amnesty International is concerned that

³³ Currently provisions on the assistance system are included in the same law as the provision on the reception and treatment of asylum seekers.

³⁴ Non-Discrimination Ombudsman and the European Institute for Crime Prevention and Control, *Tuntematon tulevaisuus: selvitys ihmiskaupan uhrien auttamista koskevan lainsäädännön toimivuudesta [An unknown future: A report on the effectiveness of legislation concerning assistance for victims of human trafficking]*, 16.3.2018,

www.heuni.fi/material/attachments/heuni/projects/sYGsAotTr/FINAL_Tuntematon_tulevaisuus_selvitys_ihmiskaupan_uhrien_auttamista_koskevasta_lainsaadannosta.pdf

³⁵ Aliens Act, section 190, subsection 3 treats appealing a decision to the first instance and section 196, subsection 3 treats appealing a decision to the Supreme Administrative Court.

³⁶ Aliens Act, section 196, as in force up to 1 September 2016

³⁷ Aliens Act, section 196

³⁸ Aliens Act, section 102, subsection 3 and section 103 (4)

³⁹ https://intermin.fi/en/article/-/asset_publisher/turvapaikanhakijoiden-uusintahakemusten-kasittelyyn-esitetaan-muutoksia

⁴⁰ Section 102, subsection 3, entered into force on 1 June 2019

authorities may unduly assume that a subsequent application is submitted only for the purpose of delaying the return, if the applicant fails to exhibit strong enough grounds for not presenting the arguments within the first application, since the prevention of misuse of subsequent applications has been identified as the primary target for these amendments and is highlighted even in the press release from the Ministry of Interior.⁴¹ This is alarming as the due process standards in the first instance, especially for the individuals who arrived in Finland during 2015, have regressed as some applicants have received poor legal counsel and had their asylum interviews conducted in a rush.⁴² This can easily result in asylum grounds going unnoticed. It will be tested in future, if appealing to these procedural failings will be accepted as “well-founded grounds” for not having previously presented the asylum arguments included in the subsequent application.

The risks of refoulement are further exacerbated by significant restrictions of legal aid to asylum seekers. Assistance of legal counsel in the first instance, during the personal interview before the Immigration Service, is no longer covered by legal aid unless there are serious grounds for this, or the applicant is under 18 years.⁴³ The Public Legal Aid Offices determine whether an applicant is in need of legal counsel during the personal interview.⁴⁴ Previously, all instances in the asylum determination procedure were covered by legal aid, thus ensuring that many asylum seekers received legal support and counsel during the procedure.⁴⁵ Previously, applicants were also allowed to choose their own counsel. Currently, asylum seekers may seek legal aid only from the Public Legal Aid Offices, which then determine whether an applicant is in need of legal aid and whether a Public Legal Aid Attorney will provide counsel or whether the applicant can seek support from another lawyer. Currently practice differs in the Public Legal Aid Offices and it is unclear whether, and how much support asylum seekers will receive during their asylum determination procedure. These changes undermine the right of the asylum seeker to choose his or her lawyer. As the whole asylum procedure was previously covered by free legal aid, there are no NGOs or law firms offering pro bono services to asylum seekers.

In addition, the remuneration to private legal counsels working with asylum seekers has been set to a standard fee, which often does not cover the entire work needed to process the case.⁴⁶ This further restricts asylum seekers’ right to a fair trial as private legal counsels must either restrict their efforts or make a loss when spending enough effort in the case. A study published in December confirmed that the above-mentioned changes have endangered asylum seekers’ right to a due process.⁴⁷ The Ministry of the Interior launched an independent survey of the asylum procedure with the objective to determine how the procedure could be improved. Results are expected to be published in the summer of 2019.⁴⁸

In 2015, the Aliens Act was amended in relation to failed asylum seekers or third country nationals who temporarily cannot be returned to their home countries due to health reasons or technical reasons (for example due to travel arrangements or lack of travel documentation). Previously, under Section 51 of the Aliens Act, these persons were given a temporary residence permit for one year at a time in accordance with Section 51 of the Aliens Act. Currently, a person who cannot be returned will not receive a temporary residence permit if the authorities consider that the person can return to his or her home country “voluntarily”. According to Section 200 subsection 5 of the Aliens Act, persons who have been granted a temporary residence permit can be returned, without a separate procedure, 7 days after being notified that the reason previously preventing their return no longer prevents their return.

Section 88 a) of the Aliens Act, providing for humanitarian protection, was repealed in 2016. Humanitarian protection was previously granted to persons who did not receive asylum or subsidiary protection but could not return to their home countries due to an environmental catastrophe; a dire security situation in the country because of an international or non-international armed conflict; or due to the poor human rights situation in their home countries. Humanitarian protection resulted in a temporary residence permit, which had been granted to persons arriving for example from Libya, Yemen, and Somalia. The amendment came into force with retroactive effect. Therefore persons, who had previously enjoyed humanitarian protection in Finland, will not automatically receive a residence permit when their current permit expires. These persons may have to lodge a new asylum application, they might decide to

⁴¹ Ministry of Interior’s press release about the legislative amendments: https://intermin.fi/artikkeli/-/asset_publisher/ulkomaalaislain-muutoksilla-torjutaan-uusintahakemusten-vaarinkayttoa?_101_INSTANCE_jyFHkC3on2XC_languageld=en_US and the government law drafting proposal (see page 1 Introduction): https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/HE_273+2018.pdf

⁴² Government’s Analysis, Assessment and Research Activities’ study, conducted by Outi Lepola, on asylum seekers as legal aid customers: Turvapaikanhakijat oikeusavun asiakkaina. Kohti yhdenvertaisia ja laadukkaita oikeusapupalveluita. Valtioneuvoston selvitys- ja tutkimustoiminta, Policy brief 33/2018: <https://tietokayttoon.fi/documents/1927382/2116852/33-2018-Turvapaikanhakijat+oikeusavun+asiakkaina.pdf/36e2f2b3-8320-f8c0-9aca-22e98cdeea4c/33-2018-Turvapaikanhakijat+oikeusavun+asiakkaina.pdf.pdf?version=1.0>

⁴³ Aliens Act, Section 9

⁴⁴ Legal Aid Act (257/2002)

⁴⁵ The amended legislation, with restrictions to legal aid, came into force on 1 September 2016

⁴⁶ Legal Aid Act, chapter 3, section 17 a <https://www.finlex.fi/fi/laki/ajantasa/2002/20020257>

⁴⁷ Government’s Analysis, Assessment and Research Activities’ study, conducted by Outi Lepola, on asylum seekers as legal aid customers: Turvapaikanhakijat oikeusavun asiakkaina. Kohti yhdenvertaisia ja laadukkaita oikeusapupalveluita. Valtioneuvoston selvitys- ja tutkimustoiminta, Policy brief 33/2018: <https://tietokayttoon.fi/documents/1927382/2116852/33-2018-Turvapaikanhakijat+oikeusavun+asiakkaina.pdf/36e2f2b3-8320-f8c0-9aca-22e98cdeea4c/33-2018-Turvapaikanhakijat+oikeusavun+asiakkaina.pdf.pdf?version=1.0>

⁴⁸ https://intermin.fi/artikkeli/-/asset_publisher/sisaministerio-kaynnistaa-riippumattoman-selvityksen-turvapaikkaprosessista?_101_INSTANCE_jyFHkC3on2XC_languageld=en_US

stay in the country as undocumented third country nationals, or they may be forcibly returned by the government. The amendment has significantly increased the number of undocumented people in Finland.⁴⁹

5.2 DETENTION OF ASYLUM-SEEKERS AND MIGRANTS

Detention of asylum seekers and migrants remains an issue of concern for Amnesty International. Finland continues to detain unaccompanied children and families with children based on their migration status. The detention of unaccompanied children who are under 15 years old was prohibited in 2015. However, the Aliens Act allows for the detention of unaccompanied children aged between 15 and 17 for up to 72 hours once there is an enforceable decision on their removal from Finland; the period of detention can be extended by 72 hours for extraordinary reasons.⁵⁰ Contrary to EU legislation,⁵¹ children have no access to education during their detention. The Act also allows for families with children to be held in detention for up to 12 months.⁵² Amnesty International has received reports of lengthy detentions of families and single parents who have been detained with young children and babies for several months. Amnesty International also continues to receive reports that asylum-seekers in need of special care such as pregnant women, persons with serious medical conditions, persons suffering from mental illness or trauma related to torture or other ill-treatment, and women who have suffered serious violence, are being detained, in particular pending their removal from the country. Convicted criminals facing deportation are sometimes held in the same detention centres as asylum seekers and irregular migrants, including children.

Legislation that was passed in 2017 introduced “directed residence” as an alternative to detention of asylum-seekers and irregular migrants awaiting return.⁵³ Under this law, authorities can order asylum seekers to live in a specific reception centre and in addition report to the reception centre up to four times per day. Applicants subject to accelerated proceedings may also be subject to the measure. Directed residence and reporting obligations are not subject to judicial review or any other form of remedy or complaint mechanism. Amnesty International is further concerned that stringent, daily reporting obligations in combination with directed residence may hinder asylum applicants from enjoying their rights and freedoms and can impair persons from seeking and receiving legal aid, education or medical treatment.

Children between the ages 15-17 can also be subject to directed residence for a maximum time of two weeks, with the possibility of a further two weeks extension.⁵⁴ During this time, the child is not allowed to leave the premises of the reception centre/housing where they have been directed to stay. Children have the right to judicial review within four days of the decision ordering them to directed residence and reporting. Amnesty International is concerned that this so-called alternative to detention for unaccompanied children is in fact a form of detention, with the only exceptions being that: it takes place in a reception centre instead of a traditional detention centre; the length of detention is up to two plus two weeks; and judicial review is possible only four days after the initial decision to place the child in directed residence. In fact, the new legislation has made the deprivation of liberty of unaccompanied children easier than it was under previous legislation.

Detained persons may be placed in solitary confinement cells or transferred to police holding facilities. As a first step, solitary confinement inside the detention centre may be used if the person poses danger to himself/herself or serious danger to the security and order of the detention centre; if it is necessary to keep the person separate for his or her own safety; or if it is necessary under exceptional circumstances in order to determine the identity of the person or the right of the person to enter the country. The director of the detention centre decides on solitary confinement and the decision is not subject to judicial review. There is no maximum time for solitary confinement and the duration is subject to review by the director of the detention centre every three days.⁵⁵ The director may also decide to transfer a person to the police detention facilities. According to law, this may take place in situations where the same grounds relating to safety and security exist as for solitary confinement in the detention centre, but the director determines that placing the individual in solitary confinement inside the detention centre is not sufficient to avert these threats. There is no maximum time for this placement, and it is not subject to judicial review. In these cases a transfer back to the detention centre from the police holding facility is subject to a decision by the director of the detention centre.⁵⁶ The decisions must still be notified to the Court and if confinement continues, they must be notified again every two weeks.⁵⁷ However, there is neither a complaint mechanism regarding these measures, nor for conditions of detention.

Finland also continues to hold refugees and migrants in police detention facilities around the country, contrary to international standards. A person may be detained in police detention facilities when the immigration detention centres are full. In these situations,

⁴⁹ A blog post from the Helsinki Deaconess Institute about the rise of numbers of undocumented persons in Finland, 29.3.2019: <https://www.hdi.fi/blog/2019/03/29/paperittomia-on-suomessa-entista-enemman-ja-uutena-ilmiona-on-kasvanut-lapsiperheiden-maara/> and News from the Finnish broadcasting company about undocumented families as a new phenomenon in Finland, 2.4.2019: <https://yle.fi/uutiset/3-10719332>

⁵⁰ Alien's Act, section 122

⁵¹ Return Directive, Article 17 (3)

⁵² Alien's Act, section 127

⁵³ Alien's Act, chapter 7, section 120 a.

⁵⁴ Alien's Act, chapter 7, section 120 b.

⁵⁵ Act on the treatment of detained aliens and the detention centre, sections 8 and 26

⁵⁶ Act on the treatment of detained aliens and the detention centre, sections 9 and 26

⁵⁷ Act on the treatment of detained aliens and the detention centre, section 10

the District Court decides on the placement of the individual. Persons detained in police facilities spend 23 hours per day in their cell and their contact with the outside world is severely restricted. The circumstances in the police detention facilities amount to solitary confinement.

Much of the statistics concerning the detention of asylum seekers and others held solely for immigration purposes is available, on request, through the detention units of Helsinki and Joutseno, who host the majority of detained persons. However, there continues to be a lack of comprehensive and reliable statistics. The Committee recommended in its concluding observations from 2017 that Finland set up a mechanism to monitor and provide statistics, disaggregated by sex, age, ethnicity and country of origin, on asylum seekers and undocumented immigrants detained under the Aliens Act. In its reply, Finland notes that such a mechanism already exists to a certain extent and refers to the POLSTAT system wherein data on individuals detained by the Border Guard is collected. However, as this system only contains data on detentions by the Border Guard, the majority of detained asylum seekers and migrants fall outside of its scope as they are detained by the Police. Individuals are very rarely detained by the Border Guard. Statistics on detention remain scattered and incomplete. The statistics provided by the police do not provide enough information to get an understanding of how detention is used. Amnesty International has continuously raised concerns with the Finnish government on the lack of comprehensive statistics on detention of asylum seekers and migrants.

6. REHABILITATION OF SURVIVORS OF TORTURE (ARTICLE 14)

Amnesty International has repeatedly raised concerns about the unbearable situation regarding the recognition, treatment and rehabilitation of torture victims in Finland, particularly relating to the insufficient and unstable funding of services in the field. Currently rehabilitation services for torture victims are mainly provided by two Rehabilitation Centres for Torture Victims in the cities of Helsinki⁵⁸ and Oulu,⁵⁹ operating under the Helsinki and Oulu Deaconess Institutes, non-state foundations providing social and healthcare services. In addition to providing evaluation and an array of rehabilitation services to torture victims (including psychiatric care, psychotherapy and physiotherapy), the centres offer consultation and education on torture rehabilitation. Together, the Rehabilitation Centres in Helsinki and Oulu are able to provide treatment to some two hundred patients yearly. Rehabilitation services for refugees are also provided by the Psychiatric Polyclinic for Immigrants run by the City of Tampere.⁶⁰ In addition, the Cross-Cultural Psychiatry Team in Helsinki University Hospital provides research and consultation to outpatients whose psychiatric assessment and treatment may be significantly impacted upon due to their cultural and linguistic background. However, it provides mostly consultations and not much treatment of patients as the responsibility for the treatment is maintained in the sending unit.⁶¹

Meanwhile, a total of 32,477 individuals applied for asylum in Finland in 2015 when the number of new asylum seekers arriving to Finland was the highest (in 2018 the number was 4,548 individuals).⁶² Even before the significant increase in 2015, thousands of torture survivors in need of treatment have been estimated to reside in Finland.⁶³

⁵⁸ Centre for Torture Survivors at the Helsinki Deaconess Institute: <https://www.hdl.fi/en/services/torture-and-trauma>

⁵⁹ Rehabilitation Centre for Torture Victims at the Oulu Deaconess Institute <http://www.odlterveys.fi/terveys-ja-kuntoutus/avokuntoutus/kidutettujen-kuntoutus/>

⁶⁰ City of Tampere, Mental health services for immigrants: <http://www.tampere.fi/en/social-and-health-services/mental-health-and-substance-abuse/mental-health/immigrants.html>

⁶¹ <https://www.hus.fi/sairaanhoito/sairaalat/meilahden-psykiatriset-poliklinikat/Sivut/Kuurojen-psykiatrinen-poliklinikka.aspx>

⁶² The Finnish Immigration Service's statistics on the total figures of asylum applications by country in 2015 available at <http://tilastot.migri.fi/#decisions?!=en>

⁶³ The Helsinki Deaconess Institute assesses that over half of the asylum seekers that come to Finland have experienced torture. A Deaconess Institute's blog post from 15 July 2016 can be found in the following address: <http://diakonisslaitos.blogspot.com/>. See also: Finnish Medical Journal, 9.8.2013 (article in Finnish): <http://www.laakarilehti.fi/ajassa/ajankohtaista/kidutuksen-uhreja-8232-on-suomessa-tuhansia/>; Article by the newspaper Hufvudstadsbladet, 26.06.2015 (article in Swedish): <http://gamla.hbl.fi/nyheter/2015-06-26/760659/tortyroffer-vardas-med-knappa-resurser>; Article by the Finnish Broadcasting Company YLE, 29.9.2015 <https://svenska.yle.fi/artikel/2015/09/29/finland-daligt-forberett-pa-att-ta-hand-om-tortyroffer>. Finally, the most thorough assessment carried out in Finland on asylum seekers' experiences on torture was conducted by MD Ilkka Pirinen (study released on 2008). For his doctoral thesis in medicine, Pirinen investigated the state of health of 170 asylum seekers registered at a reception centre in Tampere during the period from 1 August 2003 to 31 May 2004. The examinees were interviewed to assess the status of their health and their experiences of torture. In addition, a thorough medical checkup and laboratory tests as well as chest x-ray examinations were performed. Their use of health services was followed up during a six-month-period. Torture had been experienced by 57 % of adult examinees. The experiences of torture and violence seemed

The operations of the Rehabilitation Centres are not funded by the State budget, but by the Funding Centre for Social Welfare and Health Organisations (STEA), an independent state aid authority under the Ministry of Social Affairs and Health. Organisations need to apply for funds annually and STEA manages the funding granted for projects which are non-profit by nature and promote health and wellbeing. Meanwhile, the Government, and the ministries responsible for health care, asylum procedure and the integration of immigrants, namely the Ministry of Social Affairs and Health, the Ministry of the Interior and the Ministry of Employment and the Economy, have been unwilling to cover the funding or introduce alternative, lasting funding solutions. Finland should allocate sufficient funding to the rehabilitation of torture victims and funding should not be precarious but instead continuous to guarantee that there would not be gaps in the functioning of the Rehabilitation Centres' activities.

The Paloma project, conducted by the National Institute for Health and Welfare, has produced video-based training and a handbook⁶⁴ on how to support the mental health and well-being of refugees.⁶⁵ It provides practical information for authorities who encounter refugees through their work. It also covers refugees traumatized by torture. However, the recognition of refugees who have experienced torture and traumatization, and who are thus in need of special care and assistance, is still limited.⁶⁶

7. ADMISSIBILITY OF EVIDENCE OBTAINED THROUGH TORTURE OR OTHER ILL-TREATMENT (ARTICLE 15)

The Code of Judicial Procedure provides in Chapter 17, Section 25(1) that a court cannot use evidence that has been obtained through torture. However, this prohibition does not specifically extend to other ill-treatment nor to other violations. Section 25(3) provides that a court may use evidence obtained unlawfully if it will not prejudice a fair trial. While determining this the court will take into consideration the case in question, the gravity of the violation by which the evidence was obtained, whether the way in which the evidence was obtained impacts the reliability of the evidence, and other circumstances. It therefore remains for the court to decide, on a case by case basis, whether evidence obtained through ill-treatment is admissible.

to be connected with various kinds of illnesses, especially psychiatric problems. The study, including a summary in English (pp. 10–12) is available online at <http://tampub.uta.fi/handle/10024/67804>.

⁶⁴ Paloma handbook http://www.julkari.fi/bitstream/handle/10024/136193/7.8.PALOMA_KA%cc%88SIKIRJA_WEB.pdf?sequence=4&isAllowed=y

⁶⁵ <https://thl.fi/en/web/thlfi-en/research-and-expertwork/projects-and-programmes/the-paloma-project-improving-mental-health-services-for-refugees>

⁶⁶ A 2018 report from the Discrimination ombudsman, page 53 considers the problems with recognising specific vulnerability <https://www.syrjinta.fi/documents/10181/36404/Eduskuntakertomus/68ed9230-62d6-4e4b-894b-9c4fa17fe104>

8. USE OF FORCE BY LAW ENFORCEMENT OFFICIALS (ARTICLE 16)

Amnesty International is concerned about the increase in the use of force by the police,⁶⁷ including frequent use of projectile electric shock devices (Tasers) and other less-lethal weapons. In January 2019, a man, born in 1988, died in police custody after police had used an electroshock weapon against him.⁶⁸

In August 2016, the Deputy Parliamentary Ombudsman issued a decision according to which the supervision and instruction of electroshock device use should be strengthened.⁶⁹ In 2013, the Parliamentary Ombudsman had issued a decision concerning the use of the devices in prisons, urging more precise regulation on use of force and clearer instructions to be issued by the Criminal Sanctions Agency.⁷⁰

9. COUNTER-TERRORISM (DEFINITION OF TERRORISM AND COMMUNICATIONS SURVEILLANCE) (ARTICLES 2 AND 16)

Finland has recently amended the definitions of terrorist crimes in the Criminal Code.⁷¹ Amnesty International is concerned that the amendments are vague and open to abuse. In addition, the criminalization of ancillary offences involving conduct which is removed from the principal offence (“terrorist offence”) is of concern as it is more difficult to identify with certainty. This raises serious concerns as to compliance with the principle of legality and may violate the peaceful exercise of rights such as freedom of movement. Furthermore, there is a need for independent and effective oversight of the Finnish intelligence service, which currently operates without regular and effective parliamentary supervision.

⁶⁷ The use of force by the police has increased since the year 2000. Six deaths have occurred following police firearm use during the century, three of which were in 2015. According to the statistics by the National Police Board, 5,700 use of force situations were documented in 2015. Article by Sunnuntaisuomalainen, 9.10.2016: <http://www.ksml.fi/teemat/sunnuntaisuomalainen/lhmisoikeusj%C3%A4rjest%C3%B6-Poliisin-voimakeinojen-k%C3%A4ytt%C3%B6-j%C3%A4%C3%A4-pimentoon/851162>. A study by the Police Academy from 2018, shows that during 2016-2017, 7,1% of targeted persons suffered personal injuries after the use of electroshock weapons. The study also discovered that the police use increasingly electroshock weapons and in terms of numbers, most personal injuries were caused by the use of either physical force or the use of electroshock weapons. According to the study, during 2016-2017 one person died in a situation where an electroshock weapon was used: https://www.theseus.fi/bitstream/handle/10024/141674/ON_Kimpimaki_Nea_ia_Kimpimaki_Niko.pdf?sequence=1&isAllowed=y

⁶⁸ Articles by Iltasanomat: <https://www.is.fi/kotimaa/art-2000005965588.html> and Helsingin Sanomat, published on 14 January 2019: <https://www.hs.fi/kotimaa/art-2000005965612.html?share=0ff95600ab276baa2621bf412f72889e>.

⁶⁹ The decision eoak 1187/2015 issued 31 August 2016 <http://www.eduskunta.fi/eoaratkaisut/eoak+1187/2015>

⁷⁰ The decision eoak 4733/2/09 issued 15 January 2013 <https://www.oikeusasiamies.fi/fi/ratkaisut/-/eoar/4733/2009>.

⁷¹ Government proposal HE 30/2018 https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Sivut/HE_30+2018.aspx

The government recently adopted legislation on civilian and military intelligence agencies and communications surveillance,⁷² which enables the acquisition of information on threats to national security by giving military and civilian intelligence agencies permission to conduct communications surveillance without any requirement for a link to a specific criminal offence. The definitions for situations amounting to threats to national security are vague and open to interpretation. The law is not sufficiently clear to give people an adequate indication of the conditions and circumstances under which the authorities are empowered to resort to communications surveillance measures.

The legislation requires, as a general rule, a court permit for surveillance. In urgent situations, however, the Head of the Security Intelligence Service can decide on surveillance until the court has decided on a permit. It is not clear what would amount to an urgent situation. The legislation also creates an Intelligence Ombudsman, but limited resources put into question the effectiveness of such monitoring.

The legislation came into force on 1 June 2019. During the drafting process, the Constitutional Law Committee underpinned several parts that conflicted with the Finnish Constitution and its fundamental rights guarantees.⁷³ While many amendments were made to the legislative act according to the Constitutional Law Committee's directions, the legislation can still be seen to conflict with some parts that the Committee had underpinned. This is the case even though the provision on the right to privacy in the Finnish constitution had recently been amended to enable passing these laws.⁷⁴ For example, the subject's right to have information on whether he or she has been under surveillance is limited in some cases. This breaches their right to fair procedure guarantees as they cannot, de facto, bring a case to a court.

10. FORCED STERILIZATION OF TRANSGENDER PERSONS (ARTICLES 2 AND 16)

Under the Act on legal recognition of the gender of transsexuals (563/2002) (Trans Act)⁷³ transgender people can obtain legal gender identity recognition only if they agree to be sterilized, are diagnosed with a "mental or behavioural" disorder and are aged over 18. The applicant must present a medical statement certifying that he or she permanently identifies with the opposite gender, lives in that gender role, and has been sterilized or is for some other reason infertile. A certificate of infertility is normally given after 6-12 months of hormone treatment. Forced sterilisation is dehumanizing and invasive and violates the transgender person's rights to equality, personal integrity, and is also an intervention in transgender persons' and their spouses' right to privacy and family life.⁷⁵

To begin the process of receiving a medical statement necessary for legal gender recognition the person must first obtain a referral by a general practitioner, a practice that has reportedly been problematic and discriminatory. To obtain the diagnosis a person is referred by their general practitioners to one of the two multidisciplinary teams established at the Helsinki University Central Hospital and the Tampere University Central Hospital (the Trans Units). The medical statement requires a psychiatric diagnosis and transgender individuals have to undergo a long process to be diagnosed with "transsexualism". The diagnostic period -the period elapsing from the first meeting at one of the Trans Units to the moment where the psychiatric diagnosis is established - can take up to 12 months. The current procedure is very lengthy, taking up to 2-3 years, exposing transgender individuals to discrimination in situations where they are required to present documents with gender markers not corresponding to their gender identity and expression.⁷⁶

⁷² Government proposal HE 199/2017 https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Sivut/HE_199+2017.aspx, Government proposal HE 202/2017 https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Sivut/HE_202+2017.aspx, Government proposal HE 203/2017 https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Sivut/HE_203+2017.aspx

⁷³ Constitutional Law Committee's opinions PeVL 35/2018 vp https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/PeVL_35+2018.aspx and PeVL 75/2018 vp https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/PeVL_75+2018.aspx

⁷⁴ Government proposal HE 198/2017 https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Sivut/HE_198+2017.aspx

⁷⁵ <http://www.finlex.fi/fi/laki/kaannokset/2002/en20020563.pdf>

⁷⁶ Amnesty International: The state decides who I am, 4 February 2014, Index number: EUR 01/001/2014, <https://www.amnesty.org/en/documents/EUR01/001/2014/en/>

11. ISSUES SPECIFIC TO INTERSEX PEOPLE (ARTICLES 2 AND 16)

According to a study (2016) by the Finnish National Advisory Board on Social Welfare and Health Care Ethics (ETENE), intersex children in Finland are routinely subjected to medical and surgical treatments, often while very young, in order to align their physical appearances with either of the binary sexes.⁷⁷ According to ETENE, operations are often done for social reasons rather than out of medical necessity. There are variations between hospitals how parents are involved in the decision making in cases of non-emergency operations and the assignment of legal sex for an intersex infant. Some stress the authority of health professionals, some report the final decision is always solely the parents'. Out of the five existing University Hospitals, Oulu University is the only one that refuses to operate on intersex children for any other reason than medical necessity. In addition, according to ETENE, resources of health care units to support intersex individuals are inadequate. The operations performed on intersex children and infants are rarely medically necessary and can often cause scarring, loss of sexual sensation, pain, incontinence and permanent, irreversible infertility as well as increase the risk of self-harming and depression. ETENE calls for respect for the child's physical integrity and recommends that no measures modifying external sex characteristics are carried out before the child is old enough to decide for themselves.⁷⁸

Research⁷⁹ published in March 2019 adds to the evidence that documents human rights violations experienced by intersex individuals in Finland. The study is based on experiences of intersex persons and parents of intersex children in the Finnish healthcare system and society. It examines how decisions are made when an intersex child is born and how the treatment the child receives in childhood and adolescence can affect all aspects their life: health, education, work life and personal relationships. Recommendations to the government arising from the study are in line with the recommendations Amnesty International has previously suggested to the Committee and those published in Amnesty's reports on intersex persons' rights.⁸⁰ The State of Finland has to ensure that medical procedures performed on intersex infants and children are performed solely in the best interests of the child and in full compliance with internationally adopted medical ethical standards.

⁷⁷ Wahlman-Calderaram, Tuula ja Halila, Ritva: Intersukupuolisuus, Taustaraportti ETENE:n kannanottoon <http://etene.fi/documents/1429646/2056382/IS-raportti20160331.pdf/58bf2412-48a9-4521-b5ae-81a3ee3bc07b>

ETENE has also issued a statement where it criticizes the current practice. Similar critical statements have also been issued recently by the Federation of Finnish Midwives (May 2016): Intersex children have the right to self-determination of their gender, available in Finnish <http://intersukupuolisuus.fi/2016/05/04/katiloiton-kannanottointersukupuolisten-lasten-hoidosta/> and the Ombudsperson for Children (August 2016): The Rights of Intersex Children need to be strengthened <http://lapsiasia.fi/tata-mielta/tiedotteet/2016-2/lapsiasiavaltuutettu-intersukupuolisten-lasten-oikeuksiavahvistettava/>

⁷⁸ Commissioner of Human Rights issue paper - Human rights and intersex people <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2933521&SecMode=1&DocId=2367288&Usage=2>

An UN interagency statement on Eliminating forced, coercive and otherwise involuntary sterilization also states that "intersex persons may be involuntarily subjected to so-called sex-normalizing or other procedures as infants or during childhood, which, in some cases, may result in the termination of all or some of their reproductive capacity" http://www.unfpa.org/sites/default/files/resourcepdf/Eliminating_forced_sterilization.pdf

⁷⁹ Commissioned by the Ministry of Justice and Ministry of Foreign Affairs, conducted by Tikli Oikarinen. Abstract in English. http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161410/OMSO_3_2019_Ei_tietoa_eika_vaihtoehtoja_.pdf

⁸⁰ See Amnesty reports on intersex rights: First, do no harm, <https://www.amnesty.org/en/documents/eur01/6086/2017/en/> and No shame in diversity <https://www.amnesty.org/en/documents/eur01/6086/2017/en/>.

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FINLAND

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

68TH SESSION, 11 NOVEMBER-6 DECEMBER 2019

Amnesty International provides the following information to the United Nations Committee against Torture (the Committee) ahead of the adoption of the list of issues prior to reporting in advance of the 8th periodic report of Finland.

This submission sets out some of Amnesty International's key concerns about the fulfilment of Finland's obligations to respect and protect under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in particular with regard to the statute of limitations for the crime of torture, violence against women, human trafficking, asylum seekers, refugees and migrants, rehabilitation of survivors of torture, admissibility of evidence obtained through torture or other ill-treatment, use of force by law enforcement officials, counter-terrorism, forced sterilization of transgender persons and issues specific to intersex people.