



# FINLAND

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST  
TORTURE

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# INTRODUCTION

Amnesty International submits this document in advance of the Committee against Torture's consideration of Finland's seventh periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention) in November 2016. The present submission summarizes Amnesty International's concerns about Finland's failure to comply with its obligations under the Convention.

## STATUTE OF LIMITATIONS FOR THE CRIME OF TORTURE (ARTICLES 1, 2 AND 4)<sup>1</sup>

The Criminal Code continues to subject acts of torture to statute of limitations. The Criminal Code attaches statute of limitations to the minimum and 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,<sup>2</sup> it is subject to a statute of limitation of twenty years.<sup>3</sup> Furthermore, petty war crimes<sup>4</sup>, 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.<sup>5</sup>

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.<sup>6</sup>

### RECOMMENDATION

Amnesty International recommends that the Finnish authorities:

- Amend Chapter 11 of the Criminal Code to include a provision that would preclude crimes under international law, including torture, from the statute of limitations set out in the Criminal Code, in line with article 4 of the Convention.

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<sup>1</sup> List of Issues Prior to Reporting (LOIRP), CAT/C/FIN/QPR/7, 15 July 2013, para. 2.

<sup>2</sup> Criminal Code, Chapter 11, Section 9 (a),

<sup>3</sup> Criminal Code, Chapter 8, Section 1, sub-section 2 (1).

<sup>4</sup> Criminal Code, Chapter 11, Section 7

<sup>5</sup> Criminal Code, Chapter 8, Section 1, sub-section 2 (3).

<sup>6</sup> HE 76/2009, page 32.

# VIOLENCE AGAINST WOMEN (ARTICLES 2 AND 16)<sup>7</sup>

The work carried out by non-governmental organizations and state institutions to combat violence against women is systematically under-resourced in Finland.<sup>8</sup> An independent evaluation of the national “action plan to reduce violence against women” which was in force 2010-2015 was published in June 2016.<sup>9</sup> The evaluation indicates that the plan was not fully implemented partly due to lack of funding. Finland has to allocate earmarked funding to combat violence against women.<sup>10</sup>

The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) came into effect in Finland on 1 August 2015. Finland has not yet implemented key provisions of the Istanbul Convention. In September 2016, the Ministry of Social Affairs and Health prepared a second draft decree to create a body to co-ordinate work combating violence against women in accordance with the Convention. However, it did not propose adequate resources for the body and envisioned only a minor role for women’s or victims support organizations.

Every third woman in Finland has suffered physical or sexual violence by her current or former partner during her lifetime.<sup>11</sup> However specialized support services are scarce and fall short of international standards. According to the Council of Europe recommendations<sup>12</sup> as well as the Istanbul Convention<sup>13</sup> a state with a population the size of Finland should have around 500 to 550 shelter places. Finland currently has less than 120 places. In 2015, in the capital area alone, 528 women and their children were denied access to shelters due to the shelters being completely full. In the country as a whole a total of around 1200 people were denied access to shelters in 2015. According to statistics retrieved from the shelters in the capital area, the situation has only worsened by spring 2016. Over half of those seeking shelter had to be referred to other services.<sup>14</sup>

It is estimated that annually over 55 000 women suffer sexual violence<sup>15</sup> and around 15 000 cases of rape occur annually in Finland.<sup>16</sup> Despite the fact that sexual violence is very prevalent, the state has a very poor support service network for victims. This was noted in the national “action plan to reduce violence against women 2010-2015 but very little progress has been achieved. There is only one rape crisis centre in the whole country, in Helsinki which provides both psychological support and legal aid specifically for victims of sexual violence.<sup>17</sup> There is some positive development towards a more sensitive and comprehensive

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<sup>7</sup> Committee against Torture, List of issues prior to submission of the seventh periodic report of Finland, UN Doc. CAT/C/FIN/QPR/7, 15 July 2013, paras. 5, 6 and 7.

<sup>8</sup> Celeste Montoya (2013) has compared resourcing of measures against VAW in Council of Europe member states 2007-2010. Out of 15 countries Finland was second last. Comparing Finland with its neighboring Sweden, the difference is staggering: Finland with 0,01 euros per capita compared to Sweden with 32,26 euro per capita.

<sup>9</sup> Törmä, Sinikka ja Pentikäinen, Merja (2016): Tavoitteena naisiin kohdistuvasta väkivallasta ja perheväkivallasta vapaa Suomi. Only available in Finnish. [http://ulkaisut.valtioneuvosto.fi/bitstream/handle/10024/75030/Rap\\_ja\\_muist\\_2016\\_15\\_1.pdf?sequence=1](http://ulkaisut.valtioneuvosto.fi/bitstream/handle/10024/75030/Rap_ja_muist_2016_15_1.pdf?sequence=1)

<sup>10</sup> Istanbul Convention article 8 states: “Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by nongovernmental organisations and civil society.”

<sup>11</sup> European Union agency for fundamental rights (2014): Violence against women – an EU wide survey. <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

<sup>12</sup> The Council of Europe Task Force to Combat Violence against Women, including Domestic Violence (EG-TFV) Recommendation Rec (2002)5 on the protection of violence against women.

<sup>13</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008482e>

<sup>14</sup> Numbers retrieved from the shelters themselves and the National Institute for Health and Welfare.

<sup>15</sup> European Union agency for fundamental rights (2014): Violence against women – an EU wide survey. <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

<sup>16</sup> Violence against women in Finland (2006), Summary in English [https://helda.helsinki.fi/bitstream/handle/10138/152455/225\\_Piispa\\_Heiskanen\\_Kaariainen\\_Siren\\_2006.pdf?sequence=2](https://helda.helsinki.fi/bitstream/handle/10138/152455/225_Piispa_Heiskanen_Kaariainen_Siren_2006.pdf?sequence=2)

<sup>17</sup> Rape Crisis center Tukinainen [www.tukinainen.fi](http://www.tukinainen.fi) has a main unit in Helsinki and also a smaller unit in Jyväskylä. Also Välitä!-project in Tampere <http://www.seksuaalivakivalta.fi/> and Girls House in Helsinki <http://www.tyttöjentalo.fi/> also provide psychological support for women and girl victims of sexual violence. These are services all provided by non-governmental organizations and not systematically state-funded.

approach when treating and helping rape victims in hospital settings.<sup>18</sup> However, Finland still lacks a nationwide, low threshold service network<sup>19</sup>, available for victims of all forms of sexual violence, providing also long-term support.

Legislative changes are needed to adequately protect victims of sexual violence. For example, rape continues to be categorized according to the degree of physical violence used or threatened by the perpetrator rather than the lack of consent.<sup>20</sup> Amnesty International considers that the definition of rape should be revised and aligned with international law so that it is based on the lack of consent rather than the degree of violence used or threatened by the perpetrator.

Amnesty International is concerned that the attrition rate for sexual violence cases is very high.<sup>21</sup> This is the filtering process whereby alleged offences never come to the attention of the criminal justice system, either because they are never reported, or because cases are dropped at various stages of the legal process. As a result women who report rape to the police only have a small chance of having their case tried in court and most perpetrators are never held to account for their crimes. According to estimates, less than 10 per cent of all rapes are reported and of those reported around 20 per cent result in a conviction.<sup>22</sup>

## VIOLENCE COMMITTED IN THE NAME OF “HONOUR” AND FORCED MARRIAGE

Victims of violence committed in the name of “honour” - are not sufficiently protected. At present there is only one secret shelter, run by a NGO, *Monika – Multicultural Women’s Association* in Finland, providing support and protection for women specifically in cases of so called honour-based violence.<sup>23</sup> The number of women seeking shelter has increased especially in 2016. Every fourth woman had to be referred elsewhere due to lack of space. Victims of forced marriage are not adequately protected by law. Forced marriage is currently not included in the criminal code as a distinct criminal offence.<sup>24</sup> There are no known convictions on forced marriage cases under the current provisions of the criminal code, which strongly suggests that the existing framework is not sufficient to protect victims. A recent qualitative study conducted by the Finnish League of Human Rights also came to this conclusion.<sup>25</sup> The research covered, among others, documents gathered from pre-trial investigation conducted by the police.

No comprehensive information on the number of victims of forced marriage is available. Statistics are gathered by NGOs and handful of public sector actors such as the Unit for Consular Assistance on forced marriages. *Monika – Multicultural Women’s Association* in Finland reaches around 20 victims of forced marriage each year. The number has been increasing. In 2015, the number was 25 but in 2016 the same number was reached already by mid-year. Most likely this is only a small portion of the actual cases in Finland.

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<sup>18</sup> Suvi Nipuli & Katriina Bildjuschkin (2016). Chain of care to help victims of sexual violence. National Institute for Health and Welfare (THL). Abstract available in English [https://www.julkari.fi/bitstream/handle/10024/130504/URN\\_ISBN\\_978-952-302-625-4.pdf?sequence=1](https://www.julkari.fi/bitstream/handle/10024/130504/URN_ISBN_978-952-302-625-4.pdf?sequence=1)

<sup>19</sup> Low-threshold services refer to easily accessible services that do not necessarily require co-operation with the authorities, provide services for example free-of-charge and also anonymously. Specific attention should be paid to vulnerable groups (Istanbul Convention art. 12 provides a definition).

<sup>20</sup> Amnesty International report (2010): Case closed – rape and human rights in Nordic countries analyses the narrow definition of rape. <https://www.amnesty.org/en/documents/ACT77/001/2010/en/>

<sup>21</sup> See for Amnesty International report (2010): Case closed – rape and human rights in Nordic countries.

<sup>22</sup> Annual Crime Statistics provided by the Department of Social Research, Institute of Criminology and Legal Policy Only available in Finnish: [https://helda.helsinki.fi/bitstream/handle/10138/156334/Katsauksia\\_4\\_Rikollisuustilanne\\_2014\\_2015.pdf?sequence=2](https://helda.helsinki.fi/bitstream/handle/10138/156334/Katsauksia_4_Rikollisuustilanne_2014_2015.pdf?sequence=2)

<sup>23</sup> The same NGO also runs low-threshold resource centers with the possibility of receiving help anonymously. <http://monikanaiset.fi/en/>

<sup>24</sup> The Istanbul convention calls on criminalization forced marriage (art. 37). Also the Council of Europe parliamentary assembly adopted Resolution no. 1468 on forced marriage and child marriage calling the member states to “consider the possibility of dealing with acts of forced marriage as an independent criminal offence, including aiding and abetting the contracting of such a marriage” <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17380&lang=en>

<sup>25</sup> Hansen, Sams, Jäppinen and Latvala (2016): Kunniakäsitykset ja väkivalta – selvitys kunniaan liittyvästä väkivallasta ja siihen puuttumisesta Suomessa. Summary available in English. [https://ihmisoikeusliitto.fi/wp-content/uploads/2016/06/Kunniak%C3%A4sitykset-ja-v%C3%A4kivalta\\_B5\\_netiti-002.pdf](https://ihmisoikeusliitto.fi/wp-content/uploads/2016/06/Kunniak%C3%A4sitykset-ja-v%C3%A4kivalta_B5_netiti-002.pdf)

## RECOMMENDATION

Amnesty International recommends that the Finnish authorities:

- Establish a network of support services (including walk-in-centres, rape crisis centres and shelters as well as long term support) for victims of gender based violence including the most vulnerable groups in accordance with the Istanbul Convention.
- Revise the definition of rape to be based on the lack of consent rather than the degree of violence used or threatened by the perpetrator.
- Enact legislation that prohibits forced marriage and provide adequate support for victims.

# DEFINITION OF RAPE OF INSTITUTIONALIZED AND HOSPITALIZED PERSONS (ARTICLE 2 AND 4)

Amnesty International is concerned, that the current legislation does not sufficiently protect institutionalized or hospitalized individuals from sexual violence. Chapter 20, Section 5 subsection 1, paragraph 3 of the Finnish Criminal Code, provides: “A person who abuses his or her position and entices one of the following into sexual intercourse, into another sexual act essentially violating his or her right of sexual self-determination, or into submission to such an act, [...] (3) a patient being treated in a hospital or other institution, whose capacity to defend himself or herself or to formulate or to express his or her will is essentially impaired owing to illness, handicap or other infirmity [...] , shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years.”<sup>26</sup> This offence includes acts which should clearly count as rape, and would constitute torture under the Convention.

## RECOMMENDATION

Amnesty International recommends that the Finnish authorities:

- Revise Chapter 20, Section 5 subsection 1, paragraph 3 of the Criminal Code so that acts that constitute rape are defined as such.

# HUMAN TRAFFICKING (ARTICLES 2, 12, 13 AND 16)<sup>27</sup>

Victims of trafficking are not recognized as such and are not provided with adequate protection and assistance. Both the Finnish National Rapporteur on trafficking<sup>28</sup>, the Group of Experts on Action against Trafficking in Human Beings (GRETA)<sup>29</sup>, and several NGOs working in the field have stressed that there is a

<sup>26</sup> Criminal Code available in English: <http://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf>

<sup>27</sup> LOIPR, CAT/C/FIN/QPR/7, 15 July 2013, paras. 6 and 16.

<sup>28</sup> 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.

<sup>29</sup> Recommendation CP(2015)1 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631bee>

need for continuous, systematic training and guidelines for professionals who may come into contact with victims of trafficking to better identify and support the victims. In particular, human trafficking for the purpose of sexual exploitation often goes unidentified. According to the National Rapporteur<sup>30</sup>, potential victims have often not been referred to the assistance system and in the worst cases investigated; potential victims are removed from the country without being offered assistance.<sup>31</sup>

Since 12 November 2012, the responsibility for co-ordinating the provision of assistance to all victims of trafficking throughout Finland has been given to the Joutseno Reception Centre for asylum seekers. According to their statistics<sup>32</sup> altogether 52 new cases of trafficking victims entered the system in 2015, of which 18 cases were trafficked for sexual exploitation. One of the challenges with the current system is that support and identification is strongly linked with criminal proceedings of the case and is unpredictable from the victim's perspective. Legislative amendments which came into effect in 2015 did not fundamentally change this. On the contrary, a newly added paragraph stating that identification is done primarily by a preliminary investigations official or the prosecutor as part of their criminal investigation perpetuates this link. It is not possible for the assistance system to identify (and provide support) to a victim, for example, in cases where the victim is Finnish and exploitation has occurred in Finland, but the prosecutor has not been able to gather sufficient evidence in criminal case.<sup>33</sup>

It is possible for authorities to grant a reflection and recovery period for victims of trafficking during which the investigative authorities are not allowed to contact the victim without their prior consent. During this time the victim has to decide whether she or he is willing to co-operate with the authorities in the criminal investigation. However the recovery period can only be granted by the assistance system to Finnish nationals and those regularly residing in the country. A reflection period in accordance with the Aliens Act can be granted by the police or the border guard officials to those without a residence permit. Both the National Rapporteur<sup>34</sup> and GRETA have recommended that the recovery period should concern all victims of trafficking, despite their migration status. In its evaluation of Finland GRETA<sup>35</sup> also found indications that some investigation officials were reluctant to grant reflection periods because of the risk of delaying the criminal process. GRETA has therefore urged the Finnish authorities to ensure, in compliance with the obligations under Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings, that all possible victims of trafficking are offered a reflection and recovery period together with sufficient protection and assistance during this period. Police and border guard officers should be issued with clear instructions stressing the need to offer the recovery and reflection period and not making it conditional on the victim's co-operation.

Amnesty International also considers that Chapter 9, Section 148 paragraph 6 of the Aliens' Act should be removed. Under the current provision it is possible to remove a non-EU citizen from Finland if he/she is suspected of selling sex.<sup>36</sup> The particular paragraph raises the threshold for victims to report trafficking to the police, therefore hampering the identification of victims of trafficking.

## RECOMMENDATION

Amnesty International recommends that the Finnish authorities:

<sup>30</sup> [http://www.syriinta.fi/documents/10181/10854/55526\\_ihmiskaupparaportti\\_2014\\_fin\\_web.pdf/20fe062b-64c0-4e31-82e1-30cc3ef9392e](http://www.syriinta.fi/documents/10181/10854/55526_ihmiskaupparaportti_2014_fin_web.pdf/20fe062b-64c0-4e31-82e1-30cc3ef9392e)

<sup>31</sup> A recent report from the National Rapporteur on Trafficking revealed that Nigerian female victims of trafficking for the purpose of sexual exploitation had been deported back to Italy where no adequate support system exists. The report covered decisions and justifications of those decision made by the Finnish Immigration Services in 2015-2016 (Jan-July). The report states that no sufficient, individual investigation into victims' (and their children's) circumstances were made to assess the risk of re-victimization was made before deportation. The report is available in Finnish at: [https://www.syriinta.fi/documents/10181/36404/nigerialaisselvitys\\_verkkoon\\_FINAL.pdf/1b136c3b-e80f-4b57-bedc-339f4a12e68b](https://www.syriinta.fi/documents/10181/36404/nigerialaisselvitys_verkkoon_FINAL.pdf/1b136c3b-e80f-4b57-bedc-339f4a12e68b)

<sup>32</sup> [http://www.migri.fi/download/66347\\_1hmiskaupan\\_uhrien\\_auttamisjarjestelman\\_tilannekatsaus\\_2015.pdf?d7c032072c47d388](http://www.migri.fi/download/66347_1hmiskaupan_uhrien_auttamisjarjestelman_tilannekatsaus_2015.pdf?d7c032072c47d388)

<sup>33</sup> Annual report of the non-discrimination ombudsman (2015). Available only in Finnish

<http://www.syriinta.fi/documents/10181/10834/Vuosikertomus+2015/ab60f2a5-de8b-4b09-91de-5f7b6b7de2f8>

<sup>34</sup> Annual report of the non-discrimination ombudsman (2015). Available only in Finnish

<http://www.syriinta.fi/documents/10181/10834/Vuosikertomus+2015/ab60f2a5-de8b-4b09-91de-5f7b6b7de2f8>

<sup>35</sup> Recommendation CP(2015)1 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631bee>

<sup>36</sup> <http://www.finlex.fi/fi/laki/kaannokset/2004/en20040301.pdf>

- Repeal Chapter 9, Section 148 paragraph 6 of the Aliens Act.

# ASYLUM-SEEKERS, REFUGEES AND MIGRANTS (ARTICLE 3 AND 16)

## NON-REFOULEMENT AND ACCESS TO FAIR ASYLUM PROCEDURES<sup>37</sup>

Finland has not amended its legislation and practice in accordance with the recommendations presented by the Committee in its Concluding Observations in 2011. On the contrary, legislative amendments in past years have increased asylum seekers' risk of being subjected to refoulement.

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. 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."<sup>38</sup> 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<sup>39</sup>, 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 of Helsinki, but do not enjoy this right where they seek leave to appeal from the Supreme Administrative Court of Helsinki, unless the Court separately stays an expulsion. 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 accelerated procedures, the applicant can be removed from the country within seven days from receiving the decision from the Immigration Service.

The risks of refoulement are further exacerbated by significant restrictions of legal aid to asylum seekers. Assistance of legal counsel in the first instance, in particular 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.<sup>40</sup> The Public Legal Aid Offices determine whether an applicant is in need of legal counsel during the personal interview.<sup>41</sup> 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.<sup>42</sup> Previously, applicants were also allowed to choose their own counsel. Most sought counsel from specialised lawyers working with the NGO Refugee Advice Centre or for law firms working on migration and refugee law. 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. Public Legal Aid Attorneys do not currently have special expertise to work on refugee law. Currently practice also 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.

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<sup>37</sup> LOIPR, CAT/C/FIN/QPR/7, 15 July 2013, paras. 8 and 9.

<sup>38</sup> Section 196 of the Aliens Act, as in force up to 1 September 2016

<sup>39</sup> Section 196 of the Aliens Act

<sup>40</sup> Aliens Act, Section 9

<sup>41</sup> Legal Aid Act (257/2002)

<sup>42</sup> The legislation was amended recently and came into force on 1 September 2016

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 reasons relating to travel arrangements or lacking 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 a) 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, has been repealed. 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 in recent years had been granted to persons arriving for example from Libya, Yemen, and Somalia. The amendment came into force with retroactive effect. Therefore persons, who have 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 stay in the country as undocumented third country nationals, or they may be forcibly returned by the government.

## DETENTION OF ASYLUM-SEEKERS AND MIGRANTS <sup>43</sup>

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 recently. However, the Aliens Act still 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. Contrary to EU legislation, children have no access to education during their detention. Families with children may be detained where no sufficient alternatives exist, and where the child and a social welfare representative's views have been heard. The Aliens Act provides for no maximum time for the detention of families with children. 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 are being detained, in particular pending their removal from the country. 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. Convicted criminals facing deportation are sometimes held in the same detention centres as asylum seekers and irregular migrants, including children.

Detained persons may be placed in solitary confinement cells, or transferred to police holding facilities. Currently, there is no complaint mechanism regarding this disciplinary measure, 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 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. In addition there is no separation between the sexes in police facilities and men and women are held together. A person may also be transferred from the immigration detention centre to the police detention facility as a sanction or as a precautionary measure. 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

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<sup>43</sup> LOIPR, CAT/C/FIN/QPR/7, 15 July 2013, paras. 9, 20 and 23.

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.<sup>44</sup> 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.<sup>45</sup>

A government bill currently before parliament proposes directed residence as an alternative to detention of asylum-seekers and irregular migrants awaiting return. If passed, 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. Applicants in accelerated asylum procedures may also be subject to directed residence.<sup>46</sup>

Under the proposed law unaccompanied children ages 15-17 could also be subject to directed residence for a maximum time of two weeks, with the possibility of a two weeks extension. During this time the child would not be allowed to leave the premises of the reception centre/housing where they have been directed to stay. Children would 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 “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 detention centre; the length of detention is up to 2 plus 2 weeks; and judicial review is possible only four days after the initial decision to place the child in directed residence. In fact, the proposed law will make the deprivation of liberty of unaccompanied children easier than it is under the current legislation.

## RECOMMENDATION

Amnesty International recommends that the Finnish authorities:

- Ensure the right to suspensive in-country appeal in all asylum determination procedures.
- Ensure access to fair asylum determination procedures, including but not limited to free legal aid and the right to choose counsel, for all asylum-seekers.
- End migration detention of unaccompanied minors and families with children.
- Ensure that detention, and alternatives to detention that restrict the freedoms of asylum-seekers, refugees, and migrants are based on law, necessary, and proportionate in all situations.
- Ensure that no one is placed in solitary confinement unless this is done as a last resort disciplinary measure for a major violation of rules, subject to judicial review, and never for more than 15 days.

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<sup>44</sup> Sections 8 and 26, Act on the treatment of detained aliens and the detention centre 15.2.2002/116 (Laki säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköstä).

<sup>45</sup> Sections 8 and 26, Act on the treatment of detained aliens and the detention centre 15.2.2002/116 (Laki säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköstä).

<sup>46</sup> Government Proposal on changing the Aliens Act, HE 133/2016 vp.

Solitary confinement must never be imposed on children, persons with mental, intellectual or psychosocial disabilities, pregnant or breastfeeding women or parents with infants in prison.

# REHABILITATION OF SURVIVORS OF TORTURE (ARTICLE 14)<sup>47</sup>

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 Helsinki<sup>48</sup> and Oulu<sup>49</sup>, 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. Additionally, rehabilitation services for refugees are provided by the Psychiatric Polyclinic for Immigrants run by the City of Tampere.<sup>50</sup> Meanwhile, a total of 32 476 individuals applied for asylum in Finland in 2015.<sup>51</sup> Even before the significant increase in 2015, thousands of torture survivors in need of treatment have been estimated to reside in Finland.<sup>52</sup>

The operations of the centres are not funded by the State, but by the Finnish Slot Machine Association (RAY). Currently, the centres are required to apply for funding from RAY annually. 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.

## RECOMMENDATIONS

Amnesty International recommends that the Finnish authorities:

- Ensure that all victims of torture in Finland have access to necessary assessments, treatment and rehabilitation.
- The state must fully fund rehabilitation centres and other forms of reparations for torture victims.

<sup>47</sup> LOIPR, CAT/C/FIN/QPR/7, 15 July 2013, para. 17.

<sup>48</sup> Centre for Torture Survivors at the Helsinki Deaconess Institute: <https://www.hdl.fi/en/services/torture-and-trauma>

<sup>49</sup> Rehabilitation Centre for Torture Victims at the Oulu Deaconess Institute (only available in Finnish): <http://www.odlterveys.fi/terveys-ja-kuntoutus/avokuntoutus/kidutettujen-kuntoutus/>

<sup>50</sup> 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>

<sup>51</sup> The Finnish Immigration Service's statistics on the total figures of asylum applications by country in 2015 available at [http://www.migri.fi/download/65010\\_EN\\_tp-hakijat\\_2015.pdf?5118e2f188c2d388](http://www.migri.fi/download/65010_EN_tp-hakijat_2015.pdf?5118e2f188c2d388).

<sup>52</sup> For his doctoral thesis in medicine, Ilkka Pirinen, MD, investigated the state of health of 170 asylum seekers registered at a reception center 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 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>. 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/tortvoffer-wardas-med-knappa-resurser>; Article by the Finnish Broadcasting Company YLE, 29.9.2015 (article in Swedish): <https://svenska.yle.fi/artikel/2015/09/29/finland-daligt-forberett-pa-att-ta-hand-om-tortvoffer>

- Ensure that healthcare professionals are sufficiently trained about torture, its symptoms, consequences and treatment and that necessary services for torture victims are available all over the country.
- Ensure that, beyond rehabilitation, survivors' right to other forms of reparation under international standards are respected.

## ADMISSIBILITY OF EVIDENCE OBTAINED THROUGH TORTURE OR OTHER ILL-TREATMENT (ARTICLE 15)<sup>53</sup>

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.

### RECOMMENDATIONS

Amnesty International recommends that the Finnish authorities:

- Ensure that evidence obtained through cruel, inhuman or degrading treatment or punishment is inadmissible.

## USE OF FORCE BY LAW ENFORCEMENT OFFICIALS (ARTICLE 16)<sup>54</sup>

Amnesty International is concerned about the increase in the use of force by the police<sup>55</sup>, including frequent use of projectile electric shock devices (Tasers) and other less-lethal weapons. In May 2012, a 30-year-old man died in custody at Vantaa police station, after police officers had used an electro-stun device on him eight times while inside the holding facility. In August of the same year, police in Miehikkälä used an electro-stun device against a 14-year-old boy, who was speeding on a moped, injuring his arm. In both cases the

<sup>53</sup> LOIPR, CAT/C/FIN/QPR/7, 15 July 2013, para. 19.

<sup>54</sup> LOIPR, CAT/C/FIN/QPR/7, 15 July 2013, para. 24.

<sup>55</sup> The use of force by the police has increased during this century. Six deaths have occurred following police firearm use during the century, three of which 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 (in Finnish): <http://www.ksml.fi/teemat/sunnuntaisuomalainen/lhmisoikeusi%C3%A4riest%C3%B6-Poliisin-voimakkeiden-k%C3%A4ytt%C3%B6-i%C3%A4%C3%A4-pimentoon/851162>.

prosecution decided not to press charges.<sup>56</sup> In 2014 a Court of Appeal sentenced a police officer to fines for negligent violation of official duty and for negligent bodily injury for a 2011 incident where such device was used on a fleeing person in a stairway causing the person to fall and sustain a brain injury.<sup>57</sup> In September 2016, a District Court ordered the State to pay a compensation of 90 000 euro to the female victim<sup>58</sup>. During 2015, the police used Tasers at least 279 times.<sup>59</sup>

On 6 December 2015, the police used a compressed air riot weapon, FN303, for the first time in a crowd control situation during a demonstration. According to reports, seven shots were fired at protesters taking part to a counter-demonstration against a nationalist procession. According to the National Bureau of Investigation at least one demonstrator suffered an eye injury after being hit by parts of a projectile.<sup>60</sup> In early summer 2016 a decision was made to introduce the weapon permanently after being in test from 2014. During test use the weapon had also been used at a demonstration against nuclear power installations and in at least four instances inside private residences or other indoor locations.<sup>61</sup>

Amnesty International has requested the guidelines on the use of force and use of specific devices given by the National Police Board. The instruction received by the organization was declared classified and almost entirely redacted.<sup>62</sup>

In August 2016 the Deputy Parliamentary Ombudsman issued a decision according to which the supervision and instruction of electro-stun device use should be strengthened.<sup>63</sup> In 2013, the 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.<sup>64</sup>

## RECOMMENDATIONS

Amnesty International recommends that the Finnish authorities:

- Ensure that the use of force of police and law enforcement officials is limited strictly and in accordance with international standards such as the UN Basic Principles on the Use of Force and Firearms.
- Ensure sufficient training, instruction and supervision for police and other law enforcement officials of the use of force and crowd-control devices.
- Ensure transparency and a public debate on the use of all crowd control devices.

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<sup>56</sup> Amnesty International Report 2013, p. 98. Available at [http://files.amnesty.org/air13/AmnestyInternational\\_AnnualReport2013\\_complete\\_en.pdf](http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf); Following the Vantaa incident, the prosecution made a decision not to press charges after the pretrial investigation. News article by Helsingin Sanomat, 8.8.2013 (in Finnish): <http://www.hs.fi/kaupunki/a1375851990107>; Following the Miehikkälä incident, the prosecution decided not to launch a pretrial investigation. News article by Savon Sanomat, 14.8.2012 (in Finnish): <http://www.savonsanomat.fi/kotimaa/Syvt%C3%A4j%C3%A4-Poliisi-sai-ampua-14-vuotiaasta-et%C3%A4lamauttimella/392732>.

<sup>57</sup> Judgement R 13/177 by the Vaasa Court of Appeal on 11.12.2014.

<sup>58</sup> News article by Iltalehti, 23.9.2016 (in Finnish): [http://www.iltalehti.fi/uutiset/2016092322361504\\_uu.shtml](http://www.iltalehti.fi/uutiset/2016092322361504_uu.shtml).

<sup>59</sup> Statistics on the use of force by the police in 2010–2015 by the Police University College; news article by MTV3, 30.12.2015 (article in Finnish): <http://www.mtv.fi/uutiset/kotimaa/artikkeli/etalamauttimen-kaytto-lisaantynyt-suomen-poliisissa-laite-yhdistetty-satoihin-kuolemantapauksiin-maailmalla/5630856>.

<sup>60</sup> News article by the Finnish Broadcasting Company YLE, 14.1.2016:

[http://yle.fi/uutiset/osasto/news/daily\\_fragment\\_of\\_police\\_riot\\_gun\\_pellet\\_extracted\\_from\\_protesters\\_eye/8596675](http://yle.fi/uutiset/osasto/news/daily_fragment_of_police_riot_gun_pellet_extracted_from_protesters_eye/8596675).

<sup>61</sup> The decision by the National Police Board is classified. News article by Helsingin Sanomat, 19.8.2016 (in Finnish):

<http://www.hs.fi/kotimaa/a1471573765265>.

<sup>62</sup> National Police Board ordinance 2020/2013/5595 issued 27 December 2013.

<sup>63</sup> The decision eok 1187/2015 issued 31 August 2016 is available in Finnish at <http://www.eduskunta.fi/eoaratkaisut/eoak+1187/2015>.

<sup>64</sup> The decision eok 4733/2009 issued 15 January 2013 is available in Finnish at

[http://www.eduskunta.fi/triphome/bin/thw.cgi/trip?\\${APPL}=ereopaa&\\${BASE}=ereopaa&\\${THWIDS}=0.16/1476688096\\_23582&\\${TRIP\\_PIFE}=PDF.pdf](http://www.eduskunta.fi/triphome/bin/thw.cgi/trip?${APPL}=ereopaa&${BASE}=ereopaa&${THWIDS}=0.16/1476688096_23582&${TRIP_PIFE}=PDF.pdf).

# COUNTER-TERRORISM<sup>65</sup>

Finland is in the process of criminalizing “travelling with an intent to commit a terrorist crime”. A Government Bill proposing amendments to the Criminal Code to provide for such criminalization is currently before Parliament.<sup>66</sup> Amnesty International is concerned about this proposed amendment as it is vague and open to abuse. In addition, the criminalization of ancillary offences involving conduct which to varying extents 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 to freedom of movement.

A report by the University of Helsinki recently concluded that the Finnish Security Intelligence Service holds so-called informal talks, instead of official and properly monitored interrogations, with individuals who are either suspected of terrorism-related activities or whose relatives are suspected of terrorism.<sup>67</sup> The individuals are denied their right to have a lawyer present during these “talks,” since they are not considered to be formal interrogations. These reports, as well as other counter-terrorism related activities highlight the need for independent and effective oversight of the intelligence service, which currently operates without regular and effective parliamentary oversight.

## RECOMMENDATIONS

Amnesty International recommends that the Finnish authorities:

- Ensure that definitions of terrorist crimes are narrowly defined in accordance with the principle of legality.
- Ensure that human rights are fully respected while countering terrorism, including, but not limited to full procedural guarantees
- Ensure regular, independent and effective oversight of the intelligence services.

## “RENDITIONS” AND SECRET DETENTION<sup>68</sup>

Subsequent to new data published by Amnesty International and other organizations in 2011 and 2012, the Parliamentary Ombudsman of Finland conducted an investigation into Finland’s involvement in the US-led CIA “renditions” and secret detentions programmes. In a report published 2014 the Parliamentary Ombudsman concluded that the Finnish Authorities were not involved in the programme, nor was there any reason to suspect that Finnish territory had been used for prisoner flights knowingly to the Finnish authorities. An effective investigation was hampered by the loss of data that related to the flights.<sup>69</sup> In his report, the Ombudsman proposed that the Ministry of Transport and Communications, the Ministry for Foreign Affairs, and the Finnish Border Guard consider the professional remedies they have at their disposal, including international cooperation, for making it possible to identify “rendition” flights more successfully and to intervene where such flights are identified.

Amnesty International documented links between Finland and known CIA secret detention sites in Lithuania. In particular, two flights had flight plans that connected the aircraft to both Finland and Lithuania: N88ZL in

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<sup>65</sup> LOIPR, CAT/C/FIN/QPR/7, 15 July 2013, para. 25.

<sup>66</sup> Government proposal to change the criminal code and other laws (Hallituksen esitys eduskunnalle laeiksi rikoslain 34 a luvun, pakkokeinolain 10 luvun ja poliisilain 5 luvun muuttamisesta), HE 93/2016 vp

<sup>67</sup> Syrjintä, polarisaatio, nuoriso ja väkivaltainen radikalisoituminen – SYPONUR -väliraportti. Karin Creutz & Juha Saarinen & Marko Juntunen, Svenska social- och kommunalhögskolan vid Helsingfors universitet, 2015

<sup>68</sup> LOIPR, CAT/C/FIN/QPR/7, 15 July 2013, para. 26.

<sup>69</sup> Due to data protection laws, a large part of data connected to the flights had been deleted.

September 2004<sup>70</sup> and N733MA in March 2006<sup>71</sup>. The latter aircraft was connected to so-called “dummy flight plans”, which the 2010 UN Joint study on global practices in relation to secret detention in the context of countering terrorism reported on.<sup>72</sup> The “dummy flight plans” were lodged with aviation authorities in order to conceal the true location of the secret detention facilities. The aforementioned investigation by the Parliamentary Ombudsman did not come to a conclusion on the “dummy flight plans”, therefore the issue remains unresolved. In addition, the Ombudsman’s report concluded that Lithuania did not respond to Finland’s requests for information about the status of these flights.

## RECOMMENDATIONS

Amnesty International recommends that the Finnish authorities:

- Implement the Ombudsman’s proposal that the Ministries of Transport and Communications and Foreign Affairs and the Finnish Border Guard consider measures to identify and address “rendition” flights.
- Continue seeking from Lithuania and other sources information on “dummy flights” and take steps to ensure that Finland is not involved in any such or similar operations in the future.

# FORCED STERILIZATION OF TRANSGENDER PERSONS (ARTICLES 2 AND 16)

Under the Act on legal recognition of the gender of transsexuals (563/2002) (Trans Act)<sup>73</sup> 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.

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

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<sup>70</sup> 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. The aircraft departed the next morning to Washington DC and then onward to Miami. 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.

<sup>71</sup> A Boeing 737 aircraft with the tail number N733MA and registered to Miami Air supposedly landed in Helsinki at 20.37 on 25 March 2006 en route from Porto, Portugal. Lithuanian authorities have later acknowledged that the aircraft landed in Palanga, Lithuania at 22.25 and that it had arrived from Porto.

<sup>72</sup> 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, para 120.

<sup>73</sup> <http://www.finlex.fi/fi/laki/kaannokset/2002/en20020563.pdf>

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.<sup>74</sup>

## RECOMMENDATIONS

Amnesty International recommends that the Finnish authorities:

- Abolish the sterilization requirement and the “real life test” laid out in the Trans Act and the Decree 1053/2002.
- Remove the requirement that transgender individuals receive a psychiatric diagnosis and undergo psychiatric assessment or medical treatment as a precondition for legal gender recognition. Remove transgender identities from the national classification of diseases and ensure that transgender people can access the health treatments they wish on the basis of their informed consent.
- Amend current laws and practices, in particular the Act on Legal Recognition of the Gender of Transsexuals (Trans Act, no. 563/2002) and the Decree 1053/2002 with the aim of allowing transgender people to obtain a new personal identity code on the basis of which official documents reflecting their gender identity can be issued through a quick, transparent and accessible procedure.
- Allow transgender people to change their names without requiring them to undergo psychiatric assessment and receive a psychiatric diagnosis and through a quick, transparent and accessible procedure.
- Amend the Trans Act to ensure that minors can access legal gender recognition on the basis of their best interests and according to their evolving capacities.

## ISSUES SPECIFIC TO INTERSEX PEOPLE

According to a new 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.<sup>75</sup> 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 definition of sex of 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 intersex children for any other reason than medical

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<sup>74</sup> 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/>

<sup>75</sup> Wahlman-Calderaram, Tuula ja Halila, Ritva: Intersukupuolisuus, Taustaraportti ETENE:n kannanottoon. Study available only in Finnish: <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. 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-kannanotto-intersukupuolisten-lasten-hoidosta/> and the Ombudsperson for Children (August 2016): *The Rights of Intersex Children need to be strengthened*, available in Finnish at <http://lapsiasia.fi/tata-mielta/tiedotteet/2016-2/lapsiasiavaltuutettu-intersukupuolisten-lasten-oikeuksia-vahvistettava/>

necessity.<sup>76</sup> In addition, according to ETENE, resources of health care units to support intersex individuals are inadequate.

The operations performed to 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.<sup>77</sup> ETENE calls for respect to 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.

## RECOMMENDATIONS

Amnesty International recommends that the Finnish authorities:

- 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.

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<sup>76</sup> Pediatric surgeon Mika Venhola who works at Oulu University Hospital has publicly denounced surgical interventions of intersex people during childhood.

<sup>77</sup> 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/resource-pdf/Eliminating\\_forced\\_sterilization.pdf](http://www.unfpa.org/sites/default/files/resource-pdf/Eliminating_forced_sterilization.pdf)



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# FINLAND

## SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE 59<sup>TH</sup> SESSION, 7 NOVEMBER-7 DECEMBER 2016

Amnesty International submits this document in advance of the Committee against Torture's consideration of Finland's seventh periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention) in November 2016. The present submission summarizes Amnesty International's concerns regarding Finland's failure to comply with its obligations under the Convention.