

THE CRUEL, INHUMAN AND DEGRADING
TREATMENT OF TRANS AND INTERSEX PEOPLE
IN FINLAND

SUBMISSION TO THE UN COMMITTEE AGAINST TORTURE
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Introduction

This information to the United Nations (UN) Committee against Torture (CAT) in advance of its examination of Finland's seventh periodic report in November 2016 is submitted by two Finnish NGOs: Trasek – association for trans and intersex rights in Finland and Seta – LGBTI Rights in Finland.

The submission focuses on the specific issues of trans and intersex individuals that are relevant for the consideration of Finland's obligations under Articles 2 and 16 (prevention of torture and other cruel, inhuman or degrading treatment committed by public officials); Article 10 (education and information on the prohibition against torture and other cruel, inhuman and degrading treatment in the training of public officials, especially medical personnel); Article 12 (prompt and impartial investigation of alleged acts of torture or other cruel, inhuman or degrading treatment) and Article 14 (victim's right to fair and adequate compensation) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Legal gender recognition for trans people

"I've been in the process for years now, I've done everything they asked for, I'm sterilized. But I still don't know whether I'll be getting my gender legally recognised or not. They say they're busy and I just have to wait. For how long?" –Kasper

Definitions

Trans or transgender people are people whose gender identity is different to the gender they were assigned at birth or whose gender expression differs from the expectations of the gender assigned to them at birth. Some trans people, but not all, wish and are able to transition legally, socially and/or medically for example by changing their legal gender or undergoing gender confirming medical treatment.

Legal gender recognition refers to the change of name and gender in official documents and registries. Lack of legal gender recognition violates trans people's right to privacy and exposes them to discrimination and threat of violence everytime they have to present identity documents that do not match their gender identity. In Finland the legal gender of a person is indicated by a gendered social security number that is marked on a person's ID card and needed for all possible purposes ranging from applying for travel card for public transport, picking up a parcel from the post office, going to the doctor or applying for school or job.

Harmful psychiatric monitoring and forced sterilizations

Trans people in Finland face difficulties in enjoying their universal human rights due to widespread transphobic attitudes, gender stereotypes and discriminatory legislation. According to a recent survey by the EU's Fundamental Rights Agency, almost half of the Finnish trans people surveyed had been discriminated against in the 12 months prior to the survey.¹

One of the most blatant forms of discrimination against trans people in Finland is the current procedure for obtaining **legal gender recognition** that requires trans people to submit to several abusive requirements and violates their right to be free from torture or other cruel, inhuman or degrading treatment.²

According to the **Act on Legal Recognition of the Gender of Transsexuals**³ (the Trans Act), in force since 2003, the gender registered in the Population Information System can be changed only if the applicant presents a **medical statement** certifying that they permanently feel to belong to the “opposite” gender, live in that gender role, and that they have been **sterilized** or are for some other reason infertile. Furthermore **Trans Decree**⁴ issued by the Ministry of Social Affairs and Health in 2002 lays out a framework regulating the psychiatric monitoring process and access to health care for trans people.

In order to obtain the **medical statement necessary for legal gender recognition**, trans people have to undergo a **psychiatric monitoring process** and receive a psychiatric diagnosis – a requirement that many trans people experience as **humiliating, stigmatizing and causing further distress**. The psychiatric monitoring process includes a diagnostic period, minimum 6 months, and a “real life test”, minimum 12 months. Thus the whole process at its minimum takes at least 1,5 years but in reality it is regularly extended up to **2 or even 3 years**. The process is based on outdated gender stereotypes of “woman” and “man” against which the gender identity of the person in question is tested. The diagnostic period consists of interviews and different tests to be completed with a nurse, psychologist and psychiatrist and during the “real life test” trans people are expected to “live according to their preferred gender identity”. During the “real life test”, and in order to achieve the **forced sterilization** required by the Trans Act, trans people are expected to undergo hormone treatment. In case a person is unable to undergo hormone treatment, forced sterilization is carried out by surgery. After these abusive requirements have been accomplished trans people have to request a **second opinion from a second psychiatrist** – and only after that they have a right to legal gender recognition.⁵

Trans people face many obstacles rising from **lack of awareness and transphobic attitudes** when trying to access both **general and trans related health care**. According to a recent study by EU Fundamental Rights Agency⁶ one in five transgender people report inappropriate curiosity by care providers or having their specific needs ignored when seeking general health care and as a reaction trans people often avoid health-care services as much as possible and thus often suffer from a poor state of health⁷. In addition the study, for which also Finnish medical experts were interviewed, found that medical practitioners, even the ones specialized in trans health care, sometimes view trans people as mentally ill or violent, associate them with STDs or even refuse them care⁸.

For example, some trans people have been **refused access to the psychiatric evaluation** that is a prerequisite for gender conforming medical treatment or the medical practitioners have suspended the already ongoing evaluation for long periods of time without assessing the impact of such **forced “breaks”** for the well-being of the person in question⁹. Furthermore **non-binary trans people** who do not identify according to the gender binary have **limited access to state-funded trans health care**¹⁰ and no access to legal gender recognition at all. This is because they are not diagnosed with “transsexualism”¹¹ but with “other gender disorders”¹² – and the Trans Act and its

implementation Decree are interpreted as applying only to those trans people who are able to get the specific diagnosis of “transsexualism”.¹³ In addition, trans person’s **access to hormone or surgical treatments** is often complicated even if a “right” diagnosis has been established. This is due to the fact that the psychiatrist setting the diagnosis only “gives a permission” for the person to access the treatments – but it is up to the other doctors, such as endocrinologist and surgeons, to decide, whether the person actually gets the treatment¹⁴. There are also regularly problems in compensation or reimbursement of the costs of the treatments by the Social Insurance Institution of Finland¹⁵. **Taking into consideration that access to gender conforming treatment is for many trans people a question of life and death, forcing people to go through these unpredictable and arbitrary hurdles in order to get those treatments is cruel and inhuman to say the least.**

The fact that **trans identities are classified as mental disorders** by the Finnish National Institute for Health and Welfare further hinders the access to non-stigmatizing health care for trans people. The National Institute for Health and Welfare recently amended the way ICD-10 is applied in Finland, but decided to keep the classification “transsexualism” under mental illnesses, contrary to the standpoint of World Professional Association for Transgender Health Care¹⁶ and several human rights bodies such as the Council of Europe’s Commissioner for Human Rights and Parliamentary Assembly¹⁷.

In short, the requirements of the Trans Act imply that trans people may have to **undergo medical treatments against their will** for the sole purpose of changing their gender in legal documents. As a Finnish trans person in a report prepared by Amnesty International said:

“I think my body image fits even without hormonal treatment, but hormones are compulsory for me if I wish to have my male gender recognized. The legal gender is crucial in your everyday life; it is marked on your travel card, you need it when you see your doctor, when you apply for education. The thought of my identity number outing me in front of other people is distressing.”¹⁸

As the **UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment** has highlighted several times – forcing trans people to undergo unnecessary medical treatments and psychiatric evaluations is coercive, leads often to severe life-long mental and physical pain and can amount to torture and ill-treatment¹⁹.

Trans youth

Legal gender recognition is not available to minors under any circumstances in Finland. This means that trans youth are exposed to discrimination and threat of violence everytime they have to present their ID documents for years before they even have a possibility to start the process for gaining legal gender recognition. This **absolute denial of legal gender recognition for minors** is not only inconsistent with existing international standards regarding the rights of children, including the priority for the best interest of the child²⁰, but it is also particularly problematic taking into account the alarming situation of trans youth in Finland.

According to a recent study on the well-being of young LGBTI people in Finland, depending on the identification of the person (trans man, trans woman or non-binary), out of the trans youth interviewed for the study **40-58 per cent had faced physical violence** and more than **80 per cent**

had faced harassment and psychological violence. Almost 70 per cent of the trans youth who had experienced violence perceived it as motivated by their gender identity or expression.²¹

The discrimination and violence faced by trans youth has **severe implications for their mental health.** Over 50 per cent of trans youth interviewed for the above-mentioned study had thought about harming themselves or committing suicide. 22 per cent of trans women, 48 per cent of non-binary people and 65 per cent of trans men had carried out acts of self-harm. 24 per cent – **every fourth trans man had attempted suicide.**²²

Furthermore, trans youth face severe barriers in accessing psychological and social support as well as trans specific health care: they are often met with **negative attitudes, disbelief and denied referral to proper professional guidance and treatment,** even though the Trans Act and its complimentary degree in theory provide for the access to the multidisciplinary teams in charge of trans health care at the Helsinki and Tampere University hospitals²³. The World Professional Association for Transgender Health Care²⁴ highlights the importance of not dismissing or expressing negative attitudes towards trans and non-confirming gender identities and recommends acknowledging the presenting concerns and offering a thorough assessment of the child's or adolescent's situation as best practices for interaction between the medical professionals and trans and gender non-confirming youth and their families. However, as these standards are not formalized in the Finnish medical system, the principle of the best interest of the child is ignored and the **public officials,** most notably the school teachers, psychologists and medical staff, **are not adequately trained**²⁵ and thus often **contribute to the discrimination of trans youth,** instead of taking an active role in preventing cruel, inhuman and dehumanizing treatment of trans youth.

Recommendations

Following **international criticism** from the UN CEDAW Committee²⁶, in the UPR process²⁷, and the Council of Europe Commissioner for Human Rights²⁸, and as reported by the Finnish government in their seventh periodic report to the Committee Against Torture²⁹, the Ministry of Social Affairs and Health set up a **working group** to examine the needs to review the Trans Act in 2013. Against the recommendations by the different international actors and against the recommendations of the Trans Act working group, the government decided to remove from the Trans Act only the requirement to be single – a requirement that was in place to prevent same-sex marriages and became irrelevant after the Act on Marriage was amended in 2015 to include same sex couples (as of 2017).

Trasek and Seta recommend Finland to:

- **Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and self-determination as well as physical and psychological integrity of trans persons by developing a legal gender recognition procedure that is quick, transparent and accessible and based on self-determination;**
- **Proceed swiftly to revise the Trans Act and remove abusive preconditions for legal gender recognition such as sterilization and other compulsory medical treatment, as well**

as a psychiatric monitoring process including receiving a mental health diagnosis, as a necessary legal requirements to recognise a person's gender identity;

- Amend the Trans Act to ensure that minors can access legal gender recognition on the basis of their self-determination taking into consideration their best interests and according to their evolving capacities;
- Ensure that trans youth have access to non-biased psychological and social support by providing mandatory training to all relevant professional groups (health care professionals, school teachers) and by providing more support and resources, outside of health care settings, to trans youth and their parents;
- Provide adequate redress for the physical and psychological suffering caused by forced sterilizations and harmful psychiatric monitoring to trans persons;
- Amend national classifications of diseases used at national level, making sure that trans people, including children, are not labelled as mentally ill, while ensuring stigma-free, accessible access to necessary medical treatment for all trans people who need it;
- Ensure that trans specific health care, such as hormone treatment, surgery and psychological support, is accessible for all trans people who need it, that the treatment is based on highest international standards for trans health care and thus corresponds to each person's individual situation instead of arbitrary "disease classifications" and that trans health care is reimbursed by the public health insurance scheme;
- Improve public awareness on trans issues and provide mandatory training to all relevant professional groups, especially health care professionals, in order to safeguard the rights of trans people.

Harmful and unnecessary medical treatments of intersex people

“I’m greatly traumatized by vaginoplastia and other surgeries done to me when I was 14. I was and I am fine with being an intersex person. By deciding to alter my body the doctors wronged me greatly.” –Terhi

Definitions

Intersex individuals are persons who cannot easily be classified according to the strict medical norms of so-called male and female bodies with regard to their chromosomal, gonadal or anatomical sex. The latter becomes evident, for example, in secondary sex characteristics such as muscle mass, hair distribution and stature, or primary sex characteristics such as the inner and outer genitalia and/or the chromosomal and hormonal structure. Intersex is thus a collective term for many **natural variations in sex characteristics** – not a medical condition.³⁰

Normalising surgeries

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 sexes³¹. These operations, performed on intersex babies and toddlers, which are rarely medically necessary frequently cause scarring, sterilization, loss of sexual sensation, pain, incontinence and depression³². The operations on intersex children are performed **without the person’s prior, free and fully informed consent**. The degree to which the parents of intersex children are integrated into the medical examination and decision-making of the treatments in Finland varies according to the University Hospital responsible for the treatment³³. However, parents are rarely given adequate information, time or options necessary to provide fully informed consent.

Out of the five existing University Hospitals in Finland, Oulu University is the only one that refuses to operate intersex children for purely cosmetic reasons, the assistant chief pediatric surgeon Mika Venhola being a vocal critic of the unnecessary and harmful surgeries³⁴.

According to ETENE, the possibilities of health care units to offer **psychological support** or peer support are inadequate³⁵. Peer support available to intersex people has been very limited despite some support services of LGBTI and trans organisations³⁶. Recently (2015) founded internet community (intersukupuolisuus.fi) gathers intersex people together and the website, in addition to experiences of intersex people, provides information for parents and public authorities³⁷.

The National Advisory Board on Social Welfare and Health Care Ethics (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. In addition ETENE recommends that parents should be given broad, non-biased and **fact-based information** about intersex issues, including the consequences of such treatments and informing them that by modifying external sex characteristics it is not possible to influence the child’s later experience of

their gender. Furthermore ETENE calls for health care **professionals to be educated** on the whole spectrum of gender development issues in order to safeguard the rights of intersex children.³⁸

Recommendations

Despite the profound research and recommendations by the Finnish National Advisory Board on Social Welfare and Health Care Ethics (ETENE), recommendation by the Finnish Federation of Midwives to stop unnecessary surgeries³⁹, as well as a recommendation by the Ombudsperson for Children stating that there is an acute need to review the treatment practices of intersex children⁴⁰, there is **no commitment from the government to review the treatment practices and halt the harmful and unnecessary normalising surgeries** that intersex children are subjected to and that gravely violate their right to physical integrity.

Trasek and Seta recommend Finland to:

- **Immediately end medically unnecessary normalising treatment of intersex persons carried out for social or cosmetic purposes, including irreversible genital surgery and sterilisation, that are carried out without the free and fully informed consent of the person concerned;**
- **Take the necessary legislative, administrative and other measures to guarantee the respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to align their physical appearances with either of the binary sexes;**
- **Provide intersex persons and their families with impartial and non-biased information about the consequences of unnecessary and non-urgent surgery and other medical treatments and make interdisciplinary counselling and support, including peer support, available for them;**
- **Guarantee that full, free and informed consent is ensured for possible medical treatments for intersex persons and respect their right not to undergo sex assignment treatments;**
- **Undertake investigation of instances of surgical interventions or other medical procedures performed on intersex people without free and informed consent and ensure that persons concerned are adequately compensated for the physical and psychological suffering caused by these interventions;**
- **Improve public awareness on intersex issues and provide mandatory training to all relevant professional groups, especially health care professionals, in order to safeguard the rights of intersex people.**

Endnotes

- ¹ EU Fundamental Rights Agency LGBT Survey (May 2013), available at <http://fra.europa.eu/en/publication/2013/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-trans-survey-results>
- ² Amnesty International (2014): The State Decides Who I Am – Lack of Legal Gender Recognition for transgender people in Europe. The report includes a study on the specific human rights situation of transgender persons in Finland. Available at: <https://www.amnesty.org/en/documents/EUR01/001/2014/en/>
- ³ Unofficial English translation of the Trans Act available at <http://www.finlex.fi/en/laki/kaannokset/2002/en20020563>.
- ⁴ Ministry of Social Affairs and Health Decree 1053/2002 on the organization of the examination and treatment aimed at changing gender, as well as on the medical statement for confirmation of the gender of a transsexual. Unofficial English translation <http://trasek.fi/wp-content/uploads/2011/03/TransDecree2003.pdf>
- ⁵ Amnesty International (2014): The State Decides Who I Am – Lack of Legal Gender Recognition for transgender people in Europe – see link above.
- ⁶ European Union Agency for Fundamental Rights: Professionally speaking challenges to achieving equality for LGBT people (2016), available at <http://fra.europa.eu/en/publication/2016/professional-views-lgbt-equality>
- ⁷ European Union Agency for Fundamental Rights: Professionally speaking challenges to achieving equality for LGBT people (2016), see link above.
- ⁸ European Union Agency for Fundamental Rights: Professionally speaking challenges to achieving equality for LGBT people (2016), see link above.
- ⁹ Information based on Seta / Trans Support Center & Trasek counseling services.
- ¹⁰ The treatments available for people who are not diagnosed with “transsexualism” depend on the practices followed by the different Trans Units of the University Hospitals of Helsinki and Tampere providing the health care services. People who are diagnosed with “other gender identity disorders” (F64.8) or “gender identity disorders, unspecified” (F64.9) are excluded from state funded genital surgery and do not get full state funding for hormone treatment.
- ¹¹ F64.0:transsexualism of the International Classification of Diseases (ICD-1), available at <http://apps.who.int/classifications/icd10/browse/2010/en>
- ¹² F 64.8: other gender identity disorders; F 64.9: gender identity disorders, unspecified, of the International Classification of Diseases (ICD-10), available at <http://apps.who.int/classifications/icd10/browse/2010/en>
- ¹³ Amnesty International (2014): The State Decides Who I Am – Lack of Legal Gender Recognition for transgender people in Europe – see link above; see also European Union Agency for Fundamental Rights: Professionally speaking challenges to achieving equality for LGBT people (2016), see link above.
- ¹⁴ Information based on Seta / Trans Support Center & Trasek counseling services.
- ¹⁵ Information based on Seta / Trans Support Center & Trasek counseling services.
- ¹⁶ World Professional Association for Transgender Health (WPATH), Standards of Care Version 7 (2012), available at: http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351
- ¹⁷ Council of Europe Parliamentary Assembly Resolution Discrimination against transgender people in Europe 2048(2015), see link above, The Council of Europe Commissioner for Human Rights, Issue Paper Human Rights and Gender Identity (2009), available at <https://wcd.coe.int/ViewDoc.jsp?p=&id=1476365&direct=true>
- ¹⁸ Amnesty International (2014): The State Decides Who I Am – Lack of Legal Gender Recognition for transgender people in Europe, page 44 – see link above
- ¹⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement>
- ²⁰ See e.g. Committee on the Rights of the Child, Concluding observations – Chile, CRC/C/CHL/CO/4-5, paras. 34–35.
- ²¹ K. Alanko, “How are young LGBTI people doing in Finland? Seta and the Finnish Youth Research 2013”, available at <http://www.youthresearch.fi/publications/abstracts/how-are-young-lgbtiq-people-doing-in-finland>
- ²² K. Alanko, “How are young LGBTI people doing in Finland? Seta and the Finnish Youth Research 2013”, see link above.
- ²³ Information based on Trans Support Center & Trasek counseling services.
- ²⁴ World Professional Association for Transgender Health (WPATH), Standards of Care Version 7 (2012), available at: http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351
- ²⁵ European Union Agency for Fundamental Rights: Professionally speaking challenges to achieving equality for LGBT people (2016), see link above.

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- ²⁶ CEDAW Committee, Concluding observations CEDAW/C/FIN/CO/7, para 29, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fFIN%2fCO%2f7&Lang=en
- ²⁷ Universal Periodic Review, Second Cycle Finland, Matrices of Recommendation, Recommendation 90.8., available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/FISession13.aspx>
- ²⁸ Report by CoE Commissioner for Human Rights Nils Muiznieks following his visit to Finland from 11 to 13 June 2012, Para 108, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2228665&SecMode=1&DocId=1979238&Usage=2>
- ²⁹ Finland's 7th periodic report to the CAT Committee, Para. 270, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2fFIN%2f7&Lang=en
- ³⁰ Council of Europe Commissioner for Human Rights, Issue Paper on Human Rights and Intersex people (2015). Available at [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper%282015%291&Language=lanAll&Ver=original&direct=true;FRA European Union Agency for Fundamental Rights: The Fundamental Rights Situation of Intersex People \(2015\)](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper%282015%291&Language=lanAll&Ver=original&direct=true;FRA%20European%20Union%20Agency%20for%20Fundamental%20Rights%20-%20The%20Fundamental%20Rights%20Situation%20of%20Intersex%20People%20(2015)), available at <http://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people>
- ³¹ Finnish National Advisory Board on Social Welfare and Health Care Ethics (2016): Report and a position paper on the treatment of intersex individuals (2016), Available in Finnish at: http://etene.fi/artikkeli/-/asset_publisher/etene-ja-intersukupuolisten-lasten-hoito?p_p_auth=nyLu6gbv
- ³² Council of Europe Commissioner for Human Rights, Issue Paper on Human Rights and Intersex people (2015), see link above, FRA European Union Agency for Fundamental Rights: The Fundamental Rights Situation of Intersex People (2015), see link above.
- ³³ Finnish National Advisory Board on Social Welfare and Health Care Ethics (2016): Report and a position paper on the treatment of intersex individuals (2016), see link above.
- ³⁴ Council of Europe: Video interview with Mika Venhola and an intersex activist Kitty Anderson (2016): <https://www.youtube.com/watch?v=3e08EwDyS2c>
- ³⁵ Finnish National Advisory Board on Social Welfare and Health Care Ethics (2016): Report and a position paper on the treatment of intersex individuals (2016), see link above.
- ³⁶ Seta's Trans Support Center and Trask provide support also to intersex children and adults as well as their parents.
- ³⁷ More information available in Finnish at intersukupuolisuus.fi
- ³⁸ Finnish National Advisory Board on Social Welfare and Health Care Ethics (2016): Report and a position paper on the treatment of intersex individuals (2016), see link above.
- ³⁹ Finnish Federation of Midwives (May 2016), Statement: Intersex children have the right to self-determination of their gender, available in Finnish at <http://intersukupuolisuus.fi/2016/05/04/katiloitton-kannanotto-intersukupuolisten-lasten-hoidosta/>
- ⁴⁰ Ombudsperson for Children (August 2016) Statement: The Rights of Intersex Children need to be strengthened, available in Finnish at <http://lapsiasia.fi/tata-mielta/tiedotteet/2016-2/lapsiasiavaltutettu-intersukupuolisten-lasten-oikeuksia-vahvistettava/>