



FINLAND

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE
FOLLOW-UP TO THE CONCLUDING OBSERVATIONS, JULY 2018

AMNESTY
INTERNATIONAL



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1. INTRODUCTION

In November 2016, the Committee against Torture (the Committee) expressed concern over Finland's compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). We submit this briefing to assist the Committee in identifying on-going areas of concern as a commentary on the information received from Finland on follow-up to the concluding observations.¹

This submission focuses on some of the human rights concerns the government of Finland addressed in its reply to the follow-up procedure²: statistics on detention, violence against women and domestic violence, and trafficking in persons. This submission covers additional issues beyond the specific questions identified by the Committee for follow-up because the government of Finland availed itself of the opportunity to inform the Committee about its plans for implementing the remaining recommendations by the Committee.³

While the recommendations relating to non-refoulement were not identified for follow-up, nor were they commented on by the government of Finland in its follow-up submission, Amnesty International remains concerned that the legislative changes put in place in 2016, which reduced legal safeguards for asylum seekers continue to increase the risk of refoulement.

2. PARAGRAPH 13 (F): STATISTICS ON DETENTION

The Committee recommended that Finland set up a mechanism to monitor and provide statistics, disaggregated by sex, age, ethnicity and country of origin, on asylum seekers and undocumented immigrants detained under the Aliens Act.⁴ In its reply, Finland notes that such a mechanism already exists to a certain extent and refers to the POLSTAT system wherein data on individuals detained by the Border Guard is collected.⁵ However, as this system only contains data on detentions by the Border Guard, the majority of detained asylum seekers and migrants fall outside of its scope as they are detained by the Police. Individuals are very rarely detained by the Border Guard. Statistics on detention remain scattered and incomplete. Amnesty International has continuously raised concerns with the Finnish government on the lack of comprehensive statistics on detention of asylum seekers and migrants.

¹ UN doc.CAT/C/FIN/CO/7

² UN doc.CAT/C/FIN/CO/7/Add.1

³ para 34, UN doc.CAT/C/FIN/CO/7

⁴ Aliens Act, 301/2004

⁵ UN doc.CAT/C/FIN/CO/7/Add.1

3. PARAGRAPH 29(A): NATIONAL ACTION PLAN ON VIOLENCE AGAINST WOMEN

The Committee recommended that Finland draw up a new national action plan to reduce violence against women, ensuring that it receives adequate funding, and effectively implement the key provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention). In its follow-up reply, Finland mentions that a committee on combating violence against women and domestic violence (i.e. Administrative Committee) was set up to promote and monitor the implementation of the Istanbul Convention.⁶

However, the Administrative Committee in question has not been properly resourced. The work of the Administrative Committee is conducted within the budgetary constraints of the existing budgets of various ministries and relies on the human resources of existing bodies. While action plans to combat violence against women have been developed (for example the Finnish Action Plan for the Istanbul Convention for 2018–2021)⁷, a continuous lack of resourcing of these plans impede their implementation. In addition, neither women's, nor victims' support organizations are represented in the Administrative Committee.

Finland must allocate earmarked funding to combat violence against women and ensure that women's rights organisations and NGOs providing victim support can meaningfully participate in the Administrative Committee, tasked with coordinating the implementation and monitoring of the Istanbul Convention.⁸

4. PARAGRAPH 29(D): PROTECTION OF VICTIMS

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

Serious challenges remain in fulfilling this recommendation. From the beginning of 2016, the cost for applying for a restraining order is 250 euros. This sum is payable only if the application is refused. The introduction of this payment places undue financial burden on the victim and complicates in particular access to help and legal services for the most vulnerable victims.

Mediation remains widely used in cases concerning crimes of domestic violence and violence against women. The number of domestic violence cases referred to mediation was 2,300 in 2016. The outcome of mediation in cases concerning violence by intimate partners or domestic violence is unpredictable. There are diverging views among prosecutors in Finland as to whether criminal proceedings should be conducted alongside mediation.⁹

⁶ UN doc.CAT/C/FIN/CO/7/Add.1

⁷ Finnish Action Plan for the Istanbul Convention for 2018–2021

https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/160403/18_2017_Istanbulin%20sopimuksen%20tps%202018-21%20englanti.pdf

⁸ For a comprehensive and recent presentation on the situation of violence against women in Finland, see Amnesty International's submission to GREVIO: Finland: Insufficient implementation of the Istanbul Convention, April 2018. <https://rm.coe.int/amnesty-international-submission-for-the-grevio-of-finland-final/16808b161d>

⁹ The number of domestic violence cases referred to mediation: 1058 cases in 2010, 1929 cases in

Amnesty International opposes the use of mediation in domestic violence cases as these are not appropriate methods to deal with crimes of violence against women. Mediation undermines the principle of equality before the law, and frequently leads to repeated re-victimization of women at risk.¹⁰ Although mediation is not mandatory, the continued rise in the number of cases referred to mediation indicates a worrying trend where the best interests of the victim are not adequately considered.¹¹ Finland must provide clear guidelines on the use of mediation, including appropriate safeguards and ensuring that mediation is used sparingly in domestic violence cases and only when it is in the best interest of the victim and that it is practiced only by mediators who have received special training in dealing with issues of domestic violence in the context of mediation. Mediation should not be used as an alternative to criminal proceedings when this is not appropriate and not in the victim's best interest and it should not impede access to justice for victims.

5. PARAGRAPH 29(E): DEFINITION OF RAPE

The Committee recommended that Finland revise the definition of rape in national legislation so that it includes lack of consent, increase the number of rape crisis centres and ensure a higher rate of reporting; strengthen the support services available to victims of sexual violence and develop a low-threshold service network that also provides long-term support.

The Finnish Criminal Code¹² continues to categorize rape according to the degree of physical violence used or threatened by the perpetrator. Amnesty International agrees with the Committee that the definition of rape should be revised to be based on the lack of consent rather than the degree of violence used or threatened by the perpetrator in line with international law and standards.

Amnesty International is also concerned that the current legislation does not sufficiently protect institutionalized or hospitalized individuals from sexual violence. Situations where a person abuses a position of authority and commits sexual violence against a person towards whom he has a duty of care are defined as sexual abuse, not rape, and carry a lesser sentence. Using the position of authority in effect plays out as a mitigating, not aggravating, factor. Amnesty International continues to recommend that using a position of authority should be considered an aggravating factor and non-consensual sexual acts involving penetration against institutionalized or hospitalized individuals should be defined as rape.

Despite the high prevalence of sexual violence, the state has a very poor support service network for victims. Specialized support services are scarce and fall short of international standards.¹³ In

2011 and 2070 cases in 2012. In 2012 domestic violence cases amounted to 17 per cent of all the cases referred to mediation. Mediation in Criminal Cases, statistics available at <https://thl.fi/fi/tilastot-ja-data/tilastot-aiheittain/aikuisten-sosiaalipalvelut/rikos-ja-riita-asioiden-sovittelu> (only in Finnish).

¹⁰ The Committee on the Elimination of Discrimination against Women also expressed its concern about the wide use of mediation in partner violence and domestic violence in its follow up letter to the government of Finland on 25 August 2010, see <http://www2.ohchr.org/english/bodies/cedaw/docs/followup/Finland.pdf>

¹¹ According to National Research Institute of Legal Policy there are different practices between prosecutors even within same city (Sambou & Uotila 2010; Lähisuhdeväkivallan sovittelun haasteet. Oikeus 2010/39, 167-176). More recently researcher Tiina Qvist from the University of Lapland and professor Päivi Honkatukia from Tampere University have studied mediation, expressing the need for critical assessment & development of the procedural justice (see: https://helda.helsinki.fi/bitstream/handle/10138/152425/honkatukia_uhrit_rikospros_summary.pdf?sequence=3). Minister of Family Affairs and Social Services Annika Saarikko expressed her concern about mediation of intimate partner violence and violence against women in general in a round table meeting in 2018 (https://stm.fi/artikkeli/-/asset_publisher/ministeri-saarikko-ja-tasa-arvotoimijat-keskustelevat-naisiin-kohdistuvasta-vakivallasta).

¹² Criminal Code, 39/1889.

¹³ There is only one Sexual Assault Support Center in Finland and only couple of non-governmental organizations that are specialized in supporting victims of sexual violence. Rape Crises Center Tukinainen has three offices (in Helsinki, Jyväskylä and Rovaniemi). Services are clearly not adequate, in the light of prevalence of sexual violence in Finland nor in

Finland, there are not enough services for victims of rape or of other sexual violence at the moment, and existing services are often uncoordinated. Despite national recommendations, a consistent chain of care to help victims has been created in only a few areas. The lack of coordination increases the risk of the victim being left without help.¹⁴

In May 2017, the first Sexual Assault Support Centre was opened at the Women's Hospital in the capital, Helsinki. The support centre serves all people over the age of 16 who have experienced sexual assault within the last month regardless of sex or gender. Amnesty International welcomes plans to open similar Sexual Assault Support Centres in other cities. Nevertheless, the need remains for a nationwide, low threshold service network, available for victims of all forms of sexual violence, providing also long-term support, and providing support irrespective of how long ago the crime was committed. Adequate resources for the Support Centres as well as other support services must also be ensured, as the Committee recommends.

6. PARAGRAPH 29(F): SHELTERS FOR VICTIMS

The Committee recommended that Finland provide safe and adequately funded shelters for victims and their children, including for victims of so called honour-based violence, throughout the country. While Finland has indeed increased funding for victim shelter services, the risk for unexpected costs still rests with the service provider and funding remains insufficient to cover the number of needed family places. According to the National Institute for Health and Welfare, clients were referred to another shelter due to lack of space 1,198 times in 2016. The regional coverage of the shelter network has been improved, and the number of family places has grown from 123 to 185 in three years. That is still less than half of the recommended number per people by the Council of Europe, according to which there should be 550 family places in victim shelters in Finland. According to the National Institute for Health and Welfare, the annual cost of a shelter network compatible with the recommendation is approximately 40 million euros.¹⁵

Out of the 26 shelters in Finland, 20 are maintained by NGOs and funded by the State. NGOs are not permitted to use state funds allocated for shelters on services for clients who are not using shelter services, but seek help and support from open services, as external clients to shelters. This impedes the development of services for victims of violence who need support, but who do not wish to stay in the shelter. Concretely this means that early intervention and prevention services, peer groups for victims of violence, perpetrators programs and outreach services are not provided nationwide nor systematically due to lack of funding. Effective prevention of violence requires these kinds of services as well as shelter services.¹⁶

the light of international standards. The estimated number of women annually experiencing sexual violence is 58 000 (according to Statistic Finland, based on the study conducted by the European Union Agency for Fundamental Rights in 2014: In Finland 3% of all women over 15 have experienced sexual violence by a partner or non-partner in the 12 months prior to the interview. See: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>). The minimum standard of Rape Crises Centres is one per 200 000 women, according to Council of Europe ([https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\(2007\)Study%20rev.en.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF(2007)Study%20rev.en.pdf)). This means there should be one in every region, and all together approximately 14 Centres in Finland.

¹⁴ Chain of care to help victims of sexual violence. National Institute for Health and Welfare (THL). Directions 5/2016. See summary in English: https://www.julkari.fi/bitstream/handle/10024/130504/URN_ISBN_978-952-302-625-4.pdf?sequence=1

¹⁵ See, for example Amnesty International's study on municipalities (2017): <https://frantic.s3.amazonaws.com/amnesty-fi/2017/01/Amnestyn-kuntaselvitys-naisiin-kohdistuvasta-v%C3%A4kivallasta.pdf> Only available in Finnish.

¹⁶ See Council of Europe minimum standards of support services, [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\(2007\)Study%20rev.en.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF(2007)Study%20rev.en.pdf)

7. PARAGRAPH 29(H): FORCED MARRIAGE

The Committee recommended that Finland include forced marriage as a distinct criminal offence in the Criminal Code. Contrary to the follow-up report by Finland, the current legislation is not adequate, as noted in an exploratory memo from October 2017 commissioned by the Ministry of Justice.¹⁷ The assumption that other crimes, such as trafficking in human beings, should cover forced marriage is incorrect.

8. PARAGRAPH 31 C): TRAFFICKING IN PERSONS

While the Committee recommended that Finland increase protection for victims of trafficking, under current legislation and policies, victims of human trafficking are still not entitled to support services provided to victims of gender-based violence against women. Their access to services depends on their willingness to testify against their perpetrators.

According to a report published in March 2018 by the Non-Discrimination Ombudsman and the European Institute for Crime Prevention and Control (HEUNI), the identification of victims of trafficking is hampered by a lack of expertise about trafficking as well as a lack of resources at the municipal level and among the police, and a lack of resources and trust towards the official assistance system by NGOs in the field.¹⁸ Uncertainties about the victim's legal status and conflicts between different legal processes further hamper the identification of victims. In addition to the Committee, several institutions and NGOs have stressed the need for more systematic training and guidelines for professionals who may encounter victims of trafficking to identify and support them.¹⁹

The reports by the Equality Ombudsman²⁰ and HEUNI²¹ stressed the need to decouple assistance and support from criminal proceedings and the need for a separate, victim-centred law on identification of, and assistance to, victims of trafficking. Currently the process is uncertain and unclear and potentially creates a barrier for victims of trafficking to seek and receive support to which they are entitled.

¹⁷ pakkoavioliittojen esiintyminen ja ilmitulo Suomessa. Study commissioned by Ministry of Justice, 18.10.2017, <https://oikeusministerio.fi/documents/1410853/4750802/Avioliittoon+pakottaminen+-+selvitysmuistio+2017+HY.pdf/8b68f4a4-8c0e-43e0-9314-a40af9e4c56f/Avioliittoon+pakottaminen+-+selvitysmuistio+2017+HY.pdf.pdf> (available only in Finnish)

¹⁸ Tuntematon tulevaisuus: selvitys ihmiskaupan uhrien auttamista koskevan lainsäädännön toimivuudesta, HEUNI, 16.3.2018, <https://tietokayttoon.fi/julkaisu?pubid=25401> (available only in Finnish)

¹⁹ For example reports by the Finnish National Rapporteur on Trafficking, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA). See, for example: Nigerianlaistaustaiset seksuaalisesti hyväksikäytetyt ihmiskaupan uhrit Suomessa:ulkomaalaislain soveltamiskäytäntö https://www.syrjinta.fi/documents/10181/36404/nigeriaisselvitys_verkkoon_FINAL.pdf/1b136c3b-e80f-4b57-bedc-339f4a12e68b (available only in Finnish)

²⁰ Nigerianlaistaustaiset seksuaalisesti hyväksikäytetyt ihmiskaupan uhrit Suomessa:ulkomaalaislain soveltamiskäytäntö https://www.syrjinta.fi/documents/10181/36404/nigeriaisselvitys_verkkoon_FINAL.pdf/1b136c3b-e80f-4b57-bedc-339f4a12e68b (available only in Finnish)

²¹ Tuntematon tulevaisuus: selvitys ihmiskaupan uhrien auttamista koskevan lainsäädännön toimivuudesta, HEUNI, 16.3.2018, <https://tietokayttoon.fi/julkaisu?pubid=25401> (available only in Finnish)

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