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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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INTRODUCTION

Amnesty International submits this briefing to the Human Rights Committee ahead of its examination in July 2013 of Finland's sixth periodic report on the implementation of the International Covenant on Civil and Political Rights (the Covenant or ICCPR).¹

The document highlights a number of ongoing human rights concerns in Finland in relation to several questions on the Committee's list of issues to be taken up in connection with its review of the state report.² In particular, Amnesty International remains concerned at:

- the use of Finnish territory, airspace and flight records systems by the US Central Intelligence Agency's (CIA) rendition and secret detention programmes.
- discrimination against transgender and intersex people.
- Finland's failure to adequately protect women from gender-based violence.
- the detention of foreigners solely for immigration control purposes and in particular the detention of unaccompanied or separated children and other vulnerable individuals.
- the continued imprisonment of objectors to military service.
- the lack of an effective and impartial monitoring mechanism for forced removals of foreigners.

COUNTER-TERRORISM MEASURES AND RESPECT FOR RIGHTS GUARANTEED IN THE COVENANT

(QUESTION 3 ON THE LIST OF ISSUES)

In October 2011, Amnesty International published new evidence that a number of aircraft connected to the US Central Intelligence Agency's (CIA) rendition and secret detention programmes had landed in Finland between 2001 and 2006.³ Previously, only three suspected rendition flights had been documented as having landed in Finland.⁴ In response

¹ Finland's sixth periodic report on the implementation of the ICCPR is available at: <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-FIN-6.doc>.

² The Committee's list of issues to be taken up in connection with the review of Finland's state report is available at: http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceVersions/CCPR-C-FIN-Q-6_en.pdf.

³ Press release by Amnesty International Finland, "Amnesty löytänyt lisää Suomen kautta kulkeneita mahdollisia vankilentoja", 10 October 2011.

⁴ 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

to the information from Amnesty International, the Ministry of Foreign Affairs released new information recording 250 landings in Finland by aircraft linked to the CIA rendition programmes.⁵ This, together with the other evidence described below, suggests that Finnish territory, airspace and flight records systems were used by the US CIA rendition and secret detention programmes.⁶

There are also documented links between Finland and Lithuania, where the authorities have acknowledged that two secret CIA detention sites were established between 2002 and 2004.⁷ For example, on 20 September 2004 a Boeing 707 aircraft with the tail number N88ZL arrived from Bagram, Afghanistan and landed at Helsinki-Vantaa airport in Finland with 13 passengers on board. That aircraft is also reported to have landed in Lithuania, on its way from Bagram, on the same day it was photographed in Finland.⁸ The aircraft departed the next morning to Washington DC⁹ and then onward to Miami¹⁰. 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 2004.¹¹

Detention, and the Working Group on Enforced and Involuntary Disappearances” (UN Joint Study on Secret Detention), (UN Doc: A/HRC/13/42) 19 February 2010. See also the response by Finland to a written question at the Nordic Council of Ministers (Kirjallinen kysymys, CIA-lennoista Pohjoismaissa, E8/2007 Dnro: 07-392-01), 2 April 2007.

⁵ Press release by the Ministry for Foreign Affairs of Finland, “Flight information requested by Amnesty International released on human rights grounds”, 3 November 2011, available at: <http://formin.finland.fi/public/default.aspx?contentId=233396&nodeId=23&contentlan=1&culture=fi-FI> (accessed 29 April 2013).

⁶ For further information regarding these flights see Amnesty International public statement, Finland: Further investigation into USA rendition flights needed (Index EUR 20/001/2011) 9 November 2011, <http://www.amnesty.org/en/library/info/EUR20/001/2011/en>.

⁷ For further information, see Amnesty International, Lithuania: Unlock the truth: Investigate secret prisons now (Index EUR 53/002/2011) 29 September 2011, <http://www.amnesty.org/en/library/info/EUR53/002/2011/en>.

⁸ The aircraft was photographed on the runway in Finland by three flight enthusiasts. See: http://www.airliners.net/search/photo.search?aircraft_genericsearch=&airlinesearch=&countrysearch=Finland&specialsearch=&keywords=N88ZL&sort_order=photo_id+desc&page_limit=15&daterange=&range=&thumbnails=&engine_version=6.0 (accessed 29 April 2013). See also Matthew Cole, “Lithuanian President Announces Investigation into CIA Secret Prison”, ABC News, 21 October 2009, available at: <http://abcnews.go.com/Blotter/lithuania-investigating-secret-cia-prisons/story?id=8874887> (accessed 29 April 2013).

⁹ The arrival and departure of this plane was also noted in the aviation data released by the Ministry for Foreign Affairs and the Ministry of Transport and Communications on 3 November 2011, see <http://formin.finland.fi/public/default.aspx?contentId=233396&nodeId=23&contentlan=1&culture=fi-FI> (accessed 29 April 2013).

¹⁰ Nachweisliche Schweizer Landungen von Jets, die in Guantánamo waren, Blick, 1 February 2006, <http://www.blick.ch/news/ausland/nachweisliche-schweizer-landungen-von-jets-die-in-guantanamo-waren-id1672523.html> (accessed 29 April 2013).

¹¹ UN Joint Study on Secret Detention, paragraph 120.

The UN Joint study further noted that “dummy” flight plans had been filed in other countries in order to conceal flights to Lithuania.¹² In press reports, Finland was mentioned as one of the countries where “dummy” flight plans were filed.¹³ The aviation data released by the government of Finland contained a record of a Boeing 737 aircraft with the tail number N733MA and registered to Miami Air, which supposedly landed in Helsinki at 20.37 on 25 March 2006 en route from Porto, Portugal.¹⁴ Lithuanian authorities had acknowledged in a parliamentary report in 2009 that the aircraft had landed in Palanga, Lithuania at 22.25 and that it had arrived from Porto.¹⁵ Media reports suggested that the plane could have landed in both countries.¹⁶ Faced with questions about this particular flight, the Finnish authorities confirmed that the aircraft had never landed in Finland, and that the marking for N733MA referred to a flight plan that had never been realized.¹⁷ This “dummy” flight plan appeared to confirm earlier reports that Finland had been used as a destination to conceal flights to and from the secret detention facility in Lithuania. Former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin stated to news media that “dummy” flight plans had been used in the rendition programme and that Helsinki had been used as a “dummy” destination for flights to Lithuania.¹⁸ Lawyers for Abu Zubaydah, a so-called “high value” detainee currently detained at Guantánamo Bay, have alleged that there is a link between the 25 March 2006 flight and Abu Zubaydah’s departure from a secret detention site in Lithuania.¹⁹ They also allege that a series of steps – including the lodging of “dummy” flight plans – were taken to ensure that the precise flight on which Abu Zubaydah was transported out of Lithuania could not be identified.

In September 2012, the European Parliament called on EU Member States such as Finland

¹² UN Joint Study on Secret Detention, paragraph 120.

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

¹⁴ See aviation data released by the Ministry for Foreign Affairs and the Ministry of Transport and Communications <http://formin.finland.fi/public/default.aspx?contentId=233396&nodeId=23&contentlan=1&culture=fi-FI>.

¹⁵ Findings of the parliamentary investigation by the Seimas Committee on National Security and Defence concerning the alleged transportation and confinement of persons detained by the Central Intelligence Agency of the United States of America in the territory of the Republic of Lithuania”, 22 December 2009, p. 4, http://www3.lrs.lt/pls/inter/w5_show?p_r=6143&p_k=2 (accessed 29 April 2013).

¹⁶ Suspected CIA prisoner rendition plane “disappeared” in Helsinki in March 2006, Helsingin Sanomat, 1 November 2011 (accessed 29 April 2013).

¹⁷ Elina Kalliokoski, a representative of Finavia, confirmed to Helsingin Sanomat that the flight had never landed in Finland, see Suomi saattoi olla CIA:n valekohde, Helsingin Sanomat, 4 November 2011. Article on file with Amnesty International.

¹⁸ Suomi saattoi olla CIA:n valekohde, Helsingin Sanomat, 4 November 2011. Article on file with Amnesty International.

¹⁹ See Crofton Black, “New flight data, emerging from an unwilling Finnish government, raises more questions than it answers,” Reprive, Nov. 1, 2011, available at http://www.reprive.org.uk/articles/2011_11_01_new_flight_data_emerges/ (accessed on 29 April 2013) and Abu Zubaydah v Lithuania, Additional filings by the applicant, 10 September 2012, paras 17-25, available at <http://www.interights.org/abu-zubaydah-v-lithuania/index.html> (accessed on 29 April 2013).

to “disclose all necessary information on all suspect planes associated with the CIA and their territory”.²⁰

In 2012, the Parliamentary Ombudsman initiated an investigation into the use of Finnish territory, airspace and flight records systems in the CIA rendition programme. Among other things, the Ombudsman has the power to review classified information, to issue public reports on human rights violations or other abuses by government officials, and to lay charges against any state actor who may have committed crimes in the course of official duties. In November, the Ombudsman sent detailed written requests for information to fifteen government agencies and requested responses by 28 February 2013.²¹ In March 2013, the Finnish Ministry for Foreign Affairs published its response to the Ombudsman’s inquiry.²² According to the reply, the Finnish Ministry for Foreign Affairs has sought information from the Lithuanian authorities on flight N88ZL. At the time of publication of its reply, the Ministry for Foreign Affairs had not yet received a reply from Lithuania.²³ No other agency has made its response public to date.

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

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

²⁰ European Parliament resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: follow-up of the European Parliament TDIP Committee report (2012/2033(INI)), para 17, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0309&language=EN> (accessed 29 April 2013).

²¹ Oikeusasiamies pyytää selvityksiä CIA:n vankilentoasiassa, <http://www.oikeusasiamies.fi/Resource.phx/pubman/templates/2.htx?id=929> (accessed on 29 April 2013).

²² Report of the Ministry for Foreign Affairs to the Parliamentary Ombudsman concerning rendition flights, Statements 3/1/2013, available at <http://formin.finland.fi/public/default.aspx?contentid=271313&nodeid=15145&contentlan=2&culture=en-US> (accessed 29 April 2013).

²³ Ibid. Reply to the Ombudsman’s question 8, page 12.

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

Currently, the Finnish Security Intelligence Service operates without any parliamentary oversight. However, the new data on rendition flights signals the need for Finland to bring all its intelligence activities under independent, parliamentary oversight.²⁴

NON-DISCRIMINATION, EQUALITY BETWEEN MEN AND WOMEN (ARTS. 2, PARA 1, 3, 20 AND 26)

DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY (QUESTION 7 ON THE LIST OF ISSUES)

In the context of the Universal Periodic Review (UPR) process Finland committed to increase its efforts in the field of discrimination on grounds of sexual orientation and gender identity, inter alia, by a review of national legislation and administration with a view to eliminate discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people.²⁵

However, transgender and intersex people continue to face discrimination by the authorities as well as by members of the general public. Anti-discrimination legislation as well as legislation on hate crime both still lack explicit reference to gender identity and expression as grounds for discrimination or hate crime. Furthermore, legal requirements for gender reassignment to be recognized in official documentation still require that individuals be sterilized, either through surgery or hormonal treatment, and a diagnosis of gender dysphoria. For the new gender of an individual who underwent gender re-assignment to be legally recognized the individual may not be married or living in a registered partnership.²⁶ Intersex

²⁴ See UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Human Rights Council, A/HRC/13/37, para.68; UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Human Rights Council, A/HRC/14/46, paras 13-15.

²⁵ See Report of the Working Group on the Universal Periodic Review – Finland, UN Doc. A/HRC/21/8, 5 July 2012, para 90.8, http://www.un.org/ga/search/view_doc.asp?symbol=A%20/HRC/21/8/Add.1; and Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/21/8/Add.1, 7 September 2012, para. 15, http://www.un.org/ga/search/view_doc.asp?symbol=A%20/HRC/21/8/Add.1.

²⁶ Council of Europe Commissioner for Human Rights, “Discrimination on grounds of sexual orientation and gender identity in Europe”, p.86. http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf (accessed 28 May 2013). The Commissioner recommended Council of Europe member states to “abolish sterilisation and other compulsory medical treatment which may seriously impair the autonomy, health or well-being of the individual, as necessary requirements for the legal recognition of a transgender person’s preferred gender”; and to “remove the requirement of being unmarried, or divorce for already married persons, as a

infants and children are often subjected to medical procedures designed to 'correct' their gender presentation; these procedures may be carried out for social or cosmetic purposes rather than out of medical necessity.²⁷

Amnesty International notes that the government is in the process of changing anti-discrimination legislation. However, the organization is concerned that the current draft does not provide for an equal level of protection for all discrimination grounds. In addition, the proposal does not address multiple discrimination.²⁸

A marriage equality bill proposed by a group of parliamentarians was rejected by the Legislative Committee of the Parliament in early 2013 and therefore the bill did not proceed for consideration before the full legislature. A citizen's initiative on marriage equality²⁹ which was lodged in March 2013 has received sufficient signatures to date and will be handed to parliament in September 2013.³⁰

VIOLENCE AGAINST WOMEN (ARTS. 3, 7 AND 26)

(QUESTION 9 ON THE LIST OF ISSUES)

Finland is failing to adequately protect women from gender-based violence.

Current legislation in Finland pertaining to sexual offences, notably Chapter 20 of the Penal Code, remains inadequate. For example, rape continues to be categorized according to the degree of violence used or threatened by the perpetrator rather than the sexual violation.³¹ Some acts of sexual violence are not automatically investigated by the authorities, but only if so requested by the victim. In May 2012 the Ministry of Justice published a working group report on rape crimes³² and a draft bill will be presented to the Parliament later in 2013. The

necessary condition for the legal recognition of a transgender person's preferred gender". See *ibid.* p. 13.

²⁷ Discrimination on grounds of sexual orientation and gender identity in Finland, available at www.seta.fi/doc/lausunnot/07YKFinal.doc (accessed 18 November 2011).

²⁸ Luonnos hallituksen esitykseksi Eduskunnalle yhdenvertaisuuslaiksi ja eräksi siihen liittyviksi laeiksi (OM 12/42/2006), in particular Draft Sections 9-12.

²⁹ Kansalaisaloite tasa-arvoisesta avioliittolaista, OM 47/52/2013, 19.3.2013, <https://www.kansalaisaloite.fi/fi/aloite/192> (accessed 27 May 2013).

³⁰ For a citizen's initiative to be considered by Parliament it needs to obtain at least 50.000 signatures within 6 months. Up to now the citizen's initiative on marriage equality has already received more than 150.00 signatures. Once it has been submitted, the Parliament will have to formally consider the initiative, which is expected to take place towards the end of 2013 or early 2014.

³¹ Penal Code, 24.7.1998/563, Chapter 20, Sections 3, 4, 5, <http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L20> (accessed 28 May 2013).

³² Oikeusministeriö: Raiskausrikosten lainsäädännölliset muutostarpeet 25/2012. http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/1354115520116/Files/Raiskausrikokset_lausunnotiivistelma.pdf (accessed 28 May 2013).

new law must categorize rape according to the sexual violation and the lack of freely-given full agreement and consent of the victim, and not the type and level of violence used during the rape.

There are also concerns that the attrition rate in Finland is very high. This is the filtering process whereby alleged offences do not come to the attention of the criminal justice system, either because they are not reported, or because cases are dropped at various stages of the legal process. Less than 10 per cent of all rapes are estimated to be reported and of those reported less than 20 per cent result in a conviction in Finland.³³ Women who report rape to the police only have a small chance of having their case tried in court and as a result, most perpetrators are never held to account for their crime.³⁴

Conciliation and mediation remains widely used in Finland to deal with crimes of domestic violence and violence against women. The police receives over 5,000 reports of domestic violence yearly.³⁵ The amount of domestic violence cases referred to mediation doubled from approximately 1000 cases in 2010 to almost 2000 cases in 2011. This is at least partly explained by the fact that “petty assault” is no longer a complainant offence, since a revision of the Penal Code in 2011. Under current law prosecutors are obliged to raise criminal charges for “petty assault” where there is sufficient evidence. Previously it was dependent on whether the victim wished to pursue a criminal case. However, statistics reveal that 70% of the cases in mediation in 2011 were assaults.³⁶ The outcome of mediation in cases concerning intimate partner violence or domestic violence is however unpredictable. There are diverging views among prosecutors in Finland as to whether criminal proceedings should be conducted alongside mediation. Some prosecutors may drop criminal charges when the case is referred to mediation; some may take the outcome of mediation into account when determining what penalty to seek in the case; and others may not allow mediation to affect the legal process in any way.³⁷ Amnesty International considers that mediation is not an appropriate method of dealing with crimes of violence against women as these processes do not offer protection equal to criminal law, and frequently lead to repeated re-victimization of

³³ Approximately 13-19 per cent of reported rapes result in a conviction - see Amnesty International, Case Closed: Rape and Human Rights in the Nordic Countries: Summary report (Index: ACT 77/001/2010), 8 March 2010, <http://www.amnesty.org/en/library/info/ACT77/001/2010/en>. Further statistics can be accessed in the Crime Trends in Finland 2009 and 2010, published by the National Research Institute of Legal Policy.

³⁴ In Finland, approximately 16-18 per cent of reported rapes go to court. The acquittal rate in district courts between 1997 and 2007 was 19 per cent. Between 2006 and 2010, police categorized 11.5 per cent of the reported rapes as no-crimes; there is no official explanation of the reasons for this. Between 2005 and 2009 prosecutors dropped charges in 23.9 per cent of the cases that the police had handed over to prosecutors.

³⁵ Information received from Statistics Finland 06/2012.

³⁶ Mediation in Criminal and Civil Cases 2011, available at: <http://urn.fi/URN:NBN:fi-fe2012112610028> (accessed 11 June 2013).

³⁷ According to research report 252 published by the National Research Institute of Legal Policy there are different practices between prosecutors even within same city. See: Honkatukia Päivi, Research report 252, Victims in the Criminal Process. Vulnerability, Services and Treatment. Summary: <http://www.optula.om.fi/en/Etusivu/Julkaisut/Tutkimuksiasarja/1290610276900> (accessed 28 May 2013).

women at risk.³⁸

In April 2013, a working group established by the government prepared a report with a draft government proposal to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence. The report was widely criticized by NGOs taking part in the process. While it is welcome that Finland is in the process of ratifying the Convention, the government proposal fails to address some of the key requirements of the Convention. The government proposal does not introduce any concrete measures on how to extend the service system for victims of violence (e.g. by establishing a 24/7 telephone hotline for victims), and it does not guarantee sufficient allocation of funds to existing services for victims of violence.

ELIMINATION OF SLAVERY AND SERVITUDE (ART. 8)

(QUESTION 10 ON THE LIST OF ISSUES)

Despite some positive developments in the Finnish authorities' ability to identify trafficking victims,³⁹ foreign national women who are trafficked into Finland for the purposes of prostitution are often still not recognized as such, i.e. as trafficking victims, and, as a result, are not provided with adequate protection and assistance. The Finnish National Rapporteur on trafficking has repeatedly stated that one of the most significant challenges to combating human trafficking in Finland was identifying victims of sexual exploitation as victims of trafficking.⁴⁰ In cases concerning enforced prostitution, trafficking victims are treated as witnesses to the crimes of facilitation of prostitution and/or the provision of a prostitute to a customer rather than also being identified as victims. This occurs partly because the Penal Code contains overlapping definitions of trafficking and aggravated pimping/procuring. This problem has been recognized by the authorities and the Penal Code is currently being modified.

Since victims of trafficking are not provided with adequate protection and assistance, the Finnish National Rapporteur on Trafficking and the Parliament has called for a specific act

³⁸ 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>.

³⁹ By December 2012, approx. 100 victims had been referred to the system of assistance for trafficking victims. Press release of the Finnish National Rapporteur on Trafficking on 5 December 2012 "Despite positive development trafficking victims are not identified in Finland", available at: http://vahemmistovaltuutettu.fi/fi/ihmiskauppa/1/1/tiedote_positiivisesta_kehityksesta_huolimatta_ihmiskauppa_ei_tunnisteta_riittavasti_suomessa (accessed 27 May 2013).

⁴⁰ See for example 2011 Report of the Finnish National Rapporteur on Trafficking in Human Beings, available in English at: http://www.vahemmistovaltuutettu.fi/download/31724_Ihmiskaupparaportti_englanti.pdf (accessed 30 May 2013).

on assistance to victims of trafficking in order to reinforce their legal protection.⁴¹ Amnesty International and other NGOs have highlighted that the protection of the rights of the victim should be a priority in anti-trafficking measures.⁴² Concerns have been expressed about the working methods of the group mandated to draft the above-mentioned legislation; at the time of writing it remains unclear whether the drafting group will be able to fulfill its mandate.

There have been a number of cases in which Finland has forcibly removed asylum-seekers who may have been trafficking victims. This prevents effective investigations and prosecutions of trafficking offences, as the key witnesses to these crimes have been removed from the country. The situation is further aggravated by the fact that as a result of being forcibly removed the individuals concerned may also receive an entry ban.⁴³

RIGHT TO LIBERTY AND SECURITY OF PERSONS, TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY AND FAIR TRIAL (ARTS. 9, 10 AND 14)

DETENTION OF FOREIGNERS FOR IMMIGRATION CONTROL PURPOSES (QUESTION 11 ON THE LIST OF ISSUES)

Amnesty International continues to be concerned about Finland's ongoing frequent resort to detaining foreign nationals solely for immigration purposes, including, in particular, asylum-seekers and unaccompanied or separated children.⁴⁴ In general, Amnesty International opposes the use of detention solely for immigration control purposes.

Section 121 of the Aliens Act provides for detention of foreigners, instead of other measures,⁴⁵ inter alia, where there are reasonable grounds to believe that he or she will

⁴¹ See Report of the Finnish National Rapporteur on Trafficking in Human Beings 2011, and Parliamentary communication EK 43/2010: http://www.eduskunta.fi/faktatmp/utatmp/akxtmp/ek_43_2010_p.shtml (accessed 28 May 2013).

⁴² Statement by the NGO anti trafficking network 5 October 2010: <http://www.pro-tukipiste.fi/iris/lausunnot-ja-kannanotot/ihmiskaupan-vastaisen-jaerjestoeverkoston-kannanotto-5102010/> (accessed 28 May 2013).

⁴³ Aliens Act, Chapter 9, Section 148, sub-paragraph 1, clause 6.

⁴⁴ In May 2011 the Committee against Torture expressed concern about the "frequent use of administrative detention of asylum-seekers, irregular immigrants, unaccompanied or separated minors, women with children and other vulnerable persons, including those with special needs." The Committee recommended Finland "to consider alternatives to the frequent detention of asylum-seekers and irregular immigrants" and to "ensure that administrative detention of unaccompanied children is not practiced." See CAT Concluding observations – Finland, UN Doc. CAT/C/FIN/CO/5-6, 29 June 2011, para 17, <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.FIN.CO.5-6.pdf>.

⁴⁵ Other measures are: reporting regularly to authorities (section 118), handing over travel documents or

commit an offence in Finland” (sub-paragraph 3).⁴⁶ Sub-paragraph 3 of Section 121 thus provides for the preventive detention of foreigners who have not committed any crimes but *might* do so in the future. The explanatory guidance to the draft legislation which became the Aliens Act states that sub-paragraph 3 is related to deportations based on suspected or committed crimes.⁴⁷ No further details are provided as to the requirements for detaining a foreigner under sub-paragraph 3 and therefore it remains unclear: a) who would be liable to detention under the provision; b) for what reasons; c) what would amount to a suspicion of a crime not yet committed; and d) who makes the determination that a crime which has not taken place may be committed by a particular foreigner. Amnesty International is concerned that preventive detention of foreigners, as provided for under sub-paragraph 3 of section 121 of the Aliens Act, is inconsistent with the right to liberty and security of person and is discriminatory against foreign nationals on the grounds of nationality or immigration status, as Finnish legislation does not provide for the preventive detention of Finnish nationals.

Finland continues to detain unaccompanied or separated children solely for immigration purposes despite a commitment made by the government in 2011 to end the practice.⁴⁸ In 2010, Finland held at least three unaccompanied children for an average time of 16,5 days; in 2011, Finland held four unaccompanied children for an average of 20,8 days and in 2012 at least four unaccompanied children were held for an average of 12 days. These numbers do not include those children who may have wrongly been age-assessed as adults and who may later have been correctly identified as children. Most unaccompanied children are held in the Metsälä Detention Unit. However, there is concern that in 2012 Finland may have held two unaccompanied children in police holding facilities although the Aliens Act explicitly prohibits the placement of unaccompanied minors in such facilities.⁴⁹ In addition, children are held with their parents, both in the Metsälä Detention Unit and police holding facilities. In 2012 the average length of detention in Metsälä was 10,7 days for minors held with their parents. Amnesty International considers that children, and, in particular, unaccompanied or separated children, should never be detained solely for immigration purposes given that immigration detention cannot be said to be in their best interests, ever. The detention of children solely for immigration purposes, whether they are unaccompanied, separated or held together with their family members, can never be justified and represents an abject failure of the obligation to respect, care for, and protect children’s human rights.

Amnesty International continues to receive reports that particularly vulnerable asylum-seekers are being detained solely for immigration purposes. These include pregnant women, persons

communicating an address to the authorities (section 119) and posting bail (section 120).

⁴⁶ Section 121 of the Aliens Act. The other grounds are as follows: where “there are reasonable grounds to believe that the alien will prevent or considerably hinder the issue of a decision concerning him or her or the enforcement of a decision on removing him or her from the country by hiding or in some other way” (sub-paragraph 1); and where it “is necessary for establishing his or her identity” (sub-paragraph 2).

⁴⁷ HE 265/2002

⁴⁸ Programme of Prime Minister Jyrki Katainen’s Government, 22 June 2011, page 47.

⁴⁹ In a letter to Amnesty International dated 15 May, Interior Minister Päivi Räsänen states that two unaccompanied minors were detained in 2012. It appears that the letter refers to unaccompanied minors held in police holding facilities, but there is no confirmation of this as of yet.

with serious medical conditions, persons suffering from mental illness or trauma related to torture and other ill-treatment, and women who have suffered serious violence.

Finland continues to detain asylum-seekers and migrants in the Metsälä Detention Unit for aliens situated in Helsinki and in police holding facilities across the country. Based on the data available to Amnesty International, the organization has concluded that the detention capacity of the Metsälä Detention Unit continues to be below the total number of individuals who are detained each year. The Detention Unit can hold up to 40 individuals at any given time, but it has been full for the past several years. As a result, the majority of detained asylum-seekers and migrants are placed in police holding facilities. Amnesty International is concerned that foreign nationals detained solely for immigration purposes have been held in police cells, including in some cases for protracted periods.

There continues to be a lack of comprehensive and reliable statistics concerning the detention of asylum-seekers and others held solely for immigration purposes. While the Metsälä Detention Unit has provided Amnesty International with detailed statistical data on average length of detention, gender of detainees, and the status of children in detention, namely whether they were accompanied or not⁵⁰, the data provided by the police disclosed no such information. According to the statistics provided to the organization, in total 1599 foreign nationals were detained in 2012, out of these a total of 1420 foreign nationals were held in police holding facilities⁵¹ and 410 foreign nationals were detained in the Metsälä Detention Unit.⁵² The Aliens Act allows the placement of foreign nationals in holding facilities, in exceptional circumstances and when the Metsälä Detention Unit is full. However, detention in police holding facilities seems to be the rule, rather than the exception. The average length of detention was 29,3 days in Metsälä and 5,05 days in the police facilities. Amnesty International is aware of foreigners who have been held in police holding facilities beyond the average time. One individual was detained in police facilities for five months in 2012-2013. Those held in police facilities are held in holding cells built for short-term detentions. Individuals held in police facilities must spend 23 hours in their cell with limited access to recreation and hygiene.

Further, Amnesty International analyzed the data obtained and concluded that indeed there may be instances of double-counting since some individuals may spend time both in police facilities and in Metsälä. Some are held in police cells throughout their detention, while others may later be transferred to the Metsälä Detention Unit, if there is space available. Currently there does not seem to be a method to account for the potential double counting in the statistics. As a result no reliable figures are currently available in Finland about the total number of those detained solely for immigration purposes, including asylum-seekers. Further, since it appears that some unaccompanied or separated children were initially incorrectly assessed as adults, it is possible that an unknown number of unaccompanied or separated children, including child asylum-seekers, may have been detained solely for immigration

⁵⁰ Letter from National Police Board on 15 February 2013, ref 2020/2013/605, on file with Amnesty International.

⁵¹ Statistics received from the National Police Board, on file with Amnesty International. Reply by the Ministry of Interior to the Ministry for Foreign Affairs on questions from the HRC, 3 April 2013.

⁵² Statistics received from the Metsälä Detention Unit, on file with Amnesty International.

purposes, including in police facilities.⁵³

The statistics from 2010 concerning the detention of unaccompanied or separated children are indicative of the current discrepancies in statistics on immigration detention in Finland. According to the statistics by the Metsälä Detention Unit, in total 17 children were held in the Unit in 2010⁵⁴, while the police statistics provide that in total 37 children were detained in 2010⁵⁵. There is no information on whether those held in Metsälä were counted in the total number of detained children as provided by the police. In addition to this discrepancy, the police also reported that 13 individuals who were of an "unknown" age had been detained. Some or all of these may have been children undergoing age-assessment. Therefore the total number of children detained for immigration control purposes in 2010 remains unknown, due to the discrepancies in the data.

ACCESS TO LAWYER (QUESTION 12 ON THE LIST OF ISSUES)

In its concluding observations adopted in May 2011 the Committee against Torture (CAT) called on Finland to ensure that all persons deprived of liberty are provided with fundamental legal safeguards from the very outset of detention, such as access to a lawyer.⁵⁶

Finnish law does not guarantee the right of access to a lawyer from the very outset of detention in cases where individuals are deprived of liberty in connection with "minor [criminal] offences" ("vähäiset rikokset"). The Criminal Investigations Act provides for an obligation to inform suspects of their right to access to a lawyer before an interrogation, except when suspected of minor offences.⁵⁷ Further, while the same Act⁵⁸ also provides that a suspect has the right not to incriminate oneself, there is no provision requiring the police to inform suspects of their right to remain silent and of their right not to incriminate themselves. Since the adoption of the CAT concluding observations, the Finnish authorities have not taken any steps to address this issue.

However, in a positive development, in May 2012, the Finnish Supreme Court handed down judgment in a case concerning the right of access to a lawyer and the exclusion of self-incriminating evidence obtained during interrogations without the presence of a lawyer. The person concerned, known as "A", was detained on suspicion of committing drugs offences.

⁵³ Statistics provided by the police detail the following age-categories: "younger than 14 years", "15 – 17 years", "18-21 years", "older than 21 years" and "age unknown".

⁵⁴ Statistics provided by the Metsälä Detention Unit.

⁵⁵ Pakkokeinot lkm ulkomaalaisen säilöönotto (UlkomaalaisL 7:121). A statistic on immigration detention of children in Finland in 2006-2010 compiled by the Police Board for Amnesty International. The data is on file with Amnesty International.

⁵⁶ CAT /C/FIN/CO/5-6, 29 June 2011, para 8.

⁵⁷ Chapter 4, section 10 of the Criminal Investigations Act 805/2011, in force 1.1.2014.

⁵⁸ Chapter 4, section 3 of the Criminal Investigations Act 805/2011, in force 1.1.2014.

“A”’s counsel of choice was not present during his interview with the police which were conducted in English, without the presence of an interpreter, since “A” did not understand Finnish. According to the written record of the police interrogation, before the start of the interview “A” had been informed of his right to contact a lawyer, but not of his rights to remain silent and against self-incrimination. Moreover, the police knew that “A” had not consulted his lawyer prior to being interviewed. The Supreme Court considered that “A” had not been fully and unambiguously notified of his rights, including his right to consult his lawyer prior to being interviewed by the police; and that he had not been aware of the consequences of waiving his rights. The Supreme Court concluded that “A”’s right to prepare his own defence and his right against self-incrimination had been violated. In light of this, the Supreme Court ruled that the statements “A” made during the preliminary investigation should not be used against him as proof of his guilt. The prosecutor had argued that “A”’s statements during the preliminary investigation should be admitted in Court as evidence but that their weight should be reduced in light of the manner in which they had been obtained. However, the Supreme Court concluded that a violation of the rights of the accused at trial could only be avoided by ruling the self-incriminating statement inadmissible.⁵⁹

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (ART. 18)

CONSCIENTIOUS OBJECTORS (QUESTION 16 ON THE LIST OF ISSUES)

Amnesty International remains concerned that conscientious objectors to military service continue to be imprisoned for refusing to perform the alternative civilian service, as it remains punitive and discriminatory in length.

In its previous concluding observations on Finland, adopted in October 2004, the Human Rights Committee expressed regret that the civilian alternative to military service was punitively long, and called on the state party to end the discrimination inherent in the duration of alternative civilian service.⁶⁰

Conscientious objectors are, at present, obliged to perform 347 days of civilian service, which is 167 days longer than the shortest and most common period of military service.

Amnesty International considers that Finland must further reduce the length of alternative civilian service, in line with internationally recognized standards and recommendations, and to immediately and unconditionally release all conscientious objectors and abolish any other forms of punishment of conscientious objectors, including monitoring sentences.

⁵⁹ KKO 2012:45, para. 44-47.

⁶⁰ Concluding observations of the Human Rights Committee – Finland, UN Doc. CCPR/CO/82/FIN, December 2004, para 14, http://www.un.org/ga/search/view_doc.asp?symbol=CCPR/CO/82/FIN.

EXPULSION OF ALIENS (ARTS. 2, 7 AND 13)

NON-REFOULEMENT (QUESTION 17 ON THE LIST OF ISSUES)

Finnish law does not provide for a suspensive in-country right of appeal in all asylum cases.⁶¹ In ordinary asylum cases, applicants have the right to remain in the country throughout the examination of their claims, including pending appeals, except at the final instance before the Supreme Administrative Court, unless the latter suspends removal. Appeals do not have a suspensive effect, inter alia when the applicant has filed a new application raising no novel grounds; when the asylum application has been dismissed due to the Dublin regulation; when the applicant has arrived from a “safe country” or if the application has been dismissed as “manifestly unfounded”.

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

FORCED REMOVALS (QUESTION 18 ON THE LIST OF ISSUES)

Amnesty International is concerned that no regular medical assessment is carried out on people who are to be forcibly removed from Finland before their removal.⁶² This serious omission may result in special needs or particular vulnerabilities not being properly identified, or identified at all, before a removal takes place. A further serious omission consists in the failure to carry out medical assessment on those individuals whose enforced removal from Finland failed.⁶³ Amnesty International considers that such assessments would

⁶¹ In its May 2011 concluding observations CAT called on Finland to guarantee a suspensive in-country right of appeal and respect for all safeguards and interim measures with regard to asylum and deportation procedures. See CAT /C/FIN/CO/5-6, 29 June 2011, para 10.

⁶² See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2011, para. 39, page 80.

⁶³ See European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

be vital in order to detect whether any excessive force, including amounting to ill-treatment, may have been used during failed enforced removals and to ensure that they be medically documented when possible.

The European Commission has noted that Finland has not adequately implemented the EU Returns Directive's obligation to set up an effective monitoring system of forced removal (article 8(6) of the Return Directive, 2008/115/EC).⁶⁴ No effective and independent monitoring system exists currently and any monitoring takes place on a case-by-case basis and is carried out by the Parliamentary Ombudsman pursuant to its authority to receive and handle individual complaints. In addition, the Parliamentary Ombudsman has conducted on-site inspections at facilities where detained foreign nationals are held, namely the Metsälä Detention Unit (the latest inspection was in 2011), and of police holding facilities. The Chancellor of Justice may also address individual complaints related to forced removals. However, the authority of the Chancellor to deal with such complaints is limited only to the removal itself, as any individual complaint that addresses both the forced removal and detention prior to a removal, are addressed by the Parliamentary Ombudsman.⁶⁵ Currently the Ombudsman for Minorities does not monitor forced returns. The core role of the Ombudsman for Minorities is to prevent discrimination and promote equality based on ethnicity. In addition, the Ombudsman for Minorities has a general mandate to promote the rights of foreign nationals and has a right to receive any information from the authorities deemed necessary to fulfill this task. However, the Ombudsman for Minorities does not have specific expertise in relation to human rights of individuals deprived of their liberty. According to the Aliens Act the Ombudsman for Minorities shall be notified of decisions refusing entrance to foreign nationals, as well as decisions concerning deportations or expulsions.

Finland is currently in the process of developing a system for monitoring forced removals. In May 2013, the Ministry of the Interior submitted a draft law proposing that the Ombudsman for Minorities be responsible for such monitoring. Amnesty International is concerned about some aspects of the draft law, which may jeopardize the effectiveness of any future monitoring activities. In particular, the draft legislation does not provide an effective system to inform the Ombudsman for Minorities of those forced removals. The police are charged with enforcing removals. In 2012, the police escorted a total of 442 removals. In order for the monitoring to be effective, the Ombudsman should automatically receive sufficient information from the police, for instance on all planned removals and the grounds on which removal decisions are made in each individual case. Further, the current draft does not specify what powers the Ombudsman for Minorities would have in connection with its monitoring of removal operations, for instance with regard to removals affected by police officers. The monitoring body should have the ability to speak privately with the individuals concerned who are to be removed, as well as being able to notify the police of any potential concerns even during the actual enforcement of removals. In addition, the draft law and its explanatory notes do not make any reference to Finland's human rights obligations, for

Punishment (CPT), CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2011, para. 39, page 80.

⁶⁴ Draft law proposal by the Interior Ministry, dated 6.5.2013.

⁶⁵ This is because normally the Parliamentary Ombudsman deals with individual complaints relating to deprivation of liberty.

instance with regard to the obligation to effectively prevent torture and other cruel, inhumane or degrading treatment. Further, in order for the monitoring to be effective, those carrying it out should have relevant and appropriate expertise on issues relating to, among others, deprivation of liberty.

The above-mentioned concerns are not addressed adequately or at all in the current draft law. Indeed, monitoring of immigration detention is not within the mandate and powers of the Ombudsman for Minorities. The Ombudsman for Minorities does not have a responsibility or authority to visit the Metsälä Detention Unit or police premises. Authority to visit would be necessary for the Ombudsman for Minorities to meet those individuals who are to be removed before their removal is enforced, to monitor the preparation phase of the removals and to monitor failed removal attempts.

Lastly, the legislative proposal does not include any reference to funding for those monitoring activities of the Ombudsman for Minorities that are envisaged.

PROTECTION OF THE FAMILY AND CHILDREN (ARTS. 23 AND 24)

As stated above under the heading “right to liberty and security of persons”, Finland continues to detain children solely for immigration control purposes. While the Asylum Act stipulates that representatives of social welfare institutions must be heard before a minor is detained⁶⁶, a study published by the Ombudsman for Minorities in 2010 concluded that sometimes the welfare authorities have no influence on the decision to place the child in detention.. In practice, the social welfare authorities have sometimes only been notified of a child’s detention after the child had been detained. In addition, records on children’s detention do not always state the name of the particular person who was consulted at the welfare authority.⁶⁷

⁶⁶ Chapter 7, Section 122 of the Aliens Act,

⁶⁷ Annika Parsons: Lapsen edun toteutuminen turvapaikanhakija- ja pakolaislapsia koskevissa päätöksissä, 2010, page 68.

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