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OF TAMPERE



UNIVERSITY OF JYVÄSKYLÄ

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To: Committee on the Elimination of Racial Discrimination

Submission: Finland

We would like to express our deepest gratitude for the opportunity to provide information relating to the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in Finland. We would like to highlight two substantive areas, which are in the core of our knowledges as researchers: immigration issues and rights of indigenous peoples relating to the environment.

Discriminatory immigration legislation and policies

The current Government of Finland has introduced several amendments in Finnish Aliens Act and immigration policy, which are discriminatory or otherwise weakening the rights of asylum seekers.

The time to complain about the decision of the Immigration Services is significantly shorter than in other subject areas. The general regulation on the length of complaining before the court is 30 days from the time, when the decision has been noticed (hallintolainkäyttölaki, 22§). This general rule used to apply also to immigrants, before the new amendment introducing an exception.

Currently, in the cases concerning seeking of asylum on the basis of international protection, the time to complain is only 21 days (administrative court) and 14 days (the Supreme Administrative Court.) (Aliens Act, 190 §, 12.8.2016/646) This amendment places the asylum seekers seeking protection on the basis of international protection, into different position than other immigrants and nationals. The amendment will make it more difficult to prepare a thorough complaint, which would consider all the relevant legal and factual basis for the complaint.

The restrictions on the freedom and right to choose one's legal representative have also been introduced. The public legal aid has priority over private lawyers, even though there is specialized private lawyers that could provide specialized services for the asylum seekers. In addition, the private legal representatives do not have a same basis for compensation as earlier (hour based) – this will also influence on, how many hours the asylum seeker can have legal assistance.

In parallel to the previous changes, the free legal aid granted for the asylum seeker do not cover the presence of the lawyer during the asylum investigation (Aliens Act 97 a), without exceptionally heavy reasons or the young age of the applicant (under 18). This will impact

the rights of the asylum seekers as they do not have automatic possibility to use their lawyer, when they are investigated.

The possibility to use a lawyer is crucial to the proper process of investigating the circumstances of the asylum seeker, especially considering this together with the time of appeal that has been shortened in the cases concerning international protection. This can compromise the right to an effective remedy.

Furthermore, there is a group of Afghan asylum seekers that have been denied their right to use their full name. The Finnish Immigration Service gave a decision in 2016, where it stated that as there is no reliable documentation about the full name of the applicant, they will be called only by the first name (which can be verified from the documents). This is related to the fact that typically in the national identification cards (tazkiras) and in the old passports the surname of the holder is not mentioned. However, in Afghanistan, there is no exact name policy in effect in the population register that would justify the practice of using only first names stated in the national identity card of passport. This practice is humiliating and places the Afghan asylum seekers into different position than the rest of the asylum seekers and the nationals, who can use their full name. The notion that the use of surnames in Afghanistan is not customary is not an adequate reason for preventing Afghans from using their surnames in Finland, as the lack of an established practice in Afghanistan does not signify that Afghans do not have surnames at all.

The decision to adopt a strict name policy that leads to the restriction of a person's right to use their full name has not been efficiently weighted against the need to protect Afghan asylum seekers' cultural identity, as the ability to use one's last name might be central to it. Furthermore, taking into account different ethnic minorities residing in Afghanistan, the lack of official recognition of Afghan asylum seekers' last names might lead to difficulties in their relations with other members of their ethnic group.

Acknowledging the significance the use of a surname has in the Finnish society and the use of name not only as a cultural right but also as a right that is an inseparable part of the right to respect for private and family life, the denial to recognise Afghan surnames when they are not stated in the passport or a tazkira is as a practice discriminating Afghan asylum seekers.

Taking into account the changes as a whole, the judicial as well as concrete circumstances of the asylum seekers have deteriorated.

Amendment on the Law on the Finnish Forest and Parks Service (Metsähallitus) that did not take into account the rights of indigenous peoples

The Government of Finland refers to the amendment on the Law on the Finnish Forest and Park Service in relation to the rights of the Sami people. However, the report lacks significant and crucial information about the preparation of the government proposal and the content of the law.

In 2014, the draft of the bill included special regulation in relation to the homeland of Sami people. These provisions included duties for the authorities to conduct impact assessment on Sami rights in relation to the land planning (11 §) as well as the prohibition to weaken the

rights of the Sami (12 §). The provisions were made in order to ensure the compliance of the Finnish legislation with the ILO 169 Convention, which Finland has continuously promised to ratify.

The Ministry of Agriculture conducted a hearing about the draft in 2014.

In the fall of 2015, the new Government amended the earlier draft of the bill. The major changes included deleting of the specific provisions of Sami rights. The Government did not explain why the specific provisions were removed nor did it negotiate sufficiently with the Sami Parliament about the change.

The civil society actively requested a new round of hearing due to the changes in the draft of the law. Two brief rounds of hearings were held in the Fall of 2015. During t 2015 and early 2016 the United Nations also took an active standing on the issue, first during the confidential procedure and later publicly. Confidential notes were given by two Special Rapporteurs John H. Knox and Victoria Tauli-Corpuz. Later Victoria Tauli-Corpuz went public in 17 December 2015 (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16897&LangID=E>) and on 22nd March 2016 the Office of the High Commissioner for Human Rights repeated the standing (http://yle.fi/uutiset/osasto/sapmi/ykn_ihmisoikeusvaltuutetun_toimisto_kehottaa_suomen_hallitusta_vielä_neuvottelemaan_saamelaisten_kanssa_metsahallituksen_uudelleenorganisoinnista/8761078)

However, the hearings did not have any impact on the preparation of the law. The specific provisions related to the Sami were not returned. The ignorant behavior of the Government is reflected in the text of the government proposal. The assessment of the government proposal reveals that the criticism that was presented during the hearing round in 2015 is not even summarized in the actual government proposal. There is only a reference to the summary of the new hearing round, but nothing about the content (<http://www.finlex.fi/fi/esitykset/he/2015/20150132>). As the hearing of 2014 still included the provisions of Sami rights and the hearing of 2015 did not, it is insufficient that the government proposal includes only a reference to the hearing from 2014 but without clear content.

With respect,

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