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# INTRODUCTION

This submission is submitted by Amnesty International in advance of the consideration by the United Nations Committee on Economic, Social and Cultural Rights (the Committee) at its 53<sup>rd</sup> session of the sixth periodic report on Finland's implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant).

In particular, this submission provides information on discrimination of trans individuals, with particular emphasis on requirements in Finnish law for legal gender recognition, gender-based violence against women and trafficking for the purpose of sexual exploitation which cover obligations under articles 2, 3, 10 and 12 of the Covenant.

## DISCRIMINATION OF TRANS INDIVIDUALS- LEGAL GENDER RECOGNITION (ARTS. 2, 10 AND 12, QUESTION 3 & 18 LIST OF ISSUES)

Widespread prejudices, gender-based stereotypes and discriminatory legislation negatively affect the enjoyment of human rights by trans individuals in Finland. A recent study<sup>1</sup> on the wellbeing of young Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) people in Finland found that many young trans individuals face discrimination and harassment in school and other areas of life. Eighty per cent of the trans individuals interviewed had faced harassment, and generally, trans pupils were more likely to experience violence than their cisgender peers. Sixty seven per cent of the trans pupils who experienced violence perceived it as motivated by their gender identity or expression. According to the European Union (EU)'s LGBT survey<sup>2</sup>, 48 per cent of the trans individuals surveyed and living in Finland had been discriminated against in the 12 months prior to the survey.

Amnesty International welcomes the commitment of the Finnish government to tackle the discrimination faced by trans individuals by reforming the Equality Act so that gender-based discrimination is expanded to cover discrimination based on gender identity and gender expression.

Amnesty International would however like to raise concerns with regard to the current laws, policies and practices on legal gender recognition and their impact on the right of trans individuals to the enjoyment, without discrimination, of the highest attainable standard of physical and mental health<sup>3</sup>.

## LENGTH OF PROCESS FOR LEGAL GENDER RECOGNITION & THE PATHOLOGIZATION OF TRANS IDENTITIES

The current procedure to obtain legal gender recognition in Finland is very lengthy, taking up to 2-3 years, exposing trans people to discrimination in situations where they are required to present documents with gender markers not corresponding to their gender identity and expression. The procedure also requires trans people to be sterilized and to obtain a psychiatric diagnosis that pathologizes trans identities, and leads to discrimination and the violation of their sexual and reproductive rights.

According to the Act on Legal Recognition of the Gender of Transsexuals (hereafter the Trans

Act), in force since 2003, references in the Population Information System to the sex a person was assigned at birth can only be changed if the applicant presents a medical statement certifying that she or he feels to belong permanently to the opposite gender, lives in that gender role and has been sterilized or is for some other reason infertile. A certificate of infertility is normally given after a 6-12 months long course of hormone treatment. The Act also restricts potential access to legal gender recognition to individuals who are single and 18 years old. However, the single status requirement is not applied in practice if the spouse gives their consent to legal gender recognition. In this case an existing marriage is converted into a registered partnership and vice-versa.

The medical statement requires in practice a psychiatric diagnosis. Trans individuals have to undergo an onerous and lengthy process to be diagnosed with “transsexualism”<sup>4</sup>. To obtain the necessary diagnosis, every trans person is referred by their general practitioner to one of the two multidisciplinary teams established at the Helsinki University Central Hospital and the Tampere University Central Hospital (the Trans Units). The diagnostic period - the period elapsing from the first meeting at one of the Trans Units to the point where the psychiatric diagnosis is established – often takes up to 12 months or even longer. The psychiatric diagnosis is required to access specific trans health care, including hormone treatment, which is in turn necessary to obtain legal gender recognition. After the diagnostic period trans individuals still have to pass a 12 month long “real life test” whereby they live according to their preferred gender identity. Thereafter the diagnosis still needs to be authenticated by a second psychiatrist before legal gender recognition can be obtained.

According to research carried out by Amnesty International<sup>5</sup>, many trans people perceive the need to undergo a psychiatric diagnosis as stigmatizing. They also feel that in order to obtain this diagnosis, they are required to conform to stereotypical ideas of masculine or feminine appearance or behaviour<sup>6</sup>. Individuals who do not conform to these notions risk being denied diagnosis and thus legal recognition of their gender. This is even more of a barrier for individuals who do not identify with binary notions of gender (male/female). In many cases, such individuals are not diagnosed with “transsexualism”, but with “other gender disorders”, which excludes them from accessing legal recognition of their gender.

## STERILIZATION REQUIREMENT

Currently the Trans Act requires individuals to be sterilized before they can secure legal gender recognition<sup>7</sup>. A certificate of infertility is normally given after a 6-12 months long course of hormone treatment. Amnesty International views this as a discriminatory and coercive requirement that undermines the ability of individuals to consent freely to this kind of medical treatment. The sterilization requirement means in effect that trans people may have to undergo medical treatments against their wishes for the sole purpose of obtaining gender legal recognition. A young trans individual shared with Amnesty International how he felt coerced to undergo hormonal treatments in order to obtain gender legal recognition: “My body image....I think it fits even without hormonal treatment but hormones are compulsory for me if I wish to have my male gender recognised. 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”.<sup>8</sup>

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

punishment recently called on all states to “repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, “reparative therapies” or “conversion therapies”, when enforced or administered without the free and informed consent of the person concerned.” He also calls upon states “to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.”<sup>9</sup>

## SINGLE STATUS REQUIREMENT

According to the Trans Act<sup>10</sup>, those who are married or in a civil partnership cannot obtain legal gender recognition. In practice, the single status requirement is not implemented if the partner or the spouse of the trans person seeking gender recognition gives their consent to the change of their spouse’s legal gender after which their marriage is changed into a civil partnership or vice-versa. Amnesty International believes that such a difference of treatment is discriminatory, as states must ensure the enjoyment of all human rights, including the right to marry and to found a family, without any discrimination, including on grounds of sexual orientation and gender identity.

As the then Commissioner for Human Rights of the Council of Europe noted, courts in some states that have failed to recognize same-sex marriages have nonetheless decided in favour of allowing marriages to continue when one partner has changed gender<sup>11</sup>. Such rulings, the Commissioner noted, recognize that “protecting all individuals without exception from state-forced divorce has to be considered of higher importance than the very few instances in which this leads to same-sex marriages. This approach is to be welcomed as it ends forced divorce for married couples in which one of the partners is trans”<sup>12</sup>. The current Commissioner has also specifically recommended that Finland abolish the single status requirement as a prerequisite for legal gender recognition.<sup>13</sup>

Amnesty International is concerned that the Trans Act does not meet the standards of non-discrimination and efficiency laid out in the Yogyakarta Principles, whereby legal gender recognition procedures should be “efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned”<sup>14</sup>. Moreover, the procedure for legal gender recognition places undue and unnecessary burdens on individuals, pathologizes trans identities and leads to discrimination and violations of trans persons’ rights.

The Finnish government sent out a draft law on gender legal recognition<sup>15</sup> for comments in August 2014. The draft law includes the removal of the sterilization requirement and introduces two models for the removal of the single status requirement. Model A would remove the requirement to be single from the law (Trans Act, Section 1/3), but the spouse of the trans person would still have to give their consent to the legal recognition of their spouse’s gender after which their marriage would still be automatically converted into civil partnership or vice versa. Model B would remove the requirement to be single from the law (Trans Act, Section 1/3), and the spouse of the trans person would still have to give their consent to the legal recognition of their spouse’s gender, but the pair would be given the possibility to choose whether they want to continue their marriage/civil partnership or whether they want to have it converted into a civil partnership/marriage. So only the model B would actually change the current situation and give the possibility to continue living in a marriage/civil partnership after legal recognition of one’s gender, as recommended by the Commissioner for Human Rights of the Council of Europe. The other proposed option (A) is

only a token change. The draft law does not mandate the removal of the psychiatric diagnosis requirement for legal gender recognition or the requirement to live in a specific gender role (“real life test”) nor does it make it possible for minors to access legal gender recognition on the basis of their best interests and according to their evolving capacities.

## RECOMMENDATIONS

### **Amnesty International recommends that the Finnish authorities:**

- Amend current laws and practices, in particular the Act on Legal Recognition of the Gender of Transsexuals (Trans Act, no. 563/2002) with the aim of allowing transgender people to obtain a new personal identity code on the basis of which official documents reflecting their gender identity can be issued through a quick, transparent and accessible procedure;
- Abolish the single status requirement, the sterilization requirement and the “real life test” laid out in the Trans Act;
- Remove the requirement that transgender individuals receive a psychiatric diagnosis and undergo psychiatric assessment or medical treatment as a precondition for legal gender recognition;
- Ensure that the process for legal gender recognition does not require individuals to conform to stereotypical notions of masculinity or femininity, and is accessible to those who do not identify with binary concepts of gender;
- Amend the Trans Act to ensure that minors can access legal gender recognition on the basis of their best interests and according to their evolving capacities;
- Remove transgender identities from the national classification of diseases and ensure that transgender people can access the health treatments they wish on the basis of their informed consent.

# GENDER-BASED VIOLENCE AGAINST WOMEN

(ARTS. 2.2, 3, 10 AND 12, QUESTION 14 ON LIST OF ISSUES)

## ACTS OF VIOLENCE AGAINST WOMEN

Police received over 3600 reports of domestic violence against women in 2012.<sup>16</sup> According to the National Research Institute of Legal Policy only 10 percent of domestic violence cases against women are reported to the police.<sup>17</sup> The number of women murdered by their male partners remains high; from 2003 to 2008 an average of 23 women were murdered by their partners every year.<sup>18</sup>

## CONCILIATION

Conciliation<sup>19</sup> remains widely used in crimes of domestic violence and violence against women in Finland. The number of domestic violence cases referred for conciliation doubled from approximately 1000 cases in 2010 to almost 2000 cases in 2011.<sup>20</sup> According to the government this is explained by the fact that petty assault is no longer a complainant offence following the revision of the Penal Code in 2011. Under the current law<sup>21</sup> prosecutors are obliged to raise criminal charges for “petty assault” also in close relationships where there is sufficient evidence. Before this law came into effect charges were dependent on whether the victim wished to pursue a criminal case.

However in 2013, 70% of the domestic violence cases referred to conciliation were not “petty assaults” but assaults, and even 16 cases of aggravated assault and 1 case of sexual violence were referred to conciliation.<sup>22</sup>

The outcome of conciliation in cases concerning intimate partner violence or domestic violence is unpredictable. There are diverging views among prosecutors in Finland as to whether criminal proceedings should be conducted alongside such mediation. Some prosecutors may drop criminal charges when the case is referred to conciliation; 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.<sup>23</sup>

Amnesty International opposes the use of conciliation in domestic violence cases as these are not appropriate methods to deal with crimes of violence against women. Conciliation minimizes acts of violence against women. Where women are subjected to violence, there is an imbalance of power in the relationship, and conciliation can make victims more vulnerable to abuse and violence in the future. Further, mediation undermines the principle of equality before the law, and frequently leads to repeated re-victimization of women at risk.<sup>24</sup> Finland must guarantee women and girls access to legal procedures that will bring justice in criminal and civil cases, and which will secure their safety.

## RAPE AND OTHER FORMS OF SEXUAL VIOLENCE

Despite law reform that came into force 1 September 2014, the Finnish law on sexual offences, notably Chapter 20 of the Penal Code, remains inadequate. Even after the law reform, an act of rape is still defined according to the degree of violence or threats of violence used by the perpetrator, rather than the violation of sexual autonomy and physical and mental integrity.<sup>25</sup> While the new law includes some positive changes,<sup>26</sup> it does not place the lack of consent of the victim at the centre of the definition as required by evolving international human rights law.<sup>27</sup> The new bill also retains the possibility to lower the sentence for rape if the rape is committed under “mitigating circumstances”, but the bill does not specify what such mitigating circumstances might be.

The new bill continues to define abuse of position leading to sexual intercourse as sexual abuse, not recognising the possibility that it could be rape. This means that sexual acts that occur when a person may be unable to consent due to the power position of the perpetrator and circumstances in which the act took place can be considered not to be rape but sexual abuse and the maximum sentence is lower than for cases falling under the definition of rape. The failure of the law to contemplate the possibility that such crimes constitute rape is particularly problematic with regard to people with disabilities as it weakens the legal protection of the sexual integrity of afforded to those persons who reside in closed institutions and precludes access to justice for victims<sup>28</sup>. In practice acts committed in institutional settings by persons in position of authority or power against vulnerable persons under their care, for example, continue to be sentenced and punished as sexual abuse, and not rape, and therefore continue to carry a minimum sentence of a fine.<sup>29</sup> Although the new law recognizes that where the victim is under 18 years old, this should be treated as an aggravating factor, Amnesty International continues to recommend that aggravating factors should be amended to include a broader understanding of persons in situations that place them at greater risk, or when there is an abuse of position of power. Severe mental suffering caused, for example, due to the breach of a relationship of trust between the victim and the perpetrator should be considered, as well as a recognition of the severe and long lasting impact such crimes have on their victims psychological and physical well being when assessing the gravity of the crime.

The attrition rate in Finland – 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 – remains very high. Less than 10 per cent of all allegations of rape are estimated to be reported. Of those reported, only about 15 per cent go to court and approximately 14 per cent of the cases reported to the police lead to a conviction.<sup>30</sup> Persons 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.

Despite the fact that the Finnish law<sup>31</sup> as well as the Istanbul Convention<sup>32</sup> signed by Finland in May 2011 prohibits the presentation of indiscreet and irrelevant evidence in court, research indicates that this prohibition is not applied in sexual violence cases.<sup>33</sup> Even if the courts rarely rely on this evidence in their verdicts<sup>34</sup>, allowing this evidence to be presented makes the legal process even more burdensome for the victim and the prospect of this happening may lead women not to report rape or other acts of sexual violence. In a study by Amnesty International and University of Lapland, 60 percent of respondents stated that they

have little to no trust in the judiciary's ability to treat rape victims fairly.<sup>35</sup>

## SERVICES FOR VICTIMS OF VIOLENCE

The National Plan to Reduce Violence against Women (2010-2015) was not allocated a budget and most of the measures aiming at improving the services for women victims of violence have thus not been carried out.<sup>36</sup> There are no walk-in centres that would provide assistance for all women victims of violence and the specialized services for rape victims are very limited and run mainly by NGOs and funded on a project basis.<sup>37</sup> The number of shelters remains inadequate (there are approximately 20 shelters that altogether have less than 120 family places, despite the recommendation stated in the Istanbul Convention<sup>38</sup> according to which there should be more than 500 shelter places in Finland) and the number of shelter places has even decreased since 2013 when two shelters were shut down while only one new shelter has opened.<sup>39</sup>

In December 2013, the government announced that from 2015 onwards shelters would be funded directly from the state budget. This decision was warmly welcomed by NGOs but in September 2014 the government published a draft law on shelters<sup>40</sup> that allocates a budget of 8 000 000€ for shelters in 2015, an amount that does not even cover the costs of existing shelters<sup>41</sup>. The draft law also defines shelter service very strictly, restricting the government funded services to the acute crisis periods while the victim resides in a shelter. Municipalities will therefore be responsible for support services delivered before and after the acute crisis period. The shelters are at the same time required to scale their activities to a limited budget decided in advance – and NGOs fear that this can result in shelters sending victims of violence from shelters to external support services too early.

Amnesty International welcomes the fact that Finland is in the process of ratifying the Council of Europe Istanbul Convention. The government proposal on ratification of the Convention<sup>42</sup> was published on 1 September 2014 and it fails to address key requirements of the Convention. The government proposal does not introduce a dedicated action plan or new resources on how to extend the service system for victims of violence, e.g. by establishing “one-stop” walk-in centres or specialized services for victims of sexual violence. The government proposal presents some models of organizing a 24 h support line and specialized services for victims of sexual violence, but does not include a dedicated action plan how to these are in practice organized. The government proposal also does not introduce any concrete measures of how to establish a co-ordinating body for the work against violence against women, as required by the Istanbul Convention (article 10).<sup>43</sup>

Amnesty International remains concerned about the lack of services for women victims of violence, as well as fulfilling the aforementioned other obligations of the Istanbul Convention and other international treaties to which Finland is party including CEDAW, CRC, ICCPR and CESCR.

## RECOMMENDATIONS

### **Amnesty International recommends that the Finnish authorities:**

- Set up and adequately fund a dedicated action plan to prevent the murder of women by their male partners, which should take into account all forms of violence in the family likely to escalate into killing;

- Cease reliance on conciliation and mediation in cases of intimate partner and domestic violence;
- Adopt a definition of rape in the criminal law which meets the standards of international law including the Istanbul Convention, and protects the right to sexual and bodily integrity and autonomy;
- Define rape and other forms of sexual violence as a non-consensual sexual act and ensure that for sexual contact to be legal, “consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances” as required in the Istanbul Convention;
- Although the draft bill recognizes that where the victim is a child, this should be treated as an aggravating factor, Amnesty International recommends that the government revise the provisions in the law relating to rape and sexual abuse so that the definitions are fully in line with the Istanbul Convention;
- Ensure that all legal procedures in cases involving crimes of sexual violence are impartial and fair, and that presenting previous sexual history and other forms of irrelevant evidence in court, which acts to degrade and insult victims, is not allowed;
- Establish an independent monitoring mechanism to systematically analyze all sexual violence investigations that are closed before coming to trial, and to report on the reasons;
- Take preventive and effective measures against sexual violence and to eliminate gender-based stereotypes, prejudices and practices that constitute a barrier to women’s reporting of sexual violence;
- Provide adequate funding to The National Plan to Reduce Violence against Women;
- Establish a co-ordinating body to work on violence against women and ensure it has an appropriate budget, seniority of staff to co-ordinate, implement, monitor and evaluate policies and collect all the needed statistical information;<sup>44</sup>
- Open “one-stop” walk-in centres that provide protection and assistance to all women victims of violence, without discrimination of any kind including on grounds of ethnic origin, religion, sexual orientation or gender identity, disability nationality or status as undocumented migrants;
- Improve access to and increase the number of shelter places.

# TRAFFICKING FOR THE PURPOSE OF SEXUAL EXPLOITATION

(ART. 10, QUESTION 13 LIST OF ISSUES)

Despite some positive developments, including the identification of a growing number of trafficking victims by the authorities<sup>45</sup>, persons who have been trafficked for the purpose of sexual exploitation are often still not recognized as such and are not provided with adequate protection and assistance. Persons who are victims of trafficking for the purpose of sexual exploitation are instead treated as witnesses in cases concerning pandering. By being defined only as witnesses, such persons are not advised of their right to legal assistance. This is at least in part due to the fact that the definitions of trafficking and pandering/procurer overlap in the Penal Code. Cases in which a person is coerced into prostitution and/or even where grievous bodily harm is caused are considered pandering.<sup>46</sup> This has been recognized by the authorities and the Penal Code is being modified at the moment so that coercing a person to prostitution will be considered trafficking and causing grievous bodily harm is removed from the pandering section. A government proposal regarding the changes was given to the parliament 2 September 2014<sup>47</sup>

The Finnish National Rapporteur on Trafficking as well as the Parliament has called for a specific Act to be passed on the system of victim assistance in order to reinforce the legal protection of trafficking victims. The government published a draft law<sup>48</sup> that does not introduce a specific act to be passed but instead makes some changes to the existing law, such as that the System of Victim Assistance (a support system for the victims coordinated by Joutseno reception centre) is given a possibility to formally identify victims of trafficking – the existing law grants this possibility in practice only to the police and to the Finnish Immigration Service. Amnesty International remains worried about the fact that support and protection of the victim is on some cases still conditional on their cooperation in the criminal prosecution process. Cooperation with the criminal investigation is not a precondition for getting into the System of Victim Assistance, but trafficking victims who reside in Finland without a residence permit will have to apply for a special victim's residence permit and a condition for receiving such a permit is collaboration with the criminal investigation

Amnesty International acknowledges the initiative of the Ministry of Justice to assess the current prohibition of purchase of sexual services<sup>49</sup>. However Amnesty International is disappointed that no evaluation was commissioned of the discriminatory section of the Aliens Act (para.148.1.6),<sup>50</sup> which provides that if there are reasonable grounds to suspect that a person may sell and/or has sold sexual services, they can be removed from the country and/or banned from re-entering it. According to the report commissioned by the Ministry of Justice, 131 persons were removed from the country between January 2011 and April 2013.<sup>51</sup>

A study published by the National Research Institute of Legal Policy (2003)<sup>52</sup> stated that the

provision has increased the influence of procurers and undermined the position of persons who sell sexual services. Procurers benefit from a situation where persons involved in selling sexual services, including potentially even trafficking victims, are unable or too afraid to report exploitation, as they fear deportation. More recently the National Rapporteur on Trafficking in Human Beings<sup>53</sup> has expressed her concern on that Finnish authorities might not always investigate the possibility of human trafficking in an adequate way before removing third country nationals based on the aforementioned provision of the Aliens Act<sup>54</sup>. In their newest report (2014) the National Rapporteur on Trafficking in Human Beings recommends that this provision of the Aliens Act should be removed.<sup>55</sup>

Amnesty International is disappointed that the report commissioned by the Ministry of Justice does not go far enough in suggesting any change to this discriminatory provision.

## RECOMMENDATIONS

### **Amnesty International recommends that the Finnish authorities:**

- Finalize the Act on the system of victim assistance and secure the rights of trafficking victims to support regardless of their willingness to cooperate with law enforcement officials.
- Carefully assess the effects of the Aliens Act paragraph 148.1(6) on the human rights of victims of trafficking and on people who sell sexual services;
- Introduce a comprehensive plan of action to prevent trafficking in human beings;
- Engage with sex workers in order to assess their human rights situation- including the impact of anti-trafficking measures on their lives- and develop effective, evidence based measures to protect their rights.

# ENDNOTES

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<sup>1</sup> K. Alanko, "How are young LGBTI people doing in Finland? Seta and the Finnish Youth Research 2013", available at <http://www.nuorisotutkimusseura.fi/how-are-young-lgbtqi-people-doing-in-finland-abstract>, accessed 15 November 2013.

<sup>2</sup> 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>, accessed 13 January 2014

<sup>3</sup> See Amnesty International report (2014): The State Decides who I Am – Lack of Legal Gender Recognition for Transgender people: <http://www.amnesty.org/en/library/info/EURO1/001/2014/en>, Accessed 26 September 2014.

<sup>4</sup> According to the International Statistical Classification of Diseases and Related Health Problems (ICD 10), transsexualism (F64.0) is defined as "A desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex". <http://apps.who.int/classifications/icd10/browse/2010/en#/F60> (accessed 15 November 2013).

<sup>5</sup> See Amnesty International report (2014): The State Decides who I Am – Lack of Legal Gender Recognition for Transgender people: <http://www.amnesty.org/en/library/info/EURO1/001/2014/en>, Accessed 26 September 2014.

<sup>6</sup> CEDAW Committee (2014) recommended Finland to amend legal gender recognition procedures so that trans individuals would not have to sterilized or to conform to stereotypical notions of femininity and masculinity. See Concluding observations: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fFIN%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fFIN%2fCO%2f7&Lang=en), Accessed 29 September 2014

<sup>7</sup> Act on Legal Recognition of the Gender of Transsexuals (No. 563/2002, "Trans Act") Section 1 – Preconditions for legal recognition "A person can be legally recognised to belong to the gender opposite to that according to which he or she is recorded in the population information system referred to in the Population Information Act (507/1993) if he or she: 1) **presents a medical statement stating that he or she permanently feels to belong to the gender opposite to that assigned to him or her and lives in that gender role, and that he or she has been sterilised or is for some other reason infertile**; 2) is of age; 3) is not married or living in a registered partnership; and 4) is a Finnish national or has his or her place of residence in Finland." The Trans Act is available in Finnish only: <http://www.finlex.fi/fi/laki/ajantasa/2002/20020563> (Accessed September 26 2014)

<sup>8</sup> See Amnesty International report (2014): The State Decides who I Am – Lack of Legal Gender Recognition for Transgender people: <http://www.amnesty.org/en/library/info/EURO1/001/2014/en>, Accessed 26 September 2014.

<sup>9</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013, P.88, available at, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf) (Accessed 26 September 2014)

<sup>10</sup> Act on Legal Recognition of the Gender of Transsexuals (No. 563/2002, "Trans Act") Section 1 – Preconditions for legal recognition "A person can be legally recognised to belong to the gender opposite to that according to which he or she is recorded in the population information system referred to in the Population Information Act (507/1993) if he or she: 1) presents a medical statement stating that he or she permanently feels to belong to the gender opposite to that assigned to him or her and lives in that gender role, and that he or she has been sterilised or is for some other reason infertile; 2) is of age; 3) **is not married or living in a registered partnership**; and 4) is a Finnish national or has his or her place of residence in Finland." **Section 2 of the Trans Act states that the single requirement**

**is not, however, applied if the spouse gives his or her consent to the legal gender recognition. In this case an existing marriage is converted to a registered partnership and a registered partnership to a marriage.** The Trans Act is available in Finnish only: <http://www.finlex.fi/fi/laki/ajantasa/2002/20020563> (Accessed September 26 2014)

<sup>11</sup> Thomas Hammarberg, Council of Europe Commissioner for Human Rights, *Human Rights and Gender Identity* (CommDH/IssuePaper(2009)2), 29 July 2009, available at <https://wcd.coe.int/ViewDoc.jsp?id=1476365>, accessed January 2014, para 3.2.2.

<sup>12</sup> Thomas Hammarberg, Council of Europe Commissioner for Human Rights, *Human Rights and Gender Identity* (CommDH/IssuePaper(2009)2), 29 July 2009, available at <https://wcd.coe.int/ViewDoc.jsp?id=1476365>, accessed January 2014, para 3.2.2.

<sup>13</sup> Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Finland, from 11 to 13 June 2012, available at <https://wcd.coe.int/ViewDoc.jsp?id=1977837>, accessed January 2014

<sup>14</sup> The Yogyakarta Principles, Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principle 3d on the right to recognition before law. Available at [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm), Accessed 26 September 2014.

<sup>15</sup> The draft law on gender legal recognition, available only in Finnish: [http://www.stm.fi/c/document\\_library/get\\_file?folderId=9763020&name=DLFE-31407.pdf](http://www.stm.fi/c/document_library/get_file?folderId=9763020&name=DLFE-31407.pdf), Accessed 26 September 2014

<sup>16</sup> Information received from Statistics Finland 09/2013.

<sup>17</sup> Violence in Close Relationships – Results of National Crime Victim Survey 2012. In Finnish only: [http://www.optula.om.fi/material/attachments/optula/julkaisut/verkkokatsauksia-sarja/DziYiwy7b/parisuhdevakivalta\\_34.pdf](http://www.optula.om.fi/material/attachments/optula/julkaisut/verkkokatsauksia-sarja/DziYiwy7b/parisuhdevakivalta_34.pdf) (Accessed 8 January 2014)

<sup>18</sup> The National Plan to Reduce Violence against Women (2010-2015), p. 17.

<sup>19</sup> Conciliation is a form of mediation used in some criminal and civil cases.. Conciliation can restrictedly be used in domestic violence cases, in which only the police or the prosecutor can refer cases to conciliation. Conciliation processes are is mainly conducted by trained volunteers and supervised by the Ministry of Social Affairs and Health. Conciliation process can replace prosecution, but doesn't automatically do this: decision on this is done after the conciliation process has ended by the authority responsible for referring the case to conciliation. The law on conciliation (available only in Finnish), <http://www.finlex.fi/fi/laki/ajantasa/2005/20051015>, accessed September 26 2014

<sup>20</sup> The number of domestic violence cases referred to mediation: 1058 cases in 2010, 1929 cases 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 2012, available at [http://www.thl.fi/fi\\_FI/web/fi/tilastot/aiheittain/aikuisten\\_sosiaalipalvelut/rikossovittelu](http://www.thl.fi/fi_FI/web/fi/tilastot/aiheittain/aikuisten_sosiaalipalvelut/rikossovittelu) (Accessed 24 January 2013)

<sup>21</sup> The Finnish Penal Code, available only in Finnish: <http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001> , Accessed September 26 2014

<sup>22</sup> Mediation in criminal and civil cases 2013, National Institute for Health and Welfare <http://www.thl.fi/fi/tilastot/tilastot-aiheittain/aikuisten-sosiaalipalvelut/rikos-ja-riita-asioiden-sovittelu> (accessed 19 September 2014)

<sup>23</sup> 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).

<sup>24</sup> 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> and <sup>24</sup> CEDAW Committee Concluding observations (2014):  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fFIN%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fFIN%2fCO%2f7&Lang=en), Accessed 29 September 2014

<sup>25</sup> The Finnish Penal Code, available only in Finnish:  
<http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001> , Accessed September 26 2014

<sup>26</sup> According to the previous law some acts of sexual violence were not automatically investigated by the authorities, but only if so requested by the victim. The new law creates an obligation for the authorities to investigate all cases of sexual violence. However, sexual harassment that was added to as a new section to the law, was made a complainant offence. In addition the problematic “free will” section (Chapter 20, Section 12) that enables the prosecutor to waive criminal proceedings if the victim objects to them of her own “free will” and if there’s no significant public or private interest that requires charges to be pressed, was abolished from the Criminal Code.

<sup>27</sup> See definitions of rape in Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 36 and International Criminal Court, Elements of Crime relating to Article 7 and 8.

<sup>28</sup> Chapter 20, Section 1:2 (Rape): “Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, disability, state of fear or other state of helplessness, is unable to formulate or express his or her will, has sexual intercourse with him or her, shall be sentenced for rape.” Chapter 20, Section 5:1:1 (Sexual abuse): “A person who abuses his or her position and entices one of the following into sexual intercourse or another sexual act **essentially violating his or her right of sexual self-determination**, or into submission to such an act, (3) a patient in a hospital or other institution whose capacity to defend himself or herself or to formulate or express his or her will or is essentially impaired owing to illness, handicap or other infirmity, or (4) a person who is especially dependent on the offender, where the offender blatantly takes advantage of this dependence, shall be sentenced for sexual abuse.” In bold what was added in the draft bill, otherwise as in the outdated translation of the Penal Code, 24.7.1998/563, Chapter 20  
<http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L20> (accessed 7 January 2014). The current Finnish Penal Code, available only in Finnish: <http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001> , Accessed September 26 2014

<sup>29</sup> The CEDAW Committee (2014) recommended Finland to amend the Penal Code, See Concluding observations:  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fFIN%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fFIN%2fCO%2f7&Lang=en), Accessed 29 September 2014

<sup>30</sup> Amnesty International, Case Closed: Rape and Human Rights in the Nordic Countries: Summary report (Index: ACT 77/001/2010), 8 March 2010, available at <http://www.amnesty.org/en/library/info/ACT77/001/2010/en>.

<sup>31</sup> Law on legal proceedings, 17/7, available in Finnish  
<http://www.finlex.fi/fi/laki/ajantasa/1734/17340004000#L17>, accessed 26 September 2014

<sup>32</sup> Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Article 54:  
“Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary.”

<sup>33</sup> Helena Jokila, Consent against One’s Will and the Price of Undue Trust. The Legal Constructions of Knowledge in Finnish Sexual Crimes, 2010. <https://helda.helsinki.fi/handle/10138/18334> (Accessed 8th January 2014)

<sup>34</sup> See Helena Jokila, *Consent against One’s Will and the Price of Undue Trust. The Legal Constructions of Knowledge in Finnish Sexual Crimes*, 2010. <https://helda.helsinki.fi/handle/10138/18334> (Accessed 8th January 2014)

<sup>35</sup> Amnesty International and University of Lapland (2010): Study on the attitudes of Finnish people

towards sexual violence. In Finnish only: <http://www.amnesty.fi/raportit/asenne-esiin-mielipidekysely> (Accessed January 9 2014)

<sup>36</sup> The temporary Report of the Government's Equality Plan 2012-2015. In Finnish: [http://www.stm.fi/c/document\\_library/get\\_file?folderId=6511574&name=DLFE-28150.pdf](http://www.stm.fi/c/document_library/get_file?folderId=6511574&name=DLFE-28150.pdf) (Accessed 9 January 2014)

<sup>37</sup> Rape Crisis Center Tukinainen has 2 offices, in Helsinki and Jyväskylä. Webpage: <http://www.tukinainen.fi/english/>. In addition the Settlement Movement is conducting a project (2012-2015) to develop the protection and assistance of sexual violence victims in Tampere. Webpage in Finnish. <http://www.naapuri.fi/tyomuodot/valita-hanke/>

<sup>38</sup> Istanbul Convention, expl. report, , art. 23 para 135 available at: [http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Explanatory\\_Report\\_EN\\_210.pdf](http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Explanatory_Report_EN_210.pdf), accessed 25 September 2014.

<sup>39</sup> The shelters were closed down in Espoo and Pori and opened in Mikkeli.

<sup>40</sup> Draft bill on shelters, in Finnish: [http://www.stm.fi/c/document\\_library/get\\_file?folderId=9763020&name=DLFE-31438.pdf](http://www.stm.fi/c/document_library/get_file?folderId=9763020&name=DLFE-31438.pdf) (accessed 19 September 2014)

<sup>41</sup> Estimated by the Federation of Mother and Child Homes in September 2014, in Finnish: <http://www.ensijaturvakotienliitto.fi/@Bin/4419616/Lausunto+turvakotilaista+040914.pdf>, accessed 29 September 2013

<sup>42</sup> The government proposal available in Finnish at <http://217.71.145.20/TRIPviewer/show.asp?tunniste=HE+155/2014&base=erhe&palvelin=www.eduskunta.fi&f=WORD>, accessed 26 September 2014.

<sup>43</sup> Report of the Working Group on the Ministry of Foreign Affairs webpage, in Finnish only: <http://formin.finland.fi/public/default.aspx?contentid=274283&contentlan=1&culture=fi-FI> (accessed 7 January 2014)

<sup>44</sup> Recently a co-ordinating body was established for anti-trafficking work (as required by the CoE Trafficking Convention) that could serve as a model for a co-ordinating body for VAW.

<sup>45</sup> By 12/2012, approx. 100 victims were referred to the system of victim assistance. Press release of the Finnish National Rapporteur on Trafficking on Dec 5th 2012 "Despite positive development trafficking victims are not identified in Finland" [http://vahemmistovaltuutettu.fi/fi/ihmiskauppa/1/1/tiedote\\_positiivisesta\\_kehityksesta\\_huolimatta\\_ihmiskaupaa\\_ei\\_tunnisteta\\_riittavasti\\_suomessa](http://vahemmistovaltuutettu.fi/fi/ihmiskauppa/1/1/tiedote_positiivisesta_kehityksesta_huolimatta_ihmiskaupaa_ei_tunnisteta_riittavasti_suomessa) (Accessed January 13 2014).

<sup>46</sup> Penal Code, 24.7.1998/563, Chapter 20 and 25, unofficial translation (partly outdated) <http://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf> (accessed 24 January 2014). The current Finnish Penal Code, available only in Finnish: <http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001> , Accessed September 26 2014

<sup>47</sup> The government proposal in Finnish: <http://217.71.145.20/TRIPviewer/show.asp?tunniste=HE+103/2014&base=erhe&palvelin=www.eduskunta.fi&f=WORD> (Accessed 29 September 2014)

<sup>48</sup> The draft bill (in Finnish): [http://www.intermin.fi/download/54426\\_IhmiskauppaHE-luonnos\\_24062014.pdf?e8784d5fe49ad188](http://www.intermin.fi/download/54426_IhmiskauppaHE-luonnos_24062014.pdf?e8784d5fe49ad188), (Accessed 29 September 2014)

<sup>49</sup> Report commissioned by the Ministry of Justice to assess the current prohibition on the purchase of sexual services (only in Finnish), [http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/1378203764840/Files/OMSO\\_39\\_2013\\_Seksikaupan\\_kohteen\\_hyvaksikaytto.pdf](http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/1378203764840/Files/OMSO_39_2013_Seksikaupan_kohteen_hyvaksikaytto.pdf). Based on the assessment Minister of Justice has proposed that the current law that prohibits buying sexual services from victims of trafficking & pandering would be tightened so that the act would be punishable also in cases where it is a consequence of negligence. The draft bill available in Finnish at: <http://oikeusministerio.fi/material/attachments/om/valmisteilla/lakihankkeet/rikosoikeus/VAzSRxMdl/luonn>

[os\\_hallituksen\\_esit\\_20140703072212.pdf](#) (accessed 29 September)

<sup>50</sup> Unofficial English translation of the Finnish Aliens Act  
[www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf](#) (Accessed January 8 2014)

<sup>51</sup> Report commissioned by the Ministry of Justice to assess the current prohibition on the purchase of sexual services, [http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/1378203764840/Files/OMSO\\_39\\_2013\\_Seksikaupan\\_kohteen\\_hyvaksikaytto.pdf](#) (only in Finnish)

<sup>52</sup> Lehti, Martti and Aromaa, Kauko: Naiskauppa, laitton siirtolaisuus ja Suomi: Nykytilanne, lainsäädäntö ja tutkimuslähteet (Trade in women, illegal immigration and Finland: Current Situation, legislation and research sources.) Publications of the National Research Institute on Legal Policy 186/2003.

<sup>53</sup> As the National Rapporteur on Trafficking in Human Beings, the Ombudsman for Minorities monitors instances of human trafficking, oversees action against human trafficking and issues proposals, recommendations, statements and advice relevant to developing anti-trafficking work and promoting the status and rights of victims of human trafficking. The Ombudsman provides legal advice and can also assist victims of trafficking and related crimes in securing their rights.

<sup>54</sup> 2011 Report of the Finnish National Rapporteur on Trafficking in Human Beings, available in English at [http://www.vahemmistovaltuutettu.fi/intermin/vvt/home.nsf/files/Ihmiskaupparaportti\\_englanti/\\$file/Ihmiskaupparaportti\\_englanti.pdf](#) (Accessed 18 November 2011).

<sup>55</sup> 2014 Report of the Finnish National Rapporteur on Trafficking in Human Beings, available in Finnish at [http://www.ofm.fi/download/55526\\_Ihmiskaupparaportti\\_2014\\_FIN\\_WEB.pdf?be9fedc20c9bd188](#) (Accessed 24 September 2014).