



## Finland

### Amnesty International submission to the UN Universal Periodic Review 13<sup>th</sup> session of the UPR Working Group, May-June 2012

#### Follow up to the previous review

At the time of its first UPR in April 2008, Finland accepted a number of recommendations made by other states, including on issues related to violence against women,<sup>1</sup> asylum procedures,<sup>2</sup> and discrimination.<sup>3</sup>

Some positive steps have been taken with respect to these recommendations, for example as regards violence against women. In 2010 a National Action Plan to reduce violence against women came into force, and on 11 May 2011 Finland was among the first states to sign the Council of Europe Convention on preventing and combating violence against women and domestic violence (European Convention on violence against women). However, despite these welcome initiatives, Amnesty International is concerned that the proposed funding to implement the National Action Plan is insufficient. Also, the institutional infrastructure is not in place as the government has yet to set up a high-level unit to co-ordinate measures to prevent violence against women, with sufficient personnel and funding (further information on this issue is included below).<sup>4</sup>

As regards discrimination, Amnesty International notes that a proposal for new anti-discrimination legislation, the Equal Treatment Act, put forward in 2009 by a committee set up by the Ministry of Justice, has not been pursued by the government.<sup>5</sup> Concerns also remain around discrimination against transgender and intersex people (more information on this issue is included below).

With respect to asylum procedures, concerns remain about the accelerated asylum-determination procedures under the Aliens Act.<sup>6</sup> Because of their expedited nature, accelerated procedures do not allow enough time for a thorough consideration of each asylum claim. Such procedures therefore increase the risk of asylum-seekers being forcibly returned in violation of the principle of *non-refoulement*. Furthermore, asylum applicants whose claims are considered in the accelerated procedures cannot take advantage of all avenues of appeal, and can be removed from Finland while their appeal against the dismissal of their claim is pending.

#### Normative and institutional framework of the State

Amnesty International welcomes that legislation implementing the provisions of the Rome Statute of the International Criminal Court came into force in April 2008, and that a law criminalizing torture came into force in December 2009.<sup>7</sup> The organization is concerned, however, that Finnish law still provides for statutes of limitations for the crime of torture and for certain war crimes.<sup>8</sup>

Amnesty International welcomes that Finland is currently in the process of establishing a National Human Rights Institution. The planned "Ihmisoikeuskeskus" is envisaged to commence its work by the end of 2011; however, there are concerns that it may not have sufficient funding to be fully effective.

## **Promotion and protection of human rights on the ground**

### *Immigration detention*

Significant problems exist in relation to the administrative detention of irregular migrants and asylum-seekers, including those whose claims have been dismissed. Despite welcome commitments by the government in June 2011<sup>9</sup> and November 2011<sup>10</sup> to end the detention of unaccompanied minors and to develop alternatives to administrative detention, Amnesty International is concerned that insufficient consideration continues to be given to the necessity and proportionality of each decision to institute and/or continue someone's detention.

Approximately 1,000 asylum-seekers and irregular migrants are detained each year.<sup>11</sup> However, due to a lack of comprehensive statistical data on immigration detention, the exact numbers of those detained, as well as the length of and grounds for detention are not available. The Metsälä detention centre in Helsinki - the only immigration detention facility in Finland - is frequently overcrowded. As a consequence, at any one time approximately 50 per cent of those detained for immigration purposes are held in police detention facilities around the country, contrary to international standards. Their contact with the outside world is severely restricted and there is no separation between the sexes in police facilities and men, women and children are held together. While families are usually detained together, children under the age of 12 are often removed from their families and placed in fostercare for the duration of their relatives' detention.

Amnesty International also continues to receive reports that vulnerable asylum-seekers are being detained. These include pregnant women, persons with serious medical conditions, persons suffering from mental illness or trauma related to torture or ill-treatment, and women who have suffered serious violence.

### *Violence against women*

Amnesty International wishes to highlight certain areas in which Finland is failing to adequately protect women from gender-based violence.

Women who are victims of trafficking are not recognized as such and are not provided with adequate protection and assistance. The Finnish National Rapporteur on trafficking<sup>12</sup> has repeatedly stated that the most significant challenge to combating human trafficking in Finland is the failure to identify victims of victims of sexual exploitation as victims of trafficking.<sup>13</sup> Women who are victims of prostitution-related trafficking are instead treated as witnesses in cases concerning the facilitation or provision of a prostitute to a customer. By being defined only as witnesses, such women are not advised of their right to legal assistance and are often deported. This is at least in part due to the fact that the definitions of trafficking and aggravated pandering/procuring overlap in the Penal Code.

Moreover, current legislation in Finland pertaining to sexual offences, notably Chapter 20 of the Penal Code, is 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. Some acts of sexual violence are not automatically investigated by the authorities, but only if so requested by the victim.

There are also concerns that the attrition rate in Finland is very high. This is the filtering process whereby alleged offences never come to the attention of the criminal justice system, either because they are never reported, or because cases are dropped at various stages of the legal process. In Finland 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.<sup>14</sup> 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 crimes.<sup>15</sup>

Conciliation and mediation is widely used in Finland to deal with crimes of domestic violence and violence against women. The police receive approximately 5,000 reports of domestic violence yearly, of which over 1,000 are referred to mediation by the police or prosecutor. Statistics from 2010 reveal that most of these cases (84 per cent) are assaults.<sup>16</sup> The outcome of mediation in cases concerning intimate partner violence or domestic violence is however, unpredictable and there is significantly diverging views among prosecutors in Finland as to whether criminal proceedings should be conducted alongside mediation. Some prosecutors drop charges when the case is referred to mediation; some take the outcome of mediation into account when determining the penalty in a case; while others do not allow mediation to affect the legal process in any way.<sup>17</sup> Article 48 of the European Convention on violence against women acknowledges that mediation is not an appropriate method of dealing with crimes of violence against women, as such processes do not offer protection equal to the criminal law, and frequently lead to repeated re-victimization of women at risk.<sup>18</sup>

#### *Discrimination against transgender and intersex people*

Transgender and intersex people face discrimination by the authorities as well as by members of the general public.<sup>19</sup> Anti-discrimination legislation as well as legislation on hate crime both lack explicit reference to gender identity and expression thereof 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.<sup>20</sup> To obtain a legal name change, a diagnosis of gender dysphoria is also required.<sup>21</sup> Intersex 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.<sup>22</sup>

#### *Rendition and secret detention*

In October 2011, Amnesty International published new evidence that a significant 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.<sup>23</sup> Previously, only three suspected rendition flights had been documented as landing in Finland.<sup>24</sup> In response 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.<sup>25</sup> This suggests that Finland was actively incorporated into the US CIA rendition and secret detention programmes.<sup>26</sup>

There are also documented links between Finland and known CIA secret detention sites in Lithuania.<sup>27</sup> 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.<sup>28</sup> The aircraft departed the next morning to Washington DC and then onward to Miami. 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.<sup>29</sup>

The UN Joint study further noted that “dummy” flight plans had been filed in other countries in order to conceal flights to Lithuania.<sup>30</sup> In press reports, Finland was mentioned as one of the countries where “dummy” flight plans were filed.<sup>31</sup> 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. Lithuanian authorities have later acknowledged that the aircraft landed in Palanga, Lithuania at 22.25 and that it had arrived from Porto. 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. 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.

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.

#### *Civilian alternatives to military service and conscientious objection*

The length of the civilian alternative to military service in Finland remains punitive and discriminatory. Conscientious objectors are, at present, obliged to perform 362 days of civilian service, which is 182 days longer than the shortest and most common period of military service.

As of the end of September 2011, Amnesty International considered seven imprisoned conscientious objectors to military service to be prisoners of conscience. Most were serving sentences of 197 days for refusing to perform alternative civilian service.

## **Recommendations for action by the State under review**

### **Amnesty International calls on the government of Finland to:**

*Follow up to the previous review:*

- Allocate sufficient funds to ensure the effective implementation of the National Action Plan to prevent violence against women;
- Establish a high-level and well resourced unit to co-ordinate measures to prevent violence against women;
- Ensure that domestic legislation effectively protects against discrimination in all forms, including by expediting the passage of appropriate human rights compliant legislative proposals;
- Reform asylum-determination procedures to ensure that no asylum-seeker can be expelled from the country until a final determination is made of their application for asylum, including of any appeals against initial refusals.

*Normative and institutional framework of the State:*

- Remove statutes of limitations for the crime of torture and certain war crimes as well as any other legislative obstacles to effectively investigate, arrest and prosecute crimes under international law;
- Complete the process of establishing a National Human Rights Institution (the Ihmisoikeuskeskus) and ensure that it is adequately funded, independent and fully compliant with the Paris Principles.

*Immigration detention:*

- Take concrete measures to reduce the resort to detention of asylum-seekers and migrants solely for immigration purposes, in line with relevant international refugee and human rights law and standards;
- End the detention of all children solely for immigration purposes;
- End the use of police facilities for immigration detention purposes;
- Ensure that those detained for immigration purposes are treated humanely and in line with the strictest international human rights standards.

*Violence against women:*

- Ensure that women who are victims of trafficking are recognized as such and provided with protection and assistance;
- Ensure that rape is categorized as a sexual violation rather than according to the degree of violence used or threatened by the perpetrator; and to facilitate the access to justice for victims of rape to ensure that cases of rape are reported and prosecuted in court;
- Ensure that mediation is not used in cases of violence in intimate partnership or domestic violence. Mediation should not replace or otherwise affect the criminal proceeding, prosecution nor the determination of the penalty;
- Establish an independent monitoring mechanism to systematically analyze all rape investigations that are closed before coming to trial, and to report on the reasons for this.

*Discrimination against transgender and intersex people:*

- Ensure transgender and intersex people are effectively protected from discrimination, both in law and practice;
- Amend legislation to remove the sterility requirement.

*Rendition and secret detention:*

- Conduct an independent, impartial, thorough, and effective investigation into Finland's alleged complicity in the US-led rendition and secret detention programmes;
- Ensure that the government of Finland is held accountable for any human rights violations that may have occurred in the course of its co-operation with the US government's rendition and secret detention programmes;
- Prosecute in fair trials any state actor alleged to have been complicit in violations of international criminal law in the context of Finland's co-operation with the US government's rendition and secret detention programmes;
- Provide effective redress for any victims who may have suffered human rights violations as a result of Finland's involvement in the US-led rendition and secret detention programmes;
- To 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.

*Civilian alternatives to military service:*

- Immediately and unconditionally release all prisoners of conscience;
- Reduce the length of alternative civilian service, in line with internationally recognized standards and recommendations.

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review of Finland, 23 May 2008 (A/HRC/8/24) paragraph 50.3 (Mexico and Russian Federation).

<sup>2</sup> A/HRC/8/24, paragraph 50.6 (Bolivia).

<sup>3</sup> A/HRC/8/24, paragraphs 50.1 (Netherlands and Russian Federation), 50.2 (Mexico) and 50.7 (Slovenia).

<sup>4</sup> This is also required by Article 10 of the Convention on violence against women, which requires that state parties "designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention. These bodies shall co-ordinate the collection of data as referred to in Article 11, analyse and disseminate its results."

<sup>5</sup> On 25 January 2007 a Committee was appointed by the Ministry of Justice to renew Finnish anti-discrimination legislation. Its mandate was to develop a proposal for improving anti-discrimination legislation to cover all discriminatory grounds, to cover both the private and public sector and afford effective redress and remedy to victims of discrimination. The Committee filed its proposal in December 2009, however, there was disagreement on specific issues in the proposal, and the government did not propose the draft law to parliament.

<sup>6</sup> A/HRC/8/24, paragraph 50.6 (Bolivia).

<sup>7</sup> Amendment to the Penal Code, 4.12.2009/990.

<sup>8</sup> When implementing the Rome Statute, Finland divided up war crimes into different categories: aggravated war crimes, war crimes and so called "petty war crimes" (see Chapter 11, sections 5, 6 and 7 of the Penal Code). It is the latter category for which the legislation provides a statute of limitation (see Chapter 8, Section 1 of the Penal Code).

<sup>9</sup> Government Programme of Prime Minister Jyrki Katainen's Government, 22 June 2011.

<sup>10</sup> Press release by Ministry of Interior, "Ulkomaalaisten säilöönottoa koskevia säännöksiä tarkistetaan", available at: <http://www.intermin.fi/newslis/20111117031> (accessed 18 November 2011).

<sup>11</sup> As no comprehensive statistics are collected by the authorities, in past years Amnesty International Finland has compiled statistics by requesting them from different authorities.

<sup>12</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>13</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/lhmiskaupparaportti\\_englanti/\\$file/lhmiskaupparaportti\\_englanti.pdf](http://www.vahemmistovaltuutettu.fi/intermin/vvt/home.nsf/files/lhmiskaupparaportti_englanti/$file/lhmiskaupparaportti_englanti.pdf) (accessed 18 November 2011).

<sup>14</sup> 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). Further statistics can be accessed in the Crime Trends in Finland 2009 and 2010, published by the National Research Institute of Legal Policy.

<sup>15</sup> 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.

<sup>16</sup> Mediation in Criminal and Civil Cases, available at: <http://www.stakes.fi/FI/tilastot/aiheittain/Sosiaalipalvelut/rikossovittelu.htm> (accessed 18 November 2011).

<sup>17</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.

<sup>18</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 (UN Doc: HDI/follow-up/41/FIN/4).

<sup>19</sup> This is despite recommendations on gender recognition and the right to family life of transgender people made by the Commissioner for Human Rights of the Council of Europe and recommendations on measures to combat discrimination on grounds of sexual orientation or gender identity by the Council of Ministers of the Council of Europe ("Human Rights and Gender Identity", Issue Paper by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 29 July 2009, CommDH/IssuePaper(2009)2); Recommendation CM/Rec (2010)5 of the Committee of Ministers to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Committee of Ministers on 31 March 2010 (Council of Europe, "Discrimination on grounds of sexual orientation and gender identity in Europe", September 2011)

<sup>20</sup> Council of Europe, "Discrimination on grounds of sexual orientation and gender identity in Europe", p.86.

<sup>21</sup> Council of Europe, "Discrimination on grounds of sexual orientation and gender identity in Europe", p.89.

<sup>22</sup> For more information, see SETA – LGBT Rights in Finland: [www.seta.fi/doc/lausunnot/07YKFinal.doc](http://www.seta.fi/doc/lausunnot/07YKFinal.doc) (accessed 18 November 2011).

<sup>23</sup> Press release by Amnesty International Finland, "Amnesty löytänyt lisää Suomen kautta kulkeneita mahdollisia vankilentoja", 10 October 2011.

<sup>24</sup> 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 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-Ilennoista Pohjoismaissa, E8/2007 Dnro: 07-392-01), 2 April 2007.

<sup>25</sup> 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&nodeld=23&contentlan=1&culture=fi-FI> (accessed 18 November 2011).

<sup>26</sup> 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.

<sup>27</sup> For further information, see Amnesty International, *Lithuania: Unlock the truth: Investigate secret prisons now* (Index EUR 53/002/2011) 29 September 2011.

<sup>28</sup> 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](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 18 November 2011). 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 18 November 2011).

<sup>29</sup> *UN Joint Study on Secret Detention*, paragraph 120.

<sup>30</sup> *UN Joint Study on Secret Detention*, paragraph 120.

<sup>31</sup> "Secret CIA prison revealed in Lithuania" *EUobserver.com*, 20 November 2009, available at: <http://euobserver.com/13/29029> (accessed 18 November 2011).