



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

Forty-sixth session

9 May – 3 June 2011

### Consideration of reports submitted by States parties under article 19 of the Convention

#### Concluding observations of the Committee against Torture

#### Finland

1. The Committee against Torture considered the fifth and sixth combined periodic reports of Finland (CAT/C/FIN/5-6) at its 996th and 999th meetings, held on 18 and 19 May 2011 (CAT/C/SR.996 and 999), and adopted the following concluding observations at its 1011th and 1012th meetings on 27 and 30 May 2011 (CAT/C/SR.1011 and CAT/C/SR.1012).

#### A. Introduction

2. The Committee welcomes the timely submission of the fifth and sixth combined periodic reports of Finland submitted in accordance with the optional reporting procedure of the Committee consisting of replies by the State party to the list of issues (CAT/C/FIN/Q/5-6) submitted by the Committee. The Committee expresses its appreciation to the State party for agreeing to report under this new procedure which facilitates the cooperation between the State party and the Committee. The Committee appreciates that the replies to the list of issues were submitted within the requested deadline.

3. The Committee also appreciated the open and constructive dialogue with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee. The Committee thanks the delegation for its clear, straightforward and detailed answers to the questions raised by Committee members.

#### B. Positive aspects

4. The Committee notes with satisfaction that, since the consideration of the fourth periodic report of the State party, the latter has acceded to the following international instruments:

(a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol);

(b) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

5. The Committee welcomes the State party's ongoing efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including:

(a) Amendment of the Criminal Code which entered into force on 1 January 2010 that criminalizes torture and establishes the absolute prohibition of torture in all circumstances, in compliance with the recommendations of the Committee to bring the code into accordance with articles 1 and 4 of the Convention;

(b) Amendment, adopted on 20 May 2011, to the Parliamentary Ombudsman Act (197/2002), which will enter into force on 1 January 2012, establishing the Centre for Human Rights as the national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles);

(c) Adoption of the Pre-Trial Investigation Act, the Coercive Measures Act and of the Police Act in 2011;

(d) Adoption by Parliament in March 2011 of a legal reform whereby persons identified in the Child Welfare Act are required to report suspicions of sexual abuse to the police;

(e) Amendments to the Finnish Aliens Act (301/2004) which came into force on 1 April 2011;

(f) Entry into force of the New Act on Imprisonment (767/2005), the Act on Remand Imprisonment (768/2005) and of the Act on the treatment of persons held in police custody (841/2006);

(g) Amendments to the Act on the Ombudsman for Minorities and the Discrimination Board which entered into force on 1 January 2009, under which the Ombudsman for Minorities acts as the National Rapporteur for Trafficking in Human Beings;

(h) Amendments to the Criminal Code making petty assaults on minors, persons close to the perpetrator, including marital spouse or registered civil partners, the subject of public prosecution since the beginning of 2011; and

(i) Reduction in the number of prisoners since the introduction in 2006 of the possibility of probationary liberty under supervision under the Act on Imprisonment.

6. The Committee also welcomes the efforts being made by the State party to amend its policies, programmes and administrative measures in order to ensure greater protection of human rights and give effect to the Convention, including:

(a) The unification at the beginning of 2010 of the Criminal Sanctions Agency, the Prison Service and the Probation Service in a single organization called the Criminal Sanctions Agency, which is preparing a pilot survey for the end of 2012 of inmates and prison personnel;

(b) The revision of the National Plan of Action against Trafficking in Human Beings and the adoption on 11 June 2010 of the Programme on the Prevention of Violence Against Women comprising 60 measures;

(c) That the State party has continued to contribute regularly to the United Nations Voluntary Fund for the Victims of torture since 1984.

## C. Principal subjects of concern and recommendations

### Statute of limitations for the crime of torture

7. The Committee is concerned that the Criminal Code contains a statute of limitations for the crime of torture (art. 4).

**The Committee recommends that the State party ensure that acts of torture are not subject to any statute of limitations.**

### Fundamental legal safeguards

8. The Committee is concerned that fundamental legal safeguards were not always ensured for persons deprived of their liberty– in particular for those having committed “minor offences”, including juveniles – from the very outset of their detention, such as meeting with a lawyer, preferably of their choice, notifying their next of kin even in case of short stays in police custody and being examined by an independent doctor, preferably of their own choice, within the detention premises (arts. 2 and 16).

**The Committee recommends that the State party 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, preferably of their choice, notifying their family of their detention and being examined by an independent doctor, preferably of their choice.**

9. The Committee is concerned that interrogations of persons who have been arrested and detained and the investigations of persons before trial are not systematically subject to audio- or video-recording (arts. 2 and 16).

**The Committee recommends that the State party allocate the funds required to equip places where persons are interrogated and where pretrial investigations occur, and in particular police stations, with the necessary audio- and video-recording equipment.**

### Non-refoulement

10. The Committee is concerned that available legal safeguards and the time frame prescribed by law are not always guaranteed to all asylum-seekers (especially under the accelerated asylum procedure) and aliens pending deportation; for example, the right to lodge a judicial appeal with suspensive effect to the Helsinki Administrative Court and the Supreme Administrative Court. The Committee has no information on whether deportation operations are monitored by an independent body (art. 3).

**The Committee recommends that the State party guarantee a suspensive in-country right of appeal and respect for all safeguards and interim measures with regard to asylum and deportation procedures pending the outcome of the appeals to the Helsinki Administrative Court and the Supreme Administrative Court. The Committee would like to request information on whether deportation operations are monitored by an independent body.**

### Involuntary psychiatric hospitalization and treatment

11. The Committee is concerned that the provisions of the Mental Health Act governing involuntary psychiatric hospitalization and treatment have not been amended. The Committee is concerned further that an independent psychiatric opinion is not included as

part of the procedure for involuntary hospitalization, and that a decision for involuntary hospitalization can be based on a referral from a single doctor, frequently a general practitioner. Furthermore, the Committee notes with concern that a court review of involuntary hospitalizations is often not in place. In addition, the Committee is concerned that patients' consent is not sought with regard to electroconvulsive therapy and that there is no specific register for recording recourse to that therapy (arts. 2, 12, 13 and 16).

**The Committee recommends that the State party amend the Mental Health Act and pass clear and specific legislation rescinding the provisions governing involuntary psychiatric hospitalization and treatment, and enacting clear and specific legislation ensuring basic legal safeguards, such as requiring an independent psychiatric opinion as part of the procedure regarding the initiation and review of involuntary hospitalization and ensuring that a meaningful and expedient court review of the measure of involuntary hospitalization is provided, which includes the possibility for complaints. The State party should ensure that mental health care and services provided to all persons deprived of their liberty, including in prisons, psychiatric hospitals and social institutions, are based on the free and informed consent of the person concerned. The State party should ensure that any administering of electroconvulsive therapy to patients deprived of their liberty is based on free and informed consent. It also recommends the establishment of an independent body to monitor hospitals and places of detention, including with the authority to receive complaints.**

#### **Violence against women**

12. While appreciating the reply from the representatives of the State party regarding acceptance of the principle of due diligence with regard to the application of the Convention, particularly whereby State parties exercise their duty to prevent, investigate, and punish acts of violence against women and take effective action concerning acts of violence against women, whether perpetrated by the State, private persons, or armed groups, the Committee recommends that the State party redouble its efforts to prevent and eradicate all forms of violence against women (arts. 2, 4 and 16).

**The Committee in particular urges the State party to include information about the prohibition against torture under the Convention in the education and training of law enforcement and other personnel involved in combating violence against women including domestic violence and trafficking. It would appreciate receiving information from the State party concerning the sentences given to persons convicted of rape, and whether the punishments are commensurate with the gravity of the offence. It also recommends that the State party adopt legislation with a view to increasing the number of shelters for victims of violence, including trafficked persons, which should be allocated appropriate funding and specialized staff.**

#### **Training**

13. The Committee is concerned that all police training is monitored, evaluated and accepted by the National Police Board. It is also concerned that medical personnel who come into contact with persons deprived of their liberty, asylum-seekers and other aliens are not systematically trained in the provisions of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) (art. 10).

**The Committee recommends that all training of public officials be assessed and evaluated by a qualified independent body such as the envisaged independent evaluation body attached to the Ministry of Education and Culture which will start work in 2011. It also recommends that training on the provisions of the Manual on**

**Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) be introduced into the basic training curriculum for medical personnel.**

#### **Conditions of detention**

14. The Committee is concerned that occasional overcrowding continues to exist in some prisons and detention centres. While noting that prisoners have access to toilets during all hours of the day, the Committee is concerned at reports by the State party that 222 prison cells in three different prison facilities still lack appropriate sanitary equipment, including toilet facilities, and that the practice of “slopping out” continues to exist, a situation which is scheduled to end only in 2015 (arts. 11 and 16).

**The Committee recommends that the State party remedy the situation of overcrowding, including by way of redistributing prisoners, accelerating the judicial procedures and using the system of probationary liberty under supervision introduced in 2006. The Committee urges the State party to accelerate the renovation of the Mikkeli and Kuopio prisons, as well as Helsinki and Hameenlinna prisons, in addition to installing sanitary equipment in all places of detention as soon as possible.**

15. The Committee is concerned that while the total number of prisoners has fallen, the number of remand, female and foreign prisoners has increased. It remains concerned about the situation of remand prisoners and preventive detention of aliens held in police and border-guard detention facilities and the length of pretrial detention. In addition, it is concerned that some 10 per cent of Roma prisoners are accommodated in closed wards. The Committee is also concerned at the reported slowness of the State party’s judicial apparatus and whether there are any members of ethnic minorities among the judiciary (arts. 11 and 16).

**The Committee recommends that the State party limit to the extent possible the stay of remand prisoners and aliens in preventive detention, in particular in police and border-guard detention facilities, and comply with the recommendations made in November 2010 by the working group set up by the Ministry of Justice to introduce a legislative amendment allowing for remand prisoners to be moved more quickly from police stations to regular prisons than is the case at present. It recommends that the Parliamentary Ombudsman monitor the conditions of detention of Roma prisoners, including the implementation of ethnic equality, and ensure that prison staff intervene in all incidents of discrimination against Roma brought to their attention. The Committee recommends that legislation be adopted to reduce pretrial detention and to accelerate the pending civil and criminal procedures. The Committee would appreciate receiving statistics on the number of members of ethnic minorities among the judiciary.**

#### **Monitoring of places of deprivation of liberty**

16. The Committee is concerned that the Deputy Parliamentary Ombudsman dealing with prison matters was unable to carry out frequent and unannounced visits to places of deprivation of liberty owing to their heavy workload and processing of complaints (art. 11).

**The Committee recommends that the State party allocate sufficient human and financial resources to the Parliamentary Ombudsman in order to enable them to carry out frequent and unannounced visits to places of deprivation of liberty under their mandate. In this context, the Committee notes with satisfaction that the State party has signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and recommends that the State party complete the process of ratification of the Optional Protocol at the earliest**

appropriate time, so that the Parliamentary Ombudsman may act as the national preventive mechanism.

#### **Detention and ill-treatment of asylum-seekers, irregular immigrants and other aliens**

17. The Committee is concerned about information regarding the frequent use of administrative detention with regard to asylum-seekers, irregular immigrants, unaccompanied or separated minors, women with children and other vulnerable persons, including those with special needs, as well as with their numbers, the frequency and the length of their detention. In addition, the Committee is concerned that the Aliens Act allows for preventive detention not for a crime already committed but if a person is suspected of the possibility of committing a crime (arts. 11 and 16).

**The Committee recommends that the State party consider alternatives to the frequent detention of asylum-seekers and irregular immigrants, including minors and other vulnerable persons, and that it establish a mechanism to examine the frequent detention of such persons. It recommends that the State party consider increasing the use of non-custodial measures, use detention as a last resort and ensure that administrative detention of unaccompanied children is not practised. The Committee requests the State party to ensure that the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment be applied to asylum-seekers in administrative detention. In addition it would appreciate receiving information on the number of asylum-seekers and irregular immigrants in detention, how frequently they are detained and the average length of their detention.**

18. The Committee is concerned at the conditions and length of detention of asylum-seekers and irregular immigrants at the detention unit for foreigners at Metsälä and the lack of legal safeguards regarding the length of detention. It is also concerned that such persons are detained not only in the Metsälä detention centre, which has a small capacity, but also in police and border-guard detention facilities which are not suitable for holding persons detained under legislation on aliens. The Committee is concerned that men and women are held together in such facilities, that children are held with adults when families with children are placed in migration-related detention and that a total of 54 children were detained in 2010 under the Aliens Act (arts. 2 and 11).

**The Committee recommends that steps be taken to increase the capacity of the Metsälä detention centre or establish a new detention centre for foreigners. It also recommends that the State party review the detention, including length, of asylum-seekers, irregular immigrants and other foreigners in the Metsälä centre as well as in police and border-guard detention facilities, provide them with fundamental legal safeguards and set up a complaints mechanism regarding conditions of detention, and use non-custodial measures.**

19. The Committee is also concerned at allegations concerning the rise in physical and psychological ill-treatment of asylum-seekers and irregular immigrants, including their harsh treatment by the police and other law enforcement authorities (arts. 10, 11 and 16).

**The Committee recommends that the State party ensure that specialized training and internal guidelines for police, border guards and other law enforcement authorities make them aware of their obligations under human rights and refugee law so that they may treat asylum-seekers in a more humane and culturally sensitive manner and that perpetrators of ill-treatment are investigated, prosecuted and convicted.**

#### **Redress, including compensation and rehabilitation**

20. The Committee is concerned that, although persons are entitled to compensation under the Act on Compensation from State Funds for the Arrest or Detention of an Innocent

Person and the Parliamentary Ombudsman sometimes provides limited compensation for non-pecuniary damage caused by torture or ill-treatment, according to the legal order of the State party the authorities do not have a general obligation to pay compensation to a person whose rights have been violated (art. 14).

**The Committee recommends that the State party adopt all necessary measures in order to comply with the full scope of article 14 of the Convention according to which the State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, that in the event of the death of the victim as a result of an act of torture his dependants shall be entitled to compensation and that nothing shall affect any right of the victim or other persons to compensation which may exist under national law. In addition, while it welcomes the existence of two rehabilitation units for torture survivors in the State party, the Committee recommends that full rehabilitation be made available to all victims of torture and ill-treatment, in all settings.**

#### **Non-admissibility of evidence**

21. While noting that it has not received any information that evidence obtained under torture has been accepted, the Committee is concerned that criminal law in the State party does not contain any specific provisions on the prohibition of use of statements obtained under torture, as set out in article 15 of the Convention. It is also concerned that the prosecution service has not issued any instructions or orders with regard to the prohibition of using a statement obtained under torture as element of proof (art. 15).

**The Committee recommends that the State party enact legislation specifically prohibiting the use of statements obtained under torture as evidence and elements of proof in conformity with article 15 of the Convention.**

#### **Ill-treatment**

22. The Committee is concerned that, according to the Deputy Parliamentary Ombudsman, persons who were arrested for participating in a demonstration were tied by the police to the seats of their bus and to each other and were not allowed to use the toilet while in the bus, in violation of Ministry of the Interior Decision 1836/2/07 of 28 November 2007, summary 2007, pages 41–44 (art. 16).

**While taking note of the measures taken by the State party to remedy the situation and prevent such incidents in the future, as stated during the dialogue with the delegation, the Committee recommends that the State party issue clear guidelines to be followed by the police when arresting and dealing with persons deprived of their liberty, in order to prevent any ill-treatment of those detained, as outlined in the Code of Conduct for Law Enforcement Officials.**

#### **Information and statistical data**

23. While taking note of the information about the basis of the compilation of statistics by the Parliamentary Ombudsman, the Committee recommends that the State party provide the Committee with data disaggregated by age, gender and ethnicity on: complaints, investigations of and prosecutions and convictions in cases, if any, of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as persons who are not public servants. It would also appreciate receiving disaggregated data on trafficking in human beings, the forced clandestine prostitution and exploitation of immigrant women, violence against women, including domestic and sexual violence, and means of redress, including compensation and rehabilitation, provided to the victims

24. While taking note with satisfaction that the State party committed itself to making the recommendations made under the universal periodic review an integral part of its Government's comprehensive human rights policy, the Committee would appreciate receiving information regarding the measures in force to prevent violence against women, compile information on violence against children, provide the same coverage in national legislation and anti-discrimination training activities on grounds of sexual orientation and disability as for other grounds of discrimination in areas such as the provision of services and health care and to consider using the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a guide to assist in the development of its policies.

25. The Committee would further welcome information concerning the implementation of the Convention in territories where its Armed Forces are deployed, including in United Nations missions.

26. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities and its Optional Protocol, and the International Convention for the Protection of All Persons from Enforced Disappearance.

27. The Committee invites the State party to present its next treaty-specific report within the limit of 40 pages. The Committee also invites the State party to update its common core document (HRI/CORE/1/Add.59/Rev.2) in accordance with the requirements of the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the Inter-Committee Meeting of the human rights treaty bodies, and to observe the page limit of 80 pages for the common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

28. The Committee requests the State party to provide, within one year, information on the implementation of the Committee's recommendations contained in paragraphs 8, 15, 17 and 20 above.

29. The Committee recommends that the State party widely disseminate throughout its territory, in all official languages, the report submitted to the Committee and the Committee's concluding observations through official websites, the media and non-governmental organizations.

30. The State party is invited to submit its next report, which will be the seventh periodic report, by 3 June 2015.

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