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To the Ministry for Foreign Affairs

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## **Statement of the Finnish League of Human Rights concerning the implementation of the International Covenant on Civil and Political Rights (ICCPR) in Finland in light of the List of Issues**

The Finnish League of Human Rights wants to highlight following topics related to the List of Issues. Our statement focuses especially on issues which we raised already in the preparatory phase before the launch of the List of Issues. Thus, we comment on questions 4, 5, 6, 8, 9, 11 and 23. To a high extent, our concerns reiterate those that we have described in our earlier statement, but we also refer to more recent developments.

***B. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee***

***Constitutional and legal framework within which the Covenant is implemented (art. 2)***

***4. Please respond to reports that human rights impact assessment of bills, policies and other initiatives or reforms has been limited or lacking in some cases, and provide information on measures taken to strengthen the mechanisms for human rights assessment of legislative and policy proposals prior to their adoption to ensure their compatibility with the Covenant.***

As a general notion, the League for Human Rights stresses the need to establish a systematic practice of human rights assesment both in the preparatory phase of legislation and governmental programmes and as long-term impact assesments. Currently, a human rights assesment is either omitted or covered only superficially in almost any given legislative procedure or other government action.

***Non-discrimination, gender equality and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20 and 26)***

***5. Please report on the impact of the Non-Discrimination Act (1325/2014) on ensuring effective access to justice and reparation for victims of discrimination, clarifying, inter alia, whether:***

***(a) the Non-Discrimination Ombudsman can bring cases before the courts on its own motion; and (b) the National Non-Discrimination and Equality Tribunal can award compensation to victims of discrimination.***

The new, broader Non-Discrimination Act took effect in 2015, simultaneously with the reformed Act on Equality between Men and Women. The reform has given new groups of people access to the three low threshold monitoring bodies around equality and non-discrimination: The Non-Discrimination Ombudsman, The Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal.

However, there are gaps in the scope of the protections the legislation provides. It is problematic that the Non-Discrimination Ombudsman's supervision mandate excludes individual cases of discrimination in employment.

Although the Equality Act acknowledges gender identity and gender expression, the demand to promote equality only applies to equality between men and women. Concerning gender identity and gender expression, there is an obligation for employers, authorities and schools to prevent discrimination. This is a weaker formulation and has not been effectively implemented.

The National Non-Discrimination and Equality Tribunal can examine cases of discrimination in employment but only regarding gender-based discrimination, including discrimination based on gender identity or expression.

The current legislative framework makes it difficult to recognise multiple discrimination. For an individual experiencing discrimination, the asymmetric mandates of the Ombudsmen and the Tribunal may be confusing and hinder access to justice.

Under the current law, the Non-Discrimination Ombudsman cannot take a case of discrimination to the Tribunal for processing without naming the victim. This is problematic as certain kinds of discriminatory acts may not be targeted at a specific person but rather at a group of people as a whole, based for example on ethnicity, religion or sexual orientation. It is important that this kind of cases would become eligible for taking to the Tribunal without a specified victim. The threshold for individual victims to agree on their case to be taken into the Tribunal may also be high due to stress and fear of repercussions which makes it contradictory to demand that a victim should always be named.

The Tribunal cannot award compensation for victims of discrimination. As a rule, a victim of discrimination would have to sue their counterpart in a civil procedure at their own risk within two years from when the discriminatory act has taken place. Very few victims take a demand of compensation further due to the strict time frame, lengthy complaint procedures at the monitoring bodies and the cost risk involved. Thus, victims often get no remedy at all even if the Tribunal or one of the Ombudsmen had stated that discrimination has taken place in the case.

***6. Please comment on the reported increase in hate speech and intolerance in society, and provide information on measures taken to respond effectively to reports of:***

***(a) hate crimes, harassment and hate speech, including online (especially on social media) and in political discourse, against foreigners and foreign-language speakers, immigrants and members of ethnic and religious minorities such as Roma and Muslims;***

***(b) a rise in anti-Semitic hate speech online; and***

***(c) a proliferation of fake news outlets and Internet trolling factories that encourage and contribute to hate speech.***

***Please also report on the measures taken to ensure effective investigation of and prosecution for hate crimes, and supply data on the number of reported cases, investigations and prosecutions initiated and their outcome.***

Numerous projects have been implemented in Finland throughout recent years to prevent and stop hate speech and other hate crimes. However, short-lived projects are not a sustainable solution to the problem at hand. It is welcome that the government plans to launch an action plan against racism and discrimination. Focused action is necessary to combat and prevent racism effectively. The scope of the plan is still unclear. In order to be effective, the programme should cover all discrimination grounds and be based on the views and needs of vulnerable groups.

Research shows that both the police and border guards as well as private guards in cities use illegitimate ethnic profiling in performing their duties. The response of authorities to this information has so far been insufficient. Ethnic profiling is forbidden in the Aliens Act but the legislation needs to be implemented in a prompt way.

According to a report by the Ministry of Justice, in many reported cases of crimes that can be classified as hate crimes, the hate motive has either not been reported by the victim or has not been recorded by the police. Many victims lack trust in the legal system, fear repercussions or lack information about their rights. Also the police and prosecutors sometimes lack adequate knowledge of the significance of assessing and including a

potential hate motive in the process. Underreporting especially by groups at risk of discrimination should be effectively combatted in order to improve the access to rights.

The police has organised trainings on hate crimes a few years ago together with the OSCE and has later on continued with such trainings on their own. This is positive even as the general level of knowledge of human rights among the police force should be improved. Human rights education is already, to some extent, part of the curricula within the police academy, however, its content and quality should be assessed regularly. In addition, there should be compulsory human rights education for senior officers. So far, participation in human rights sessions has been voluntary and such sessions have not been integrated systematically into the training. All in all, the quality and results of human rights education for the police should be evaluated regularly, using good practice from other countries as benchmark.

***Discrimination on the grounds of gender identity and intersex status (arts. 2, 7, 9, 17, 24 and 26)***

***8. In connection with the previous concluding observations (para. 8), please report on the measures taken to address discrimination against transgender persons. Please also report on the progress made in bringing into compliance with the Covenant the Act on Legal Recognition of the Gender of Transsexuals, which requires, inter alia, sterilization or infertility as a precondition for legal gender recognition, and comment on reports that gender recognition requires a mental health diagnosis of “transsexualism”.***

The government has pledged to launch a reform of the Trans Act. According to the government’s programme, legal gender recognition would in the future be based on self-determination. This is a long-awaited turn. It is very unfortunate though that the government has announced that the reform will be limited to persons over 18 years of age, and that there will be a reconsideration period before actual legal gender recognition. The process of legal gender recognition should be based on real self-determination and should be available also for minors.

***9. Please respond to reports that infants and children with variations in sex characteristics (intersex) are subjected to medically unnecessary and irreversible “sex-normalizing” surgeries and other medical treatment without fully informed and free consent. Please report on:***

***(a) any follow-up to the proposal made in 2016 by the National Advisory Board on Social Welfare and Health Care Ethics that measures to modify external sex characteristics of***

*intersex children not be taken until they themselves can both define their gender and form a position on their sexuality;*

*(b) the outcome of the study on the rights and experiences of intersex children, planned under the National Action Plan on Fundamental and Human Rights 2017–2019, and on any ensuing follow-up measures;*

*(c) efforts to adopt national binding guidelines for medical professionals on the treatment of intersex individuals; and*

*(d) measures to facilitate effective access to justice and redress for individuals who have been subjected to such surgeries or other medical interventions.*

Unnecessary and nonconsensual genital normalizing surgery and other nonconsensual, not medically necessary interventions for intersex children violates the child's right to self-determination, physical-integrity and bodily autonomy. The government has pledged in its programme to stop this kind of surgeries. The scope of the reform is still unknown. It is essential that the ban should cover all kinds of nonconsensual, medically unnecessary medical interventions such as hormonal treatment, and not only genital surgery.

***Violence against women, including domestic and sexual violence (arts. 2, 3, 6, 7 and 26)***

***11. With reference to the previous concluding observations (para. 7), please report on measures taken and progress achieved in relation to tackling effectively the prevalence of violence against women, particularly domestic violence and rape, including measures:***

***(a) to provide sufficient funding for the Committee for Combating Violence against Women and Domestic Violence and for the implementation of policies and programmes aimed at combating violence against women and assisting victims;***

***(b) to encourage reporting of such violence and address the root causes of its underreporting, the low prosecution and conviction rates for rape and the ensuing lenient penalties;***

***(c) to make the lack of victim's consent, as opposed to the use or threat of violence, the core element of the definition of rape;***

***(d) to reconsider the court fee for unsuccessful applications for restraint orders and ensure effective access to justice and remedies for victims of violence, including sexual violence;***

***(e) to provide sufficient and adequate victim support services, including shelters and sexual assault support centres, throughout the country, and facilitate access to such services for all victims; and***

***(f) to provide counselling services for perpetrators.***

***Please respond to reports that protection against forced marriage remains insufficient in the absence of comprehensive data on its extent and on its effective criminalization, and report on the outcome of the project initiated in 2017 to collect information about forced marriage.***

Many relevant Finnish authorities and professionals have insufficient knowledge on honour-related violence, including forced marriage, estimated a study conducted by the Finnish League for Human Rights in 2016. No compulsory training on the subject is included in most authorities' or professionals' education.

There have been some improvements in recent years, especially increased training for e.g. immigration officers as well as professionals working within the integration process and within the judicial system. However, those trainings are almost exclusively conducted by civil society organisations. For instance, in 2017-2018 the Finnish League for Human Rights provided national trainings for professionals in the field integration commissioned by the Centre of Expertise in Immigrant Integration at the Ministry of Economic Affairs and Employment. These trainings were listed in the Action plan of the Istanbul convention. Also, in September 2019, the Finnish League for Human Rights trained judges and legal assistants (145 persons) of district courts on honour-related violence, including forced marriage. The training was ordered by the Ministry for Justice. More education is definitely needed to ensure that victims of forced marriage can get the protection they are entitled to.

Also legislative changes are needed. The government listed in its programme in June 2019 that measures will be taken to look into the possibilities of criminalising and annulling forced marriage. Currently, there is no separate section on forced marriage in the Criminal Code. Under the Criminal Code, forced marriage is punishable as trafficking in human beings, aggravated trafficking in human beings or coercion. The current legislation is not adequate or functional, which is also stated in the memo commissioned by Ministry of Justice in 2017.

The legislation on trafficking in human beings cannot cover all forms of forced marriage. In addition, coercion is a crime it is up to the plaintiff to sue, which means that the police will only investigate if the plaintiff has reported the suspected crime to the police. This might be impossible for the victim of forced marriage who is often in a vulnerable position in many ways. As of now, the protection of victims of violence in Finland has not been sufficient, and consequently, the threshold for reporting forced marriage is high.

Already in 2017, a memo commissioned by Ministry of Justice acknowledged the need for annulling forced marriages. This would be especially important for the victims, since after an annulment, the marriages entered into under force do not exist. Also, by annulling, the state would note that the victim's human rights have been violated. The process of making an annulment possible has proceeded, and the memo is at the moment being prepared in the Ministry of Justice.



***Rights of indigenous peoples (art. 27)***

***23. In relation to the previous concluding observations (para. 16) and the Committee's evaluation of the third follow-up reply of the State party (see CCPR/C/120/2), please report on:***

***(a) Progress in amending the Act on the Sami Parliament (974/1995), including on how any proposed or adopted revisions: (i) strengthen the right to internal self-determination of the Sami, including the decision-making powers of Sami representative institutions; (ii) accommodate Sami concerns that led to the rejection of the proposed draft in September 2018, in particular regarding the definition of Sami and the State's obligation to negotiate with the Sami Parliament; and (iii) ensure that the criteria for eligibility to vote in Sami Parliament elections are defined and applied in a manner consistent with the right to internal selfdetermination of the Sami people***

A reform of the Act on the Sami Parliament is still pending after the change of government.

***(b) Measures taken to ensure meaningful consultation with a view to obtaining the free, prior and informed consent of the Sami people before adoption of legislation or policies or approval of development projects that may affect their rights as indigenous people, including information on compliance with this duty in the context of the adoption in 2016 of the Act on Metsähallitus (the State enterprise managing State-owned parks and forests), the signature of the Teno River fishing agreement in 2017 and the proposed Arctic Ocean railway project. In this respect, please clarify how the concept of "significant harm" is defined and applied in practice when assessing the impact of measures, including development projects, that may directly or indirectly affect the Sami culture and traditional livelihood;***

Since the previous monitoring cycle we have witnessed negative developments with regard to self-determination of the Sami. The right of the Sami to free, prior and informed consent has been reiterated in several government documents and legislation but it has not been lived up to in all legislative and other procedures where needed. Some branches of the government still fail to respect the obligation to obtain free, prior and informed consent of the Sami in legislative and administrative processes that may affect them.

In the negotiations between Finland and Norway in 2016-17 on common fishing regulations for the Teno River, the Sami were not only neglected but actively ignored. The Finnish Chancellor of Justice stated in 2017 that the negotiations violated the Finnish Constitution and the Act on Sami Parliament. However, the negotiations were not reopened and regulations that have detrimental effect on Sami culture remain in force.

Some positive developments have occurred since then, such as the adoption in 2017 of a guideline memorandum drafted by the Finnish Ministry of Justice and Sami Parliament in cooperation on negotiations between public authorities and the Sami Parliament. The memorandum emphasizes the need to engage in genuine negotiations in a timely fashion. However, even after adopting the guideline memorandum, the Sami have not been properly consulted, for example, with regard to the plans to build a railroad across the Sami homeland from Rovaniemi to the Arctic Ocean.

In some procedures, the negotiation procedure as such has been appropriate but the outcome has not reflected the will of the Sami due to lack of political will from the state. An example of this is the request of the Sami Parliament in 2019 to delay the Sami parliament elections due to a need to reform the legislation upon the UN Human Rights Committee ruling in early 2019 against the state in the case of complaints about inclusion of persons in the list of people eligible for voting in the Sami parliament elections.

***(c) Progress in ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization.***

The ratification of the ILO169 convention on indigenous and tribal peoples is still in a standstill. Also the procedure to agree on a Nordic convention on the Sami has waited for next steps for two years after the Sami parliament asked for amendments in the text of the convention.

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