1. Seta – LGBTI Rights in Finland welcomes the opportunity to provide a written submission to the Committee. Seta comments mainly on the issue raised in question 7 in the list of issues provided by the Committee: discrimination based on sexual orientation and gender identity. We also comment shortly on questions 4, 9, 11 and 14.

**NON-DISCRIMINATION, EQUALITY BETWEEN MEN AND WOMEN (ARTS. 2, PARA 1, 3, 20 AND 26)**

**Non-discrimination legislation (question 4 on the list of issues)**

2. Multiple discrimination and intersectional discrimination should be explicitly included in both the Gender Equality Act and the Non-Discrimination Act.
3. The mandates of the Ombudsman for Minorities and the Discrimination Board, supervising the Non-Discrimination Act, include discrimination based on ethnic origin, but not based on sexual orientation, while the Ombudsman for Equality has decided that discrimination on the grounds of gender identity and expression fall within her mandate even if not explicitly covered by the law about the mandate of the Ombudsman. It is of utmost importance that there would be an explicit mandate for one or other of the Ombudsmen to act in cases of discrimination based on sexual orientation or gender identity or gender expression. In the revision of the Non-Discrimination Act the Ombudsman should be granted with sufficient new resources and a mandate to monitor all areas of life, including employment. The Ombudsman for gender equality should receive additional resources in order to be able to effectively monitor discrimination based on gender identity and expression and against intersex persons, and to promote equality of trans, intersex and gender variant persons.

4. The revisions must not lead to weakening of the protection against any type of discrimination. Seta is particularly worried about a weakening of the definition of direct discrimination in the field of education concerning sexual orientation, disability and religion or belief.

Discrimination based on sexual orientation and gender identity (Question 7 on the List of Issues)

5. The legal status and protection of LGBTI people has improved in Finland. Also some of the authorities have taken positive action. In the context of the UPR process Finland committed to increase its efforts in the field of discrimination on grounds of sexual orientation and gender identity, inter alia, by a review of national legislation and administration with a view to eliminate discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people. The inter-ministerial human rights focal points network has recently founded an LGBTI task force and invited the LGBTI organisations Seta and Trasek to be part of the task force. The network together with Seta and the recently established human rights center organised together in June 2013 a national seminar on the results of the EU Fundamental Rights Agency survey on experiences of discrimination of LGBTI people. The ministry for foreign affairs included LGBTI issues in its human rights strategy, as a continuum from the government's human rights declaration from 2009. The government has promised to establish a working group to plan a reform of the legal gender recognition legislation.

6. However, many significant problems remain. There is still a lack of comprehensive governmental policies and structures concerning LGBTI people. The authorities in general lack awareness and knowledge about the diversity of gender and sexual orientation.

7. Another problem is the lack of data and research-based information on the situation of LGBTI people.

8. Transgender and intersex people continue to face discrimination by authorities, employers, service providers as well as by members of the general public. Anti-discrimination legislation as well as legislation on hate crime both still lack explicit
reference to gender identity and expression 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, and a diagnosis of gender dysphoria. Individuals seeking legal recognition for their gender reassignment may not be married or living in a registered partnership unless the spouse gives their consent to the change of the civil status.

9. 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. There is also only very limited support or counseling to the parents of intersex children. So far no comprehensive, high-quality data on the experiences of intersex persons of the treatment has been gathered.

10. The National Institute for Health and Welfare amended in 2011 the ICD-10 classification of diseases and health problems as applied in Finland and excluded classes on transvestism (F64.1 & F65.1), but maintained transsexualism as a mental disorder, contrary to, e.g., the standpoint of the European Parliament and of the Council of Europe Commissioner for Human Rights.

11. The privacy of transgender people is still commonly violated. There have been problems in acquiring new certificates from schools or employers after confirmation of the new gender marker. Thus, the ministry for education and culture is about to issue a new recommendation urging educational institutions to issue new certificates in cases of name change due to gender reassignment.

12. The population information act was reformed in 2010 to the effect that gender reassignment is marked in the population register. This has caused worries that it may be possible to create a list of transgender persons and their personal data through the population register. Currently a reform of data protection legislation is ongoing on EU level. Seta is worried that gender identity might be left outside of the scope of grounds defined as sensitive.

13. Children and youth of various gender identities suffer from the predominant gender normativity in schools and from the lack of proper and sensitive support systems.

14. According to information gathered by Seta, elderly LGBTI people suffer from invisibility, gender- and heteronormative structures and harassment in institutions and services for the elderly. Seta has started a project to develop training and produce materials about LGBTI perspectives for service providers and professionals within elderly care.

15. According to the government’s response to the additional list of issues, on the basis of the Constitution of Finland, the Health Care Act (1326/2010) and the Act on the Status and Rights of Patients (785/1992) health care services are non-discriminatory. According to the Act on the Status and Rights of Patients states that health care services are given in consensus with the patient. However, this legislation is not implemented in practice
when it comes to trans persons, especially related to the gender reassignment procedure.

16. Access to hormone or surgical treatments is often complicated even when a diagnosis has been established according to the requirements of the current legislation in Finland and, particularly, there have been problems in compensation or reimbursement of the costs by the Social Insurance Institution of Finland (Kela).

17. In addition, considerable local variation is found in the level and quality of treatment and support for transgender people, especially gender variant children and transgender teenagers. Thus these young people do not have equal access to essential health care services. They are often treated by professionals who do not have sufficient knowledge on gender variance. The services should be equally efficient and of high quality throughout the country, but no state authority has currently taken adequate responsibility for ensuring that this is the case. Trans youth have also been denied referral to proper professional guidance and treatment preparing for gender reassignment even as the law on gender reassignment includes no age limit for access to investigation and treatment. The access of young people to gender identity investigation was discussed in 2011 by the National Ethical Board of Social and Health Sector, ETENE. It stated that young people should have access to proper support and treatment by experts in accordance to current legislation.

18. The Criminal Code of Finland was amended in 2011 to incorporate bias against sexual orientation as ground for increasing the punishment for common crimes. Similarly, incitement of hatred, defamation or insulting sexual minorities was specifically criminalized. Gender identity was not included in these reforms in spite of the recommendations by the CoE commissioner for human rights and by the Council of Europe Committee of Ministers and in spite of NGO submissions condoning an inclusion of gender identity and expression.

19. Homophobic and transphobic crimes, defamation and criminalized discrimination have been monitored for a few years in Finland, and in part they have been reported to ODIHR and to the Fundamental Rights Agency (FRA) of the European Union. It is, however, very likely that the true number of such incidents is higher than the estimates in these reports. It can be safely assumed that in numerous cases people do not report the hate crime or similar incidents to police, in fear of being treated inappropriately or ignored or apprehending that the cases will be publicized. There have been little efforts by the police to alleviate these, perhaps unfounded, suspicions.

20. There is no systematic follow up on how hate crime cases related to sexual orientation, gender identity or gender expression are dealt with by the prosecutors or decided by courts. Moreover, there are no guidelines or instructions on how police, prosecutors or courts should handle hate crimes or other criminal offences against sexual or gender minorities. The authorities have not fully utilized the training possibilities supplied by OSCE or the best practices provided by the governments of among others United Kingdom, the Netherlands or Sweden.
21. LGBTI people experience discrimination in services. Most social and health care services are based on a gender normative and heteronormative system. Professionals within these fields lack adequate understanding about LGBTI people and their family relations and needs. It is for example sometimes difficult for the same-sex spouse of a patient in a hospital to get recognized by the hospital staff as a relative.

22. LGBTI people experience discrimination at work. There have been several cases of discrimination against transgender people in the media. Also cases of discrimination based on sexual orientation have come to the knowledge of NGOs. It can be assumed that few people experiencing employment discrimination due to sexual orientation or gender identity take their case further due to fear of further discrimination in the workplace and being “outed” in one’s social environment. The lack of an ombudsman with a mandate to investigate LGB discrimination cases in the work life is another reason for the lack of known cases.

VIOLENCE AGAINST WOMEN (question 9 on the list of issues)

23. Vulnerable groups such a lgbti people have neither been taken into account sufficiently in the provision of services to victims of violence nor in the training of police and victim support officials. The working group preparing the ratification of the Istanbul convention did not include LGBTI NGOs and it also did not include specific recommendations on actions targeted at LGBTI victims fo violence or at improving authorities' and service providers' knowledge on LGBTI in its report. The ministry of justice has nominated a working group to plan the implementation of the EU victim support directive but has failed to nominate representatives of vulnerable groups to the working group.

24. In general, work against gender-based violence has received far too little resources. There are too few shelters, and no shelters at all specifically for LGBTI persons.

RIGHT TO LIBERTY AND SECURITY OF PERSON, TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY AND FAIR TRIAL ( ARTS. 9, 10 AND 14)

Right to liberty and security of person, (question 11 on the list of issues)
25. Among detained asylum seekers and irregular migrants there are also persons seeking international protection on the basis of persecution based on sexual orientation or gender identity. Seta is worried that LGBTI asylum seekers may encounter harassment from other detainees and staff. As previous experience of persecution based on sexual orientation or gender identity may have been very traumatising it is of utmost importance that LGBTI asylum seekers receive proper mental support and help and that they be kept in detention only in cases when it is specifically required based on an individual assessment.

26. Immigration officials and detention institution personnel lack sufficient training and guidelines on the needs of LGBTI asylum seekers. Seta has conducted one training to MIGRI and has recommended the production of guidelines but according to our knowledge, specific material on LGBTI asylum cases has not been produced to date. Seta has distributed the Fleeing homophobia report to MIGRI staff and other immigration officials.

Treatment of persons deprived of their liberty and fair trial (question 14 on the list of issues)

27. In Prisons, it is not clear whether trans persons are placed according to their lived gender identity or solely according to their official sex. Prison authorities have not provided sufficient proof of systematic training of prison officials in equality and non-discrimination related to sexual orientation and gender identity. Also court personnel and police lack sufficient knowledge and capacity to encounter LGBTI persons in a way that would create a safe and non-discriminatory environment.

RECOMMENDATIONS

28. Against the background of the information provided, as well as in the context of the thematic areas considered in this submission, Seta calls on the Committee to make the following recommendations to the Government of Finland:

1. To adopt comprehensive LGBTI policies for each policy sector, differentiating between policies related to sexual orientation and policies related to gender identity and expression and intersex persons when relevant

2. To agree on structures for implementing and coordinating LGBTI policies and to allocate resources for those policies in all sectors and levels of government
3. To implement a comprehensive reform of the legal gender recognition legislation based on human rights, including access to services and care related to gender reassignment

4. To allocate resources to improving authorities’ knowledge on LGBTI and non-discrimination in all sectors and levels of government, including local authorities

5. To without further delay give the parliament proposals of reforming the non-discrimination act and the gender equality act in a manner that does not weaken protection against discrimination in any way and that covers explicitly multiple discrimination and intersectional discrimination

6. To ensure that the monitoring of equality and non-discrimination is consequent, sufficient and independent in all areas of life, including employment, by giving the new non-discrimination ombudsman a clear mandate also in employment

7. To put procedures in place to ensure that the human rights of LGBTI people are taken into account in all government programs and legislative procedures, as well as in human rights monitoring mechanisms

8. To allocate more resources to the new human rights architecture, especially for the human rights center that forms a part of the national human rights institution, and to the ombudsmen responsible for sexual orientation and gender identity and expression

9. To ensure that LGBTI issues are mainstreamed and explicitly mentioned in school curricula and in all levels of the education system

10. To adopt gender identity inclusive hate crime legislation

11. To adopt procedures for a systematic follow-up of hate crime prosecutions related to sexual orientation and gender identity

12. To ensure that the needs of all vulnerable groups, including LGBTI people, are sufficiently taken into account and resourced in services for victims of violence and other crimes

13. To ensure that the rights of trans and intersex persons to privacy, integrity and security are protected and implemented in all legislation and public services, including data protection legislation

14. To ensure that LGBTI asylum seekers receive fair and human treatment with special attention to their specific needs and experiences, including when held in detention

15. To ensure that prisons respect the lived gender identity of inmates and protect LGBTI inmates from violence and harassment among prisoners
16. To gather reliable information on the treatment of intersex children and adopt guidelines that are consistent with current international recommendations for treatment of intersex persons.

17. To mainstream sexual orientation and gender identity in national data gathering procedures and human rights indicators and to allocate resources for targeted research on the situation of LGBTI people.