

Concluding observations on the sixth periodic report of Finland
adopted by the Human Rights Committee at its 109th session in 2013

Information provided by the Government of Finland
on its follow-up to the recommendations contained in paragraphs 10, 11 and 16

11 April 2016

Paragraph 10

(a) [B1]: The Committee welcomes the amendments to the Aliens Act and the Act on the Treatment of Aliens in Detention and Detention Units, which prohibits placing children in police detention facilities and detaining unaccompanied children seeking asylum. Additional information is required on:

(i) all legislative changes introduced regarding the process and circumstances for detaining asylum seekers and irregular migrants, and improving living conditions in detention facilities, in addition to the ones already mentioned by the State party.

(ii) the progress of the project on alternatives to detention launched by the Ministry of the Interior, including changes being proposed: and

(iii) the progress made by the National Police Board in reviewing its instructions and making changes needed to comply with the new legislation. Further information is also required on additional measures taken by the State party to ensure that administrative detention for immigration purposes is justified as reasonable, necessary and proportionate, including for detention of adults.

(b) [C2]: The Committee welcomes the opening of the new the Joutseno detention unit and the fact that there is no longer any need to place detained aliens in police facilities. However, the Committee notes that the State party has not provided information on the number of irregular migrants and asylum seekers detained in Metsälä in the last three years and the lengths of their detention. The Committee reiterates its recommendation.

Detention is an interim measure of the last resort, available only if the use of other interim measures is considered insufficient. Sections 118–120 of the Aliens Act (Act 301/2004; amendments 813/2015) provide for interim measures alternatives to detention: an obligation to report to authorities, handing over travel documents or travel tickets to authorities (the police, the border control authority), giving authorities an address where the alien can be reached, or giving a security. These interim measures have primacy over detention. The obligation to report under section 118 of the Act is very often used instead of detention especially in enforcing decisions to remove an alien from the country when no escort is needed for the removal.

Sections 121–129 (Act 301/2004; amendments 813/2015; 193/2015; 1214/2013) of the Aliens Act contain detailed provisions on the detention of an alien and the preconditions, procedures and precise time limits for detention. In 2015 the Act was amended to limit detention by requiring that both the general and the special preconditions for detention must be fulfilled at the same time, by emphasising the last resort status of detention compared with the other interim measures, and by requiring an individual assessment. The amendment emphasised the primacy of the alternative measures over detention, and included reception centres, in addition to the police and the border control authority, among the possible authorities to which an alien can report as obligated.

The detention of an alien is subject to an administrative decision, which is temporary and possible only if the detention is necessary either for examining the eligibility of the person for entering the country or residing there or for enforcing a decision to remove the person from the country. Detention is not used for punitive purposes. The possibility of using the above-mentioned alternatives to detention must be examined before deciding on detention. Alternative measures are used especially for persons in a vulnerable position. The decisions are made individually, and the detention of minors is avoided to the extent possible. Moreover, before decisions to detain children, social welfare authorities must be heard, too.

On 23 February 2015 the Ministry of the Interior set up a project to introduce certain interim measures alternative to detention. Among other targets, the project aims at reducing the detention of especially minor aliens, vulnerable aliens and aliens with families. The project examines possibilities of new obligations, relating for instance to place of residence, and of electronic surveillance.

According to section 122 (813/2015; amendment in force as of 1 July 2015) of the Aliens Act, an unaccompanied child younger than 15 years of age must not be detained. An unaccompanied child aged 15 years or more and seeking international protection must not be detained before a decision to remove the child from the country has become enforceable. A detained unaccompanied child must be released at the latest when 72 hours have passed after the detention. Thereafter the detention may, for special reasons, be continued for the maximum of 72 hours. Other prerequisites for detaining a child are that the precondition for detention laid down in section 121, subsection 1 (813/2015) of the Aliens Act is fulfilled and that, according to an individual assessment, the interim measures referred to in sections 118–120 (the obligation to report to authorities, handing over travel documents or travel tickets to authorities and giving a security) are insufficient and detention as the last resort measure is necessary. The child must have been heard before making the decision. Moreover, an official designated by a social welfare body and having the professional qualifications of a social worker required by section 3 of the Act on Qualification Requirements for Social Welfare Professionals (272/2005) must have been given an opportunity to be heard.

Section 123a (813/2015), subsection 4 of the Aliens Act provides that if a detained alien is a child, he or she must not be placed in the detention facilities of the police or the Border Guard but always in a detention unit. According to section 123a, subsection 5, a detained alien seeking international protection must as a rule be placed in a detention unit. Section 124, subsection 1 (813/2015) of the Act stipulates that the official responsible for the decision to detain an alien must, without delay and no later than the day after the alien was placed in detention, notify the District Court of the municipality where the alien is held in detention of the matter. According to section 124, subsection 2 (813/2015) the District Court must hear a matter concerning the detention of an unaccompanied child without delay and no later than 24 hours from the notification.

Section 125a (813/2015) of the Aliens Act stipulates that when a District Court hears a matter concerning the detention of a child, social welfare authorities must present to the Court their written statement on the matter. In respect of a child detained with his or her guardian it is also required that the detention must be indispensable for maintaining the family ties between the child and the guardian. According to section 129 of the Act a decision on detention made by

authorities or a District Court is not subject to appeal. The person held in detention may complain about the decision of the District Court. There is no deadline for the complaint. The complaint must be handled with urgency.

The threshold for detention is high, especially regarding minors. Aliens accommodated in reception centres are free to move in Finland. However, an asylum seeker whose identity or travel route to Finland is unclear may be accommodated in a detention unit for the time of investigating the matter. Because detention units are closed institutions, the detainees cannot leave their premises. Currently there are two detention units in Finland. One of them is located in Metsälä suburb in Helsinki, connected with Metsälä Reception Centre, which belongs to the organisation of the Social Services and Health Care Department of Helsinki City. The detention unit has a total of 40 client places. In autumn 2014 a new detention unit with 30 client places was opened in connection with the state-maintained Joutseno Reception Centre. The Finnish Immigration Service is responsible for the overall management, planning and supervision of the detention unit. After the opening of the Joutseno detention unit, there has no longer been any need to place detained aliens in police facilities due to a shortage of capacity. The Joutseno unit focuses on the detention of vulnerable aliens, whereas the Metsälä unit is specialised in accommodating detained higher-risk aliens.

Police activities

Paragraph 10 (a) [B1] (iii) – The amendments made by the National Police Board to the instructions for the detention of aliens: as distinct from the rest of the relevant legislation, the Aliens Act (301/2004 and amendments), the Act on the Treatment of Aliens in Detention and Detention Units (116/2002 and amendments) and the Act on the Treatment of Persons under Police Custody (841/2006 and amendments), as currently in force, contain very detailed procedural provisions. This detailed regulation is based on the related aspects of human rights and basic rights and liberties. Consequently, there has been no need to give the police any separate instructions on the new legislation and the measures required by it.

Paragraph 10 (b) [C2] – The numbers of persons detained in Finland by virtue of the Aliens Act in 2013–2015 and the length of their detention: In 2013 a person was detained by virtue of the Aliens Act in 1678 cases, in 2014 in 1450 cases, and in 2015 in 1204 cases. In all three years in question the average length of detention was 12 days per case.

Paragraph 11

(a)[C1]: The Committee encourages the efforts of the working group to examine the possibility of introducing alternatives to remand imprisonment and requests information on any progress in this respect. The Committee expresses regret that the State party has not required that suspects be brought before a judge within 48 hours of their arrest on criminal charges and reiterates its recommendation in that regard.

The working group on the alternatives to remand imprisonment and the organisation thereof completed its work on 31 December 2015 (Memorandums and Statements of the Ministry of Justice 5/2016).

The working group proposes that the Coercive Measures Act (806/2011) should be supplemented with provisions on a strengthened travel ban and investigative confinement as alternatives to remand imprisonment. Instead of ordering that a criminal suspect must be detained or held in detention, a court could impose on the person a strengthened travel ban supervised by technical devices, if an ordinary travel ban is insufficient as a coercive measure and if the other preconditions laid down in the Coercive Measures Act are fulfilled. Instead of ordering that a person sentenced to unconditional imprisonment must be detained or held in detention, a court could order the person to investigative confinement supervised by technical devices, if the preconditions laid down in the Coercive Measures Act are fulfilled and the punishment for the offence is less than two years of imprisonment. One precondition for a strengthened travel ban and investigative confinement would be that the suspect or sentenced person must commit themselves to complying with the orders and obligations imposed on them and that their compliance with the orders and obligations can be considered probable in light of their personal circumstances or other similar circumstances.

The working group considers that the practice of detaining remand prisoners in police detention facilities should be abolished as soon as possible. The responsibility for accommodating remand prisoners and implementing remand imprisonment should be imposed on prisons gradually, because currently they have no room for accommodating 80 remand prisoners. The working group proposes that, at the first stage, the Detention Act (768/2005) should be amended by shortening the current permitted length of holding a remand prisoner in police detention facilities, and by tightening the preconditions for detention in police facilities in other respects, too. It would not be permissible to hold a remand prisoner in police facilities longer than for seven days without an exceptionally important reason related to the safety or separation of the prisoner.

The proposals of the working group were circulated for comment in February 2016. On the basis of the comments, the Ministry of Justice will work on the proposals, with the aim of submitting a Government Bill on the new legislation to Parliament in September 2016.

Paragraph 16

(a) [C1]: The Committee notes that information provided on the progress of the adoption of the two legislative proposals. Given the withdrawal of the Bill on the Act on the Sami Parliament, the Committee reiterates its recommendation to the State party to advance the implementation of the right of the Sami by strengthening the decision making powers of the Sami representative institutions.

[B2]: The Committee notes that the proposed amendments to Metsähallituslaki, including the initiative to ratify the ILO Convention No. 169, are under consideration. Additional information is required on measures taken to ensure that Sami people participate in the discussion of these amendments and on the progress to adopt the proposed amendments.

During the current electoral period the Ministry of Justice aims at revising the Act on the Sámi Parliament in the manner proposed in the related Government Bill (HE 167/2014 vp), which was submitted and later cancelled during the previous electoral period. Now, the Ministry intends to present most of the proposed revisions to Parliament again. In this context the Ministry will

reiterate the proposal that the current obligation to negotiate (section 9) should be changed to better comply with the principle of free, prior and informed consent.

In November 2014 a Government Bill to ratify ILO Convention No. 169 (HE 264/2014 vp) was submitted to Parliament. The reading of the matter was transferred to the post-electoral new Parliament. This year the Government has commissioned a new study which draws from the international norms, experiences and practices relating to the rights of indigenous peoples.

A new Act on Metsähallitus, the Finnish state forestry enterprise, was adopted on 30 March 2016 and will take effect on 15 April 2016. According to section 6, subsection 2 of the new Act on Metsähallitus the management, use and protection of natural resources governed by Metsähallitus in the Sámi Homeland, referred to in the Act on the Sámi Parliament (974/1995), must be adjusted to ensuring the opportunities of the Sámi people to practice their culture. Further, according to section 39, subsection 2 of the Act municipal advisory committees will be set up in all municipalities located entirely in the Sámi Homeland to deal with the sustainable management and use of State-owned lands and waters and related natural resources.

The municipal advisory committees to be appointed in the Sámi Homeland will be a new institution. The relevant provision was drafted by a working group set up by the Ministry of Agriculture and Forestry to prepare an increase of the rights of the Sámi to participate in decision-making on the use of State-owned lands and waters in the Sámi Homeland. The working group had a representation of the Sámi Parliament and the Skolt Sámi Village Council. The advisory committees are estimated to strengthen to some extent the right of the Sámi as an indigenous people to maintain and develop their language and culture. The advisory committees will also provide an opportunity to reconcile different views on the use and management of State-owned lands.

The Sámi Homeland is one of the most sparsely populated regions within the European Union, with approximately 20,000 inhabitants in an area of 30,000 square kilometres. In practice, there is no economic activity in most of the region. Moreover, because of the large nature reserves located in the Sámi Homeland it is not possible, even in theory, to pursue any extensive economic activities there. There are no active mines in the Sámi Homeland. The local population has extensive rights to use the renewable natural resources of the region for recreation, and the new Act on Metsähallitus will not narrow these rights in any respect.

The Fishing Act (379/2015) that took effect at the beginning of 2016 aims to strengthen the rights of the Sámi to participate in the planning mechanism for the use and management of fish resources. The use and management of fish resources are planned in fisheries regions, which have representatives of the owners of the water areas, bodies of joint owners, fishery organisations and environmental organisations. In the Sámi Homeland, the Sámi Parliament is entitled to one representative at the general meeting of the fisheries region. The fisheries region prepares a proposal for the management plan concerning the fish resources of the region, and the Centre for Economic Development, Transport and the Environment approves the plan. One statutory precondition for the approval of management plans for the Sámi Homeland is compliance with the obligation to negotiate under the Act on the Sámi Parliament.

In the Sámi Homeland the Sámi Parliament is also represented in the regional fishery committee of the Centre for Economic Development, Transport and the Environment. The committee is tasked with, for instance, making proposals and taking initiatives on the organisation of fishing and the management of fish stocks. Moreover, the Fishing Act aims to safeguard the traditional Sámi fishing culture by empowering the Centre for Economic Development, Transport and the Environment to grant exceptional permits, for example to use a fishing or catching method that is otherwise prohibited by the Act or by virtue of it, for the purpose of maintaining a fishing tradition. The Fishing Act also maintains the right of inhabitants of the three northernmost municipalities in Upper Lapland to a permit for fishing in State-owned water areas free of charge.

The Act on Structural Support for Reindeer Economy and Natural Sources of Livelihood (986/2011), applicable in reindeer herding areas, gives the Sámi the right to participate in the allocation of support funding granted by virtue of the Act. In measures supported by virtue of the Act, particular attention must be paid to the opportunities of the Sámi as an indigenous people to maintain and develop livelihoods belonging to their culture in the Sámi Homeland. When the annual budget reserved for the support has been assigned to the Homeland, the Centre for Economic Development, Transport and the Environment must negotiate with the Sámi Parliament on the principles to be observed, in addition to the relevant legislation, in decisions on the objects of support. The negotiations must deal with such issues as the regional allocation of funds to the Sámi Homeland, the allocation of funds to reindeer economy and other natural sources of livelihood, and the allocation of funds to projects of reindeer herding co-operatives and entrepreneurs in the Sámi Homeland. The provisions of section 9 of the Act on the Sámi Parliament apply to the negotiations. Any decision to suspend the allocation of support under the Act on Structural Support for Reindeer Economy and Natural Sources of Livelihood for a fixed or undetermined period must be negotiated with the Sámi Parliament if the suspension concerns the Sámi Homeland, and also with the Association of Reindeer Herding Co-operatives if the suspension concerns reindeer economy.

According to the Act on Structural Support for Reindeer Economy and Natural Sources of Livelihood, the Sámi Parliament and the Association of Reindeer Herding Co-operatives may also participate in assessing the applications for support. The Centre for Economic Development, Transport and the Environment may in all cases request an opinion of the Association or the Sámi Parliament on circumstances related to the recipient of the support or the granting of the support, if this is necessary for assessing the eligibility of the applicant. If the costs of an investment in reindeer economy exceed the amount provided for by a Government Decree, the opinion of the Association of Reindeer Herding Co-operatives must be requested. If, in addition, the investment is made in the Sámi Homeland, the opinion of the Sámi Parliament must be requested, too. If the application concerns the right based on the Act to establish a base for reindeer economy in State-own land without separate remuneration, by the permission of Metsähallitus, the opinion of the Sámi Parliament must be requested, if the base is to be located in the Sámi Homeland. Moreover, the Sámi Parliament must be requested to opine on the funding of research and report projects under the Act, if the project is carried out in the Sámi Homeland or its principal research subject is located there or if the project essentially concerns traditional Sámi livelihoods. An opinion must always be requested in respect of significant research and report projects concerning reindeer economy.

Support targeted only at Skolt Sámi is granted to Skolts residing permanently in the Skolt region defined in the Skolt Act (253/1995). The Act regulates the management of Skolt affairs, the Skolt Sámi Village Council, Skolt Councils and the Skolt representative.

The Skolt Sámi Village Council deals with, for instance, proposals and opinions on far-reaching matters or matters of principle concerning the livelihoods and living conditions of the Skolts. The Act stipulates that the Skolt Sámi Village Council and the Skolt Councils must be given an opportunity to opine on the issues referred to above, when governmental or local authorities are considering them. In urgent matters, or if the Skolt Sámi Village Council cannot be convened for considering such issues, it is for the Skolt Councils to issue opinions to the authorities. Furthermore, the Skolt Act obligates the Skolt Councils to opine on the following matters: applications for the construction of cabins for reindeer herding, hunting and fishing, applications for the acquisition of land, permissions to assign real estates of Skolts, the use of areas subject to a usufruct, and other similar matters with a direct impact on the circumstances of the Skolts. A Skolt representative may be elected for managing joint matters of the Skolts and supervising their interests. An opinion on far-reaching matters or matters of principle concerning the livelihoods and living conditions of the Skolts may also be requested from the Skolt representative.

According to the Skolt Act, also the Association of Reindeer Herding Co-operatives and the local reindeer herding co-operatives must be given an opportunity to opine on issues related to reindeer economy that may be of major significance to the practice of reindeer economy.

Attendance allowances, travel expenses and other expenses of the Skolt Councils, the remuneration and expenses payable for the performance of the tasks of the Skolt representative and the secretary assisting him or her, as well as the attendance allowances, travel expenses and other expenses of the Skolt Election Committee are covered by the budget of the Development Fund of Agriculture and Forestry.

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