***Finnish Disability Forum***

**Report on the Implementation of the International Covenant on Civil and Political Rights (ICCPR)**

**Introduction**

This brief submission provides the Human Rights Committee with additional specific information concerning the rights of persons with disabilities in Finland, in reply to questions posed in the List of Issues Prior to Reporting.

The FINNISH DISABILITY FORUM (FDF) hopes this information is taken into account in the lead up to and during the review of Finland and that it is reflected in concrete recommendations in the Concluding Observations to be adopted.

**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 material scope of the Act was extended to include goods and services, an important improvement to the protection from discrimination on the ground of disability. Access to justice was improved via the Tribunal and Ombudsman both offering a channel to bring cases forward, and the number of disability cases has grown considerably since 2015. However, the **Tribunal is not mandated to provide any remuneration or compensation to victims** under the Non-Discrimination Act.

***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.***

A [FDF questionnaire](https://vammaisfoorumi.fi/wp-content/uploads/2019/10/VFKyselyn-perusraportti2019_2.pdf#page=14) distributed among persons with disabilities revealed an **increase in experience of hate speech and intolerance, hardening of attitudes towards persons with disability**: [nearly 27% (N 389) of those who answered had experienced their right to life being directly or indirectly questioned in 2016-2018.](https://vammaisfoorumi.fi/wp-content/uploads/2019/10/VFKyselyn-perusraportti2019_2.pdf#page=14)

***17. Please respond to the following concerns related to restrictions limiting the rights of asylum seekers, and report on measures taken to address them: (…) (d) Income requirements that significantly restrict the right to family reunification;***

The **income requirements can be regarded as especially restrictive to refugees with disabilities due to their poor prospects within the Finnish labor markets**. Hence, while the restriction is based on income, it also indirectly excludes applications from refugees with disabilities.

Another issue which requires closer examination is the **requirement for family members to apply for family reunifications** from certain Finnish embassies abroad. While it was earlier possible to initiate an application in Finland, the physical presence is now required at specified Finnish embassies abroad. This creates logistical and bureaucratic (visa requirements) obstacles that can be especially hard or impossible to overcome for persons with disabilities. Hence, the current technical rules can be seen as discriminating to those with disabled family members, essentially jeopardizing their right to respect and protection of family life. It is also unclear, to what extent Finland has taken necessary measures to facilitate reasonable accommodations in this area.

Other concerns affecting particularly persons with disabilities are the definition of the family and prolonged application procedures. Persons with disabilities may have lived with others the whole life as a family but may still not fit into the strict definition of a nuclear family. Also, if the application procedures are prolonged the conditions of persons with disabilities may become worse as time passes by. Many persons with disabilities are also subjected to discrimination and even violence while waiting for the decisions in hostile environments.

A law-reform is currently being prepared within the Finnish government concerning family reunification, possibly improving some of the problems. This process should count with the involvement of organizations of persons with disabilities.

Proposed recommendations:

* Reasonable accommodations should be made to ensure that the right to family will not be deprived on the basis of disability. Reasonable accommodation and, any other specific measures, should be applied to avoid the deterioration of health of an applicant with disabilities.
* The very strict time requirements such as the three-month-rule should be applied more flexibly on persons with disabilities, or removed altogether. Also, Family members to persons with disabilities should be able to lodge an application from Finland on behalf of the family member with disabilities.

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

**26)**

***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.***

On (c): Under the current Criminal Code of Finland, Chapter 20 Section 5 titled Sexual Abuse acts of sexual violence, taking place in institutions directed at persons with disabilities by persons in a position of authority are considered under the title of “sexual abuse” as opposed to rape or aggravated rape (Sections 1 and 2). Section 1 and 2 were reformed in 2014. Section 1 (2) reads: Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, disability, state of fear or other state of helplessness, is . unable to defend himself or herself or to formulate or express his or her will, has sexual intercourse with him or her, shall be sentenced for rape.

While this can be regarded as an important step in recognizing the vulnerability of disabled persons in face of sexual violence, it is important to note that section 5 continues to read as:

Section 5 - Sexual abuse (563/**1998**)

 (1) A person who abuses his or her position and entices one of the following into sexual intercourse, into another sexual act essentially violating his or her right of sexual self-determination, or into submission to such an act,

(1) a person below the age of eighteen years, who in a school or other Institution is subject to the authority or supervision of the offender or in another comparable manner subordinate to the offender,

(2) a person below the age of eighteen years, whose capacity of independent sexual self-determination, owing to his or her immaturity and the age difference of the persons involved, is essentially inferior to that of the offender, where the offender blatantly takes advantage of this immaturity,

(3) a patient being treated in a hospital or other institution, whose capacity to defend himself or herself or to formulate or to express his or her will is essentially impaired owing to illness, handicap or other infirmity, or (509/2014)

(4) a person who is especially dependent on the offender, where the offender blatantly takes advantage of this dependence, shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years.

As section 5 remains, it serves as a guide towards lesser sentences, even fines.

Both the minimum and maximum sanctions are less for essentially similar offenses taking place in institutions against disabled persons than what would be the case of non-disabled persons outside institutions and hospitals.

There was a citizen’s initiative to Parliament promoting reform of Chapter 20 and the change of section 1 and 2 to include a definition based on lack of consent, and it was included in the government program of Prime minister Rinne.

There is some uncertainty concerning the interpretation of the law on this matter. However, as unclarity exists even this may lead to a systematical lighter interpretation, as the most favorable interpretation of law must be applied when sentencing the criminal suspect. The takeaway here must be that disability right organizations should be actively included in a reform of Chapter 20, to ensure equal protection under the law and access to justice for persons with disabilities. Attention should be paid both to the elements described in the penal code as well as positive support measures extended to the victim. Especially organizations representing disabled women should be included in the legislative process.

In relation to point (e): improvements have been made, SERI- centers support victims. number of shelter places has increased. However, **no accessibility audits have been made**. Organizations working with women with disabilities have highlighted critical needs for improvement in **women’s shelters**. While these shelters claim to be accessible, there is no information available on to what degree the shelters are accessible. This can ultimately leave women with disabilities without the protection afforded by the shelters. Finnish Disability Forum would like to highlight that available information and knowledge of accessibility is a critical factor in making premises truly accessible. Currently, no record is kept on persons who are being turned away from the shelters due to the lack of access. This should be given closer attention.

Proposed recommendation:

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* Disability organization, especially organizations representing disabled women should be included in the legislative process in order to ensure equal protection under the law and access to appropriate support.
* Finland must amend Chapter 20 Section 5 to ensure that rape of women with disabilities in institutions are defined, prohibited and prosecuted as such.
* Finland should ensure that women’s shelters are accessible to women and girls with disabilities; through accessibility of the built environment and communication of information in accessible formats, such as in Easy to Read, Braille and sign language interpretation.

**Liberty and security of person and treatment of persons deprived of their liberty**

**(arts. 9 and 10)**

***14. Please report on the progress made in strengthening the right to autonomy for persons with intellectual or psychosocial disabilities in the context of involuntary placements and treatment in psychiatric institutions, including on safeguards available to them and on their effective access to legal remedies through judicial review. Please also respond to reports of deprivation of liberty in health and social care settings without sufficient legal basis or legal safeguards, including of older persons with dementia and patients “lacking capacity”, and to concerns about the repeated postponement of draft legislation to address such shortcomings.***

There is no new development on the adoption of a legislation in line with the more updated human rights standards related to persons with disabilities, under the Convention on the Rights of Persons with Disabilities. [A law reform governing i.a. involuntary interventions has been under preparation 2016-2018](https://stm.fi/-/uudella-lainsaadannolla-halutaan-vahvistaa-ihmisten-itsemaaraamisoikeutta-sosiaali-ja-terveydenhuollon-palveluissa), but the legislative procedure was seized in 2018 and has not yet continued.

The delay on the self-determination legislation is again increased due to pressures of COVID-19 relevant public health related legislation taking priority. **The FDF is concerned of the ever-growing delay as this legislation covers many vulnerable populations' core fundamental rights.**