



FINLAND: The Human Rights status of Lesbian, Gay, Bisexual, Transgender and Intersex People

Submission to the United Nations Human Rights Council for its Universal Periodic Review of Finland (13th Session, 2012)

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Introduction and general remarks

1. Although the legal status and protection of LGBTI people has improved in Finland, some significant problems remain. This report address three key issue areas: (i) transgender and intersex persons' rights, (ii) lack of comprehensive governmental policies and structures concerning LGBTI people, authorities' lack of awareness and knowledge about the diversity of gender and sexual orientation, and lack of data and research-based information on the situation of LGBTI people; (iii) the rights to equality and non-discrimination. In addition, the submission looks specifically at the human rights of LGBTI children, youth and families as well as LGBTI refugees, asylum seekers and other migrants. The report moves beyond the legal situation.
2. This information is submitted by Seta¹, Trasek², Sateenkaariperheet³ and ILGA-Europe⁴ in the framework of the Universal Periodic Review in order to draw the attention of the Human Rights Council to human rights concerns affecting lesbian, gay, bisexual, transgender and intersex(LGBTI) people in Finland. This compilation is based on published as well as unpublished data, such as information received by the submitting organizations from their members.
3. Definitions of the discrimination grounds: (i) 'Sexual orientation' refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender; (ii) 'gender identity' refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means), (iii) 'gender expression' refers to a person's individual expressions of gender, including dress, speech and mannerisms. In relation to sexual orientation, abbreviation LGB (lesbian, gay and bisexual) is used. In relation to both grounds the abbreviation LGBTI (lesbian, gay, bisexual, transgender and intersex) is used.
4. In the conclusions of the 8th session of the Human Rights Council⁵, Finland approved of recommendations to provide same coverage for sexual orientation and disability as for

¹ Seta ry – LGBTI Rights in Finland is a national LGBTI rights non-governmental organization, founded in 1974. Seta has 19 member organizations and numerous supporting members throughout Finland.

² Finnish association for transgender and intersexual individuals.

³ Finnish association for rainbow families, ie. families of LGBTI people.

⁴ European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).

⁵ Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, Finland (A/HRC/8/24)

other grounds in the anti-discrimination legislation, to strengthen protection and respect for all persons based on sexual orientation and gender identity, and to consider using the Yogyakarta principles as a guide to assist in its policy development. Unfortunately, the reform of the Anti-discrimination Act and of the Act on Equality between Men and Women still remain in process, which means that protection for sexual orientation is still weaker than for ethnic origin, and gender identity and expression completely lack explicit coverage in the anti-discrimination legislation.

5. Finland also has to a high extent failed to adopt comprehensive strategies on protecting the human rights of LGBTI people, contrary not only to the HRC recommendations but also to the recommendations of the European Union Agency for Fundamental Rights (FRA)⁶, of the Committee of ministers of the Council of Europe⁷ and of the Commissioner for Human Rights of the Council of Europe⁸. In the recommendations of the 8th session of the HRC, the need was stressed to apply the Yogyakarta principles especially further identify and strengthen responses to a range of needs faced by persons on the grounds of sexual orientation and gender identity, in areas such as suicide, health care, domestic violence, hate crimes, educational needs, and multiple forms of discrimination, including the needs of LGBT youth, elderly and disabled people. The scope of specific actions taken by Finland to this end have been limited.

Trans persons

6. Trans and intersex issues are regularly ignored or dealt with great ignorance by authorities and public alike. This can be seen in legislation and government instructions as well as in public debates. Especially appalling is the omission of reference to gender identity and expression in the recently amended section of the Criminal Code (see further 15). A positive exception is the Ombudsman for Equality. She has opened dialogue with transgender organizations and drawn attention to several injustices faced by trans persons, including sterility as a requirement for legal gender recognition, among others in her annual report⁹. The ombudsman for Equality

⁶ Agency for Fundamental Rights 2011. Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States.

⁷ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Adopted by the Committee of Ministers on 31 March 2010. <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

⁸ Council of Europe 2011. Discrimination on grounds of sexual orientation and gender identity in Europe.

⁹ Tasa-arvojulkaisu 2011:1 Tasa-arvoaltuutetun vuosikertomus 2010.

has also organised a seminar about the human rights situation of transgender people and is currently preparing a comprehensive report on the issue.

7. The National Institute for Health and Welfare recently amended 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 Parliament¹⁰ and of the Council of Europe Commissioner for Human Rights¹¹.
8. For the confirmation of a new legal gender a person must have a medical certificate verifying sterilization. This can be seen as a form of forced sterilization. Council of Europe Commissioner for Human Rights has taken a strong stand against sterilization as a prerequisite for gender reassignment.¹² Also the Committee of Ministers of the Council of Europe has questioned requirements of physical changes as prerequisites for gender reassignment.¹³
9. If a person demanding legal gender reassignment is married or in registered partnership, consent of the spouse is required as a prerequisite so that the marriage can be altered to registered partnership and vice versa; otherwise change of the legal gender is not possible. This violates a person's right to privacy and self-determination. The non-marriage requirement has been condemned by the Council of Europe Commissioner for Human Rights.¹⁴
10. 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. The population information act was reformed in 2010 to the

Press release by the Ombudsman for Equality on May 12, 2011: <http://www.tasa-arvo.fi/nyt/tiedotteet/tiedote/view/1560473>.

Press release by the Ombudsman for Equality on November 18, 2011, publicised at http://yle.fi/uutiset/kotimaa/2011/11/tasa-arvoaltuutettu_transsukupuolisten_ihmisoikeudet_eivat_toteudu_3040081.html.

¹⁰ European Parliament resolution of 28 September 2011 on human rights, sexual orientation and gender identity at the United Nations

¹¹ http://www.coe.int/t/commissioner/Viewpoints/090105_en.asp

¹² http://www.coe.int/t/commissioner/Viewpoints/090105_en.asp

¹³ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Adopted by the Committee of Ministers on 31 March 2010. <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

¹⁴ Council of Europe 2011. Discrimination on grounds of sexual orientation and gender identity in Europe.

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.

11. 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.
12. 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).
13. 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 stated¹⁵ that young people should have access to proper support and treatment by experts in accordance to current legislation.

Intersex persons

14. Intersex children have been exposed to non-medically based surgery, which may cause in later life serious mental or physical complications. 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.

Lack of data and awareness

15. Effective anti-discrimination policy can only be based on adequate information on discrimination in society. In Finland, lack of information is often related to the lack of

¹⁵ <http://www.etene.fi/fi/aineistot/tiedotteet/tiedote/view/9979>

sufficient support systems and prevention programmes. In its submission to the eighth session of the UPR, Seta pointed out some fields where there is a shortage of information based on research on population. In all of those fields, the lack of information still prevails. These are the fields we listed also in 2008:

- The risk of LGBTI people committing suicide. This concerns especially young people who, in several previous studies made in other countries, have been found to have a higher risk of suicidal behaviour. Even though the suicide rate in Finland is high, so far no suicide prevention program has had an explicit LGBTI angle.
- Access to health care and health care information. There is no research on health issues of LGBTI people (others than HIV and HIV related issues), such as issues concerning mental health and a heightened probability for lesbian women to attain certain gynaecological cancers and breast cancer (recognised in previous studies outside Finland)¹⁶
- The prevalence of homo- and transphobic hate crimes in Finland. The police has started compiling data about hate crimes related to sexual orientation, gender identity or gender expression annually. This is an improvement. However, there is still a lack of analytical research into the matter, including the victims' experiences, and a lack of systematic and adequate training of the police force in the matter.
- The prevalence of domestic violence by and against LGBTI people. In 2008, Seta stated in its UPR submission that no support phone services or shelters for victims of violence are openly welcoming LGBTI clients. Now, the NGO-based Naisten linja¹⁷ phone support service for women who encounter violence or threat of violence is more explicitly open also for LBT women. Otherwise, support services to victims of violence are still predominantly built on a heteronormative structure.
- The special needs of elderly LGBTI people¹⁸.
- The special needs of disabled LGBTI people.
- The prevalence of multiple discrimination, for example discrimination simultaneously based on ethnic origin and sexual orientation.

¹⁶ See *Lesbian and Bisexual Women's Health: Common Concerns, Local Issues*. ILGA report. ILGA 2006. Available at: http://doc.ilga.org/ilga/publications/publications_in_english/other_publications/lesbian_and_bisexual_women_s_health_report

¹⁷ <https://www.naistenlinja.fi/en/public/how+can+we+help+you/womens+line/>

¹⁸ On age and employment issues, for example the risk of early retirement, see Charpentier, Sari "Heteronormativity and Working Life Course in the stories of People over the Age of 45" in Lehtonen, Jukka & Mustola, Kati (2004) *"Straight people don't tell, do they...?" Negotiating the boundaries of sexuality and gender at work*. Research Reports 2b/ 04. Ministry of Labor 2004. Available at: <http://www.valt.helsinki.fi/sosio/tutkimus/equal/wwweng/publications.htm>

Hate crimes

16. The Criminal Code of Finland was recently amended 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 Ministers¹⁹ and in spite of NGO²⁰ submissions condoning an inclusion of gender identity and expression.
17. Homophobic and transphobic crimes, defamation and criminalized discrimination have been monitored for a couple of years in Finland²¹, and in part they have been reported to ODIHR²² and to the Fundamental Rights Agency of the European Union. It is, however, very likely that the true number of such incidents is higher than the estimates in these reports. The Finnish report² listed 46 suspected homo- and transphobic hate crimes, a very low number in comparison with some other countries, where ODIHR reported, in a narrower category, 5240 incidents from UK and 801 from Sweden.
18. 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.
19. 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 United Kingdom, the Netherlands or Sweden.

¹⁹ Council of Europe 2011. Discrimination on grounds of sexual orientation and gender identity in Europe.

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Adopted by the Committee of Ministers on 31 March 2010. <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

²⁰ Seta submitted several statements to the ministry of justice in the process of reforming the Criminal Code.

²¹ Niemi, J. 2011. Hate Crimes Reported to Police in Finland 2010. Poliisiammattikorkeakoulun raportteja 95 [in Finnish]. 46 suspected homophobic hate crimes.

²² ODIHR 2011. Hate Crimes in the OSCE Region, Incidents and Responses, Annual report 2010.

Discrimination

20. The Non-Discrimination Act does refer explicitly to sexual orientation, but in the act different grounds for discrimination are dealt with in unequal way. In context of social welfare and health care services, social security benefits, the performance of military service, or access to housing discrimination based on sexual orientation is not prohibited. All public authorities are required to prepare an equality plan, but inclusion of sexual orientation and gender identity in the plan is voluntary.
21. Discrimination related to gender reassignment process is implicitly included in the Act on Equality between Women and Men. A reform of the latter is going on with the aim of providing explicit and comprehensive protection also on the grounds of gender identity and expression.
22. 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.
23. The work to revise the Non-Discrimination Act as well as the mandates of the Ombudsmen, e.g. in relation to gender minorities, have been suspended due to lack of funding for the application of the planned amendments. The plans to revise the Act on Equality between Women and Men to include explicitly gender identity and expression is in progress, but it is tied to the progress of the Non-Discrimination Act.
24. 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.
25. LGBTI people experience discrimination at work. There have been several cases of discrimination against transgender people in the media recently. 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.

Children, Youth and Families

26. A recent study²³ revealed that some 36 percent of the young respondents of the survey had been target of bullying in schools because their belonging to sexual or gender minorities. Similarly, according to another study²⁴ only 12 percent of teachers believed that a student's openness about sexual orientation in school would be accepted by her mates. Harassment and uncertainty of acceptance as well as invisibility in school life and curricula may furthermore significantly raise the risk of suicides among children and youths belonging to sexual and gender minorities. There have been plans to amend legislation and some special programs by the education authorities²⁵ to fight discrimination and violence in schools, but they don't include references to sexual orientation or gender identity.
27. Finnish law grants specific, partly salaried, parental leaves. This right, however, is not quite fulfilled for families of LGBTI people. The spouses of biological mothers or fathers are only entitled to the so called paternity leave after second-parent adoption has been approved, which may take more than half a year since the birth of the child. Legal fathers living in a separate household from the legal mother are not entitled to full rights or compensations, although they may be very involved in the care of the children.
28. Same sex couples living in a registered partnership are not allowed to adopt children together. Second parent adoption was introduced in 2009. The process of second-parent adoption is long and can so far only start eight weeks after the birth of the child. This endangers the rights of the child, especially in cases of death of parent or child before confirmation of the second-parent adoption.
29. By the Finnish law the number of custodians of a child is not limited. The Finnish courts, however, have granted custodianships in an irregular manner to de facto social parents, contrary to the best interest of the child. Similarly, there have been problems in the way some courts and public authorities have been handling the second parent adoption processes.
30. Trans women i.e. women who's legal sex has been changed from man to woman can become legal parents of their biological children born after the legal gender reassignment only if living in a registered partnership with the mother of the child and even then only through internal adoption i.e. adopting one's biological child. Those children's right to their parents are thus at least partially limited.

²³ Huotari, K., Törma, S. & Tuokkola, K. 2011. Discrimination in education and leisure time. Ministry of the Interior publication 11/2011 [in Finnish].

²⁴ Puustinen, M. & Tikkanen, T. 2010. Moninaisuus ei mahdu kouluun. Opettaja lehti 3: 14-22. [in Finnish, 'Diversity doesn't fit in the school'].

²⁵ Antibullying program KiVa koulu ['cool school'], Finnish Ministry of Education and Culture, <http://www.kivakoulu.fi/there-is-no-bullying-in-kiva-school>

Migrants, refugees and asylum-seekers

31. Finland recognizes in principle sexual orientation and gender identity as grounds for granting residence permit on the basis of subsidiary or humanitarian reasons. There are no official statistics of the applications or decisions, neither positive nor negative, based on sexual orientation or gender identity, but they may be at least dozens²⁶. In some instances which have got public attention, the authorities have decided to expulse persons to countries where LGBTI people are strongly discriminated and persecuted and where homosexuality is illegal. There are also indications that in some cases the expulsion decisions have been based on a discretion requirement.
32. There is evidence that at least in some cases Finnish Immigration Service has not followed the guidelines of the UN High Commissioner of Refugees²⁷, e.g. the interrogators have no expertise on sexual orientation or gender identity and the amending of statement by a refugee has been considered as evidence of untrustworthiness.

Foreign policy and external relations

33. The Ministry for Foreign Affairs has declared the rights of LGBTI people as one of its human rights policies²⁸ and further has stated that the Yogyakarta principles should be a guideline in this work, as recommended by the Human Rights Council in its 8th session 2008²⁹ to Finland. These principles have been followed in some activities within international organizations, such as OSCE and UN General Assembly. Applying them in practical foreign and development policies e.g. in planning development projects or in the work of Finnish embassies, however, is not transparent and explicit, although this also is a part of the recommendations of the EU Toolkit on LGBT rights³⁰. In domestic policy areas there are so far few policy documents outlining explicit measures to promote equality and non-discrimination of LGBTI people.

²⁶ Fleeing homophobia in Europe,
http://www.rechten.vu.nl/nl/Images/Fleeing%20Homophobia%20report%20EN_tcm22-232205.pdf

²⁷ United Nations High Commissioner for Refugees (UNHCR) 2008. Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity

²⁸ [Government report to Parliament on the human rights policy of Finland 2009](http://www.formin.fi/Public/default.aspx?nodeid=42553&contentlan=1&culture=fi-FI),
<http://www.formin.fi/Public/default.aspx?nodeid=42553&contentlan=1&culture=fi-FI>

²⁹ Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, Finland (A/HRC/8/24)

³⁰ http://www.ilga-europe.org/home/guide/eu/lgbt_rights/european_union_adopts_a_toolkit_on_lgbt_rights