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To the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

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Statement of the Finnish Non-Discrimination Ombudsman to the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the Consideration of the State Report of Finland

The mandates of the Finnish Non-Discrimination Ombudsman

The Non-Discrimination Ombudsman is an autonomous and independent authority. The task of the Ombudsman is to promote equality and to prevent discrimination. The Ombudsman also supervises removal from the country and is the National Rapporteur on Trafficking in Human Beings as well as the National Rapporteur on Violence against Women. The Ombudsman further works towards improving the rights and status of foreign nationals.¹

Based on these mandates, the Ombudsman wishes to inform the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment about issues concerning the rights of foreigners (article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) as well as violence against women and human trafficking (article 16).

¹ [Our work | Non-Discrimination Ombudsman \(yhdenvertaisuusvaltuutettu.fi\)](https://www.yhdenvertaisuusvaltuutettu.fi/en/our-work)

Article 3: the principle of non-refoulement

According to article 3 of the Convention, (1) no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, and (2) for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

In relation to the principle of non-refoulement, the Non-Discrimination Ombudsman notes the following:

Centralising international protection applications and border closures

Finland amended its Border Guard Act in 2022. According to the amended Act (section 16.2), the Government may decide to centralise the submission of applications for international protection to one or more border crossing points if it is necessary to prevent a serious threat to public order, national security or public health, and if the situation is caused either by instrumentalized migration or large-scale influx of migrants. When a decision concerning centralisation has been made, seeking asylum is possible only on those border crossing points to which the reception of asylum applications has been centralised. Exceptions can be made in individual situations taking into account the rights of children, disabled persons and other persons in a particularly vulnerable position. (section 16.3.)

As a reaction to the amendments of the Border Guard Act, the Council of Europe Commissioner for Human Rights sent Finland a letter where she expressed her concern "that the provisions introduced could prevent individuals from applying for asylum and may lead to them being returned in violation of the principle of non-refoulement."² The Non-Discrimination Ombudsman has stated that a situation where a person would be forbidden to seek asylum and enter the country is in evident conflict with the Constitution and international human rights obligations.³

In November 2023, the Government decided to centralise the reception of asylum seekers to certain border crossing points on the eastern border due to instrumentalization of migration and as the situation continued, all border crossing points on

² [Letter to the Minister of the Interior of Finland from the Commissioner for Human Rights of the Council of Europe](#) (27.7.2022, CommHR/DM/sf 022-2022).

³ The Annual Report of the Non-Discrimination Ombudsman for the year 2022, available only in [Finnish](#).

the eastern border were closed and the reception of asylum seekers was centralised to only airports and seaports. Based on the most recent decision of the Government, the eastern border will remain closed until 14 April 2024.⁴ The continuous closure of the eastern border will at that point have continued for 4 months (15.12.2023-14.4.2024).

Since November 2023, when the Government decided to only keep one border crossing point open on the eastern border, the Non-Discrimination Ombudsman has considered that the border closure measures seriously jeopardise the right to seek asylum.⁵ The state has an obligation to safeguard real and effective access to the asylum procedure. This means, among other things, an obligation to keep a sufficient number of border crossing points open for persons seeking international protection, and to accept and examine asylum applications. In the absence of genuine and effective access to the asylum procedure, there is a danger of violations of the principle of non-refoulement and the prohibition of collective expulsions.

International human rights actors have been concerned about the human rights consequences of the current border measures. In November 2023, UNHCR stated the following: “UNHCR is concerned about the closure of Finland’s eastern land border which may prevent people who wish to apply for asylum from accessing the territory and the asylum procedures in line with international refugee law.”⁶ In December 2023, the Council of Europe Commissioner for Human Rights stated that “the full closure of the Eastern land border raises concerns as regards genuine and effective access to means of legal entry in order to claim asylum, in accordance with the case-law of the European Court of Human Rights and other standards. I am concerned this step may lead to breaches of the principle of nonrefoulement and of the prohibition of collective expulsion.”⁷

The Non-Discrimination Ombudsman recommends that:

- Finland stops the full closure of the eastern border in order to ensure the access to asylum procedure and the realisation of the human rights of asylum-seekers.
- The amended Border Guard Act is re-evaluated to ensure that the Act can only be implemented and interpreted in a manner fully in line with international and European human rights obligations.

⁴ The Decision of the Government SM/2024/5, available only in [Finnish](#) (8.2.2024).

⁵ [Non-Discrimination Ombudsman: the closing of nearly all border crossing points on the eastern border seriously jeopardises the right to seek asylum](#) (24.11.2023); [Keeping the Eastern border crossing points closed continues to seriously compromise the right to seek asylum](#) (12.1.2024).

⁶ [UNHCR urges Finland to protect the right to seek asylum](#) (30.11.2023).

⁷ [Letter to the Minister of Interior of Finland concerning the human rights of refugees, asylum seekers and migrants](#) (4.12.2023, CommHR/DM/sf 034-2023).

The Government Programme and the quality of the asylum procedure

The Government Programme of Petteri Orpo includes many large-scale legislative changes to the Aliens Act and other legislation related to the rights of migrants. Some of the proposed changes seek to increase the efficiency of the asylum procedure. Proposed changes include, among other things, introducing a border procedure, the more comprehensive use of the accelerated procedure, remotely organized asylum interviews, and tightening the conditions for subsequent applications.

After 2015, numerous changes in practices and legislation were implemented with the aim of making the asylum procedure more efficient. These changes included, for example, limiting legal aid for asylum-seekers, shortening appeal periods, and introducing new criteria for admissibility of subsequent applications, as well as abolishing the residence permit based on humanitarian grounds. Simultaneously, asylum interviews were made more efficient by making the interviews shorter and utilizing remote interpreters. The results of these changes were detrimental to the quality of the asylum procedure and resulted in an increase in the number of appeals and subsequent asylum applications.⁸

Based on these experiences, the Non-Discrimination Ombudsman is of the view that reforms that aim to streamline the asylum procedure without considering the effects to the quality of the procedure should not be undertaken again. Carefully executed and adequately resourced asylum procedures provide better conditions for identifying all relevant factors for granting asylum or residence permits from the very first asylum application.

The Government Programme also includes a statement that “[t]he conditions for submitting subsequent applications will be tightened and unfounded subsequent applications will be prevented.” The Non-Discrimination Ombudsman reminds that sometimes the need for international protection is only recognized due to the subsequent application.⁹ It is thus essential that submitting subsequent applications remains possible and the applications are adequately assessed to fully ensure the realization of the principle of non-refoulement.

The government is also preparing legislation to introduce a border procedure, in which asylum applications would be processed in a fast procedure if they are made at or in the vicinity of the EU external border and if they are likely to be unfounded.

⁸ Elina Pirjatanniemi, Inka Lilja, Maija Helminen, Kristiina Vainio, Outi Lepola, Anne Alvesalo-Kuusi, [The combined effects of the amendments to the Aliens Act and the practice of applying the Act with regard to the status of those requesting and receiving international protection](#) (VN TEAS 2021:10).

⁹ The Non-Discrimination Ombudsman is finalizing a report on administrative practices concerning subsequent applications which will be made public in April together with recommendations based on the report.

However, there is a risk that the need for international protection and the applicant's possible vulnerability are not adequately investigated and identified in the short period of time given in the border procedure. The Ombudsman considers that the border procedure thus threatens to increase the number of situations where the need for international protection goes unrecognized. The border procedure also would allow for restrictions to the freedom of movement of asylum-seekers, in practice designating them to a reception centre which they cannot leave for the duration of the procedure, which according to the proposal could last up to 77 days. In the view of the Non-Discrimination Ombudsman, this practice amounts to detention. Yet, no legal remedy is available for asylum-seekers to challenge the designation to the closed reception centre.

Legal aid and legal protection are an important factor for the high quality of the asylum procedure. Regarding legal aid, former fixed case-specific fees have been changed back to hourly billing. However, according to information received by the Ombudsman, there are still issues in obtaining legal aid and in legal aid decisions in national asylum processes and when appealing to international treaty monitoring bodies, as well as in cuts to legal aid fees. Furthermore, the Ombudsman believes that asylum-seekers should be able to choose their legal representative during the administrative phase, whether they are public or private representatives.

The Non-Discrimination Ombudsman recommends that:

- No legal changes should be introduced that strive to make the asylum procedure more efficient without regard to the quality of the procedure.
- Legislative changes, that would make submitting or assessing subsequent applications more difficult, should not be introduced.
- Plans to introduce a border procedure should be re-evaluated so that the fundamental and human rights of asylum-seekers are ensured. The border procedure should not be implemented in cases of children and other vulnerable asylum-seekers.

The asylum procedure and problems in the credibility assessment

The Non-Discrimination Ombudsman is finalizing a report on administrative practices concerning subsequent applications. In the report, the Ombudsman pays special attention to positive decisions made to subsequent applications in situations where the applicant has presented the same asylum claims already in their earlier application or where the applicant is in a vulnerable position which has not been identified in the earlier decision. Based on the examination of these cases, it seems

that in earlier asylum procedures, there have been problems in recognizing the need for international protection.

One of the problems in the asylum procedure that has been identified in the report is the threshold of the credibility assessment. Other studies have also identified problems in the credibility assessment of the Immigration Service.¹⁰ It seems that the credibility assessment is sometimes based on assumptions about memory, identity, and for example the way in which applicants relate to religion, that are not supported by academic psychological research.

The threshold of credibility assessment is also relevant in a recent decision of the UN Committee against Torture.¹¹ In the decision, the Committee drew attention to the credibility assessment of authorities, as the authorities had not regarded the account of torture credible. In this regard the Committee stated, that “the complainant’s credibility was questioned based on inconsistencies in the complainant’s statements during the asylum interviews, and recalls that complete accuracy can seldom be expected from victims of torture and that in order to provide victims of torture with an effective remedy, State parties should refrain from following a standard credibility assessment process to determine the validity of a non-refoulement claim. The Committee recalls that the inconsistencies in the complainant’s presentation of the facts do not raise doubts about the general veracity of her claims, especially since it has been demonstrated that she suffers from post-traumatic stress disorder. The Committee recalls that the State party should provide the person concerned with fundamental guarantees and safeguards, especially if the person has been deprived of the person’s liberty or is in a particularly vulnerable situation, such as a woman who has been subjected to violence.” The Committee came to the conclusion that “the State party has not sufficiently considered the particularly vulnerable situation of the complainant, did not provide her with the necessary safeguards, and did not adequately assess the medical statements related to the torture she was submitted to and failed to sufficiently investigate whether there are substantial grounds for believing that she would be in danger of being subjected to torture if returned to her country of origin.”

Regarding credibility assessment, the Ombudsman has provided a statement in a case that is still pending in the Supreme Administrative Court. The Ombudsman

¹⁰ Hedayat Selim, Julia Korkman, Peter Nynäs, Elina Pirjatanniemi ja Jan Antfolk, ”A review of psycho-legal issues in credibility assessments of asylum claims based on religion” (Psychiatry, Psychology and Law 2023); Ilona Blumgrund, Hilikka Lydén ja Alina Leminen, ”Migrin teologia turvapaikkapäätösten valossa” (Diakonian Tutkimus 2:2022); Jenny Skrifvars, Veronica Sui, Jan Antfolk, Tanja van Veldhuizen ja Julia Korkman, ”Psychological assumptions underlying credibility assessments in Finnish asylum determinations” (Nordic Psychology 2022).

¹¹ [Decision adopted by the Committee under article 22 of the Convention, concerning Communication No. 1052/2021.](#)

asked a legal psychologist to provide a statement on the matter, and in this statement the legal psychologist identified shortcomings in the assessment of the applicant's credibility. These shortcomings related to how psychological knowledge about human memory, cultural background, and the impact of traumatic experiences on memory had been considered in the decision. The credibility of the applicant was questioned in a way which is not in line with psychological findings. There were also deficiencies in the way the applicant was interviewed as for example the interviewers and interpreters changed multiple times. In addition, the applicant's vulnerable position had been overlooked.

The Non-Discrimination Ombudsman recommends the following:

- The threshold for admissibility of subsequent applications must be kept sufficiently low in administrative practices.
- The potential vulnerable position of the applicant must be considered at all stages of the asylum procedure.
- Medical statements should be obtained with a low threshold in cases relating to torture or other forms of serious violence as well as in cases where the applicant is potentially in a vulnerable position due to health reasons.
- The asylum interview and decision-making must be in line with psychological findings about memory, identity, and trauma.
- The Finnish Immigration Service should evaluate its threshold in credibility assessment.

Detention of asylum-seekers

According to the Government Programme, the detention of aliens on grounds of public order and security and the continuation of detention for 12 months will be enabled in place of the current six months. The possibilities to detain aliens guilty of serious offences will be expanded. Overall, the Government aims to examine and introduce efficient and appropriate precautionary measures within the limits of the EU asylum directives. These changes would enable more detentions for longer periods of time. In addition, the Non-Discrimination Ombudsman is of the view that the proposed border procedure would entail severe restrictions to the freedom of movement and can even amount to deprivation of liberty.

According to information available to the Ombudsman, there are no statistics about detained foreigners in police custody. In addition, the Ombudsman has observed that foreigners detained waiting for deportation are not always informed about the time of their deportation in advance, even though this is recommended by the

Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The Non-Discrimination Ombudsman recommends that:

- Legislative changes should respect the principle of detention being a last resort. Particularly, if the detained individual is a victim of torture or otherwise in a vulnerable position, the reasonableness of detention should be carefully considered.
- Foreigners awaiting deportation should be informed about the time of their deportation in advance.
- All detentions should be documented so that the quantities and durations of detentions can be monitored. Statistics should be improved to include information about all detained minors and other detained vulnerable individuals.

The suspensive effect of appeals

An appeal to the Supreme Administrative Court does not have suspensive effect if the Court does not issue a prohibition of enforcement, and in some situations an appeal to the administrative court does not either have a suspensive effect without an administrative court's decision on the prohibition of enforcement. Even submitting a subsequent application has suspensive effect only in exceptional situations for the enforcement of previous deportation decisions. In these situations, the authority in charge of the return operation (the police or the border guard) checks from the Immigration Service the situation of the subsequent application and the potential risks concerning the principle of non-refoulement if the applicant is returned due to their previous enforceable return decision. The Non-Discrimination Ombudsman considers that, given that subsequent applications receive often positive decisions¹², it is possible that the legislation and practices cause a risk of violating the principle of non-refoulement.

The Non-Discrimination Ombudsman recommends that:

- Deportation decisions of the Immigration Service should not be enforceable before an administrative court or the Supreme Administrative Court has issued a decision on the request for the prohibition of enforcement.

¹² The upcoming report of the Ombudsman examines decisions made between 1st of March and 31st of August 2023. During that period, 41 % of decisions made to subsequent applications were positive. During the same period, 44 % of decisions made to asylum applications altogether were positive. Up-to-date statistics are available on the [website of the Immigration Service](#).

- Complicated sections of the Aliens Act concerning the enforceability of deportation decisions should be simplified and they should better include situations of subsequent applications.

New proposal for legislation on suspension of receiving asylum applications

On March 15, the Government presented a draft proposal for a Bill on an Act which would allow the Government to make a decision for a maximum of one month on the suspension of receiving asylum applications and returning persons seeking asylum (ia. a legislation allowing for pushbacks). The draft proposal was sent out for comments with a dead-line 25.3. The draft proposal explicitly states that a legislation of this kind would be in violation with international human rights instruments, including the Torture Convention. The legislation would also be in violation of the Constitution. The Government's intention is that the Act would be passed in Parliament through the procedure foreseen in the Constitution for exceptions from the Constitution, which would require a quorum om 5/6 of the Parliament to be passed during this parliamentary period.

The Non- Discrimination Ombudsman recommends:

- that the proposed legislation is withdrawn.

Article 16: preventing other acts of cruel, inhuman or degrading treatment or punishment

According to article 16(1) of the Convention, each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

In relation to article 16, the Non-Discrimination Ombudsman notes the following:

Women prisoners and marginalised women lack gender- and trauma-sensitive services

As the Rapporteur on Violence against Women, the Non-Discrimination Ombudsman wishes to draw the Committee's attention to the status of female prisoners and marginalised women. Marginalised women are women in difficult life situations, where homelessness, drug use and a cycle of crime expose them to violence and exploitation. As most people who are homeless, actively using substances and convicted of crimes are men, the supposedly gender-neutral services do not meet the needs of women.

The problems of marginalised women have been recognised and studied.¹³ Female prisoners have a lot of drug addiction, mental health problems and experiences of violence. Studies have shown that the exhausting life cycle of female prisoners often starts already in childhood. Violence has been present in a woman's life in different forms throughout her life. Violence has occurred in intimate and close relationships, which is particularly damaging and vulnerable, as is sexual violence.

A study on the health of women prisoners shows that women who end up in prison have often previous traumas and represent the prisoner group with the most health problems. Also, according to the study of Health and Wellbeing of Finnish Prisoners 2023, a total of 97 per cent of female prisoners have experienced physical violence, and 59 per cent have experienced sexual violence. Female prisoners also report more trauma symptoms than men.

There is a strong stigma attached to substance use, criminal and prison background, and homelessness, which can cause strong prejudices and inappropriate encounters in the public service system, including prison. The service system often has stigmatizing or punitive practices; thus, women are excluded from services.

The Non-Discrimination Ombudsman recommends that:

- Female prisoners should be provided with comprehensive and female-specific rehabilitation and the opportunity to deal with traumatic experiences under the guidance of professionals.
- Gender- and trauma-sensitive approaches and women-specific services are required to ensure marginalised women's survival and humane treatment.
- Public officials should be actively trained, both initial and in-service, on gender-based violence against women.

¹³ Mika Rautanen, Kennet Harald and Sasu Tyni (eds.) 2023: Vankien terveys ja hyvinvointi 2023. Wattu IV -vankiväestötutkimus. THL, Raportti 007/2023. The Health and Wellbeing of Finnish Prisoners 2023. Tammi-Moilanen, K.: Naisvankiselvitys: Selvitys naisvankien olosuhteista, toiminnoista ja turvallisuudesta, Rikosseuraamuslaitoksen monisteita 4/2020, 2020.

Victims of human trafficking

As the National Rapporteur on Trafficking in Human Beings, the Non-Discrimination Ombudsman has paid attention to anti-trafficking structures, including the National Action Plan, coordination and national referral mechanism, residence status of the victims of trafficking, and assistance given to the victims.

After 2019, when the Finnish civil society and human rights actors were last consulted¹⁴ in the Periodic Review process, there has been following developments:

- Access to services: The link between assistance of the victims of trafficking in the National Assistance System and the criminal proceedings has been weakened by amendments of the Act on the Reception of Persons Seeking International Protection and on the Identification of and Assistance to Victims of Human Trafficking.
- Coordination structure: The coordination of Government's anti-trafficking action was transferred to the Ministry of Justice from the Ministry of Interior, and the National Action Plan against trafficking in human beings for 2021-2023 was carried out.

The Non-Discrimination Ombudsman has continued following the residence permit practice of the Finnish Immigration Service. In 2021, the Ombudsman carried out a study of the residence permit practices concerning victims of human trafficking¹⁵. The study looked at the types of cases in which victims of trafficking in human beings were identified, and how the Aliens Act was applied in processing their residence permit applications. The main focus was on studying the application of the residence permit for victims of human trafficking (section 52a) and the residence permit granted on individual compassionate grounds (section 52) and how the line was drawn between the sections of law. A key aspect was to investigate how the vulnerability of victims of trafficking in human beings was assessed and which factors were deemed significant in the assessment of vulnerability.

In legislation, Finland fully complies with the requirements of the Article 14 of the Council of Europe Convention and the Residence Permit Directive (2004/81/EC). In 2006, a special provision (section 52a) was included in the Aliens Act concerning a temporary or continuous residence permit granted for victims of human trafficking. A temporary residence permit may be issued if the residence of the victim of trafficking in human beings is justified on account of criminal proceedings. A residence

¹⁴ See, for example, the statement of the Finnish NHRI (the Finnish Human Rights Centre) for LOIPR.

¹⁵ Summary of the study on the residence permit practice is included in the [Ombudsman's report to the Parliament](#) (pages 84-89).

permit may be issued on a continuous basis if the victim of trafficking in human beings is in a particularly vulnerable position.

Victims of human trafficking may receive international protection (refugee status or subsidiary protection, sections 87–88) or they may receive a continuous residence permit on individual compassionate grounds (section 52). A residence permit granted on individual compassionate grounds can be received due to vulnerable position, for instance. To receive a continuous residence permit for a victim of human trafficking, a particularly vulnerable position is required.

According to the study, victims of human trafficking only rarely receive a continuous residence permit based on their particularly vulnerable position. The threshold for deeming that a victim of trafficking in human beings is in a particularly vulnerable position was remarkably high. The assessment of the vulnerability of a victim of human trafficking is not consistent with the provision in accordance with section 52 of the Aliens Act, either.

The study also showed that only a few temporary residence permits had been granted to victims of human trafficking for reasons related to a criminal investigation into a trafficking offence. In cases, in which the presence of the victim of human trafficking during pre-trial investigation was not considered necessary, the victim was not granted a right of residence. The right of residence is necessary for the victims of human trafficking as the injured parties in the offence to be able to exercise their rights in the criminal procedure.

In addition to the study, the Non-Discrimination Ombudsman receives complaints concerning residence permit issues. Regarding the threshold for obtaining a residence permit as a victim of human trafficking, there is a case where an asylum-seeker had experienced repeated gender-based violence since childhood. As she had received international protection in another EU country, she was deported there, despite her claims of having been trafficked in that country. After deportation, the woman was again trafficked. She returned to Finland to seek international protection again but received another negative decision. The Non-Discrimination Ombudsman issued a statement on the matter to the Supreme Administrative Court. In the statement, the Ombudsman highlighted that the re-victimization after the deportation had not been considered, and the state's obligation to ensure that a person does not become a victim of further abuses had not been followed. The particularly vulnerable position had not been assessed as a whole. The Supreme Administrative Court overturned the Immigration Service's decision, and considered that the applicant should be granted a residence permit as a victim of human trafficking.

In monitoring the removal from the country of foreigners, the Ombudsman regularly pays attention to the returns of individuals who are in Finland in the assistance system for victims of human trafficking. The authorities responsible for deportations must facilitate the continuation of assistance in the country of return, either by cooperating with assisting entities in the country with the consent of the returnee or by providing the returnee with the contact information of assisting entities.

The Non-Discrimination Ombudsman recommends that:

- The Aliens Act should be amended so that more victims of human trafficking meet the requirements for granting a continuous residence permit.
- The right of victims of human trafficking to remain in Finland for the whole duration of the criminal procedure must be ensured.

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