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Parallel Report by the Finnish Human Rights Centre to the Committee on Economic, Social and Cultural Rights

The Finnish Human Rights Centre (HRC) wants to thank the Committee for the opportunity to contribute to the process of evaluating economic, social and cultural rights in Finland and presents its parallel report for the consideration of Finland's Seventh Periodic Report submitted in March 2020.

The HRC is an autonomous and independent expert institution whose task is to promote the implementation of fundamental and human rights and increase cooperation and exchange of information between various actors. The National Human Rights Institution (NHRI) consists of the Human Rights Centre, its pluralistic 40-member Human Rights Delegation and the Office of the Parliamentary Ombudsman. The Institution was established by law (changes to the Law on the Parliamentary Ombudsman 535/2011), effective as of 1 January 2012. The NHRI is accredited under the ICC.

Q2

According to a study published in 2019 (FIANT, 3bility Consulting: Words to Deeds) 94 percent of the assessed Finnish companies had made at least a general level commitment to respect human rights in their business operations. However, only 20 percent of the companies reported identifying and assessing more systematically their human rights risks and impacts. The assessment results indicate that bringing the commitments to respect human rights into practice is still, overall, at a very early stage. The study assessed the implementation of UN Guiding Principles on Business and Human Rights in 50 largest listed companies in Finland. While Finland has been a forerunner for example in drafting a national implementation plan, the study shows that even the largest Finnish companies still have a long way to go to integrate human rights impact assessment results in their organizations' processes and practices. Moreover, small and medium sized enterprises tend to have even less knowledge and resources in business and human rights questions, even though the UN principles on business and human rights apply to all companies.

There will be more information available on how Finnish companies are fulfilling their human rights responsibilities once we have results from a new study currently

underway. The study started in 2020 and will review 80 Finnish companies from different sectors. (SIHTI project, <https://www.hanken.fi/sv/node/2408911>). SIHTI is implemented by Hanken School of Economic's and the University of Helsinki's joint research and development institute Centre for Corporate Responsibility (CCR), the Finnish Human Rights Centre (HRC), FIANT Consulting Oy and 3bility Consulting. The role of the Human Rights Centre in the SIHTI project is to be responsible for the quality assurance of the study on human rights aspects and regularly guide the work of the researchers at different stages of the project. One aim of the study is to examine the main challenges for companies to publish information on the fulfilment of their human rights. The project is implemented and funded under the Government of Finland's research, analysis and assessment activities.

According to the Government Programme, there will be also another study conducted on business and human rights to advise the Government as it plans drafting of new legislation based on the businesses' due diligence obligation. It needs to be noted here that the government's report only mentions the study and the promotion of EU level regulation and does not bring up the objective of the study: a national legislation based on due diligence standards.

Both organisations and companies worked together in the campaign "Suomi yrittäsvastuun ykkösketjuun", in 2018. The goal of the campaign was to get a mandatory national human rights due diligence legislation included in the governmental programme of 2019-2023. This means, unlike the Government's report suggests, that not just organisations but also many companies are promoting the legislation. The Government's report assumes that national legislation is promoted mostly by employees' organisations whereas the enterprises would only advocate EU level regulation.

Collective action has been presented as a possible legal remedy in human rights violations committed by companies (Valleala 2015, TEM). Collective action is, however, only applicable in the scope of the Consumer Ombudsman's authority in disputes between a consumer and a trader.

The Finnish National Action Plan for the implementation of the UN Guiding Principles is from the year 2014 and the proposals for actions it contains are mostly targeted to years 2014-2016. The Human Rights Centre is of the view that an evaluation of the impacts of the plan should be carried out before eventually drafting a new action plan. In this process drafting a national legislation on business and human rights should be considered.

Q3

The State Party asked the Sami Parliament for their views regarding the question 3 of the list of issues. However, some central parts of that contribution were left out from the Finnish government's report.

Among these was the fisheries legislation which entered into force in 2016 (and amended in 2019). It is a concrete example of weakening the rights of Sami people to the use of natural resources. The Sami Parliament reported that in its view the new legislation deteriorated the constitutional rights of the Sami people.

The fisheries law only grants the right to free fishing permit in traditional Sami fishing areas for inhabitants of the municipalities of Enontekiö, Inari and Utsjoki, excluding thus those Sami who don't permanently live in these municipalities, and depriving them effectively of the right to exercise their traditional culture. 65 percent of Sami live outside the Sami region. Thus, the amendment significantly affected their right to, as an indigenous people, maintain and develop their own language and culture, a right that is protected both by the Finnish Constitution and of the article 1§2 of the CESCR.

Q4

The Government's report recognizes that there is a clear gender segregation in the Finnish labor market and young people's educational choices and that the gender pay gap is closing quite slowly.

The Human Rights Centre wishes to point out in addition the situation of people of foreign origin in relation to inequalities in the labor market.

The employment rate of women of foreign origin is lower and the unemployment rate correspondently higher than of men of foreign origin. Years spent in Finland increase the participation in labor market of women more than that of men.

According to the Survey on work and well-being among people of foreign origin, in 2016 the monthly income of women who do not speak Finnish national languages was 76 % of men who do not speak Finnish national languages and 62 % of men who do speak those languages.

The gender differences in education are stronger among persons of Finnish origin than those of foreign origin. Women of foreign origin have had more degrees in engineering and less degrees in health and welfare. Moreover, men of foreign origin have had less degrees in engineering than women of Finnish origin.

Nevertheless, 45 % of degrees completed by women of foreign origin aged 25-54 years *in Finland* were in health and welfare and 40 % of degrees completed by men of foreign origin were in engineering. Studying in Finland seems thus to increase gender segregation in education.

The Human Rights Centre considers that the situation of people of foreign origin should be taken into account when gender segregation in Finnish labor market is assessed.

In addition to the Human Rights Centre's observations, **The Finnish Ombudsman for Equality** notes the following with reference to question 4:

The gender pay gap is far from being eliminated. On the contrary, at the current rate, it will take roughly 50 years for women to earn as much as men in Finland. The Ombudsman remarks the discontinuity of the Equal Pay Programme, and notes that future actions should be ambitious and targets measurable. Regarding tripartite collaboration, the trade union level should be involved in addition to central labour market organisations, as the central organisations no longer participate in pay negotiations.

Pay survey as an integral part of employer's duty to promote gender equality is set forth in the Act on Equality Between Women and Men (aka Gender Equality Act). Pay surveys should help combat pay discrimination and narrow gender pay gap.

Unfortunately, the Ombudsman has discerned in his monitoring practice that the pay surveys are often too vague and provide insufficient information. Legal provisions should be revised with this respect. For instance, access to information on salaries should be secured and adequate comparison between relevant groups should be better addressed by law.

Occupational sex segregation is another persistent issue in Finland. Approximately only 10 % of employees work in industries where both women's and men's share are at least 40 %.

Furthermore, family care work is provided mainly by women as fathers take only about 10 % of all family leaves regardless gender-neutral formulations of such leaves. This affects women's status in the labor market, where they suffer from discrimination. The Ombudsman keeps witnessing cases of discrimination based on pregnancy and family responsibilities as the clients typically contact the Ombudsman when the duration of a fixed-term employment contract has been restricted due to pregnancy and family leaves, or when returning to work after family leave seems difficult, or they have been asked inappropriate family related questions in job interviews.

Overall, the uneven sharing of the right to family leave has a negative impact on gender equality. The Finnish Ombudsman for Equality thus emphasizes the need to reform the family leave system with the aim of increasing significantly earmarked leave for fathers. Moreover, in the Ombudsman's view, the legislation on employment contracts should contain a prohibition of failing to renew a fixed-term contract due to pregnancy or family leaves and a prohibition of limiting the duration of a fixed-term contract to the start date of a maternity, paternity or parental leave. In addition to legislative measures, the Governmental Action Plan for Gender Equality should address specifically discrimination based on pregnancy and family leaves.

Q5

The European Committee of Social Rights examined in January 2019 the follow-up of five decisions given to Finland on the merits of collective complaints in which the Committee had found a violation. Two of the complaints were about social security and sufficient living standard.

The Finnish Government submitted its fifteenth periodic report on the implementation of the revised European Social Charter in January 2019.

In the complaint of Finnish Society of Social Rights v. Finland (Complaint No. 88/2012, decision of 9 September 2014) the Committee concluded that there was a violation of Article 12§ 1 and of Article 13§ 1. The minimum level of several social security benefits (sickness benefits, maternity benefits, rehabilitation benefits, basic unemployment allowance and the guarantee pension) was manifestly inadequate.

The Finnish Government has emphasized in its responses that the Finnish social security system is complex with different components which in different combinations aim at providing necessary assistance in particular and attention therefore must be paid to how the different benefits work combined. The Committee invited the Government to provide information in future reports,

including typical examples of different categories of recipients, demonstrating that the main benefits at stake when combined with other supplementary benefits reach a level which is adequate in the meaning of Article 12 and Article 13, respectively. However, this kind of information was still lacking from the Government's report in December 2019, and, consequently, it still isn't established whether the social security system is adequate in the meaning of Article 12 and Article 13.

Another complaint about social security and sufficient living standard was *The Finnish Society of Social Rights v. Finland* (No. 108/2014).

In 2016 The Committee concluded that there was a violation of Article 13§1 of the Charter on the ground that the level of the labour market subsidy, even in its combination with other benefits such as housing allowance and social assistance to cover excess housing cost, was not sufficient to enable its beneficiaries to meet their basic needs.

The Committee considered in 2019 that the situation had not been brought into conformity with the Charter. It had not been demonstrated that action had been taken to bring the labour market subsidy to an adequate level whether alone or in combination with the housing allowance. It had not been shown that the effect of possible supplementary social assistance benefits, such as housing benefit and income support, was sufficient to decisively improve the situation for all the recipients of labour market subsidy concerned.

In its periodic report in December 2019 the Finnish Government emphasized once more that in Finland, social security does not only consist of individual monetary benefits but constitutes an aggregate of minimum benefits payable in money and their different components, of earnings-related benefits and services supplementing them and of payment ceilings. In assessing compliance of the Finnish system with the provisions of the Charter, this overall picture of the Finnish social security system should be taken into consideration.

As the Government has yet not provided the requested examples on the Finnish social security system, it is not possible to verify whether the system is, in fact, adequate and in accordance with the Charter. There is still lack of data provided by the Government to international bodies for them to assess the compliance of their recommendations in the field of social security.

Q6

In some parts of Finland there seems to be a shortage of psychiatrists. One indicator that illustrates this shortage is the number of persons attending psychotherapy covered by the Social Insurance Institution. The regional variations show the differences in the availability of private psychiatric services.

According to the Mental Health Barometer 2019 carried out by The Finnish Association for Mental Health, mental health professionals see a need for more staff in mental care services, good quality psychiatric care is concentrated in the private sector and in urban areas and as a consequence people in need do not get sufficient help. However, once in the service system, persons who have been treated for mental health problems are in general rather satisfied with the services they have received.

There is a link in Finland between income level and psychiatric hospital care. According to studies it appears that the mental care system treats people differently depending on their income level. It is possible that persons with low income do not have access to low-threshold services. Consequently, their problems worsen and when they finally enter the mental care system, they are hospitalized, whereas persons with higher income get preventive services. (Kimmo Suokas et.al. Association of Income with the Incidence Rates of First Psychiatric Hospital Admissions in Finland,1996-2014).

These facts indicate that the problem in mental care services in Finland is more the availability and the affordability than the quality of mental health services.

In the national development project TERTTU (Developing the health examination protocol for asylum seekers in Finland) the National Institute for Health and Welfare and the Finnish Immigration service developed together a national health examination protocol for asylum seekers that was adopted in all asylum reception centres in Finland. There are units specialized in rehabilitation of torture victims in Helsinki and Oulu. The municipalities receiving quota refugees are scattered all around Finland and there are not always low-threshold mental health services available for persons that have recently arrived in Finland. Rehabilitation psychotherapy is rarely offered to quota refugees while they would be entitled to interpretation services for the rehabilitation.

There are frequently suicides among asylum seekers, which affects also the mental well-being of other residents of asylum reception centres.

The PALOMA2 project (National Support System for Refugee Mental Health Work and Knowhow Dissemination) is currently constructing a subsite for the HealthVillage.fi service's MentalHub for professionals on supporting the mental health of refugees.

According to the TERTTU development project a major part of adult asylum seekers had experienced trauma either in their country of origin or during their asylum-seeking journey. Experiencing trauma was especially common among the youth. 87 percent of young asylum seekers had experienced some sort of trauma before arriving to Finland. In addition, a long asylum process in Finland causes severe psychological stress which often adds to mental health problems.

According to TERTTU, almost 40 percent of adult asylum seekers expressed significant symptoms of depression and anxiety when arriving in Finland. On third of children and youth had psycho-social, emotional and/or behavioral symptoms. The Finnish Immigration Service has developed a unit of residential psychiatric care for asylum seekers with severe mental health symptoms since there is a shortage of appropriate services in different parts of Finland. However, the unit is often full. The Immigration Service has also provided asylum units with crises and family workers.

Regardless the significant prevalence of mental health issues, they were treated or even discussed in only in a very small part of asylum seekers' health care contacts. This leads to assume that a substantial part of asylum seekers' mental health problems is left untreated in the asylum process.

Q8

The Finnish NHRI is composed of the Finnish Human Rights Centre, its Human Rights Delegation and the Parliamentary Ombudsman. The Finnish Human Rights Centre and its Delegation were established by law in 2011, while the Ombudsman is already 100 years old in 2020. Initially, the HRC received very small financial and human resources when it started its operation in 2012. There were only 3 permanent staff members. In 2016 the number increased to 4 staff members and in 2019 to 7 staff members. In its budget for 2021, there will be 2 more posts for the HRC for young professional staff. Overall, the number of posts is approaching a level that it was initially planned, when the legislation was drafted in 2011. The Parliamentary Ombudsman is generally quite well resources with some 60 staff members, but new tasks from the UN CRPD and the OPCAT have not been allocated new resources despite the requests of the Ombudsman. In particularly the 5 new staff members allocated to work on the rights of older persons, which were received as permanent posts in 2020 (and as temporary posts in 2019) have increased the capacity of the Finnish NHRI to carry out its mandate on economic and social rights.

Q15

As noted by the Government, there are no official statistics pertaining to the employment rate of persons with disabilities in Finland. The Finnish Human Rights Centre recommends that efforts will be undertaken to improve data collection, collection of statistics and availability of statistics in order to rectify the current situation. The current work on human rights indicators under the Government's new Human Rights Action Plan is at least partially addressing the lack of data and indicators on vulnerable groups.

A survey carried out in 2018 by Finnish Human Rights Centre and the Disability Forum among persons with disabilities found that the majority of the respondents (n=1 525) received a disability pension (48 per cent), 15 per cent were employed and 7 per cent were unemployed. The employment rate differs significantly between the types of disability. The lowest employment rate is amongst the intellectually disabled respondents (6 per cent). Similar results were found in a survey carried out in 2016 by the Non-Discrimination Ombudsman: it found that 45 per cent of the respondents (n=518) received a disability pension, 18 per cent were employed and 12 per cent unemployed.

The Finnish Human Rights Centre notes that there is ambiguity in the Young Guarantee Scheme, which, at worst, excludes persons with disabilities from the services guaranteed to persons under 25 years of age. It has been brought to the attention of the Finnish Human Rights Centre that some local authorities consider persons with disabilities, who receive disability pension, as non-qualified for the measures improving access to the labour market.

The Government has not included in its report information on older women or women with disabilities and there are in the report only sporadic comments on women belonging to minorities.

Q18

The Government has not developed any nation-wide policies for persons with a disability pension that have never had paid employment to integrate them on the labour market. The Government has developed and implemented policies to stimulate employment for groups of people who have previously had attachment to the labour market. This group of people may include persons with disabilities.

The Finnish Human Rights Centre considers that there should be policies developed that specifically aim at stimulating labour market access of persons with disabilities taking into account different types of disabilities.

The Finnish Human Rights Centre notes with concern that there is no official data available regarding the extent to which reasonable accommodation is used in the labour market. Accordingly, it is not possible to state whether the adopted measures are successful. According to the survey carried out in 2018 by Finnish Human Rights Centre and the Disability Forum, altogether 47 per cent of the respondents (n=449) had experienced discrimination with regard to reasonable accommodation in the labour market within the last two years.

The Finnish Human Rights Centre stresses the importance of improving data collection to allow monitoring on the situation in the labour market with regard to the use of reasonable accommodation.

Q21

The Office of the Parliamentary Ombudsman announced in October 2019 that complaints by children in substitute care had increased substantially after inspections made in children's homes by the legal advisers of the Ombudsman's Office. During 2019, 35 such complaints were initiated in the Office of the Parliamentary Ombudsman. The complaints concerned issues such as treatment in the place of substitute care, decision-making related to substitute care, and the use of restrictive measures.

Of decisions issued, some 70% led to action on the part of the Ombudsman. During the same period, about 16% of the cases in the whole category of social services led to action, and close to 14% of the complaints on any matter dealt with by the office resulted in action.

The HRC considers that the Government should have included in its report also information about children with disabilities in need of child welfare services, since those children are particularly vulnerable.

Q24

The Act on Supporting the Functional Capacity of the Older Population and on Social and Health Care Services for Older Persons (980/2012), which came into effect in 2013, has been implemented effectively in the municipalities. However, the municipalities' own implementing measures raise the threshold of care contrary to the intention of the legislator. The assessment of the client's physical and cognitive capacity has set aside social considerations in the application

directives. As a result, the older person's own home and remaining capacity are transformed from legal guarantees of the client's welfare into barriers to adequate care. Fulfilling the client's freedom of choice by using service vouchers raises the threshold of care when they are used in services related to low capacity, where the conditions for autonomous choice are primarily low. When clients are unable to exercise their freedom of choice in full, they become proxy-consumers under the direction of others. (Laura Perttola: Crossing the threshold: Socio-legal barriers to access to care at old age in Finland, 2019),

The article **Care poverty: unmet care needs in a Nordic welfare state** (Teppo Kröger et alia, 2019) introduces the concept of care poverty. Care poverty is defined as inadequate coverage of care needs resulting from an interplay between individual and societal factors. The article examines its level and predictors among the 75+ population in Finland. The data comes from a survey conducted in 2010 and 2015. Despite the universalistic goals of the Finnish care system, 26 percent of respondents with limitations in daily activities faced care poverty with regard to instrumental activities of daily living; the activities of daily living care poverty rate was 17 percent. Concerning instrumental activities of daily living, care poverty was associated with income level, health status and living arrangements.

The Deputy-Ombudsman, concerned by the lack of guidelines for and supervision of elderly care, conducted in 2019 an investigation in elderly care in Finland. The purpose was to identify how municipalities could proactively ensure that no individual elderly people suffering from dementia could be mistreated. A further purpose of the investigation was to highlight the action that municipalities could take if severe shortcomings have already arisen.

According to the investigation, there are severe shortcomings in the operating practices for elderly care and treatment in municipalities: The supervision conducted by municipalities has been inadequate, and municipalities have not fulfilled their legal obligations to ensure that elderly people who are housed in an institution or assisted living unit and who suffer from dementia have been assigned a designated professional holding a municipal office.

A heated discussion and national crises in elderly care started in Finland in 2019 when severe shortcomings were discovered in an elderly care unit in Western Finland by **the Regional State Administrative Agency**. As a result, **the National Supervisory Authority for Welfare and Health** decided to shut down the unit. Already in 2015-2018 Regional State Administrative Agencies had handled numerous monitoring cases regarding elderly care units. The Agencies provided units with guidance and direction, which, however, wasn't adequately followed and client security in elderly care units continued to decline. At the same time big private companies providing care for the elderly continued to expand. The clients in average needed more assistance than before but there wasn't an increase in staff accordingly.

The number of cases handled by the National Supervisory Authority for Welfare and Health increased rapidly as the problems in elderly care were discussed in public (179 cases in 2017, 207 cases in 2018 and 583 cases in 2019). There was a similar increase of cases also in Regional State Administrative Agencies. Recurring problems were lack of skilled staff, lack of resources, inadequate care and service plans, shortcomings in leadership, problems of patient safety in medicinal products, insufficient medical services and failings in self-monitoring.

The National Supervisory Authority for Welfare and Health and Regional State Administrative Agencies organized in the autumn of 2019 a series of regional seminars for municipalities and service providers in the field of elderly care. The purpose was to give guidance in order to improve the quality of elderly care and to strengthen the rights and security of clients. The Finnish Human Rights Centre took part in the seminars giving lectures about fundamental and human rights of elderly persons.

As the Government points out in its report, the Institute for Health and Welfare produces every other year a survey of the situation of the services for older persons which, for example, supports municipalities in the development of services for the aged by providing information from the management perspective. However, the survey is directed only to service providers and thus the information received is based mainly on their subjective views of the situation, not of the users of the services.

The Human Rights Centre emphasizes the need to provide sufficient resources for good quality elderly care and systematic data collection. It is also important that there are resources for monitoring the fulfillment of older persons' rights and that the older persons from various situations and backgrounds are themselves heard in these processes.

Q26

The Finnish Human Rights Centre shares the view expressed by civil society organisations, and noted in the Government's report, that women and girls with disabilities do not have sufficient availability of and access to information on sexual and reproductive health.

The Finnish Human Rights Centre is concerned with the availability of and access to individualised information concerning the right to sexual and reproductive health for women and girls with disabilities.

Q27

The UN has opposed special school in its human rights programmes already in the 1980s. Already in 1994, the UNESCO Salamanca Statement for Action on Special Needs Education took a clear stand for inclusive education for children. According to the statement, children with special educational needs must have access to regular schools which should accommodate them within a child-centered pedagogy capable of meeting these needs.

The principle of inclusion requires the environment to adapt itself to the needs of an individual. Taking a child to a special school does not integrate a child to the educational system, but not in an inclusive way and not in the community in which the child lives, as required in the article 24 of the CRPD.

The Basic Education Act provides that the local authority assigns a neighbourhood school to a child of compulsory school age. However, the Act does not guarantee access to a neighbourhood school because for "well-founded reason relating to educational arrangements, the local authority may change the place of education." Such educational arrangements may include issues relating to accessibility of the neighbourhood school, availability of appropriate support or other personnel. This

leads to a situation, were children with disabilities or children with foreign origin don't in fact have a right to inclusive, mainstream education in their own environment under the national law.

Q31

The Government has not included in its report some important programs such as The National Action Plan on the UN Convention on the Rights of Persons with Disabilities 2018–2019 and the National Action Plan for Safety Promotion among Children and Youth 2018-2025.

Sirpa Rautio
Director

Sanna Ahola
Expert