



FINLAND

Submission to the Committee on the Rights of the Child

93rd Pre-Sessional Working Group, September 2022

NGO Report

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INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the in advance of the 93rd Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following two areas:

- General Principles: **Equality and Non-Discrimination**
- Special Protection Measures: **Children in Situations of Emergency (Detention based on Immigration Status)**

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states (150 in the case of detention based on immigration status) using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our legal and constitutional findings, as well as suggested questions for the Committee to ask Finland, and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed legal and constitutional excerpts documenting our findings. We hope the Committee will recommend that Finland address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong legal and constitutional guarantees in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Finland for having provisions in place, we hope the Committee will recommend that Finland work with stakeholders to overcome any obstacles in implementing these provisions.



SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. General Principles: Equality and Non-Discrimination (Article 2)

Based on our review of full-text national constitutions, Finland explicitly prohibits discrimination of persons based on sex, language, religion, opinion, origin, disability status, age, and other personal characteristics or statuses. However, some groups guaranteed equality in the Convention are not covered by this constitutional provision, including children facing discrimination based on race, colour, or ethnicity.

RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- Recommend in its concluding observations that Finland amend its constitution to add explicit guarantees of equality and non-discrimination regardless of race, colour, and ethnicity, consistent with CRC commitments. These guarantees could be added to Article 6 of the constitution, which already guarantees non-discrimination based on other personal characteristics and statuses.

Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

Based on our review of legislation, regulations, and decrees, we find that Finland categorically prohibits detention of migrant and asylum-seeking children under 15, but allows the detention of minors over the age of 15, even if it is still in very specific circumstances and for a limited amount of time.



RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

We hope the Committee will:

- In its list of issues, ask Finland: Can Finland provide details on the specific steps it is taking, if any, to extend the prohibition of detaining minors under 15 so that it encompasses minors of any age?
 - If Finland cannot provide details on the specific steps it is taking to completely prohibit the detention of migrant and asylum-seeking minors of any age, recommend in its concluding observations that Finland amend its immigration legislation to completely prohibit minor detention.

- In its list of issues, ask Finland: given the limited circumstances that do exist for detention, can Finland provide:
 - details on the current rates of detention among minor migrants
 - details on the current rates of detention among minor asylum-seekers

DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

1. General Principles: Equality and Non-Discrimination (Article 2)

Article 2.1 of the Convention states that:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Constitutions state the values of a country, outlining the rights of people living within the country and profoundly influencing norms and practices. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws, as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.



We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution took any approach to equality across the grounds listed in article 2.1 of the CRC by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

FINLAND'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION BASED ON RACE, COLOUR, AND ETHNICITY

Based on our review of full-text national constitutions, Article 6 of Finland's constitution explicitly prohibits discrimination of persons based on sex, language, religion, opinion, origin, disability status, age, and other personal characteristics or statuses.

Constitution of Finland, amended to 2018

Section 6 - Equality

[...]

No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

However, some groups guaranteed equality in the Convention are not covered by this constitutional provision, including children facing discrimination based on race, colour, or ethnicity.

2. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

The detention of children based on immigration status violates the principle of the best interests of the child and infringes on core values outlined in the Convention, including the right to liberty (Article 37).

Moreover, as noted in the Committee's 2002 Report on the Rights of All Children in the Context of International Migration, migrant and asylum-seeking children may experience heightened vulnerabilities. For example, migrant children held in detention may face barriers to accessing fundamental services such as education (Article 28) and health services (Article 24).

Article 37.b. specifically states:

States Parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;



In General Comment No. 6, the Committee has specifically ruled that detention of minor migrants is not in accordance with the Convention.

61. In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.

For 150 UN member states, we systematically reviewed national-level immigration laws, regulations, ministerial decrees, and executive decrees related to asylum-seekers, refugees, and migrants. We identified and located relevant laws through the United Nations High Commissioner for Refugees (UNHCR) RefWorld catalog, the International Labour Organization's (ILO) NATLEX legislation database, and the Global Detention Project. For each country, we reviewed all identified legislation to determine whether countries prohibited or allowed the detention of accompanied and unaccompanied minors, and under what circumstances.

FINLAND'S LEGISLATIVE PROVISIONS: MOST MINORS ARE PROTECTED FROM DETENTION

We commend Finland for passing, as described in the State Party Report, par. 300, a 2015 amendment to its Aliens Act that categorically prohibits the detention of children under the age of 15. However, **for those over 15 but younger than 18, detention is still permitted**, albeit in very specific circumstances and for a limited amount of time.

Aliens Act 2004, amended to 2022

122 § (26.6.2015/813)

Tagande av barn i förvar

(...)

Ett barn under 15 år som saknar vårdnadshavare får inte tas i förvar. Ett barn som fyllt 15 år och saknar vårdnadshavare och som söker internationellt skydd får inte tas i förvar förrän ett beslut om avlägsnande ur landet av barnet har blivit verkställbart.

Ett barn som saknar vårdnadshavare och som tagits i förvar ska friges senast 72 timmar efter det att barnet togs i förvar. Av särskilda skäl kan tiden i förvar förlängas med högst 72 timmar.