

**Submission on Finland
Human Rights Committee, 27th Session**

The Finnish Disability Forum (Vammaisfoorumi ry / Handikappforum rf- FDF), has prepared the following information and proposed questions to the State highlighting the rights of persons with disabilities in Finland as it concerns the issues of non-discrimination; right to liberty of movement and freedom to choose residence; access to justice; the right to use one's own language; and data collection.

- Annex I which compiles selected disability references in UPR recommendations and Concluding Observations of treaty bodies with respect to Finland (page)
- Annex II which includes information of the organisation making this submission (page).

FINLAND

Finland signed the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 30 March 2007. We note with satisfaction that the commitment of present and prior governments to ratify the CRPD and its Optional Protocol has finally been realised, as recommended by the Human Rights Council as an outcome of the Universal Periodic Review (UPR) of Finland¹; the CRC Committee², the CAT Committee³, the CEDAW Committee⁴ and the CESCR Committee⁵. (see Annex I below)

Ratification of CRPD finally concluded – entry into force in national legislation

The ratification process of the CRPD (2007-10th June 2016) was prolonged due to many factors. The need to reform national special legislation concerning Special Care for Mentally Handicapped Persons (1971), especially provisions concerning the use of coercion, or providing care against the will of a person under special care, proved difficult to solve. The Finnish Parliament requested that compliance of national legislation with CRPD Article 14 be ensured. Relevant legislative reforms are underway. Major reform on social welfare and health care systems is underway together with administrative regional reforms. The combined effect of these reforms to the position of clients, users of health care and social services needs careful monitoring to ensure realization of fundamental social rights. The reforms will be having an effect on the realization of specialized social welfare legislation,

¹ UPR, 13th session, [A/HRC/WG.6/13/L.6](#), 2012

² Concluding Observations of the CRC Committee, [CRC/C/FIN/CO/4](#), 2011, paras 41(e), 65

³ Concluding Observations of the CAT Committee, [CAT/C/FIN/CO/5-6](#), 2011, para 26

⁴ Concluding Observations of the CEDAW Committee, [CEDAW/C/FIN/CO/6](#), 2008, para 39

⁵ Concluding Observations of the CESCR Committee, [E/C.12/FIN/CO/5](#), 2008, para 32

including services and assistance for persons with disabilities. The general principles of CRPD must be fully taken into account in these reforms.

A specific Government Disability Policy Programme, VAMPO – Finland’s Disability Policy Programme (2010-2015), outlining the most important measures to be undertaken in the field of disability policy was concluded in end of 2015. The final report highlighted that while some progress has been made in some areas, many others remained incomplete.⁶ Full and effective implementation of the CRPD calls for a proactive policy programme. Due to the long delay in ratification and incorporation of CRPD into national legislation, the implementation and monitoring structures the CRPD requires are at early introduction phase.

Continuation of disability policy programming and action plans is necessary for effective implementation of CRPD obligations. Particularly, disability research and data collection among all actors, inclusive DPOs as full participants in the monitoring framework need to be effectively resourced.

The legislative framework of non-discrimination and equality on the grounds of disability has been strengthened through the changes introduced to the Non-Discrimination Act by the new Non-Discrimination Act (1325/2014, entry into force 1 January 2015). The extension of material scope of protection against disability discrimination so as to include access to goods and services was an important enhancement in terms of equal legal protection.

Due to delay in ratification, the early stage of implementation of CRPD, the preparation of first baseline report all highlight the clear and pressing need for **for more extensive and systematic data collection and research on the situation of persons with disabilities in Finland**, in particular their socio-economic status and living conditions but also concerning violence against women with disabilities. This is particularly urgent since the ratification of CRPD for Finland to be able to meet the reporting requirements. **The lack of data on persons with disabilities results in lack of effective policies and continuation of discrimination and marginalisation of persons with disabilities.**

Data collection should be systematic in nature, and disaggregated on the basis of age, gender, disability, socio-economic status, ethnicity, and geographic location. There is very little gender specific information on the status of disabled women and girls in Finland. The need to have baseline information and an extensive overview of the situation of all persons with disabilities, young and old, men and women, also persons with disabilities from minority backgrounds, underlines the urgency for disability research. There are several organizations, including Kela – Social Insurance Institution and the National Institute for Health and Welfare THL, whose mandates should be strengthened in this area. As a general remark, we would underline the very limited resources for disability related issues within the ministries and the National Institute for Health and Welfare. Organizations of persons with disabilities are able and willing to assist the very limited number of disability experts in the ministries, through dialogue and exchange of information. However, more experts are needed to cover the range of substantive issues on the rights of persons with disabilities.

⁶ [A Strong Basis for Inclusion and Equality. Finland's Disability Policy Programme 2010–2015](#). Summary available in English.

Reform of Non-Discrimination Legislation

Finnish legislation concerning equality is currently spread over a number of provisions, and is somewhat incoherent in nature and very difficult to grasp for citizens. The Human Rights Council⁷, the CRC Committee⁸ and the CAT Committee⁹ have also paid attention to this disparity in their recommendations and Concluding Observations. (see Annex II below)

While the *Non-Discrimination Act* does acknowledge the denial of reasonable accommodation as a form of indirect discrimination¹⁰, the positive potential of this provision is stunted due to shortcomings in the way this Act is monitored. **Monitoring mechanisms and their personnel (e.g. The Non-Discrimination Ombudsman) have very limited human resources considering the extension of mandate and scope of application** relative to disability.¹¹

On a positive note, as of 1 January 2010 **The Finnish Criminal Code does include an explicit mention of disability in several sections.**¹² However, **when persons face discrimination on the ground of their disability or on other prohibited grounds, they have no practical access to effective legal safeguards.** Cases are often not recognized as discriminatory by service providers, such as restaurants or stores, or even by investigative officers. Also, the possibility of taking a case to court as a civil lawsuit remains illusory for most persons in Finland – considering, for example, the risk of having to cover costs of both parties in case of loss, in particular for persons with disabilities who more likely to be unemployed with fewer financial resources. The system of legal aid is overburdened in Finland and cannot be seen as a solution to providing assistance in discrimination cases. Non-Discrimination Ombudsman and the Non-Discrimination and Equality Tribunal of Finland are new and aim to provide low threshold access to justice for victims. Their first year of operation has revealed pent-up demand for disability related discrimination. Their functioning has slowed due to cuts in financing and human resources. So far, only few cases of discrimination based on disability have been finalized.¹³ Most recent case law includes decisions concerning denial of reasonable accommodation in education.

⁷ Universal Periodic Review, 13th session, Finland, [A/HRC/WG.6/13/L.6](#), 2012

⁸ Concluding Observations of the CRC Committee, [CRC/C/FIN/CO/4](#), 2011, paras 25, 26

⁹ Concluding Observations of the CAT Committee, [CAT/C/FIN/CO/5-6](#), 2011, para 24

¹⁰ Non-Discrimination Act 1325/2014 Section 5 -

¹¹ the Annual Report of the Non-Discrimination Ombudsman 2015, p10-15 (published in July 2016, available in Finnish or Swedish) noted the relatively high number of cases involving disability as the ground of discrimination, brought to the attention of the Ombudsman Office, it was 2nd most often referred as ground of all. Similar trend is noticeable in the cases brought to the Non-Discrimination and Equality Tribunal of Finland. (www.yvtltk.fi)

¹² [The Criminal Code of Finland](#) (39/1889, as amended by 13.11.2009/885, the amendment entered into force 1. January 2010). Chapter 11 Section 11 –

(unofficial translation of the Finnish text [\[Rikoslaki 19.12.1889/39\]](#). Disability mentioned also in Chapter 11 Section 3 - Crime against humanity & Section 5 – Grounds increasing the punishment & Section 9 a – Torture & Section 11 – Discrimination, Chapter 17 Section 24 – Corporate criminal liability, Chapter 20 Section 1 – Rape, Section 4 Coercion into a sexual act, Section 5 - Sexual abuse, Chapter 24 Section 13, Chapter 25 Section 10, Chapter 47 Section 3 Work discrimination.

¹³ First case where denial of reasonable accommodation was found against education provider. A deaf student who used sign language was denied a place in private vocational education. This was deemed an instance of unlawful discrimination. The education provider was fined and monetary compensation awarded for the student.

Implementation and monitoring of CRPD – new structures initiated

The ministerial focal point and the independent monitoring framework are constituted and have begun their operation. The framework does include representation of organisations of persons with disabilities as required by art 33 (3): a committee of rights of persons with disabilities. The committee's narrow mandate has raised concerns as to the efficacy and independence of the committee. Resource constraints pose a severe threat to effective implementation, in relation to measures and activities under Art 8 Awareness raising. CSOs and DPOs are facing severe cuts to their information activities, severely impacting their ability to raise awareness of the rights of persons with disabilities and, even more crucially their ability to fully participate in implementation as foreseen by art 33 (3).

Concern over continuity of human rights promotion

The CSOs working for human rights have raised concerns over continuity and consistency of human rights promotion in Finland. Austerity related savings have seriously limited funding for government programmes promoting human rights and fundamental freedoms. The lack of continuity is evident in concrete institutional processes or mechanisms: National Action Plan for Human Rights; human rights education; assessment of fundamental and human rights in legislative processes.

1. National Action Plan for Human Rights

The Government of Finland is currently drafting its second National Action Plan on human rights. We are concerned that the National Action Plan will not be given at all; there are no specific human or other resources allocated for its implementation. We call the government to give necessary support for the this plan, including from the highest governmental level, and to provide necessary resources for the implementation.

2. Human rights assessment in legislative processes

No appropriate fundamental and human rights analysis has been carried out in recent legislative processes. Examples of this include legislation related to asylum seekers' rights, immigrants' rights, Sámi peoples' rights and to economic and social rights.

3. Human Rights education

Recommendations:

- The Government should ensure that proper fundamental rights and human rights analysis is done in the early phase of legislative processes.
- The on-going reform of social and health services must take into account existing analysis of potential negative implications for equality between different groups, and to the enjoyment of human rights.
- Non-governmental organisations, including human rights organisations, must be involved in legislative consultations and hearings with appropriate time frame.

The human rights situation of persons with disabilities in Finland has received legislative improvements, through new Non-Discrimination Act and new bodies mandated to implement and monitor the CRPD. The national framework and independent structures are in place.

Concern is raised over the adequate resourcing of key actors, including organisations representing persons with disabilities. The number of disability related cases being brought to Non-Discrimination and Equality tribunals is one indicator of rights infringements and lack of awareness among providers of goods and services about the significance of reasonable accommodations. Training of legal practitioners and the judiciary is crucial in this regard. Disability related discrimination in employment and education through lack of access and of reasonable accommodation is a growing phenomenon. For persons with intellectual disabilities, who have work placements in the open labour market, their work may not be considered as paid work covered by the labour law, but social activity under social welfare law remunerated and gives concern for exploitation.¹⁴

New human rights instruments, new framework and independent mechanisms are positive long awaited developments. Their real and positive impact for the effective enjoyment of human rights and fundamental freedoms by persons with disabilities is severely undermined by significant resource constraints and lack of continuity in programmatic promotion and maintenance of key services and provisions, such as accessibility requirements that are necessary conditions for equal enjoyment of rights for persons with disabilities.

¹⁴ : http://www.kehitysvammaliitto.fi/wp-content/uploads/tyollisyyskokeilut-selvitys_kehitysvammaliiton_evastykset_18-02-2016.pdf