

9. From Problem Talk to Taking Action – Implementing the Rights of Vulnerable Children

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Abstract This chapter presents the recent findings on the health and well-being of Finnish schoolchildren belonging to certain vulnerable groups and discusses the responsibilities of the state to act to realise the rights of these children. Insofar as children's rights in general lack effective implementation, it is difficult to define what it means to give special attention to realising the rights of vulnerable groups. It is argued that children's special vulnerability is more often connected to the deficient implementation of their rights in general than to them belonging to a certain group labelled as vulnerable.

Keywords vulnerability | children's rights | legal protection

9.1 INTRODUCTION

Feeling mentally and physically well is a necessary precondition for learning and going to school. To enable pupils to enjoy their right to education, their basic physical, emotional, and social needs must be sufficiently met. The right to education has widened to include not solely learning but also several other elements that support the holistic well-being of pupils at school.¹ According to the Committee on

1 These include, for example, the right to a physically, mentally and socially safe learning environment, the right to health, the right to non-discrimination, the right to privacy, the right to freedom of expression, and the right to freedom of thought, conscience and religion. On pupils' fundamental rights and human rights at school, see Suvianna Hakalehto-Wainio, "The Best Interests of a Child in School," *Family Law & Practice*, no. 1 (2014): 105–112. See also Katarina Tomasevski, *Human Rights Obligation in Education: The 4-A Scheme* (Woolf Legal Publishers, 2012); Patricia O'Lynn and Laura Lundy, "Education Rights," in *The Human Rights of Children*, eds. Ursula Kilkelly and Ton Liefwaard (Springer 2018); Laura Lundy, "Children's Rights and Educational Policy in Europe: The Implementation of the United Nations Convention on the Rights of the Child," *Oxford Review of Education*, vol. 38 (2012): 393–411; Katherine Covell, Brian R. Howe and Anne McGillivray, "Implementing Children's Education Rights in Schools," in *Handbook of Children's Rights: Global and Multidisciplinary Perspectives*, eds. Martin D. Ruck, Michele Peterson-Badali and Michael Freeman (Routledge, 2017).

the Rights of the Child (the Committee), providing healthcare services at school is essential to promote children's health, follow up on possible illnesses, and increase pupils' access to healthcare (CRC/C/GC/15, para. 36).

In Finland, education shall be provided according to the pupil's age and capabilities, as well as to promote healthy growth and development in the pupil and to ensure study skills (Basic Education Act, sec 3; 628/1998). The Student Welfare Act (1287/2013) lays down the provisions regarding receiving student welfare services. According to the Student Welfare Act (sec 2), school healthcare aims to promote learning, health, well-being, and participation; prevent problems; provide early support for pupils in need; and secure the quality of health services as well as equality of access to these services.²

Since 1996, statistics published by the Finnish National Institute for Health and Welfare (THL) have provided diverse and high-quality follow-up data on the well-being and health of schoolchildren, their experience of school attendance and studies, their participation, their access to help, and how well services respond to their needs. The statistics are based on an overall sample produced from the School Health Promotion (SHP) study conducted every two years covering the whole of Finland. Comparable data is collected from pupils in four grades (fourth, fifth, eighth, and ninth)³ in basic education, pupils in upper secondary school, and students at vocational education institutes.

In recent years, the SHP study has paid special attention to children and young people in particular life situations. In each study, the results of some vulnerable groups, such as adopted children or children with disabilities, are examined. In 2021, data concerning pupils of foreign origin, pupils belonging to sexual or gender minorities, and pupils placed outside the home were examined separately.

This chapter aims to consider the role of the state as a signatory to the UN Convention on the Rights of the Child (CRC) in promoting and protecting the health and well-being of pupils who belong to vulnerable groups. First, I wish to understand how the concept of "vulnerable" is used in the context of the CRC and how it has been understood in Finland in the context of pupils. Secondly,

2 Individual school healthcare monitors and promotes the growth, health, and well-being of each pupil and supports the pedagogical work of parents and guardians. Its aims also include identifying pupils' needs in support and health examination, referring pupils to further examinations and treatment if necessary, supporting the care of children with chronic illnesses, and providing examinations to establish the state of learners' health. Individual school healthcare is free of charge and consists of the school healthcare services and services of school social workers and psychologists, in addition to certain social and health services.

3 In Finland, children begin their fourth year of school at the age of 10, fifth year at the age of 11, eighth year at the age of 14, and ninth year at the age of 15.

I am interested in what kind of challenges concerning health and well-being have been found in the SHP study in the case of the vulnerable groups. Finally, I aim to present what the results of the SHP study mean for the responsibilities of the state when implementing the CRC. Due to the setting of the SHP study, I focus on pupils in the eighth and ninth grades of Finnish basic education, who are usually aged 14–16.⁴

9.2 WHO ARE VULNERABLE CHILDREN?

Vulnerability has long been associated with the biological and physical development of a person, and thus also associated with childhood. The nature of a child's vulnerability has been described as fluid, socially constructed, and dependent on a child's personal and social circumstances.⁵ It is generally accepted that minors experience special vulnerabilities due to their state of development and their status within society; this is one of the main reasons to provide them with special rights.⁶ First, *children's developmental state makes them particularly vulnerable to several risks and human rights violations*. The consequences of violations at home and at school, for example, can be more severe and longer lasting compared to adults.⁷ Secondly, *children lack full legal competence*, making them dependent on the decisions and actions of adults. *Minors are not capable of reacting themselves* and cannot be expected to react when their rights are not respected. These elements make the state's duty to protect children's rights especially vital and oblige states to consider minors as a vulnerable group of rights holders.⁸ The vulnerability that is present in the lives of all minors can affect the health and well-being of

4 The response rate in the 2021 study was 75% in grades 8 and 9.

5 John Tobin, "Understanding Children's Rights: A Vision Beyond Vulnerability," *Nordic Journal of International Law*, vol. 84(2) (June 2015): 155–182, 180.

6 Tobin, "Understanding Children's Rights," 155–182.

7 David Archard, *Children: Rights and Childhood* (Routledge, 2015), 111. Vulnerability is nowadays also considered a fundamental part of being human, and the concept is also widely used in contexts other than with minors. Martha Albertson Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition," *Yale Journal of Law & Feminism*, vol. 20(1) (2008); Martha Albertson Fineman, "The Vulnerable Subject and the Responsive State," *Emory Law Journal*, vol. 60 (2010): 251–257. It has been argued that states must recognise relationships and positions of universal vulnerability and dependency, acting as an instrument of social justice.

8 Herring, Jonathan, "Vulnerability, Children and the Law," in *Law and Childhood Studies*, ed. Michael Freeman (Oxford University Press, 2012), 243–263; Sigurdson, Randi, "Children's Right to Respect for Their Human Dignity," in *Children's Constitutional Rights in Nordic Countries*, eds. Lena Bendiksen, Trude Haugli, Anna Nylund and Randi Sigurdson (Brill Nijhoff, 2019), 32–24, 19–36.

any child. In this chapter, vulnerability is understood as the state of being at risk of having one's rights violated.

The notion of vulnerability is also connected to the certain groups of people *facing higher risk of harm* but is also extensively applied, especially in the context of expressing concern for the well-being of people who belong to certain *minority groups*. It most often seems to refer to a *status or circumstances* of a variety of groups or individuals and is often used as *grounds for receiving additional protections of rights*, for example, in the form of certain benefits or services.⁹

In practice, the term “vulnerability” is frequently used in social policy arenas in the context of interventions targeted at those who are “less well off”.¹⁰ This way of thinking and acting in the health and social care services can be considered both typical and a tool for political guidance. In child law, it is widely recognised that one of the main aims of the CRC is to compensate for children's vulnerability by providing them the same level of human rights protection as adults, plus several special rights guaranteed only for minors.¹¹ In general, both minors and adults are considered vulnerable in cases of disability, refugee status, immigrant background, ethnic group, language, or cultural minority. However, there are some vulnerabilities that only minors face: children placed in out-of-home care, children who face violence or abuse from their parents, or children living with parents who have mental health or substance abuse problems.

In order to ensure children their right to development, there is in the context of the CRC a strong emphasis on special protection of the rights of children considered as especially vulnerable.¹² In the titles of the articles of the Convention, the following groups have been identified as vulnerable: children deprived of their family environment (Art. 20), adopted children (Art. 21), refugee children (Art. 22), children with disabilities (Art. 23), minorities and indigenous children (Art. 30), children in armed conflict (Art. 38), and children in the juvenile justice system (Art. 40). It is the duty of the state to recognise these children and to actively ensure the realisation of their rights.

9 The division of people into vulnerable groups is typical in social and health policy as well as in humanitarian policy.

10 Kate Brown, “Questioning the ‘Vulnerability Zeitgeist’: Care and Control Practices with ‘Vulnerable’ Young People,” *Social Policy & Society*, vol. 13(3) (2014): 371–388.

11 Rosalind Dixon and Martha C Nussbaum, “Children's Rights and a Capabilities Approach: The Question of Special Priority,” *Cornell Law Review*, vol. 97(3) (2012): 549–594.

12 Noam Peleg and John Tobin, “Article 6. The Right to Life, Survival, and Development,” in *The UN Convention on the Rights of the Child. A Commentary*, ed. John Tobin (Oxford University Press 2019), 231–233.

In General Comment no. 20, adolescence is defined as a life stage characterised by “significant vulnerability” (para. 2). The pupils in the SHP study are adolescents and are as such especially vulnerable, in addition to being minors. According to the Committee, certain groups of adolescents may be subject to multiple vulnerabilities and violations of their rights, including discrimination and social exclusion (para. 26). The Committee mentions adolescents with disabilities (para. 31), from minority and indigenous groups (para. 35), in alternative care (para. 52–53), and refugee and asylum-seeking adolescents (para. 77). According to the Committee, mental health and psychosocial problems, such as suicide, self-harm, eating disorders and depression, are primary causes of ill health, morbidity, and mortality among adolescents, particularly among adolescents in vulnerable groups.¹³

Sormunen has noted that vulnerability seems to be a common denominator in the context of many of the Committee’s concluding observations. This is especially true concerning migrant children, children of imprisoned parents, children with disabilities, children in street situations, children in conflict with the law, and the sale and trafficking of children.¹⁴ In the Concluding Observations to Finland (2005), the Committee expressed concern regarding the lack of coordination and regularity of statistics on children, “in particular with regard to the most vulnerable groups of children such as disabled children, asylum-seeking children, children in conflict with the law and children belonging to minority groups, among others” (para. 13). In the subsequent Concluding Observations (2011), the Committee recommended that Finland pay more attention to children belonging to minorities (e.g., Sámi children, Roma children, and migrant children), disabled children, children in foster care, and minors in prisons.¹⁵

13 See UN Committee on the Rights of the Child, *General Comment no. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24)*, CRC/C/GC/15 (April 17, 2013), para. 38. When mentioning the dissemination of the CRC among vulnerable groups and the importance of providing training for professionals who work with children, the Committee mentions immigrants and indigenous, ethnic or linguistic minorities (para. 16). When paying attention to the implementation of Articles 28 and 29, the Committee especially emphasises children belonging to the most vulnerable groups, mentioning Roma children as an example (para. 43).

14 In recent concluding observations, the Committee has, instead of referring generally to children in vulnerable situations, begun to address these groups separately, making children’s – for example, asylum-seeking children’s – needs visible. Milka Sormunen, “A Focus on Domestic Structures: Best Interests of the Child in the Concluding Observations of the UN Committee on the Rights of the Child,” *Nordic Journal of Human Rights*, vol. 38(2) (2020): 100–121, 115.

15 UN Committee on the Rights of the Child, *Concluding Observations: Finland*, CRC/C/FIN/CO/4 (June 20, 2011).

In 2005, the Committee recommended that Finland collect data on children belonging to the most vulnerable groups to allow detailed analysis of their living conditions and the implementation of their rights (para. 14). In 2011, the Committee repeated its concern, adding children affected by poverty and immigrant children to the list of examples of vulnerable groups (para. 17). In the SHP study, children belonging to the certain vulnerable groups mentioned above have been in focus. No information is available as to why these groups have been chosen and whether the Concluding Observations to Finland have played any role in selecting the groups.¹⁶

9.3 RESULTS ON THE WELL-BEING AND HEALTH OF FINNISH PUPILS

9.3.1 Introduction

The aim of the SHP study is to monitor the well-being, health and schoolwork of Finnish children and adolescents and to strengthen the planning and evaluation of health-promoting activities at school, municipal, and national levels.¹⁷ Children and young people are asked about their welfare, participation and leisure time, health and functional capacity, lifestyle, health-related behaviour, school attendance and studies, family and living conditions, safety of their growth environment, and school health services and access to assistance.¹⁸

In the 2021 SHP study results for pupils with a foreign background (N = 5,296), those placed outside the home (N = 1,284) and those belonging to sexual minorities (N = 11,797) were analysed separately. The SHP study includes over 100 questions. In this chapter, I examine the results of some questions that are clearly linked to

16 In the Finnish national programme of non-violent childhood, children are considered vulnerable if they belong to the groups at higher risk of encountering violence. These groups are noted to be disabled children, children belonging to ethnic groups, children with a sexual orientation other than heterosexual, children placed outside of their home, and minorities based on language or culture. In Finland's First National Child Strategy, vulnerable children are mentioned several times, but there is no definition of vulnerability in the strategy. Implementation Plan for the National Child Strategy, Government publications 2021:8.

17 The data is gathered from fourth and fifth graders from comprehensive school, eighth and ninth graders from comprehensive school, first and second graders from upper secondary school, and vocational institutions. Data gathering is anonymous and voluntary via a classroom-administered questionnaire.

18 Even though most of the pupils in Finland are satisfied with their life and consider their health to be good, the figures have seen a decrease in recent years. While in 2017 about 54% of pupils were very satisfied with their life, in 2021 the number had decreased to 45%. In 2017, for example, 19% of girls assessed their health as average or poor compared to 34% in 2021.

pupils' health and well-being. I chose questions that can be easily connected to the rights of the CRC: *non-discrimination and protection from violence and harmful treatment* (experiences of bullying), *participation* (experiences of being able to exert influence in matters at school), *right to health* (experience of own health), *social well-being* (experience of loneliness; sense of belonging to the class and school), *right to education* (experience of enjoying school; experience of having difficulties with learning skills; experience of opportunities at school to discuss any troubling matters with an adult; experience of caring and fair treatment from teachers).

9.3.2 Pupils with Foreign Backgrounds

The Committee has noted that the inadequate attention paid to, and insufficient respect shown for, the cultures, values, and world vision of adolescents from minority and indigenous groups may lead to discrimination, social exclusion, marginalisation, and non-inclusion. This increases the vulnerability of minority and indigenous adolescents to poverty, social injustice, and mental health issues, including disproportionately high suicide rates, poor educational outcomes, and high levels of detention within the criminal justice system (CRC/C/GC/20, para. 35).

In the SHP study, the results concerning this group of pupils were mostly like the results of pupils in this age group generally. For example, there were no major differences in experience of learning skills and enjoying school. Experience of loneliness was only a little more common in this group compared to other pupils (42% vs. 39%). First-generation pupils with immigrant backgrounds also perceived their health to be poorer a little more often than others (28% vs. 25%). There were some differences in experiences of anxiety (24% vs. 19%) and school fatigue (24% vs. 20%).¹⁹

Pupils with foreign backgrounds had considerably more experiences of being bullied (11% vs. 5%) as well as experiences of bullying peers (8% vs. 2%). These pupils also reported more often than others that adults at school had bullied them (11% vs. 4%). Boys with foreign backgrounds had experienced physical violence from their parents or caretakers three times more often than boys with Finnish backgrounds (24% vs. 8%).

19 Rekar Abdulhamed, Kirsti Lonka, Lauri Hietajärvi, Riikka Ikonen and Reija Klemetti, "Anxiety and Depression Symptoms and Their Association with Discrimination and a Lack of Social Support among First- and Second-Generation Immigrant Adolescents," *International Journal of Intercultural Relations*, vol. 87 (2022): 193–205.

It is interesting that pupils in this group felt more often than others that they were able to influence more matters at school (22% vs. 10%). They also experienced a little more often that they had been treated in a caring and just way by teachers (57% vs. 53%). Their sense of belonging to the school community was also a little higher compared to other pupils (44% vs. 40%).

9.3.3 Pupils Placed in Out-of-Home Care

In General Comment no. 20 (para. 53) the Committee notes that there is significant evidence of poor outcomes for adolescents placed in out-of-home care. The problems include lower educational attainment, dependency on social welfare, and higher risk of homelessness, imprisonment, unwanted pregnancy, early parenthood, substance misuse, self-harm, and suicide. The results of the SHP study show that the health and well-being of this group of minors differs in many respects from that of their contemporaries with other living arrangements.

According to the SHP study, pupils in this group had more difficulties with learning skills compared to their peers (56% vs. 39%) and they enjoyed school less than others (49% vs. 59%). There was more school fatigue in this group (29% vs. 20%) as well as more experiences of average or poor health (39% vs. 25%). In this group, challenges with mental well-being, such as anxiety, were more common (30% vs. 19%) than generally, as was the feeling of loneliness (27% vs. 15%).²⁰

Experiences of violence from parents or another caretaker were also more common in this group (28% vs. 12%).

Pupils placed in out-of-home care were bullied significantly more often compared to their peers (15% vs. 5%). These pupils also reported more often that adults at school had bullied them (13% vs. 5%) and that they themselves had bullied their peers (9% vs. 2%).

Like pupils with foreign origins, pupils placed in out-of-home care experienced more often than others that they are able to influence matters at school (16% vs. 10%). Their experiences of being able to talk to school personnel and be treated in a caring and just way by teachers were the same as that of other pupils.²¹

20 39% of the pupils placed in out-of-home care had experienced symptoms of depression for at least two weeks, compared to 24% of other pupils. They had also been more often worried about their own mental state during last year compared to the other pupils (53%/36%).

21 Riikka Ikonen, Pia Eriksson and Tarja Heino, "Sijoitettujen lasten ja nuorten hyvinvointi ja palvelukokemukset. Kouluterveyskyselyn tuloksia" [Well-Being and Experiences of Services of Children and Adolescents Who Have Been Placed in Out-of-Home Care. Results of the School Health Promotion Study], *National Institute for Health and Welfare (THL)*, Discussion Paper 35/2020 (Helsinki, Finland 2020).

9.3.4 Pupils Belonging to Sexual and Gender Minorities

In the latest SHP study, 14% of youths (14–15-year-olds) considered themselves to be something other than heterosexual, with 5% saying they felt different from their official sex.²² Pupils belonging to these groups were significantly more often dissatisfied with their lives (36%) than other pupils (15%). They more often considered their health average or poor (59% vs. 25%). Symptoms of depression lasting at least two weeks (57% vs. 24%) and concerns about mood (73% vs. 36%) were also considerably more common. Anxiety levels were more than twice as high among pupils belonging to sexual and gender minorities.

These pupils experienced many difficulties related to school attendance. They much less often felt that they were part of a class or school community. More than half of pupils belonging to this group had problems with their learning skills, and school fatigue was more common than among other young people (35% vs. 20%)

Experiences of physical violence from parents or other caretakers were twice as common as among other pupils (19% vs. 9%). Mental violence was also more common. Especially those belonging to gender minorities reported that they had experienced bullying and physical threats at school more often than other young people. Experiences of sexual harassment were more common, and experiences of sexual violence were twice as common as with other young people (15% vs. 6%). The results also show that it is more difficult for pupils belonging to these groups to get support and help for problems when they need it.²³

22 From 2019 on, the SHP study has paid attention to gender diversity with two questions concerning gender: “What is your official gender?” (alternatives 1) boy, 2) girl). The second question was “Do you feel you are” a 1) boy, 2) girl, 3) both, 4) neither, 5) it varies.

23 Experiences of rainbow youth have been examined in a research article by Satu Jokela, Pauliina Luopa, Anni Hyvärinen, Tupu Ruuska, Tuija Martelin and Reija Klemetti, “The Well-Being of Young People Belonging to Sexual and Gender Minorities,” *Results of the School Health Promotion Study 2019*. National Institute for Health and Welfare. Discussion Paper 38/2020 (Helsinki, Finland 2020). There are several research articles based on the SHP study’s results regarding sexual and gender minority. Kurki-Kangas Leena, Sari Fröjd, Henna Haravuori, Mauri Marttunen and Riittakerttu Kaltiala, “Associations Between Involvement in Bullying and Emotional Symptoms: Are There Differences Between Heterosexual and Sexual Minority Youth?,” *Journal of School Violence*, vol. 19(3) (2020): 309–322; Riittakerttu Kaltiala-Heino, Nina Lindberg, Sari Fröjd, Henna Haravuori and Mauri Marttunen, “Adolescents with Same-Sex Interest: Experiences of Sexual Harassment Are More Common Among Boys,” *Health Psychology and Behavioral Medicine*, vol. 7(1) (2019): 105–127.

9.4 DUTIES OF THE STATE CONCERNING CHILDREN BELONGING TO VULNERABLE GROUPS

9.4.1 Are Vulnerable Children Being Recognised?

The gathering of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights, is an essential part of implementing the CRC (CRC/C/GC/11, paras. 23–24, CRC/C/GC/5, para. 12). The SHP study is about taking this step. Research findings show significant differences in the health and well-being between pupils belonging to different groups. It must be noted that only a few vulnerable groups have been recognised for the study. It is evident that there are several other vulnerable groups of pupils facing special difficulties concerning their rights. For example, some outcomes differ remarkably according to sex. In 2021, 30% of girls but only 8% of boys in grades 8 and 9 reported moderate or severe anxiety.²⁴ This means that girls seem to be more vulnerable concerning risk to anxiety.

In addition to the “traditional” vulnerable groups, attention should be paid to the other life situations that might add to the probability of problems in well-being. Social problems, mental health problems, and parents’ substance abuse as well as violence in the family can cause traumatic crises for any child. Pupils with chronic illnesses and those living with disabilities, children who have experienced long-term or sudden crises or trauma (e.g., divorce, death, or severe illness in the family), and children from families struggling for a variety of reasons, such as poverty, may need support. Many children are bullied at school or live with learning difficulties even when they do not belong to any of the traditionally vulnerable groups. At the same time, it must be noted that children in certain vulnerable situations or with certain special needs do not comprise a homogenous group. Not even children placed into a certain group of vulnerable people have all the same needs and challenges.

In Finnish court praxis, it is common to refer to the vulnerability of a child in immigration cases due to the concept of vulnerability being included in the Finnish Immigration Act. Recently, the Finnish Supreme Court referred to the vulnerable status of a child also in criminal cases with child victims (KKO 2018:18; KKO 2021:82). In both cases, the rights of the child had been violated by parents/step-parents. In its praxis the Parliamentary Ombudsman has often referred to the vulnerability of the child, for example, in the context of child protection and education.

24 In 2013, the figures were 10% and 5%. It is probable that the consequences of the COVID-19 epidemic influenced the results, but the results have been developing in a more worrying direction for many years.

It has been noted that the constitutions of the Nordic countries, unlike several other European constitutions, do not include specific rights for children from ethnic, religious, and sexual minorities or children with disabilities.²⁵ It has been argued that specific provisions recognising the groups of vulnerable children would be more powerful tools than general provisions on children's rights or on equality.²⁶ On the other hand, it has also been argued that instead of marking groups or individuals as vulnerable, the focus should be on vulnerable life situations and the role of, for example, education or health services in reducing vulnerability.²⁷

It can be argued that many problems in children's well-being are related to the lack of implementation of children's rights in general, not just those of children belonging to certain vulnerable groups. If adults – parents and professionals – do not act according to their legal duties, children are at continuous risk of experiencing violations of their rights. This is partly due to the ineffective implementation of the existing legal duties and poor system of legal protection. In other words, children are often especially vulnerable because their rights have not been realised according to the norms protecting their rights.

9.4.2 What Should Be Expected from the Implementation Measures?

From the children's rights perspective, it is not enough to point out the challenges that children or certain groups of children face. The most important thing is what happens once we are aware of these challenges. This seems to be the Achilles' heel when protecting and promoting children's rights in general.²⁸ Furthermore, it is not enough to note that special attention must be given to vulnerable groups.

25 Trude Haugli and Anna Nylund, "Children's Constitutional Rights in the Nordic Countries: Do Constitutional Rights Matter?," in *Children's Constitutional Rights in the Nordic Countries*, eds. Trude Haugli, Anna Nylund, Randi Sigurdson and Lena R. L. Bendiksen (Brill Nijhoff, 2019), 391–422, 396.

26 Haugli and Nylund, "Children's Constitutional Rights," 391–422, 397.

27 Elina Vironkangas, Suvi Liski, and Marjo Kuronen. "The Contested Concept of Vulnerability – A Literature Review," *European Journal of Social Work*, vol. 23(32) (2020): 327–339. In this context, the classification of temporal, situational, relational, and structural vulnerabilities has been used.

28 It has been noted that, around the world, states have generally failed to incorporate the CRC into, for example, education legislation and policy, to incorporate children's rights into teacher training, and to advance the teaching and practice of children's rights and human rights in schools. Katherine Covell, R. Brian Howe and Anne McGillivray, "Implementing Children's Education Rights in School," in *Handbook of Children's Rights: Global and Multidisciplinary Perspectives*, eds. Martin D. Ruck, Michele Peterson-Badali and Michael Freeman (Routledge, 2017), 296–311, 298.

It must be clarified who has a duty to give that attention and what are the measures that should be taken.

States have committed to undertake *all appropriate legislative, administrative, and other measures* for the implementation of the rights recognised in the CRC, Article 4. The CRC Committee has emphasised that states must see their role as fulfilling clear obligations to each child (CRC/C/GC 5, para. 11). According to Article 3(2) of the CRC, states must take all appropriate legislative and administrative measures to ensure children “such protection and care as is necessary for his or her well-being”. The aim is to protect children from all forms of violence and harmful treatment.²⁹ I argue that this means also protecting children from the inefficient implementation of their rights.

Implementing Article 2 of the CRC involves paying special attention to certain groups of children who might experience difficulties enjoying their rights. The duty to prohibit discrimination includes recognising children who are in need of special measures concerning the enjoyment of their rights and taking active, effective measures to secure their rights. States shall respect and ensure the rights included in the CRC to each child without discrimination of any kind and take all appropriate measures to ensure that the child is protected against all forms of discrimination.³⁰ When addressing discrimination, changes in legislation, administration, and resource allocation, as well as educational measures to change attitudes, may be required (CRC/C/CG/5, para. 12).

The principle of non-discrimination must be reflected in all domestic legislation and must be directly applied. The realisation of non-discrimination must be appropriately monitored and enforced through judicial and administrative bodies (CRC/C/GC/11, paras. 23–24). Regardless of the possible existence of non-discrimination legislation, these laws are not always effectively implemented. In Finland, the Non-Discrimination Act (1325/2014) includes a duty to promote equality also in schools and in early childhood education. The Finnish Governmental Proposal of the Non-Discrimination Act states that promoting equality at school requires giving special attention to the needs of pupils

29 Article 3(2) has been considered as an umbrella provision constituting an important reference point for interpreting general obligations under the CRC. John Eekelaar and John Tobin in *The UN Convention on the Rights of the Child. A Commentary*, ed. John Tobin (Oxford University Press, 2019), 73–105, 101.

30 Even though Article 2 does not mention equality, the Committee refers to equality when interpreting the non-discrimination principle, and sometimes uses both principles interchangeably. Samantha Besson and Eleonor Kleber, “Article 2: The Right to Non-Discrimination,” in *The UN Convention on the Rights of the Child. A Commentary*, ed. John Tobin (Oxford University Press, 2019), 41–72, 57.

in danger of being discriminated against as well as preventing and recognising discrimination.³¹ It is not specified what this “special attention” might be or which groups are in danger of being discriminated against.

Even though the right to equality is protected by the Constitution and several human rights conventions, legislators have seldom established specific legal duties to intervene against discrimination. However, in order to make equality a reality for children and to tackle the existing experiences of inequality, there should be a clear legal requirement to take certain measures when inequalities are recognised. For example, the Finnish Basic Education Act lacks the means to tackle bullying, which is problematic from the perspective of pupils’ safety, especially when there has been awareness of the prevalence of bullying for a very long time.³²

In addition to legislation, there are several means that can be used to strengthen the legal protection of children: raising awareness of rights among children and their parents, identifying children in need of special measures, cooperating with parents, providing early support, preventing problems with health and well-being, referring pupils to the school health services, and developing processes and services adapted for children.³³ In addition to legislation, the essential element of protecting and promoting children’s rights is to make sure that all stakeholders are being educated and there are systematic monitoring and follow-up procedures that include children’s participation. Effective legal protection of children requires monitoring to ensure that rights are realised in practice in children’s everyday lives.³⁴

It is crucial to note that children in general might not recognise violations of their rights and will not always talk about them to adults. The CRC Committee emphasises that, in many cases, only children themselves can indicate whether their rights are being fully recognised and realised. Article 12 of the CRC obliges states to ensure that the child is capable of forming his or her views and is given the right to express those views freely in all matters affecting him or her. The views of the child must be given due weight in accordance with the age and maturity

31 Government Proposal, HE 19/2014 vp. *Hallituksen esitys eduskunnalle yhdenvertaisuuslaiksi ja eräiksi siihen liittyviksi laeiksi*, 62–63.

32 Suvianna Hakalehto, “Constitutional Protection of Children’s Rights in Finland,” in *Children’s Constitutional Rights in Nordic Countries*, eds. Trude Haugli, Anna Nylund, Randi Sigurdson, Lena R. L. Bendiksen (Brill Nijhoff, 2019), 58–82.

33 Jokela, Luopa, Hyvärinen, Ruuska, Martelin and Klemetti, “The Well-Being of Young People.”

34 Suvianna Hakalehto, Lotta Lerwall and Niina Mäntylä, “Disciplinary Measures in School – Finland and Sweden,” *Nordisk Socialrättslig Tidskrift*, no. 27–28 (April 2021): 85–118; Suvianna Hakalehto, Niina Mäntylä and Maria Refors Legge, “School Supervision in Finland and Sweden: Taking Pupils’ Rights More Seriously?” *Nordiskt Socialrättsligt Tidskrift*, no. 33 (2022): 27–61.

of the child.³⁵ According to the Committee, assessment of a child's best interests must in all matters affecting the child include respect for this right (CRC/C/GC/14, para. 43).³⁶ The views of children themselves are essential in both recognising the need for help and also planning and implementing methods to tackle the problems that have been noted. It is also important to examine children's views on the concept of vulnerability and on placing them into certain groups considered vulnerable.³⁷

Sormunen has identified six main measures the Committee focuses on when describing what kind of active measures states need to take to implement the obligation to consider the best interests of the child: legislative measures, integration in practices, cooperation, awareness-raising and training, budgeting, and monitoring.³⁸ This is a solid starting point also when paying attention to the challenges of vulnerable pupils' well-being and health.

9.5 CONCLUDING REMARKS

In this chapter I have used the results of the Finnish SHP study to show how the results on health and well-being of pupils belonging to certain vulnerable groups differ from those of pupils in general. While examining the results of the vulnerable groups, it might be forgotten that the worrying results on health and well-being

35 On participation rights of children at school, see Laura Lundy "'Voice' Is Not Enough: Conceptualising Article 12 of the UN Convention on the Rights of the Child for Education," *British Educational Research Journal*, vol. 33(6) (2007): 927–942; Aisling Parkes, *Children and International Human Rights Law: The Right of the Child to Be Heard* (Routledge 2015), 123–149. Fortin has highlighted the importance of education in ensuring that children can develop their own views separate from the opinions of their parents or from the groups into which they were born. Jane Fortin, *Children's Rights and the Developing Law* (Cambridge University Press, 2009), 411.

36 Action must be taken to build opportunities for children to express their views regarding a range of issues, including the planning of curricula, prevention of bullying, and disciplinary measures, and for those views to be given due weight (UN Committee on the Right of the Child, *General Comment no. 12 (2009) The Right of the Child to Be Heard*, CRC/C/GC/12 (July 20, 2009), paras. 105–111). The Committee has stressed that respect for the right of the child to be heard within education is fundamental to the realisation of the right to education.

37 In the Finnish Youth Barometer 2021, 42% of participants felt that they belong to at least one minority group. These groups in the survey were ideological conviction, religious/nonreligious conviction, ethnic background, appearance, sexual orientation, disability or chronic illness, gender identity, and other minorities. Tomi Kiilakoski, *Nuorisobarometri 2021: Kestävää tekoa [Youth Barometer]* (Hansaprint, 2022).

38 The Committee suggests that states should create structures that advance the implementation of human rights in general. Sormunen, "A Focus on Domestic Structures," 100–121.

of pupils found in the SHP study are not all about vulnerable groups. The study shows remarkable challenges concerning the health and well-being of pupils in general.

My argument is that if children's rights in general lack serious and effective implementation, it is problematic to settle on paying special attention to the vulnerable groups. When concentrating on the implementation of the rights of all pupils, the rights of vulnerable pupils will also be implemented. It is not only in the case of chosen vulnerable groups of pupils that it is important to tackle bullying or mental health – it is the legal right of all pupils.

I am concerned that even though the use of the concept of vulnerability aims to strengthen children's rights, there is little evidence that the aim is achieved in practice. I wish to pose the question: Is the paradigm of vulnerability hiding the real problem – that the rights of children in general lack effective implementation? The focus of the CRC is promoting and protecting the rights of all children. When strengthening, for example, pupils' safety at school, possibilities for participation, access to high-quality healthcare services, social skills, and support for learning, the rights of all pupils – also those belonging to vulnerable groups – will become stronger.

My conclusion is that the concept of vulnerability must more often be used not only in cases of children belonging to minorities or facing special risks due to their situations, but also for all minors as regards their legal protections.³⁹ It is dependency on others that makes children vulnerable. In the context of rights, it is their dependency on adults who have legal duties to realise children's rights that makes children vulnerable. We might call this legal vulnerability: children cannot independently secure their rights, and they are at constant risk of lacking adequate legal protection.⁴⁰ Is children's special vulnerability more often connected to the deficient implementation of their rights than to their belonging to certain groups labelled as vulnerable?

In Finland, as well as in many other countries, there is more and more data available on the problems concerning children's well-being and rights. However, adequate regulation and effective policies that aim to secure the full realisation of rights of the vulnerable groups are missing. Support for children's rights is often symbolic, but devoid of genuine commitment. The government and other actors

39 It is the view of the CRC Committee that all children aged 0–18 are considered vulnerable at the universal level (CRC/C/GC, para. 72).

40 See Jonathan Herring, "Vulnerability, Children and the Law," in *Law and Childhood Studies*, ed. Michael Freeman (Oxford University Press 2012), 243–263; Sigurdson "Children's Right to Respect for Their Human Dignity," 32.

might express support for promoting equality, but the actual implementation of policies is sorely lacking.⁴¹

Herring has noted that it is difficult to realise the idea of equal treatment for persons who lack the legal tools to claim their rights.⁴² This is also why all minors have a legal right, secured in the CRC, to be recognised as vulnerable as a subject of rights. This concerns the legal protection of all children. In my opinion, if there is no real pressure on states to turn rights in books into rights in action, and the system lacks accountability, we cannot expect much to change regarding the realisation of children's rights – not in general and not in terms of vulnerable groups. The human rights of all people are meant to be realised in an effective way. If the implementation of the CRC is not effective and children's rights are not realised, we should be talking not only about deficient implementation but also about long-lasting – in fact, chronic – violations of children's human rights.

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41 R. Brian Howe and Katherine Covell, *Empowering Children: Children's Rights Education as a Pathway to Citizenship* (University of Toronto Press, 2005), 174–180.

42 See Jonathan Herring, *Vulnerability, Childhood and the Law* (Springer Verlag, 2018).

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