



HUMAN RIGHTS AND FLANDERS' INTERNATIONAL POLICY



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Het Europees Parlement, de Raad en de Commissie kondigen plechtig het navolgende Handvest van de Grondrechten van de Europese Unie af.

HANDVEST VAN DE GRONDRECHTEN VAN DE EUROPESE UNIE

Preambule

De volkeren van Europa hebben besloten een op gemeenschappelijke waarden gebaseerde toekomst te delen door onderling een steeds hechter samenleving te bouwen.

De Unie, die zich bewust is van haar verantwoordelijkheid ten aanzien van de menselijke waardigheid, de vrijheid, de gelijkheid, de solidariteit en de democratie, verklaart dat deze waarden de kern vormen van haar doelstellingen.

A. BASIC FACTS

Flanders has a long tradition in human rights issues. The notion that the individual can invoke certain rights from the government has been enshrined in documents that date as far back as our regions' medieval charters. This makes it clear that human rights are not forced upon sovereign states by international law, but **have their basis in a variety of constitutional traditions** both here and elsewhere in the world. They reflect the fundamental values of a community, such as justice, equality, dignity, mutual respect and solidarity.

Not only is the Government of Flanders legally bound, within its powers, by a large number of international treaties on human rights to which Belgium is party, but, in view of its international powers, it has in most cases explicitly approved them as mixed treaties and it has often been involved, through experts, in the development of new standards. For Flanders, **respect for human rights through its own policies is a legal and ethical obligation**.

Better respect of human rights by all states contributes to the development of a more democratic, **more peaceful and safer international order**. After sixty years, the Universal Declaration of Human Rights (UDHR) is still the best international point of reference when it comes to framing national policy aimed at securing the rights and opportunities of all. Like the specific goals recently set out by the world community in the Millennium Development Goals, the UDHR espouses the principles of human dignity, prosperity and peace that lie at the basis of the Charter of the United Nations (UNCharter). These principles are then further developed in the various human rights conventions concluded in the framework of UN and other organisations.

Therefore, human rights are not just an obligation towards a state's own citizenry, but a **guiding principle for foreign policy**. Indeed, all states are bound by the fundamental rights and liberties that have since become enshrined in international common law. In addition, they have often signed treaties in this area of their own free will. As a result, they are answerable to other states and international organisations when it comes to respecting these obligations towards their own populations. Given that respect of human rights undeniably leads to greater peace, security and economic and social progress, a **proactive international policy on human rights** advances the long term interests of Flanders.

In recent years, the universality of human rights has been under pressure. Flanders realises that the interpretation of international human rights is not straightforward, and that there are many cultural differences between the various continents and civilisations of this world. Power shifts in the world have meant that support for the traditional interpretation of human rights is losing ground. For Flanders, **the universality of all human rights is beyond dispute** and the debate stretches only to whether and how there might exist room within the universality principle for a degree of cultural and regional variation when interpreting these rights. When it comes to human rights, relativism needs to be out of the question.

The Government of Flanders is **concerned by the fact that respect for human rights is becoming ever less of a given**.

Flanders wishes to take action to counter this trend. It has at its disposal, by virtue of the constitution, several **means to frame this policy**, for example, through its own, exclusive international treaties and cooperation agreements, through participation in the Belgian coordination of multilateral (human rights) institutions, through the adoption of positions with respect to European Union external policy and through the framing of its development policy via Flemish Parliament Act.

This policy document seeks, therefore, as announced in the policy memorandum entitled “Buitenlands Beleid, Internationaal Ondernemen en Ontwikkelingssamenwerking” [Foreign Policy, International Enterprise and Development Cooperation], to integrate human rights as a cross-cutting theme underlying Flemish action in the international arena. It is in this way that the Government of Flanders intends to give interpretation to the **coalition agreement’s** call to conduct “an active and coherent foreign policy” which is “designed to emphasise our openness” and in which use is made “of progressive cultural, economic and public diplomacy” (Coalition Agreement, page 86). Indeed, Flanders is a solidarity-based federated state, also beyond its borders, and strengthening the protection of international human rights brings about a long term improvement in the living conditions of billions of people. The purpose of this document is to direct our policy in the area of human rights and foreign policy and so it potentially exceeds this legislative term. However, human rights evolve, and the world we live in is changing. This means, then, that it should be possible to question on a regular basis the specific priorities and methods of implementation set out in the present document and that it should be possible to update the document in the light of future developments.

B. INTERNATIONAL HUMAN RIGHTS AGREEMENTS

Human rights, as enshrined in a number of international agreements and in the Constitution, create a **framework by which the exercise of Flemish powers is simultaneously restricted** (by setting limits on intrusions into the privacy of citizens) **and steered** (by setting goals to be pursued through policy).

Therefore, human rights are in the first place a domestic story, but after each of the two World Wars, which left their scars on the previous century, significant steps were taken to **internationalise the protection of human rights**.

For example, the International Labour Organization saw the light just after the end of the First World War, whereupon it set out a number of social rights without delay. However, just a couple of decades later, the cruelties of the Nazis showed that such purely national regulations did not offer sufficient protection. As a result of the horrors of the Second World War, one of the purposes of the Charter of the United Nations was “To achieve international co-operation in [...] promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (art. 1, § 3, UN-Charter). This led to the **codification**, both inside and outside the UN system, **of a considerable number of international human rights standards**. For Flanders, these were the standards of the United Nations, the Council of Europe and the European Union. The Organization for Security and Co-operation in Europe is also concerned with human rights, but does not set standards in this area.

A. UNITED NATIONS

- **Universal Declaration of Human Rights**

On 10 December 1948, the General Assembly of the United Nations adopted, with no votes against and eight abstentions, the **Universal Declaration of Human Rights**, which had been prepared by a commission chaired by Eleanor Roosevelt. In the workings of the United Nations these “universal declarations” are rare and they are “a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated.” The choice of the term “universal” as opposed to “international” was also deliberate: the intent of this was to show that the text encompassed the common values of the leading legal systems and cultures.

And yet, formally, the UDHR remains a **recommendation of the General Assembly**, from the perspective of international law, **and is not, therefore, legally binding**. Flanders enjoys the support of a significant proportion of international jurists in its opinion that most of the articles of the UDHR have since become tenets of international common law, and that they can be considered at least as a particularly authoritative interpretation of the convention’s obligation as regards respect of human rights and the fundamental freedoms that were adopted by the members of the United Nations on signing the Charter. Hence, the rights described in the UDHR are binding on all states, even if they did not vote on the Declaration at the time of its adoption and even if they signed no human rights conventions thereafter.

The UDHR rests on the idea that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and as its first principle proclaims that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” (art. 1 UDHR). The Declaration contains **thirty rights and freedoms**, from traditional liberties (right to life, prohibition of torture and slavery) to socio-economic rights (right to education and protection of intellectual property), which can be divided into five categories: inherent personal freedoms, inextricably bound with each and every person; rights and freedoms relating to personal safety; rights relating to the political life of the individual; economic and social rights; and rights relating to the social and legal life of the individual.

As opposed to the human rights treaties adopted by the UN and the Council of Europe, the UDHR also contains **an article on duties and responsibilities**. As reasonable and conscientious beings, people should “act towards one another in a spirit of brotherhood” (art. 1 UDHR). Without specifying these responsibilities further, article 29, paragraph one, UDHR clearly states the following: “Everyone has duties to the community in which alone the free and full development of his personality is possible.” It is possible then to refute, on the basis of the UDHR text itself, the regularly-heard criticism that the international instruments rest on an approach in which the rights are too individualistic.

The **significance of the UDHR** is hard to overestimate, especially given the historical context in which it was adopted following the horrors of totalitarianism. In 2008, on the sixtieth anniversary of the UDHR, the High Commissioner for Human Rights stressed that the greatest merit of the UDHR was still that “all human rights were recognized as inherent and inalienable entitlements, rather than privileges ‘magnanimously bestowed’ at the caprice of the powerful.” It is still the best point of reference for discussions in the broad - and ever broadening - domain of human rights. This is the reason why the 10th of December, the day on which the UDHR was adopted, has been **international human rights day** ever since.

• UN Human Rights Treaties

However, it was necessary, with a view to legally enforcing human rights and setting up effective control mechanisms, to introduce a binding instrument rather than a recommendation by the General Assembly. It was not until 18 years later, in 1967, that this took shape in two separate texts; one for civil and political rights (International Covenant on Civil and Political Rights, ICCPR) and one for economic, social and cultural rights (International Covenant on Economic, Social and Cultural Rights, ICESCR), together known as the “**International Bill of Rights**”. In both treaties the rights are described in greater detail than in the UDHR, as are the possibilities of derogating from the rights in certain circumstances. Additionally, the rights guaranteed by the UDHR and by the Bill of Rights are not 100% the same.

The **division** was justified by the idea that these rights are considered to be different in nature, to rest on a different basis, to require different standards and to imply other state obligations. The main consequence of the distinction is the non-immediate character of the obligation of the states to realise the rights in the ICESCR: the goals are to be achieved progressively, depending on the financial and other means available to the state in question. And yet, we see that most states view the two treaties as one, and this is expressed through their simultaneous ratification (in Flanders too both treaties were given approval by Flemish Parliament Act at the same time, on 25 January 1983), and that a number of articles run parallel. Furthermore, other more specific human rights treaties, such as the Convention on the Rights of the Child, relate to both categories of rights.

It is hardly surprising then that the **distinction between “traditional” civil and political rights on the one hand, and economic, social and cultural rights on the other is a matter of debate**. Furthermore, in 1993 the World Conference on Human Rights convened by the United Nations in Vienna solemnly declared that “[all] human rights are universal, indivisible and interdependent and interrelated.” The Government of Flanders endorses this vision: it makes no sense to perceive a hierarchy between the different, mutually reinforcing human rights. This is why the Government of Flanders is among the leaders in the assent procedure to approve the complaints protocol for the ICESCR which, after a forty year delay, provides similar international enforceability for economic, social and cultural rights as for civil and political rights. The future complaints procedure to be introduced for the Convention on the Rights of the Child also dispenses with the artificial distinction between the different categories of human rights.

Both before and after the International Bill of Rights was adopted, other, **more specific human rights treaties** were created in the United Nations, aimed at the protection of vulnerable groups. More specifically these are the Convention on the Elimination of All Forms of Racial Discrimination (1966, CERD), which, due to its broad definition of the concept “race”, also covers discrimination against ethnic minority groups, the Convention on the Elimination of All Forms of Discrimination Against Women (1979, CEDAW), the Convention Against Torture (1984, CAT), designed to protect people who have been deprived of their liberty, as well as the most successful treaty in the world, the Convention on the Rights of the Child (1989, CRC), which now has 193 signatories. The Flemish Parliament has also assented to most of these treaties. Belgium also became a signatory, in 2009, to the Convention on the Rights of Persons with Disabilities (2006, CRPD), and recently too, in June 2011, to the - also Flanders-ratified - Convention for the Protection of All Persons from Enforced Disappearance (2006, CED). Finally, as regards the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990, CMW), it appears that there is little enthusiasm in the European Union to proceed with ratification.

These “special” human rights conventions **break down the division** between a) civil and political rights and b) economic, social and cultural rights, because they guarantee both types of rights for specific groups (women, children, persons with a disability). They are an important addendum to the two general covenants, because at certain points they offer more far-reaching protection than the general treaties as well as greater detail in the areas that present the greatest difficulties for vulnerable groups. More than the general human rights treaties they outline the way in which states should pursue the purpose of the treaty, as illustrated in the following examples:

- one particular characteristic of the Convention on the Elimination of All Forms of Racial Discrimination (article 1, § 4), the Convention on the Elimination of All Forms of Discrimination Against Women (article 4) and the Convention on the Rights of Persons with Disabilities (article 5, § 4) is the legal basis set aside for **positive discrimination** (“affirmative action”);
- the Convention on the Elimination of All Forms of Discrimination Against Women imposes upon states the obligation to implement policy aimed at **changing social and cultural patterns** as regards the behaviour of men and women and at their shared accountability for bringing up children (art. 5).

• Supervisory mechanisms under treaty law

The UN treaties have contributed significantly to respect for human rights. Indeed, each calls an **international supervisory mechanism** into being, in the form of a committee, and no two committees have the same powers.

Above all, these supervisory committees present **findings resulting from the periodical reports** that every signatory to the treaty is required to produce in accordance with a given schedule. As regards its powers, the Government of Flanders has input into an integrated Belgian report. This report and the ensuing committee findings fulfil a number of different, but related, functions:

- examination of national legislation and practice;
- monitoring and mapping of relevant developments;
- formulation of policy measures to implement the treaty obligations;
- giving account to citizens, stakeholders and the international community;
- assessment of the value of developments and achievement of goals set;
- signalling of shortcomings and bottlenecks;
- gathering and exchange of information relating to a learning process.

This overview of functions places a committee’s comments in response to periodic reporting in their **correct context**. It is not a judicial procedure, but a set of comments designed to allow constructive dialogue between the treaty committee and the state in question. It is not, therefore, a sort of infringement proceeding in which it is postulated that the state in question is violating a particular right, and in which this infringement is definitely established through a judicial procedure involving evidence, argument and counterargument. The comments should, rather, be seen as a starting point for dialogue between the government, which has conducted a self-evaluation through the report, and independent experts who look at national policy from a distance and can compare it to the situation in other countries.

These committees fulfil, in addition to this first role, a second function in the framework of **interstate or individual complaints procedures**, which are optional in most cases; in other words, a state must declare

whether or not it accepts the option. Some committees have a right to independent inspection, including the sending of reporters, if they receive reliable information about serious violations of these treaties, and this is particularly the case in the fight against torture. To date it is only the committee of the Convention on the Rights of the Child that has not been given the power to receive complaints or conduct its own investigations, although an international working group is currently looking into this possibility. The Government of Flanders supports in principle the filling of this gap in the international supervision of respect for human rights obligations.

Finally, the committees also regularly issue **general comments**, in which they set out their vision of the scope of the rights in the treaty. These comments carry a great deal of weight, since they are also taken into account when a committee gives its findings on the periodic report of a state.

The human rights treaties and the committees that supervise their application result from a long process that has run from 1948 (UDHR) to the present day. Growth has been organic, with no predetermined, over-all plan. This also explains the subtle differences in powers between the committees. It should therefore come as no surprise that this **proliferation of committees** has led to an international debate on the reform of the United Nations treaty system. Many states, and the Government of Flanders too, have in the past been critical of the fact that the requirement of reporting to these different committees - and other international authorities - was a great burden on the national administrations, due among other things to mutual differences in the reporting requirements and overlapping information.

The Secretariat of the United Nations was sympathetic to this criticism. The Secretary-General insisted that "harmonized guidelines on reporting to all treaty bodies should be finalized and implemented so that these bodies can function as a unified system". The Office of the High Commissioner for Human Rights (OHCHR) also wrote a concept paper in which it **proposed that a "Single Unified Standing Treaty Body" be created**. The OHCHR is currently already authorised to coordinate human rights activities within the United Nations system. However, the proposal to create a "Unified Standing Treaty Body" (also referred to as a "single permanent body") goes further than mere coordination.

There are a number of **advantages** with a single permanent body, such as the fact that this committee can assess the human rights situation of a given country in a coherent manner on the basis of an integrated report; the possibility that, due to its permanent character, action can be taken at any time following serious breaches; and the fact that the increase in visibility could also increase the body's authority and promote accessibility, given that more people will be aware of its existence. At the same time, there are **serious disadvantages** to a merger of the treaty bodies:

- the risk of losing or opening to discussion any acquired powers;
- the question as to whether in one unified body all aspects will be covered with the same level of adequacy as afforded in the current situation, whereby each of the treaty bodies is made up of experts in the field of that specific treaty;
- the legal complications arising from the fact that the body's powers are determined by treaty or protocol, so that unification would involve amendments of different treaties.

For the time being, therefore, all that is sought is **realistic cooperation between the committees**, all of which, it is true, retain their singularity but since 2008 meet together in Geneva. The OHCHR offers secretarial support for all these committees, the OHCHR website hosts the information and documentation for the various different committees, and every year there are meetings between the various different committees to increase the efficiency and effectiveness of the system. The aim is to arrive at documents that are intended to lead to more uniform reporting by the states on the one hand while ensuring greater harmonisation of the committees' work methods on the other. Flanders actively continues to monitor developments in improved efficiency and synergy within the UN human rights system via the Representative of the Government of Flanders in Geneva and via intra-federal consultation, and supports pragmatic initiatives to promote greater uniformity in reporting so as to relieve the pressure on the national administrations. This is also intended to lead to better reporting by countries with limited resources.

• The Human Rights Council

The relatively recently formed UN Human Rights Council is independent of all these treaties and committees. It was set up on 15 March 2006 by resolution 60/251 of the General Assembly of the United Nations. It is an **auxiliary body of the General Assembly**, responsible for promoting universal respect by all states

of all the human rights and fundamental freedoms without distinction, be they party to human rights treaties or not. This is because, merely by virtue of their membership of the United Nations, states are under obligation to respect human rights as worded in the UDHR.

The Council replaces the former **Human Rights Commission** of the Economic and Social Council of the United Nations, about which former Secretary-General Kofi Annan said: “the Commission’s capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission, not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations as a whole.” Unfortunately, experience in recent years has shown that the present Human Rights Council is not immune to politicisation either.

The Human Rights Council’s **Universal Periodic Review (UPR)** is of prime importance with regard to Flemish domestic policy. This is because the body’s formation resolution provides for a similar “periodic evaluation” of national policy, conducted not by an independent body but by the Human Rights Council itself; in other words, a political body with representatives from the member states. The standard by which a member state is measured in this process does in fact differ depending on whether it has undertaken to meet other obligations through the ratification of human rights treaties. However, the main accomplishment of this UPR is the fact that countries that have not signed up to a treaty are also required, at a minimum, to report on their respect of the UDHR rights that have now passed into common law and are required to give account to the other member states in this matter. This is because the evaluation is based on (1) a national “self-evaluation report,” drawn up in consultation with civil society, (2) a compilation of information from the UN itself (reports by treaty bodies, other documents) and (3) a summary of additional credible and reliable information from other stakeholders.

Belgium - including Flemish policy - also reported on its human rights record on 2 May 2011, during the eleventh session of this mechanism. The Flemish Department of Foreign Affairs coordinated the input from the Government of Flanders to the composition of the Belgian self-evaluation report, on which civil society was also given a say. In coming years, Flanders will help implement in practice the obligations accepted by Belgium, such as the creation of a National Human Rights Organisation.

B. COUNCIL OF EUROPE

• European Convention on Human Rights

On 5 May 1949, in Saint James’s Palace, London, the Statute of the Council of Europe was signed by ten Western and Northern European states. Since then, the organisation has gathered **47 European countries**, a large portion of which were not able to accede until after the fall of the communist dictatorships in Central and Eastern Europe. The Council is based on the spiritual and moral values which form the common heritage of the European peoples and which are “the true source of the individual freedom, political liberty and rule of law which underlie a true democracy.” The Council’s most important task, certainly since the summit of Heads of State and Government in Vienna in 1993, is to **protect and realise human rights, democracy and the rule of law** throughout Europe, from Reykjavik to Vladivostok.

Soon after the organisation was set up, on 5 November 1950, the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was created, which has been amended and supplemented by fourteen protocols since then. All members of the Council are required to ratify this convention. The main guarantees under the Convention and the protocols, are the **right** to:

- life, liberty and security;
- a fair trial in civil and criminal cases;
- participate in elections, by casting a vote and by standing as a candidate;
- freedom of thought, conscience and religion;
- freedom of expression (including freedom of the press);
- peaceful enjoyment of property;

and a **prohibition** of:

- torture and inhuman or degrading treatment or punishment;
- capital punishment;
- discrimination in the enjoyment of the rights and freedoms guaranteed by the Convention;

- expulsion of the subjects of a state or deprivation of subjects of the right to enter the territory of a state;
- collective expulsion of aliens.

One significant difference between this and the human rights mechanisms of the United Nations is the **judicial approach** to the guarantee of rights. By way of illustration there is no provision for periodic reporting by member states, but there is a supranational court directly accessible by individual complainants who are of the opinion that their rights have been violated by a party to the convention. The Court is intended as a second level of protection: in the first instance the states, through their national courts and tribunals, have to guarantee the respect and enforceability of the rights assured in the ECHR and the protocols. Only when this fails does the Court enter the picture. The Court's judgements are binding to the state against which they are issued. Supervision of enforcement lies with the Committee of Ministers of the Council of Europe. The judgements of the ECHR often also have a **major effect on the legislation** of the country in question: for example the decision in the Marckx case sparked a revolution in Belgian inheritance law and the position of illegitimate children. Other high-profile cases have recently led to Assize Courts giving justification of their judgements and the requirement that a lawyer be present at the first examination of a suspect. To date only one judgement of the Court (Hamer, decision of 27 November 2007) has involved a Flemish Parliament Act (the Flemish Parliament Act on the organisation of spatial planning and the Flemish Parliament Act on Forestry). Additionally, there is a case pending at the Court over the construction of the Deurganckdok dock.

On 18 September 2008 the Court passed its 10,000th judgement: in recent years the number of cases brought before the Court has grown exponentially. In the space of four months, from 1 July to 31 October 2008, 458 complaints were allowed and no fewer than 9,943 complaints were dismissed. This increase led to the adoption of a fourteenth protocol to the ECHR, which aims to increase the Court's efficiency through **procedural reform**. After all it is not acceptable that the Court, which among other things guarantees the dispensation of justice in every state within a reasonable period of time (art. 6 ECHR - "justice delayed is justice denied"), is taking ever longer to process the growing number of complaints. After many delays, the protocol was recently ratified by Russia, with the result not only that the Court has run along new lines as of 1 June 2010, but also that the accession of the European Union to the ECHR, another reform under protocol 14, has become possible.

Flanders attaches a great deal of importance to the ECHR and the European Court in Strasbourg, which play a part in establishing the rule of law across the continent and in particular in the Western Balkans and the "outer circle" of the European Union, which come under special focus in Flemish foreign policy.

• European Social Charter

In contrast to the ECHR, the **European Social Charter (ESC)** in the first place uses a system of reporting, as do the UN Human Rights treaties, although it does have a collective complaints protocol on the grounds of which some international NGOs and employer and employee organisations are able to submit collective complaints to a committee of independent experts. For example, this committee has complaints pending against Belgium (all sections) as regards policy towards trailer park residents and care for non-accompanied minor foreign nationals. Belgium has not yet made a statement enabling national NGOs to submit a collective complaint.

The ESC is an "**à la carte**" treaty: member states are required to subscribe to a minimum number of provisions, but can choose not to accept some rights. Belgium has accepted 87 of the 98 paragraphs of the revised ESC, and as a result is among the front runners. In the spring of 2009, a seminar took place in Brussels at which the European Committee of Social Rights furnished representatives of the various authorities in this country with all kinds of information and entered into a dialogue on the scope and interpretation of the 11 paragraphs that Belgium has not yet accepted, so as to bring closer a possible future ratification.

More specifically, this involves:

- a number of provisions in respect of labour law (art. 24, 26, §2, 27 and 28 revised ESC), more particularly about the duty to give reasons for termination, measures against harassment in the workplace, rights for employees with family responsibilities and protection of employee representatives;
- right to education in own language and culture for migrant workers (art. 19, § 12, revised ESC);
- right of elderly people to social protection (art. 23 revised ESC);
- right to housing (art. 31 revised ESC).

- **The Council of Europe and the protection of minorities**

This policy document cannot overlook the subject on which the Council of Europe has most frequently made the domestic press in recent years: the protection of minorities, more particularly the **Framework Convention on the Protection of National Minorities**, which Belgium signed on 31 July 2001. In its mandate to sign, the Government of Flanders worded a reservation on this Framework Convention. This reservation was, in its essence, used again by the federal government on signing. It states that 1) this must not be to the detriment of the existing language legislation and constitutional balance, and 2) in the framework of the Interministerial Conference for Foreign Policy (ICFP) a definition be given for the concept of “national minority”.

The working group tasked by the ICFP with working out this definition **was unable to reach a unanimous conclusion**. The Parliamentary Assembly and the Venice Commission, two Council of Europe bodies, took advice or resolutions further to a visit by an Assembly reporter, requested by French-language members of parliament. Thus in Belgium the definition “national minorities at regional level” was arrived at, a concept that has no basis in the Framework Convention and which the Government of Flanders is unable to support.

The present Government of Flanders has therefore undertaken not to ratify this convention (Coalition Agreement, page 95). This does not mean that Flanders does not value the Council of Europe’s work in the area of protecting minorities. The Government of Flanders is, however, of the opinion that the individual rights-based minorities protection envisaged by the Framework Convention is diametrically opposed to the existing, group rights-based constitutional order in Belgium, which has a balance of special majorities, alarm procedures, guaranteed representations and theoretical application of the principle of territoriality. The application of the Framework Convention undermines certain elements of a constitutional compromise without touching the other side of the balance. The Government of Flanders is therefore of the opinion that **in Belgium the Framework Convention cannot play the pacifying role for which it was conceived**, but, on the contrary, will give rise to discord and instability. For that matter there are, besides Belgium, seven other member states of the Council of Europe which, for a variety of reasons, have not ratified or not signed the Framework Convention. This in no way prevents the Government of Flanders from continuing to follow the initiatives of the Council of Europe and other organisations in the area of minorities proactively and structurally via interdepartmental harmonisation and information exchange.

- **Other initiatives**

The Council of Europe sees itself as the **ultimate European institution for human rights and democracy**. This is also the case outside the context of the treaties referred to above. A number of Council bodies are dedicated in part or in full to the respect of human rights by the member states. Of particular importance are the human rights commissioner and the European Commission against Racism and Intolerance (ECRI). Both bodies visited Belgium in 2008 (including a visit to the Government of Flanders), and published their recommendations in the spring of 2009. These reports offer valuable insights by external observers on a number of Flemish policy areas, and it goes without saying that they will play a role in future internal policy evaluations. Additionally, Equal Opportunities in Flanders co-financed a study by the human rights commissioner on the situation of lesbian, gay, bisexual, and transgender people in the member states of the Council of Europe, so as to highlight Flanders’ pioneering role in lesbian, gay, and bisexual policy.

In brief: activities in the area of human rights permeate the entire organisation of the Council of Europe, both at intergovernmental level, in the activities of many official committees, and in the regional and national bodies to which members are elected. Additionally, the Committee for the Prevention of Torture is an important independent body which recently visited prisons and welfare institutions in Flanders. One last example is the European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which was created within the Council and has already been approved by the Flemish Parliament, but has not yet been ratified by Belgium. Flanders will continue to push for such ratification.

C. EUROPEAN UNION

- **Charter of Fundamental Rights and European regulations**

The Charter of Fundamental Rights of the European Union, which was solemnly proclaimed at the Euro-

pean Council of Nice on 7 December 2000 and signed again as part of the Treaty of Lisbon on 12 December 2007, **binds the Government of Flanders in its application of European regulations**, such as when transposing European directives. The fundamental rights can be divided into six groups: dignity of the person, liberty, equality, social and workers' rights, citizens' rights and justice. Article 6 of the Treaty on the European Union states that the Charter has the status of primary law, at the same level as the treaties. Furthermore, the European regulations also have a direct impact on the internal legal framework in the area of human rights, as can be seen from the various directives on non-discrimination that form the basis for the Flemish Parliament Act on Flemish equal opportunities and equal treatment policy.

- **European Agency for Fundamental Rights (FRA)**

The European Union is above all a community of values, and even provides an - exceptional - procedure to take action when there is a clear danger of a serious violation of these values by a member state. Every bit as important, however, is the **preventive and remediating approach of the European Agency for Fundamental Rights in Vienna**, which assists the European institutions and member states and offers expertise in the area of fundamental rights in order to help them fully respect these rights when putting measures in place or taking action.

The Agency plays an important role in **gathering and analysing data from the various member states**, through which reports are created that make it easier to compare the situations in each of the countries. In this the emphasis lies on a number of themes that are also very dear to the Government of Flanders: equal opportunities, the fight against racism and other forms of discrimination, among others against lesbian, gay, bisexual, and transgender people. The Government of Flanders thus undertakes to ensure fluent cooperation and throughput of information about Flemish policy, so that these reports can play a valuable role in drawing up new initiatives.

- **Accession to the ECHR**

The coming into effect of the Treaty of Lisbon and of Protocol 14 to the ECHR meant that the task of the EU as set out in article 6, §2, of the Treaty of the European Union **to accede to this European Charter of Fundamental Rights** could finally be fulfilled. The Government of Flanders is following these developments, which represent a veritable revolution in the protection of European fundamental rights.

D. ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

In Europe the OSCE is important too, including as it does a number of countries that are not members of the Council of Europe, such as Belarus and the Central Asian Republics. Without immediately taking action regarding standards, it is active in the area of human rights, among other things, through institutions such as the Office for Democratic Institutions and Human Rights (ODIHR), the Representative on Freedom of the Media and the High Commissioner for National Minorities,. The OSCE is important given the Flemish foreign policy interest in the outer circle of the European Union and the Western Balkans.

C. POLICY OBJECTIVES

The Government of Flanders seeks to contribute to a **growing and better respect of human rights in the world**, with a view to ensuring the dignity and equality of every human being, wherever he or she is born, and to ensuring a peaceful international order, which is both a precondition and a consequence of this.

To this end Flanders will:

1. **sweep its own back yard**, by guaranteeing respect of human rights in Flanders in those policy areas that lie within its competency;
2. disseminate the **undertakings it has made in the international relations** it maintains and in the activities it develops in the framework of its international policy.

A. THE BELGIAN INSTITUTIONAL FRAMEWORK

A. NOT A “COMPETENCE”, BUT A TASK FOR EVERY AUTHORITY

In the Belgian context, human rights **are not a competence in and of themselves**. The Constitutional Court leaves no doubt over the fact that a human rights treaty “has no detrimental effect on the internal division of competence between the respective internal legislators as required by the Constitution. It is up to only that legislator which, according to the internal division of competence, is competent to regulate the situation that is the subject of the treaty, to adopt, make explicit or implement articles from that treaty, whether they apply directly or not.”

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In other words, every authority has the task of **guaranteeing and realising human rights within its own area of competence**. This is also to be seen in a number of articles in the constitution, which state that the guarantee of fundamental rights must take place by law, by parliamentary act or by ordinance, e.g. the rights and freedoms of the ideological and philosophical minorities (art. 11 Constitution), equality between men and women (art. 11bis Constitution), respect of family life and private life (art. 22 Constitution), the right to respect of the moral, physical, spiritual and sexual integrity of the child (art. 22bis Constitution), the economic, social and cultural rights (art. 23 Constitution), the right to education (art. 24 Constitution) and the right to open government (art. 32 Constitution). The Government of Flanders fulfils this constitutional task in earnest and with enthusiasm, and does so via specific Flemish Parliament Acts as well as regulations that set out to create a broad policy framework, such as the Flemish Parliament Act of 10 July 2008 concerning a framework for Flemish Equal Opportunities and Equal Treatment policy and the successive Flemish Parliament Acts on Flemish youth and children’s rights policy. Furthermore, to coordinate children’s rights policy, the Government of Flanders has appointed a coordinating minister for children’s rights since as far back as 1997.

B. STATUS OF HUMAN RIGHTS IN BELGIUM

Belgian rule of law is characterised by a **high degree of openness** towards international law. An important role has been set aside in this regard for the national court as the “guardian” of international law. Insofar as the provisions of human rights treaties are unconditional and independent of further implementation measures by the member states, they are to be applied directly by the national court (with respect for the competences of the Constitutional Court), and inconsistent national regulations can be set aside by the national court. This need not be the case for a treaty as a whole, but can be viewed provision by provision. In addition the Constitutional Court indirectly ensures, through cohesion with analogous rights in the Constitution or with the prohibition on discrimination and the equality principle in articles 10 and 11 of the Constitution, compliance with a large number of provisions from human rights treaties, even if they do not have a “direct effect”. The court can also apply human rights standards in domestic law via a treaty-compatible interpretation of “open” standards, and the “standstill principle”, which, largely in the context of social and economic rights, prevents existing realisations from being reversed.

This should make it clear that the international human rights treaties are not soft obligations, that merely sketch a picture of the objectives to be reached, but are actually legal standards which, in both the international rule of law and in domestic law are actually of use to the citizen.

The Government of Flanders too has created a number of instruments to enforce these rights, including protection of rights and maintenance of law and order in the framework of the Flemish equal opportunities and equal treatment policy and the Flemish ombudsman service, which has the power to investigate

complaints and to intermediate to ensure respect of the fundamental rights in Flemish governing bodies. The Vlaamse Kinderrechtencommissariaat [Flemish Office of the Children's Rights Commissioner] in turn ensures fulfilment of the Convention on the Rights of the Child in Flanders.

C. CONSULTATION AND COORDINATION ON HUMAN RIGHTS

Intra-federal consultation on human rights currently takes place in the framework of **ad hoc coordination following international reporting or position taking**. Use is hereby made of the COORMULTI coordination mechanism or ad hoc coordination by other federal public services such as the FPS Justice and the FPS Employment. There is no structured periodical consultation, independent of these coordination meetings, although there have indeed been initiatives in the past to create a national body for human rights, from both the academic world and the FPD Justice, and recently also supported by the recommendations of the UPR.

One exception to this is the **National Commission for the Rights of the Child** that was set up by the cooperation partnership of 19 September 2005 and which has been operational since 2007. This is a platform for consultation between the federal, community and regional authorities and a number of children's rights organisations. Above all, the Commission plays a coordinating role in the framework of the five-yearly report on the application of the United Nations Convention on the Rights of the Child. It also contributes to the development of other documents relating to the rights of the child which the Belgian State is required to produce for other international bodies (such as the action plans). It examines the recommendations of the Committee for the Rights of the Child and ensures that these are followed up. The National Commission for the Rights of the Child can also make non-binding proposals or recommendations to the competent authorities. This cooperation partnership offers a potential source of inspiration for a broader coordination of global human rights policy. The activities of this committee are currently being evaluated. Conclusions are expected by March 2012.

Another exception is the federal coordination mechanism created in the framework of the Convention on the **Rights of Persons with Disabilities**. This consultation body was brought under the FPS Social Security and unites the 8 focal points, set up within the various Belgian sub-entities, that were appointed to promote, protect and monitor the obligations of the convention.

B. FLEMISH REGULATIONS

A. EQUAL OPPORTUNITIES AND EQUAL TREATMENT POLICY

The development of a **broad Flemish policy vision on equal opportunities** culminated in the ratification and proclamation on 10 July 2008 of the Flemish Parliament Act on Flemish equal opportunities and equal treatment policy. This relatively new Flemish Parliament Act is literally an overarching Act to fight against discrimination in the sphere of competence of the Government of Flanders and to develop a broad Flemish equal opportunities policy. It provides not only for the transposition of existing European antidiscrimination directives, but also implementation of the UN treaties against racial discrimination (CERD) and discrimination against women (CEDAW).

The purpose of the Flemish Parliament Act is to bring an end in Flanders to situations in which people fall victim to discrimination on the basis of their sex (including transsexuals), race, skin colour, origin, national or ethnic extraction, age, sexual orientation, marital status, parentage, means, religion or ideology, political convictions, language, state of health, physical or genetic characteristics, social position or nationality. As a Framework Parliament Act it gives a number of **uniform solutions to antidiscrimination issues that exceed the separate Flemish areas of competence**, such as the protection of rights and maintenance of law and order.

The Flemish Parliament Act specifies the areas in which no discrimination is permissible. This naturally relates to the Flemish areas of competence: work, healthcare, education, housing, mobility, culture, youth, social advantages and access to and participation in economic, social, cultural or political activities outside the private sphere. **This extensive list takes Flanders further than the current European legislation**. In broad terms Europe currently only imposes rules relating to protection on the grounds of race and sex and in the area of labour, but with this new Flemish Parliament Act, Flanders has already anticipated an enlargement of the directives.

The fight against discrimination is one of the priorities of the Flemish Parliament Act, but the Act also creates a **legal foundation for a broader policy in the area of equal opportunities and equal treatment**. The plan contains preventive measures against discrimination and creates a framework for an equal opportunities policy based on the open coordination method.

The Parliament Act provides for the setting up of **reporting desks in the 13 major and central cities and Brussels**. These reporting desks give assistance to potential victims of discrimination and take action designed to stop discriminatory behaviour. They largely play a mediating role in this. They also carry out local preventive publicity campaigns. At the present time there is structural recognition and funding for reporting desks in 11 cities, and 2 reporting desks are still under development as a trial project. Equal Opportunities in Flanders coordinates the reporting desks, provides staff guidance via training and takes initiatives to streamline their activities. Through a cooperation agreement with the Centre for Equal Opportunities and Opposition to Racism, the reporting desks can also call on a helpdesk and guidance in complex cases. The same agreement links them up with a central registration system, which ensures a standardised approach and the fluent referral of complaints, and which also serves as a monitoring tool.

The Government of Flanders **will continue to build on its policy against discrimination during this legislative term**. It is investing in the appointment of an independent body to provide, among other things, legal assistance for the victims of discrimination and monitor and advise on Flemish policy. In the light of this, it is working out the future scenario for the reporting desks and providing a structural, scholarly basis for its policy. Through the open coordination method it is implementing equal opportunities and non-discrimination in each of its areas of competence and harmonising these efforts. In its "Compendium of practice on Non-Discrimination/Equality Mainstreaming," the European Commission has labelled this form of cross-cutting policymaking in Flanders a good practice. The Government of Flanders has also decided that all ministers will screen their legislating for conformance with the Convention on the Rights of Persons with Disabilities, so that adjustments can be made wherever necessary.

B. YOUTH AND CHILDREN'S RIGHTS POLICY

The starting point for the current Flemish youth and children's rights policy was the Flemish Parliament's approval of the International Convention on the Rights of the Child (ICRC) by Flemish Parliament Act of 15 May 1991. The first two initiatives taken via Flemish Parliament Act on the basis of that convention were the **Office of the Children's Rights Commissioner and the child impact report**, both on 15 July 1997. In 1997 too, the Government of Flanders appointed the (first) **coordinating minister for children's rights**. A Flemish Parliament Act of 2008 integrated the child impact report and Flemish youth policy. It defines **youth and children's rights policy** as follows: "the integral and integrated vision and the systematic and methodical government measures that are based on this and aimed deliberately to impact on youth, with particular reference to the International Convention on the Rights of the Child, adopted in New York on 20 November 1989 and approved by Flemish Parliament Act of 15 May 1991, as the ethical and legal framework" (freely translated). In this, the Government of Flanders makes use of five instruments: a Flemish youth policy plan, reporting on the implementation of this plan and the rights of the child, child and youth impact reporting, contact points for youth and children's rights policy and a "state of youth" to monitor the social environment of young people. The draft of a new Flemish Parliament Act on youth builds on these realisations and furthers the Government of Flanders' focus on children's rights in its internal policy.

On 15 July 2011, the Government of Flanders approved a **Flemish Action Plan on the Rights of the Child**. The plan aims to clarify what this Government of Flanders intends to achieve within the current period of government in order to bring its policy in line with the concluding remarks of the UN Committee on the Rights of the Child of June 2010, in the light of the next reporting point (2017). In addition, the **Youth and Children's Rights Policy Annual Report** reports on the execution of the Flemish youth policy plan, the ICRC and international cooperation in the area of youth and children's rights. This reporting was modelled on the reporting system used within the United Nations. The annual report was prepared by the contact points for youth and children's rights policy of the Government of Flanders and coordinated by the Youth Division. The Flemish minister for Youth responsible for coordinating children's rights policy put it before the Government of Flanders for approval and then forwarded it to the Flemish Parliament and the Office of the Children's Rights Commissioner.

Whereas the annual report looks back over what has occurred in the past, the **child and youth impact**

report (JoKER) is a proactive instrument. The JoKER is an extension of the child impact report (KER), introduced in 1997. Whereas the KER applied only to minors, the JoKER extends to decisions directly affecting the interests of people under the age of 25. The JoKER will for the most part be incorporated in the general test against the criteria for good legislation, the Regulatory Impact Analysis (RIA). Another instrument for the implementation of youth and children's rights is the 33 youth and children's rights **contact points** in all divisions of the Government of Flanders and in agencies of importance to children and youth. The contact points play a part in the preparation and implementation of policy and act as representatives of the Government of Flanders in consultations with civil society in the framework of the youth and children's rights policy reflection group. Coordination of the network of contact points lies with the Youth Division, to which the children's rights coordinator belongs.

Besides these instruments, the Flemish Parliament Act of 2008 also created institutions for Flemish youth and children's rights policy. Notable is the **Children's Rights Knowledge Centre**, which focuses on children's rights. The purpose of this new centre is to increase knowledge of children's rights at the national and international level. The Children's Rights Knowledge Centre approaches children's rights in an interdisciplinary manner and on the basis of scholarly research. The Children's Rights Knowledge Centre has the aim of making the results of this scholarly research available to the public at large.

C. HUMAN RIGHTS EDUCATION

The Government of Flanders endorses this famous citation from the UNESCO statute *“since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed.”* Therefore, in line with international initiatives in this area from the UN and the Council of Europe, it attaches great importance to the points of contact set in the curricular and cross-curricular attainment targets and developmental objectives for primary and secondary education with a view to furthering human rights education. To implement these attainment targets in the schools in a qualitative way, the Government of Flanders supports various organisations (via secondments and/or subsidies) that encourage human rights education in the classroom and at school, such as the King Baudouin Foundation (citizenship education project) and non-profit organisation VORMEN (children's and human rights education). The Flemish Peace Institute is also a valuable source of information on peace education.

In addition, the Government of Flanders supports the development of **Kazerne Dossin: Memorial, Museum and Documentation Centre on Holocaust and Human Rights**, which officially opens in 2012 and represents not just a benchmark for remembrance, but will create critical awareness among present and future generations regarding the fragility of democracy and human rights. The Special Committee for Remembrance Education, made up of various organisations in the field of remembrance education, supported by the Government of Flanders and located within Kazerne Dossin, aims to help teachers deal with the question as to how they can work effectively on remembrance education with a given group and what lessons can be drawn from this on the issues of human rights, discrimination and exclusion today.

Incidentally, the opening of Kazerne Dossin in 2012 will coincide with the Belgian chairmanship of the **International Holocaust Remembrance Organization**. Flanders will also host in Mechelen one of the two conferences to take place in our country during this Belgian chairmanship. The aim is also to show how the Flemish education system goes about quality remembrance education, in which human rights is one of the focus points. The Great War project also offers an opportunity to make the connection between peace and human rights, through, among other things, the planned **Flanders Fields Declaration**.

C. PROGRESS

A. OTHER HUMAN RIGHTS COMMITMENTS

- **Priority ratification of human rights treaties**

Parliamentary approval of human rights conventions is a priority matter for the Government of Flanders. Indeed, the international human rights system grows stronger as ever more states sign up to the treaties. The Government of Flanders has, therefore, made the commitment to pave the way for the presentation of a number of human rights conventions to Flemish Parliament for approval. This has already been done for

the **Optional Protocol to the International Convention on Economic, Social and Cultural Rights**, which introduces an interstate and individual complaints mechanism for violations of these rights and for the **International Convention for the Protection of All Persons against Enforced Disappearance**. The Government of Flanders hopes that Belgium ratifies these treaties as soon as possible. Through the Interministerial Conference on Foreign Policy (ICFP) and its auxiliary body, the Mixed Treaties Working Group (MTWG), Flemish representatives in the other authorities will press for a quick completion of internal procedures.

The Government of Flanders also hopes to bring before Parliament still this year the **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** for approval. This protocol introduces a mechanism by which experts are given access to institutions housing people who have been deprived of their liberty (prisons, psychiatric institutions, closed centres for special youth care). However, implementation of this Protocol requires an internal cooperation partnership, the negotiations for which have not yet been concluded.

• Broader undertakings

The Government of Flanders is also prepared to enter into further obligations in the framework of treaties which are already implemented in our country. In the first instance this involves the European Social Charter, which, as we have said before, has an “à la carte” structure. The 11 paragraphs (out of a total of 98) not accepted by Belgium to date include **additional rights for employees with family responsibilities, the right of elderly people to social protection and the right to housing**. The Government of Flanders supports an enlargement of Belgium’s commitments to include these additional rights.

The collective complaints mechanism under the European Social Charter is open to international and national employer and employee organisations, and international non-governmental organisations that enjoy consultative status with the Council of Europe. Parties to the ESC can also accept that they acknowledge the right of other, national, non-governmental organisations to lodge complaints. The Government of Flanders is prepared to accept this right, with the result that the **broad Flemish civil society also has access to this complaints procedure**.

In addition, agreement has been reached in the Mixed Treaties Working Group to sign and ratify the new Council of Europe Convention on **preventing and combating violence against women and domestic violence** (CETS no. 210, approved on 7 April 2011). This Convention is the first binding instrument to create a legal framework to combat violence, protect the victims and prevent the perpetrators from escaping punishment. It defines and makes a number of forms of violence against women punishable (forced marriages, genital mutilation, stalking, as well as physical, psychological and sexual violence). It also provides for the setting up of a group of international experts to monitor the Convention’s implementation.

The Government of Flanders will also, in consultation with the Flanders Social and Economic Council (SERV) and the relevant strategic advisory councils, including the Flemish Foreign Affairs Council (SARiV), take a fresh look at, among other things, a possible acceptance of the **Convention on Human Rights and Biomedicine, on Biomedical Research**. This Convention, which has since been enriched with three additional protocols, is the latest branch on the Council of Europe’s human rights tree. It is based on the precedence of the interests of the human being over the interests of society or science and from this vision formulates a number of principles and prohibitions in the area of bioethics, medical research, consent, personal privacy, information provided by the physician, and organ transplantation. The Convention does, it is true, largely relate to federal matters, but this does not prevent the Government of Flanders from considering the implications of this Convention and the opportunity to ratify it in the light of its competences in the area of healthcare and scientific research.

Finally, the Government of Flanders also aims to take a constructive approach, as recommended by the UPR but rejected by Belgium, towards withdrawing in as far as possible the **reservation to the Convention on the Rights of the Child** and a number of other human rights conventions.

• Support for New International Instruments

The Government of Flanders also seeks to declare its support of the development of new human rights instruments. For example, Flanders supports the quick creation of a **Complaints Protocol to the Conven-**

tion on the Rights of the Child. This protocol has already been the subject of negotiations in a special working group of the Human Rights Council, for which the Government of Flanders was proactive in helping determine the Belgian standpoint. The Flemish Coordination of Children's Rights prepared a coordinated Flemish position that affected the position taken by Belgium. In all probability the protocol is soon to be adopted by the General Assembly of the United Nations, after which it will be opened to signing. Flanders supports such a complaints protocol and will approve it soon after its adoption.

Flanders also supports the **international strengthening of the rights of lesbian, gay, and bisexual people**, for which the initial steps have been taken in the Council of Europe, and recently also in the UN. Flanders wishes to play a pioneering role in this. An initial example in this regard is the network of officials looking into lesbian, gay, bisexual, and transgender policy (Informal Network of Governmental LGBT Focal Points), which the Government of Flanders (Equal Opportunities in Flanders) and the Netherlands set up in 2008 and in which twenty member states now actively participate. The network seeks, on the one hand, to offer a platform of consultation for member states of the EU and the Council of Europe, but, on the other, to influence the agenda of the EU and Council of Europe. A second example is the international conference on the subject of education and lesbian, gay, bisexual, and transgender policy, which it organised in the framework of the Belgian EU Presidency.

- **Human rights in the Flemish Parliament Act on the Arms Trade**

As already announced in the policy memorandum "Beleidsnota Buitenlands Beleid, Internationaal Ondernemen en Ontwikkelingssamenwerking 2009-2014" [Foreign Policy, International Enterprise and Development Cooperation 2009-2014], a draft Parliament Act on international weapons trading has been put before the Flemish Parliament. This Flemish Parliament Act takes into account the common European standards but keeps attention fixed on a **balanced and justified assessment of ethical, economic and security elements**.

- **Embedding in the Flemish Rule of Law**

The Government of Flanders also wishes to open the political and academic debate in order to embed, in dialogue with the Flemish Parliament, the fundamental rights in the Flemish rule of law. In the first instance this can be done via the Handvest voor Vlaanderen [Charter for Flanders], for which a proposal was made to the President of the Flemish Parliament in September 2010. Any further quasi-constitutional embedding and the enforceability that would go with this will require further legal analysis, both in terms of formulation and in terms of impact on Flemish legislation.

The Government of Flanders is prepared to:

- take the necessary steps with a view to **ratification** of a number of important human rights instruments, namely the optional protocol against torture;
- enter into **further commitments** in the framework of existing human rights treaties, namely in the framework of the European Social Charter;
- **investigate whether any other treaties can be signed**, such as the Convention on Human Rights and Biomedicine;
- espouse **new human rights instruments**, namely the complaints protocol to the Convention on the Rights of the Child and instruments to protect the rights of lesbian, gay, bisexual, and transgender people;
- **embed** respect for human rights **internally** in relevant Flemish legislation.

B. REPORTING TO INTERNATIONAL AUTHORITIES

- **Improving the process in the Government of Flanders**

The Government of Flanders **emphasises the importance of a qualitative Flemish contribution to Belgian reporting and position taking** with respect to international control mechanisms, and urges all parts of the Government of Flanders to work openly towards this.

The **Flemish Department of Foreign Affairs plays a central role in coordinating this Flemish viewpoint** on Belgian position taking or reporting in the area of human rights. The Department's remit is, how-

ever, broader than the gathering, streamlining and passing on of information. It also contributes to the development of a coherent Flemish vision of the international human rights system, and monitors its implementation. Via periodic consultation over multilateral policy in the Strategisch Overleg Internationale Aangelegenheden (SOIA) [Strategic Consultation on International Affairs], with a Human Rights case team, the Department offers a forum for harmonisation, coordination and position taking which can be used by other actors in the Government of Flanders, in the first place the Equal Opportunities unit (CEDAW and IVRPH) and the Youth Division's children's rights coordination for the ICRC.

Representatives of the Government of Flanders accredited in Strasbourg (Council of Europe) and Geneva (human rights bodies of the United Nations) will systematically participate in the verbal presentation of Belgian reports, for which a substantial contribution is made by the Government of Flanders. They, along with the experts from the different departments, have the task of clarifying where necessary the Flemish sections of the report and giving feedback to the Government of Flanders with a view to providing extra information and assisting with the later follow-up. The aim is to ensure a proactive follow-up of and bilateral relations with the Council of Europe and the human rights bodies of the UN.

It is important to ensure that the reporting is not purely an administrative process, but that **Flanders is also involved politically and is aware of the reporting cycle and its follow-up**. For this reason, the draft reports and questions put by the international supervisory bodies (so-called "list of issues") are distributed among the members of the Government of Flanders. The same is true for the comments and recommendations of these bodies, on which the Government of Flanders takes a joint stance if necessary, which can also be explained in the Flemish Parliament.

• National institution for human rights

For several years now there has been talk of setting up a national institution for the protection and promotion of human rights that **satisfies the so-called "Paris Principles"** drawn up in 1991 for institutions of this type. At various different international conferences, such as the World Conference on Human Rights in Vienna in 1993, and in the recommendations and resolutions of the institutions of the Council of Europe and the United Nations, the states are urged to create institutions of this kind. The report of Commissioner for Human Rights Hammarberg of 2009 also contained this recommendation. For this reason, Belgium has accepted in principle, further to the UPR, the setting up of an institution of this type.

In addition, **a number of international treaties**, such as the aforementioned Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 18, § 4) or the Convention on the Rights of Persons with Disabilities (art. 33, § 2), assume that the Parties have an independent institution to promote, protect and monitor implementation of the treaties in accordance with the Paris Principles. The correct implementation of these treaties, which is, as regards the Convention on the Rights of Persons with Disabilities, an explicit attainment target of the Government of Flanders (Coalition Agreement, page 78), thus implies further steps towards the setting up of an institution of this type. More generally, it should contribute to the follow-up of the conclusions and recommendations of international committees following Belgian reports, following the trend in international jurisprudence and interpretative practice and distilling from this recommendations for the national authorities, and guaranteeing a consultation platform on human rights between non-governmental organisations and the state. During the UPR, Belgium entered into the obligation to set up a human rights institution of this type.

The Government of Flanders aims to:

- **provide qualitative reporting to international supervisory bodies;**
- work on a **proactive follow-up** of and **bilateral relations** with the human rights institutions of the UN and Council of Europe;
- set up a **national human rights institution that is in full conformity with the Paris Principles.**

C. HUMAN RIGHTS AND FLEMISH LEGISLATION

The Government of Flanders has **the international, constitutional and ethical obligation to respect human rights in its promulgation of laws**. When examining Flemish legislation, the Council of State - the Supreme Administrative Court of Belgium - checks that the texts accord with the constitutional and internationally guaranteed fundamental rights. The strategic advisory councils form additional, external advisory

authorities, which, given their composition and the specific interest areas of their youth or social partner representatives, for example, offer an extra guarantee that the new legislation satisfies human rights and economic and social rights in particular.

There is no immediate reason, therefore, to create a new internal control body to check the extent to which new Flemish legislation is compliant. Indeed, it should automatically be so. When a bill is being drafted, using regulatory impact analysis (RIA) for example, in which the aforementioned JoKER has been integrated, or in an explanatory memorandum to a Flemish Parliament Act, it is already possible at this time to approach the **prepared bill from a human rights perspective**. Attention can be focused both on the way in which the draft legislation contributes to the realisation of a given human right and on the question as to whether any planned restrictions of particular rights are indeed called for in a democratic society to protect public security, public order, public health or public decency or to protect the rights and freedoms of others.

In the meantime, on 2 December 2011, the Government of Flanders did fact decide to check, by 2014, the relevant legislation in force against the UN Convention on the Rights of Persons with Disabilities and harmonise its conformance with the latter, and to investigate the impact of the UN Convention on the Rights of Persons with Disabilities on every policy area.

The officials involved in drafting legislation must be **made aware** in an appropriate manner that there is a need to look at the relationship between that legislation and human rights. The Government of Flanders must to this end provide suitable **education** in the area of human rights, in the form of specific training courses, seminars, or by incorporating a human rights component in existing training packages (in legislative studies, for example). Indeed, in his report on Belgium, Council of Europe Commissioner for Human Rights Thomas Hammarberg urged our country to provide civil servants with adequate training in human rights.

It goes without saying that all - existing and new - Flemish legislation must take account of human rights. The Government of Flanders must thus **create the necessary cross-compliance to ensure that conformity with human rights is incorporated in the process of promulgating new law**.



THE UNIVERSAL DECLARATION OF Human Rights

HUMAN RIGHTS IN FLANDERS' INTERNATIONAL POLICY

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

determined to promote social progress and better standards of life in larger freedom,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and

WHEREAS Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

A. FOUR PRIORITY HUMAN RIGHTS THEMES

Though all human rights are universal, interdependent and mutually reinforcing, it is also the case that **in their international policy governments tend to focus** on particular rights. Naturally this does not mean that the other rights are less important or that their universality is not recognised. It is really a matter of weighing up how the limited resources available to foreign policy are best employed.

Flemish foreign policy also faces choices of this type when it sets out to bring human rights closer to the fore in its international actions. On the one hand, attention will be **focused on two horizontal themes**, related to the rights to life, physical integrity and equality, on which no compromise can be made, and on the other hand work will be done on **two themes that are also central to the Flemish coalition agreement** and overlap with a large number of Flemish policy areas, such as education, youth, special youth care and family policy. More particularly this involves:

- a. respect for the physical integrity of every human being;
- b. the fight against every form of discrimination;
- c. the rights of the child;
- d. the right to decent work.

These rights are not independent of each other, but are, like all human rights, mutually reinforcing in different ways and related to other rights.

A. RESPECT FOR THE PHYSICAL INTEGRITY OF EVERY HUMAN BEING

The Government of Flanders requires respect from every authority for the physical integrity of its citizens and **therefore voices its resolute rejection of capital punishment, of torture and of enforced disappearance**, practices through which the state itself violates the fundamental right to life and to physical integrity.

Through a largely European effort we have seen a growing movement in recent decades against capital punishment, the highpoint at present being the **resolution calling for a worldwide moratorium** passed by the General Assembly of the United Nations in 2007. In this it expressed its deep concern over the continued use of capital punishment; called on the states that had already abolished it not to reintroduce it; and asked those states in which capital punishment still exists to respect international minimum standards, provide information on the application of capital punishment, progressively limit its use and issue a moratorium on executions.

Capital punishment is a **flagrant violation** by the state itself of the right to life. The deterrent effect of capital punishment on the behaviour of potential criminals is not proven, with the result that the function of the punishment is simply to extract vengeance; furthermore, it is possible for the punishment to cost - by definition irreversibly - an innocent person his or her life. 95 states, including virtually all the European countries, have currently abolished capital punishment in all circumstances. In 9 states capital punishment is confined to circumstances of war, while 35 states no longer apply capital punishment in practice. As opposed to these 139 states, there are **58 countries in which capital punishment is still used**.

Use or otherwise of capital punishment is **not a purely internal affair**, but incorporated nowadays in a number of international standards. Art. 6 of the ICCPR implicitly assumes that states evolve towards the abolition of capital punishment. The Human Rights Committee emphasised in its comments on this article that capital punishment, if not abolished, must be an exceptional measure, which can only be imposed for the "most serious crimes, it being understood that their scope should not go beyond intentional crimes

with lethal or other extremely grave consequences". States that increase the number of crimes for which capital punishment can be applied, or reinstate capital punishment de facto or de jure, are acting contrary to the international rule of law.

In practice we see that capital punishment **is, proportionally, more often imposed on weaker groups such as ethnic minorities and the poor**, who cannot afford a decent defence, or is pronounced for minor assaults or in cases that cannot even be termed crimes (homosexuality, adultery or even the victims of rape). Such sentences, and the fact that capital punishment is regularly imposed, without proof, on innocent parties, cause great outrage in Flanders, something which is reflected in a number of Flemish Parliament resolutions among other things.

The Council of Europe was the first organisation to take the initiative with a treaty in which capital punishment **is effectively abolished in times of peace**. This is the sixth protocol to the ECHR of 1983 to which all member states, with the exception of Russia, are party. The more recent thirteenth protocol to the ECHR even abolishes capital punishment in all circumstances, including times of war or imminent war. A similar protocol has also been adopted in the framework of the Organization of American States. The Government of Flanders endorses the directives adopted by the European Union in 2008 on capital punishment, and therefore helps propagate at international level the standpoint that as many countries as possible should ratify these protocols and the protocol to the ICCPR abolishing capital punishment in peacetime, and at the very least issue a moratorium on executions.

Like capital punishment, **torture and enforced disappearance** are reprehensible practices which, if they are part of a widespread and systematic approach, are a crime against humanity which is punishable by the International Criminal Court. Again, this is a serious violation by the state of its own subjects' right to life and to physical integrity. Under the guise of **the fight against terrorism**, the number of enforced disappearances and practices of torture has increased in recent years. Secret detention and enforced disappearance are used by a number of states as a weapon in this fight. It seems that the fundamental prohibition on torture and enforced disappearance is no longer something that can be taken for granted, even in democracies.

For this reason, a **principled position by Flanders against capital punishment, torture and enforced disappearance** is a necessity and remains so. The Government of Flanders shares the abhorrence that has been expressed many times in the past in the Flemish Parliament over serious human rights violations, torture, disappearances and executions.

This principled position is also being translated into actions:

- The Government of Flanders calls on its partners to join the international evolution towards the abolition of capital punishment. Partners who have not yet formally abolished this penalty, such as development partner Malawi (which though, it should be noted, has had an official moratorium issued in 1992 in place since), will be formally invited to take the logical step towards abolition of capital punishment. In accordance with the European guidelines on capital punishment, Flanders will raise this subject, where relevant, for discussion in dialogues and consultations with partner countries and partner regions.
- Torture, enforced disappearances and summary or indiscriminate executions are forms of domestic oppression which, if there is talk of a widespread and systematic pattern, lead to the refusal of an export licence by the Strategic Goods Control Unit with regard to goods that can be used for such practices.
- Flanders supports international initiatives that assist and give a voice to the victims of torture, enforced disappearance and other serious human rights violations.

B. THE FIGHT AGAINST EVERY FORM OF DISCRIMINATION

The Coalition Agreement assumes that the Government of Flanders will work towards a **"policy of zero tolerance in the area of discrimination"**. This attainment target is to be pursued in both domestic and international policy. The fight against discrimination is also a central theme of Flemish development cooperation and Flemish participation in the policy making of international organisations. Foreign policy will pay special attention to three forms of discrimination:

- discrimination on the grounds of sex;
- discrimination on the grounds of sexual preference; and
- discrimination against indigenous and nomadic people.

• Equality between men and women

The emancipation of women and more generally the fight against all forms of sex discrimination have **always been high on the Flemish policy agenda**. The international aspect has never been lost from sight, as we see from the former Flemish Parliament Act of 13 May 1997 on the follow-up of the resolutions of the World Conference on Women that took place from 4 to 15 September 1995 in Beijing, and has, in the meantime, been incorporated in the broader Flemish Parliament Act of 10 July 2008 containing a framework for Flemish equal opportunities and equal treatment policy. The theme “gender” is also a cross-cutting theme in the Flemish Framework Act on development cooperation of 22 June 2007 (art. 10). The Equal Opportunities in Flanders unit has been active internationally for many years, as can be seen from its annual participation in the United Nation’s “Commission on the Status of Women”, which focuses every year on another attainment target in the Beijing Action Plan. The new organisation UN Women - which has been operational since January 2011 - also offers Flanders new opportunities to disseminate its gender policy at a global level. Conversely, the reforms in the Council of Europe, and more particularly the new architecture for gender (as for disability), mean that there is a need for strengthened cooperation with the Permanent Representation so as not to lose sight of the gender perspective in the activities of the Council of Europe. In this regard, the existing steering group for gender, in which all 47 member states took part, is to be replaced by a committee of 16 experts.

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For many years, the focus on the gender issue has taken shape in the **focus on women in the framework of healthcare** in Mozambique, Malawi and South Africa, in accordance with the country strategy papers drawn up through a policy dialogue between these three partner countries and the Government of Flanders. This theme is brought to a conclusion in both bilateral and multilateral projects (via UNAIDS, with which a new cooperation agreement has only just been signed, and the World Health Organization) relating to the growing feminisation of the HIV/AIDS epidemic or the approach to domestic violence and rape.

• Discrimination against lesbian, gay, bisexual, and transgender people

As in Flanders’ internal policy (Coalition Agreement, page 78), **Flanders is also carrying the fight internationally against stereotypical views of lesbian, gay, bisexual, and transgender (LGBT) people**. This takes shape in the aforementioned activities, such as the formation of the Informal Network of Governmental LGBT Focal Points, in which Flanders participates, or funding of the research carried out by the Council of Europe Human Rights Commissioner on discrimination on the grounds of sexual identity.

In seven countries the penalty for homosexuality is death, while more than 70 countries impose prison sentences on lesbian, gay, and bisexual people. This situation is of course unacceptable. The fact that the official representatives of some states in the Human Rights Council can say without batting an eyelid that there is no human rights standard whatsoever to prevent discrimination against lesbian, gay, and bisexual people shows clearly that there is still a long way to go. Moreover, it has not yet been possible to get the General Assembly of the United Nations to pass a resolution to the effect that homosexuality be decriminalised. That being said, on 18 December 2008 a declaration on the subject was read out by the Argentinean ambassador and then endorsed by 67 states, among them all the member states of the European Union. On the other hand, 57 states signed a declaration opposing decriminalisation. The rights of lesbian, gay, bisexual, and transgender people continue to cause controversy internationally. We must work tirelessly to ensure that the group of well-meaning states increases, so that in time, as was the case with the moratorium on capital punishment, there is sufficient support within the community of states to include decriminalisation in a real resolution, even if this is just a first step in the effective banishment of discrimination. The adoption on 31 March 2010 of a recommendation on the combating of discrimination on the grounds of sexual orientation and gender identity by the Committee of Ministers of the Council of Europe, and the historic resolution of the Human Rights Council on 17 June 2011, in which violence and discrimination on the grounds of sexual orientation were condemned and the High Commissioner for Human Rights was requested to carry out a study in this regard, are already positive signals.

In a number of resolutions, most recently on 2 February 2011, the Flemish Parliament has also shown its concern for the rights of lesbian, gay, and bisexual people across the world. The situation of an openly gay couple in our partner country Malawi was also covered in some detail in the Flemish Parliament, and as a result of this there were consultations with the Malawian ambassador in Brussels. Indeed, the Government of Flanders shares the concern about discrimination against lesbian, gay, and bisexual people. All the

more so, as the Government of Flanders is, in international terms, on the front line in the fight against discrimination against lesbian, gay, bisexual, and transgender people.

- **Rights of indigenous and nonsedentary peoples**

Worldwide there is a 370-million strong population of indigenous peoples, in other words, peoples who have a long cultural continuity with the area they inhabit, and at the present time live in a non-dominant position alongside a more recent population, but despite this wish to continue their cultural practices and traditions. It was not until 13 September 2007 that sufficient consensus was found in the international community to issue a Declaration on the rights of indigenous peoples. Flanders endorses the principles put forward in this declaration.

The rights of indigenous peoples have for many years been a special point for attention for the Flemish Parliament, which, in resolutions of 1998 and 2001, urged that these rights be respected in international cooperation. The requisite attention has also been paid via the Flemish trust fund with UNESCO. In the future, the Government of Flanders will continue to strive to include **projects with specific added value for members of indigenous peoples** in bilateral cooperation agreements and in the selection of projects funded via the multilateral trust funds.

Roma, Sinti and related population groups represent the **largest ethnic minority in the European Union**. It has been estimated that there are 10 to 12 million Roma in Europe. The largest concentrations are located in Central and Eastern Europe. In their day-to-day lives, they face prejudice, intolerance, discrimination and social exclusion. They frequently migrate for humanitarian reasons. Although a great many Roma are EU citizens, they often have a precarious residence status. They are far behind the rest of the population when it comes to education, healthcare, work and housing. In line with the ten fundamental community principles on the integration of the Roma (European Roma platform, 2009) and as part of the “national strategy for the integration of the Roma” as requested by the European Commission, the Government of Flanders has drawn up an action plan for Central and Eastern European (Roma) migrants. Raising the subject of discrimination and investing in integration in the countries of origin is one of the explicit objectives of the plan.

Also in **Flemish minority policy**, that took shape in the Flemish Parliament Act of 28 April 1998, residents of mobile dwellings formed a special group. This is also the case in the new Parliament Act on integration of 22 April 2009 and this translates into a Strategic Plan on Mobile Dwelling Policy (prepared by the Flemish Commission for Mobile Dwelling) and into subsidies for the construction of mobile dwelling and transit sites. The Flemish Coalition Agreement specifies that Flanders will ensure that local governments meet their agreements to provide sufficient and sustainable transit sites and allow residents of mobile dwellings to set up permanent sites.

The international **non-tolerance policy against discrimination takes shape** in:

- a permanent focus on **gender as a cross-cutting theme in development cooperation**, which mostly translates into projects in the area of healthcare;
- **support of initiatives** by authoritative international organisations such as the Red Cross that focus specifically on the theme of **women as a particularly vulnerable group in conflict and post-conflict situations**, as acknowledged by Security Council resolution 1325 in 2000;
- participation in activities in **international organisations** (Council of Europe and United Nations) in the framework of the international fight against discrimination against lesbian, gay, and bisexual people. The Government of Flanders and the Netherlands together christened the Informal Network of Governmental of LGBT Focal Points and organised, in the framework of the EU Presidency, an international conference on the subject of education and lesbian, gay, bisexual, and transgender policy. The Government of Flanders also urges that discriminatory laws be systematically raised for discussion by Belgium in the Universal Periodic Evaluation of other countries in the Human Rights Council.
- special attention focused on bilateral cooperation in the work programmes, where applicable and in consultation with the partner country and countries of origin, in relation to **projects that benefit indigenous and nonsedentary peoples**.

C. RESPECT FOR THE RIGHTS OF THE CHILD

The Flemish Parliament ratified the Convention on the Rights of the Child on 15 May 1991. This made Flanders was the first government in Belgium to endorse this treaty officially. This special interest in the

rights of the child still typifies the Government of Flanders twenty years after the treaty was ratified. This can be seen in the **Flemish Action Plan on the Rights of the Child**, which the Government of Flanders approved on 15 July 2011 and which encompasses a number of international activities. With this it provided a response to the recommendations of the UN Committee on the Rights of the Child.

Furthermore, the rights of the child are a cross-cutting theme of Flemish development cooperation (art. 10 Development Cooperation Framework Act), and the present Flemish Parliament Act of 18 July 2008 on youth and children's rights policy provides for reporting on international initiatives taken in the various youth and children's rights policy areas. **Through this, concerns with regard to children's rights are embedded in Flanders' international policy through Acts of the Flemish Parliament.**

The Convention on the Rights of the Child is the United Nation's most ratified human rights convention. It has been signed by 193 states. The two Optional Protocols, on the Involvement of Child Soldiers on the one hand, and on the Sale of Children, Child Prostitution and Child Pornography on the other, do not enjoy the same, almost universal ratification. Flanders will therefore **discreetly yet consistently urge its partner countries to sign up to these Protocols**. The same is true for the future Protocol introducing a complaints mechanism.

One important point for attention in the shared development priorities of Flanders and its partner countries is **care for young children and people in a difficult educational situation**, among other things through support for the World Health Organization.

One particularly harrowing form of children's rights violation is the sad fate of **child soldiers**, to which one of the extra protocols to the Convention on the Rights of the Child is devoted. By virtue of the current Arms Export law, the export or transfer of arms intended for use by an army which is known to use child soldiers is forbidden. This is an added reason for refusal over and above the rules issued from the common position of the European Council, which will be retained in the new Flemish Parliament Act on Arms Trade. The Government of Flanders is also endeavouring to ensure that this reason for refusal is included in European legislation and in the United Nation's future Arms Trade Treaty. Security Council resolution 1882 of 4 August 2009 strengthened the international control mechanism against child soldiers, and the information from this mechanism will be used by the Strategic Goods Control Unit. The Government of Flanders also places a great deal of hope in the prosecution by the International Criminal Court (ICC) of a number of suspects from the Democratic Republic of Congo, who are thought to be guilty of having conscripted child soldiers.

Flanders also contributes internationally to **respect for the rights of the child** through:

- urging partner countries to ratify and convert the **international acquis in the area of the rights of the child**;
- full support for the development of a **complaints protocol to the Convention on the Rights of the Child**, to become a reality in the shortest possible time;
- continued focus on **the rights of the child as a cross-cutting theme in development cooperation**, which above all translates into projects in the areas of healthcare, education and the needs of children and young people in a difficult educational situation;
- the partnership between Flanders and UNICEF, which reached its conclusion in the recent multiannual agreement 2011-2015;
- support for initiatives offering a way out for children and young people who were **deployed as child soldiers**;
- retention in **future Flemish arms export legislation** of the tightened up ground for refusal compared to European rules, so that export licences can be refused to armies known to have made use of child soldiers.

D. THE RIGHT TO DECENT WORK

In times of economic crisis, short-term considerations can place a strain on fundamental labour rights, such as those guaranteed in the ICESCR and in the various treaties of the International Labour Organization. However, the right to decent work gives interpretation to the **social dimension of sustainable development**, which is commensurate with the economic and ecological components. On this subject there is international consensus, which was endorsed by the world community at the World Summit of the United Nations in 2005.

Sustainable growth must thus go hand in hand with a systematic improvement in working conditions. As stated earlier, Flanders seeks to set the right example by entering into broader undertakings with the other competent authorities in Belgium in the framework of the European Social Charter, among other things in the area of working conditions. The Government of Flanders also attaches in its foreign policy, in conformance with the Coalition Agreement, particular importance to the broadest possible application worldwide of the fundamental labour and environmental standards, and will endeavour to stimulate this application as strongly as possible in **trade policy at the European level**.

Through its existing trust fund with the **International Labour Organization**, Flanders has already supported in the past projects that contribute to an improvement in social standards. The new general cooperation agreement between Flanders and the ILO works even harder towards this end. Even more than it did previously, Flanders wishes to use the resources that it provides for the ILO to invest in increasing respect for the fundamental social rights in growth and developing countries. With this, the Government of Flanders is also showing its express support of the ILO's campaign to ratify eight core treaties, including the treaties on the minimum age of employment and the abolition of the most serious forms of child labour. The latter also reveals, through the close link with the rights of the child, the interdependence of the various priorities and human rights in general. This is also the case for the prohibition of penal servitude and the principle of non-discrimination, which, along with freedom of (professional) association make up the other core treaties of the ILO.

Flanders wishes to contribute to a better international fulfilment of **the right to decent work** in the following ways:

- Via the Flemish trust fund at the International Labour Organization, the Government of Flanders will **invest in an increasing respect for fundamental social rights** in emerging and developing countries.
- The Government of Flanders will work hard to ensure that **clauses on fundamental working and environmental standards** are included in future investment treaties of the European Union and the Belgian-Luxembourg Economic Union (BLEU).
- The right to decent work is also prominent in the **Operations in the North of the Flemish Development Cooperation**, through the support of projects for development education on fair trade, through awareness-raising via the media and in the Government of Flanders' sustainable procurement policy.

B. RESPECT FOR HUMAN RIGHTS IN INTERNATIONAL COOPERATION

When selecting partner countries for more intense cooperation, the human rights situation in that other country has played (and continues to play) an important role. In the case of development cooperation this is made explicit in the Framework Act on cooperation development of 22 June 2007 by using **"good governance" as a criterion for the selection of partner countries** (art. 7). In this Act, good governance is defined as "the method that aims to optimise management of the institutional capacities, the decision making process of the governments and management of government monies subject to democracy, the rule of law and human rights and the fundamental freedoms" (freely translated).

Naturally, there is room in each country for a better and more far-reaching fulfilment of human rights. In developing countries in particular, the economic circumstances are often such that some human rights, usually economic or social human rights, are open to improvement. Good governance as a selection criterion does not mean that the country in question should have a spotless human rights record, but that it **wishes to take a progressive approach to gradually improving the human rights situation**, both through its own policy and in cooperation with the donor community.

Despite these cooperation criteria, relapses in the area of human rights cannot be ruled out in a partner country. The enormous needs of the local population **argue against stopping assistance for a country in which the human rights situation** creates cause for concern. If, nonetheless, a serious conflict does arise over the human rights situation in the partner country, Flanders will, in cooperation with other donors, channel its resources to multilateral organisations or civil society organisations whose activities preferably dovetail with the priorities in the strategy paper for development cooperation with this country. Flanders also uses the European Union guidelines for human rights defenders to **espouse and protect the work of social actors who contribute to the further development of human rights in its partner countries**.

Outside development cooperation too, respect for human rights is also investigated prior to an intensification of relations with a country or region, so that here too it can be considered, at least implicitly, as a selection criterion. The Flemish Coalition Agreement places an extra focus on the **Western Balkans and the new Member States of the European Union**, and an active use of the treaty law. As in the past, the Government of Flanders will be guided in its cooperation decisions by a qualitative environment analysis, in which the human rights situation is deserving of a chapter. Possible partners in an agreement will be invited to include references to human rights in the cooperation agreements.

Flanders cooperates internationally with countries that **wish to adopt a progressive approach towards gradually improving the human rights situation**. However, if there is a relapse in this cooperation, financial resources will be reoriented to other actors in the partner country.

C. HUMAN RIGHTS DIALOGUE VIA APPROPRIATE INTERNATIONAL FORUMS

A. INTRODUCTION

As a relatively small federated state, Flanders has only a limited selection of instruments which it can use in order to raise problems in the area of respect for human rights. Flanders does not have active bilateral relations with most of the states in which serious human rights violations take place. Therefore, it is all the more important to invest in two valuable, existing international forums where these problems can be raised in an institutionalised manner: on the one hand, agreements between the European Union and partner countries or groups of partner countries, and on the other, the UN Human Rights Council.

Also when exchanging visions with countries with which we work more closely, more particularly the three partner countries in Southern Africa, Flanders opts for a **multilateral setting in which policymakers, civil society and academics from the partner countries and Flanders are brought together** in a so-called dialogue between governments, which, given the relationship between donor and receiving state, is difficult to consider as a talk between equals.

B. EUROPEAN UNION

As a part of the European Union, a world player, Flanders has an excellent channel by which to turn a number of its concerns into a meaningful dialogue on human rights. For this reason, Flanders will maximally air its human rights concerns via the channel offered by the European Union. **Indeed, the European Union's external policy is packed with goals in the area of human rights and democratisation.** The current reforms in the area of neighbourhood strategy (with greater emphasis on democracy and conditionality) and human rights strategy will ensure even more than previously that human rights run through the core of the external policy of the Union and that the collective weight of the Union and the member states is felt to a maximum in human rights issues.

The European Union can only be credible if the human rights situation in the member states meets its own strict requirements. For this reason, in the context of the **accession negotiations** Flanders insists on a full respect of the human rights as set out in the Copenhagen criteria.

The European Union also implements a human rights dialogue with a number of important countries or groups of countries, in which it follows the EU guidelines for human rights dialogues of 13 December 2001. These dialogues take place in **a number of different contexts**:

- in the framework of a partnership agreement, such as the - Flemish Parliament approved - agreements under the Barcelona process (countries of the Mediterranean Sea region), the stabilisation and association agreements with countries from the Balkans and the Cotonou Agreement with the African, Caribbean and Pacific Group of States;
- the dialogue with China which focuses exclusively on human rights (as did the earlier dialogue with Iran);
- ad hoc dialogues on human rights in the framework of a broader dialogue with third party countries;
- the dialogues in the context of the special relationships which the European Union has with countries that share the same opinions over a broad area, such as Canada, the USA and the candidate countries.

The **subjects covered** in the dialogues differ, but comprise accession to human rights instruments and their implementation, cooperation with international human rights mechanisms, the fight against capital punishment, against torture and against all forms of discrimination, the rights of the child, women's rights, freedom of expression, of assembly and of conscience, respect for the constitution, the role of civil society, international cooperation in the area of justice, and conflict prevention. There is therefore a huge convergence with the Flemish priorities outlined above. The Government of Flanders also monitors the activities of the High Representative for Foreign Policy in the area of human rights - such as the European Instrument for Democracy and Human Rights and the anticipated European human rights strategy - so as to harmonise its policy, in conformance with the policy memorandum on international policy, with European foreign policy.

The position of the European Union as a world power also means that the points which Flanders can push to the fore via its internal Belgian (DGE) preparatory activities, **can be raised with a greater chance of success in the partner countries** than if the Government of Flanders were to raise them bilaterally: this is because there is no structural cooperation with most countries, with the result that a separate expression of indignation by the Government of Flanders can have little or no effect. If Flanders has a particular concern over certain situations or has useful information from its partner countries, it will contact the new European External Action Service (EEAS).

C. HUMAN RIGHTS COUNCIL

Besides the human rights dialogue of the European Union, the aforementioned **Universal Periodic Review (UPR)** of the Human Rights Council of the United Nations offers the possibility to raise situations that offer cause for concern.

For this reason, we are working harder towards a Flemish contribution to the Belgian or European interventions following the presentation of the self-evaluation reports of the various states. This Flemish contribution will focus **in particular on the fight against gender discrimination and discrimination on the grounds of sexual orientation and on the rights of the child**. The Government of Flanders expects the federal government to ensure that the sessions of the Human Rights Council and the sessions of the UPR are prepared in Belgium through intra-federal cooperation in conformity with the rules in the cooperation agreement on "mixed" international organisations, so that Flanders and the other communities and regions can lend shape to the Belgian standpoint.

The Council also has a number of "**special procedures**" with which situations in a given country or particular themes that create problems all around the world can be tackled. At this time there are 8 country-specific (Burundi, Cambodia, Haiti, Myanmar, North Korea, Palestinian Territories, Somalia and Sudan) and 31 thematic special procedures. The Government of Flanders deplores the systematic restriction of the country-specific mandates - as was painfully seen in the non-extension of the procedure for the Democratic Republic of Congo, where there remains a great need for international watchfulness. As far as the thematic procedures are concerned, the Government of Flanders strives here too to take a qualitative line of approach in its questions of the member states, so that the other countries can also use the same high standards to formulate their answers.

D. HUMAN RIGHTS SEMINAR IN SOUTHERN AFRICA

The **Framework Act on Development Cooperation** of 22 June 2007 provides that the situation in the area of human rights, democratic development and peace is a specific point for attention in the policy dialogue with the partner country, in which both governments and representatives from civil society are involved (art. 4, 3°).

The Government of Flanders opts to allow this exchange of visions to take place in the form of a talk between multiple partners in the framework of a **human rights seminar in Southern Africa**. As a result, experts in the government, representatives from civil society and academics from Flanders, Malawi, Mozambique and South Africa can be brought together in an informal setting in the actual region in question in which the hearing of each other's experiences and the giving of recommendations for mutual cooperation take centre stage. Regional authorities such as the recently-formed African Court of Human Rights will also be involved in this. Seminars like these can be held on a variety of subjects, from focusing on a particular right to more institutional subjects, such as the design of internal human rights institutions or reporting to international authorities.

Flanders endorses a multilateral approach to the raising of problematic human rights issues by:

- **harmonising Flemish policies with the European human rights strategy;**
- insisting in the context of the **accession negotiations** on full respect of the human rights as specified in the Copenhagen criteria;
- **having Flemish points flow through for attention to the Belgian interventions in all relevant European and international forums;**
- allowing the **human rights dialogue** with partners in Flemish development cooperation to take place in a **multilateral setting** in Southern Africa, attended by stakeholders and experts from Flanders as well as the partners.

D. HUMAN RIGHTS AND THE INTERNATIONAL ECONOMY

A. INTERNATIONAL ARMS TRADE

By virtue of article 4, § 1, 4°, a, of the existing Arms Export law, still used by the Flemish Strategic Goods Control Unit until acceptance and introduction of a new Flemish Parliament Act on the Arms Trade, **the government refuses export and transfer licences for weapons and military equipment** if there are indications that, in the destination country, “the export or transfer contributes to a clear violation of human rights, there is a clear risk that the export in question will be used for domestic oppression or if it has been established that children have been put to use in armed conflict”. Great care is also taken when, on a case-by-case basis and taking account of the nature of the equipment, licences are issued to countries in which serious human rights violations have been observed by authorities empowered by the United Nations, the Council of Europe or the European Union. This regulation interprets the second criterion of Common Position of the Council 2008/944/CFSP of 8 December 2008, which updates and makes binding the provisions of the former Code of Conduct of the European Union on arms exports. The Flemish Coalition Agreement and policy memorandum state that the new framework taken via Flemish Parliament Act for monitoring the international arms trade must rest on a Code of Conduct. This will provide a strong control with a balanced and responsible consideration of the ethical, economic and security elements.

Besides this new Flemish Parliament Act on the international arms trade, the Government of Flanders is also working, in its broader policy, towards a **peace economy**. Through implementation of Regulation 428/2009 setting up a regime for the control of export, transfer, brokering and transit of dual-use items, the Government of Flanders tries to prevent products that originate in Flanders and that can have both a civilian and a military use from contributing to the production of chemical, biological or nuclear weapons. As far as chemical weapons are concerned, the Government of Flanders also makes its contribution through the implementation of the Convention on Chemical Weapons. Finally, the Government of Flanders invests in outreach, by raising awareness among Flemish businesspeople of the importance of controlling the export of strategic goods.

B. INTERNATIONAL ENTERPRISE

The right to decent work is, as we have said above, one of the four points that Flanders wishes to stress in its international human rights policy. Besides financial support for the International Labour Organization for decent working conditions, the Government of Flanders continues to work on a number of **policy instruments** that can be used to this end.

Since Flanders wishes to work towards a fair world, we are dedicated to a **(more) sustainable world trade**. The Government of Flanders undertakes to opt as far as possible for honest products that guarantee that the extra costs for sustainable production are not shifted in full onto the South.

FIT (Flanders Investment & Trade) undertakes a great many actions around sustainable enterprise, both on behalf of Flemish business and industry and within its own organisation, among other things by means of information sessions or seminars and via the FIT’s information channels (website, country files, articles in the newsletter). Indeed, international economic expansion can be successfully combined with respect for sustainability and ethics. The **principle of sustainable and ethical international enterprise (SEIE)** are embedded in all grant rules that apply in Flanders in the area of international enterprise.

The guide **“Duurzaam Internationaal Ondernemen – 50 landen wereldwijd in actie en dialoog”** (Sustainable International Enterprise - 50 countries worldwide in action and dialogue), created through a part-

nership between FIT and Kauri and Sustenuto, gives companies the possibility of developing their business policies further at a sustainable and ethical international level, in the spirit of the OECD guidelines for multinationals. This guide gives Flemish companies clear information on all aspects of importance to sustainable international enterprise, with practical country-by-country information on local networks for sustainable and ethical enterprise, and points for companies to bear in mind during international expansion.

The diamond sector, which employs about 8,000 people directly and more than 25,000 indirectly, is an important component of the Flemish economy. The international community is particularly vigilant in its efforts to avoid financing conflicts through the diamond trade. The Government of Flanders shares this concern, and lends its support to the centre, which in collaboration with UNITAR, the UN training institute, gives training courses in Antwerp on **corporate social responsibility in the diamond industry**.

On an initiative started by a number of MPs and non-governmental organisations, the governments of Belgium and Luxembourg reached agreement in 2002 on the insertion of not just an environmental clause, but a **social clause in the specimen text for bilateral investment treaties** (BITs) of the Belgian-Luxembourg Economic Union (BLEU), which concludes investment treaties on behalf of both countries and the three Regions. As a result, these BITs make explicit reference to the fundamental working rights set out by the International Labour Organization (ILO).

This insertion assumes firstly that the prospect of signing a BIT with the BLEU will encourage the potential treaty partner to enter into commitments in the areas of environment and working conditions, and aims secondly to set an example to other OECD member states, in the hope that similar provisions will be inserted in their specimen agreements. Indeed, the **BLEU was the first body to include clauses of this type in the actual text of the agreement** - before then there were a number of other states (of which one was Finland) that merely alluded to social and environmental goals in the preamble of their specimen texts. The USA has in the meantime also included similar clauses on working standards and environment in the dispositive section of its treaties. Needless to say, the actual wording of the ultimate treaty text depends on the progress of negotiations with the other party. The Flemish Coalition Agreement provides that the broadest possible worldwide application of the fundamental working and environment standards should be stimulated as strongly as possible, through the BLEU investment treaties and European-level policy. For this reason, Flanders is endeavouring to include these **clauses in future European trade and investment treaties**.

Finally, the Flemish Coalition Agreement states that the Government of Flanders representation in the federal state-owned company **Delcredere** will argue for **greater transparency** in the company.

C. INTERNATIONAL TOURISM

The Flemish regulations have, since last year, imposed on travel agents the obligation to refuse to cooperate with **trips based around child prostitution and human trafficking** and to subscribe to the principles, especially those of sustainable tourism, set out in the UNWTO's **Global Code of Ethics for Tourism** (article 31bis of the implementing order of the Flemish Parliament Act on Travel Agencies). The Government of Flanders will ensure that this global code of ethics is widely disseminated in the sector, and monitor compliance with the provision in the framework of tourism enforcement policy. Flanders also continues to cooperate, through its associated membership of UNWTO, on the code's further implementation and refinement.

Human rights and support for international enterprise are by no means contradictory concepts. The Government of Flanders fulfils its role here through:

- a balanced and responsible consideration of **ethical, economic and security elements in its licensing policy** for the international arms trade;
- support for the Antwerp UNITAR training institute for **corporate social responsibility in the diamond industry**;
- stimulation of **sustainable and ethical international enterprise** by Flemish companies, in the spirit of the OECD guidelines for multinationals;
- attention for sustainability and honest trading in **internal procurement policy**;
- insisting on the inclusion of **clauses on fundamental working standards in future bilateral and European trade and investment treaties**, alongside the aforementioned financial support for initiatives on these standards by the International Labour Organization;
- support of UNWTO initiatives in the **fight against child prostitution and human trafficking**.



SEVEN FUNDAMENTALS

1. Insofar as they are not diametrically opposed to the constitutional order of this country, Flanders will work towards its parliamentary approval of several important human rights conventions. It will look into how added **commitments** may be undertaken.
2. Flanders invests in internal governmental processes in order to contribute in a qualitative manner to **human rights reporting** for international control mechanisms. For this reason, the Government of Flanders provides **internal training** on human rights, their impact on policies and the consequences for Flemish legislation.
3. In its foreign policy, Flanders lays **emphasis on four groups of human rights**:
 - Respect for the physical integrity of each human being;
 - The fight against all forms of discrimination;
 - Respect for the rights of the child;
 - Promotion of the right to decent work.
4. The Government of Flanders aims to **invest in an increasing respect for fundamental social rights** in emerging and developing countries.
5. The Government of Flanders uses the criterion of “**good governance**” in its bilateral cooperation with other countries and regions, which involves them wishing to take a progressive approach towards gradually improving their human rights situation.
6. Flemish human rights policy takes account and makes use of the **multilateral and European framework**, on the one hand by employing the European guidelines for human rights defenders and for capital punishment, and on the other hand by having Flemish concerns flow through to the European and UN forums.
7. The Government of Flanders shall, in implementing the **Flemish Parliament Act on Arms Trade**, continue to focus attention on a balanced and responsible consideration of ethical, economic and security elements.

HUMAN RIGHTS AGENDA

International Convention on Civil and Political Rights (ICCPR)	The periodic report was defended before the Human Rights Committee in October 2010. The final date for the next report is 29 October 2015.
International Convention on Economic, Social and Cultural Rights (ICESCR)	The latest report was submitted on 1 September 2010.
Convention on the Elimination of Race Discrimination (CERD)	The last Belgian report was defended in April 2008. An interim report was submitted in 2009. The final submission date for the next report is 6 December 2012.
Convention Against Torture (CAT)	The periodic report was submitted to the Committee in the course of 2005. The Committee processed that report in November 2008. The final submission date for the next report is 21 November 2012.
Convention on the Elimination of Discrimination Against Women (CEDAW)	The periodic report was submitted in 2007. Additional questions by the Committee were answered in the spring of 2008. The report was defended in 2008. The final submission date for the next report is 31 October 2012.
Convention on the Rights of the Child (CRC)	The periodic report was defended in June 2010. The Government of Flanders acted upon this by approving on 15 July 2011 the Flemish Action Plan on the Rights of the Child 2011-2014. The children's rights coordination is helping from within the NCRC to develop a new specimen report for the next report. The final submission date is 14 September 2017. Uiterste indieningsdatum is 14 september 2017.
Convention on the Rights of Persons with Disabilities (CRPD)	The first Belgian report was submitted on 1 August 2011. At the same time, the new Belgian "core document" was submitted.
Convention against Enforced Disappearance (CED)	The first Belgian report must be submitted on 2 June 2013 at the latest.
Reporting in the framework of the UN Human Rights Council	Belgium defended its report in the framework of the UPR of the Human Rights Council on 2 May 2011. The report was definitively accepted in September 2011. The first interim status report will be drawn up in 2013.

CREDITS



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