



POLICY PAPER 1504

Youth Rights

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President: Noziwe Dube

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The Flemish Youth Council on 1 juli 2015 under the presidency of Noziwe Dube, and in the presence of the aforementioned participants, has unanimously adopted the following recommendations:

1. Ensure adherence to the rights of youth and tackle societal issues and problems which detrimentally affect the position of the youth. Ensure that youth rights are respected so that the basic conditions for a decent standard of living can be enjoyed and youth can build towards their future. 5
2. Ensure that policy concerning youth and children's rights sufficiently departs from a rights-based perspective. Mobilize youth in defending their rights and place sufficient emphasis on the needs of vulnerable youth. Incorporate youth rights in JoKER and ensure that legislation contributes to the rights of youth and children. Increase the age limit for the applicability of JoKER from 25 to 30 years. 6
3. Comply with the recommendations concerning the rights of youth encompassed in national and international human rights instruments. Ensure that youth and their respective organisations are aware of the concerned instruments and mechanisms and know how these can be employed in order to ensure effective enjoyment of their rights. Establish an independent human rights institute in Belgium 7
4. Ensure that youth are taught about human rights throughout their education and extra-curricular activities. Structurally incorporate human rights education in teaching plans and ensure that everyone who comes in contact with children can receive human rights education. Provide youth with the opportunity to access sufficient and adequate information concerning their rights, both online and offline. 8
5. Ensure that, insofar wanted by the child concerned, they can exercise the right to be heard in divorce proceedings, and ensure that this is complied with an approach that is child-friendly. Establish a contact point which children can turn to in order to see their respective rights ensured and which can function as a means of acquiring relevant information. Facilitate access to sufficient and adequate information, which is accessible to children. 9
6. Improve the implementation of legislation concerning online-privacy for youth. Inform youth about use of the Internet, their rights and contact points, which they can turn to in case of problems. Achieve the foregoing via awareness-raising campaigns, incorporating media-awareness in the lesson plans at school and supporting agencies and organisations, which focus on these topics. 10
7. Tackle discrimination of youth on the labour market, with a particular focus on youth with different ethnic-cultural heritage. Achieve the foregoing by, amongst others, imposing practical tests, investigating the feasibility of anonymous application procedures and by stimulating companies and government agencies to establish action plans concerning diversity. Inform the youth about their rights and contact points in this respect. 11



1 Introduction

1.1 Contextualisation

“The rights of young people in Europe have been overridden by the crisis and the austerity measures for the past few years. It is essential to guarantee that young people access their rights in order to foster political participation for young Europeans and ensure that they are fully included in the society. (Vice-President of the European Youth Forum)”.¹

The Council of Europe has dealt with the realisation and implementation of youth rights – the human rights applicable to youth and the national instruments implementing such rights – for quite some time.² The foregoing is in part thanks to the European Youth Forum, pursues as one of its objectives enhanced access for youth to their rights and a rights-based perspective in policy concerning youth.³ This platform of European youth organisations, of which the Flemish Youth Council is a member, equally so, is in favour of a new treaty in order to ameliorate the conditions and rights of youth.⁴ The latter would ensure that youth have enforceable and internationally recognized human rights and would additionally ensure that youth rights receive increased attention both on a national and an international level.⁵

In 2009, the Flemish Youth Council organised a round-table with experts concerning the rights of youth and whether a new human rights instruments in this respect is desirable in order to ensure better protection. This round-table resulted in the following conclusions⁶:

- Whilst a new human rights instrument does indeed have certain advantages, priority must go to ensuring enhanced implementation of the existing human rights instruments directed and applicable to youth.
- More information concerning the rights of youth is needed. The dispersing of such information must occur via channels accessible to youth, such as, amongst others, parents, teachers, etc.
- Human rights instruments, which are particularly relevant to youth, need be translated in order to render them more accessible.
- The United Nations (UN) must move towards all-encompassing human rights reporting, including specific reference to the rights of importance to youth.
- Children and youth organisations make better use of the existing rights-mechanisms.

In the meantime, the topic concerned has gained momentum within the framework of the European Union (EU) and the UN. The foregoing is exemplified by the joint conclusions made by the youth-representatives and policy-makers during the EU youth conference last year, pertaining to the access by youth to their rights.⁷ Moreover, in 2013 the UN organised a conference during which experts discussed the rights of children and youth and the means whereby the UN could further contribute to the enforcement thereof.⁸ Furthermore, note need be made of youth rights, which are

¹ Vice-President of the European Youth Forum Guoda Lomanaitė, press-release of the EU youth conference of October 2014 (<http://www.youthforum.org/pressrelease/joint-press-release-the-eu-youth-conference-concludes-in-rome/>)

² Parliamentary Assembly of the Council of Europe, Recommendation 2013 about young people's access to their fundamental rights (<http://www.assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19709&Language=EN>)

³ European Youth Forum, Policy Paper on Youth Rights, adopted at the General Assembly meeting of November 2012, p. 2. (http://www.youthforum.org/assets/2013/10/0527-12_PP_Youth_Rights_FINAL.pdf)

⁴ The European Youth Forum refers to two existing regional treaties in support of a new human rights treaty for youth: [Iberoamerican Convention on the Rights of Youth of October 10th and 11th 2005](#) and [African Charter for Youth of July 2nd 2006](#).

⁵ European Youth Forum, 'The young and the rightless? The protection of youth rights in Europe', p. 103. (<http://www.youthforum.org/assets/2013/11/The-Young-and-the-rightless-The-Protection-of-Youth-Rights-in-Europe-THESIS-PDF.pdf>)

⁶ Notes of the round table on youth rights elaborated by Lies Corneille, former member of the General Assembly of the Flemish Youth Council (<http://www.allesoverjeugd.be/opinie/ronde-tafel-iongerenrechten>)

⁷ The Italian Presidency of the Council of the European Union of 2014, EU Youth Conference of Italian Presidency Joint Conclusions 'Young People's Access to Rights' (<http://www.youthforum.org/assets/2014/10/EUYC2014-access-to-rights-final-outcome-.pdf>)

⁸ Office of the High Commissioner for Human Rights, notes of the expert meeting on the human rights of youth, July 25th and 26th 2013 (<http://www.ohchr.org/Documents/Issues/Youth/ExecutiveSummary.pdf>)



embedded in the UN System wide Action Plan on Youth,⁹ the Office of the Secretary-General's Envoy on Youth 2015 Work-Plan¹⁰, and the youth resolutions by the GA and the Commission for Social Development.¹¹

The Flemish Youth Council is pleased that youth rights are increasingly receiving the requisite attention on an international level. We recognize, in this respect, the contribution thereto by the Flemish government. However, we are also of the opinion that Belgium must undertake more action in order to ameliorate the oftentimes troubled and problematic situations of youth. As a result, we are of the opinion that drafting a new treaty will entail a complex political and long-term process, whilst action is required now for those young individuals subjected to the detrimental consequences of our contemporary social, economic and ecological crisis. Consequent thereto, we have drafted and directed this advice to Flanders and Belgium, calling upon both in the short-term and foreseeable future, to better implement current human rights instruments, without prejudice to a potential new treaty in the long-run.

The Flemish Youth Council drafted this advice by incorporating input by the UN Working-Group. This group is composed of young individual volunteers, the United Nations Association Flanders Belgium (VVN), the youth and student department of the UN Association Flanders Belgium (VVN Youth) and Plan Belgium. Towards the end of 2014, the UN Working-Group organised a 'Rights Night' during which youth were given the opportunity to provide input on specific topics concerning youth rights. In addition thereto, the participants were given the opportunity to interact with human rights experts.

1.2 Defining youth rights

In its work concerning the rights of children and youth, the European Youth Forum makes use of the term "youth rights". A youth rights human rights instrument has yet to be drafted, and the term as such has not yet been incorporated in existing legislation. As a result, no legal definition can be found as to what youth rights represent and to whom they are applicable. The Parliamentary Assembly of the Council of Europe describes youth rights as follows:

'Youth rights are those rights which enable young people to successfully make the transition between childhood and adulthood, to become informed, independent, autonomous, responsible and committed citizens at local, national and international levels'.¹²

Such rights are found in treaties and national instruments. In first instance such rights are found in human rights encompassed in treaties¹³, which determine the rights youth have within the framework of topics such as education, free time, participation, employment, freedom of expression etc. They are bestowed upon everyone irrespective of, amongst others, origin, nationality, conviction, gender, sexuality, and legal status. In addition to the foregoing, children additionally enjoy specific protection provided for by the UN Convention on the Rights of the Child.

The Flemish Youth Council seeks to emphasize that the rights of youth are not solely incorporated in the aforementioned human rights instruments, but that they are equally so, found embedded in the national instruments which implement human rights treaties. This is exemplified, amongst others, by Flemish legislation concerning education, participation and integral youth care. Additional examples are the Belgian constitution; the Federal law concerning the placement of minors and the Federal law with regard to youth protection. In our opinion rights

⁹ Further information about the UN System-wide Action Plan for Youth and the rights of youth is available at: <http://unyouthswap.org/thematic-areas/protection-of-rights-and-civic-engagement>

¹⁰ UN Envoy for Youth, Work Plan 2015 (http://www.un.org/youthenvoy/wp-content/uploads/2013/07/OSGEYs-Work-Plan_2015.pdf)

¹¹ Youth resolutions are available on this website: <http://undesadspd.org/Youth/ResourcesandPublications/Youthresolutions.aspx>

¹² Parliamentary Assembly of the Council of Europe, Recommendation 1978 (2011), appendix 'Ten principles for a European framework convention on youth rights' (<http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/EREC1978.htm>)

¹³ At UN level: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1979), the International Covenant on Economic, Social and Cultural Rights (1979) and treaties that protect vulnerable groups, such as children, women, handicap people and refugees. At the Council of Europe level: the European Convention on Human Rights (1950), the European Social Charter (1961), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989), the Convention on Action against Trafficking in Human Beings (2005), the Revised European Charter on the Participation of Young People in Local and Regional Life (2003). At EU level: several EU treaties, the Charter of Fundamental Rights (2010) and specific legislation, amongst others on asylum and migration, external relations and justice.



concerning youth are predominantly concerned with the rights of particularly vulnerable youth. In this respect the Flemish Youth Council refers to the list of recognized and not legally recognized rights¹⁴ established by the European Youth Forum:

- The right to autonomy
- The right to education
- The right to participation
- The right to employment and social protection
- The right to freedom of expression and information
- The right to non-discrimination and equal treatment
- The right to freedom of thought, conscience and religion
- Rights concerning juvenile criminal law and detention
- The right to mobility
- The right to sexual and reproductive health
- The right to make decisions with respect to your own body
- The right to a healthy life
- The right to engaging in volunteer and charity work
- The right to refuse military service.¹⁵

As no international definition of youth exists, it is extremely difficult to determine the recipients of youth rights. States and regions employ individual and differing definitions of youth, which vary tremendously. For statistical purposes the UN defines youth as encompassing individuals between the ages of 15 and 24.¹⁶ There is however agreement as to the fact that youth are those individuals, who find themselves in the transition of childhood to adulthood, and dependence to independence. Despite this consensus, disagreement persists with respect to when this transition-phase takes place in particular.¹⁷ The Flemish Youth Council applies the definition of youth as defined by the Flemish government, entailing that youth encompass individuals up until the age of 30.¹⁸

¹⁴ The not legally recognized rights are the right to autonomy and the right to engage in volunteer and charity work. The right to refuse military service doesn't apply to Belgium, as since 1994 military service has been suspended.

¹⁵ European Youth Forum, Policy Paper on Youth Rights (2012), adopted at the General Assembly meeting of November 2012, p.10. (http://www.youthforum.org/assets/2013/10/0527-12_PP_Youth_Rights_FINAL.pdf)

¹⁶ UN, Fact sheet on the definition of youth (<http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>)

¹⁷ Angel. W, Cardona J. & Guisepe P. et al *The International Law of Youth Rights: second edition* (2015), chapter XV.

¹⁸ Decree on conducting a renewed Flemish youth and children rights policy of January 20th 2012, article 2 (http://www.sociaalcultureel.be/jeugd/regelgeving_VJKB/decreet_vernieuwdJKRB_gecoördineerd_cor.pdf)



2 Advice

2.1 Contemporary landscape of youth rights

Ensure adherence to the rights of youth and tackle societal issues and problems which detrimentally affect the position of the youth. Ensure that youth rights are respected so that the basic conditions for a decent standard of living can be enjoyed and youth can build towards their future.

Flanders is home to a multitude of societal problems, which render enforceability of youth rights particularly difficult and which render the youth concerned particularly vulnerable. In particular, underage migrants¹⁹, the cascade-system in education²⁰, youth unemployment, labour discrimination²¹, lacking housing for youth in poverty²², lacking psychological support and lacking information about youth rights, can be named as a non-exhaustive enumeration of these societal deficiencies. Youth that cannot participate within society experience a difficult transition from childhood to adulthood.²³

On multiple occasions and in 2012 in particular, the Council of Europe was required to remind Belgium of its obligations concerning administrative detention of unaccompanied asylum-seeking minors.²⁴ Due to insufficient detention centres, unaccompanied minors are living on the streets, which can result in deficient human rights adherence due to human trafficking, the practice of begging or sexual exploitation. This is particularly disturbing in view of the fact that the government is held to provide specific enhanced protection to such individuals in conformity with national and international legislation, the UN Convention on the Rights of the Child, and human rights instruments generally.

Non-compliance to youth rights can result in serious and detrimental consequences for the development and independence of the youth, despite the resilience, determination, flexibility and enterprising spirit oftentimes inherent to the youth. Children and youth can undergo physical and psychological health issues, financial problems as well as social difficulties.

As a result of the foregoing, the Flemish Youth Council is of the opinion that the government should increase and enhance its compliance with youth rights, in conformity with the obligations incumbent upon it in order to ensure that the youth can enjoy the basic minimum rights in order to enjoy a minimum standard of living and can build towards their future.

Within the framework of this advice, the Flemish Youth Council would like to delve more specifically into certain youth rights issues. Furthermore, in the final chapter we have established a number of recommendations concerning *the right of children to be heard during divorce proceedings, the right of the youth to online privacy and the right of youth to non-discrimination during job applications.*

¹⁹ See policy paper 1409 of the Flemish Youth Council: https://vlaamsejeugd raad.be/sites/default/files/advies/1409_advies_eindrapport_vjbpvak.pdf

²⁰ See policy paper 1402 of the Flemish Youth Council on social inclusion regarding education and work: https://vlaamsejeugd raad.be/sites/default/files/advies/1402_advies_sociale_inclusie_in_onderwijs_werk.pdf

²¹ See Policy paper 1402 and policy paper 1113 of the Flemish Youth Council on youth and employment: https://vlaamsejeugd raad.be/sites/default/files/advies/1113_advies_jongeren_en_werk.pdf

²² See policy paper 1501 of the Flemish Youth Council about housing and youngsters in poverty: <https://vlaamsejeugd raad.be/advies/1501-wonen-armoede>

²³ European Youth Forum, The State of Youth Rights in Europe (2010), publication with support of the European Commission, p.7 (http://www.youthforum.org/assets/2013/11/youthrightsineurope_ISUU.pdf)

²⁴ Defence for Children International Belgium, press release on the condemnation of Belgium with regard to the shelter of minor migrants (<http://www.dei-belgique.be/fr/component/k2/item/266-vreemdelingende-opvang-minderjarige>)



2.2 Enhanced enforcement mechanisms

2.2.1 Rights-based approach in youth and children's rights policy

Ensure that policy concerning youth and children's rights sufficiently departs from a rights-based perspective.
Mobilize youth in defending their rights and place sufficient emphasis on the needs of vulnerable youth.
Incorporate youth rights in JoKER and ensure that legislation contributes to the rights of youth and children.
Increase the age limit for the applicability of JoKER from 25 to 30 years.

This year the Flemish government will establish a new youth and children's rights policy plan (JKP). It envisages equal treatment, broad development opportunity and space for youth and children, as well as the increase of formal and informal participation by children and youth in society.²⁵ The Flemish Youth Council finds it paramount that upon establishing and drafting of the policy plan, the Flemish government not only takes into consideration the needs of youth, but equally so, their respective rights. The government should, via the means of its policy, ensure that these rights are effectively enforced. To this end, it shouldn't solely take into consideration the UN Convention on the Rights of the Child but equally so, all national and international rights-based mechanisms applicable to children and youth.

The youth and children's rights framework is composed of the JKP and is furthermore supplemented by all national and international policy provisions which affect youth rights. The entirety of the framework surrounding children and youth rights should ideally depart from a rights-based approach. Governments should to this end, identify the rights-based issues, investigate the causes thereof, and establish their respective responsibilities. Subsequent thereto they should empower the youth to stand up for their rights, with a particular focus on vulnerable youth and children. Mechanisms should be in place which can enforce and guarantee such rights. Within the framework of this process, governments should take into account the recommendations voiced by international human rights mechanisms.²⁶

The Flemish Youth Council is of the opinion that a youth and children's rights policy framework based on rights contributes to an increasingly sustainable policy. Consequently, we advise governments within the context of youth and children's rights policy to depart from a rights-based approach. This will ensure the establishment and drafting of measures that:

- Focus on the adherence of rights concerning particularly vulnerable individuals in society, which otherwise run the risk of seeing their respective rights violate, and to eliminate discrepancies in this respect;
- Are formulated based upon participation and which conjointly contribute to the establishment of structural participation on differing levels of policy-making;
- Ensure that the youth and youth organisations are empowered to enforce youth rights and impose upon governments the obligations to rectify youth rights violations;
- Help governments in complying with their reporting and justification obligations vis-à-vis human rights mechanisms.²⁷

The Flemish Youth Council, in particular, would like to delve into the op het Child and Youth Impact Assessment (JoKER), which seeks to assess the effects of Flemish legislation upon children and youth. For every legislative initiative made by a minister in the Flemish Parliament, which may affect or be of importance of youth below the age of 25, a JoKER must be attached.²⁸ In order to attain a truly effective Flemish rights-based approach concerning youth rights, it is of the utmost importance that legislative initiatives, in the preparatory phases, sufficiently regard

²⁵ Decree on conducting a renewed Flemish youth and children rights policy of January 20th 2012, article 3 (http://www.sociaalcultureel.be/jeugd/regelgeving_VJKB/decreet_ernieuwdJKRB_gecoördineerd_cor.pdf)

²⁶ UN, The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN agencies (http://archive.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf)

²⁷ Office of the UN High Commissioner for Human Rights, Frequently asked questions on a human rights based approach to development cooperation (2006), p. 16-18 (<http://www.ohchr.org/Documents/Publications/FAQen.pdf>)

²⁸ Information on the JoKER is available at this website of the Flemish government: http://www.sociaalcultureel.be/jeugd/vikb_joker.aspx#regels



youth rights. An approach as such is the sole means whereby policy can be established which complies with youth rights as opposed to contradicting and negating them.

The Children's Rights Knowledge Centre (KeKi) has recently evaluated JoKER. Pursuant to its findings, it was held that JoKER insufficiently departs from a rights-based approach. The analysis encompassed in JoKER is focussed predominantly upon the rights encompassed in the UN Convention on the Rights of the Child, whilst ideally it should take into consideration all youth rights. In addition thereto, it appears that oftentimes government officials mandated with the establishment of the JoKER are not aware of the positive obligations incumbent upon the legislator in addition to the negative obligations incumbent upon them in attaining youth rights.²⁹ The Flemish Youth Council would like moreover, to increase the age of the JoKER from 25 to 30, in conformity with the definition of youth as defined in the Decree on conducting a renewed Flemish youth and children rights policy of 2012.

2.2.2 Human Rights Mechanisms

Comply with the recommendations concerning the rights of youth encompassed in national and international human rights instruments. Ensure that youth and their respective organisations are aware of the concerned instruments and mechanisms and know how these can be employed in order to ensure effective enjoyment of their rights. Establish an independent human rights institute in Belgium

The government should establish policy, which ensures the enforcement of youth rights. In this respect, policy-makers shouldn't take incomplete steps or adopt insufficient measures, as these can have detrimental effects and/or result in societal problems, which have not yet been addressed in policy. As such it is thus important that in Belgium human rights enforcement mechanisms exists which prompt policy-makers into taking action. This can be achieved by, amongst others, complaint mechanisms, legal verdicts, research and recommendations/advice. Examples are the Constitutional Court, the Interfederal Centre for Equal Opportunities, the Federal Ombudsman, the Privacy Commission and the Flemish Children's Rights Commissioner.

The Flemish Youth Council calls upon the Flemish and federal governments to adequately take into consideration the recommendations and verdicts of national *and* international human rights mechanisms:

- **EU:** the Court of Justice of the European Union (insofar it concerns EU-policy) as well as the EU Ombudsman (in case of violations by EU institutions).
- **Council of Europe:** the European Court of Human Rights, the European Committee of Social Rights, the Commissioner for Human Rights, the European Committee for the Prevention of Torture, and the European Commission against Racism and Intolerance.
- **UN:** the UN Committee on the Rights of the Child, additional mechanisms associated to human rights treaties (for example: human rights treaties concerning women, and treaties concerning discrimination), UN rapporteurs and envoys, and lastly, the Universal Periodic Research (UPR) by the Human Rights Council.

The international human rights mechanisms ensure and verify that the Flemish and federal governments progress towards increased compliance with international human rights. Additionally, these mechanisms adopt recommendations in individual cases or with respect to general human rights violations when our country is unable to come up with an adequate response or solution.³⁰ The objective is thus to ensure that the respective governments shape and mould policy to ensure that future human rights violations are prevented. For children and youth

²⁹ Flemish Children's Rights Knowledge Center (KeKi), evaluation of the Child and Youth Impact Assessment JoKER (2012), p. 80 – 81 (http://www.sociaalcultureel.be/jeugd/jeugd_kinderrechtenbeleid_doc/20120330%20KeKi_rapportJoKER.pdf)

³⁰ Office of the UN Commissioner For Human Rights, Human Rights in the Administration of Justice: a Manual on Human Rights for Judges, Prosecutors and Lawyers (2003), chapter 2, p. 28-29 (<http://www.ohchr.org/Documents/Publications/training9chapter2en.pdf>)



organisations, it is of importance to signal youth issues to such mechanisms when our country is unable to provide for solutions. The Flemish Youth Council consequently asks governments to better inform child and youth organisations with respect to these international human rights mechanisms and the means by which they operate.

In 2011, during the UPR of the UN Human Rights Council, Belgium accepted the recommendation to establish a human rights institute. The legislative proposal for the establishment thereof in 2013³¹ was an important step in this direction. Despite this laudable progress however, Belgium unlike other nations, has yet to effectively establish the envisaged human rights institute. The Flemish Youth Council thus implores the federal government to make haste in establishing the latter. An independent human rights institute could be instrumental in promoting and protecting children and youth rights in Belgium. Within this context, the Flemish Youth Council is readily available to support this process. Via the means of a complain mechanism, research and recommendations, an institute as such could result in enhanced human rights adherence for youth.

2.2.3 Human Rights Education

Ensure that youth are taught about human rights throughout their education and extra-curricular activities. Structurally incorporate human rights education in teaching plans and ensure that everyone who comes in contact with children can receive human rights education. Provide youth with the opportunity to access sufficient and adequate information concerning their rights, both online and offline.

In view of the current difficulties surrounding youth, and the fact that not all youth are aware of their respective rights, the Flemish Youth Council calls upon the Flemish government to ensure that human rights education is sufficiently and adequately available throughout the various phases of education. Additional thereto, the Flemish Youth Council envisages sufficient support by the Flemish government in this respect for organisations, which work around human rights during leisure and off-time. By providing such support and education, youth will gain knowledge as to what human rights are, the different human rights mechanisms to see the respective rights enforced, and the youth will generally learn how to approach and ensure the enforcement of their rights.³² Whilst much educational material concerning human rights already exists, it is not yet sufficient and an enhanced effort in this respect is required.

The UN Convention on the Rights of the Child³³ holds that governments should ensure that children are taught about their respective rights at school. The Flemish Youth Council subsequently seeks for human rights education, with a specific emphasis upon the UN Convention on the Rights of the Child, to be structurally incorporated in lesson plans of educational institutions. To facilitate the foregoing, regard should be had for the recommendations encompassed in the report on 'Children's Rights Education in Education' by the Flemish Coalition for Children Rights.³⁴

Furthermore, we find it important that all relevant actors that come in contact with children and youth have sufficient human rights educational material available to them and are sufficiently educated in this respect themselves. The foregoing ensures that an increased amount of individuals can provide information and explanations to children and youth concerning their rights, and it allows for those individuals to contribute to enhanced human rights adherence for children and youth.

Equally of importance within the framework of human rights education: according to the UN Convention on the Rights of the Child, children have the right to information, as encompassed in article 17 thereof. Teachers and extra-

³¹ Belgian Chamber of Representatives, legislative proposal of July 10th 2014 concerning the set-up of a human rights institution, Parl. St. Kamer 2012-2013, nr. 53 (<http://www.dekamer.be/FLWB/PDF/53/2946/53K2946001.pdf>)

³² Office of the UN High Commissioner for Human Rights, Plan of Action: Word Programme on Human Rights Education 2006 (http://www.ohchr.org/Documents/Publications/WPHRE_Phase_2_en.pdf)

³³ The UN Children's Rights Treaty and its protocols are available in Dutch on this website of the Flemish Children's Rights Commissioner: <http://www.kinderrechtencommissariaat.be/verdrag-en-protocollen-kinderrechtenverdrag>

³⁴ Flemish Coalition for Children's Rights, Children Rights education in education, 2014 (http://kinderrechtencoalitie.be/sites/default/files/wysiwyg/Kinderrechtenfora/kinderrechteneducatie_in_het_onderwijs.pdf)



curricular organisations are subsequently held to dispose over adequate and relevant lesson plans and materials to ensure said right.³⁵ Moreover, youth should be able to access information concerning their rights online and offline. We thus ask the Flemish government to continue to support and improve information products in this respect as well as continue to support and improve the dissemination thereof. This is achieved, amongst others, by informing individuals about very concrete situations involving children and youth rights.

2.3 Recommendations concerning specific youth rights topics

2.3.1 The right of children to be heard during divorce proceedings

Ensure that, insofar wanted by the child concerned, they can exercise the right to be heard in divorce proceedings, and ensure that this is complied with an approach that is child-friendly. Establish a contact point which children can turn to in order to see their respective rights ensured and which can function as a means of acquiring relevant information. Facilitate access to sufficient and adequate information, which is accessible to children.

“They can ask your opinion about the divorce, but you shouldn’t be allowed to decide everything. Otherwise you would be in charge of your parent’s divorce. They can ask you who you would like to live with. However, certain things children don’t need to know and are between the parents themselves”.³⁶

Belgian children are increasingly confronted with parents that have chosen divorce. It has been estimated that over half of the couples that marry subsequently result in divorce proceedings. In two out of three of the cases concerned, children are involved.³⁷ In accordance with article 9 of the UN Children’s Rights Treaty children in situations as such are entitled to maintain contact with both parents. The procedures in this respect should adequately take into consideration the opinions and thoughts of the children involved, as many children do indicate that they would like to be involved.³⁸ However, it is important to note that not all children wish to be involved – as such it is important to respect the choice of the child or children concerned. The right to be heard is not an obligation, it is a choice.

Insofar a child is effectively heard throughout divorce proceedings, this should be done in a manner that is considerate of the child. This is of the utmost importance to the Flemish Youth Council. Children that experience a divorce are already placed in a vulnerable position. As a result, the detrimental effects thereof need be limited to the greatest extent possible. Moreover, this entails that judges – when hearing children – should ensure that this is done taking into consideration the specific needs of the child and in a child-friendly environment. To achieve the foregoing, judges and lawyers should be educated in the right to be heard with respect to children. In addition thereto, they must be aware of the fact that a speedy conclusion of the divorce proceedings is in favour of the children concerned.

Children should be given information concerning their rights, the divorce proceedings and the reasoning of the judge in his or her decision-making, in a language they understand. The Flemish Youth Council finds it of the utmost importance that children are given a contact point in this respect, which can represent them throughout the divorce proceedings and can provide them with relevant information.³⁹ Insofar hearing a child is difficult, an external person should be called upon to talk with the child concerned, who can subsequently transfer his or her findings and

³⁵ Amongst others, the educative materials of Plan Belgium, UNICEF Belgium, the Flemish Children’s Rights Commissioner, KIYO and the Flemish peace institute.

³⁶ In 2014, the volunteers of the Working- Group UN of the Flemish Youth Council carried out a children’s rights consultation in order to celebrate the 25 years existence of the UN children’s rights treaty. We consulted children of the sixth year of primary school (http://issuu.com/vlaamsejeugd Raad/docs/kinderrechten_3.0)

³⁷ Deredactie.be, *Nowhere as many divorces as in Belgium*, Feb. 24th 2011 (<http://deredactie.be/cm/vrtnieuws/binnenland/1.969745>)

³⁸ EC, Children’s rights as they see them (2011), p. 7. (http://ec.europa.eu/justice/fundamental-rights/files/rights-of-the-child_nl.pdf)

³⁹ The Council of Europe has elaborated guidelines how to hear children in a child friendly manner during legal proceedings http://www.coe.int/t/dghl/standardsetting/childjustice/News/newpublications_en.asp



conclusions to the judge in the divorce proceedings.⁴⁰ Equally so, in this respect, sufficient regard need be had for the protection of the child when he or she comes from a troubled family situation.

The Flemish Children's Rights Shop is experiencing an increasing amount of questions by children concerning divorce proceedings⁴¹ The foregoing clearly exemplifies the need for information. The Flemish Office of the Children's Rights Commissioner has indicated that such information materials already exists, but that the availability thereof is limited. Certain organisations do not possess over sufficient funds to buy the relevant material or alternatively, to disseminate such material, despite the importance thereof.⁴² The Flemish Youth Council thus asks the Flemish government to ensure that sufficient information materials are available in places of relevance to children, such as amongst others, school, libraries and youth centres. In addition thereto, a website should be created which allows for children to communicate their respective stories and to learn from experiences by other children.⁴³

2.3.2 The right of youth to online privacy

Improve the implementation of legislation concerning online-privacy for youth. Inform youth about use of the Internet, their rights and contact points, which they can turn to in case of problems. Achieve the foregoing via awareness-raising campaigns, incorporating media-awareness in the lesson plans at school and supporting agencies and organisations, which focus on these topics.

"Hey. There's something strange on the internet. Pictures of you, me, and three other girls from our group. However, they aren't actual pictures of us. Our heads were added on other bodies. These bodies were half-naked, in provocative poses and with certain accessories. I know that it's not us, she said, but it seems professional because others probably wouldn't be able to distinguish. You can vote and/or react to these pictures. You should look at the site concerned and on google."⁴⁴

The right to online privacy is of the utmost importance to youth.⁴⁵ For youth in particular the internet is a highly accessible, used and influential tool. They learn, play, give opinions and make contacts via the internet. Indeed, usage of the internet provides youth with a plethora of advantages. Unfortunately however, many young individuals are unaware of their rights, rendering them particularly vulnerable concerning their online privacy. Within this context young individuals have become victims of violence, have access to unwanted information, are regarded as a consumer and have issues concerning the protection of their own data.⁴⁶ The usage of the internet thus contributes to the improvement of their rights, but equally so detrimentally affects and violates their rights.

Defining the term "online privacy" in an all-encompassing manner is absolutely necessary if we would like inform youth of their rights in this context, despite the fact that this is a difficult task. Consequently and in view of the continuously changing landscape of online media, we choose for a flexible definition thereof. The Flemish Youth Council proposes the following concrete description of what "online privacy" entails: online privacy entails that youth can communicate via the internet, knowing that they are, at all times, responsible and in charge of determining who receives information about them.

⁴⁰ K.Herbots, E. Roevens and J. Put, *Participation of the child in legal divorce proceedings: dream or reality?* In the Flemish Journal for Youth and Children's Rights, 2012/1, p. 38.

⁴¹ Flemish Children's Rights Shop, *It is like that: when your parents split up* (http://www.kinderrechten.be/sites/kom/files/bestanden/tzitemzo_scheiding.pdf)

⁴² Flemish Children's Rights Commissioner, publication children and divorce (2005), p. 23. (<http://www.kinderrechtencommissariaat.be/publications/detail/kinderen-en-scheiding>)

⁴³ Villapinedo, the Dutch website where children of divorced parents can exchange their experiences (<http://www.villapinedo.nl/>)

⁴⁴ Quote taken from a weblog by youngsters on media literacy <http://mediawijs.be/blog/help-mijn-foto-op-het-internet>

⁴⁵ An overview of national, European and international legal rules on online privacy can be found on this website of the Belgian Privacy Commission <http://www.privacycommission.be/nl/wetgeving-en-normen>

⁴⁶ UNICEF, *Children's Rights in the Digital Age* (2014), p. 6.

(http://www.unicef.org/publications/files/Childrens_Rights_in_the_Digital_Age_A_Download_from_Children_Around_the_World_FINAL.pdf)



On a national and international level there is growing consensus that enhanced protection of online data is absolutely necessary. Similarly the EU acknowledged that the right to privacy of the individual should be strengthened and that new technology should not result in this right being negated.⁴⁷ In addition thereto the Court of Justice of the EU passed a judgment on “the right to be forgotten” on online search engines.⁴⁸ Despite the foregoing progress, it remains difficult for young individuals to enforce their rights. The Flemish Youth Council asks that the current legislation concerning online privacy be implemented in a more stringent manner to ensure effective protection for the youth. Within this same vein it is important to guarantee that complaints by young individuals are effectively investigated and dealt with.

Within this context, it is equally important to raise awareness amongst youth. Young individuals are not always aware of rights concerning their privacy, and when a given action results in a violation of those rights. Oblivious to the dangers, children and youth can quickly be subjected to violations of their rights. Hence, information on responsible and safe use of the internet is requisite and is best achieved via channels such as amongst others, schools, organisations dedicated to this cause and awareness-raising campaigns. In addition thereto, children and youth must be made aware of means of information-gathering and acquiring help available to them in case of violations of their right to privacy.⁴⁹

2.3.3 The right to non-discrimination of youth during job applications

Tackle discrimination of youth on the labour market, with a particular focus on youth with different ethnic-cultural heritage. Achieve the foregoing by, amongst others, imposing practical tests, investigating the feasibility of anonymous application procedures and by stimulating companies and government agencies to establish action plans concerning diversity. Inform the youth about their rights and contact points in this respect.

The right to non-discrimination is solidly embedded in the Belgian Constitution (article 11), the European Convention on Human Rights (article 14 and Protocol 12), and the Universal Declaration of Human Rights (article 23(1)). In Belgium, discrimination with respect to amongst others race, nationality, skin colour, ethnic or national roots, sex, age, sexual preference, and political or philosophical conviction, is furthermore criminally sanctioned due to the *Anti-discrimination Law* of 2003 and 2007. In addition thereto, Belgium has adopted specific legislation concerning discrimination, such as the *Anti-racism Law* adopted in 1981.

Despite the laudable steps that have been taken in Belgium to combat discrimination, Flanders is still behind in what concerns ethnic-cultural discrimination in the labour market. The foregoing is corroborated by reports composed by, amongst others, OECD, the UN Committee on the Elimination of Racial Discrimination (CERD), and the European Network Against Racism. The recent issues concerning service checks are demonstrative in this respect. Pursuant to the relatively high unemployment amongst the youth in Flanders, discriminatory practices as such, place youth in a particularly disadvantaged position. Within this context we refer to the law concerning an equal participation on the labour market (May 8th 2002)⁵⁰ and the law concerning a framework for the Flemish equal changes and treatment policy (July 10th 2008)⁵¹ which clearly accentuates the indispensable need to fight against discrimination of young individuals based upon differing ethnic-cultural backgrounds during job applications.

Combating discrimination on the labour market of young people with a different ethnic-cultural background could, according to the Flemish Youth Council, be done through carrying out practical tests by the government or any other

⁴⁷ Directive 95/46/EG of October 24th 1995 and Directive 2002/58/EG of July 12th 2002

⁴⁸ EU Court of Justice, March 13th 2014, , C-131/12. Persons have, under certain conditions, the right to ask a search engine to remove links to personal information. It must be inaccurate, inadequate, irrelevant or extraordinary information.

⁴⁹ Amongst others, ikbeslis.be, EMSOC, the EHBO-kit for privacy and social media, Child Focus and the Privacy Commission

⁵⁰ This law is available on this website: <http://www.diversiteit.be/vq-decreet-evenredige-participatie-op-de-arbeidsmarkt>

⁵¹ This law is available on this website: <http://www.diversiteit.be/decreet-houdende-een-kader-voor-het-vlaamse-gelijkegelijkheidsbeleid-vlaamse>



authority that can detect discriminatory recruitment procedures. We hereby like to refer to the hearings that took place in April and May in the Commission on Economy, Employment, Social Economy, Innovation and Science Policy of the Flemish Parliament. Legal experts showed that practical tests at Flemish level can be legally put in place. In 2007, Kif Kif and the Human Rights League already published a manual for the carrying out of practical tests.⁵²

Additionally, job applications could be rendered less susceptible to discriminatory practices by the implementation of anonymous applications, of which the feasibility and desirability should be investigated and assessed. Within this same vein, it cannot be sufficiently emphasized that integrated diversity policies should be structurally integrated within public and private companies, as well as procedures which result in reporting concerning hiring and denying of positions to individuals following public vacancies.

We must continue to inform young individuals with respect to their rights and the competent authorities they can resort to in case of violations of their rights. By means of an example it suffices to refer to the Inter-federal Centre for Equal Opportunities or one of the discrimination contact points.⁵³ Confusion persists amongst youth with respect to the required threshold of evidence to prove discrimination, rendering complaints to the competent authorities sparse and uncommon. However, as a result of the *Anti-discrimination Law* adopted in 2007, victims of discrimination no longer have to prove that they have been discriminated against. Rather, the burden of proof is reversed so that the defendant is held to prove that he or she did not discriminate.⁵⁴

⁵² The manual can be found on this website: http://www.mensenrechten.be/index.php/site/nieuwsberichten/handleiding_voor_praktijktest

⁵³ Consult this website for a list of the 13 cities that have a hotline: <http://www.gelijkekansen.be/Praktisch/Melddiscriminatie.aspx>

⁵⁴ An explanation of the reversal of the burden of proof can be found on this website: http://www.belgium.be/nl/justitie/slachtoffer/klachten_en_aanpak/discriminatie/