

## **Implementing the Convention on the Rights of the Child for ‘youth’: who and how?**

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### **Abstract :**

From various perspectives, an ambiguous relationship between the Convention on the Rights of the Child and young persons emerges. Given the overlap between the target groups of children’s rights policies and youth policies, the current and potential connections between these two policies are explored, in order to assess whether (further) linking these policies could increase the realization of the rights of young persons. The inquiry is carried out at the international and European level (United Nations, Council of Europe and European Union), on the one hand, and within Flanders (Belgium), on the other. Contrasting results appear, calling for a middle ground in the degree of interconnection between children’s rights policies and youth policies.

### **Keywords:**

Convention on the Rights of the Child, youth, children’s rights policies, youth policies, United Nations, Council of Europe, European Union, Belgium, Flanders

## **I. Introduction**

This contribution aims to explore the interactions between children’s rights policies and youth policies, and to reflect on whether and how (further) linking these policies could enhance the realization of the rights of children and young people. First, some recent evolutions are identified, which illustrate the pressing issues revolving around (the rights of) young persons/youth. From various angles, there appears to be an ambiguous relationship between the United Nations Convention on the Rights of the Child (CRC) and young persons. Also, the target groups of youth policies and children’s rights policies partially overlap. The convergence of these observations leads to the central questions of this article: what are current linkages between children’s rights policies and youth policies? And how should/could these interrelations be strengthened, in light of an enhanced implementation of the CRC? The inquiry is carried out at two levels: at the European and international level, on the one hand, and with respect to Flanders (Belgium), on the other. In order to be able to answer the aforementioned questions, the (theoretical) range of overlap between the concepts of ‘children’ and ‘youth’ is identified for each institutional level. The article closes with some concluding reflections.

## **II. Observations leading to the research focus**

### **a. The CRC and young persons: an ambiguous relationship**

In recent times, the relationship between the CRC and young persons is increasingly being perceived as somewhat problematical, from different angles. First, it has been noted that, in *implementing* the CRC, the realization of the rights of older children has not received adequate attention, or at least less attention than the implementation of the rights of young children. Second, the relevance of the *text* of the CRC for young people today is being questioned. It is felt that the provisions of the CRC are not

responsive enough to the realities of young people's lives in the twenty-first century. Finally, the *personal field of application* of the CRC, i.e. the upper age limit of the concept of 'children', is (again) subject to debate. Hereinafter, these three observations are briefly explained and illustrated. The primary objective of this section is not to substantially discuss these tendencies or evaluate their merits. The observations mainly serve as indicators of the ambivalent relationship between the CRC and young persons, and of the need to pay greater attention to the rights of young persons and the (possible) links between children's rights policies and youth policies. Nevertheless, in order to avoid confusion on the author's stance, a short appreciation will be added, where relevant.

The first observation is that, in efforts to implement the CRC, the rights and concerns of older children, also referred to as 'adolescents', have not received equal consideration as those of young children. It has repeatedly been argued that greater efforts should be directed towards the former age group. As such, the Committee on the Rights of the Child "[has noted] with concern that in implementing their obligations under the Convention, States parties have not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development".<sup>1</sup> This induced the Committee to adopt General Comment No. 4 (2003) on 'Adolescent health and development in the context of the Convention on the Rights of the Child'. Adolescence is described as "a period characterized by rapid physical, cognitive and social changes, including sexual and reproductive maturation; the gradual building up of the capacity to assume adult behaviours and roles involving new responsibilities requiring new knowledge and skills".<sup>2</sup> The General Comment aims to "raise awareness and provide States parties with guidance and support in their efforts to guarantee the respect for, protection and fulfilment of the rights of adolescents, including through the formulation of specific strategies and policies".<sup>3</sup> Also, in its 2011 edition of the report 'The State of the World's Children', UNICEF shifted its attention from young children (0-9 years) towards adolescents (10-19 years). In recent years, the life circumstances of young children considerably improved in many countries, because of investments in, among others, health care, basic education and nutrition. The new focus on adolescents was explained by arguing that "lasting change in the lives of children and young people ... can only be achieved and sustained by complementing investment in the first decade of life with greater attention and resources applied to the second" (UNICEF, 2011, p. 2). Within the group of adolescents, there appears to be a tendency to focus concern on the older adolescents, to the detriment of the age group of 10-14 years. Nevertheless, these young adolescents are in a crucial phase of rapid biological and psychological changes, in which they need adequate support from their environment (UNAIDS, 2004).

A second observation concerns the assertion that the text itself of the CRC does not fit well with the current needs and expectations of young people. According to Veerman (2010), more than twenty years after its adoption, the Convention on the Rights of the Child appears outdated with regard to various aspects, such as HIV/AIDS, globalization, alcohol and drug (ab)use, information and communication technologies (ICT)... issues that today stand central in the lives of young persons. He proposes to revise the text of the CRC, in order to be able to better address these challenges young people are currently facing. Another movement that can be linked to this observation, is the one pleading for a greater recognition of 'youth rights', as distinct from children's rights and general human rights (European Youth Forum, 2010; Mahidi, 2010). It is argued that young persons should be recognized as a separate legal category, since they face a range of challenges that are different from those of children and adults with respect to, among others, participation, education, employment and

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<sup>1</sup> UN Doc. CRC/GC/2003/4, § 3.

<sup>2</sup> *Ibid.*, § 2.

<sup>3</sup> *Ibid.*, § 3.

housing. The Convention on the Rights of the Child can be used to cover some aspects of youth rights, but it does not appear as appropriate to tackle the majority of the challenges young people are confronted with today (Mahidi, 2010, p. 62). It is asserted that some provisions may be seen as 'patronising' when applied to young persons (for instance, Article 5 CRC on the rights and duties of parents) (Ibid., p. 61), and that the CRC as a whole is too much focused on 'protection': "[T]he CRC's main concern being to "shield" children from certain social risks, it is highly protective in nature. A Convention on the Rights of Young People should endorse a more proactive approach; it should be a legal document recognising both rights and responsibilities, aiming at fulfilling autonomy for young people, and enabling them to actively participate in society" (European Youth Forum, 2010, p. 9). A proposed way to suitably address young persons' needs and rights in Europe would thus entail drafting a 'European Convention on Youth Rights'. Inspiration could be drawn from similar instruments that have been developed in other regions, such as the African Youth Charter and the Iberoamerican Convention on the Rights of Youth.

As mentioned, the arguments above are referred to here because they point to a tense relationship between the CRC and (the rights of) young persons. It is not the objective of this contribution to substantially address these appeals. Nevertheless, the author would like to express some reservations, without being exhaustive, which should be taken into account when evaluating the proposals of revising the CRC and drafting a new convention on youth rights. To start, such an endeavour would require the allocation of a substantial amount of financial and human resources, to be invested in meetings and negotiation processes. In times of economic restraint, the question arises whether the resources available should not be devoted to securing the effective implementation of existing human rights provisions. Also, there is the risk that, at the end of the negotiation processes between the different national states, the revised or new text may be more restrictive in recognizing the rights and concerns of young persons, than anticipated now by the proponents of these processes. Moreover, human rights treaties, such as the CRC, contain general principles, which are subject to a progressive and evolutionary interpretation. Openness to a progressive interpretation has been observed with both the European Court of Human Rights (see, for instance, its jurisprudence on the right to respect for private and family life) and the Inter-American Court of Human Rights (see, for instance, its interpretation of the right to property as including the collective property rights of indigenous peoples). It should be carefully examined whether the rights of young people cannot be appropriately realized on the basis of a progressive and contextual interpretation of existing human rights provisions.

A third illustration of the ambiguous relationship between young persons and the CRC concerns the upper age limit of the concept of children. Not only the substantive provisions of the CRC are thus called in question (*supra*), also the personal field of application of the convention is subject to debate.<sup>4</sup> Article 1 of the CRC defines 'a child' as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". The reference to the domestic legal framework allows for flexibility in the application of the CRC, by leaving the possibility of using a lower age limit when majority is reached earlier under national law.

In the last decade, neuroimaging research has demonstrated that the brain is not fully matured by puberty, but continues to develop until the age of about 25 (Johnson *et al.*, 2009). This finding has triggered questions about the relationship between neuromaturation and real-life behaviour: does the fact that the brain of adolescents is not fully matured yet, have an impact on the maturity of their

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<sup>4</sup> Not only the end, but also the beginning of childhood and the application of children's rights to the unborn, have been the topic of discussion (Cornock & Montgomery, 2011).

judgments? According to many neuroscientists, “empirical support for a causal relationship between neuromaturational processes and real-world behavior is currently lacking” (Ibid., p. 216). Notwithstanding this scientific uncertainty, the fact of adolescent brain immaturity has been invoked as an argument to extend the protection of young people, especially in criminal law. For instance, the United States Supreme Court has decided that it is unconstitutional to impose capital punishment on persons who were under the age of 18 when they committed their crimes (*Roper v. Simmons*, 543 U.S. 551 (2005)). One of the arguments in support of this decision was that adolescents do not have the same maturity and sense of responsibility as adults, so they cannot be considered culpable for their crimes in the same way. The finding of adolescent brain immaturity has also led to appeals not to subject young people from 16 to 23 years to adult criminal law (Doreleijers, 2009) and, more generally, to extend the protection of children’s rights and youth law to young persons until the age of 25 (Veerman, 2010). As mentioned, a cautious stance is warranted when using neuroscience research in policy making, given that no causal link between neuromaturation and real-life behaviour has been established (yet).

Also during the drafting process of the CRC, the age limit of 18 years to define the end of childhood was contested. Pleadings were mostly held, however, to support an adaptation of the definition in the other direction. At the second session of the open-ended Working Group on the Question of a Convention on the Rights of the Child in 1980, various arguments were advanced in favour of a lower age limit: the UN General Assembly had set an age limit of 15 in relation to the International Year of the Child; the age of 14 implied in many countries the end of compulsory education and/or was the legal marriage age; and setting the age limit at 14 would establish a clear distinction between the concepts of ‘minor’ and ‘child’.<sup>5</sup> Other delegates did not agree with the proposal to lower the age limit, stating that their legal frameworks contained protective measures for children older than 14, and that “they believed that the draft Convention should apply to as large an age group as possible”.<sup>6</sup> The 1980 Working Group endorsed the latter position and upheld the proposed age limit of 18 years. In 1989, the year of the Convention’s adoption, the representative of Nepal supported an upper age limit of 16 for the definition of a child “as to take into account the concerns of poorer States who may not be able to shoulder the burdens imposed by this convention for children up to 18 years of age”.<sup>7</sup>

More generally, the relativity and inherent arbitrariness of legal categories based on the number of years since a person’s birth (‘chronological age’) have been emphasized, and alternative conceptions of age have been advanced. As such, the concept of ‘social age’ has been proposed as a complementary perspective to chronological age, where social age indicates “the socially constructed meanings applied to physical development and roles attributed to infants, children, young people, adults and elders, as well as their intra- and inter-generational relationships” (Clark-Kazak, 2009, p. 1310). Another example constitutes the discourse analytical approach of Aapola (2002), who distinguishes between four main discourses of ages: the discourse of chronological age, the discourse of physical age, the discourse of experiential age, and the discourse of symbolic age, with each discourse having one or more subdiscourses.

In conclusion, these three clusters of observations characterize the relationship between the CRC and young persons as multidimensional, ambiguous, and increasingly at the centre of attention of research and policy.

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<sup>5</sup> UN Doc. E/CN.4/L.1542, § 32.

<sup>6</sup> Ibid., § 33.

<sup>7</sup> UN Doc. E/CN.4/1989/48, § 82.

### **b. Overlap of the target group of children's rights policies and youth policies**

During the last decennia, policies were developed at various governmental and institutional levels towards 'youth', on the one hand, and to support the implementation of 'children's rights', on the other. Although the range of the overlap differs dependent on the governance level (*infra*), at least some 'children' also belong to the target group of 'youth' policies. There is thus a (partial or total) convergence of the target groups of children's rights policies and youth policies.

Combining the aforementioned ambiguous relationship between the CRC and young persons with the overlap in the personal field of application of children's rights policies and youth policies, leads to the question to what extent youth policies (could) contribute to the realization of the rights of the older children (adolescents) covered by the CRC. Are there today linkages between youth policies and children's rights policies? Could these interrelations be strengthened, in view of an enhanced implementation of the CRC? These questions are first addressed at the European and international level. Then, a brief comparison with the Flemish policy on children's rights and youth is carried out.

## **II. At the international and European level**

The present analysis concerns the institutional levels of the United Nations, the Council of Europe, and the European Union. Focus is placed on those policy agendas, which are explicitly and primarily oriented to children, youth and children's rights. Within the constraints of this article, other governance levels and sectorial policies (such as education or migration) are not considered. Also, the study is confined to those policies to be taken into account by European Union Member States internally, excluding EU external policy from its scope.

With respect to both children's rights and youth, the principal policy agendas of the United Nations, the Council of Europe and the European Union were thus identified.<sup>8</sup> As regards children's rights, at the level of the United Nations, the document 'A World Fit for Children' was adopted at the special session of the General Assembly on children in 2002.<sup>9</sup> Until now, there has been no successor to this document. Within the Council of Europe, the programme 'Building a Europe for and with children', launched in 2006, was concretized for its second policy cycle (2009-2011) in what became known as the 'Stockholm Strategy', adopted by the Committee of Ministers in 2008. The Council of Europe is currently finalizing a new 'Strategy on the Rights of the Child' (2012-2015). At European Union level, the European Commission adopted in 2011 the communication 'An EU Agenda for the Rights of the Child'.<sup>10</sup> This communication followed on the Commission's prior (and first) communication on children's rights of 2006, 'Towards an EU Strategy on the Rights of the Child'.<sup>11</sup> Given the recent adoption of the former instrument, both communications are included in the analysis, and particular attention is paid to differences between the two. As concerns youth, the United Nations General Assembly adopted in 1995 'the World Programme of Action for Youth to the Year 2000 and beyond'.<sup>12</sup> In 2008, the Committee of Ministers of the Council of Europe issued 'Resolution CM/Res(2008)23 on the youth policy of the Council of Europe'. Finally, in November 2009, the EU Council of Youth Ministers adopted a resolution 'on a renewed framework for European cooperation

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<sup>8</sup> For more information on the history and content of these policy agendas, see 'The European and International Policy Agendas on Children, Youth and Children's Rights. A Belgian EU Presidency-Youth Note' of 2010, prepared by this author. The Belgian EU Presidency provided this information to the Council of the European Union in October 2010 (Doc. 14855/10). See also (Desmet, 2010).

<sup>9</sup> UN Doc. A/RES/S-27/2, Annex.

<sup>10</sup> COM(2011) 60 final.

<sup>11</sup> COM(2006) 367 final.

<sup>12</sup> UN Doc. A/RES/50/81.

in the youth field (2010-2018)'. This resolution was based on the Commission's communication of April 2009 'An EU Strategy for Youth – Investing and Empowering. A renewed open method of coordination to address youth challenges and opportunities'.<sup>13</sup>

#### **a. The range of the age overlap**

In order to identify the range of the overlap between the target groups of the policies on children's rights and youth, the definitions of 'children' and 'youth' used within each organization must be reviewed. With respect to the concept of 'child', the CRC definition is adhered to not only by the United Nations, but also by the Council of Europe<sup>14</sup> and the European Union.<sup>15</sup> The upper age limit of 18 years for children is thus uniformly used by the three organizations. This stands in contrast with the lack of an internationally agreed definition of 'youth'. In its 2009 communication 'An EU Strategy for Youth – Investing and Empowering', the European Commission described the term 'youth' as "[m]eaning broadly speaking teenagers and young adults from 13 to 30 years old".<sup>16</sup> In the Commission's White Paper 'A New Impetus of Youth' of 2001, however, youth was regarded as the period from 15 to 25 years of age.<sup>17</sup> The youth policy of the Council of Europe is oriented to children and young people from the age of 10/12 until 30 years. At the level of the United Nations, young people are generally defined as "the age-cohort 15-24", but it is acknowledged that the meaning of the concept of youth varies across different societies and cultures.<sup>18</sup> Despite these diverse interpretations of the concept of youth, some commonalities may be identified. Within the three organizations, the upper age limit for 'youth' is placed between 24 and 30 years. The lower age limit fluctuates between 10 and 15 years. Children from the age of – depending on the source – 10 to 15 until 18 years old thus fall under the definition of both children and youth, and belong to the target groups of both policy agendas.

#### **b. Current links between children's rights policies and youth policies**

Given the partial overlap between the target groups of children's rights policies and youth policies of the United Nations, the Council of Europe and the European Union, the question arises whether links between these policies have been established. This section explores the current cross-references between children's rights policies and youth policies in the main policy documents of these three organizations, as identified above. The limits of such a textual analysis must be stressed. Writing down an intention of cooperation does not guarantee effective implementation. On the other hand, interaction or cooperation may develop spontaneously, without a written basis. Nevertheless, the inclusion (or not) in an organization's main policy documents of references to the 'other' policy field of children's rights respectively youth, may serve as an indicator of the organization's openness and willingness to interact.

The current policy agendas of the United Nations on children's rights and youth contain no references to the other policy field. A possible explanation is that these policy documents are considerably older than those at European level: the World Programme of Action for Youth was adopted in 1995; the document 'A World Fit for Children' dates from 2002. In contrast, the policy agendas of the European Union and the Council of Europe on children's rights and youth are from 2008 at the earliest. Some of these policy documents include references to the other policy area, and express an interest to exchange and cooperate. The linkages made at the Council of Europe level are the most sophisticated.

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<sup>13</sup> COM (2009) 200 final.

<sup>14</sup> Stockholm Strategy 2009-2011, note 1.

<sup>15</sup> COM(2006) 367 final, 2.

<sup>16</sup> COM (2009) 200 final, note 1.

<sup>17</sup> COM(2001) 681 final, note 1.

<sup>18</sup> UN Doc. A/RES/50/81, §§ 9-10.

The Stockholm Strategy of the Council of Europe Programme ‘Building a Europe for and with Children’ refers twice to the youth sector. First, under the strategic objective of ‘Participation of children and their influence in society’, it is stated that the Council of Europe should “reinforce co-operation between children’s rights programme [sic] and the youth sector, building upon the youth sector’s expertise in the field of participation and making use of the platform offered by the European Youth Forum”. Furthermore, the final chapter on ‘Partners’ mentions that the Council of Europe will develop and consolidate partnerships with, among others, professional networks, in particular in the fields of education, justice, social services, health and youth. Similarly, the Resolution of the Committee of Ministers on the youth policy of the Council of Europe of 2008 includes various references to children’s (rights) policies. In the preamble, the Committee of Ministers expresses its conviction that a dynamic youth policy is needed, “which includes children as well as young people”, and stresses the importance of following up the programme ‘Building a Europe for and with Children’. In the text of the resolution, the Committee of Ministers resolves that “co-ordination between child- and youth-related activities should be further enhanced”.

At European Union level, the communications of the European Commission on children’s rights of 2006 and 2011 do not include references to the youth field. In lower level documents concerning EU policy on children’s rights, links to EU youth policy have been included. As such, in the working document accompanying the 2006 Communication ‘Towards an EU Strategy on the Rights of the Child’, which offered a preliminary inventory of EU actions affecting children’s rights, the key elements of EU youth policy were referred to in the section on child participation, as an interesting observation (“It is interesting to note that...”).<sup>19</sup> The precise relationship between these initiatives in the field of youth and the upcoming communication on children’s rights was not further clarified. Also, in a ‘state of play’ of the implementation of the 2006 Communication, issued by the European Commission in November 2009, the youth policy documents and programmes were mentioned. It can be deduced from these documents that EU youth policy is, at least implicitly, considered to contribute to the implementation of (EU policies on) children’s rights. Therefore, it seems a missed opportunity that the two key communications on children’s rights of the European Commission do not establish a connection with EU youth policy.<sup>20</sup>

In contrast, turning to EU youth policy, one of the general initiatives suggested for all fields of action in Annex I of the Council Resolution on a renewed framework for European cooperation in the youth field is “[i]ncluding, where appropriate, a children’s policy dimension, having regard to their rights and protection taking into account that the life and future prospects of young people are significantly determined by the opportunities, support and protection received during childhood”. The preparatory document for this resolution, the Communication ‘An EU Strategy for Youth – Investing and Empowering’, states under the field of action of ‘social inclusion’ that “child, family and youth policies are closely linked and this Communication is complementary to the Commission Communication ‘Towards an EU Strategy on the Rights of the Child’”. Adopting a cross-sectoral approach, it is noted that youth policies can contribute to delivering results in areas such as “child and family policy, education, gender equality, employment, housing and healthcare”.<sup>21</sup> In addition, in

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<sup>19</sup> SEC(2006) 889, 11.

<sup>20</sup> The proposal of the Belgian Presidency to include in the 2011 Communication a reference to the renewed framework for European cooperation in the youth field (2010-2018) was thus not followed. The Presidency contribution also referred to the outcome of an expert conference of ‘Europe de l’Enfance’ in September 2010, where “the need for learning from and cooperating with the youth sector was stressed. Reference was made to the structured dialogue in the field of youth, the renewed open method of coordination, the partnership between the European Union and the Council of Europe in the field of youth, the co-management system in the field of youth of the Council of Europe”. (Belgian presidency of the permanent intergovernmental group “Europe de l’Enfance”, 2010).

<sup>21</sup> COM (2009) 200 final.

Council Conclusions of 19 November 2010 on the European and International Policy Agendas on Children, Youth and Children's Rights, the EU Youth Council underlined "the crucial importance of work undertaken in the area of children, youth and children's rights" and encouraged Member States to take an active role in the ongoing intergovernmental activity in this field.<sup>22</sup> Within the European Union, there thus appears to be a greater openness from the youth sector towards children's rights, than the other way around.

### **c. Possible links between children's rights policies and youth policies**

The question arises whether, in addition to and beyond the general cross-references mentioned above, there is further potential for coordination and cooperation between the policies on children's rights and youth of the European Union, the Council of Europe and the United Nations. This potential will be investigated with regard to three aspects: the general objectives of the policies on children's rights and youth, their thematic priorities, and the means of implementation proposed.

A first issue is that the general objectives of the policy agendas on children's rights and youth seem to differ. The general objectives of the policy agendas on children are formulated in terms of *rights* (the promotion and protection of children's rights), whereas the policy agendas on youth take the provision of (equal) *opportunities* as entry point. The policy agendas on children clearly adopt a rights-based approach. There are particularly strong resemblances between the objectives of the European Commission's Communication 'Towards an EU Strategy of the Rights of the Child' of 2006, on the one hand, and the Stockholm Strategy 2009-2011 of the Council of Europe, on the other. A first shared objective is to integrate a child rights perspective in the actions of the organization itself. A second common objective is to support Member States in their efforts to promote and protect children's rights. The Commission's Communication 'An EU Agenda on the Rights of the Child' of 2011 also emphasizes the first objective of including a child rights perspective in EU actions, in its general principle 'Making the rights of the child an integral part of the EU's fundamental rights policy'. The new communication pays less attention, however, to the (second) objective of supporting the Member States in their efforts to implement children's rights. In contrast, youth policies focus more on strengthening the capacities and skills of young people, with the aim of providing them equal opportunities so that they can fully participate in society. The general objectives of the United Nations and Council of Europe youth policies are broadly formulated as the provision of opportunities for full, effective and constructive participation of young people in society. At the level of the European Union, the aim of creating more and equal opportunities is concentrated on education and the labour market. A second overall objective of EU youth policy is "to promote the active citizenship, social inclusion and solidarity of all young people".

This different language in the formulation of the objectives of children's rights policies and youth policies may point to a difference in approach. For, in the latter case policy makers decide they want to create opportunities for a certain group (youth) because this seems interesting, relevant, useful or appropriate. It is another thing to start from the premise that a certain group (children) has rights and that these rights have to be realized. The realization of those rights may then create or increase opportunities. It seems worth considering the potential added value of youth policies adopting a stronger (children's and human) rights-based approach in the formulation of their general objectives. This is not to say that at present, children's and human rights are totally absent from youth policies at European and international level. On the contrary, the Council resolution on a renewed framework for European cooperation in the youth field underlines that "European Youth Policy cooperation should

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<sup>22</sup> 2010/C 326/01.

be firmly anchored in the international system of human rights". Within the Council of Europe, 'human rights and democracy' is one of the three priorities of youth policy and action for the next years.<sup>23</sup> Human rights and fundamental freedoms also occupy an important place in the World Programme of Action for Youth. Nevertheless, through the more explicit incorporation of a rights-based approach in the formulation of the general objectives of youth policies, these policies could contribute (and could be seen as contributing) more explicitly and directly to the realization of the rights of young persons, as laid down in the CRC and other human rights conventions.

A comparison of the thematic priorities reveals that 'participation' and 'poverty and social exclusion' are the only two priorities that are common to the policy agendas of both children's rights and youth of the three organizations. The goal of increasing participation of children and youth is running like a red thread through the different policy agendas: the participation of children and youth is to be promoted in democratic processes and structures, on the one hand, and in all aspects of everyday life, on the other. The other shared thematic priority concerns combating poverty and discrimination, and enhancing social inclusion.

Looking at the thematic priorities shared by the agendas of one policy field, but not occurring in the documents of the other policy area, tells us something about the image of children and young people that seems to underlie these policies. There are various themes that are addressed in all three youth policy agendas, but that are not taken up as such in any of the main policy documents on children's rights. These include voluntary activities, creativity, culture and cultural diversity, environment, leisure-time activities, girls and young women, and intergenerational issues. The issue of violence and the focus on vulnerable groups are very prominent in the policy agendas on children's rights, and not in those on youth. The latter two thematic priorities evoke the image of a child as vulnerable and in need of protection. In contrast, young people must be stimulated and supported in, for instance, the development of their creativity, but not so much protected. Both these images should be nuanced. The thematic priorities of the youth agendas are also relevant for, especially older, children, whereas young people may also be in need of protection. In this regard, both policy fields could learn from each other, in order to obtain a more balanced approach towards children and young people, which can be related to the balance between the three Ps of protection, provision and participation. Especially with respect to the topics on which the CRC has been considered 'outdated' or 'ageing' (*supra*), the implementation of the youth policy agendas could make an important contribution to the effective realization of the rights of young people.

Not only with respect to thematic priorities, but also as concerns methods of implementation, there is potential for the policy agendas on children's rights and youth to join forces. One approach included in all the policy documents reviewed (on children's rights and youth, at the three levels) is 'cooperation and coordination' with other actors. It would be an interesting exercise to map the actual level of cooperation and coordination in practice. Until recently, a second measure of implementation clearly shared by all policy agendas concerned the allocation of human and financial resources for the implementation of the policies on children's rights and youth. With regard to the European Union's policy on children's rights, however, intentions in this respect have recently become more clouded. The 2006 communication 'Towards an EU Strategy on the Rights of the Child' stated that "[t]he Commission is committed to allocating the necessary human and financial resources to implement this strategy". It was added that "efforts will be made to secure the financial resources necessary to fund the actions proposed in this communication and the future strategy". The new communication 'An EU

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<sup>23</sup> The other two priorities are 'living together in diverse societies' and 'social inclusion of young people'.

Agenda on the Rights of the Child' of 2011 makes no mention of (financial or human) resources. It states more weakly that the Commission "is ready to offer its support and cooperation" to the policy actions affecting children that are undertaken by Member States, and "will continue to play its part in joint efforts to achieve well-being and safety of all children". These provisions do not live up to the Commission's commitment in the 2006 Communication. Nevertheless, the financial responsibility of the Commission with respect to the new communication could be derived from the text of the 2006 document, where it was included that efforts would be made to secure the financial resources necessary to implement "this communication *and the future strategy*",<sup>24</sup> even though the announced 'strategy' on the rights of the child was renamed (and reduced?) to an 'agenda'.

It also reveals interesting to see which means of implementation are shared by the policy agendas of one field, but are not mentioned in the documents of the other policy area. All three children's rights policy agendas attach particular importance to 'monitoring and evaluation' and to 'communication on children's rights', whereas the youth policy agendas do not include these focuses. Faced with the lack of basic data to guide decision making on children's rights, the 2011 Communication includes a clear choice for evidence-based policy making. Here, inspiration seems to have been drawn from the youth sector, which has a long tradition of (emphasis on) evidence-based policy making. Indeed, one of the two means of implementation shared by all three youth policy documents and – until 2011 – absent from the children's rights policy agendas, concerns precisely knowledge building and evidence-based policy. The second measure of implementation shared exclusively by the three youth policy documents is to enhance the participation of young people in the formulation and implementation of youth policy. In the youth policy agendas, participation is thus not only a thematic priority (*supra*), but also a way of implementing youth policy. The system of co-management employed by the Council of Europe is the most far-reaching in this respect.

#### **d. Conclusion**

Within the United Nations, the Council of Europe and the European Union, the policy fields of 'children's rights' and 'youth' are characterized by their own histories and dynamics. They developed in parallel to one another; traditionally there has been little interaction. In more recent policy documents, some openness towards 'the other' is noticeable. The most, although still limited, interconnections between the fields of children's rights and youth are found at the level of the Council of Europe. Although the formulation of the general objectives of children's rights policies and youth policies differs, based on 'rights' and 'opportunities' respectively, a comparison of the thematic priorities and means of implementation of both policy fields reveals that there is substantial potential for increased interaction, mutual learning and cooperation.

### **III. At the level of Flanders (Belgium)**

In the Flemish Community, a different picture emerges with regard to both the definition of 'youth' and the policy approach.<sup>25</sup> The main documents considered here are the Flemish Youth Policy Plans and the Decree of 18 July 2008 on conducting a Flemish policy on youth and children's rights (2008 Decree), which provided an 'integration' of children's rights policy and youth policy. On 28 October 2011, the Flemish Government gave its assent to the draft decree on a 'renewed' youth and children's rights policy (2011 Draft Decree). The draft decree was then submitted to the Flemish Parliament. The 2011 Draft Decree, which will replace the 2008 Decree, aims to continue and strengthen the

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<sup>24</sup> Emphasis added.

<sup>25</sup> In Belgium, the competencies on 'youth' and 'children's rights' have been transferred from the federal government to the three communities (the Flemish, the French and the German-speaking Community).

integration of youth policy and children's rights policy, by refining certain provisions and filling some gaps. This contribution only focuses on the changes (or no changes) between the two decrees that are relevant in the light of the present analysis.

#### **a. Definition of 'youth'**

With respect to the definition of 'youth', there is no difference between the 2008 Decree and the 2011 Draft Decree. Both texts define 'youth' as "persons up to and including thirty years, or a part of this population group".<sup>26</sup> In contrast to the European and United Nations definitions, all children, also younger ones, thus fall under this broad definition of 'youth'. On the other hand, the definition leaves open the possibility that only a part of the population group is covered by the concept of 'youth'. As such, both the current and the upcoming decree restrict the concept of youth in certain instances to a segment of this age group. Youth work, for instance, is carried out for or by young persons "from three up to and including thirty years".<sup>27</sup> For the child and youth impact report (*infra*), the upper age limit is set at 25 years.<sup>28</sup> Also, the explanatory memoranda of the 2008 Decree and the 2011 Draft Decree make clear that, as regards children's rights policy, the age group of 0 to 18 years is concerned.

#### **b. The integration of children's rights policy and youth policy**

Similar to the European and international level, children's rights policy and youth policy in Flanders are coloured by different origins and developments. From a historical perspective, children's rights policy has its roots in youth care policy, whereas (broader) youth policy has developed out of youth work policy (Reynaert, 2011). In recent times, however, children's rights policy and youth policy have been converging, with respect to both governmental organization and policy approach. In 1997, a minister of the Flemish government was for the first time appointed as 'coordinating minister for children's rights'.<sup>29</sup> Since 1999, a Flemish minister explicitly carries the competency of 'youth' in its title. In 2006, the two competencies of 'coordination of the policy on children's rights' and 'youth' accrued for the first time to the same minister.<sup>30</sup>

The first Youth Policy Plan (JBP) of 2002 stated that "children's rights are the railway on which a train with several carriages is riding" (JBP, 2002, p. 24). However, the remainder of the plan contained few explicit references to children's rights (Coussée, 2006, p. 39). According to the second Flemish Youth Policy Plan (VJBP) 2006-2009, children's rights offer "not only a legal, but also an ethical framework for Flemish youth policy" (VJBP, 2006, p. 14). A first objective of the plan was to establish by decree a basic structure for "the integration of the Flemish youth policy and the Flemish children's rights policy" (Ibid., p. 23). It was added that "a distinction [is made] between children's rights as legal and ethical framework, on the one hand, and the concrete integration of the instruments of the children's rights and youth policy, as well as the integration of various objectives and actions which can be taken in youth policy and/or children's rights policy, on the other" (Ibid., p. 24). The Decree of 18 July 2008 on conducting a Flemish policy on youth and children's rights gave effect to this double integration movement. The decree merged and adapted the two prior legal bases of children's rights policy and youth policy in Flanders, namely the 1997 Decree on the Child Impact

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<sup>26</sup> 2008 Decree, art. 2, 1°; 2011 Draft Decree, art. 2, 5°.

<sup>27</sup> 2008 Decree, art. 2, 4°; 2011 Draft Decree, art. 2, 8°.

<sup>28</sup> 2008 Decree, art. 6; 2011 Draft Decree, art. 4.

<sup>29</sup> Until 2004, this was the Minister of Welfare, Health and Equal Opportunities. In 2004, the competency on children's rights policy was transferred from the policy domain of Family and Societal Welfare to the policy domain of Culture, Youth, Sports and Media (Reynaert, 2005, p. 113).

<sup>30</sup> In 2006, this was the Minister of Culture, Youth, Sports and Brussels. Since 2009, the Minister of Education, Youth, Equal Opportunities and Brussels is the coordinating minister for children's rights.

Report and the 2002 Decree on Flemish Youth Policy. During the drafting process of the 2008 Decree, a children's rights actor expressed its concern that the integration of children's rights policy and youth policy would lead to a diminished attention for minors.<sup>31</sup>

(i) *Children's rights as ethical and legal framework for youth policy*

The 2008 Decree defined 'youth and children's rights policy' as

the integral and integrated vision and the systematic and methodical governmental measures based thereupon that aim at an explicit impact on the youth, with special attention for the International Convention on the Rights of the Child, adopted in New York on 20 November 1989 and approved by decree of 15 May 1991, as ethical and legal framework<sup>32</sup>

The original draft of the 2008 Decree included the text "with special attention for the rights of the child". This was amended to the more narrow formulation "with special attention for the International Convention on the Rights of the Child ... as ethical and legal framework", as cited above.<sup>33</sup> Although the latter formulation puts emphasis on the CRC as the key legal text on children's rights, it leaves out of sight children's rights provisions in other human rights treaties (Vandenhoele, 2008). The 2011 Draft Decree positively includes the broader formulation, as it describes 'youth and children's rights policy' as

the integral and integrated vision and the systematic and methodical governmental measures based thereupon that aim at a noticeable impact on the youth, with special attention for the rights of the child, as ethical and legal framework<sup>34</sup>

However, looking at the definition of 'rights of the child' reveals that a similar narrow approach is taken. The 2011 Draft Decree defines 'rights of the child' as "the rights of the child, mentioned in the provisions and principles of the Convention on the Rights of the Child, adopted in New York on 20 November 1989, and in the accompanying Optional Protocols".<sup>35</sup> Although the definition is positively extended to the Protocols to the CRC, it still does not include children's rights in other legal texts. Another difference between the two definitions is that, pursuant to the 2008 Decree, an *explicit* impact on the youth is aimed at, whereas the 2011 Draft Decree requires a *noticeable* impact. The explanatory memorandum does not comment on this change in wording. During the drafting process of the 2008 Decree, the Children's Rights Commissioner had proposed a more radical amendment, namely to define 'children's rights and youth policy' as "the integral and integrated vision, *based on children's and human rights*, and the systematic and methodical governmental measures based thereupon that aim at an explicit impact on the youth" (Kinderrechtencommissariaat, 2008, p. 6).<sup>36</sup> This proposal clarifies and emphasizes that children's rights are part of the broader human rights framework. Also, the wording 'based on' is stronger than 'with special attention to'. This difference in language is more appreciated by children's rights actors than by the youth sector. During the discussion of the draft text of the 2008 Decree in a Commission of the Flemish Parliament, a representative of the youth sector noted: "Whether it is a youth policy based on children's rights or a youth policy with special attention to children's rights, is not an essential discussion for us."<sup>37</sup> The 2011 Draft Decree does not take up this stronger formulation.

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<sup>31</sup> Flemish Parliament, Parliamentary Document 2007-2008, no. 1698/3, p. 7.

<sup>32</sup> 2008 Decree, art. 2, 2°.

<sup>33</sup> Flemish Parliament, Parliamentary Document 2007-2008, no. 1698/2, p. 2 (amendment no. 1).

<sup>34</sup> 2011 Draft Decree, art. 2, 6°.

<sup>35</sup> 2011 Draft Decree, art. 2, 11°.

<sup>36</sup> Emphasis added.

<sup>37</sup> Flemish Parliament, Parliamentary Document 2007-2008, no. 1698/3, p. 9.

The explicitation in the youth policy plans and the legal texts that children's rights should function as a framework for youth policy can difficultly be disputed and is to be supported. However, there may be some unforeseen consequences of this approach. First, it is argued that children's rights should function as a framework, not only for youth policy, but for all policies having an impact on children (for instance, education, housing etc.). Connecting children's rights – at least implicitly – exclusively to youth policy, and in this way 'enclosing' children's rights within youth policy, might entail that less attention is paid to children's rights in the development of policies in other fields. Approaching youth policy as a categorical policy may/should counter this 'danger'. A categorical policy concerns all policy measures that are directed to a category or group (here 'youth'), which shares a certain characteristic (being young), and is to be distinguished from sectorial policies such as culture, sports, education and welfare (Redig, 2011). A second challenge is that by mentioning children's rights as the general framework that underlies and permeates youth policy, less attention is paid to a children's rights perspective in the actual objectives and actions of the policy plan. In his advice on the third Flemish Youth Policy Plan (VJBP) 2010-2014, the Children's Rights Commissioner made a similar observation: "In the VJBP, the importance of the Children's Rights Convention may be made more explicit. The rights of children may be formulated more explicitly as point of departure for the integral vision or as motivation for the actions" (Kinderrechtencommissariaat, 2011, p. 3).

(ii) *Integration of policy instruments on children's rights and youth*

The 2008 Decree provides an integration of the instruments of children's rights policy and youth policy. For instance, the different 'contact points' within each administration and governmental institution for 'children's rights' and 'youth policy' were merged into contact points on youth and children's rights policy. Also, the child impact report (KER) was extended towards a youth and child impact report (JoKER), which implied an extension of the personal field of application up to persons younger than 25 years (instead of 18 years before). Reynaert has warned that the integration of the policy instruments on children's rights and youth does not guarantee the development of "an integrated children's rights and youth policy, ... with attention for the interests of children and young persons in all Flemish policy domains" (Reynaert, 2005, p. 114). The 2011 Draft Decree continues this process of integration of policy instruments. The 'Flemish Youth Policy Plan' will be broadened into a 'Flemish Youth and Children's Rights Policy Plan'.<sup>38</sup> The challenge of writing an integrated policy plan on youth and children's rights still lies ahead. For the current term of government, two separate policy plans were still adopted: the third Flemish Youth Policy Plan 2010-2014, and the second Flemish Children's Rights Action Plan (VAK) 2011-2014. The latter plan clarifies the actions envisaged by the Flemish Government during its term of government to bring its policy into agreement with the concluding observations of the Committee on the Rights of the Child with respect to Belgium of June 2010. Given that the third Flemish Youth Policy Plan was already in an advanced stage of drafting when the concluding observations were issued, it was decided to adopt a separate children's rights action plan.

#### **IV. Concluding reflections**

Comparing the European and United Nations policy approach with the policy of Flanders brings to light some remarkable and substantial differences. Different roads have been taken to implement the Convention on the Rights of the Child for those young persons who still fall under the Convention's definition of children, but who also belong to the target group of youth policies. A first conclusion is that there is consensus on the definition of 'children' as human beings below the age of 18, but that the concept of 'youth' is defined differently by different actors and institutions. Although the specific age

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<sup>38</sup> 2011 Draft Decree, art. 3, § 1.

limits differ, some or all children also fall under ‘youth policies’. As a minimum, this ‘overlapping group’ concerns the youngsters from 10/15 to 18 years old; this is the case at the international and European level. In Flanders, all children are in principle subject to youth policies, although this may be restricted. Secondly, at the European and international level, children’s rights policies and youth policies continue to develop separately, with in recent times some cross-references prudently paving the way for enhanced cooperation and coordination between the two policy domains. Within the Flemish Community, the choice was made to ‘integrate’ the policies on children’s rights and youth, (i) by clearly establishing that children’s rights (or at least the Convention on the Rights of the Child and its two Optional Protocols) form the ethical and legal framework for youth policy; and (ii) by integrating the policy instruments on children’s rights and youth. Each choice has its advantages and disadvantages: within the European organizations and the United Nations, more cooperation between the policies on children’s rights and youth could lead to an enhanced implementation of the CRC for older children. On the other hand, a complete integration of children’s rights policy and youth policy, as in Flanders, entails the risk that children’s rights become enclosed within youth policy, and that a children’s rights perspective is less strongly present in the concretization of the policy plans and objectives. The prospects and potentials of a middle ground should be explored, in which there is extensive interaction and cooperation between children’s rights policies and youth policies, without both policies being necessarily completely integrated, as the latter entails the risk of one policy becoming to a greater or lesser extent absorbed by the other.

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