# Recommendations for implementing a human rights assessments at the Flemish universities

**VLIR.doc 01**

VLAAMSE
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## Preamble

Universities are the cornerstones of academic education, scientific research and social services. In recent years, these universities have grown to become some of the largest employers, where internationalisation is the rule rather than the exception. This internationalisation is becoming more and more important and is reflected, among other things, in staff and student exchanges, contributions to capacity building in the South, international networking, clustering of research capacity and cross-border research cooperation. Universities are also academic safe havens where students can develop into critical citizens and researchers can freely address fundamental issues, applied scientific research and valorisation. Respect for human rights is inherent to universities' social role. The Flemish universities are committed to develop their own human rights policy and to play a pioneering role in this regard. The ever more complex and international environment in which these institutions operate creates the need for more guidance in the area of human rights for the 32,700 researchers and staff members (VLIR, 2018) affiliated to the Flemish universities.

The issues facing academics are not specific to any one university, nor even to academia in general. These are everyday issues which also confront other educational and research institutions and companies. The human rights assessment is an important tool to help answer these questions. It was developed by an ad hoc Working Group on Human Rights, set up by the VLIR Council in January 2018, and composed of human rights experts from all Flemish universities.

The present human rights assessment is a form of self-regulation by and for the Flemish universities. It should be read as a common but non-binding set of guidelines that allow the Flemish universities to further shape their institutional human rights policy. As a general principle, the Flemish universities have committed to embed the respect for human rights as a permanent cornerstone in their international operations.

# Chapter 1. Terminology

*Working group:* This is the ad hoc working group on Human Rights that was established in January 2018 within the Flemish Interuniversity Council (VLIR) in order to examine how the role of the five universities in the area of human rights can be more effectively incorporated into society and how each member of staff can be supported in this regard.

*Human rights assessment:* As a starting point, all researchers and employees of the Flemish universities are explicitly asked to think consciously and critically when starting a project, study or collaboration with one or more partners, both from the university and non-university domain. The human rights assessment provides an evaluation framework that is applied to all possible collaborations (research, education and services) that they wish to initiate (or extend) and for which they do not know in advance whether or not the partner and/or the planned activities violate human rights, either directly or indirectly. As such, the human rights assessment covers both the partners and the activities.

*Contact point for Human Rights (CMR in Dutch)*: This is the contact point within each university to whom researchers and staff members can address any questions regarding the human rights assessment, the human rights policy at their institution and possible human rights violations in new or current contracts. The concrete implementation of this is entirely up to the institution. However, it is recommended that the staff acting as a contact point have sufficient background knowledge on human rights or are sufficiently supported by human rights experts.

# Chapter 2. Positioning: the human rights assessment at the five Flemish universities

Universities are the cornerstones of academic education, scientific research and social services. In recent years, these universities have grown to become some of the largest employers, where internationalisation is the rule rather than the exception. This internationalisation is becoming more and more important and is reflected, among other things, in staff and student exchanges, contributions to capacity building in the South, international networking, clustering of research capacity and cross-border research cooperation. Universities are also academic safe havens where students can develop into critical citizens and researchers can freely address fundamental issues, applied scientific research and valorisation. Respect for human rights is inherent to universities' social role. The Flemish universities are committed to develop their own human rights policy and to play a pioneering role in this regard. The ever more complex and international environment in which these institutions operate creates the need for more guidance in the area of human rights for the 32,700 researchers and staff members (VLIR, 2018) affiliated to The Flemish universities.

The rectors of the five Flemish universities, which are all members of the VLIR, have agreed to work on a human rights policy and thereby play a pioneering role. They intend to develop a human rights policy that focuses on the positive impact that universities can have on their partners, partner countries and society at large.

The issues facing academics are not specific to any one university, nor even to academia in general. These are everyday issues which also confront other educational and research institutions and companies. The university management boards hope that this human rights assessment will inspire other organisations and individuals.

The ad hoc working group on Human Rights was therefore established within the VLIR in which professors and policy officers specialising in human rights and ethics work together to examine how the role of the five universities in the area of human rights can be more effectively incorporated into society and how each member of staff can be supported in this regard. This is a form of self-regulation by the universities.

The working group has indicated that broader and deeper awareness-raising is important, but not sufficient in itself. Practical tools are also needed to support colleagues in the academic world. An important tool in this respect is the human rights assessment within each university. To this end, the working group sought inspiration in the existing tools and developments in the area of human rights, both nationally and internationally. However, there appear to be few comparable tests and guidelines abroad. Consequently, the working group itself developed a human rights assessment and has been able to incorporate the experience gained at Ghent University over the past few years, both for drafting the human rights guidelines and for the procedural and practical elaboration of these guidelines.

In concrete terms, the following aspects were elaborated:
1. The present positioning
2. Human rights in a nutshell: an overview of history, legal bases and scope
3. Scope, responsibilities and phasing of the human rights assessment
4. Advice to the central services of universities: the roll-out of the human rights assessment

This first brainstorming exercise required regular updates so that it could keep track of rapid national and international developments. It is expected that the human rights assessment will generally run smoothly and will not cause any issues for researchers and staff members. In exceptional cases, problems or issues may arise. It is up to the working group to discuss these and any overarching cases, and to formulate an opinion on them.

In addition to the whys and wherefores of the assessment, proposals are also made for a further roll-out of the assessment procedure. All these guidelines and tools are intended to serve as levers for central services/university management boards to develop their own human rights policies. The aim is not to increase the administrative burden for researchers or staff members, or to develop new administrative processes. In order to avoid the human rights policy or review being seen as an additional administrative procedure, it is recommended to make use of existing structures and processes.

***Composition of the ad hoc VLIR Working Group on Human Rights:***
Members:
- Stephan Parmentier (KU Leuven) - Chairman
- Eva Brems (UGent)
- Dylan Couck (VVS) - observer
- Koen Lemmens (KU Leuven)
- Ann Peters (UHasselt)
- Stefaan Smis (VUB)
- Sonja Snacken (VUB)
- Jan Theunis (UHasselt) - replaced by Stijn Smet (UHasselt)
- Stef Vandeginste (UAntwerpen)
- Wouter Vandenhole (UAntwerpen)
- Andries Verspeeten (UGent)

Members of the VLIR Working Group on Science, Ethics and Integrity:
- Marianne De Voecht (UAntwerpen)
- Hanne Elsen (UHasselt)
- Inge Lerouge (KU Leuven)
- Stefanie Van der Burght (UGent)
- Audrey Van Scharen (VUB) - replaced by John Pearson (VUB)

VLIR Secretariat:
- Steven Van Luchene - replaced in September 2018 by Aurora Geerts

Incorporation of the human rights assessment at VLIR level: Aurora Geerts and Els Titeca

## Chapter 3. Human rights in a nutshell

We start with a brief overview of human rights: what is so special about them, and what should every employee of a university know about human rights?

### 3.1. What are human rights anyway?

Human rights are fundamental rights to which every human being is entitled. They are basic rights people need in order to live a dignified life. Human rights differ from ordinary rights and other rules in a number of important areas:

- First, they are *general* in the sense that they apply to every person, and must therefore be applied without discrimination, for example based on sex, skin colour, race, religious belief, or wealth;
- Furthermore, they are *universal*, i.e. they must apply in all countries and regions of the world, regardless of political, social, cultural and religious traditions;
- They are also *indivisible*, in the sense that all human rights are interlinked and there is no hierarchy between them;
- Finally, human rights are *inalienable*, which means that they cannot be taken away.

It follows from these characteristics that human rights are more fundamental than ordinary rights and other rules that apply to citizens, and that they therefore take precedence *a priori*. However, this does not mean that human rights are always absolute or unlimited; on the contrary, most of them are relative in nature. For example, they may be restricted in the name of protecting the rights of others or the public interest. Nevertheless, such restrictions must always have a legal basis and must not go beyond what is necessary. The courts have supervision over these aspects. For example, freedom of speech does not mean that you can always say or write whatever you want. Legislation can set limits in this regard, so that, for example, you must respect the privacy of others, or not incite hatred or violence. A small number of human rights, including the prohibition of torture and inhuman treatment and the prohibition of slavery, are of course absolute. As soon as a given action falls under this qualification, it constitutes a human rights violation.

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**How did human rights come about: a brief overview of a long history**
    see also (Dutch only): https://www.amnesty.nl/encyclopedie/geschiedenis-van-de-mensenrechten and
    https://www.humanrights.com/what-are-human-rights/brief-history

Human rights have a long history. But the Enlightenment of the 18th century and modern thinking about written law and natural law played a crucial role in the evolution towards its present-day interpretation.

Other events and traditions also contributed to the concept of human rights. Indeed, in all cultures, norms and values arose in order to guarantee the life and protection of the person in order to avoid falling into chaos. Ancient texts such as the Hammurabi Codex, the Ten Commandments, or the Cyrus Cylinder contain principles related to present-day human rights. Religious and philosophical currents gave them a theoretical or metaphysical interpretation, and the history of state-building and the evolution towards democratic forms of government contributed to refining the political basis of human rights, as evidenced by countless texts. The Magna Carta (1215), the Joyous Entry (1356), the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1789) are a few examples.

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Following the atrocities of the Second World War, the story of human rights took a new turn. Through the United Nations (founded in 1945), the international community was given the power to safeguard human rights, with the result that human rights enjoy international and regional protection in addition to national recognition, including through the Universal Declaration of Human Rights.

### 3.2. Human rights and universities: what should every university and its staff know about human rights?

Despite the common characteristics of human rights, there are also distinctions between different types of human rights, which are related to their origins. In general, a distinction is made between three major types or categories of human rights:
- Firstly, there are <u>civil and political rights</u>: these are the classic freedoms and fundamental rights, such as the right to life, the right to freedom of expression and the right not to be discriminated against;
- There are also <u>economic, social and cultural rights</u>: these rights often relate to social and economic justice such as the right to education, the right to health or the right to equal pay for equal work;
- Solidarity rights<u>, unlike the two previous categories of human rights that are individual, are generally collective in nature and have been recognised much more recently compared to these human rights, such as the right to development, the right to a healthy environment or the right of population groups to self-determination.</u>

In addition, it is important to know that human rights are protected at three different levels:
- the <u>national level</u> (the State and its components, e.g. federal and state entities in Belgium);
- the <u>regional level</u> (inter-state cooperation in one region or continent, e.g. in Europe), by means of regional treaties;
- and the <u>global level</u> (global cooperation between states, e.g. within the framework of the United Nations), through international treaties.

Human rights enshrined in regional and international texts are considered as minimum standards that can be supplemented and broadened by national legislation. Most of these are laid down in international treaties that are legally binding for the states that have submitted themselves to the standards and control mechanisms (*hard law*). In addition, there are various recommendations and guidelines that are not strictly legally binding but often have at least a moral and political significance (*soft law*).

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**What are the main legal instruments in the area of human rights?**
(See also the 9-language website of the University of Minnesota Human Rights Library: http://hrlibrary.umn.edu).

At the global level of the **United Nations**, the following legal instruments are of particular relevance (see also:
https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx)

- the Universal Declaration of Human Rights (1948)
- the Genocide Convention (1948)
- the International Covenant on Civil and Political Rights (1966)
- the International Covenant on Economic, Social and Cultural Rights (1966)
- the International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- the Convention on the Elimination of All Forms of Discrimination against Women (1979)

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- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- the Convention on the Rights of the Child (1989)
- the Convention for the Protection of the Rights of all Migrant Workers and Members of their Families (1990)
- the Convention on the Rights of Persons with Disabilities (2006)
- the International Convention for the Protection of All Persons from Enforced Disappearance (2006)

There are two major regional organisations on the European continent, the **Council of Europe** and the **European Union**, both of which have adopted important legal instruments (see also: https://www.coe.int/en/web/portal/home and https://europa.eu/european-union/topics/human-rights_en):

- the European Convention on Human Rights (1950)
- the (Revised) European Social Charter (1996)
- the Charter of Fundamental Rights of the European Union (2000)

Within the framework of the Regional **Organization of American States**, the following are also familiar in particular (see also: http://oas.org/en/topics/human_rights.asp):

- the American Declaration of the Rights and Duties of Man (1948)
- the United States Convention on Human Rights (1965)

And in the context of the **African Union**, the main instrument is (see also: https://au.int/en/organs/cj):

- the African Charter on Human and Peoples' Rights (1980)

There is also the **Organisation of Islamic Cooperation** (see also: www.oic-oci.org) with:

- the Cairo Declaration on Human Rights in Islam (1990)

It should be noted that the vast continent of Asia does not have a comprehensive regional organisation, and therefore no regional human rights instruments; human rights in Asia are thus protected either at the national level of the individual countries or at the global level (in particular the United Nations). There is, however, the **ASEAN** Declaration of Human Rights (2012), which seeks to promote human rights in South-East Asia (https://asean.org/asean-human-rights-declaration).

Finally, an important evolution in the area of human rights can be highlighted. The brief historical overview clearly showed that human rights were originally developed to govern relations between the government and the individual in a different way. This so-called 'vertical dimension' of human rights is expressed in the duty of the government to respect, protect and uphold human rights. There are negative and positive obligations of the government according to the degree of government involvement. Individuals are the beneficiaries and, when the government violates human rights, may appeal to national courts and tribunals or to international or regional bodies against the state.

In recent years, an increasing number of essentially non-state actors have been asked to play a role in human rights. National companies and multinational corporations, trade unions, professional organisations, and non-governmental organisations in general, are also expected to take responsibility for making human rights protection more effective. This 'horizontal dimension' of human rights is rapidly becoming more important and numerous legally binding and non-binding instruments have been enacted to this end. Some universities and academic institutions are non-state

actors who are expected to actively work to protect and promote human rights within their institutions and in their contacts with external partners. The present human rights assessment relates to university collaborations and therefore fits in with the narrative of the 'horizontal protection of human rights'.

# Chapter 4. Scope, responsibilities and phasing

In this section, we look at the conditions under which the human rights assessment applies and which aspects are assessment. We also go over the responsibilities for the human rights assessment within the universities and the various phases of this assessment.

## 4.1.    To what forms of cooperation does the human rights assessment apply?

The working group proposes to apply the human rights assessment to forms of cooperation that individual Flemish universities intend to enter into with external (university and non-university) partners. This clearly shows that it is not the intention to apply the human rights assessment at the level of a country or a regime, but only at the level of potential and actual partners and activities within the university cooperation.

**A first recommendation concerns the scope of the systematic human rights assessment**: it consists of a commitment by every Flemish university to systematically carry out a human rights assessment (see the box below for some concrete examples). When making this self-imposed commitment, the following should be taken into account:
-    It only concerns collaborations concluded with a document *signed by the university as an institution, either by a central service or by one of its departments* (as this signature implies the responsibility of the institution as a whole).
-    The human rights assessment focuses on *new collaborations and on the renewal of ongoing collaborations*, within one or more of the three classic domains of the academic remit, namely research, education, and services.
-    It is a collaboration that the institution wishes to develop with *one or more external partners*, both university partners (both the central university and decentralised units that form part of the university) and non-university partners (both non-university institutions for research, education and services, as well as institutions and organisations from the public sector, such as ministries, the army, the police, the public prosecutor's office, etc., and from the private sector, such as companies, non-governmental organisations, etc.), in bilateral or multilateral forms of cooperation.
-    The collaborations will be developed at *national level* (with Belgian partners or Belgian funding) *and/or* at *international level* (with non-Belgian partners or non-Belgian funding); it is never the intention to assess a country or a regime, only the specific partner institution.

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**Examples of cooperation to which the systematic human rights assessment applies (this list is not exhaustive):**

•        a Flemish university wishes to conclude a 'joint PhD' agreement with another university institution (national or international), or to renew an existing agreement;
•        a researcher at a Flemish university is considering starting a research project with one or more partners (national and/or international; university and/or non-university);
•        a faculty of a Flemish university wishes to conclude an exchange agreement with a faculty at another university institution (national or international) for the exchange of students;
•        a member of staff at a Flemish university is considering starting a capacity building project with one or more non-university partners (national and/or international), or extending that project;
•        a researcher or research group at a Flemish university is invited to join an international consortium with a view to applying for project funding for research;
•        a faculty of a Flemish university is considering setting up a joint master's programme in collaboration with other university institutions (national and/or international).

The commitment of the Flemish universities means that the human rights assessment is applied in the above situations, since each time:
1) the cooperation is formalised in an agreement binding a Flemish university; **and**
2) cooperation in research, education and/or the provision of services is being considered or initiated.

In addition to the systematic human rights assessment, a university can also decide to subject other partnerships to an assessment, for example if the partner's circumstances have changed (e.g. a regime change or policy change in response to practices that are not in conformity with human rights). This assessment can be applied in the following cases:

- On *agreements with university or non-university partners that are currently ongoing:* it remains important to 'monitor' such cooperation over time, each time there is a concrete reason for doing so, carry out a new risk analysis in order to be able to detect and adjust any problems with the partners or the activities early enough.
- Once the *collaborations have ended*, they can also be evaluated retroactively ('ex post'), with a view to detecting problems afterwards and drawing possible lessons for the future. These should ideally take place at the level at which most information on the activities and partners is available, in most cases at the level of the local research or teaching unit or individual staff; in exceptional circumstances, this phase may be at a higher university level, for example in the case of collaborations concluded centrally.
- On agreements with external partners (domestic and/or foreign) *who supply goods or services* to the university (sub-contracts). In such cases, universities may limit themselves to a review of the subcontractor itself, or may also review its *supply chain*.
- On the activities carried out by universities *without the cooperation of external partners*. In such cases, universities can reflect further on the human rights implications of these activities.
- On specific forms of cooperation with external partners *not covered by a formal agreement*.

**Examples of cooperation that can also be assessed by extension (this list is not exhaustive):**

• a professor at a Flemish university invites a national or international colleague to give one or more guest lectures, or is invited abroad him or herself;
• a researcher at a Flemish university invites national or international colleagues to take part in a conference, or is invited by them;
• a PhD supervisor at a Flemish university invites national or international colleagues to sit on a doctoral jury or to act as co-supervisors, or is invited to take on one of these positions him or herself;
• a faculty member at a Flemish university concludes an agreement with a catering company to provide catering during meetings, conferences and festivities.

Strictly speaking, the human rights assessment does not have to be applied in the above situations, as it concerns activities:
1) for which there is no agreement at university level; or
2) which do not fall under the classic academic remits of research, education and services.

Although these cases do not fall within the scope of the systematic human rights assessment, universities themselves may choose to carry out the assessment optionally or even to systematise it in a number of cases within their institution (e.g. entering into an agreement with a security firm). Moreover, it is part of the academic freedom of each staff member to apply the human rights assessment when he or she bears the decision-making responsibility (e.g. inviting international colleagues to attend a conference).

### 4.2. What aspects of cooperation are subject to the human rights assessment?

A follow-up question concerns the precise aspects that will be assessed with a view to preventing or detecting violations or the risk of violations of human rights.

**The second recommendation covers the aspects of cooperation that are assessed**: it stipulates that the human rights assessment must cover at least the following two aspects (see box below for concrete examples):
- On the one hand *the partner(s) in the cooperation*: in this case, it is assessed whether the partner(s) has/have been guilty of serious and/or systematic human rights violations in the past; it is therefore an assessment of the risks of human rights violations, always on the basis of the current knowledge; for this aspect, the assessment body cannot be aware of all the facts and in most cases there is no reason for concern; nevertheless, it is advisable to obtain information about the past (*track record*) of the partner(s); according to this third guideline, a partner only becomes 'problematic' if the human rights violations are 'serious' and/or 'systematic' (together they constitute the concept of 'serious human rights violations'): serious violations relate to the nature of the violations (e.g. serious attacks on the physical and psychological integrity of individuals and groups); systematic violations are those that occur repeatedly, which means that they can no longer be regarded as occasional, but can reasonably be assumed to be inherent in a partner's established practice or policy. Assessing these aspects involves a certain margin of discretion and is therefore best done in a consequential manner by the competent person or contact point (see below).
- On the other hand, *the activities of the cooperation*: this refers to the extent to which the activities covered by the cooperation agreement could give rise to human rights violations; here again, it is an assessment of the risks of human rights violations, always on the basis of the current knowledge, but in this case the assessment body is closely involved in the planned activities and, in principle, is well informed.

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**Examples of <u>problematic partners</u>:**

• university partners who systematically discriminate against certain persons on the basis of their gender, ethnicity, political opinion, nationality, religion, etc., for example by denying them access to university;
• university partners who regularly dismiss staff due to criticism of government policy;
• university partners whose security staff counteract protesting students with excessive force (whether or not resulting in death);
• non-university partners who systematically refuse to grant their employees fair remuneration, according to local standards, for work done (within or outside the planned cooperation);
• partners who are state actors, such as army, police, prisons, who have been shown to commit or have committed serious human rights violations in the past (e.g. repression of demonstrations with excessive violence, imprisonment of minorities in 're-education camps', torture of terrorist suspects, expulsion and murder of minority groups);
• university or non-university partners who actively contribute to serious human rights violations committed by a national government; for example, these partners support the government in:
   o operating detention centres in which refugees are held in inhuman conditions and/or for an indefinite period of time;
   o the unlawful destruction of housing as part of infrastructure projects or to oppress part of the population;

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o   the drastic reduction of health care in already disadvantaged parts of a country;
o   setting up torture programmes for terrorist suspects;
o   organising death squads in a 'war on drugs';
o   the compulsory sterilisation of certain groups of persons (e.g. persons with disabilities or Roma);
o   testing experimental drugs on an impoverished section of the population.

Cooperation with the above partners should certainly be the subject of critical reflection and evaluation, as they are serious and/or systematic violations of human rights. This applies irrespective of the activities that would be carried out in cooperation with the partner. In other words, even if the planned activities are in no way related to the human rights violations in question, the partnership is problematic.

**Examples of problematic activities in the context of the cooperation:**

•        activities for which child, forced or slave labour is used by the partner(s);
•        activities that constitute unlawful discrimination, e.g. an exchange agreement or a joint PhD agreement that are not open to certain categories of persons on the basis of their gender, ethnicity, religion, nationality, etc., without any well-founded objective reasons (e.g. 'positive discrimination');
•        activities with harmful side-effects, e.g. damage or destruction of land and/or cultural property of indigenous peoples.

The above activities are problematic, as they involve human rights violations (at least prima facie) and should therefore raise a red flag. Regardless of the partner with whom the cooperation is intended (even if it has an otherwise flawless human rights record), the university should consciously ask itself whether it can make a positive contribution in one way or another to solving the problem in question (e.g. by developing alternatives to child labour in a project). At the very least, the university needs to make a *best effort* to prevent the cooperation from being misused for political communication purposes or to legitimise a bad policy.

**Examples of non-problematic situations (partners or activities):**

•        a Flemish university or staff member of a Flemish university is considering concluding an agreement with a partner from a country in which human rights are seriously violated (e.g. political activists are systematically locked up, large parts of the population die from malnutrition, minorities are systematically discriminated against, terror suspects are tortured, etc.). However, the proposed partner is in no way involved in these human rights violations, **nor** do the activities of the proposed cooperation involve human rights violations; in this case it cannot be concluded that there is a problem situation, as the human rights assessment does not assess the general human rights situation in a country;
•        a proposed non-university partner may, due to a temporary shortage of funds that is not caused by systematic misuse of funds, occasionally fail to pay the salaries of their employees on time;
•        a proposed university partner refuses access to their buildings to an academic on one occasion due to their controversial political opinion, without this opinion being punishable.

**The third recommendation is to include a safety option, where relevant**. In some cases (e.g. in a context where there have been problems in the past or where the internal legal order does not function well), the university could consider advocating for the inclusion of a specific 'human rights clause' from the moment the contacts are initiated that will lead to a signed agreement:

- The *purpose* of this clause is to ensure that, in the case of cooperation that will actually start or has already started, there will still be room for substantive discussions in the event of a real risk of human rights violations arising later, either at the level of the partner or at the level of the activities.
- Such a clause may also include *procedural provisions* setting out the various steps to be followed, e.g. an initial notification to the partner concerned of the intention to apply sanctions; an invitation to formulate a reply or to engage in dialogue within a reasonable period of time; in the absence of a reply or of a satisfactory reply, a reminder of the notification which triggers the sanctions immediately (or at the end of the indicated period).
- The consequences and their motivations may or may not be publicised, taking into account the possible wider awareness-raising effect of the publication by the Flemish university through the media, among other things.

## 4.3. Who carries out the human rights assessment and when?

**The fourth recommendation covers the timing and the entity which will carry out the systematic human rights assessment:**
- The systematic human rights assessment (in the case of new and renewable partnerships) should ideally take place *as soon as possible* during the preparatory process. The longer this is postponed, the more difficult it becomes to adjust the planned collaborations, or in the extreme case, to stop the discussions or preparations.
- The implementation of the human rights assessment involves both the *research or education units and the individual staff, as well as the central university entities* (especially in the case of centrally managed collaborations). In practice, the initiative to start or extend existing collaborations often starts at the decentralised level, at the department or faculty, the specialist group or even the individual employee.
- In order to carry out the human rights assessment properly, it is necessary to have *sufficient information* on the envisaged partners and planned activities.
- It is up to each university to individually organise the *exact entities and procedures* in this step-by-step plan.

## 4.4. How many stages make up the human rights assessment?

**The fifth recommendation covers the different stages of the human rights assessment**. The human rights assessment consists of three phases: the 'screening', the 'scoping' and the conclusions. The 'screening' should be carried out by the university researchers or staff themselves or by the support service responsible for the cooperation agreement in question. If necessary, this service (decentralised or central) will in turn ask the contact point for advice. The 'scoping' and conclusions are for the contact point for human rights ('CMR') whom the university in question made responsible for following up the human rights assessment. Some examples of typical situations are shown below.

### 4.4.*a*. 'Screening' based on information and an 'indicator diagram'.

As a starting point, all researchers and staff are explicitly asked to think consciously and critically when starting a project, study or collaboration with one or more partners, both from the university and non-university domain.

The researchers and staff are expected to systematically apply the human rights assessment to all possible collaborations (research, education and services) that they wish to initiate (or extend) and where there is a suspicion of a risk of human rights violations. As such, the human rights assessment covers both the partners and the activities, as previously stated.

The researchers and staff are encouraged to apply the human rights assessment by using the following elements:
- by examining the mission, vision and activities of the partner or by obtaining information or reading articles about the partner;
- by using a number of websites that can be a good starting point (see section *'Screening': the indicators diagram for researchers and staff*);
- by answering a number of questions, which have been arranged as 'indicators' in the broader diagram.

The working group believes that in the vast majority of cases the 'screening' will not reveal any negative information. However, if the indicators do reveal issues, or if there is still doubt after carrying out an online search and checking the indicators, the researchers and staff are asked to contact the department responsible for the collaboration in question or the contact point within the university. Researchers and staff can, of course, first consult with colleagues to see how they can deal with this or see if colleagues have more information about the partner or activity.

### 4.4.b. 'Scoping' by the CMR within the universities

If an indicator has revealed an issue during the 'screening' by researchers or staff (including staff of the consulted central service), or if doubts remain about the human rights risk for any other reason, the next step should be 'scoping'. This is a more thorough examination of the partner and/or the activities, and is no longer the task of the researcher or staff member. Responsibility for this lies with the CMR within the university, both for the 'scoping' as for discussing the consequences with the researchers or staff involved. The working group believes that 'scoping' will only have to be carried out in exceptional cases, and that the consequences will likewise only be negative in exceptional cases.

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**Diagram of the human rights assessment**
(with an indication of the **main** persons responsible):

| | | Partner(s) | Activity(ies) |
|---|---|---|---|
| o | 'Screening' | staff/researcher | staff/researcher |
| o | 'Scoping' | specialised unit | specialised unit |

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### 4.4.c. Consequences of the human rights assessment

If the 'scoping' effectively brings to light issues with the partner and/or the activities, it is up to the CMR within the university to discuss the consequences of this with the researcher or staff member involved.

Attention should be paid to cases where there is a real risk that the potential partner(s) is/are involved in serious and/or systematic human rights violations and/or a real risk of human rights violations in the area of the planned activities. It is important to stress the exceptional nature of such high risk.

As these consequences can vary widely according to the precise circumstances, the working group has opted for a process-based approach, which aims both at an appropriate response to the specific situation and coherence. In general, the working group advises trying to thoroughly assess what impact (both positive and negative) the possible collaboration may have.

***The sixth recommendation covers the possible consequences of the systematic human rights assessment*** which would lead to a real risk for the new or continued collaboration, and stipulates the following:

- As a basic option, it is strongly recommended to *enter into dialogue* with and about the partners and activities which have resulted in the problem situation.
- If the problem relates to the past/present of the potential partner, it is then recommended to take action at the level of the potential partner and, if necessary, to exclude the partner from the envisaged collaboration.
- If the problem is at the level of planned project activities, it is recommended to adjust the planned activities to a greater or lesser extent and, if necessary, eliminate them altogether.
- *Each of the above options should be weighed up* on the basis of the severity of the problem, the substantive consequences of the cooperation, the intended societal impact of the cooperation, and the financial and legal commitments entered into.
- In general, each university has the necessary degrees of freedom in this regard to organise the *specific entities and procedures* of these exercises itself.

### 4.4.d.   Examples illustrating the different phases of the human rights assessment

By way of illustration, below are several typical situations that may occur regularly when the human rights assessment is carried out. Reference was made above to examples of problematic partners and problematic activities.

### Typical situation 1: low risk in terms of potential partners and activities

A faculty of a Flemish university wishes to conclude an exchange agreement with a faculty at another university institution for the exchange of students; The proposed cooperation builds on an existing cooperation relationship with the partner.

Formalising or continuing an existing collaboration is the most common situation, also in the context of research and services. Given the circumstances, the *screening* by the staff member - of both partner and activities - will be quick and easy.

### Typical situation 2: real risk in terms of potential partners

A research group considers starting a capacity building project with a number of non-university partners with whom it has not previously worked. In addition, the project is in the area of fishing, a potential high-risk sector for the exploitation of workers.

Before further developing the project, the staff member carries out a *screening* of the possible partners. The staff member consults a number of sources, including the ResponsibleSourcing Tool. This shows that fishing in the country in question involves child labour and forced labour. The staff member conducts a targeted search with the names of the partners and stumbles upon a report by a human rights organisation on child labour, in which several potential partners for the cooperation are mentioned. The staff member therefore considers that the risk of serious and systematic human rights violations at the level of the partners is real.

The staff member reports on the *screening* to the CMR and indicates that he or she believes there is a real risk of serious and systematic human rights violations at the level of the potential partner. The CMR within the university carries out a more detailed *scoping* of the partner. The *scoping* confirms that the potential partner shows a real risk of involvement in serious and systematic human rights

violations. The consequences of this conclusion for the envisaged cooperation are dealt with in Chapter 6.

**Typical situation 3: real risk in terms of the planned activities**

A researcher or research group in a Flemish university considers starting a research project with a company (a non-university partner) with whom it has not previously collaborated. It is a research project on the extraction of natural raw materials, a known high-risk sector.

Before further developing the project, the staff member carries out a *screening* of the partner. In doing so, he or she comes across a number of press articles mentioning a problematic link between the national government and a number of companies in the mining industry. The press articles state that certain companies have been actively involved in the forced displacement of indigenous peoples during mining projects. However, the proposed partner is not mentioned in the press articles and additional research does not provide any further insights either. Nonetheless, the staff member still has doubts and does not consider him or herself capable of correctly assessing the risk of serious and/or systematic human rights violations by the potential partner.

The staff member submits the findings to the CMR within the university and indicates that he or she is unable to correctly assess the risk at the level of the potential partner. The CMR therefore moves to the *scoping* phase, and this reveals that there is no particular risk with regard to the partner; indeed, according to all available information, the company is in no way involved (past or present) in the observed human rights violations.

The staff member is given the green light and continues work on the project. As soon as the activities are completed, the staff member also performs a *screening* of these activities. Conscious of the previously-found information, the staff member pays special attention to any risk of forced displacement of indigenous peoples. This risk seems low in this case, given that the mining site in question is reasonably far away from areas inhabited by indigenous peoples. However, given the earlier doubts surrounding the project, the staff member wishes to call in the assistance of the CMR within the university on this point as well.

The staff member submits the findings to the competent body and indicates that he or she is unable to correctly assess the risk at the level of the activities. The competent body carries out a *scoping* of the activities. In doing so, it discovers that the mining site is located in an area where important cultural properties of indigenous peoples are located (e.g. an ancient cemetery or rock art) and that these are in danger of being destroyed by the planned activities of the cooperation. Consequently, the CMR concludes that the planned activities do pose a real risk of human rights violations. The consequences of this conclusion for the envisaged cooperation are dealt with in Chapter 6.

**Typical situation 4: the risk only comes to light later**

A researcher or research group at a Flemish university is invited to join an international consortium consisting of both university and non-university partners. The consortium will undertake both research and services in collaboration with multinational tech companies.

The project has already been largely developed by the lead partner, and the planned activities are therefore already reasonably certain. The staff member immediately proceeds to a *screening* of both the potential partners and the planned activities. The staff member pays particular attention to protecting the right to privacy, as he or she knows that there are general concerns about the impact of tech companies on this human right. However, the *screening* does not flag any specific risks. The

staff member decides that the risk is low in terms of both the potential partner and the planned activities. Consequently, no *scoping* will take place.

The project is launched. Over time, however, an entirely different problem comes to light. It appears that one of the non-university partners systematically refuses to grant fair remuneration to its employees. Moreover, the partner does not comply with national legislation on the maximum number of working hours. Under the threat of dismissal, employees are forced to work up to twelve hours a day at a lower wage than is customary in that sector. The staff member carries out a new *screening* and this time identifies a high risk for the partner in question. The *scoping* by the CMR within the university confirms this real risk that came to light during the collaboration. The consequences for the further progression of the cooperation are dealt with in Chapter 6.

Since the working group has established that there are no or few comparable human rights assessments in Belgium or in other countries, it has developed one itself and made it available to The Flemish universities. The central objective of the universities is to be able to assess a real risk of serious human rights violations in good time. The human rights assessment proposed here is intended to be a tool in this respect.

The working group used UGent's 'checklist' to further elaborate an 'indicator diagram' for individual university staff. With this indicator diagram, we offer researchers and staff members a tool to start screening potential partners and/or activities in new agreements or when renewing existing contracts. This diagram can be further supplemented or adapted by the universities themselves. Researchers and staff will only go through this diagram after there has been an awareness-raising campaign about human rights within the institution. It is not the intention to let a researcher or staff member go through the indicator diagram without any context or background.

### 5.1.    Sources and criteria for 'screening'

In order to 'screen' the partner and the activities, researchers and staff members can start informing themselves online. When looking for partners and/or activities online, the following websites can be a good starting point:
-    CSR risk check: https://www.mvorisicochecker.nl/en/home
-    For high-risk sectors: https://www.responsiblesourcingtool.org/
-    For sectors or companies: https://www.business-humanrights.org
-    For risk areas: https://freedomhouse.org/report-types/freedom-world
-    For violations of academic freedoms: https://www.scholarsatrisk.org

These websites offer information on specific risk areas or sectors. The working group advises researchers or staff members to supplement these websites by requesting newspaper articles, websites and other sources.

The following criteria can be used for the 'screening':
-    The content of the impact: which rights can be violated?
-    The scale of the impact on human rights: will it be significant/large or rather limited?
-    The nature of the impact: does it have direct or indirect consequences?
-    How likely is it that there will be violations?
-    The role of the partnership in the impact: will cooperation have an impact? Will these contribute to / aggravate violations that are already taking place?

If after this 'screening' the indicators reveal potential problems or if doubt remains after performing an online search and checking the indicators, please contact the CMR within each university.

## 5.2. Indicator diagram

Below is an 'indicator diagram' intended to provide researchers and staff with a concrete tool to 'screen' potential partners and activities. In particular, it points to a number of scenarios in which special vigilance is necessary.

The key questions of the human rights assessment are the following:

Is a partner within the cooperation involved in serious and/or systematic violations of human rights? Serious violations relate to the nature of the violations (e.g. serious attacks on the physical and psychological integrity of individuals and groups); systematic violations are violations that occur recurrently, which means that they can no longer be regarded as occasional, but can reasonably be assumed to be inherent in a partner's established practice or policy.

Yes ✳ | No ○

Will the activities in the context of the cooperation contribute to human rights violations?

Yes ✳ | No ○

Certain types of partners, activities and contexts may call for heightened vigilance:

1. Partners

1.1. One of the partners in the project is not an academic institution, but an actor who, by its nature, may have possible involvement in human rights violations. Examples in this regard may include:
- (elements of) the police, army or other (public and private) security services, and other public services whose operations may give rise to human rights violations;
- companies in sectors where large-scale violations of workers' or residents' rights occur on a regular basis (mining sector, clothing industry, large-scale plantations, infrastructure and utilities (e.g. a dam)).

Yes ✳ | No ○

1.2. One of the partners is a government agency (other than a public university) in a country with a poor reputation for human rights violations. E.g. a country marked as 'not free' in the 'Freedom in the world' index (Freedom House, https://freedomhouse.org/report-types/freedom-world).

Yes ✳ | No ○

1.3. One of the partners in the project is an academic institution very closely associated with an actor mentioned in 1.1. or 1.2.

Yes ✳ | No ○

2. Activities

2.1. Due to the nature of the activities and the context, there is a risk that messages are disseminated within the project (e.g. in training or education) which may give rise to human rights violations (this may also include problematic requirements of donors, e.g. a formal requirement not to speak about family planning in medical programmes).

Yes ✳ | No ○

2.2. There is a risk that knowledge, equipment or results acquired in the course of the cooperation may be used/misused to violate human rights.

Yes ✳ | No ○

2.3. There is a risk of human rights being violated in the margins of the project ('collateral damage') or prior to the project (e.g. in order to create a testbed, people may be expelled from their country).

Yes ✳ | No ○

3. Context

3.1. The project is (partly) carried out in a country/region where serious human rights violations occur, where it is reasonable to suspect that this may also affect the cooperation (activities and/or partner) (e.g. large-scale discrimination against a certain ethnic group, systematic censorship, etc.).
Yes ✳ No O

3.2. The project is (partly) carried out in a country/region where academic institutions are instrumentalised by the government in a policy of human rights violations (e.g. cooperation in prosecuting dissidents or legitimising human rights violations).
Yes ✳ No O

# Chapter 6. 'Scoping' by the Contact point for human rights and the possible consequences

If the 'screening' of potential partners and/or activities results in a real risk situation, or an unclear situation, regarding human rights violations, the human rights assessment requires that the second phase is triggered and a 'scoping' is carried out. In principle, this 'scoping' does not take place by the individual researcher or staff member, but by a CMR within the university that has the necessary expertise.

With this chapter, we offer a framework to the CMR within the university for carrying out the 'scoping'. The specific components of this analysis will depend strongly on the specific question received by the contact point.

## 6.1.     'Scoping': What and how?

If a real risk has been identified based on the 'screening', or if no clear conclusion can be drawn, a 'scoping' needs to be carried out. The purpose of the 'scoping' is to allow a more thorough assessment of a more limited list of issues related to a potential partner and/or a planned activity. This is not the task of the researcher or the staff member him or herself. To this end, he or she will be assisted by the CMR within the university, which will further investigate the potential partner or the planned activity in the context of research, education or services.

The criteria for scoping can be diverse:

- There may be a focus on serious and/or systematic violations, emphasising the scope, irreparability and extent of the violations;
- Whether it is possible to identify which rights in particular are being violated and/or which specific population groups are targeted (e.g. forced eviction of Roma from illegal settlements);
- The exact nature of the potential partner's involvement in human rights violations.

How does the scoping need to be carried out exactly?

This depends strongly on the question being asked. The working group recommends using the experience of existing committees or working groups within the university. The working group proposes the following possibilities to help the staff of the contact point:

- Possible sources are: Belgian embassies, FPS Foreign Affairs, European Union, United Nations, specialised human rights organisations, etc.
- Contact researchers or staff members who have previous experience with the same partner or activity

## 6.2.     Consequences for universities and their staff

Finally, the question arises as to the consequences of the systematic human rights assessment carried out for new university partnerships, especially in the event of a real risk of human rights violations occurring at the level of potential partners and/or of planned activities. It is important to stress the exceptional nature of such a real risk, given that the thresholds are relatively high before a situation can be described as problematic.

As these consequences can vary widely according to the precise circumstances, the choice here is for a process-based approach, which aims both at an appropriate response to the specific situation and coherence. It is left to the universities to judge the appropriate consequences. This document only provides a number of tools.

In the situation where the universities or their staff explore and discuss a <u>new collaboration</u>, the consequences of a 'scoping' that indicates a real risk of serious and/or systematic human rights violations by the potential partner, or of violations by the planned activities, can be numerous:

- The very first step always consists of a serious attempt to engage in a dialogue with one or more partners, with a view to obtaining an explanation and triggering accountability, both as regards the potential partner and the planned activities. These discussions should ideally be done by the central service that concludes the contracts, the individual researcher or staff member is not expected to address the partner personally.

- As a result, the potential partner may be requested to adapt the activities that entail serious violations of human rights, or the planned activities of the cooperation may be adapted, to a greater or lesser extent.

- The next step is to completely remove the planned activities and/or exclude the envisaged partner from the new cooperation.

- The university or its staff can also withdraw as a potential partner.

- Or, as part of a consortium, it can be decided not to start the new partnership.

- If, after thorough evaluation and justification, it turns out that a continuation of the cooperation may have more positive than negative consequences for the human rights situation, then it may be advisable to actually continue these, provided that a follow-up procedure ('monitoring') is put in place; various arguments can be put forward, such as the dissuasive effect on human rights violations of the presence of a foreign partner, an expected improvement in the partner's attitude towards human rights, the strengthening of moderate and/or human rights-minded voices within the partner organisation, and so on.

- Each of the above-mentioned substantive and procedural options should be weighed up against the severity of the problem, the substantive consequences for the new cooperation, and the financial and legal commitments already entered into.

There is still the situation in which the <u>cooperation is already in progress</u>, and to which the human rights assessment can be applied by the university if they wish. Even in this situation, risk situations in the area of human rights may have various consequences:

- If a human rights clause was included in the cooperation agreement, this can be used to discuss the problem within the cooperation and seek a joint solution; and even in the absence of a human rights clause, the university may choose to raise the issue and seek solutions.
- Even more so than in the previous situation of a new collaboration, in an ongoing collaboration it is essential to enter into dialogue with and between the partner(s) in order to raise the issue and jointly seek solutions.
- In addition to substantive adaptations, procedural steps may be taken in the above cases: ongoing collaborations may be suspended, in the short or longer term; the funding body may be informed of the problem situation; the collaboration may be discontinued with the partner or on the activity

in question; the university may withdraw from the cooperation; the entire cooperation project may be discontinued.

- Furthermore, the same considerations that were specified when exploring new collaborations apply.

# Chapter 7. Advice to the central services of universities in connection with the human rights assessment

## 7.1. Background

The outcome of the work of the working group has resulted in the present recommendations for implementing a human rights assessment. In addition, the working group has also elaborated concrete suggestions to further raise awareness and alert the Flemish university landscape to human rights. This was partly done by outlining the importance of human rights in university collaborations. In part, this is done by providing a number of concrete tools to apply a human rights assessment, systematically for new and renewable contracts with domestic and foreign partners, and optionally in all other cases.

It is certainly not the intention to create new administrative burdens. Safeguarding human rights is not a question of administrative 'checks'. It is a mindset, a code of conduct that must be pursued as effectively as possible. Incidentally, the assessment will not bring about any major change for the universities themselves. Indeed, it is in universities' DNA to think critically and carefully about their role in society. What is new here is the fact that the universities also commit to making human rights policy more explicit and to extending it in their collaborations with partners. It is not a revolutionary change, it is primarily the inclusion of the pioneering role that universities already play on so many fronts. It is about convincing partners to work with or helping partners to respect human rights. Nonetheless, the intention is for researchers or staff affiliated to a Flemish university to consciously generate positive impact and consciously prevent negative impact.

## 7.2. Advice to the central services of universities

The working group advises:

- making an overview of human rights available to university researchers and staff;
- providing a Contact point for human rights to whom staff and researchers can address questions or receive advice relating to the human rights assessment. Depending on the context of the institution, this may constitute a task for an already existing entity.
- organising the human rights assessment in optimal conditions. As stated above, the human rights assessment is primarily aimed at the staff of the university. They are asked to 'screen' their future partners and activities for possible human rights violations. If the 'screening' shows that there are given risks, the staff member must contact the CMR of their own institution.
- broadly communicating the introduction of the human rights assessment to in-house staff.
- ideally embedding the human rights assessment in a broader human rights policy.