



### **Joint NGO's' contribution**

#### **to the third Universal Periodic Review of Belgium by the UN Human Rights Council**

This report, with specific focus on health, environmental issues and sustainable development, is written and submitted on behalf of the following NGOs:

- stRaten-Generaal (citizen movement: *StReet Parliament*)
- Climaxi (Friends of the Earth - Flanders)
- Stand Up For Your Rights (RICHWE program / advisor)

The above mentioned NGO's welcome the opportunity provided by the Office of the High Commissioner on Human Rights to submit a stakeholders' report for the Third Universal Periodic Review (UPR) of Belgium, to be held during the 38th session of the Human Rights Council in 2021.

For this 3rd Universal Periodic Review of Belgium, a group of NGOs are presenting this report relating to the "Human Right for a safe and healthy environment" for current and future generations.

We sincerely hope that the findings in this report will encourage an open and constructive dialogue, which will lead to an expedient solution to the identified shortcomings and secure the human right to live in a healthy and safe environment in Belgium for present and future generations.

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## 1. INTRODUCTION

Belgium is a politically very complex country. Which is part of the reason why its environmental issues are not being addressed effectively. Due to the fact that responsibilities are scattered throughout the 5 parliaments, Belgium lacks a coherent, unified and long term vision. This is a structural problem.

In the present report, we focus on three specific primary problem areas in Belgium that affect environmental protection as well as essential human rights:

1. Belgium is still lacking a National Human Rights Institution (NHRI)
2. Belgium is experiencing a systematic lack of access to information and justice, compounded by various efforts to further reduce this access.
3. Belgium is experiencing absent vastly diminished implementation of environmental protection laws.
4. A lack of consideration for the long-term impact of policy decisions and (non)implementation of established environmental protections.

These issues and their negative impact will be illustrated with various examples.

## 2. THE BELGIAN NATIONAL HUMAN RIGHTS INSTITUTION

We welcome the fact that the Belgian government has voted a law stating its intention to establish a National Institute for Human Rights (NHRI) according to the Paris Principles, and according to several recommendations in earlier UPR reports for Belgium. Our institute carries the name FIRM: *Federaal Instituut voor de Mensenrechten* (Federal Institute for Human Rights). But it is as yet inoperative, as Belgium has remained without a Federal Government for 500 days since the last federal elections, which means there was no duty bearer which was qualified to confirm its establishment. The Institute has an important role to play in putting national issues in a human rights perspective. Having socio-economic and (sustainable) development issues recognised as human rights, both by the people and by the authorities, is an important step toward their protection and implementation, but the Belgian Institute still has no budget or staff allocated.

Belgium has adopted the 2030 Agenda for Sustainable Development, and therefore agreed to “...implement the Agenda for the full benefit of all, for today’s generation and for future generations”. In doing so, the country commits to international law and agrees the Agenda is to be implemented in a manner consistent with the rights and obligations of states under international law, as set out in SDG18. Human rights principles and standards, as well as intergenerational equity, are strongly reflected in this ambitious new global sustainable development framework<sup>1</sup>.



In addition to what has been set out before by the OHCHR, Agenda 2030, the goals and targets, the Merida Declaration and the rights-based monitoring by NHRIs, we have noticed that UN human rights bodies are also addressing the SDGs. A rights-based approach to SDGs would definitely help to underpin the implementation of the SDGs by Belgium.

We welcomed that the Secretary General of the UN also demands more emphasis on the right to a healthy and safe environment. The current Covid-19 pandemic has revealed to all of humankind how our overexploitation of the environment and destruction of animal habitats and ecosystems inevitably comes back to haunt us.

#### RECOMMENDATIONS:

***We recommend that the Human Rights Council urge Belgium to ensure that a Belgian National Institute for Human Rights be provided with sufficient resources and support to work independently on all human rights issues in Belgium, including the monitoring and implementation of the Sustainable Development Goals and all relevant environment-related international agreements.***

***We recommend that the Human Rights Council advise Belgium to develop and implement a National Human Rights Action Plan, and clear human right based criteria and indicators for the realisation of the Sustainable Development Goals in Belgium. The progression on the specific goals and the implementation of the Sustainable Development Goals should be periodically reviewed and evaluated based on these criteria and indicators.***

### 3. LACK OF GOOD GOVERNANCE AND POOR ACCESS TO THE COURT

The right to a healthy living environment is asserted in the Belgian constitution.

Art. 23 of the constitution states:

*“Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them. These rights include among others: 1° the right to employment and to the free choice of an occupation within the context of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation; 2° the right to social security, to health care and to social, medical and legal aid; 3° the right to decent accommodation; 4° the right to the protection of a healthy environment; 5° the right to cultural and social fulfilment; 6° the right to family allowances”.*



This constitutional provision is very positive but unfortunately does not have a “direct effect”, as the government is not acting in accordance with this article. Also, citizens cannot invoke this provision in any court to claim this right. Furthermore, Belgium does not have a complaint mechanism to submit complaints or seek redress on dysfunctions and protect citizens from arbitrary actions or negligence on the part of the authorities. They are compelled to have recourse to civil law, which is not intended for this purpose, and not best suited to prove who is guilty of violating their right to a healthy and safe environment.

Furthermore, due to the federal state structure with its subnational levels and mandates, the responsibilities related to this article of the Constitution are divided over various administrations. It is often unclear which governmental organisation is competent in which matters. Moreover, appropriate training for civil servants is nonexistent in Belgium and as a result, citizens are routinely being sent from pillar to post. As a consequence, in practice these social, economic and cultural rights remain hollow phrases.

Each region (Flanders, Brussels and Wallonia) has its own environment legislation, while the legal system is a national competence. On the Flemish level, environment legislation is extremely complex and inaccessible. (Cfr. Milieuzakboekje, a "brief" summary of Flemish environment legislation, consisting of no less than 1.500 pages!).

Belgium has no real independent administrative courts. Matters regarding the environment are often decided by disparate administrative/political colleges such as the Permanent Committee of the Province, a political body that processes, for instance, appeals against the granting of planning permission of infrastructure works.

Only the Council of State has the power to annul any governmental decisions that have a negative impact to the environment. But the procedure for this so-called high administrative court is very complex, very long-winded and expensive. It is not clear before which courts citizens might assert and pursue their rights with regard to decisions made by each governmental level. It is often unclear even to specialised lawyers which court should be addressed. So in reality there is no court citizens can turn to in case a serious environmental problem should occur.

For this reason, environmental associations tend to request a prohibitory injunction from the President of the Court of First Instance in cases where a serious infraction of environmental law has been identified and the authorities refuse to act. (Law of 12 January 1993 regarding the right of action in matters of protection of the environment)<sup>2</sup>

When an association is granted the right to go to court, it needs to prove to the court that it has a personal, specific interest in the matter. This is far from evident in environmental cases, as such cases are for the most part by their very nature about collective issues (air pollution, climate change...), and also referring to unborn children, to become the future generations. Recent reforms have made access to the courts even more daunting and more expensive than it already was.



Undersigned NGOs note with concern that Belgium does not consider provisions on economic, social and cultural rights in human rights treaties to be directly applicable and binding. Nor are these adopted in the legal order nor in political governance. The previous (2016) UPR recommendations repeatedly stated that Belgium should clear its backlog regarding the process of ratification of certain legal instruments. In general, it is of great concern to us that Belgium is slow in integrating international agreements in its policies, on a national and/or subnational level.

#### RECOMMENDATIONS:

***We recommend that the Human Rights Council urge Belgium to take adequate measures to provide appropriate access to justice for citizens, to provide sufficient and relevant information and mechanisms to engage in participative decision-making.***

***We recommend that the Human Rights Council urge Belgium to improve its poor implementation of the Aarhus Convention, the Paris Agreement on Climate Change and various European environmental protection laws. Commitment to these agreements should be clearly demonstrated through an unambiguous effort to bring Belgian law, but especially its enforcement, in line with the aforementioned treaties.***

## 4. SPECIFIC CASES:

### 4.1 AIR POLLUTION

#### ***Considering:***

The Committee on Economic Social and Cultural Rights makes several clear references to environmental hygiene and the impacts of (air) pollution on health, including 'the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health'. Moreover states 'should refrain from unlawfully polluting air' and 'should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline'. Finally, 'the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries' is a violation of the obligation to protect the right to health<sup>3</sup>.

The WHO points out the severe health effects due to exposure to ambient air pollution, and has drafted international guidelines on air pollution. A particular concern is that WHO guidelines are two times more



stringent than the EU regulations for Particulate Matter (PM). Therefore Belgium should strive to align its guidelines to global standards as provided by the WHO Guidelines in order to protect its citizens' right to the highest attainable standard of health which is clearly related to 'the right to life'. The right to life is codified (under Article 6 ICCPR) "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Human Rights Committee General Comment No. 6 explains how states often interpret this right too narrowly<sup>4</sup>: The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures<sup>5</sup>. The link with air pollution is obvious.

### **Context in Belgium:**

Poor air quality has been a major problem in Belgium for a very long time. This is due largely to two primary factors:

- A decades-old policy choice to promote automotive travel as the primary means of transportation. Belgian road infrastructure is one of the densest in the world. To make matters worse, roads and highways often cut right through historical city centres. Company cars are commonly used as a tax optimisation tool and for a long time highly polluting diesel engines were the fiscally advantageous choice. All of these factors combined produce the main source of NO<sub>x</sub> emissions at street level. Traffic pollution is amplified by the common problem of "street canyons" where air pollution lingers and concentrates.
- Intensive Flemish livestock and meat farming, a large and widely distributed source of NH<sub>3</sub> (ammonia), which combines with O<sub>3</sub> (ozone) to form particulate air pollution (PM).

Due to these factors, further exacerbated by Dieselgate, Belgium failed to meet the 2010 deadline for the European Air Directive, with various regions experiencing air quality problems exceeding EU limits, specifically regarding NO<sub>x</sub> regulations. For the problematic Brussels region and Antwerp agglomeration, an extension was granted until 2015. Unfortunately, none of the guidelines are being met in these areas even today and more recent studies have shown that air pollution is much more widespread in various smaller-sized towns and cities than was assumed earlier, especially in the Flanders region<sup>6</sup>.

Air quality plans for the Brussels and Flemish region have shown systematic flaws since the beginning. Even now, twenty years after the original deadline and fifteen years after the ultimate extension, air quality plans for Flanders, Brussels and Antwerp still expect that EU limits will be exceeded in multiple urban locations well into 2030, overlooking the loss of life associated with long-term pollution exposure and the fact that EU-limits for PM are higher than WHO-limits, which are more suited to the prevention of mortality.



Various factors exacerbate this problem:

- EU law states that any exceedance of the air quality standards should be addressed in “as short as possible” a timeframe, by all means available, without defining what this implies in practical terms. As evidenced in lawsuits launched by local environmental groups against governments, this allows judges to let the government decide what “as short as possible” could mean, even if this is 15 years longer than the official extension period (5 years).
- Belgian law allows the government to successfully argue that courts cannot force *any* remedial action or even supplementary studies. This is also evidenced from the fact that the true scale of the so-called “street canyon” effect only became clear through a “citizen science” project<sup>7</sup>.
- Air quality disproportionately affects the poor and socially disadvantaged, as they often live in or near street canyons and seldom have access to judicial reprieve.
- The high levels of ammonia (NH<sub>3</sub>) emissions from the (mostly Flemish) industrial animal/meat industry combine with nitrous and sulphuric oxides to form PM<sub>2.5</sub> (fine particle) pollution<sup>8</sup>. In other words: during fertilisation in spring, road emissions and agricultural emissions combine to form a chemical smog that results in a large drop in air quality.

It should be observed that air quality policy in Flanders aspires mostly to comply with the *minimally* required EU regulations, often using the “economic health” reasoning. The most glaring example of this was what happened with a study investigating the impact of a so-called “kilometre tax”. It concluded that this tax would allow Belgium to meet EU regulations in the shortest possible delay. The tax measure was included in early drafts of the updated Flemish air quality plan. But it was removed as a result of political lobbying<sup>9</sup>. Which clearly contradicts the requirement to meet EU standards “by all available means”<sup>10</sup>.

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## RECOMMENDATIONS

***We recommend that the Human Rights Council urge Belgium to take immediate and concrete action on air pollution, e.g. through various regulatory measures and with a focus on environmental justice for present and future generations. Such measures should aim to ensure that the highest attainable level of air quality is obtained, based on the most stringent international safety standards for air pollution and health ( i.e. the WHO Guidelines).***

## 4.2 CLIMATE CHANGE

***Considering:***



The applicability of the human right to health in climate change and the severe health effects of climate change were affirmed by the WHO Factsheet on Health and Climate Change<sup>11</sup>, the UN Human Rights Council recently and in the preamble of the UNFCCC Paris Agreement of December 2015 along with inter-generational equity<sup>12</sup>.

In the past years, the relationship between climate change and human rights has received increasing attention from the Human Rights Council and international bodies, including the Conference of the Parties to the United Nations Framework Convention on Climate Change.

The OHCHR calls for a Rights Based Approach to Climate Change on its websites<sup>13</sup> and Special Rapporteur John Knox has drafted a comprehensive outline regarding such an approach in his early 2016 “Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment” (A/HRC/31/52), in which he concludes that human rights standards clarify how states should respond to climate change.

The Human Rights Council has adopted several resolutions on climate change, including resolutions 7/23, 10/4, 18/22, 26/27, 29/15 and (most recently in July 2016) 32/3422.

In this last resolution, the Human Rights Council welcomes the Paris Agreement, which acknowledges that climate change is a common concern of humankind, and that parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, as well as intergenerational equity.

### **Context in Belgium:**

As with many environmental targets and regulations, Belgium regularly fails to meet climate change targets. Most recently, the Flanders region acknowledged that it had failed to meet its non-ETS targets by wide margins.<sup>14</sup> Where a 15,7% reduction in non-ETS emissions in 2020 (compared to 2005) was targeted, only a 3% reduction was achieved, or only one fifth of what was required. Worse still, in 2019 this reduction was still at 5%, with a 3,8 Mton deficit<sup>15</sup>, which has since increased to a 4,7 Mton deficit.

With regard to ETS sectors like the petrochemical sector, the situation is not much better. On numerous occasions the Flemish government has stated that its climate ambitions towards 2030 and 2050 would have to be reduced, at the behest of the various ETS industries (not including energy). Most remarkable in this regard is the active policy of attracting petrochemical investments to the Port of Antwerp, despite its historical role in climate change and the problem of plastic pollution.

The current, most pressing case is the commitment of the Flemish government to support the construction of “Project One”, a large scale gas cracker and PDH unit, planned by Ineos, a privately held Swiss company. The primary resource of this installation, as stated by Ineos, would be shale gas (either from the USA or GB), infamous for its massively negative impact on climate and environment. The primary product of the



expanded facility is plastics, which would add to the excess plastic production and its continuous negative impact on the environment, especially the marine and river environments downstream of the various Antwerp plastics factories. Despite these facts, the Flemish government committed hundreds of millions of euros in guarantees for the project without even a single environmental impact assessment (EIA) having been completed.

Also, a deforestation request was granted without an EIA for the overall project, in direct violation of the prohibition on so-called “salami slicing”, meaning that environmental impact of such projects is split up in order to reduce regulatory hurdles. After strong objections from dozens of environmental organisations as well as various administrative appeals, Ineos submitted a second and renewed deforestation request right before it could be heard in front of a judge, thereby side-stepping the judicial overview of the process, all with clear governmental assistance.

Most notable however, is the fact that one such facility typically generates 1-2 million tons of CO<sub>2</sub> emissions per year, an addition of 3-6% of the total current ETS emissions of Flanders. No explanation has been provided to show how this increase will be compatible with current climate policies, nor was this calculation made before the granting of a deforestation request for 55ha (see below).

It should be pointed out that the climate impact of such an expansion of the Belgian petrochemical industry is currently being explained away by the promise of a so-called “CO<sub>2</sub> pipeline” to be built in the future to transport greenhouse gases from the industry into storage in empty gas fields underneath the North Sea. However, even though substantial governmental subsidies have been earmarked for this development, very few long-term risks seem to have been considered:

- Carbon Capture and Storage (CCS) on this scale does not have a proven track record and is still largely in a “proof of concept” phase, yet investment policies and emission-allowances are clearly already being drafted under the assumption that it can and will work as promised.
- Investment in CCS results in the permanent installation of the petrochemical (and plastics) industry, as evidenced by Project One, which has none of the “essential industry” requirements that supposedly come with CCS investments.
- Promoting CCS is not the appropriate incentive for and could severely slow down its stated purpose of transitioning to a more durable and environmental industry.

Another example of a failing regulatory framework is the Flemish “deforestation compensation fund”.<sup>16</sup> Since 2001, any new deforestation has to be compensated for with an equally large area of ‘reforestation’ (in some cases a larger one). To facilitate this process, a fund was created that allows for financial compensation instead of actual ‘reforestation’. A 2016 report by the Belgian Court of Audit on this environmental compensation exposed the absolute inadequacy of this regulatory framework<sup>17</sup>.



An explanation for the failure to meet the objectives of these environmental regulations can be found in the climate action plans themselves<sup>18</sup>: Reference is often made to “non-ETS leeway”, in other words the level of emissions that would still be permissible under various regulations and scenarios. In other words, emissions are maximised towards the regulatory limit, rather than minimised to reduce the harmful effects of climate change. This pattern is similar to the way the number of animals in the industrial agricultural sector is maximised against projected nitrogen deposits and ammonia emissions. However, due to chronic inability and lack of willingness to implement and enforce these regulations, combined with wide-scale fraud<sup>19</sup>, targets are being missed systematically. The combined effects of failing agricultural, traffic, construction and (de)forestation policies aggregate to form a solid obstruction to the required climate change mitigation and adaptation .

Unfortunately, it has proven virtually impossible so far to use judicial reprieve to attain enforcement of the regulations. A case in point is the so-called “klimaatzaak - climate case”, initiated in April 2015, to protest the dramatic failure of four Belgian governments (Federal, Brussels, Flanders and Wallonia) to meet the Paris Climate targets. The first time the arguments will actually be argued before a judge will be in March of 2021, six years after the case was initiated. The delay was caused by the slow pace at which cases tend to proceed in Belgium, a clear violation of good practice regarding access to justice, and by an instance of legal wrangling over which national language should be used and subsequent appeals by the Flemish government to put off the starting date for the court case.

In the context of the Human Rights, the arguments made by the government are especially disconcerting:

- No immediate threat to the lives of individual people is perceived.
- (Potential) damage has not been shown and is considered hypothetical.
- The victims of the damage [of climate change] are not clearly defined.
- Governments have a wide margin of interpretation in regard to the measures required to protect the right to life.

These elements, while clearly disingenuous and contradictory to various statements made by the Belgian governments regarding the seriousness of the ongoing climate crisis, also show various weaknesses in the formulation and possible interpretation of article 2 of the ECHR<sup>20</sup>. Specifically, there is a lack of concern for the rights of future generations and young people (despite massive street protests), as it allows their right to an unscathed planet to be actively ignored. Secondly, it shows that if the damage is sufficiently important and will literally affect everyone, the translation of individual rights towards collective rights is interpreted in the least precautionary manner possible.

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## RECOMMENDATIONS:



***We recommend that the Human Rights Council insist that Belgium takes immediate and dedicated national action on greenhouse gas reductions and, at a minimum, meets the internationally required and agreed reduction targets for mitigating climate change. This includes that Belgium needs to ensure the commitment and compliance of non-state actors, such as businesses, to any and all human rights requirements.***

***We recommend that Human Rights Council advise Belgium to develop and implement clear human rights-based criteria and indicators to ensure that the Paris Agreement and EU targets are implemented, which includes intergenerational equity, specific groups and compliance by non-state actors, such as businesses. Progression toward the specific goals and implementation of the Paris Agreement should be periodically reviewed and evaluated based on these criteria and indicators.***

***We recommend that the Human Rights Council elaborates a general Comment on Article 6 (Right to Life) on Human Rights, Environment and Sustainable Development for present and future generations. We recommend that the Committee on ESCR elaborate the link on the right to health, climate and sustainable development.***

#### 4.3 WATER

***Considering: water is a human right.***

On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognised the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. In September 2010 the Human Rights Council passed resolution 15/9 clarifying that the rights to water and sanitation derive from the right to an adequate standard of living, effectively linking the UNGA resolution to the procedures of the ICESCR. The UNGA Resolution calls upon States and international organisations to provide financial resources, help with capacity-building and technology transfer to aid countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.

In November 2002, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 15 on the right to water. Article I.1 states that "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights". Comment No. 15 also defined the right to water as the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses<sup>21</sup>.

Groundwater is also central to human development, for a range of societal sectors and for environmental flows<sup>22</sup>. Its strategic importance for global water and food security will probably increase as a result of climate change, as more frequent and intense climate extremes (e.g., droughts and floods) increase variability in precipitation, soil moisture and surface water availability. The values for society—and not least from the



perspective of public health—are tremendous, but vastly increased groundwater dependence also has consequences. In some regions, the understanding of the resource is very limited, particularly the quantities available, how much can be extracted and how groundwater is replenished through recharge. A lack of data means that information on groundwater remains as hidden as the resource itself. Securing drinking water requires an integral water policy.

### **Context in Belgium:**

The situation in Belgium is quite bad: the groundwater level is too low<sup>23</sup>. Huge parts of the country are “overbuilt” and there is a worrying lack of permeable soil. A ban to stop building never gained political consensus. Rainwater is not sufficiently absorbed into the ground. Increasingly frequent and long periods of drought are making the situation worse and drinking water shortages are threatening. Drought also has an impact on the stability of existing infrastructure and will cause subsidence, which may destabilise the construction of properties .

In Flanders, water policy is regulated by means of the Decree of 18 July 2003 regarding an integral water policy, in implementation of the European Framework Directive for Water<sup>24</sup>. A complex administrative system was set up, dividing the territory into river basins and river basin districts, reservoirs and sub-reservoirs. In each area, so-called democratic administrative structures are to be established, which are supposed to draw up and implement local action plans. These new institutions partly conflict with and overlap existing ones, such as the Vlaamse Milieumaatschappij - Flemish Environment Agency, the provinces and the municipalities. Participation in this process is usually limited to the traditional public inquiry, which means citizens get to signify any objections when these plans are about to be finalised. In practice, these plans seem to be quite vague and general. Also, it is unclear who exactly will be implementing these plans and how. Many institutions are responsible but as often is the case: no-one takes responsibility.

Solutions and good ideas are legion; by way of an example, allow us to refer to the excellent Water plan of the city of Antwerp, drawn up by a Dutch consultancy firm<sup>25</sup> .

The big question is whether this plan will ever be implemented. There seems to be a lack of administrative clout, technical knowledge or political will at city level. Sometimes very local or ad hoc problems are being addressed, but a long term vision is sorely lacking and even made impossible by the fact that there is no certainty about who exactly is responsible.

Besides the imminent threat of (ground)water shortages, we also note a worrying trend of increasing water pollution<sup>26</sup> due to intensive industrial agriculture (e.g. nitrates, phosphate, pesticides, ..) and emissions from chemical and heavy industry (e.g. metals, mercury, hazardous chemicals, ..)

The water policy is symptomatic for Flemish environment policy: there is a lack of political determination, weak, poorly organised administrations seem to be struggling and are riddled with political appointments, there is no opportunity for participation and no possibility for citizens to demand their right to a decent water policy and hence to a healthy environment, apart from the laborious detour of “civil liability cases” .



## RECOMMENDATIONS:

***We recommend that the Human Rights Council urge Belgium to take action in the development of a long term integrated water policy action plan embracing both surface and groundwater and both quantity and quality. This requires the professionalisation, responsabilisation and de-politisation of the administrations authorised for water policies, in coordination with other administrations and relevant institutions in domains such as agriculture, industry, spatial planning, ... An effective mechanism should be set up to guarantee access to information, consultation and participation of citizens on water management.***

***We recommend that the Human Rights Council urge Belgium to immediately put an end to construction on open permeable soil and especially in forest areas, to achieve infiltration of rainwater, protect species and prevent long-term climate change.***

<sup>1</sup> On its websites, the OHCHR confirms the importance of a human rights-based approach to sustainable development: “The OHCHR has made a strong contribution to the integration of human rights throughout the process to define the SDGs and will seek to ensure that strategies and policies to implement the 2030 Agenda are human rights-based. In this regard, it will be crucial to ensure that the 2030 Agenda is implemented with the support of the necessary resources and political commitment.”

<sup>2</sup> [https://e-justice.europa.eu/content\\_access\\_to\\_justice\\_in\\_environmental\\_matters-300-be-en.do?member=1](https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-be-en.do?member=1)

<sup>3</sup> UN-Committee for Economic Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health (art. 12 of the Covenant on Economic, Social and Cultural Rights), 11 Augustus 2000, E/C.12/2000/4.

<sup>4</sup> Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994)

<sup>5</sup> We would also like to refer to a recent verdict of the European Court for the Human Rights where they state (§75): “In the context of dangerous activities in particular, States have an obligation to set in place regulations geared to the specific features of the activity in question, particularly with regard to the level of risk potentially involved. They must govern the licensing, setting-up, operation, security and supervisions of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of the citizens whose lives might be endangered by the inherent risks”

<sup>6</sup> <https://www.vmm.be/data/luchtkwaliteit-in-je-eigen-omgeving> (Especially visible in the NOx “layer”)

<sup>7</sup> <https://www.standaard.be/curieuzeneuzen>

<sup>8</sup> <https://www.sciencemag.org/news/2018/09/ammonia-poorly-understood-smog-ingredient-could-be-key-limiting-deadly-pollution>

<sup>9</sup> <https://newmobility.news/2018/12/28/wallonia-doubtful-about-flanders-kilometre-tax-proposal/>

<sup>10</sup> A case that is currently being prosecuted (Greenpeace vs Flemish government) resulted in two convictions of the government, which should have forced a new and more effective air quality plan to be drafted at a cost of 1000 € per day of delay. The outstanding sum at the time of this writing is 339.000 €, but instead of producing an adequate air quality plan, the government has decided to appeal once again. The court date is set for early 2021, at which point the legal battle will have taken four years.

<sup>11</sup> WHO Factsheet on Health and Climate Change, via: <http://www.who.int/mediacentre/factsheets/fs266/en/>.

<sup>12</sup> Human Rights Council Resolution 29/15 (22 July 2015), available at:



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[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/29/15](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/29/15) ; See also Hesselman and Toebes: 'The human right

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to health and climate change: A legal perspective', 31 October 2015, available at:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2688544](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2688544).

<sup>13</sup> See: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>

<sup>14</sup> [https://www.nieuwsblad.be/cnt/dmf20201009\\_96419479](https://www.nieuwsblad.be/cnt/dmf20201009_96419479)

<sup>15</sup> <https://omgeving.vlaanderen.be/vlaams-energie-en-klimaatplan-2021-2030>

<sup>16</sup> <https://codex.vlaanderen.be/Portals/Codex/documenten/1007887.html>

<sup>17</sup> While 19% of all direct compensations (40% of the total area to be compensated) were considered to have been inadequately executed, only about half of the compensations processed by means of the fund had actually been executed. The result of this failure to protect natural environments is a continuous loss of open space. The current rate is about 6 to 7 ha lost per day, resulting in a massive loss of species diversity, including a 60,8% reduction in the overall bird population since 1990<sup>17</sup> and a negative impact on the ground water level. In the context of climate change, it should be noted that the Flemish climate plan outlines a 10.000 ha increase in forest area, which would require an increase of about 3 ha per day. <https://factcheck.vlaanderen/factcheck/dagelijks-7-hectare-bebouwde-percelen-erbij-in-2018> and <http://docs.vlaamsparlement.be/pfile?id=1191032> and <https://www.vlaamsparlement.be/parlementaire-documenten/schriftelijke-vragen/1404038#documenten>

<sup>18</sup> <https://omgeving.vlaanderen.be/vlaams-energie-en-klimaatplan-2021-2030>

<sup>19</sup> Various fraud cases have been documented in the agricultural industry, car industry (Dieselgate) and the construction sector.

<sup>20</sup> <https://wetten.overheid.nl/BWBV0001000/2010-06-10>

<sup>21</sup> Resolution A/RES/64/292. United Nations General Assembly, July 2010 and General Comment No. 15. The right to water. UN Committee on Economic, Social and Cultural Rights, November 2002

<sup>22</sup> <https://www.mdpi.com/2073-4441/12/2/419>

<sup>23</sup> <https://www.dov.vlaanderen.be/page/actuele-grondwaterstandindicator>

<sup>24</sup> This decree mentions the principle of participation (art. 6). Apart from this new regulation, some older decrees are still in force with regard to groundwater (Decree of 24 January 1984) and drinking water (Decree of 24 May 2002) and even older ones related to polders and waterings ( Law of 3 of June 1957 and 5 of July 1956).

<sup>25</sup> [http://www.urbanisten.nl/wp/wp-content/uploads/Waterplan\\_Antwerpen\\_Samenvatting.pdf](http://www.urbanisten.nl/wp/wp-content/uploads/Waterplan_Antwerpen_Samenvatting.pdf)

<sup>26</sup> <https://www.vmm.be/publicaties/nutrienten-in-oppervlaktewater-in-landbouwgebied-resultaten-map-meetnet-2018-2019>