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Interuniversity Attraction Poles (IAP)
Phase VII

2012 - 2017

Call for proposals

Submission form - SECTION I

Information on the network

To be filled in by the network coordinator

Attention: Before filling in this submission form, please read carefully the information document of the call

Closing date: 17 October 2011 at 12:00 (noon)

Proposal's title (maximum 20 words): The Global Challenge of Human Rights Integration: Toward a Users' Perspective
Proposal's acronym: HRI
Name of the coordinator: Eva Brems Institution: Ghent University

Code (Reserved for BELSPO):

FORM A: NETWORK COMPOSITION

BELGIAN PARTNERS·

Coordinator : Partner 1 (P1) Name : Eva Brems Institution : Universiteit Gent Institution's abbreviation :UGent
Partner 2 (P2) Name : Emmanuelle Bribosia Institution :Université Libre de Bruxelles Institution's abbreviation :ULB
Partner 3 (P3) Name : Paul De Hert Institution :Vrije Universiteit Brussel Institution's abbreviation :VUB
Partner 4 (P4) Name : Koen De Feyter Institution :Universiteit Antwerpen Institution's abbreviation :UA
Partner 5 (P5) Name : Sébastien Vandrooghenbroeck Institution :Facultés Universitaires Saint Louis Institution's abbreviation :FUSL

INTERNATIONAL PARTNER

International Partner 1 (INT 1) Name :Barbara Oomen Institution :Roosevelt Academy, Universiteit Utrecht Institution's abbreviation : UU Country :The Netherlands

* Mention only **one** name per partner. The person listed here should be the one in charge of the operational aspects of the project. Indicate the full name (family name + first name) of the partner.

FORM B: PROPOSAL SUMMARY

(1 to 2 pages maximum)
Indicate clearly and briefly the project's major objectives and provide a concise description of the proposal.

Summary in English

Starting point of the proposed research is the finding that both rights holders and duty bearers under human rights norms are confronted simultaneously with a multitude of human rights provisions differing as to their scope, focus, legal force and level of governance. This non-hierarchical accumulation of human rights provisions has resulted in a complex and unco-ordinated legal architecture that may in some circumstances create obstacles for effective human rights protection.
The central research objective of the proposed network is **the study of human rights law as an integrated whole from a users' perspective.**

A first research hypothesis concerns the relevance of concepts and theories from legal anthropology for an in-depth analysis of human rights law from the viewpoint of state authorities as well as rights holders . The concept of legal pluralism describes and analyses the multiplicity of forms of law present within a given social field. From that perspective, the research will map overlaps, conflicts and gaps in the architecture of human rights law, as well as users' strategies to deal with them. In addition, theoretical insights from scholarship on legal pluralism will feed the network's normative proposals, as may related theories such as the 'théorie du droit en réseau'. Moreover, these empirical approaches will be confronted with traditional-legal normative approaches, that categorize potential models for legal integration, in an effort to identify a model that would fit the integration of human rights law.

***A second research hypothesis states that the current lack of co-ordination between different spheres of human rights law creates obstacles leading to sub-optimal human rights protection, and that at least some of these can be removed or reduced*.** The research will identify the frictions that arise in the integrated experience of human rights, as well as existing good practice that alleviates such frictions

Within the above-sketched framework, the network will pursue 7 ambitious research goals:

1. Develop theoretical and conceptual frameworks capturing the multilayered nature of human rights law.
2. Analyse users' trajectories through the complex architecture of human rights law.
3. Explore actual and potential bridges between different layers of human rights law.
4. Determine how to maximize the added value of one specific layer of human rights law.
5. Define optimal conditions of access for users navigating through international human rights mechanisms.
6. Investigate the tension between divergence and coherence in human rights law in theory and practice.
7. Research the interaction between human rights law and its next-door neighbours: international humanitarian law and international criminal law.

WP 1: Theorizing the multilayered nature of human rights law
Work package 1 theorizes and conceptualizes the multilayered nature of human rights law. The bottom-up approach of legal anthropology, expressing the empirical reality of multiple human rights norms and fora in terms of legal pluralism, will be confronted with a different empirical approach – 'law as a network'- as well as with approaches borrowed from legal philosophy that may serve to grasp the same reality. While the empirical approaches are mostly geared to explaining and analysing the facts on the ground, these other approaches are normative in nature, aimed at changing those same facts. Thus, both types of approaches are complementary. The concepts and theories of legal pluralism and of 'law as a network' will help unravel the complex architecture of human rights law, and the normative models will work towards streamlining that picture toward integrated human rights. Concept papers on these approaches will provide guidance as well as cohesion to all work packages within the project.

WP 2: Users' trajectories in human rights law
Work Package 2 concerns mostly empirical research on how rights holders navigate through the complex architecture of human rights law. It includes the development of an adequate methodology, as well as three case studies. Two case studies will examine how urban and rural poor communities in the Global South have used human rights in order to protect themselves from perceived threats to their human dignity. They will be carried out in India and the DRC, in close cooperation with institutional partners in the countries concerned. The third case study will examine the human rights trajectories of foreigners in Europe in a migratory context. It will undertake a detailed analysis of the jurisdictional process of these vulnerable human rights users and of their mobilization of the fragmented set of human rights sources and mechanisms at the

European and global levels. It will allow for both the identification of good practices and the analysis of obstacles these actors encounter in pursuit of justice through the human rights labyrinth.

WP 3: Bridges Between Different Layers of Human Rights Law

Work package 3 will investigate ways in which an integrated view of human rights may be envisaged, both as a project of normative development, and as a matter of current procedural practice. A first axis of research, centred on disputes brought before the European Court of Human Rights, examines the procedures of reference to 'external sources' and of 'cross references' which *de facto* build bridges between different layers of human rights law. Yet they raise important difficulties in terms of legitimacy, which need in-depth scrutiny. In addition, crucial questions regarding these procedures' 'methodology' will be addressed, in particular the need for transparence in order to avoid perceptions of arbitrariness. The second axis of research focuses on the results of these bridge building efforts. Can they produce such a powerful integrating effect that it can lead to the construction of a *corpus juris* that is functionally equivalent to the drafting of a *hard law* instrument? This query will be conducted through a case study on the categorical rights of the elderly.

WP 4: Maximisation of added value of human rights texts/mechanisms: Do we need a national Bill of Rights?

Work package 4 will zoom in on the status and functions of one source within the multilayered human rights protection system, i.e. national bills of rights. Situating this single source within the context of human rights law as a whole, the central question will be how to optimize its added value for users. For several years, the promotion of an integrated approach towards fragmented human rights law has notably taken the shape of a reflection as regards the modernisation of the national constitutional catalogue of protection of fundamental rights and freedoms. The idea would be to transform this catalogue into an 'interface' or a 'synthesis' integrating and organising the contributions of different layers of human rights law. Mobilizing the resources of legal theory, comparative law, political science and legal sociology, the research will critically examine the feasibility of such a project.

WP 5: Optimizing access to international human rights mechanisms

Work package 5 will examine the procedural dimensions of human rights integration, with a focus on international complaint procedures. While monitoring bodies such as the European Court of Human Rights and the Inter-American Commission and Court on Human Rights are confronted with mounting or even huge amounts of incoming petitions, individual petitioners and in particular members of vulnerable groups still experience practical and legal obstacles hindering them to effectively pursue cases of alleged human rights violations. The research will formulate clear-cut and substantiated proposals reconciling optimal access with the need of procedural efficiency and an efficient management of incoming cases. Particular attention will be paid to examining to what extent solutions and strategies developed within one system (also beyond the regional mechanisms) may benefit another.

WP 6: Divergence and Coherence in Human Rights Law

Work package 6 will examine the value there may be in not –entirely – integrating human rights law. Indeed, a central question is to what extent human rights pluralism makes room for variations on a single theme, i.e. different formulations and interpretations of the same norms. The research will define a guiding framework for the demarcation of acceptable degrees of divergence in specific situations. Next, the research will provide an inventory of – both existing and new- legal techniques that allow to accommodate and at the same time control divergence in human rights formulations and interpretations. The theme will be further explored in two extensive case studies: one concerns the potential of the Strasbourg (ECtHR) tool of 'margin of appreciation' for the Luxemburg court (ECJ). The other examines how indigenous peoples' rights to lands and resources are approached in different manners in different human rights mechanisms, in particular on account of European resistance to the idea of collective rights.

WP 7: Clarifying the grey zone between internal human rights abuses and crimes against humanity

Work package 7 will broaden the central research question toward the fuzzy borders of human rights law. The projects of international human rights law (IHRL), international humanitarian law (IHL) and international criminal law (ICL) are rooted in a similar ideal: respect for the autonomy and integrity of individuals and protecting individuals from abuse of state authority. The research will investigate the potential for integration of these streams, focused on the crucial concept of crimes against humanity. It will identify the frictions that arise in the integrated experience of IHRL and ICL as an enforcing mechanism of IHRL in the field of crimes against humanity. Disagreements on the exact definition of that concept have lead to sub-optimal human rights protection. The research will test the value of the argument that the progressive development of ICL and the law on crimes against humanity in particular is halted under influence of IHRL, on account of the latter's state-centred nature.

FORM C: OBJECTIVES, MOTIVATION AND STATE OF THE ART (5 PAGES MAXIMUM)
Describe the project's objectives and research goals.
Define the problems being addressed by positioning them in relation to the current state of knowledge.

MOTIVATION

The ultimate touchstones of human behaviour, human rights are included in legal sources at the top of the normative pyramid (constitutions, international treaties). Contrary to public belief, there is no such thing as a single human rights catalogue. Instead, human rights are found in a multitude of highly diverse sources. These can be differentiated on the basis of the *governance level* at which they operate: (sub)national -constitutions and charters of fundamental rights, (sub)regional - e.g. European Union, Council of Europe, Organisation of American States, African Union, Association of Southeast Asian Nations- or global -United Nations and specialized agencies such as the International Labour Organisation. In addition, distinctions can be made according to *scope. Ratione materiae*, comprehensive texts - e.g. Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights- coexist with categorical texts -e.g. International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights- and single-issue texts - e.g. Convention Against Torture, International Convention for the Protection of All Persons from Enforced Disappearance, Convention on the Elimination of All Forms of Racial Discrimination. *Ratione personae*, some instruments are universal, while others have a specific target group - e.g. women, children, persons with a disability, members of minority or indigenous groups. Yet another distinguishing feature is the *legal force* of the instrument: while numerous human rights norms - constitutions, treaties, customary law- are binding, human rights have also been included in formally non-binding soft law - e.g. declarations, resolutions- that may nevertheless have strong moral or political force, and even acquire, in the words of the ICJ a 'normative value'. Finally, there is a great variety among the *monitoring mechanisms* that accompany binding human rights instruments: these range from judicial control - the European Court of Human Rights, the Inter-American Court of Human Rights, the African Court of Justice and Human Rights) over quasi-judicial control - individual complaints examined by expert committees- to other forms of expert control and political control -reporting procedures, Special Rapporteurs etc..

While each of these sources is internally coherent and each monitoring body has developed its own broadly consistent case-law using its own interpretation tools, the picture looks a lot more chaotic from a users' perspective. ***Starting point of the proposed research is the finding that both the individuals and collectivities that are the subjects of human rights, and public authorities and other duty bearers under human rights norms, are confronted simultaneously with all of these human rights provisions*.** To any particular situation, a dozen relevant human rights sources may apply. While the non-hierarchical accumulation of human rights provisions takes place in a project aimed at providing the best possible human rights guarantees, the complex and unco-ordinated legal architecture in which it has resulted may in some circumstances create obstacles for effective human rights protection.

OVERALL OBJECTIVES AND RELATED STATE OF THE ART

The central research objective of the proposed network is **the study of human rights law as an integrated whole from a users' perspective.**

A first research hypothesis concerns the relevance of concepts and theories from legal anthropology for an in-depth analysis of human rights law from the viewpoint of state authorities as well as rights holders . Through the lens of legal anthropology, the confrontation with a multi-layered human rights system can be described as a situation of legal pluralism. The concept of legal pluralism and the theories based on it describe and analyse the multiplicity of forms of law present within a given social field (Rouland 1994). In recent years, the term 'global legal pluralism' has been used both by students of legal pluralism interested in globalization, and by students of legal globalization interested in the idea of legal pluralism (Michaels 2009). The latter tendency explores the use of legal pluralism 'as a framework for conceptualizing the multiple conflicting jurisdictional assertions that characterize the global legal arena' (Berman 2009). It has been suggested that the study of international law from the angle of legal pluralism may serve to identify 'procedural mechanisms, institutional designs, and discursive practices for managing hybridity' (Berman 2007). From that perspective the research will map overlaps, conflicts and gaps in the architecture of human rights law, as well as users' strategies to deal with them. In addition, theoretical insights from scholarship on legal pluralism will feed the network's normative proposals, as may

related theories such as the 'théorie du droit en réseau' (Ost and van de Kerchove 2002). Moreover, these empirical approaches will be confronted with traditional-legal normative approaches, that categorize potential models for legal integration, in an effort to identify a model that would fit the integration of human rights law.

***A second research hypothesis states that the current lack of co-ordination between different spheres of human rights law creates obstacles leading to sub-optimal human rights protection, and that at least some of these can be removed or reduced*.** This may occur when states manipulate human rights sources in bad faith to mask human rights violations, yet it may also happen when states in good faith attempt to respect and protect all human rights. In some cases different monitoring bodies issue contradictory guidelines, as on the banning of Muslim headscarves in public schools, to which several UN monitoring bodies and a Special Rapporteur have objected, while the European Court of Human Rights finds no violation. At the same time, human rights actors are aware of some of these issues and are developing tools and practices that knit human rights law closer together. The European Court of Human Rights for example, regularly refers to the practice of the Committee for the Prevention of Torture, and has often referred to specific Council of Europe or United Nations treaties. The research will identify the frictions that arise in the integrated experience of human rights, as well as existing good practice that alleviates such frictions. Examples of the latter include a common study about the principle of non-discrimination made by the Council of Europe and the EU Fundamental Rights Agency and the use of 'external sources of the law' by the European Court of Human Rights as a means of updating its interpretation of the Convention.

CONCRETE RESEARCH GOALS AND RELATED STATE OF THE ART

Within the above-sketched framework, the network will pursue 7 ambitious research goals:

1. Develop theoretical and conceptual frameworks capturing the multilayered nature of human rights law.
2. Analyse users' trajectories through the complex architecture of human rights law.
3. Explore actual and potential bridges between different layers of human rights law.
4. Determine how to maximize the added value of one specific layer of human rights law.
5. Define optimal conditions of access for users navigating through international human rights mechanisms.
6. Investigate the tension between divergence and coherence in human rights law in theory and practice.
7. Research the interaction between human rights law and its next-door neighbours: international humanitarian law and international criminal law.

1. Develop theoretical and conceptual frameworks capturing the multilayered nature of human rights law

The project will build on both empirical approaches and legal philosophical approaches to develop theoretical and conceptual frameworks that will allow the analysis of the multilayered nature of human rights law as well as support efforts to integrate human rights law.

Empirical approaches concern insights from legal pluralism studies (Berman 2006, Neuman 2003, Halberstam 2009) and of theory of 'law as a network' (Ost and van de Kerchove 2002).

Among the benefits to be drawn from 'classical legal pluralism' for the study of human rights law, are:

- the concept of social fields that can generate rules and induce compliance with them, and thus also filter the ways in which other norms come to acquire meaning (Falk Moore 1973)
- a focus on the variety of actors seeking to mobilize and realize human rights within a given setting, including non-state actors, such as firms, private interest groups, or NGOs (Risse 2004, Von Benda-Beckmann and Von Benda-Beckmann 2007, Von Benda-Beckmann 1999)
- a focus on power differentials (Roudometof 2005, Randeria 2003, Rajagopal 2005)
- a long-standing track record of looking at the law through the eyes of its users (Snow 2004, Merry a.o. 2010)
- a methodology that goes beyond legal analysis and includes interviews, participant observation and survey data (Starr and Goodale 2002)

The normative component of the research mandates a different approach, that will draw on legal philosophy.

The question of integration of human rights on the global level requires the elaboration of possible models for such integration. Here, human rights touch upon theories and debates on the globalisation of law, reflecting competing schools of thought and disciplinary paradigms. These include cosmopolitan democracy (Habermas 2000), global governance of human rights (Cassese, 2011, Kingsbury et al. 2005, Slaughter 2004), ordered pluralism (Delmas-Marty 2011), transnationalisation of human rights (Watson 1974, Koh 2006, Ost 2009), co-regulation of human rights (Berns 2007) and natural human rights (Domingo 2010, Cançado Trindade 2010).

2. Analyse users' trajectories through the complex architecture of human rights law

The project will research how rights holders navigate through the labyrinth of human rights. It will build on existing lines of research of the UA partner (localizing human rights project; De Feyter, Parmentier, Timmerman and Ulrich 2011) and the ULB partner (http://www.juristras.eliamep.gr 6th Framework Program of the European Commission; patterns of litigation in the Strasbourg Court).

When mounting a defense against a threat to dignity (Lipschutz 1996), individuals and groups have a choice to resort to human rights or not. Why they decide to do so, and why they choose for a particular mechanism or forum is a matter for empirical research. From a different perspective, the process of locally claiming global human rights may be described as the local production of global discourse (Anders 2009). Sally Engle Merry (Merry 2006) found that when grassroots groups take up human rights, the rights framework does not displace other ways such groups think about their problem. Action on local human rights claims usually starts in the local arena, yet since human rights are a global language, 'verticalization' may occur. The conflict is then 'raised to a higher level' where apart from the domestic State, external actors become involved (Wilson 2007) The same shift occurs at the normative level: users may decide not (or no longer) to appeal to local or domestic law, but to regional or global law – that may offer better prospects for accommodating their claims. Case studies to be undertaken among people living in poverty in the Global South will trace and analyse the mobilization of human rights by these people.

In addition, a case study will be undertaken among foreigners in a migratory context in Europe as human rights 'users'. If there is no lack of studies about the human rights of migrants (Goodwin-Gill and McAdam 2007, Saroléa 2006 , Cholewinski 1997), a detailed analysis of the jurisdictional process of the involved actors and of the mobilization of this set of fragmented sources has not yet been undertaken. Retracing procedural trajectories through European and international human rights mechanisms, the project will help to elucidate the strategies employed and obstacles encountered when facing pluralism in human rights law.

3. Explore actual and potential bridges between different layers of human rights law

The research will examine ways in which an integrated view of human rights may be envisaged, both as a project of normative development, and as a matter of current procedural practice

The protection of human rights, at the international and European level, rests upon a *summa divisio* between *hard law* and *soft law* sources. This is also reflected, in terms of systems of supervision, by a division of tasks as the treaty bodies are competent exclusively with respect to the instrument that has created them. The current practice of these treaty bodies moderates these dividing lines. In order to interpret 'their source instrument', they are prompted by 'external sources' – these being *hard law* or *soft law* – as well as by the case law produced by other treaty bodies. Such procedures seem to be able to reduce the fragmentation of the international and European protection of human rights, for the greatest benefit of the users. If the phenomenon has already been described by the literature (Tulkens and Van Drooghenbroeck 2008, Kleijssen 2010, Barkhuysen and van Emmerik 2010), it gives rise to fundamental questions, which can be structured around two research lines.

The first research line is concerned with the *legitimacy* and the *methodology* of these 'bridge-building' procedures. The case law of the European Court of Human Rights, being especially generous as regards the use of 'external sources' and 'cross references', constitutes an excellent research field.

A second research line is concerned with the *performance* of the results secured by the implementation of this procedure in extremely fragmented fields of human rights law. In this respect, the categorical rights of the elderly constitute a paradigm. While there is no explicit recognition of the human rights of the elderly, their rights do appear in a number of international policy documents on ageing, in *hard* international and regional positive human rights treaty provisions, as well in the decisions and reports of judicial and quasi-judicial treaty and non-treaty bodies (De Hert and Mantovani 2011, Mégret 2011, Doron and Apter 2010, Tang and Lee 2006, Rodriguez Pinzon and Marin 2003). The proposed inscription of the human rights of the elderly in an ad hoc international convention is therefore a case in point and in time to explore the bridges between multi-layered systems of protection and governance of human rights.

4. Determine how to maximize the added value of one specific layer of human rights law

The project will research how one specific tool for human rights protection – constitutional bills of rights - can optimize its added value within the human rights landscape. Made up of various layers, the *corpus juris* of human

rights protection has become so dense - saturated? - that one may question the feasibility, necessity and opportunity of adding new legal instruments to it. This question arises, amongst others, with respect to national *Bills of Rights.* Historically, national constitutions provided the bedrock of individual rights protection. With the development of regional and international protection of these same rights, competing instruments challenged, and sometimes even replaced, national constitutions in the performance of that role. Recently, however, it has been increasingly suggested that modernizing the constitutional catalogues of rights could turn them into interfaces for the integration and ordering of international and regional contributions, or even, beyond that simple codification objective, could make them genuine vehicles of reinforced protection and increased effectiveness of such rights. Such a constitutional modernization work fits, from a theoretical point of view, with the logic of substantial and procedural subsidiarity underpinning the international and regional protection of human rights. Yet, in light of the Belgian (Velaers and Van Drooghenbroeck,2004-2007, Van Drooghenbroeck 2001, Brems 2007), Dutch (works of the *Staatscommissie voor de herziening van de Grondwet* 2009-2011), Luxembourg (Gerkrath 2010) and Swiss (Auer, Malinverni and Hottelier 2006, Knapp 2000) experiences, it must be noted that such a project attracts skeptical reactions. Is it really feasible and, more importantly, is it really useful? It is suggested that these questions, which have already surfaced in the literature, could be better addressed through an in-depth analysis drawing on comparative constitutional law, legal theory, political science and legal sociology.

5. Define optimal conditions of access for users navigating through international human rights mechanisms

The research will incorporate the procedural dimensions of human rights pluralism, with a focus on optimizing conditions of access. It takes as a point of departure the outcome documents on the reform of the European supervisory mechanism within the Council of Europe from the period 2000-2011 (e.g. Report Evaluation Group; Report Group of Wise Persons; outcome documents Interlaken and Izmir Conferences, and follow-up reports), combined with the literature on the access of individuals to the European System and the reform of the European supervisory machinery (e.g. Wildhaber 2002, Leach,2006, Greer 2006, Helfer 2008), and the existing literature on the reform of the Inter-American supervisory machinery during the period 2000-2011 (e.g. Dulitzky 2007, several contributions in Revista IIDH 2001). The research will also include the case-law of the respective supervisory organs that shows their inability to reconcile optimal access rights with the need to deal with cases within a reasonable time limit. While a substantial body of literature exists on past reforms and current proposals of reform in both regional human rights systems, the research proposes to take a step back to *take a fresh look at a number of reform proposals* that have been *dismissed remarkably fast in the past without any in-depth investigation by the policy makers* and that have - extraordinarily - attracted *virtually no attention or in-depth research in legal literature*. These include amongst others class actions, an 'improved' certiorari-system, preliminary ruling-systems, and reforms in the domestic legal systems. The research takes up the challenge to see whether or how these 'forgotten techniques' may contribute to optimizing access to regional human rights systems while at the same time contributing to the functioning of the systems per se. This will be done in a broad comparative perspective, paying particular attention to examining the potential relevance of solutions and strategies developed within one system for the other and vice versa, and by scrutinizing good practice from UN bodies and constitutional courts for potential borrowing.

6. Investigate the tension between divergence and coherence in human rights law in theory and practice

The project will examine both the legitimacy and methods of maintaining deliberate divergence in human rights law. It will produce a new status questions on the *tension between universality and diversity in human rights* (e.g. Brems 2001, Brems 2004, Cohen-Jonathan 2003, Delmas-Marty 1998, Donnelly 2007), that takes into account the 21st Century reality in which Islamic human rights discourse has changed from defenses against Western allegations into assertive claims, and has replaced the Asian values debate at the centre of current discussions. The research will next take up the challenge of deriving from current practice and theory a *normative model,* and of *translating this into legal techniques* for the simultaneous accommodation and control of divergence in human rights law. These will include the margin of appreciation doctrine in the ECtHR (Arai-Takahashi 2002, Brems 2003, Greer 2000), the concept of 'progressive realisation' (Brems 2008) and the incorporation of divergence in 'container concepts' (Alston 1994, Peroni 2010), next to creative new proposals inspired by comparative research.
In addition to this mapping and analysis of divergence tools, two case studies will be investigated in depth.
One concerns a systematic study on the use of the *national margin of appreciation (a European Court of Human Rights doctrine) in the European Court of Justice case-law*. The study will take as a starting point the literature on

interactions between fundamental rights and freedoms of movement (Bailleux 2009), and continue with an examination of the margin of appreciation's potential application to the European criminal law area. In the latter sphere, some authors have demonstrated that mutual recognition instruments may be a source of conflict in respect of compliance with specific substantive rights guaranteed by the Member States' Constitutions (see concerning right to life, Shuibhne 2009). The research will study the main elements of the margin of appreciation technique in the ECJ case-law in relation to ECtHR doctrine. Although some articles have recently been published on this subject in EU law (Sweeney 2007, Díaz Crego 2009, Gerards 2011), no study exists at the present time which frames the 'structural concept' of this tool in the differential logic of the two legal systems (harmonization and integration v. subsidiarity and minimal protection). Nor has any study to date zoomed in on the distinct role of consensus in determining the margin of appreciation in the case-law of both European courts. This analysis will prove essential to enable the researchers to draw conclusions about the adequacy of this technique to reconcile specific conceptions of fundamental rights and the uniform application of EU law.

The second case study examines *divergent ways in different human rights fora of framing indigenous peoples' land rights*. On 13 September 2007, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Some of the main hurdles in drafting were the reference to the right to self-determination and indigenous peoples' access to traditional lands, territories and resources, rights which received a prominent place in the UNDRIP. However, the questions of the indigenous peoples' rights to self-determination and to their lands and natural resources remain heavily contested (Magnarella 2001, Huff 2005, Murphy 2008, Weissner 2008) and the UNDRIP does not fully clarify the position of international law in this regard. The objective of the research is to fill that gap and to clarify what is meant by economic self-determination for indigenous peoples and in particular what meaning should be given to the right to traditional lands, territories and resources. This issue will be approached through comparative research involving both the universal as well as regional human rights protection systems. Taking an integrated perspective on human rights, the study will analyze in particular the impact of the developments consolidating in one human rights system and see how they might or are influencing other human rights systems.

7. Research the interaction between human rights law and its next-door neighbours

The project will examine pluralism and the potential for integration also with respect to the relations between international human rights law (IHRL), international humanitarian law (IHL) and international criminal law (ICL). The research will focus on the law on crimes against humanity, a subject that is highly topical and a perfect example of how deeply interconnected IHRL and ICL are. Over time, the category of crimes against humanity has become the criminal law response to gross violations of human rights. Human rights are values protected by the prohibition of crimes against humanity, making the latter vulnerable to challenges of being too vague and over-inclusive and thereby in violation of the fundamental criminal law principle of *nullum crimen sine lege* (Nilsson 2008). This engendered a debate on the *raison d'être,* the outer limits and boundaries of the law on crimes against humanity. This debate is more alive than ever following recent events highlighting the indefinite character of crimes against humanity. The discussion mainly focuses on whether private organizations, which are not State-like, can ever orchestrate crimes against humanity. While a considerable amount of legal scholarship has been published on the exact scope of crimes against humanity, these contributions have all adopted a very strong criminal-law approach (Hansen 2011, Schabas 2010, Kress 2010, Halling 2010). The originality of the current research will lie in its stronger *human rights focus*. If one can establish that organizations have the obligation to respect international human rights law, the pro-victim teleological argument to include such organizations in the policy requirement of crimes against humanity would gain more credibility and legal grounding. It would also counter the argument that the progressive development of ICL, and the law on crimes against humanity in particular, is halted under influence of IHRL because of the state-oriented nature of the latter.

FORM D: DETAILED DESCRIPTION OF THE PROPOSAL

(15 pages minimum, 25 pages maximum)

- Submit a general description of the project as well as a detailed description of each work package and indicate the partners involved in each work package.
- Illustrate by means of a table or scheme the interaction between the partners within a work package and the interaction between the work packages.
- Describe and justify the methods and proposed approaches in relation to the state of the art.
- Describe and justify how the contribution of the different partners will be integrated.

1. General Description

Complementing the general outline of the research objectives above (form C), and the detailed description of the work packages below (2.), a number of comments can be made as to the overall focus of the project, as well as its research methods.

1.1. Focus

The research project is characterized by an original point of view, looking at human rights law from the viewpoint of its users, i.e. both rights holders and state authorities. We find that this users' perspective inevitably leads us to an integrated view of human rights, as each user is subject to a multitude of human rights provisions that apply simultaneously to any situation in which she or he *uses* (appeals to, applies, ...) human rights.

1.1.1. A users' perspective

As many human rights scholars are also human rights activists, the perspective of rights holders is rather prominent in human rights research. In the current research project, the users' angle includes rights holders, yet it looks with equal interest into the views and experiences of the duty holders of the obligations to respect, protect and fulfil human rights, i.e. state authorities.

Rights holders are all individuals who are at risk of human rights violations or who may claim to have suffered human rights violations, as well as groups of individuals sharing similar risks or violations with respect to the individual rights of their members, or alternatively seeing their collective rights threatened or claiming violations of such rights. Rights holders appeal to human rights norms in order to prevent violations (e.g. through the adoption of protective legislation or of a decision barring a certain action such as an expulsion), to stop violations (e.g. improve an appalling housing situation or inadequate prison conditions) or to hold accountable those responsible for committing violations of human rights. Depending on the situation, they may invoke all relevant human rights norms at the same time (e.g. in a domestic court in a state recognizing the direct effect of human rights law, or in a lobbying situation) or they may have to frame their case in the terms of a single norm or set of norms as a result of their choice of forum (e.g. a case before the European Court of Human Rights).

State authorities on the other hand have to take into account all human rights norms that are applicable to them at all times in all their activities. Human rights obligations apply to all levels of authorities (local, regional, federal...) as well as to all three government powers (legislative, executive and judiciary). On international fora though, only the (federal) state is held accountable. While some accountability mechanisms may pick and choose from the full range of human rights norms (e.g. NGO reports, Universal Periodic Review), others are limited to one specific norm or set of norms (e.g. constitutional review, UN Treaty Bodies).

In some situations, private actors are not only rights holders, but also duty bearers under human rights law. This is in particular the case under domestic human rights law (e.g. anti-discrimination provisions), in the 'neighbouring fields' of international criminal law and international humanitarian law, as well as under some 'soft law' rules (e.g. human rights obligations for companies). These situations will be taken into account in the project, and some will be explicitly explored (cf. WP 7).

1.1.2. An integrated view

The growth of human rights scholarship over the past decade has lead to increasing specialisation among scholars and research centres. Some have specialized in a specific right (e.g. freedom of expression), others in a type of violation (e.g. human trafficking), a well-defined group of rights-holders (e.g. children) or a particular human rights instrument (e.g. the European Convention on Human Rights). The fragmentation and multiplication of human rights research has lead to a situation in which it has become near impossible for a single centre – let alone a single scholar- to be fully versed in recent developments and debates on all aspects of human rights law. As a result, research on cross-cutting issues (e.g. conflicts between human rights) is scarce, and often tentative. Yet for a network such as the current one, with six partners, who all have significant, yet quite different experience in human rights research, the ambition to construct an integrated view of human rights as a joint enterprise is a realistic one. It is also a highly relevant one, as users are indeed confronted not with

one provision at a time, but with the entire body of human rights law at once. The purpose and ambition of this project is to map and analyse how the 'whole' of human rights law talks to users in multiple voices, and to explore ways of guaranteeing harmony, coherence and transparency in its discourse and practice.

1.2. Method

The research will combine empirical and normative dimensions. Thorough analysis of the practice of human rights monitoring bodies and of the strategies of national authorities and other users (NGO's, social movements, local communities…) in this field will put the finger on the shortcomings that normative proposals will address. The legal solutions that will be devised will be embedded in a normative framework integrating legal theory with insights from legal anthropology and technical knowledge of human rights law.
The analysis of legal practice will adopt a functional comparative legal approach, characterized by its 360° focus. Good practice that is found in one context will be considered for incorporation in another, making abstraction wherever possible of whether the other level is hierarchically higher or lower, as well as of its geographical remoteness or proximity. The integrated approach that is central to this research will hence also be carried through in its methodology.
The research will develop theoretical as well as practical insights. The injection of the theory and concepts of legal pluralism into human rights legal doctrine will result in new theoretical insights. These will be tested in case studies focusing on the relations between specific overlapping fields, on the strategies of specific actors, or on specific types of friction within the pluralist architecture.
The research will be interdisciplinary through its incorporation into human rights law of concepts and theories that are borrowed from legal anthropology, thus crossing the boundaries between the two disciplines. This will apply to theoretical analysis, as well as to some case studies, that will combine qualitative social science methodology (semi-structured interviews with 'users') with classical legal methodology.

2. Work Packages (including description/justification of methods and approaches in relation to the state of the art)

2.1. Work Package 1: Theorizing the multilayered nature of human rights law (UU, ULB, FUSL)

Work package 1 theorizes and conceptualizes the multilayered nature of human rights law. A central hypothesis in the project concerns the applicability of concepts and theories from legal anthropology, in particular related to legal pluralism. This bottom-up approach, starting from the empirical reality of multiple human rights norms and fora, will be confronted with a different empirical approach – 'law as a network'- as well as with approaches borrowed from legal philosophy that may serve to grasp the same reality. While the empirical approaches are mostly geared to explaining and analysing the facts on the ground, these other approaches are normative in nature, aimed at changing those same facts. Thus, both types of approaches are complementary. The concepts and theories of legal pluralism and of 'law as a network will help unravel the complex architecture of human rights law, and the normative models will work towards streamlining that picture toward integrated human rights. Concept papers on these approaches will provide guidance as well as cohesion to all work packages within the project.

2.1.1. Empirical approaches : Legal pluralism and network theory applied to human rights law

Human rights law and legal pluralism
One of the aims of this project is to apply the notion of legal pluralism, as developed in socio-legal studies, to the multi-layered human rights system, in order to contribute to the study of human rights law as an integrated whole from a user's perspective. Whereas the conceptual notion of pluralism is increasingly used in *legal* literature seeking to analyze the interactions between rights regimes, the *socio-scientific* literature can draw attention to a number of characteristics of this multi-layered human rights system as well as to mechanisms to overcome obstacles to rights realization. Most notably, this literature points at 1) the existence of semi-autonomous social fields, with a specific – if permanently negotiated – legal culture and the ability to enforce (human rights) norms 2) the actors and the 'governance arrangements' in these particular fields 3) the power differentials and modes of resistance against the notion of human rights in particular social fields, as well as processes of 'translation' of human rights within a local setting 4) the way in which individuals, in general, use the law 5) the specific research methods needed to obtain an integrated understanding of human rights from a users' point of view.
As stated, scholars studying the multi-layered nature of human rights law have, over the past years, increasingly invoked the notion of global legal pluralism or constitutional pluralism to analyze the co-existence of human rights norms adopted in various locations (Berman 2006, Walker 2002). They point out how this coexistence opens space for a 'jurisgenerative'

interplay between normative communities and commitments, helping to crystallize the essence of the values of constitutionalism, thus strengthening the guarantees of the rights concerned (Berman 2006, Neuman 2003, Halberstam 2009). These studies generally point out the heterarchical, instead of hierarchical relationship between the normative communities and rights concerned, in which constitutional considerations determine the coordination between actors (Halberstam 2009). Seeking primarily to develop human rights law, however, they pay less attention to some of the core insights from 'classic' legal pluralism on the role of social fields and legal culture, actors, power relations, individual backgrounds (Davis 2007, Grigolo 2010, Grigolo 2011) and ways in which to research these issues (Griffiths 1986, Fuller 1994, Tamanaha 2008, Griffiths 2002,Merry 1988).

Prof. Oomen at Utrecht University will produce a concept paper, that will sum up the state of the art in legal pluralism research with respect to human rights, as well as strands in legal pluralism research that have not as such been applied to human rights, yet that may yield valuable insights into the workings of human rights law.

For *one*, legal pluralism studies have classically dedicated a great deal of attention to social fields that can generate rules and induce compliance with them, and thus also filter the ways in which other norms – like international human rights law – come to acquire meaning (Falk Moore 1973). Such fields can be characterized by a specific legal culture which, even if this culture is always negotiated, contested and subject to change, sheds light on for instance attitudes towards human rights and the degree of adversarialism (Nelken 2007). Whilst such fields may collide with the legal entities that are the duty-bearers in the realization of human rights, like nation-states, this is not always the case. To give one example, there is the recent increase in 'human rights cities' which synthesize the international human rights framework and directly take it as a point of departure for developing social policies thus, arguably, offering a larger chance of rights realization for users than in cities – in the same country – which do not adopt such an identity (Davis 2007, Grigolo 2010, Grigolo 2011). On the other hand, social scientists have pointed at the rise of a global social field, a 'world community' that does not only generate rules but also, increasingly, has the mechanisms to induce compliance – varying from individuals complaints procedures to the notions of universal jurisdiction and the International Criminal Court (Addis 2009).

A *second* conceptual addition to draw from legal pluralism concerns the focus on the variety of actors involved in the governance of social fields. Because of its empirical point of departure, legal pluralism pays attention to the wide variety of governance arrangements seeking to mobilize and realize human rights within a given setting, including non-state actors, such as firms, private interest groups, or non-governmental organizations (NGOs) and often operating transnationally (Risse 2004, Von Benda-Beckmann and Von Benda-Beckmann 2007, Von Benda-Beckmann 1999). In seeking to realize human rights, local and global actors often join forces, creating a 'human rights spiral' to coerce nation-states into compliance (Risse, Ropp, and Sikkink 1999, Keck and Sikkink 1998). Here, the interrelationship between various fields also becomes a topic of concern. As Merry put it: 'A focus on the dialectic, mutually constitutive relations between state law and other normative orders emphasizes the interconnectedness of social orders and the vulnerability of local places to structures of domination far outside their immediate worlds' (Merry 1992).

This relationship, as a *third* insight from legal anthropology, involves important power differentials. The paradox of the realization of human rights is that the increase of the importance of international human rights law worldwide, has been coupled with an emphasis on autochthony and local methods of – for instance – dispute resolution (Oomen 2009, Merry 2006). In this process of 'glocalization' one also sees local groups both adopting and rejecting international human rights law as a language of resistance against globalization (Roudometof 2005, Randeria 2003, Rajagopal 2005). Whilst the way in which emphasis on universal human rights has – also – generated resistance in non-western settings has often been described, it is useful to transpose these understandings to processes of rights resistance in western countries, in which human rights are also increasingly 'brought home' (Halliday and Schmidt 2004, Soohoo, Albisa, and Davis 2007). The British resistance against the Human Rights Act, and call for a national Bill of Rights, can for instance be understood through emphasizing the need for belonging in the face of globalization (Geschiere 2009, Pinto-Duschinsky 2011). Whilst pointing at mechanisms of, and dynamics underlying, rights resistance, legal anthropology has also described how these can be overcome, for instance through an emphasis on vernacularization of rights and the search for an overlap between human rights and religious and cultural traditions (Merry 2006, An Na'im 2003).

Fourth, legal anthropology and the sociology of law have a long-standing track record of looking at the law through the eyes of its users, and taking a bottom-up perspective. Early studies on the knowledge and opinions of law through the eyes of its users as well as more sophisticated research on legal consciousness are useful in understanding the role of rights consciousness in mobilizing human rights (Hertogh 2004, Ewick and Silbey 1998, Silbey 2005). Sociologists of law, for instance, have drawn attention to how strongly litigants' expectations of court cases can differ from their actual outcomes (Bruinsma 1999) and to the (limited) degree to which public law litigation leads to the social change desired by actors who engage in it (Rosenberg 2008). On the other hand, legal anthropologists have pointed out how human rights can not only function as law, or as claims, but also as 'frames' for packaging ideas and inspiring collective action (Snow 2004, Merry and others 2010).

Finally, the socio-legal literature on legal pluralism helps in drawing up the methodology for this project, which seeks to go beyond legal analysis and include interviews, participant observation and survey data (Starr and Goodale 2002). In understanding the interactions between layers of human rights law and those implementing it, it is necessary to engage in multi-sited ethnography and to formulate grounded theories (Marcus 1995, Charmaz 2006). Additionally, whereas the fact

that many human rights scholars are also human rights activists helps in acquiring additional insights, the degree to which activist research also has its perils and how these can be overcome can also benefit from earlier research (Speed 2006, Bentzon and others 1998).

Human Rights law as a network
Linking in with this research at Utrecht University, the FUSL partner will draft a paper, applying the concept of 'law as a network'. This approach is compatible and complementary with respect to the research on the basis of legal pluralism. The paradigm of the 'network' (Ost and van de Kerchove 2002) is a descriptive one, rooted in a pluralistic vision of the law and connected to the notions of regulation and governance. It notably aims at describing recent phenomena which, in the normative relations taking place within a specific legal order or between different legal systems, do not fit with the 'pyramidal' model traditionally used to describe such relations. Inherited from Kelsen's school of thought, the pyramidal model depicts the legal order as a structure that is mainly *hierarchical* (each norm is necessarily placed in a relationship of superiority or subordination), *linear* (the relations between the various levels are one-sided) and *tree-structured* (derivation of all norms from one single original source). Today, however, the pyramid is affected by more and more 'rifts' of an increasing amplitude: subordination is being replaced with coordination and collaboration; linearity is fading away and often gives rise to 'strange loops'; arborescence is melting away insofar as the multiplicity of the sources of creation of law cannot always be derived from one single and sovereign origin. In a nutshell, the pyramidal model progressively gives way to the picture of the 'law as a network'. Working out the consequences for human rights law of this theory that was developed by FUSL legal theorists, will contribute to the theoretical and methodological framework within which work packages two to seven take place.

2.1.2. Theoretical models supporting human rights integration

From a normative angle, the question of integration of human rights on the global level requires the elaboration of the possible models for such integration. The research carried out at ULB by professors Bribosia and Rorive, in close collaboration with professors Benoît Frydman and Ludovic Hennebel of the Perelman Centre for Legal Philosophy, will aim to draft an inventory of the principal available theoretical models and to apply them to human rights law. They will sketch different scenarios for human rights integration, and isolate for each of them, the relevant instruments and procedural specificities. This will eventually allow a comparison of their respective merits with a view to identifying the model or the models that are most realistic and most suitable. From a methodological point of view, the approach will apply the resources of legal philosophy to grasp the changes related to the globalisation of law and to discuss the competing paradigms that were developed to render an account of the phenomenon of globalisation.
Among the theoretical models of globalisation of law applicable to the field of human rights, this research will examine, in particular, the following models, which are presented here in a 'top-down' order proceeding from the most monistic, centralised and formalised to the pluralistic, individualised and pragmatic ones. At this stage, this order is not to be taken as a value judgement of any sort. The ULB partner will produce a concept paper that will explore in detail the merits of each approach in the context of the current project.
a) The global law state and cosmopolitan democracy – This model is based on the idea that law can exist only in the framework of a national legal order. Accordingly, effective human rights protection at the global level presupposes the prior establishment of a global state able to guarantee and sanction human rights in an effective manner, if necessary by constraint or by force. Besides the utopian character of the establishment of a unique state in the contemporary multipolar political environment, this thesis faces the classical objection according to which a global state would necessarily have to take the form of a dictatorship (Kant 1795). An important variation and an answer to this objection considers the struggle for respect for human rights both as a condition for and as the product of the emancipation of humanity by means of the establishment of a cosmopolitan democratic order, expressed notably in the establishment of a global parliament made up of elected representatives of citizens of the world (Habermas 2000).
b) Global governance of human rights – This model states that the integration of rights progresses through the action of organisations and plural international networks, developing programmes and instruments to improve the performance of the relevant actors, in particular states, in the fields of human rights, democracy and the rule of law (*Etat de droit*) (Cassese 2011, Kingsbury et al. 2005, Slaughter 2004). Under this model come for example the politics of the World Bank in terms of the promotion of the 'rule of law' and the instruments for their implementation, in particular the managerial instruments of benchmarking, comparison and classification of the progressive performances of the states in this area (Restrepo 2011).
c) Ordered pluralism – According to this model, the global integration of law in general, and of human rights in particular, takes place by means of the coordination and harmonisation of the horizontal and vertical relations between plural coexisting legal orders. In the field of human rights, these are notably the national (constitutional) legal orders, the regional legal orders and the international legal order (Delmas-Marty 2004-2011). The issue of the integration of human rights at the level of the different European legal orders represents a specific geographical application in this respect (Krisch 2008).

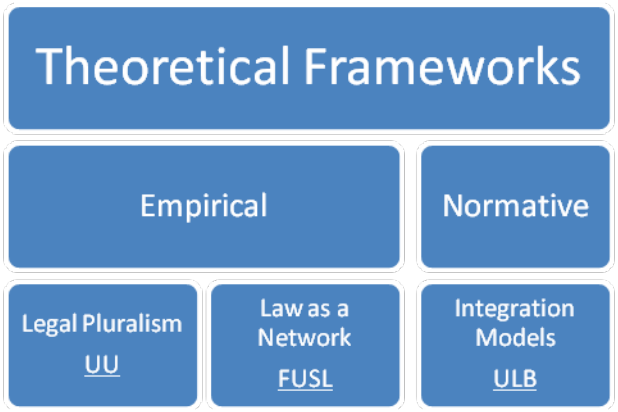
d) Transnationalisation of human rights – This model emphasises harmonisation and the progressive integration of law, and of human rights law in particular, through the dissemination of certain concepts, principles, rules and decisions across the borders of the different legal orders, by means of reception mechanisms that may be qualified as 'transplants' (Watson 1974), 'downloading' (Koh 2006) 'translations' (Ost 2009). This model especially emphasises harmonisation at the level of -national and international- case law by means of the 'dialogue of judges', 'cross citations' and the use of 'external sources' (*Le dialogue des juges* 2007).

e) Co-regulation of human rights – This model studies the progressive institutionalisation of global law starting from the strategic interaction of private actors in a context characterised by a multiplicity of legal instruments as well as diverse instruments of a broader normative kind (economical, technical, managerial). These combine so as to produce, in either a concerted or an aleatory manner, regulatory effects, possibly leading to the establishment of original normative devices. In the field of human rights, this model emphasises horizontalisation through the transfer of extended responsibilities as regards the promotion and the guarantee of human rights towards certain private actors considered as 'controlling points', in particular companies and NGOs. This dynamic finds an expression notably in the movements of social (or societal) responsibility of companies and of *Business & Human Rights*. It leads to the creation of atypical devices and instruments such as, for instance, the United Nations Global Compact and more recently the ISO 26000 standard in the field of social responsibility of organisations (Berns 2007).

f) Natural human rights – This model, inspired by the modern school of natural law, maintains that the foundation of law is not to be found in the power of states to formulate the rules, but directly in the fundamental rights to which human beings are entitled by birthright. Hence, human rights serve as the foundations of the global legal order that is under construction. If this model blatantly assumes an idealistic and utopian dimension, it is nevertheless capable of producing important consequences as regards the practical modalities of the integration of human rights at the global level. One example concerns the legal application and interpretation of these rights, with the model leading to the notion of *ius cogens* taking precedence over the conventional character of treaties as upheld by classical public international law (Domingo 2010 ; Cançado Trindade 2010).

g) Postmodern theories or critiques of human rights – Contesting the model of abstract universalism of the modern theories of human rights, this model, by contrast, calls upon the diversity of cultures and groups that, in their heterogeneity, fight for the recognition of their differences against the homogenisation of liberal globalisation and of the dominant culture. It is in line with critical legal theories and, on the political level, displays affinities with the alter-globalist movements and those of the emancipation of peoples (de Sousa Santos 2002, Kennedy 2011).

SCHEMATIC REPRESENTATION OF INTERACTION BETWEEN PARTNERS WITHIN THIS WP



2.2. Work Package 2: Users' trajectories in human rights law (UA, ULB)

Work Package 2 concerns mostly empirical research on how rights holders navigate through the complex architecture of human rights law. It includes the development of an adequate methodology, as well as three case studies.

2.2.1. Developing a methodology

From 2007 onwards, the UA partner has run an international research project on Localising Human Rights. The main purpose of the research network has been to study whether human rights as globally defined offer real protection when disadvantaged groups invoke them at the local level in an attempt to improve their living conditions. In setting up the project, use was made of earlier interdisciplinary efforts at defining the local relevance of human rights (Engle Merry 2006, Meckled-Garica and Cali 2006, Engle Merry and Goodale 2007, Von Benda Beckmann, Von Benda-Beckmann and Griffiths 2009, Goodale 2009). Preliminary results on the theory of the project were recently published (De Feyter, Parmentier, Timmerman and Ulrich 2011). On that basis, a methodological paper will be produced for the analysis of users' trajectories in human rights. Such a methodology will by necessity need to be interdisciplinary, i.e. combine elements of the social sciences, political science, and law. The methodological guidance offered by this paper will include both rights holders' and national authorities' perspectives and will serve as a resource for all partners in the project.

2.2.2.Three case studies on rights holders' trajectories

The UA partner will contribute two case studies on how urban and rural poor communities in the Global South have used human rights in order to protect themselves from perceived threats to their human dignity. The ULB partner will examine the human rights trajectories of foreigners in Europe in a migratory context.

Human rights trajectories of urban poor in India and rural poor in the DRC
Field studies in India and the DRC, carried out in close cooperation with institutional partners in the South, will concentrate on vertical (and some horizontal) aspects of legal pluralism of human rights norms.
Four central issues will be addressed in both case studies:

- Why do local poor communities ('users') decide to appeal to human rights to achieve their goals? Does their perception of what their rights are differ from the legal definition of rights (in national or international law)?
- At what level of regulation (local, domestic, regional, international) do users put forward their claim, and why do they opt for that level?
- What factors determine whether an appeal to human rights by the users is successful or not (or in other words: why do human rights sometimes work, and sometimes not work at this local level)? How do the communities themselves evaluate the appeal to human rights?
- Whether/ how local human rights claims' results permeate prompt further development or elaboration of the global human rights framework.

In both case studies a methodology will be used that combines insights from sociology, political science and law, and uses an integrated perspective, at the cutting edge of international research in this area (Oré 2011). The case-studies will be implemented in close cooperation with National Law University New Delhi (India) and The Human Rights Centre at the Université Kongo (Bas-Congo, DRC), respectively. The UA partner has signed memoranda of understanding and has already developed staff exchanges and research collaboration with both institutions. The current project proposal thus has a solid basis in institutional research cooperation with partners in the South – a factor many consider to be a crucial prerequisite for research on the global dimension of human rights. Local research will be supported (in particular on methodological issues) by a Senior Researcher with a background both in human rights and in anthropology/social science.
The specific areas provisionally defined as focus areas for the case-studies are as follows:

- DRC/Bas-Congo: *UNICEF's sanitised villages project in the Bas-Congo: the view from the rural poor.* UNICEF provides funding in the DRC for 'sanitising villages': ensuring access to drinking water, improving hygienic conditions, improving village health centres and primary schools. UNICEF's interventions are explicitly rights-based. The process of identifying villages selected for the project is a tricky one, and so is ensuring sustainability. The research will focus on the rural communities in the area (some of which have received UNICEF funding, and others not): what is the level of human rights awareness of these communities; is their perception of human rights similar to that of UNICEF; have they taken action to secure better human rights services from the donor and the international community as whole, and also from the Congolese state; and has the experience of using the strategy in the Bas-Congo made any difference to UNICEF's own understanding of the right to water, health and education;
- India: *Displacement of the Urban Poor in New Delhi.* In the run-up to the 2010 Commonwealth Games in New Delhi, a huge number of people were rendered homeless, and many people in the informal sector (street vendors etc.) lost their livelihood. A coalition of civil society organisations was formed, that claimed that 'a blatant violation of human rights of the urban poor had occurred'. The research will analyse the relationship between the urban poor and the NGOs in the coalition, identify which human rights strategies were used by the coalition, whether the coalition's understanding of human rights coincides with the Indian constitution and international law; whether some of the claims were accommodated, and whether claimants were able to mobilize international support through the use of global human rights language.

Foreigners in the labyrinth of human rights

The condition of foreigners is situated at the crossroads of state sovereignty and the progressive recognition of their rights by virtue of international and European human rights law (Saroléa,2006). Traditionally, differences of treatment on grounds of nationality have been covered by a legitimacy of principle in the field of migration, a legitimacy challenged, in the last years, by one of the great structural evolutions of European and international human rights law (Flauss *in* Carlier,2010).

Nevertheless, foreigners in a migratory context – economic migrants, asylum seekers, illegal immigrants – find themselves in a particularly vulnerable position as fundamental rights users (D. Anagnostou and E. Psychogiopoulou 2010). The precariousness of their residence status, most often coupled with a lack of knowledge both of the language and of the institutional system of the country of immigration, has an impact on their aptitude to exercise their fundamental rights, in particular the right to not be subjected to inhuman and degrading treatment in the case of expulsion or deportation, the right to not be subjected to arbitrary detention, the right to respect of private and family life, and the right to not be subjected to discrimination on grounds of nationality, or even on grounds of ethnical origin or religious beliefs. What is more, the foreigner whose rights are flouted is confronted with a multitude of sources and organs of protection. Even if these can, in theory, be perceived as multiple opportunities to guarantee the respect of rights and fundamental freedoms, there is a strong risk that, in the absence of adequate integration mechanisms, they constitute an impenetrable obstacle generating confusion and inefficacy.

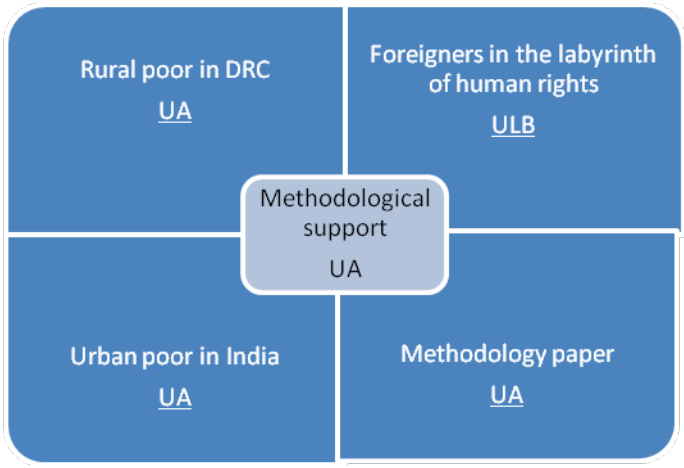
If there is no lack of studies about the human rights of migrants (Goodwin-Gill and McAdam 2007, Saroléa 2006, Cholewinski 1997), a detailed analysis of the jurisdictional process of the involved actors and of the mobilization of this set of fragmented sources has not yet been undertaken. The ULB suggests conducting a doctoral research, centred around the foreigner as 'user' of human rights on the European (Court of Justice of the EU, European Court of Human Rights, Committee of Social Rights) and on the international level (Human Rights Committee, Committee against Torture, Committee on the Elimination of Racial Discrimination, Committee on Migrant Workers). The subject of the study is to retrace the procedural trajectory of foreigners in emblematic cases, before the different protective organs, which will allow for a refinement of the profiles of the actors involved, as well as of the individual or collective strategies that are employed in order to cope with this set of 'uncoordinated' instruments for the protection of foreigners' rights. The research will develop a typology of strategic actions in support of the fundamental rights of foreigners, in particular through:

- the combined use of sources/mechanisms (example: the case *Koua Poirrez* brought to the Court of Justice of the European Communities - 16 December 1992, C-206/91 – and then to the European Court of Human Rights – 30 December 2003, req. n° 40892/98);
- the direct or indirect involvement of an NGO specialised in legal procedures with respect to the rights of foreigners (example: involvement of the GISTI in the case *Lampedusa* before the Court of First Instance of the EU – order of 6 September GISTI/Commission, T-209/05 –, before the Court of Justice of the European Communities – order of 6 April 2006, GISTI/Commission, C-408/05 P – and before the European Court of Human Rights - decision on the admissibility of 11 May 2006 and judgement on striking-out of 19 January 2010, *Hussun and others v. Italy*);
- third party interventions (example: European Court of Human Rights (G.C.), *M.S.S. v. Belgium and Greece*, 21 January 2011).

The relevant case law of the main organs for the protection of fundamental rights on the European and international level will make up the central material of the study. As the research intends to emphasize the process rather than the result, the selection of cases to be included in the corpus will not be made on the basis of the substance of the rights of which the violation is alleged, but will instead be contingent on the strategic and collective dimensions of the cases.

This original legal approach will be combined with a sociological approach centred on the users, applying a qualitative methodology on the basis of questionnaires as well as semi-structured interviews. With an eye to the feasibility of the research, the scope of this part of the research will be limited to Belgium. Interviewees will include representatives of NGOs specialised in foreigners' rights and human rights, agents of competent federal and regional institutions and, to a certain extent, the migrants themselves. This will allow both the identification of good practices by elucidating the detail of jurisdictional processes and strategies used to realise foreigners' human rights as well as the analysis of the obstacles these actors encounter in a fragmented legal and institutional universe.

SCHEMATIC REPRESENTATION OF INTERACTION BETWEEN PARTNERS WITHIN THIS WP



2.3. Work Package 3: Bridges Between Different Layers of Human Rights Law (ULB, FUSL, VUB)

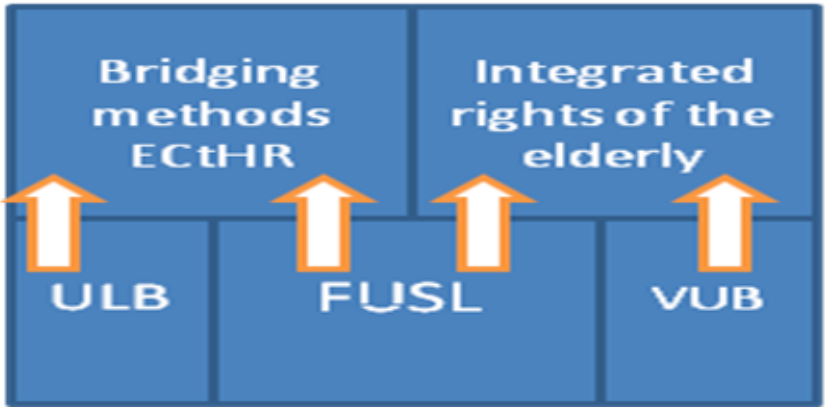
In Work package 3, three partners will look for ways in which an integrated view of human rights may be envisaged, both as a project of normative development, and as a matter of current procedural practice.
The fragmentation of human rights law is, in particular, a product of the distinct nature of its underlying formal sources. Besides *hard law* sources (treaties, customs, etc.), there exists a constantly increasing bulk of instruments that are not legally binding (recommendations, joint political declarations, standards or guidelines elaborated by expert committees, etc.) which are generally subsumed under the label of *soft law*. Certain categorical rights - following the example of the specific rights of the elderly – are still chiefly based on such 'soft' sources so that the urgent question arises as to their entrenchment within a unified and complete *hard* instrument (De Hert and Mantovani 2011, Mégret 2011, Doron and Apter 2010, Tang and Lee 2006, Rodriguez Pinzon and Marin 2003). In addition to this dividing line between the sources there appears to be a relatively impenetrable division of tasks and responsibilities among human rights monitoring bodies: every treaty body receives, as a monopoly, the one and only mission of ensuring the international surveillance of its 'source-instrument'.
These strict divisions and dividing lines are however diluted in the contemporary practice of these same bodies. Here, the soft law becomes harder, and the case law intermingles. This phenomenon can be observed in the practice of the UN organs, the African Commission on Human Rights, the Inter-American Commission of Human Rights or the Inter-American Court of Human Rights. It is particularly spectacular in the case law of the European Court of Human Rights (Tulkens and Van Drooghenbroeck 2008, Kleijssen 2010, Barkhuysen and van Emmerik 2010). For several years, this Court enriches its interpretation of the European Convention on Human Rights by referring to 'external sources' to this Convention. The external sources thus mobilised are of a great variety, in particular as regards their 'legal origin' (national Constitutions, treaties of the Council of Europe, UN treaties, European Union law, etc.) (Gonzalez 2007). The diversity of the 'external sources' used by the European Court also rests upon their 'legal status'. Hence, there is an increase in the number of references to *soft law* originating from authorities (politically representative or not) within the Council of Europe or the United Nations. The recourse to these 'external sources', being of very diverse origin and nature, is particularly significant in certain proceedings: electoral disputes, penal litigation, and litigation on discrimination against vulnerable groups (Roma, illegal residents, persons with disabilities). When the European Court mobilises external sources in such a way, it also takes into consideration – by way of 'cross references' – the case law (*soft* or *hard*) employed for their interpretation by the competent treaty body (general observations, findings of UN committees, etc.).
The positive contribution of the use of these 'external sources' and of the practice of 'cross references' unquestionably lies in the progression towards a human rights law which is, if not uniform, at least 'harmonised' – certain have already referred to a *jus commune* or a 'global' law – and, correlatively, in the reduction of the phenomenon of fragmentation - *ratione temporis* (coexistence of old and new instruments), *ratione personae* (multiplication of categorical rights) and *ratione loci* (coexistence of universal, regional and national stratums that are not organised into a hierarchy) of this law. The reference to *soft law* instruments is particularly fruitful in this respect, since these instruments often stem from the compilation of 'best practices', and, in this very way, operate, concerning a given problem, the coherent synthesis of different 'fragmented' elements of human rights law. Beyond the mere description of the phenomenon, a critical evaluation still needs to be carried out. Two angles of evaluation are possible.

Methods and procedures of bridge-building: case study of the European Court of Human Rights
The first angle is linked to the procedure itself. The procedure of reference to 'external sources' and of 'cross references' raises important difficulties in terms of legitimacy, within a legal thinking that is still widely dominant and places the consent of states at the foundation of the binding force of the rules that are imposed on them. Is it admissible that, beyond the will of

the states, the treaty body transforms 'soft' law into 'almost hard' law, and that it indirectly sets itself up, by means of the external sources, as the guardian of other instruments than 'its' own source instrument (Renucci 2007)? In an important judgment *Demir & Baykara* (2008), the European Court of Human Rights has answered these questions affirmatively by linking the procedure of 'external sources' and of 'cross references' with its classical evolutive and consensual methods of interpretation. The debate on this point has however not come to an end. Furthermore, the procedure raises important questions as regards its 'methodology', which has to be sufficiently transparent in order to avoid the objection of 'cherry picking' (Van Drooghenbroeck 2010). In a litigation procedure, is the possibility to raise the existence of 'external sources' reserved for the parties or the intervening third parties or is it the task of the treaty body itself (*Curia novit jura*)? *Quid* when there is discordance or even contradiction among external sources? What are the ultimate limits of the soft law susceptible of being taken into consideration? Are legal analysis or standards developed by private actors (Amnesty International, Human Rights Watch, for example) also 'external sources' that may be used by official monitoring bodies?
This first axis of research is centred on disputes brought before the European Court of Human Rights (including a comparative dimension with the practice of other treaty bodies where this proves relevant). It will give rise to the drafting of a doctoral thesis by a Ph.D. student whose mandate will be shared by the FUSL and the ULB. Methodologically, the research will touch the perspectives of the fields of human rights law, public international law and of legal theory (law as a network). Besides the detailed analysis of the literature and the case law it will include an empirical dimension based on interviews with the relevant actors (of which primarily the judges and the legal counsels of the Court), with a view to grasping their perception of this emerging practice in terms of legitimacy and need for rationalisation.

Building new rights on an integrated reading of existing sources: The case of the rights of the elderly
The second angle of evaluation is linked to the results. In the presence of a set of fragmented norms which are in part supported by simple *soft* instruments, can the procedure of external sources and cross references produce such a powerful integrating effect that it can lead to the construction of a *corpus juris* that is functionally equivalent to the drafting of a *hard law* instrument and that is unified and exhaustive as regards the question dealt with? This query will be centred on the issue of the categorical rights of the elderly, for which the drafting of a new international instrument is precisely envisaged. This second axis of research will give rise to doctoral research conducted by a person whose mandate will be shared by the FUSL and the VUB. This research will be based on an analysis of the existing literature and on a transversal study of the case law of diverse jurisdictions dedicated to the problem of the rights of the elderly.
There is hardly a single right whose understanding is not challenged by the issue of ageing and by how societies deal with their older members, such as the right to life, health, education, work, housing, etc. (Human Rights Council Advisory Committee, 2010). The question has risen as to whether an international convention on the rights of the elderly is a justifiable addition to the existing system of human rights protection (Mégret 2010); the vast body of ready-made programs and good practices, such as those included in the 1982 Vienna International Plan of Action on Ageing (VIPAA), the 1991 UN Principles for Older Persons, and the 2002 Madrid International Plan of Action on Aging (MIPAA), could complement or specify mainstream human rights instruments, contributing to 'respect, protect and fulfill' the rights of the elderly.
Legal-empirical studies (Rodriguez-Pinzon and Marin 2003, Tang and Lee 2006) have already conducted a broad review of the rights of the elderly and concluded that a strategy to have a comprehensive legal instrument on elderly rights is missing in both universal and regional human rights systems. The expected results of this research will be both broader and more precise in scope than existing literature. In particular, there is a lack of understanding of the apparent tension that exists between, on the one hand, the ban on discrimination on grounds of age and the emerging rights of the elderly (*e.g.*, article 21 and 25 of the EU Charter, respectively) and, on the other, the conventional use of age differentiations, notably in employment and social policy. Different layers and rationales intersect: on the one hand, prohibition of discrimination to combat ageism and stereotyping, and, on the other, a more positive approach urging states to accommodate the increased longevity of populations. In the backdrop to this, contentious concepts of demographic ageing, 'active ageing' and 'inter-generational responsibility' (Estes and Phillipson 2002) can be seen.
The recent decisions of the European Court of Justice (ECJ) since *Mangold* (2005) *and Palacios de la Villa* (2007) offer a practical illustration of this tension and, consequently, of the opportunity to strike a balance. Accordingly, the aim of the research, 'both broader and more precise', is to rationalise in a unified system different 'generations' of human rights, enshrined in both regional and international instruments, clarified through comments, reports, and (quasi-) judicial decisions, and construed or 'mainstreamed' by international policy documents on ageing, mentioned above.

SCHEMATIC REPRESENTATION OF INTERACTION BETWEEN PARTNERS WITHIN THIS WP



2.4. Work Package 4: Maximisation of added value of human rights texts/mechanisms: Do we need a national Bill of Rights? (FUSL)

Work package 4 will zoom in on the status and functions of one source within the multilayered human rights protection system, i.e. national bills of rights. Situating this single source within the context of human rights law as a whole, the central question will be how to optimize its added value for users.

The fragmentation of human rights protection stems in particular from its construction in – international, regional and national – stratums, distinct and independent from each other. For several years, the promotion of an integrated approach towards this fragmented law has notably taken the shape of a reflection as regards the modernisation of the national constitutional catalogue of protection of fundamental rights and freedoms. The idea would be to transform this catalogue into an 'interface' or into a 'synthesis' integrating and organising the different contributions of this fragmented law. From a user's perspective, the objective is to offer a systematic constitutional text, coherent and modern, supposed to be closer and more familiar to the citizens than the remote and exotic European and international instruments.

Such a reflection emerged within several 'old' European states endowed with an incomplete and outmoded constitution in terms of the protection of rights and freedoms. In Switzerland, this reflection has led to the insertion, into the new Constitution of April 18, 1999, of an 'updated' catalogue of fundamental rights and freedoms, synthesising the relics of the 1874 Constitution, the *acquis* of the case law of the Federal Supreme Court and the contributions of the international instruments to which the Confederation is a party (Auer, Malinverni and Hottelier 2006, Knapp 2000). In Belgium, such a reflection has taken place between 2004 and 2007 within the framework of a working group established within the Chamber of Representatives (Velaers and Van Drooghenbroeck 2004-2007, Van Drooghenbroeck 2001, Brems 2007). So far, this has not been successful. However, the reflection is carried on at the level of the Flemish Community, by works aiming at the drafting of a *Handvest voor Vlaanderen*, the catalogue of rights and freedoms of which would be inspired by the Charter of fundamental rights of the European Union. In the Netherlands, the reflection as regards the modernisation of the constitutional Bill of Rights has been one of the facets of the mandate given to the *Staatscommissie voor de herziening van de Grondwet* in 2009. Numerous contributions dealing with the utility and the *modus operandi* of this modernisation have been published on the website of this *Staatscommissie*: http://www.staatscommissiegrondwet.nl. In Luxemburg, finally, the idea of a modernisation of the catalogue of rights and freedoms was suggested by the Venice Commission, that was called upon for its opinion regarding the revision of the Constitution, proposed by MP Meyers (Gerkrath 2010).

These different initiatives, *a priori*, fit perfectly in the theory of 'law as a network', and in the logic of substantial and procedural subsidiarity that articulates international and regional human rights protection vis-à-vis the national protection of these very rights. The subsidiarity principle invites states not to settle for the common denominators of international and European law, but, on the contrary, to go beyond the scope of the latter. In addition, the complete, legible and explicit constitutional entrenchment of fundamental rights favours the settlement of litigations in this respect on the national level, which fits perfectly in the logic of the exhaustion of domestic remedies. Yet, a certain scepticism remains as regards the question of the utility of constitutional 'updating/modernisation' operations, a fact that may explain their mitigated success within the four pre-cited states. This brings along a series of questions, which the existing literature has thus far only touched lightly. Is it not chimeric to try, in one-and-the-same text, to capture the totality of contributions of the international and European human rights law with a view to organise them in a perfectly coherent and systematic manner? Is such an undertaking not useless from the user's perspective, within national legal orders that are already very open to penetration by international and European law? Is the possibility of the national constitution to offer a better protection for such and such right than the international or European law (so-called 'maximisation clause') in practice not increasingly counteracted by the incidence of conflicts between fundamental rights?

All of the above questions as well as others that may arise, will be examined in detail within the framework of a doctoral research. The doctoral researcher employed to this effect at FUSL will exploit the following resources, in a firmly interdisciplinary perspective:

- legal theory: between the chimeric ideal of absolute codification and the resignation towards absolute disorder, does a fruitful middle way exist that is capable of making sense of an undertaking of constitutional modernization?
- comparative law: the four pre-cited national legal orders would constitute a ground for an original comparative study in order to evaluate both the relevance and limits of the 'constitutional movement' of modernization of the fundamental rights catalogue;
- political science: the updating of a fundamental rights catalogue is often inspired by an explicit or implicit political intention of reaffirming the common values of a given society (nation-Building ; creation of a 'constitutional patriotism'). The failure of this undertaking of updating could possibly be associated with the disappearance or weakening of these common values;
- legal sociology: the plea in favour of a modernisation of a constitutional fundamental rights catalogue often departs from the assumption that a national legal community (citizens, lawyers, NGOs, judges) maintains a stronger link with its Constitution than with a regional or international treaty. This assumption needs to be verified (cf. the studies that have been undertaken in this respect in the Netherlands, within the framework of the works of the *Staatscommissie voor de herziening van de Grondwet*).

This research will have a strong component of desk research, taking the form of an analysis of the specialized literature in the fields of constitutional law, comparative law and political science, as well as of published case law and (parliamentary and extra-parliamentary) preparatory works dedicated, in the legal orders concerned, to the modernisation of the catalogue of fundamental rights and freedoms. This will be complemented by interviews conducted with 'users' of the constitutional protection of fundamental rights (NGOs, lawyers, National Human Rights Institutions, Equality Bodies).

2.5. Work Package 5: Optimizing access to international human rights mechanisms (UGent)

Work package 5 will examine the procedural dimensions of human rights integration, with a focus on international complaint procedures. The use of international human rights complaints procedures has expanded exponentially during the past decade. While monitoring bodies such as the European Court of Human Rights and the Inter-American Commission and Court on Human Rights are confronted with mounting or even huge amounts of incoming petitions (Greer 2006, Wolfrum and Deutsch 2009), individual petitioners and in particular members of vulnerable groups still encounter practical and legal problems hindering them to bring cases of alleged human rights violations before these supranational supervisory bodies and subsequently (sometimes) even to maintain and thus effectively pursue their complaint on the docket of these organs (Lambert-Abdelgawad 2011; Cançado Trindade 2011).

A doctoral researcher to be engaged at UGent will study from a comparative perspective the problems faced by individuals as well as vulnerable groups in society petitioning the European and Inter-American regional human rights systems, while at the same time analysing and evaluating the coherence and divergence of policies and practices within both systems. This analysis will include rules and practice determining who is able to submit a complaint, practice on the - restricted - access to interim measures of persons in danger of being the victim of irreparable harm. Besides, the legal consequences of States actively or passively hindering applicants to bring and maintain their case before their regional supervisory body will be studied, as well as the financial constraints inhibiting applicants to submit their application. Moreover it will confront existing policies (e.g. on managing the case-load by giving priority to certain cases, meaning that other cases are kept indefinitely in the docket) with policies and measures currently on (or off) the table at the international-regional political level aimed at curbing the influx of cases into the respective systems (e.g., but not exclusively the options chosen at the conferences at Interlaken 2010 and Izmir 2011 on the future of the European Court of Human Rights).

Adopting an open and creative approach to the topic, a wide range of scenarios will be investigated These include the creation of a 'class action model' to accomodate larger groups of petitioners (going beyond the instrument of pilot judgments) and the feasability and possible structure of a fully judge-driven 'preliminary ruling-system' next to (Benoît-Rohmer 2001, Harmsen 2007) or in replacement of the current complaints mechanisms. Both mechanisms have been ruled out by regional experts such as the Group of Wise Persons (GWP 2006) remarkably fast and without any scientifically-sound in-depth research (Haeck a.o. 2008). In addition, the research will look into the usefulness and feasability of an 'improved certiorari type' mechanism that would provide more coherent and transparent guidance to potential petitioners than is currently the case in the US Supreme Court and would go beyond a 'significant disadvantage'-approach (Haeck a,d Vande Lanotte 2008). Moreover the work will bear on legislative changes that may be needed in domestic legal systems to accomodate the effectivity of interim measures taken at the level of the regional human rights mechanisms (Burbano and Haeck 2010).

The overall aim of the research is of a normative nature: it intends to come to clear-cut, substantiated proposals to reconcile optimal access of individual petitioners, respectively groups, to their regional human rights systems, with the need of

procedural efficiency and an efficient management of incoming cases (in turn leading to more efficient justice rendered) by these regional human rights monitoring bodies. Particular attention will be paid to examine to what extent solutions and strategies developed within one system may also serve the other and vice versa. Moreover, the European and Inter-American rules and practice will be placed in a broader context, by examining them in the light of the universal treaty body system and the constitutional courts of selected countries (the latter in view of their competence - which partially or wholly extends to questions in the ambit of fundamental or human rights and/or their leading or prominent role worldwide; e.g. Federal Indian Constitutional Court, US Supreme Court, German Constitutional Court).

2.6. Work Package 6: Divergence and Coherence in Human Rights Law (UGent, ULB, VUB)

Work package 6 will examine the value there may be in not –entirely – integrating human rights law. Indeed, a central question in the multi-layered architecture of human rights law is that of the extent to which it makes room for variations on a single theme, i.e. different formulations and interpretations of the same norms. On the users' side, both states and rights holders may support a certain degree of divergence, as this may allow to take into account contextual needs and variations in value systems. Yet both may also prefer uniformity, as rights holders may wish to oppose local value systems through an appeal to universal standards, and as some state authorities may regret being held to higher standards than others on specific topics (compare for example the European Social Charter with the International Covenant on Economic, Social and Cultural Rights).

On the ground, the number of regional human rights treaties has been continuously growing, regardless of the fact that there may already exist binding global treaties in the same field to which most or all of the member states of the relevant regional organisation adhere (e.g. 1979 Convention on the Elimination of All Forms of Discrimination Against Women and 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa).

One of several reasons that are invoked to justify the need for regional human rights treaties on top of global treaties, is the wish to 'customize' treaties, tailoring them to the realities on the ground in the region concerned, both with respect to the types of violations that occur and with respect to the cultural and societal context in which the rights provisions are interpreted and applied. In the same vein, at the national level, states continue to update constitutional bills of rights, even when they recognize the direct effect of human rights treaties.

Customization of human rights occurs moreover at the level of their interpretation by authoritative bodies, in particular regional human rights courts and constitutional courts. On the one hand, regional courts regularly refer to regional standards (e.g. the ECtHR's 'consensus principle') and to regional challenges (e.g. the African Commission on Human and Peoples' Rights) as guidelines to their interpretative work. On the other, regional courts as well as global monitoring bodies may refrain from imposing uniform solutions to some human rights questions, leaving room for divergence of domestic approaches (e.g. the 'margin of appreciation' doctrine of the ECtHR Arai-Takahashi 2002, Brems 2003, Greer 2000).

In a broader perspective, heated debates on universality and diversity in human rights have lead to a consensus on the view that universality does not imply uniformity, and hence divergence in formulations and/or interpretations of universal rights are not illegitimate *per se* (Viaene and Brems 2010). Yet there has been little research and debate on the crucial questions of the extent or degree of divergence that is acceptable or desirable, and into ways of guarding the limits of acceptable divergence and preserving a sufficient degree of coherence in international human rights law. Moreover an exploration is needed of legal techniques that are *de facto* used to manage divergence in human rights law, or that may potentially be used to this effect.

Within this research package, UGent, ULB and VUB will cooperate, approaching the central questions from different angles.

2.6.1. Regulating divergence: identifying the tools

The UGent partner intends to undertake Ph.D. research geared at defining in the first place a guiding framework for the demarcation of acceptable degrees of divergence in specific situations. Next, the research will provide an inventory of – both existing and new- legal techniques that allow to accommodate and at the same time control divergence in human rights formulations and interpretations. A thorough analysis of the work of regional and global human rights monitoring bodies will allow a mapping of techniques that are currently employed and of the areas and themes on which divergence is more or less accommodated. Moreover, the study of the legal doctrine will allow an assessment of how the current practice is received, what is considered best practice, in which situations current practice is contested, and what normative solutions are put forward. Finally, this research will employ out-of-the-box thinking to devise new tools for the management of divergence in universal norms and for upgrading existing tools toward better performance as defined by the guiding framework.

Taking as a starting point the extensive literature on the tension between universality and diversity in human rights (e.g. Brems 2001, Brems 2004, Cohen-Jonathan 2003, Delmas-Marty 1998, Donnelly 2007), the research will *update* the findings of this literature, which was produced mostly in the 1990s, in the wake of the UN Vienna World Conference on Human Rights

(1993). In the meantime, the debate on 'Asian values' has lost much of its urgency, whereas Islamic claims have changed face, turning from defenses against Western allegations into assertive claims to see Islamic views reflected in universal standards (Brems 2010).
The research will next take up the challenge of deriving from current practice and theory a normative model, and of translating this into legal techniques for the simultaneous accommodation and control of divergence in human rights law. While a substantial body of literature exists on the margin of appreciation doctrine in the ECtHR(e.g. Arai-Takahashi 2002, Brems 2003, Greer 2000), other techniques that are or may be applied in this context, remain under-explored. A number of scenarios have been suggested, that include broadening the concept of 'progressive realisation' (Brems 2008) and incorporating divergence in the concretization of 'container concepts' such as 'the best interest of the child' (article 3(1) CRC)(Alston 1994) or of key concepts such as 'family' or 'property' (Peroni 2010). These will be useful building blocks that need however to be more thoroughly examined and to be made operational. Moreover, a comparative study of creative methods of interpretation and argumentation in the area of human rights is likely to reveal other scenarios that are worth pursuing.
The UGent contribution is intended to support the analysis in the VUB and ULB case studies within these work package.

2.6.2. National Margin of Appreciation as a Tool to Reconcile Specific Conceptions of Humans Rights and the Uniform Application of European Union Law?

The ULB partner will undertake a case study of one 'diversity tool': doctoral research will explore the potential of the Strasbourg tool of 'margin of appreciation' for the Luxemburg court. In contrast to the system established by the ECHR, the law of the European Union imposes a standard of human rights protection that is more than a mere threshold of protection (Torres Pérez 2009). Consequently, even though Union law guarantees a 'high standard of protection […] in harmony with the common constitutional traditions (Explanations relating to the Charter of Fundamental Rights), the requirement of uniformity of the law of the Union is liable to impair more favourable national human rights conceptions as well as 'uncommon constitutional values' (Shuibhne 2009). In recent years, in the field of state derogations from the fundamental economic freedoms, the Court of Justice of the EU has, on several occasions, granted a margin of appreciation to national authorities, allowing for a higher level of protection of the fundamental right or the legitimate interest in question, by emphasising the diversity of the values (Tridimas 2010) (see, among others, ECJ *Omega* 2004).
The Ph.D. will study the case law of the CJEU that mobilises this 'structural conception' of the margin of appreciation (Letsas 2006) as a tool designed to reconcile the sovereignty of the states with the need to respect European obligations, in the light of the relevant literature as regards the mechanism in the ECHR system. The contours and consequences of this case law, which has already been commented upon in the doctrine (Bailleux 2009), deserve a systematic analysis. In particular, the question arises as to the scope of application of such an approach and its potential extension to fields in which a certain degree of legislative harmonisation already exists, notably the European criminal area under construction, which will represent a privileged research field. Moreover, the doctoral research will integrate this analysis into the framework of theoretical reflections with respect to the appropriateness and the legitimacy of devices aiming at finding a right balance between unity and diversity in terms of the fundamental rights protection in the European area.

2.6.3. Indigenous peoples' rights to traditional lands, territories and resources: a comparative view from the various human rights systems

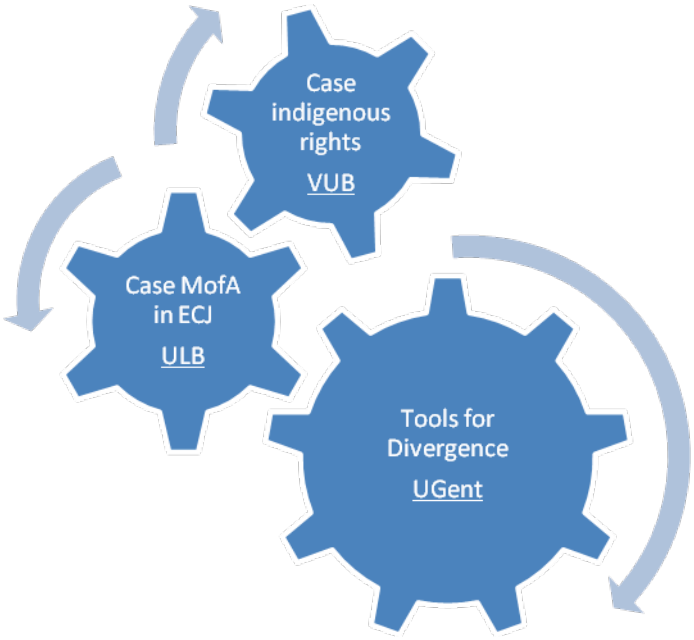
The VUB partner will undertake a case study that examines how the same goal – protecting indigenous peoples' rights to lands and resources – is pursued by different means in different human rights mechanisms and how indigenous peoples are trying to move the human rights systems to be more responsive to their claims. The choice of the theme moreover leads to a focus on the contentious issue of collective rights. While collective rights are embraced by the African regional system, 'Western' human rights approaches shy away from them. Yet in the area of indigenous rights, the Inter-American system is experiencing the impact of global – collective rights- oriented – norms on the interpretation of individual rights at the regional level.
On 13 September 2007, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). This event was not only a landmark for the indigenous peoples' movement but also constituted an important contribution to the universal human rights system. The declaration has indeed, after two decades of difficult negotiations, finally acknowledged that indigenous peoples are, as a group, holders of human rights. Adopted as a soft law instrument, the UNDRIP has nevertheless quickly been considered as an important legal standard when it comes to defining indigenous peoples' rights (UN Doc. A/HRC/9/9/2008).
Some of the hurdles in the drafting of the UNDRIP were the reference to the right to self-determination and indigenous peoples' access to traditional lands, territories and resources, rights which received a prominent place in the UNDRIP. Basic

human rights instruments such as the ICCPR and the ICESCR mention that 'all peoples have a right to self-determination'. Although indigenous peoples have now been recognized as possessing that right, it remains controversial whether they can benefit from the same right to self-determination as other peoples (Magnarella 2001, Huff 2005, Murphy 2008, Weissner 2008). The bulk of UN practice on self-determination has mainly focused on the political dimension of the right even though the basic human rights instruments also include a right to freely pursue its own economic development. But although 'economic self-determination' constitutes the counterpart of the political aspect of self-determination, it has never received the same attention in the UN and other circles (Farmer 2006). It is 'as if self-determination has been shorn of all its economic elements and [has] become solely concerned with borders, territory, and nationalism' (Oloka-Onyango 1999). Despite its codification as a distinct form of self-determination, the application of economic self-determination has only been approached from a state centric perspective considering the state as the right holder rather than the people (e.g. GA Res. 3281 (XXIX) of 12 December 1974). The indigenous claims are closely linked to the economic aspect of self-determination because without control of their traditional lands and natural resources, efforts to preserve indigenous distinctness are often meaningless. The UNDRIP therefore refers to political and economic self-determination. Moreover, by devoting a number of provisions to indigenous peoples' rights to the traditional lands, territories and resources it obliges the analyst to pay more attention to an aspect that has greatly been neglected in the traditional self-determination debate. The question of the indigenous peoples' rights to their lands and natural resources remains however heavily contested and the UNDRIP does not fully clarify the position of international law in this regard (ILA report on the rights of indigenous peoples, The Hague 2010).

The objective of the research proposal is to fill this gap and to clarify what is meant by economic self-determination for indigenous peoples and in particular what meaning should be given to the right to traditional lands and resources. This issue will be approached through comparative research involving the universal as well as regional human rights protection systems. Since human rights systems are not functioning in a vacuum but mutually influence each other, it is justified to also analyze the impact of the developments consolidating in one human rights system and see how they might or are influencing other human rights systems.

The adoption of the UNDRIP has confirmed that indigenous peoples' rights are crystallizing into rules of international law at the universal level. These developments have also been reflected regionally in the inter-American (Tramontana 2010, Anaya and Williams 2001, Pasqualucci 2009) and to a lesser extent the African human rights systems (Viljoen 2010) even though none of these regional human rights systems have adopted a binding legal instrument addressing indigenous peoples' rights. Through an 'evolutive' interpretation of regional human rights instruments, the Inter-American Court of Human Rights has developed an interesting corpus of case law granting indigenous peoples property right over their land and natural resources. Similarly the African Commission on Human and Peoples' Rights has ruled that ownership of the subsurface resources was vested in the indigenous community. Even though the same issues arose in Europe and various complaints from northern indigenous communities have been launched to the European Court of Human Rights, it is still a very controversial issue in the European human rights system whether indigenous peoples possess rights beyond those recognized for individuals (Koivurova 2011). Despite the emerging international consensus on indigenous rights, the European human rights system is almost totally absent in the debate on the framing of indigenous peoples' rights.

SCHEMATIC REPRESENTATION OF INTERACTION BETWEEN PARTNERS WITHIN THIS WP



2.7. Work Package 7: Clarifying the grey zone between internal human rights abuses and crimes against humanity (VUB)

Work package 7 will broaden the central research question toward the fuzzy borders of human rights law. When users get disoriented in the human rights landscape, they risk indeed ambling off into the neighbouring fields of international humanitarian law and international criminal law. Does a potential for integration exist?

The projects of international human rights law (IHRL), international humanitarian law (IHL) and international criminal law (ICL) are rooted in a similar ideal: respect for the autonomy and integrity of individuals and protecting individuals from abuse of state authority (Robinson 2010). When ICL grew explosively in the mid-1990s, after decades of inertia, it was perceived as a major advancement for IHRL and IHL, offering a valuable remedy and means of enforcement by punishing violators (Robinson 2010).

A great amount of scholarship has been published in recent years on the complex relationship between IHRL and IHL (See e.g. Ben-Naftal, 2011, Eden 2009, Happold 2009, Arnold 2008, Quenivet 2008, Provost, 2002). On the contrary, the interrelation, correlation and cross-fertilization between IHRL on the one side, and ICL on the other side has not attracted the same scholarly attention, while several areas where intense interaction takes place between IHRL and ICL warrant further research.

This research will be carried out from the perspective of three important users in IHRL and ICL: first, the victims as rights holders who claim to have suffered human rights violations and want to hold accountable those responsible for the violations; second, State authorities that have to take into account all human rights and criminal law norms that are applicable to them; and third, private actors who are not only rights holders, but have, in some situations, become duty bearers under IHRL and ICL.

The research will add to the integrated view of human rights by focussing on a topical subject of great interest that is a perfect example of the deep interconnection between IHRL on the one hand, and ICL on the other, namely the law on crimes against humanity. Over time, the category of crimes against humanity has become the criminal law response to gross violations of human rights. This made it vulnerable to challenges of being too vague and over-inclusive and thereby in violation of the fundamental criminal law principle of *nullum crimen sine lege* (Nilsson 2008). It engendered a debate on the *raison d'être,* the outer limits and boundaries of the law on crimes against humanity. A few recent events again brought out some exciting but difficult questions on the exact demarcation line between crimes against humanity and 'ordinary' human rights abuses and the outer reaches of crimes against humanity. These events force us to get serious about the exact role and scope of international criminal law as an accountability mechanism for the most egregious human rights abuses committed around the world. For example, the plan of the Norwegian prosecutors to prosecute Anders Breivik for crimes against humanity brings out the question if an individual can ever commit crimes against humanity. In the same sense, the debates whether or not the terrorist acts committed on 9/11 constitute crimes against humanity and whether or not crimes against humanity should be included in the jurisdiction *ratione materiae* of the Special Tribunal for Lebanon raise the question if terrorist groups can ever commit crimes against humanity. Most recently, the Center for Constitutional Rights (CCR) submitted, on behalf of the Survivors Network of Those Abused by Priests, a communication to the International Criminal Court requesting that an

investigation be opened for crimes against humanity committed by high-level Vatican officials. One can seriously doubt that the alleged crimes actually constitute crimes against humanity under the Rome Statute but the complaint is another sign of the blurring of the line between IHRL and ICL.

The most important event however concerning the issue was the historic majority decision of the ICC Pre-Trial Chamber whereby it authorized the Prosecutor to conduct official investigations into crimes against humanity believed to have been committed in Kenya during the post-election violence in 2007-2008 (ICC, 2009). The most contentious aspect of the Pre-Trial Chamber's decision concerns the manner in which it interprets 'organizational policy' in the context of a crime against humanity, with the Chamber unable to reach a consensus on this point. Article 7(2)(a) of the Rome Statute provides that for a crime to amount to a 'crime against humanity', it must be made 'pursuant to or in furtherance of a State or organizational policy'. In an extension of previous jurisprudence of the ICTY and the SCSL on this point, the majority decided that it is possible for crimes against humanity to be committed by groups that are not States or even 'State-like', so long as the violence is 'organized'. According to the majority, the question to be considered is whether the organized group has 'the capability to perform acts which infringe on basic human rights.' Judge Kaul of the Pre-Trial Chamber sets a different tone in his Dissenting Opinion. In Judge Kaul's opinion, if this demarcation between crimes against humanity and crimes under national law is downgraded, this might infringe on State sovereignty and the action of national courts for crimes which are not under the jurisdiction of the ICC (ICC, 2009).

The consequence of the broad, human-value-driven victim-teleological construction of the term 'organization' in article 7(2)(a) of the ICC-Statute by the majority the Pre-Trial Chamber of the ICC in the Situation of Kenya would be the creation of a new IHRL directly incumbent upon private organizations or even upon individuals which are not even state-like (Kress 2010). Some observers applaud the interpretation of the Pre-Trial Chamber. They argue that if one imports too much of the State-orientation from IHRL, it ignores the fact that ICL has developed separately, encompassing conduct orchestrated by states or non-state actors, and that one must recognize the massive harms that non-state actors can inflict (Robinson 2011). Accordingly, they argue that traditional IHRL should be revisited in the light of the development of ICL (Clapham 2008, Clapham 2010). Others disagree and align themselves with the Dissenting Opinion of Judge Kaul. They argue that this amounts to a miscalculation of the proper relationship between IHRL and ICL. In their eyes this broad interpretation of ICL should not be used as a back door for the progressive development of IHRL. Only if the obligation of an organization as a private actor who's bearing duties under IHRL can be established, a human-inspired teleological argument to include such organizations in the policy requirement of crimes against humanity would be acceptable (Kress 2010).

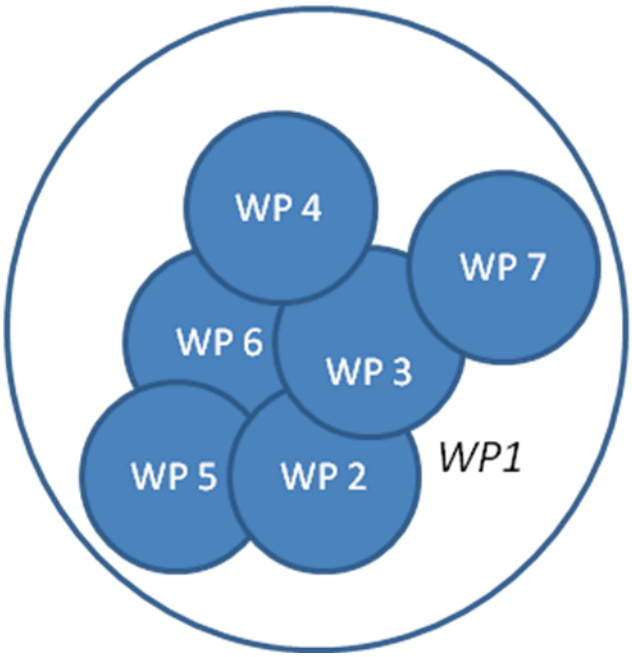
Whoever is right, it seems clear that the current lack of co-ordination and understanding between IHRL on the one hand and ICL as a tool to enforce and protect IHRL under the moniker of crimes against humanity on the other hand, creates disagreements that lead to sub-optimal human rights protection. Further research seems thus warranted to clarify the essence of crimes against humanity. While a considerable amount of legal scholarship has been published on the exact scope of crimes against humanity, these contributions have all adopted a very strong criminal-law approach (Obel Hansen 2011, Schabas 2010, Kress 2010, Halling 2010). The originality of the Ph.D. research will lie in its stronger human rights focus. If one can establish that organizations have the obligation to respect international human rights law, the pro victim teleological argument to include such organizations in the policy requirement of crimes against humanity would gain more credibility and legal grounding. It would also counter the argument that the progressive development of ICL and the law on crimes against humanity in particular is halted under influence of IHRL, because of the state-oriented nature of the latter.

The following research questions will be addressed during the doctoral research:

- Can private actors and organizations (e.g. political parties, powerful terrorist organizations, or even individuals) ever orchestrate crimes against humanity?
- Does IHRL have a role to play in answering the first question, and if yes what is the role of IHRL?
- If the answer to the first question is positive, what does this mean for the role and the scope of ICL? Does this mean that ICL is from now on entitled to step in when private actors commit *intra*-state human rights abuses? If yes, exactly what kind of human rights abuses can lead to accountability under ICL?
- What are the consequences of this further enlargement of the scope of ICL for States and private actors and organizations as duty bearers under IHRL?

The research will be carried out from three perspectives: the perspective of the victim, the perspective of the State and the perspective of private perpetrators. Victims of human rights violations seek accountability through crimes against humanity and favour, quite logically, a very broad, victim-teleological interpretation of the law on crimes against humanity. This is opposed to the perspective of both States and private perpetrators. States seek to limit the contextual requirements of crimes against humanity for a reason to be found quite likely external to human rights, namely the sovereignty interests of States. Private perpetrators aim to prevent a broad interpretation of the law on crimes against humanity because it minimizes the risk that they will ever be held individually accountable under international criminal law. This research will hence identify the frictions that arise in the integrated experience of IHRL and ICL as an enforcing mechanism of IHRL in the field of crimes against humanity.

3. Schematic representation of interaction between the work packages



4. **Integration of the different lines of research** (narrative accompanying the figure in 3.)

Work package 1 provides theoretical and conceptual frameworks for the entire project. Its transversal umbrella function is a crucial integrating factor within the research. In all internal activities of the network, particular attention will be paid to the integration of these concepts and theories within all work packages.
In addition, numerous overlaps and shared interests exist among the work packages, as shown in the schematic representation above.
Work packages 3 and 6 mirror each other. While *work package 3* is concerned with tools and methods for the integration of the different layers of human rights law, *work package 6* on the other hand focuses on legitimate divergence between these layers, and thus on the limits of desirable integration. As there is a constant tension between both approaches, it will be interesting to compare notes and to discuss specific issues from both angles during network meetings. *Work package 2* on users' trajectories overlaps with *work package 3* to the extent that users throw bridges between human rights layers, and to the extent that bridges created by others impact on users' experience. Moreover, some findings on foreigners as a vulnerable group in *work package 2* are likely to echo through the research on the rights of the elderly in *work package 3*. The focus on vulnerable groups also links *work package 5*, with its emphasis on vulnerable groups' access to complaint mechanisms, to that part of *work package 2.* A broader link exists between both last-mentioned work packages, as users' trajectories through human rights mechanisms – the topic of *work package 2* – may be influenced by procedural factors – the topic of *work package 5*.
Work package 5 is to some extent the procedural complement of *work package 6*, as the question on desirable degrees of coherence and divergence concerns procedural law as well and as procedural rules may be tailored to specific needs in a similar manner as substantive rights may be customized.
Work package 6 is also linked to *work package 2*, as arguments for both coherence and divergence may be derived from users' trajectories. To the extent that national bills of rights express specific choices with respect to fundamental rights, and are thus examples of customized rights, *work package 4* overlaps with *work package 6.* Moreover, the case study on indigenous rights in *work package 6* relies to an important extent on soft law sources, and in that sense overlaps with part of the research in *work package 3*. Through its practical reflection on the usefulness of new - or renewed -instruments of human rights protection in relation to other existing instruments, *work package 4* also builds on the work of *work package 3*. Finally the research in *work package 3* on bridging methods that may help integrate layers of human rights law will serve as reference frame for the research in *work package 7* intent on integrating human rights law with international humanitarian law and international criminal law.
The significant amount of overlaps and shared interests among the work packages, combined with the fact that most partners are engaged in several work packages and that most work packages involve several partners, will guarantee the sustainability

of this project as a joint enterprise. The sense of shared purpose will moreover be strengthened through the numerous planned network activities, during which the above-indicated areas of shared concern will provide interesting topics for debate.

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FORM E: PARTICIPATION OF THE PARTNERS IN THE DIFFERENT WORK PACKAGES

Tick off in the table the participation of the different partners in the different work packages (delete not used rows and columns in the table). Mention for each partner his/her name and the institution's abbreviation.

	PARTNER	WP 1	WP 2	WP 3	WP 4	WP 5	WP 6	WP 7
P1	Name : Eva Brems Institution : UGent					X	X	
P2	Name : Emmanuelle Bribosia Institution : ULB	X	X	X			X	
P3	Name : Paul De Hert Institution : VUB			X			X	X
P4	Name : Koen De Feyter Institution : UA		X					
P5	Name : Sébastien Vandrooghenbroeck Institution : FUSL	X		X	X			
INT1	Name : Barbara Oomen Institution : UU	X						

FORM F: MAIN SKILLS OF THE PARTNERS

Describe the main skills of each of the partners in relation to the proposal (15 lines maximum per partner).
Delete not used lines.

P1 - Name : Eva Brems
Institution: Universiteit Gent
Main Skills:

Birds-eye view and attention to cross-cutting issues in legal human rights research: Within the Human Rights Centre at the Law Faculty of Ghent University, Eva Brems has developed two strong lines of research. One of these involves classical legal research into domestic and international human rights law, with a strong focus on legal reasoning, in particular in the European Court of Human Rights. That research line has emphasized themes cutting across different rights provisions, such as the issue of conflicting rights, the issue of mainstreaming diversity, and the issue of procedural justice in human rights adjudication. A preference for a methodology that includes 360° comparisons has increased insights in the commonalities as well as idiosyncrasies within human rights law.
Experience with legal pluralism-oriented research on human rights: The second line of research applies social science methodologies in human rights research, and has in particular been focusing on concepts and theories of legal pluralism in contexts where state law coexists with traditional law (in Guatemala, in Sub-Saharan Africa, and in migrant communities in Belgium).
Research design and project management: Eva Brems' research group is one of the largest of the UGent law faculty, as she has attracted numerous externally-funded research projects. These accumulate to an impressive track record in the field of research design and the management of research projects.

P2 - Name: Emmanuelle Bribosia
Institution: Université Libre de Bruxelles
Main Skills:

Emmanuelle Bribosia and Isabelle Rorive have worked for more than 10 years to build a research team, at the Université Libre de Bruxelles, in the field of human rights, equality and non-discrimination law in Europe and beyond. First, their participation, since 2002, in different networks of legal experts in the non-discrimination field for the European Commission gave them the opportunity to be at the core of this research field and to get information on the national anti-discrimination laws of 30 European States (See website: www.discrimination.net). Second, as Belgian experts, they took part in *collaborative research* projects with other Belgian universities, which led among others, to the creation of an inter-university Chair on « Law and Discrimination », in 2008 and 2009. Third, they have developed a trans-*disciplinary approach* of this research field, by their participation, as promoters, in a Concerted Research Action on "Outsiders in Europe. The Foreigner and the 'Other' in the Process of Changing Rules and Identities", coordinated by Prof. A. Rea. Moreover, regarding *strategic litigation* in the human rights field, E. Bribosia & I. Rorive took part in a FP6 on *The Strasbourg Court, Democracy and the Human Rights of individuals and communities : patterns of litigation, state implementation and domestic reform*, (JURISTRAS, 2006-2009, see the website: http://www.juristras.eliamep.gr/).

P3 - Name: Paul De Hert
Institution: Vrije Universiteit Brussel
Main Skills:

Paul De Hert is director of the Fundamental Rights and Constitutionalism (FRC) Research Group. He addresses problems in the area of privacy & technology, human rights and criminal law. His scope of interest also includes research on the human rights status of the elderly and the principle of neutrality in a democratic state. Paul is a member of the editorial boards of ten international and national scientific journals. He has also been project coordinator and scientific coordinator of several European research projects within the 6th and the 7th framework and on behalf of the European Commission in the area of non-discrimination law, elderly and technology and security.

Stefaan Smis is also part of the FRC board and editor of book series. He defended a PhD on the right to self-determination and is a member of the International Law Association Committee on the rights of Indigenous Peoples. He is the promoter of an inter-university development project that has created a centre for human rights and humanitarian law at the University of Bukavu (Eastern Congo) where a LLM in human rights and humanitarian law is taught and research is conducted on human rights issues and questions on humanitarian law affecting the region of Central Africa.

P4 - Name: Koen De Feyter
Institution: Universiteit Antwerpen
Main Skills:

The Law and Development Research group is an internationally recognized centre of excellence at the University of Antwerp on the legal dimension of development studies. The various research lines share a concern with how law provides protection to those adversely affected by economic and other forms of globalization. Legal research is situated within an *interdisciplinary context*.
The research program started in 2008, but is now beyond its start-up phase. Networks have been created, external funding has been secured, and a significant number of researchers have joined the group. Its strengths include *significant research output*, strong internal cohesion and high degree of cooperation, increasing international visibility and recognition, expanding *network*, and policy-oriented research approach allowing for high visibility among Belgian and international policy-makers.
The Research Group organizes at least one international conference (either in Belgium or abroad). It is frequently approached to assess research projects on topics of law and development at other research centers across Europe and beyond; it is also asked to lend its expertise to research projects of other groups through membership in advisory panels, steering committees etc.

P5 - Name: Sébastien Vandrooghenbroeck
Institution: Facultés Universitaires Saint Louis
Main Skills:

Sébastien Van Drooghenbroeck has developed, jointly with other members of the Centre interdisciplinaire de recherches en droit constitutionnel et administratif, a *theoretical and practical expertise* with respect to several of the issues related to this proposal. Together with Professor J. Velaers (UA), he was associated, as an expert, to the working group of the Belgian House of Representatives which, between 2004 and 2007, looked into the modernization of Title II of the Constitution. The papers that were produced at that time fed into the debates which took place in The Netherlands and Luxembourg as regards the *modernization of fundamental rights bills in constitutional law*. He was also one of the two experts entrusted with the reform of the Belgian federal anti-discrimination law with a view to bringing this legislation into compliance with the various and sometimes diverging requirements of EU law, the European Convention on Human Rights and the Belgian constitutional case-law. Since 2008, he has been investigating, together with Judge Françoise Tulkens (ECHR), *the use by the European Court of Human Rights of « external sources », and, particularly, of human rights « soft law ».*

INT 1 - Name: Barbara Oomen
Institution: Roosevelt Academy, Universiteit Utrecht
Main Skills:

Socio-legal research knowledge and experience: Barbara Oomen is a socio-legal scholar with diplomas in law and political science. She has extensive experience with empirical research on human rights from a socio-legal angle. Her skills in this field include research design, theoretical development and field research, both in the Global South and in European settings.
Legal pluralism expertise: Barbara Oomen holds an endowed Chair in Legal Pluralism at the University of Amsterdam. She is one of the rare experts in this field in the low countries. She has worked among others on the relationship between human rights and customary law in South Africa and on the extent to which the globalization of the justice process influences its local legitimacy.
(see also form G)

FORM G: ADDED VALUE OF THE INTERNATIONAL PARTNERS (if applicable)
(25 lines per partner maximum)
Justify the added value of the collaboration with the international partner for the network as a whole.

The international partner is Professor Barbara Oomen, who holds a chair in the sociology of rights at Utrecht University and an endowed chair in legal pluralism at the University of Amsterdam. She has published widely on legal pluralism and human rights, and focused on (South) Africa as well as the Netherlands, and on comparative research. This research included themes like customary law and constitutional rights, transitional justice and the sociology of rights in the Netherlands. Currently, prof. Oomen engages with the central research themes in a variety of ways. She coordinates a project funded by the Dutch Science Foundation titled 'Why the Dutch don't talk rights: universal human rights as a framework for the resolution of societal conflicts in the Netherlands' which is to result in a book on the sociology of rights in the Netherlands. Additionally, she supervises PhD-research that takes a bottom-up perspective to rights implementation, f.i. on the relationship between NGO's in the field of human rights and conflict resolution (M. Parlevliet), human rights as discourse in refugee camps in Nepal (I. Griek) and rights realization and legal pluralism concerning domestic workers in Saudi Arabia and the Emirates (A. Vlieger). Additionally, she was a member of the Dutch Constitutional Review Commission that – amongst others – looked into the relationship between constitutional rights and international human rights law in the Netherlands, chairs the Netherlands Platform on Human Rights Education and is a member of the Commission on Human Rights of the Netherlands Advisory Council on International Affairs.
As a partner in the network, Barbara Oomen thus contributes first-hand experience with legal-anthropological research on human rights in a variety of western and non-western settings, and experience in supervising such research. She is one of the rare experts on legal pluralism in the Low Countries, and as such will contribute theoretical and methodological knowledge on this crucial topic. As a member of the Netherlands School for Human Rights Research, she will be able to connect the Belgian partners to research in the Netherlands. Additionally, she has experience in cooperating in international networks, for instance as a Fulbright New Century Scholar, coordinator of a legal cooperation between Mali and the Netherlands and member of a research network on the anthropology of international institutions.

FORM H: YOUNG EMERGING TEAMS (if applicable)
(25 lines maximum)
Mention the Belgian partners of the network (mentioned in Form A) that can be considered as young emerging teams.
Justify that they are young, emerging and promising and demonstrate that they will benefit from the outstanding environment generated within the network.

All partners in this new network are young and emerging teams.

UGent: The *Human Rights Centre* did not develop any joint activities (and hence could not be properly named a 'team') until recently. Since the appointment of Yves Haeck as a lecturer in 2009, the teams of Profs Brems, Haeck and Voorhoof have been meeting monthly to discuss research presentations and synergies have started to develop. The IUAP will allow intense cooperation between the professors and their teams and will allow the Human Rights Centre to grow into a centre of excellence in its field.

ULB: Profs Bribosia (Institute for European Studies - IEE) and Rorive (Centre Perelman for Legal Philosophy,) have collaborated closely on human rights research for ten years. However, prof. Rorive joined the Perelman Centre and its programme on global law only in 2010. In addition, prof. Bribosia was appointed associate member of the Perelman Centre in 2011 and prof. Rorive gained the same status in the IEE at the same time. The IUAP will allow the formalisation and the visibility of a research unit of excellence on human rights and diversity, crossing bridges between the IEE and the Perelman Centre.

VUB: In 2010 the Research Group on Human Rights changed focus and became the Fundamental Rights & Constitutionalism (FRC) Research Group. Today, the FRC boards 10 experienced professors, 4 post-doctoral researchers and 12 junior researchers. Originally set up as an internal meeting forum, the group is changing towards an effective research group obtaining national and international recognition and grants. FRC is increasingly involved in international research, including EC research on non-discrimination law and broader human rights research for the European Fundamental Rights Agency.

UA: The *Law and Development Research Group* was established in 2008. It set up a South Program engaging in joint research with institutes from developing countries. The Research group facilitated the conclusion of a Memorandum of Understanding between National Law University in New Delhi (India) at faculty level in November 2009, and concluded a MoU directly with the *Centre des Droits de l'Homme* of the *Université Kongo* in December 2010. Over the past years, there have been frequent research visits in both directions with these institutions.

FUSL: The *Centre Interdisciplinaire de Recherches en droit Constitutionnel et administratif (CIRC)* has been operational for 10 years. Created within a small-sized university and endowed with only limited human resources, it has constantly striven, through co-operations within the FUSL and with other universities, to broaden the research potential and scope of each of its members. The first participation of the CIRC in a project as substantial and wide-ranging as the IUAP would enable that Centre, and each of the members of its young team, to build up and deepen such cooperative relationships.

FORM I: NETWORK ORGANISATION AND MANAGEMENT

(4 pages maximum)

Describe the network's organisation and the practical terms governing collaboration and interaction between the partners (meetings, newsletters, network-driven training activities for PhD students and postdocs,).

Describe the leadership and management skills of the coordinator.

1. Joint network activities

1.1. Kick-off retreat

To kick off the new network, the partners plan a 1,5 day retreat in the first 6 months of the project, in which all project researchers and team leaders will participate. During this retreat, the administrative framework of the project will be clarified, and the substance and timing of all work packages will be presented and discussed. At this time, the practical arrangements set out below will be further detailed. Moreover, the retreat will allow all individuals involved to get to know each other, which will facilitate communication throughout the project. It is expected that this approach will contribute to creating joint ownership of the research project.

1.2. Keynote papers

In the course of the first 12 months of the project, 4 or 5 keynote papers will be produced, with a view to serving as theoretical, conceptual and/or methodological guidelines throughout the entire project. One paper, to be produced within WP 1, will explore in general terms the applicability of concepts and insights from the legal pluralism literature to current and potential future developments in human rights law. Other papers, also within WP1, will apply the theories of "global law" and of "*le droit en réseau"* respectively to the phenomenon of multilayered human rights law. Moreover, in WP 2, a keynote paper will outline the methodological consequences inherent in the focus on a users' perspective. Another methodological paper may address comparative methodology and/or the normative vision of 'integrated human rights'.

1.3. International conference

In year 3, the network plans an international conference addressing its central research topic. Within the research strategy, it has a double purpose. In the first place, it will allow for the presentation of initial research results, and their discussion with international experts. The timing of the conference in year 3 will guarantee both the availability of some results and the possibility of incorporating comments and suggestions made at the conference in the final output. In the second place, the conference will allow the network to complement our own research with solicited research by selected experts on specific (sub)-topics. The network will thus stimulate research interest into its central topic of study within the broader human rights research community. The conference will be open to all interested participants.

1.4. Annual international seminar

In addition, each Belgian partner will organize an international seminar addressing either the central research topic or the topic(s) of one or more work packages. These seminars are perceived as expert meetings, with participation on invitation only, at which international experts will present papers and ample time is provided for thorough discussion of their views as well as their implications for the network's research. In year 1, this seminar will be organized by the co-ordinator (UGent). In year 2, FUSL will organize an international seminar. In year 3, on account of the international conference, there will be no international seminar. In year 4, two international seminars will take place, organized by VUB and ULB, respectively. UA will organize the international seminar in year 5. For the international partner, the organization of an international seminar is optional.

1.5. Training activities

For the PhD students and postdoctoral researchers within the network, 4 annual training activities will be organized. These can take several forms, involving the presentation and discussion of research in progress within the network, and/or a Master class, in which an expert from outside the network presents and discusses her or his

work in an exclusive session with the network researchers. At least 2 sessions each year will include the presentation of research in progress, and at least 2 sessions each year will involve an outside expert.

1.6. Meetings

As per the requirements of the Belgian Science Policy Office, the network will organize one formal meeting each year, in the presence of the Programme Administrator. In addition, concertation meetings will be organized whenever necessary.

2. Responsibilities of each partner

2.1. Research

Each partner is responsible for the research design, planning and execution to which she or he committed, in concertation with the other partners who participate in the same work package. Research-related decisions that affect the overall research strategy will be discussed among all partners. In cases where several professors belonging to the same research centre are involved in the network, they may decide either to divide the work in such a way that each professor is responsible for a specific part of the research, or instead to share all research responsibilities.

2.2. Management

Each partner is responsible for her or his own budget and personnel management. In cases where several professors belonging to the same research centre are involved in the network, they may decide either to divide the human and financial resources in such a way that each professor has her or his share, or instead to share all resources. Each partner is also responsible for internal as well as official reporting and communicating on the research, in concertation with the other partners who participate in the same work package, and with the co-ordinator.

2.3. Network activities

Each of the Belgian partners is responsible for the organisation of part of the network activities. For the international partner, this is optional. In particular, each partner will organize and host one international seminar, on her or his budget, and each partner will organize and host 4 training activities for Ph.D. students and postdocs, on her or his own budget. Each Belgian research centre within the network will participate in all network-related meetings and joint activities. The international partner will participate in at least one activity or meeting per year.

3. Role of the co-ordinator

3.1. Overal research co-ordination

The co-ordinator is responsible for the overall research strategy. All partners report to the co-ordinator. On the basis of this information the co-ordinator may identify the need to amend for example the pace of the research or the scope of a particular research question. The co-ordinator will continuously check the progress of the research against the overall research goals and objectives of the project. Where choices have to be made, these will be made in concertation with all partners.

3.2. Communication and concertation

The co-ordinator will guarantee continuous communication among the partners, thus guaranteeing both transparency and joint ownership at all stages of the project. In particular she will make sure that the programme of all network activities provides room for concertation, and she will call additional concertation meetings whenever necessary. Day-to-day communication will take place by e-mail and telephone, making use of all relevant and available technological tools (e.g. dropbox, conference calls, skype). The co-ordinator will design and manage the network's IUAP website.

3.3. Meetings and International conference

The co-ordinator will plan and organize the meetings with the Belgian Science Policy Department, and additional concertation meetings whenever necessary. She will organize the kick-off retreat.
The co-ordinator will host the international conference (mentioned above) in Ghent. She will be responsible for the practical organisation and the conference will be budgetted on the co-ordinator's budget. Concept and programme of the conference will however be determined in concertation among all partners.

3.4. Management

The co-ordinator is responsible for the overall management of the project. This includes in particular the co-ordination of reporting to and communication with the Belgian Science Policy Department. She will communicate all guidelines clearly to the partners and will follow up on their implementation.

3.5. Mediation

Should any research-related conflict arise between researchers within this network affiliated to different partner institutions, the co-ordinator will mediate in order to find a solution.

4. Experience and skills of the co-ordinator

4.1. Co-ordinator's experience in project leadership and management

Since her appointment at Ghent University in 2000, Eva Brems has managed numerous research projects, as well as a number of projects in academic development cooperation. These have allowed her to develop extensive experience in project design, co-ordination, reporting, day-to-day management, budgeting, strategic planning, and network building.
Moreover, several of these projects have involved cooperation with other universities (nr 3: Mekelle University Ethiopia (cooperation partner), nr 3: KULeuven (co-promoter); nr 5: University of Lubumbashi (cooperation partner), nr 6: Antwerp University; nr 9: University of Cape Town, nr 10: VUB and KULeuven; nr 14: University Eduardo Mondlane (cooperation partner) and VUB, UA and KULeuven in VLIR team; nr 19: ULB).
This has lead to substantial experience in communication, alignment, reciprocal accountability and division of work in networks and partnerships.
Moreover, in the context of the development cooperation projects, Brems was trained in Project Cycle Management. She is fluent in Dutch, English and French.

List of externally funded projects of which Eva Brems is/has been the/a co-ordinator:

1. FWO 2001-2005, 4 years postdoc research on « Judicial enforcement of human rights: the European Court of Human Rights and the domestic judge as models? » budget approx. 300 000 EUR
2. BOF (Special Research Fund, Ghent University) 2003- 2007: 4-year project 'Conflicts between fundamental rights', budget 143 300 EUR
3. European Commission, 8th Development Fund, 2003-2006: Staff Capacity Building for Mekelle University Law Faculty (Ethiopia), budget : 309 400 EUR
4. FWO 2006-2010: 4-year project 'Cultural context and transitional justice', budget approx. 280 000 EUR
5. VLIR-UOS 2007-2008: 18-month project with University of Lubumbashi (DRC) 'Introduire le genre dans les formations universitaires', budget : 43 325 EUR
6. Flemish Ministry of Equal Opportunities, 2007: funding for Centre on Discrimination Law (Antwerp University and Ghent University) – with Stefan Sottiaux (Antwerp University), budget : 99 935 EUR
7. FWO 2007-2011 : 4 year project 'Traditional law and institutions confronted with human rights in Sub-Sahara Africa', budget approx. 280 000 EUR
8. Belgian Technical Cooperation 2007-2011: 4 year Ph.D research Richard Mulendevu Mukokobiya (DRC) on land rights in the DRC
9. Belgian Ministry of Science, 2008-2011: 3-year project 'Dealing with traditional law in the context of post-conflict legal and judicial development aid in Africa', budget : 571 708 EUR

10. FW0 2008-2011: 4-year project on 'Accountability for human rights violations by international organisations', budget approx. 275000 EUR (joint project with Prof. Jan Wouters, KULeuven, and Prof. Stefaan Smis, VUB)
11. FWO 2009: 12 month visiting post-doc research Daniel Mekkonen on "Cultural context and transitional justice", budget approx. 60 000 EUR
12. European Commision, Erasmus Mundus, Basileus doctoral research for Gjylbehare Murati, 2009-2011, approx. 60 000 EUR.
13. BOF (Special Research Fund, Ghent University), 2009-2013, 4 years research on « The role of national Human Rights Commissions in Enforcing Economic and Social Human Rights".
14. VLIR-UOS (Flemish University Development Cooperation) 2008-2013, cooperation with Universidad Eduardo Mondlane (Maputo, Mozambique): project 'Human Rights', budget: ca. 320 000 EUR
15. Belgian Technical Cooperation 2009-2013: 4 year Ph.D. research Rémy Kababala Vutsopire (DRC) on the legal status of married women in the DRC
16. European Research Council Starting Grant 2009-2013, 5 years research on "Strengthening het European Court of Human Rights: More Accountability Through Better Legal Reasoning", budget: 1370 000 EUR
17. BOF (Special Research Fund, Ghent University) 2009-2013, 4 years research on "Strengthening the European Court of Human Rights: More Accountability Through Better Legal Reasoning", budget: 196 000 EUR
18. FWO 2011-2015, 4 years research on "Reconciling human rights and traditional law: the right to a fair trial", budget 284 000 EUR
19. Belgian Ministry of Science 2011-2014, 3 years research on "Legal Pluralism in Belgium: a human rights analysis of family conflict resolution in migrant communities", budget: 570 562 EUR
20. FWO 2011-2015, 4 years research on "Positive obligations under the European Convention on Human Rights – Beyond the Case-by-Case Approach", budget ca. 240 000 EUR

In addition, Eva Brems has supervised several Ph.D. candidates outside of project structures, two of which have already successfully defended their Ph.D. (Christophe Vander Beken in 2006 and Charles Olufemi Adekoya in 2008).

Moreover, as chair of the Law Faculty Working Group on Diversity, she has successfully lead pilot projects on language skills (legal and academic Dutch language for law students: 2009-2010) and on student mentorship (since 2009- ongoing).

4.2. Co-ordinator's leadership skills

Eva Brems is currently leading one of the largest research teams in the Ghent University law faculty (approx. 15 junior researchers with one professor, excluding those who do not reside in Belgium). This has been a success story of steady expansion, research projects concluded within schedule and receiving positive evaluations, and overall satisfaction among the staff.
However she developed her leadership skills largely outside the academic environment, through her voluntary work on the boards of several human rights organisations. She was a co-founder and chair (2000-2006) of the Flemish Organisation for Human Rights Education 'Vormen', a board member of the Flemish Human Rights League (1998-2001), a board member of Avocats sans Frontières (2005-2007) and a chair of the Flemish section of Amnesty International (2006-2010). Especially in the latter position, she acquired substantial experience in short, medium and long term planning, strategic thinking, efficient organisation of meetings, negotiations, conflict resolution, monitoring of output and impact, people management, etcetera.

FORM J: BUDGET (global distribution per partner)
(in EURO, without decimals)
The detailed distribution per partner is given in Section II - form S

	Name Partner	**Institution**	**Budget**
P1	Eva Brems	UGent	900 916
P2	Emmanuelle Bribosia	ULB	512 347
P3	Paul De Hert	VUB	512 905
P4	Koen De Feyter	UA	504 000
P5	Sébastien Vandrooghenbroeck	FUSL	506 337
INT1*	Barbara Oomen	UU	149 625

* The budget for the international-partner is the budget attributed by the IAP-programme only (without the 50% contribution of the international-partner and with a maximum of 160.000 EUR per proposal).