

Alternative follow-up report
of the Association for the Promotion of Francophonie in Flanders (APFF) and the Association for the Promotion of Human Rights and Minorities (ADHUM)
to the Committee on the Elimination of Racial Discrimination (CERD)
concerning the priority recommendations made during the examination of the periodic report of the Belgian State

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The purpose of this document is to inform CERD of Belgium's shortcomings in implementing the priority recommendations made in the concluding observations on Belgium's twentieth to twenty-second periodic reports.

Priority recommendations

DATA COLLECTION (5-6)

1. Although UNIA's socio-economic monitoring, carried out in collaboration with the Federal Public Service (FPS) Employment, Labour and Social Dialogue, as well as the diversity barometers, are necessary and useful instruments for gauging structural inequalities and discrimination, the fact remains that the Belgian State, in its response¹, completely sidesteps the CERD recommendation² that Belgium should develop tools that will enable it to obtain an overview of the composition of its population, particularly with regard to mother tongues and languages commonly spoken.
2. It is explicitly stated that *'the State party should provide information on any information on descent or national or ethnic origin derived from social surveys as well as on mother tongues, languages commonly spoken or any other indicators of ethnic diversity. The data should be numerical and provide a qualitative description of the ethnic characteristics of the population collected on a voluntary and anonymous basis and on the principle of self-identification.*
3. However, none of these instruments take into account the above-mentioned reality.
4. Indeed, in Belgium, linguistic data relating to the number of speakers of a particular language remain approximate, without exception, as these data are based on non-scientific grounds.
5. The language census has been prohibited since the law of 24 July 1961, and the last conclusive results date from 1947.
6. Between 162 and 183 mayors of Flemish municipalities had returned the forms for the 1960 decennial census to the National Institute of Statistics on the grounds that they were written in both languages and therefore did not comply with the law, which stipulates that the language of administrative documents in Flanders is exclusively Dutch. This power grab prevented the census from being carried out on the scheduled date of 31 December 1959.
7. In the face of opposition from the Flemish movement, the principle of an 'objective' language census within a legal framework was abandoned.
8. The government installed in 1961 proceeded in two stages: it passed a law, promulgated on 24 July 1961, which prohibited any question related to the use of languages in the next census, and the fixing of the linguistic border was established by the law of 8 November 1962, which was therefore decided by a majority vote of the Flemish representation alone, and against the will of the majority of the French-speaking representation. (extracts from "La frontière linguistique 1878-1963", Stéphane Rillaerts, CRISP Dossier 2010/24-25)
9. The APFF and the ADHUM therefore note that for more than sixty years, the question of the linguistic census requested by the CERD has been "taboo" in Belgium, due solely to the Flemish majority will of the country.

¹ CERD/C/BEL/FCO/20-22, para. 4

² CERD/C/BEL/CO/20-22, para. 6

10. It is regrettable that the Belgian State did not even mention it in the report submitted to the CERD.

11. Points 1 to 10 of Belgium's interim report, despite the generosity of the elements set out for data collection, do not answer the CERD's question about the collection, organised by a legal mechanism, of linguistic data at national level, at the level of linguistic regions, and at local level.

NATIONAL HUMAN RIGHTS INSTITUTION (7-8)

12. In a second priority recommendation³, CERD recommends that Belgium give the Federal Institute for the Protection and Promotion of Human Rights (IFDH) the mandate to receive and deal with individual complaints, including cases of language discrimination against minorities.

13. In its communication, the Belgian State (point 16) states that the Government agreement of 30 September 2020 provides for the establishment of a complaints mechanism (which is still not the case at present) and that a right of complaint already exists with several specialised bodies such as UNIA and the Commission permanente de contrôle linguistique.

14. However, as the APFF and ADHUM pointed out in their report to the third Universal Periodic Review (UPR) of Belgium⁴, since the 2007 anti-discrimination laws, language has been included as one of the grounds of discrimination that the law aims to combat. The Belgian legislator has entrusted the Interfederal Centre for Equal Opportunities (known as UNIA) with the task of ensuring the proper implementation of the anti-discrimination law.

15. However, an exception was made to this competence for disputes or litigation based on language discrimination. Article 29 §2 of the Anti-Discrimination Act provides that the King (i.e. the federal executive, represented by the Federal Government) shall designate the body that shall be competent for discrimination based on language, a provision that has never been implemented.

16. As a result, UNIA cannot deal with reports where the discrimination is based on language. UNIA told the Federal Parliament that it receives an average of 135 reports per year on the basis of language. Victims of language discrimination are always left to fend for themselves.

17. In the first evaluation report of the 2007 anti-discrimination laws, the experts, chaired by Françoise Tulkens - who was a Belgian judge at the European Court of Human Rights from 1998 to 2012 - point to the lack of a competent body to deal with language discrimination. *"Article 29 §2 of the law entrusts the King with the task of designating the body that will be competent to deal with discrimination based on language. To date, however, this designation has not been made. Therefore, victims of discrimination on the basis of language cannot, unlike victims of discrimination on the other grounds mentioned in the legislation, benefit from the assistance, information and advice of a public institution specially created for this purpose."*

18. After recalling, on the one hand, that UNIA cannot intervene in cases of language discrimination and, on the other hand, that in cases of discrimination on both language and another ground, the language dimension is disregarded, the experts stated: *"This inconsistency in the anti-discrimination protection system, which creates inequality between victims, should be remedied"* and recommended that *'Section 29(2) of the Anti-Discrimination Act should be implemented and an equality body should be designated with competence for the ground of language'*.

19. On the occasion of Belgium's fifth periodic report, the Committee on Economic, Social and Cultural Rights (CESCR) asked Belgium *"to implement the recommendations issued by the Commission*

³ CERD/C/BEL/CO/20-22, para. 8

⁴ <http://www.francophonie.be/caff-adhum/main/pdf/ctcaff-adhum2021.pdf>, paras 31-36

for the Evaluation of Federal Legislation on the Fight against Discrimination. It also recommends that Belgium designate a body responsible for dealing with complaints of discrimination on the basis of language.

20. In February 2022, Michelle Bachelet, High Commissioner for Human Rights, sent a letter⁵ to our Minister of Foreign Affairs, Sophie Wilmès. In her letter, the High Commissioner welcomes the creation of the Federal Institute for the Protection and Promotion of Human Rights (IFDH) in Belgium as a national human rights institution, while advocating that its mandate should be as broad as possible and that it should be allowed to hear and examine complaints concerning individual situations.

21. While UNIA does have a complaints mechanism, it is not legally applicable to language discrimination.

22. Moreover, the Permanent Commission for Language Control, a federal body responsible for monitoring the application of laws on the use of languages in administrative matters, is not competent to deal with linguistic discrimination that may occur in other legal or public policy areas (justice, social, cultural, employment, etc.).

23. APFF and ADHUM would like to inform the CERD that, in parallel, the Flemish government approved a draft decree on 1 July 2022 on the creation of a Flemish human rights institute, which would thus compete with UNIA.

24. The Flemish Government also approved a preliminary draft decree (Vlaamse Parlement, doc 1358, sess 2021-2022) authorising the Flemish Government to terminate the cooperation agreement of 12 June 2013 between the Federal Government, the Regions and the Communities with a view to setting up the Interfederal Centre for Equal Opportunities and Opposition to Discrimination and Racism in the form of a joint institution as referred to in Article 92bis of the Special Act of 8 August 1980.

25. Both the Flemish consultative body of employers' and employees' organisations (SERV) and the Flemish Council for Welfare, Health and Family had asked Flanders to reconsider this decision.

26. Various organisations expressed similar concerns, ranging from the Liga voor Mensenrechten to the Christian and socialist trade unions. Twenty-one organisations regretted in a joint statement⁶ that the route will become "unnecessarily complex" for victims of discrimination and will make it more difficult to access justice.

27. The Council of State was critical of the draft decree on the creation of a Flemish Institute for Human Rights.

28. The Council of State considers that Flanders has the ambition to create a single point of contact for citizens in the field of human rights in the future, but in the short term this may make the landscape more complex. A person who wants to contact a human rights institution is not necessarily familiar with the division of competences, says the Council of State.

29. On the other hand, the Flemish Institute for Human Rights will no longer be able, like Unia, to take legal action in cases of gross violations and assist victims in court.

30. The Council of State sees a risk of reducing the level of protection with regard to the right to legal assistance, which is guaranteed by Article 23 of the Constitution.

⁵ <https://www.ohchr.org/sites/default/files/2022-03/Belgique.pdf>

⁶ De Standaard, 16/12/2021, *Opinie, discriminatie, Een waakhond zonder tanden kan niet bijten*

31. UNIA, in its annual report 2021⁷, considers that this new institution "*considerably restricts the recourse to justice of victims of discrimination, in particular those who are less fortunate or who have no assurance of legal recourse*" and that "*this creation does not help the citizen to find his way more easily in an already complex institutional landscape*".

32. It should also be noted that in the draft decree establishing a Flemish Institute for Human Rights, it is stated that the Institute will not deal with discrimination based on language.

33. The ADHUM and the APFF note that, like the data collection, the Belgian State intends to divert from the real problems set out by the CERD in its recommendations: in the present case, not only is UNIA still not competent to deal with linguistic discrimination in general, but there is a risk that a competing Flemish authority will, in the future, thwart UNIA's own competence.

34. In so doing, our two associations denounce the dominant Flemish influence within the Belgian state, which aims to prevent both the collection of linguistic data and the establishment of a body specifically dedicated to the objective treatment of linguistic discrimination

NOTE ON THE CIVIL SOCIETY CONSULTATION

35. The priority recommendation on the Federal Institute for the Protection and Promotion of Human Rights (FIPHR)⁸ refers to consultation with civil society and other stakeholders.

36. It should be noted that since the adoption of the concluding observations in April 2021, civil society has still not been brought together.

37. However, in the report that our country submitted to the UN⁹, during its second Universal Periodic Review (UPR) in 2016, it was stated: "*Belgium is committed to fully implement its human rights obligations and to improve its national human rights monitoring mechanisms. It also commits to continue to report to all human rights mechanisms, including the Universal Periodic Review, in a timely manner and to cooperate with these mechanisms. The participation of civil society organisations in this process will remain a key priority.*"

38. On the basis of this commitment, we denounced the fact that, contrary to the commitment made by the Minister of Justice on 30 April 2018, civil society had not been brought together to examine the text of the bill establishing the IFDH before its adoption in 2019.

39. The lack of collaboration with civil society to bring the IFDH into full compliance with the Paris Principles and to enable it to receive and deal with individual complaints, including cases of language discrimination, is a recurrent phenomenon.

⁷ Unia, Annual Report 2021 - Another world is possible, p 76

⁸ CERD/C/BEL/CO/20-22, para. 8

⁹ A/HRC/WG.6/24/BEL/1, para. 88