

**Contribution by  
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The Association for the Promotion of Human Rights and of Minorities  
(CAFF-ADHUM)  
For the third UPR of Belgium**

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**Résumé en français en page 12**

## **INTRODUCTION**

In Flanders, the unilingual Flemish Region situated at the North of Belgium, over 300,000 citizens have French as a mother tongue<sup>1</sup>.

This French speaking minority in Flanders (5% of the population) is not recognized as such, neither is it protected by the Council of Europe Framework Convention for the Protection of National Minorities, which Belgium has still not ratified to this day, whereas it was signed on 31 July 2001.

In the absence of their rights being recognized, notably of benefitting of subventions for their cultural activities, and being continuously submitted to administrative hassles and harassment from the Flemish Region, both in the communes with special language status (“communes with facilities”) as in the communes “without facilities”, the Francophones living in Flanders feel threatened to be forcibly assimilated.

In order to finally have their linguistic and cultural rights recognized and upheld, the Francophones living in Flanders ask for the help of the International Community. The latter cannot remain indifferent to this situation nor tolerate that a number of Human Rights, notably those of national minorities, are not implemented in part of Belgium.

## **METHODOLOGY**

This report is the fruit of the work from the coalition of 4 associations representing all Francophones in Flanders, including in the outskirts of Brussels, the Fourons entity and the city of Renaix, as well as from the Association de Promotion des Droits Humains et des Minorités.

Present in the field, these associations constituting the CAFF-ADHUM, regularly intervene on Belgian and foreign media in order to expose the situation of the French speaking minority in Flanders. They also attentively follow the debates in Parliament. They equally participate in the United Nations work and other organisations dedicated to the protection and the promotion of human rights.

This report is derived from over 20-years of experience in the field.

### **1. PROTECTION OF NATIONAL MINORITIES**

1. In 2001, Belgium signed the Framework Convention for the Protection of National Minorities, asserted by two declarations. But after 19 years and notwithstanding the repeated recommendations from the Council of Europe and the recommendations from the United Nations in the framework of the 2011 and 2016 Universal Periodic Reviews, the said Convention has still not been ratified.
2. In its' first declaration, the Belgian Government stated that its' internal legal provisions would prevail on the Framework Convention.
3. The Belgian Government was immediately opposed by the Council of Europe in its' 1301 Resolution adopted the following year, stating that the Belgian declaration constituted a reservation incompatible with the International Law of Treaties.
4. In its' second declaration, Belgium stated that it would entrust the Inter-Ministerial Conference on Foreign Policy (CIPE) with the task of defining the national minority concept.

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<sup>1</sup> According to the “Etude sur la pratique du français par les habitants de Flandre” (p.24) realised by Dedicated Research in September 2009, in the absence of a linguistic census, <http://www.francophonie.be/ndf/main/pdf/rapportdr.pdf>. This estimate is confirmed by the “Nieuwe Encyclopedie van de Vlaamse Beweging”, Lannoo, 1998, which indicates that “In Flanders, a small part of the population is French speaking”.

5. This Conference never came up with any result. However, quite fortunately, the Council of Europe, in its' 1301 Resolution of 26.09.2002, rendered the recourse to this Inter-Ministerial Conference on Foreign Policy futile and devoid of any object. Indeed, the Council of Europe did better than define the national minority concept. It named the national minorities in Belgium which had to be protected.
6. Thus, at item 18 of Resolution 1301<sup>2</sup>, on the basis of the Venice Commission work, it is explicitly stated that : *“At the light of the Framework Convention, the Assembly holds the opinion that the following groups are to be viewed as minorities in Belgium : at State level, the German speaking community; at Regional level, the Francophones living in the Dutch speaking region and in the German speaking region, and the Dutch and German speaking communities living in the French speaking region”*.
7. One should also refer to the European Parliament's resolution of 07.08.2018 on the Protection and Non-discrimination of Minorities living in the European Union's Member States (2017/2937)<sup>3</sup>, detailing (p.14) that the Parliament engages all Member States to sign, ratify and insure the implementation of the Framework Convention of the Council of Europe for the Protection of National Minorities.
8. A solution to this dossier cannot indefinitely be put off. As time passes, the Francophones living in Flanders experience mounting difficulties in using their mother tongue and in participating actively to their culture. This is totally unjustified. For them, it becomes more and more difficult to live in symbiosis with their profound identity.
9. It is, moreover, not acceptable that the Francophones of Flanders cannot benefit from a guaranteed representation at the Flemish Parliament, whereas the Dutch speaking minority in Brussels benefits from a guaranteed representation at the Brussels Regional Parliament (17 seats out of 89, i.e. 20%) and that, moreover, the Francophones living in Flanders are way more numerous than the Flemish in Brussels !
10. Finally, the Special Rapporteur on issues concerning minorities and also other Human Rights activists regularly insist on *“the importance of having ventilated data for the implementation and surveillance of the rights of persons belonging to minorities”*<sup>4</sup>. This would be possible if one re-established the language component of the 10-year population census no longer authorised since a 1961 law, here also under pressure from Flanders.
11. **RECOMMENDATION N° 1 : In compliance with Resolution 1301 of the Council of Europe, to ratify the Framework Convention for the Protection of National Minorities without any reservation and without any delay, with the approval of the Belgian Parliament and of the Regional and Community Parliaments, including the Flemish Region.**
12. **RECOMMENDATION N° 2 : As of the next regional elections, to guarantee a minimal representation of the French minority at the Flemish Parliament.**
13. **RECOMMENDATION N° 3 : To re-establish the language component having been forbidden by a 1961 Belgian law in the 10-year population census.**

<sup>2</sup> <https://pace.coe.int/fr/files/17048>

<sup>3</sup> [https://www.europaparl.eu/doceo/document/TA-8-2018-0032\\_FR.pdf](https://www.europaparl.eu/doceo/document/TA-8-2018-0032_FR.pdf)

<sup>4</sup> A/HRC/37/26

## II. PROTOCOL N° 12

14. Protocol N°12 to the European Convention of Human Rights represents one of the most performing international instruments in the fight against discrimination of any nature, both through its' clarity and through its' implementation efficiency, as it allows to directly enter its' effects into the internal judicial order of the countries having ratified it, in such a manner that the citizens can directly claim its' application in front of their national jurisdictions.
15. Thus Article 1 of Protocol 12 reads : *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*
16. Although Belgium signed this Protocol on 04.11.2000, since over almost 20 years now Belgium is in persistent default to ratify it, thus making this Protocol null and void in Belgium, whereas all other regional parliamentary assemblies have approved it, with the exception of the Flemish Parliament which still obstinately refuses to do so.
17. The Federal Entities, which already had an anti-discrimination legislation, all gave their assent or introduced their nominal projects of assent, each time without any reservations. The Walloon Parliament on 18 November 2003, the Parliament of the French Community (Walloon-Brussels Federation) on 21 April 2004, the French Community Commission of the Brussels Region (editor's note : Francophone Parliament of Brussels) on 15 May 2003, the Joint Community Commission of the Brussels Region on 5 December 2002 and the Parliament of the German-speaking Community on 18 February 2002. As to the Flemish Parliament, it introduced a draft decree of assent, still not adopted, no less than 12 years later.
18. In the working group's report on the Universal Periodic Review of Belgium in January 2016, the Belgian Minister for Foreign Affairs indicated that Protocol 12 aiming at eliminating all discriminations could so far not be ratified by Belgium as the Flemish Region, one of the Belgian federal entities, had not yet ratified it because it wished to wait for the European Court's jurisprudence to see what its' legal scope encompasses.
19. Although its' Parliament has a text ready for ratification since 2008, the Flemish Region has not advanced one step forward in this direction whereas, on the one hand, the Belgian State Council never expressed any objection against the Federal Entities ratifying this Protocol. And that, on the other hand, the European Court of Human Rights has never given a restrictive interpretation of as clear a text as Protocol 12, as a matter of fact destined at completing and improving article 14 of the European Convention of Human Rights.
20. Finally, one will take note of the European Parliament's resolution of 07.02.2018 on the Protection and Non-discrimination of Minorities in the European Union's member states (2017/2937)<sup>5</sup> which points out (14.) that the Parliament engages all member states to sign, ratify and insure the implementation of Protocol n° 12 to the Convention for the Protection of Human Rights and fundamental freedoms.
21. **RECOMMENDATION N° 4 : To ratify Protocol n° 12 to the European Convention of Human Rights without any delay.**

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<sup>5</sup> [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0032\\_FR.pdf](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0032_FR.pdf)

### III. THE NATIONAL INSTITUTE FOR HUMAN RIGHTS

22. During the course of the second Universal Periodic Review (UPR) in 2016, more than thirty countries recommended Belgium that it should accelerate the setting up of a National Institute for Human Rights in conformity with the Paris principles.
23. The Belgian Federal Institute for the Protection and the Promotion of Human Rights (INDH) was created by the 12 May 2019 law, before the latest federal elections in Belgium. It has just been installed. Unfortunately, it does not offer any progress in the field of fighting discrimination based on language. Indeed, the Institute will not take individual complaints.
24. The CAFF-ADHUM associations, notwithstanding their satisfaction to finally have an Institute for Human Rights created in Belgium, vividly regret the fact that civil society was not called upon in order to examine the draft bill before it turned into law. Belgium had accepted the recommendation from Poland *“to associate civil society in the follow-up and implementation process of the issues brought up by the UPR”*. Contrarily to the commitment taken during our visit at the Cabinet of the Minister of Justice on 30 April 2018, civil society was not assembled to discuss the draft of this law proposition.
25. Two United Nations committees recently expressed concern about the shortcomings of the future National Institute for Human Rights in Belgium.
26. In October 2019, within the course of examining the sixth periodic report of Belgium<sup>6</sup>, the Committee for Human Rights (CCPR) wondered about the coordination between the sectorial institutions for human rights and the new Federal Institute.
27. The Committee recommends Belgium to give the Institute *“a global mandate and all necessary means for it to fully accomplish its’ mandate, including the possibility of receiving complaints”*.
28. During the course of examining the fifth periodic report of Belgium<sup>7</sup>, the Committee for Economic Social and Cultural Rights (CESCR) for its’ part, indicated that it was *“preoccupied by the fact that the Federal Institute for Human Rights’ mandate is, at the moment, limited to the federal level and by the absence of having the competence to receive individual complaints”*.
29. The Committee recommends the Belgian State to broaden the mandate of its’ national institution for human rights in conformity with the Paris Principles, so that it applies to both the Federal State and the Regions. The Committee also encourages the Belgian State to examine the possibility to endow the Institute with the capability of receiving and examining complaints and requests relating to individual situations.
30. **RECOMMENDATION N° 5 : Allow the Federal Institute for the Protection and the Promotion of Human Rights to receive and examine individual complaints and requests.**

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<sup>6</sup> CCPR/C/BEL/CO/6, para. 9 and 10

<sup>7</sup> E/C.12/BEL/CO/5, para. 7 and 8

#### IV. DISCRIMINATION BASED ON LANGUAGE

31. Since the 2007 anti-discrimination laws, language is considered to be one of the grounds for discrimination against which the law intends to act<sup>8</sup> (article 3). The Belgian legislator entrusted the Inter-federal Centre for Equality of Chances (named UNIA) with the mission of watching over the proper implementation of the anti-discrimination legislation.
32. However, an exception was made to this competence for litigation or conflicts resulting from discrimination based on language. Article 29 §2 of the law provides for the King (i.e. the Federal executive power represented by the Federal Government) to designate the body which will be competent for discrimination based on language. This provision was never enacted.
33. UNIA (editor's note: The Inter-Federal Centre for Equality of Chances and the Fight against Discriminations) can therefore not deal with reports of cases based on language. UNIA explained in front of the Federal Parliament that it received an average of 135 reports for discrimination based on language. The victims of language discrimination are therefore still left to their own devices.
34. In the first evaluation report on the 2007<sup>9</sup> anti-discrimination laws, the experts under the Chairmanship of François Tulkens – who was a Belgian judge at the European Court of Human Rights from 1998 to 2012 – point out that there is no competent body for dealing with discrimination based on language. *“Article 29 § 2 entrusts the King with the care of designating which body will be responsible for dealing with discrimination based on language. To this day, such designation has still not taken place. As a result, victims of discrimination based on language cannot, as opposed to victims of discrimination linked to other motivations mentioned by these laws, benefit from the support, the information and the advice of a public institution especially set up to this end”*.
35. Having recalled that UNIA cannot, on the one hand, intervene in cases of discrimination based on language and, on the other hand, that the language dimension is ignored in cases of discrimination based on both language and another motivation, the experts declare: *“It is necessary to remedy the inconsistency within the apparel of protection against discrimination as it causes inequality between victims”*. They recommend to *“implement article 29 §2 of the anti-discrimination law and to designate a body for the promotion of equal treatment with a competence for language discrimination”*.
36. At the fifth Belgian<sup>10</sup> periodical report, the Committee for Economic Social and Cultural Rights (CESCR) asked Belgium to *“implement the recommendations from the Commission for Evaluating the Federal legislation with regard to fighting discriminations. The Committee also recommends to designate a body responsible for dealing with complaints of discrimination based on language”*.
37. **RECOMMENDATION N° 6 : To designate the body competent for discriminations based on language, as provided for by the anti-discrimination law of 10 May 2007 and its article 29 § 2.**

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<sup>8</sup> [http://www.ejustice.just.fgov.be/cgi\\_loi\\_changelg.pl?language-fr&la-F&cn=2007051035&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi_changelg.pl?language-fr&la-F&cn=2007051035&table_name=loi)

<sup>9</sup> [https://www.unia.be/files/Documenten/Aanbevelingsadvies/Commission\\_d'Évaluation de la législation fédérale relative à la lutte contre les discriminations.pdf](https://www.unia.be/files/Documenten/Aanbevelingsadvies/Commission_d%27%C3%A9valuation_de_la_l%C3%A9gislation_f%C3%A9d%C3%A9rale_relative_%C3%A0_la_lutte_contre_les_discriminations.pdf)

<sup>10</sup> E/C.12/BEL/CO/5.para.18 and 19

## V. ACCES TO FRENCH TUITION

38. On 28 July 1968, a ruling from the European Court of Human Rights<sup>11</sup> pointed to a provision in the legislation on Administrative matters in Belgium as not abiding by the European Convention for Human Rights. In the case called “the language regime in the Belgian education system”, the Court judged that article 7, §3 of the 2 August 1963 Belgian law on the use of languages in administrative matters “*was not compliant with the provisions of article 14 of the European Convention of Human Rights combined with the first phrase of article 2 of the Additional Protocol, in that it prevents a number of children to access French schools in the six communes with special language status located in the Brussels periphery on the sole basis of their parents’ residence (...)*”.
39. Indeed, this legal provision forbids French speaking children whose parents live in a unilingual Flemish commune without language “facilities” to enrol in a French school situated in one of the 6 communes with “facilities” (communes having a special language regime provided for by law) for the sole reason that they do not live in one of the above mentioned communes: the Court deemed that this was a discrimination based on language in particular.
40. More than 50 years after this ruling, the situation remains unchanged for children whose parents reside outside these 6 communes. It is still impossible for them to enrol in the French speaking Kinder Garten and Preparatory level of the schools established in these communes. The provision deemed contrary to the internal Belgian judicial order continues to apply.
41. The Council of Europe’s Parliamentary Assembly reiterated, on 26 September 2002, that the condition of residence in order to be able to benefit from the French tuition system, a condition that was expressly condemned by the 1968 ruling, is discriminatory.
42. The Parliamentary Assembly thus called upon “*the Kingdom of Belgium to fully and without delay enact the ruling of the European Court of Human Rights rendered on 23 July 1968, according to which among other things children of parents not residing in the six municipalities with language facilities in the Brussels outskirts have, none the less, to be authorised to access the French speaking schools in these municipalities*”.
43. A new dossier is presently pending at the European Court of Human Rights in order to, let us hope, confirm this jurisprudence and force the Belgian State to change its’ legislation.
44. **RECOMMENDATION N° 7 : To remove the condition of residence from the Belgian law, in order to allow French speaking pupils domiciled in a different commune to enrol in a French speaking school situated in one of the Brussels peripheral communes “with facilities”.**

## VI. UPHOLDING THE LANGUAGE FACILITIES

Keeping the regime of language facilities for French speakers in the communes with a special language status is not to the taste of Flanders, which considers that these facilities have been conceived as transition measures in order for Francophones to integrate into the Flemish Region. This thesis is totally indefensible! If the legislator had wanted to introduce transition measures, he would have inscribed it in the law.

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<sup>11</sup> [https://hudoc.echr.coe.int/fre#{\"itemid\":\[\"001-62083\"\]}](https://hudoc.echr.coe.int/fre#{\)

45. Even so! Several special draft laws have been introduced at the Chamber and the Senate by the extreme-right and the Flemish nationalists with the view of getting rid of the facilities. The Renaix communal authorities also launched a procedure against the Belgian State in order to repeal the language facilities regime. Their request having been rejected by the Court of First Instance in Brussels, they decided to appeal.
46. In Renaix a number of complaints were introduced with the Permanent Commission for Language Control against public places (Town Hall, CPAS (Permanent Commission for Social Assistance), waste recycling unit, library, swimming pool, ...), the publication of information magazines and communications by the official internet site of the Commune which were all in Dutch only. In July 2020, these complaints have been deemed receivable and founded. *“Renaix has to establish its publications and communications destined to the public in French and in Dutch, with a priority for Dutch”*.
47. Since 1997, the circular letters adopted by the Flemish Government, applicable to both local services and services of the Flemish Government, are aimed at imposing a restrictive regime to the use of French in administrative matters for the communes with “facilities” situated in the Flemish Region, contrary to the valid interpretation which always prevailed, i.e. that the language facilities are permanent and not subject to repetitive requesting, meaning to say that the beneficiaries of this regime do not have to each time renew their request in order to obtain the documents in their own language.
48. Article 129 § 2 of the Belgian Constitution stipulates that only the Federal legislator, acting by a 2/3 qualified majority, is able to modify the legal regime prevailing in the communes with facilities. This means, conversely as under the Constitution, that any other level of authority, and particularly so the Flemish Government, is incompetent to modify this regime by way of a circular letter.
49. The Flemish interpretation contained in these circular letters has been contested in front of the courts and tribunals, and in front of the administrative jurisdictions since early 1998. The highlight of this contention is the 6 December 2018<sup>12</sup> judgement rendered (be it 20 years later) by the Court of Cassation, the highest judicial body in Belgium, establishing the judicial level required for the correct interpretation of the language facilities regime.
51. A as reminder, the Council of State, sitting in General Assembly, by Arrest of 20 June 2014<sup>13</sup>, already had the opportunity to judge that the same “Peeters” circular letter, as well as *“the interpretation whereby the person concerned has to engage into a special procedural request each time he/she wishes to have the benefit of using the French language disproportionately restricts the rights guaranteed by articles 25, 25 and 28 (editor’s note : of the laws on the use of languages in administrative matters) and is contrary to the law”*.
52. This double jurisprudence is thus legally non disputable. It states the incompetence of the Flemish Community to govern the use of languages in the communes with a special regime : once someone has requested the use of French, the Francophone domiciled in one of the communes with special language regime has to have his choice confirmed by the administration concerned once and for all.
- 53. RECOMMENDATION N° 8 : To uphold the legal permanent and non-repetitive regime of the language facilities, as confirmed by the Belgian administrative and judicial courts.**

<sup>12</sup> [http://jure.juridat.just.fgov.be/pdfapp/download\\_blob?idpdf-F-201811206-11](http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf-F-201811206-11)

<sup>13</sup> [http://www.raadvst-consetat.be/?page-news\\_archive&lang-fr&newsitem-225&year-2014](http://www.raadvst-consetat.be/?page-news_archive&lang-fr&newsitem-225&year-2014)



54. **RECOMMENDATION N° 9 : To withdraw from the internal judicial order the restrictive circular letters introduced by the Flemish Government and which have been declared illegal by the Belgian administrative and judicial courts.**

## VII. THE USE OF FRENCH IN DELIBERATIVE ASSEMBLIES

55. Since the 70-ties the Francophone municipal councillors from the communes with special language regime seated in the Flemish Region are still not able to express themselves in their own language during Municipal Councils.
56. Whereas the constant jurisdiction of the Permanent Commission for Linguistic Control (controlling body for the implementation of the language laws) states that *“oral use of languages within Municipal Councils is free both during public sessions and behind closed doors”* and that *“municipal councillors from the communes designated by article 23 of the laws on the use of languages in administrative matters are free to use either Dutch or French in their oral or written addresses to the College”*.
57. The Arrest rendered by the Arbitration Court (now Constitutional Court) of 10 March 1998<sup>14</sup> determines *“expressis verbis”* that *“the obligation to use Dutch during the Municipal Council sittings exclusively applies to the Burgomaster and other members of the College of Burgomasters and Aldermen, and does not apply to the other members of the Municipal Council”*.
58. Recommendation n° 258 from the Congress of the Local and Regional Authorities of the Council of Europe, 2 December 2008, entitled *“Local Democracy in Belgium : the refusal by the Flemish Authorities to appoint three Burgomasters”*<sup>15</sup> has highlighted this practice, which is contrary to the European Charter on Local Self-Government”.
59. The legal opinion of 02/2016/04 rendered by Professor Moreno from the University of Madrid moreover indicates, on the one hand, that the European Charter on Self-Government constitutes a legal instrument which should permit to guarantee, at the level of the use of languages, the possibility for local political authorities to truly exercise their representation functions, whereas on the other hand, the jurisprudence of the Constitutional Court relating to the obligation of exclusively using Dutch during Municipal Council sessions does not apply to the Municipal Councillors.
60. This opinion relates to a complaint entered on 18 May 2015 with the Chamber of Local Authorities of the Council of Europe by six local mandatories from communes with facilities, calling upon the Congress of Local and Regional Authorities concerning the exclusive use of Dutch during Municipal Council sessions.
61. In the eyes of the Council of Europe, the persistent refusal by the Flemish authorities to recognize the opinions and recommendations of the Council of Europe and their refusal to implement the arrest of the Constitutional Court border to arbitrariness.
62. Local democracy in the communes with facilities, as the Council of Europe recalls, can no longer suffer to be strangled by the impossibility for Francophone communal councillors to express themselves in the

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<sup>14</sup> [https://www.ejustice.just.fgov.be//article\\_body.pl?language-fr&caller-summary&pub\\_date-98-05-21&numac-1998021202](https://www.ejustice.just.fgov.be//article_body.pl?language-fr&caller-summary&pub_date-98-05-21&numac-1998021202)

<sup>15</sup> <https://m.coe.int/democratie-locale-en-belgique-la-non-nominaiton-de-trois-bourgmestres-/168071938f>

language of their voters and is contrary to universal suffrage and to the vision of a representative democracy.

63. **RECOMMENDATION N° 10 : To enforce the authority of the 10 March 1998 Arrest pronounced by the Constitutional Court, as confirmed by the Council of Europe bodies and committees, and to allow the Francophone Municipal Councillors from the communes with facilities to freely and without constraint express themselves in the language of their voters, who constitute the majority in most of the communes with facilities.**
64. **RECOMMENDATION N° 11 : To confer full legal effect to the interventions expressed in French by the Municipal Councillors from all communes with facilities situated on Flemish Region territory.**

### VIII. CIVIL SOCIETY – FOLLOW-UP TO THE UPR

65. Following the second Universal Periodic Review (UPR) of Belgium, the APFF participated, on behalf of the CAFF, in the debriefing of civil society on 27 April 2016. This debriefing was organised by the Federal Public Service for Foreign Affairs, responsible for establishing the reports destined to the United Nations.
66. One had to wait more than three years and a half before civil society be again convened, end of 2019.
67. On 19 December 2019, the FPS Foreign Affairs organised an information and dialogue session with civil society at the Egmont Palace. The APFF, which participated in this meeting, vividly regrets that this was the sole and unique follow-up meeting civil society actors had been invited to since the 2016 debriefing.
68. Though Belgium had accepted the recommendation from Poland “to engage civil society in the t follow-up process of implementing the UPR recommendations”.
69. In view of the fact that the 19 December 2019 meeting has been programmed at the end of the cycle, it had no reason of being any more, except for giving Belgium the opportunity to tell the United Nations Human Rights Council that civil society had been consulted. This meeting should have been convened during the first semester of 2018, in order for Belgium to submit its’ mid-course balance sheet in July 2018. Had the FPS Foreign Affairs not assured us in April 2018 that Belgium would not let the deadline for submitting its’ mid-course balance pass by ?
70. In our view, the 19 December 2019 meeting should rather have been dedicated to consulting civil society in the framework of preparing the report Belgium will have to submit at the occasion of the UPR Third Cycle. Indeed, referring to the UPR-info calendar, consultations with civil society for the third cycle of Belgium should have started on October 2019. Let us simply state that beginning of October 2020 they still have not been started.
71. No question for the CAFF-ADHUM, that civil society be consulted only once at the end of the process, as it has too often been the case. No question either to receive the national draft report at the last minute. As this would not provide for sufficient time to examine it.

72. At the occasion of this third UPR of Belgium, the CAFF-ADHUM appeals for a narrow and transparent concertation with civil society, towards which the Belgian State has committed itself at multiple times.
73. The CAFF-ADHUM will not lend itself to a sham of democracy by endorsing a report exclusively drafted internally. Finally, the CAFF-ADHUM will pay close attention to the fact that simultaneous interpretation in the three national languages – French, Dutch and German – be provided at the next meetings. It was indeed not the case at the 19 December 2019 meeting.
74. **RECOMMENDATION N° 12 : To actively and regularly cooperate with civil society for following-up the recommendations from the Universal Periodic Review (UPR) and for drafting the national reports.**

## **IX. LIST OF RECOMMENDATIONS**

- 1. In compliance with Resolution 1301 of the Council of Europe, to ratify the Framework Convention for the Protection of National Minorities without any reservation and without any delay, with the approval of the Belgian Parliament and of the Regional & Community Parliaments, including the Flemish Region.**
- 2. As of the next regional elections, to guarantee a minimal representation of the French minority at the Flemish Parliament.**
- 3. To re-establish the language component having been forbidden by a 1961 Belgian law in the 10-year population census.**
- 4. To ratify Protocol n° 12 to the European Convention of Human Rights without any delay.**
- 5. To allow the Federal Institute for the Protection and the Promotion of Human Rights to receive and examine individual complaints and requests.**
- 6. To designate the body competent for discriminations based on language, as provided for by the anti-discrimination law of 10 May 2007 and its article 29 § 2.**
- 7. To remove the condition of residence from the Belgian law, in order to allow French speaking pupils domiciled in a different commune to enrol in a French speaking school situated in one of the Brussels peripheral communes “with facilities”.**
- 8. To uphold the legal permanent and non-repetitive regime of the language facilities, as confirmed by the Belgian administrative and judicial courts.**
- 9. To withdraw the restrictive circular letters introduced by the Flemish Government and which have been declared illegal by the Belgian administrative and judicial courts from the internal judicial order.**
- 10. To uphold the authority of the 10 March 1998 Arrest pronounced by the Constitutional Court, as confirmed by the committees and bodies of the Council of Europe, and to allow the Francophone Municipal Councillors from the communes with facilities to express themselves**

**freely and without any constraint in the language of their voters, who are a majority in most of the communes with facilities.**

**11. To confer full legal effect to the interventions expressed in French by the Municipal Councillors from all communes with facilities situated on Flemish Region territory.**

**12. To actively and regularly cooperate with civil society for following-up the recommendations from the Universal Periodic Review (UPR) and for drafting the national reports.**

## **X. RESUME EN FRANÇAIS**

### **INTRODUCTION**

En Flandre, région unilingue flamande située au nord de la Belgique, plus de 300.000 citoyens ont pour langue maternelle le français<sup>16</sup>.

Cette minorité francophone en Flandre (5% de la population) n'est pas reconnue comme telle, ni protégée par la Convention-cadre du Conseil de l'Europe pour la protection des minorités nationales, que la Belgique n'a toujours pas ratifié à ce jour, depuis sa signature le 31 juillet 2001.

En l'absence de droits reconnus, notamment de disposer de subventions pour leurs activités culturelles, et soumis de manière continue aux tracasseries administratives imposées par la Région Flamande tant dans les communes à statut linguistique spécial (les communes à facilités) que dans les communes dites « sans facilités », les francophones de Flandre se sentent menacés d'assimilation forcée.

Pour obtenir enfin la reconnaissance et la protection de leurs droits culturels et linguistiques, les francophones de Flandre appellent à l'aide la Communauté internationale. Celle-ci ne peut rester indifférente à cette situation et tolérer que certains droits de l'homme (notamment ceux des minorités nationales) ne s'appliquent pas dans une partie de la Belgique.

### **METHODOLOGIE**

Ce rapport est le fruit du travail de la coalition de 4 associations représentatives de l'ensemble des francophones de Flandre, en ce compris la périphérie de Bruxelles, l'entité des Fourons et la ville de Renaix, ainsi que de l'Association de Promotion des Droits Humains et des Minorités.

Présentes sur le terrain, les associations qui composent la CAFF-ADHUM, interviennent régulièrement dans les médias belges et étrangers pour dénoncer la situation de la minorité francophone en Flandre. Elles suivent attentivement les débats parlementaires. Elles participent également aux travaux de l'ONU et d'autres organisations vouées à la protection et à la promotion des droits humains.

L'expérience engrangée depuis plus de 20 ans est à l'origine du présent rapport.

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<sup>16</sup> d'après l'« Etude sur la pratique du français par les habitants de Flandre » (p. 24), réalisée par Dedicated Research en septembre 2009, en l'absence de recensement linguistique, <http://www.francophonie.be/ndf/main/pdf/rapportdr.pdf>  
Cette estimation est confirmée par la « Nieuwe Encyclopedie van de Vlaamse Beweging », Lannoo, 1998, qui précise :  
« En Flandre, il y a, depuis des siècles, une petite partie de la population qui est francophone. »

## **LISTE DES RECOMMANDATIONS**

- 1. Ratifier sans réserve et sans nouveaux délais, avec l'assentiment du Parlement belge et des parlements régionaux et communautaires, y compris celui de la Région flamande, la Convention-cadre pour la protection des minorités nationales, conformément à la résolution 1301 du Conseil de l'Europe.**
- 2. Garantir, dès les prochaines élections régionales, une représentation minimale de la minorité francophone au Parlement flamand.**
- 3. Rétablir le volet linguistique dans le recensement décennal de la population, interdit depuis une loi belge de 1961.**
- 4. Ratifier sans délai le Protocole n°12 à la Convention européenne des droits de l'homme.**
- 5. Permettre à l'Institut fédéral pour la protection et la promotion des droits humains de recevoir et d'examiner des plaintes et requêtes individuelles.**
- 6. Désigner l'organe compétent pour les discriminations fondées sur la langue, tel que prévu par la loi antidiscrimination du 10 mai 2007 en son article 29 § 2.**
- 7. Supprimer la condition de résidence inscrite dans la loi afin de permettre aux élèves francophones domiciliés dans une autre commune, de s'inscrire dans une école francophone d'une commune périphérique dite « à facilités ».**
- 8. Faire respecter le régime légal permanent et non-répétitif des facilités linguistiques, tel que confirmé par les juridictions administratives et judiciaires belges.**
- 9. Retirer de l'ordre juridique interne les circulaires du gouvernement flamand restrictives qui ont été déclarées illégales par les juridictions administratives et judiciaires belges.**
- 10. Faire respecter l'autorité de l'arrêt de la Cour constitutionnelle du 10 mars 1998, telle que confirmée par les instances du Conseil de l'Europe, et de permettre librement, sans contraintes, aux conseillers communaux francophones des communes à facilités de s'exprimer dans la langue de leurs électeurs, majoritaires, dans la plupart des communes à facilités.**
- 11. Faire reconnaître plein effet juridique aux interventions formulées en français par les conseillers communaux des communes à facilités de la périphérie bruxelloise.**
- 12. Collaborer activement et régulièrement avec la société civile lors du suivi des recommandations de l'Examen périodique universel (EPU) et de la rédaction des rapports nationaux.**