



**Civil and Political Wrongs: The Growing Gap Between International Civil and Political Rights
and African Canadian Life**

**A Report on the Canadian Government's Compliance with the *International Covenant on Civil
and Political Rights*
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PART I - INTRODUCTION

Identification of Canadian Civil Society Organization

Established in 1994, the African Canadian Legal Clinic (ACLC) is a community-based not-for-profit organization with status at the United Nations Economic and Social Council (ECOSOC) that is committed to combating systemic anti-Black racism in Canadian society. The ACLC represents and advocates on behalf of the African Canadian community through: (i) involvement in groundbreaking test-cases and interventions involving anti-Black racism, human rights and the equality provisions guaranteed in Canadian human rights legislation such as the *Canadian Charter of Rights and Freedoms* [Charter];¹ (ii) monitoring significant legislative, regulatory, administrative and judicial developments; and (iii) engaging in advocacy, law reform and legal education.

In addition to its legal services, the ACLC also operates seven social service programs, namely: the African Canadian Youth Justice Program; the African Canadian Youth Outreach Worker Program; the Knowledge of Self Group Programs; the African Canadian Justice Program; the African Canadian Parent Support Group; the Employment Skills and Job Readiness Program, the Youth in Transition Program; the Community Justice Worker Program, and; Cultural Competency Training. These programs are all aimed at assisting and improving the lives of African Canadian children, youth, adults and families. The ACLC's experience with these agencies has given it unique insight into the issues affecting the African Canadian community in the Greater Toronto Area, the province of Ontario, and throughout Canada. Through its community involvement, the ACLC has been and continues to be at the forefront of groundbreaking legal and social justice developments.

African Canadians in 2015 and the Immediate Context of this Report

Over the course of the last year, anti-Black violence at the hands of law enforcement has been met and resisted in the United States under the clarion call of Black Lives Matter. However, the struggle for recognition and respect for the rights, humanity and dignity of people of African descent also stretches north of the US boarder and into Canada.

Within Canada, the Black Lives Matter Movement has gripped major urban centres such as Toronto, Ottawa, Hamilton and Halifax, as well as their surrounding suburbs. The Movement has emerged as a leading and inspirational force for communities calling for an end to violence against Black people at the hands of state actors in Canada. The current and most charged manifestation of this anti-Black violence has come in the form of a practice known as "carding" in Toronto. Carding is the practice of the Toronto police of stopping, questioning and documenting people who are not suspected of a crime, with a significant disproportion of these police encounters being with African Canadians.

¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11 [Charter].

On this backdrop, the Black Lives Matter Toronto (BLMTO) Movement, along with organizations like the ACLC, and the Anti-Black Racism Network have galvanized the African Canadian community to push for fundamental structural changes that would reduce and eliminate anti-Black racism in Canadian policing and the wider criminal justice system. Specifically, they have rallied community support for the elimination of carding and racial profiling, and reform of both the Special Investigations Unit and the Office of the Independent Police Review Director, all with the aim to substantially enhance the ability to hold police officers more accountable for incidents of anti-Black racism and violence against African Canadians in Ontario. These organizations and collectives have also organized and/or participated in various demonstrations, community forums, workshops and panel discussions which have successfully leveraged the media to raise public awareness about the multi-dimensional and dynamic experiences of anti-Black oppression faced by African Canadians across the GTA.

Another critical backdrop for this report is the United Nations International Decade for People of African Descent. The International Decade, proclaimed by the *UN General Assembly Resolution 68/237* is to be observed from 2015 to 2024. It is being recognized by the UN as providing a solid framework for the United Nations, Member States, Civil Society and all other relevant actors to join together with people of African Descent and take effective measures for the implementation of a UN-adopted Programme of Activities in the spirit of the Decade's theme: **Recognition, Justice and Development**. Activities of the Decade are expected to be organized at the state and grassroots levels with the aim of underlining the important contribution made by people of African Descent to global societies and to propose concrete measures to promote our full inclusion and to combat racism, racial discrimination, xenophobia and related intolerance faced by African Descendants. It is fitting, then, that this report is being provided to the UN Human Rights Committee on this first year of the UN International Decade for People of African Descent.

Finally, before the end of this year, 2015, citizens across Canada will be called to vote in a federal general election that will have significant implications for the direction of the country. As such, this report offers the Human Rights Committee an opportunity to appreciate the some of the issues most pressing to African Canadians as they prepare to direct the future of this country in ways that enhance the well-being and prospects of Blacks in Canada.

These three contextual factors speak to the timeliness and urgency of providing this report on Canada's compliance with the *International Covenant on Civil and Political Rights (ICCPR)* to the Human Rights Committee at this time. In light of this context, the African Canadian Legal Clinic, is pleased to have identified in this report key strategic and critical solution-based recommendations to address the current crisis facing the African Canadian community. These recommendations reflect the ongoing and growing need for the Canadian government and its agencies to undertake more fulsome, comprehensive, sustainable and long-term initiatives to support the health, well-being and development of the African Canadian community.

Canada's African Canadian Population, its History and Significance

According to Canada's 2011 Census² just fewer than 945,700 individuals identified themselves as Blacks, the third largest visible minority group. African Canadians make up 15.1% of the visible minority population and 2.9% of the total Canadian population.

In order to understand contemporary anti-Black racism in Canada, it is necessary to first understand its history. Canadians tend to downplay the role of slavery in our nation's history. "Unlike the United States, where there is at least an admission of the fact that racism exists and has a history, in this country one is faced with a stupefying innocence."³ Slavery, however, existed in Canada from the 17th century until its abolition in 1834, for a total of 206 years.⁴ During this time, persons fleeing from slavery in the United States found themselves either re-enslaved or living a truncated version of freedom. After slavery was abolished, African Canadians had to contend with slavery's afterlife by being forced to face legal and de facto segregation in housing, schooling, and employment, and exclusion from public places such as theatres and restaurants.⁵ These racist practices were reinforced by a justice system that often served to keep African Canadians "in their place."⁶

Despite their oppressed and enslaved status, African Canadians made significant contributions to early Canadian society. In the war of 1812, for example, African Canadians fought in the British army in defense of Canadian borders against the United States.⁷ Similarly, in 1837, African Canadians assisted in quashing a rebellion in Upper Canada against the proposed unification of both Upper and Lower Canada by the British.⁸ The contribution of African Canadians extended beyond military support; Canadians of African descent were involved in politics, for example, where they helped join the province of British Columbia to the Federation of Canada,⁹ and in education, where they established successful settlements and founded schools that provided education to children of all races.¹⁰ These contributions, however, are all but absent from educational curricula and public discourse on Canada's history.¹¹

² Statistics Canada, "Immigration and Ethnocultural Diversity in Canada", 2011. Online: <http://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-010-x/99-010-x2011001-eng.cfm>

³ Dionne Brand, *Bread Out of Stone* (Toronto: Coach House Press, 1994).

⁴ Afua Cooper, *The Hanging of Angelique: The Untold Story of Canadian Slavery and the Burning of Old Montréal* (Toronto: HarperCollins Publishers, 2006).

⁵ Robin Winks, *The Blacks In Canada: A History*, 2d ed., (Montreal: McGill- Queen's Press, 1997).

⁶ *Christie v. York Corporation*, [1940] S.C.R. 139; *R. v. Desmond*, (1947) 20 M.P.R. 297 (N.S.S.C.); *Hill v. Camden and Zone*, 11 U.C.B.Q. 573 (Ont. Q.B.).

⁷ Lawrence Hill, *Trials and Triumphs: The Story of African Canadians*, (Toronto: Umbrella Press, 1993) at 19, 20 and 53.

⁸ *Ibid.* at 54.

⁹ *Ibid.* at 41-42; Milfflin Wistar Gibbs was part of the Victoria City Council and played a role in encouraging British Columbia to become a part of Canada, which eventually happened in 1871.

¹⁰ *Ibid.* at 22, 23 and 35. The Dawn settlement, Chatham, Ontario was established by Josiah Henson in the 1840s. Another prominent Black school, the Buxton Mission School in Ontario, was established in 1850.

¹¹ Four-Level Government/African Canadian Community Working Group, *Towards a New Beginning: The Report and Action Plan of the Four-Level Government/African Canadian Community Working Group* (Toronto: African Canadian Community Working Group, 1992) at 15: "The story of people of African origin in Canada is a long one, predating Confederation itself by more than two centuries. Yet few Canadians know of this story and fewer still are aware of the contributions which this ethnic minority group has made over these centuries to the development of Canadian society as we know it today. One tragic consequence of this ignorance is that it has denied Black

Canada's refusal to accept its racist past and simultaneous failure to recognize the historical contributions of people of African descent is partly responsible for the perpetuation of contemporary anti-Black racism. Specifically, denying Canada's history of slavery, segregation and racial oppression means that the modern day socio-economic circumstances of Canada's Afro-descendant population cannot be placed in their proper historical context; at the same time, neglecting the numerous contributions of members of the African Canadian community leads to the portrayal of this community as "good-for-nothing." The "blame" for the disadvantaged position occupied by African Canadians is thus placed only on the shoulders of the African Canadian community itself.

Left without a reasonable historic explanation for the disadvantaged position occupied by the African Canadian community and any acknowledged record of African Canadian accomplishments, it is easy to explain the marginalized position of the African Canadian community by reverting to racist stereotypes (e.g. Afro-descendants as unintelligent, lazy, savage, overly aggressive and prone to anti-social or criminal behaviour).¹² This continuing legacy of Canada's racist past was acknowledged by Dr. Doudou Diène, the UN Special Rapporteur on Racism, upon his visit to Canada in 2004:

Canadian society is still affected by racism and racial discrimination. Because of its history, Canadian society, as in all the countries of North and South America, carries a heavy legacy of racial discrimination, which was the ideological prop of trans-Atlantic slavery and of the colonial system. The ideological aspect of this legacy has given rise to an intellectual mindset which, through education, literature, art and the different channels of thought and creativity, has profoundly and lastingly permeated the system of values, feelings, mentalities, perceptions and behaviours, and hence the country's culture.¹³

Racist stereotypes are the result but also the cause of racist practices. In the past, stereotypes of Black people were used to justify slavery and segregation.¹⁴ Today they provide the basis for discriminatory policies and practices that violate the civil and political rights of African Canadians. These include the over-policing of African Canadian communities, police brutality, disparities in sentencing and policing accountability institutions absolving law enforcement

Canadians the full measure of their own self-worth in the way that other communities ... have been able to enjoy." See also TDSB, "Improving Success for Black Students: Questions and Answers".

¹² Earl Hutchison, *The Assassination of the Black Male Image*, (New York: Touchstone, 1997); Esmeralda Thornhill, *Focus on Racism: Legal Perspectives From a Black Experience*, (Ottawa: National Judicial Institute, 1995) at 81, 83, 86, and 87; Frances Henry and Carol Tator, *Racist Discourse in Canada's English Print Media* (Toronto: The Canadian Race Relations Foundation, 2000).

¹³ Doudou Diène, Report by Mr. Doudou Diène, *Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance – Mission to Canada, UNHRC, E/CN.4/2004/18/Add.2* (2004) at para. 68.

¹⁴ Richard Delgado, ed., *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 1995) at 547-548; Frances Henry and Carol Tator, *Discourses of Domination: Racial Bias in the Canadian English-Language Press* (Toronto: University of Toronto Press, 2002) at 163-202.

agencies of wrong-doing when the victim is African Canadian.¹⁵ These phenomena reveal a legislative, administrative and judicial focus on the perceived deviance of members of the African Canadian community and ignorance of their underlying socioeconomic and historic causes.

Anti-Black Racism is No Secret to Canadian Authorities

Despite African Canadians having a presence in Canada since the early 1600s, and notwithstanding Canada's 2014 ranking as one of the top 10 countries in the world according to the 2014 UN Human Development Index¹⁶, anti-Black racism continues to dominate the experience and encumber the civil and political rights of African Canadians.¹⁷

The African Canadian Legal Clinic (ACLC) defines anti-Black racism in the following way:

Anti-Black racism is the racial prejudice, stereotyping and discrimination that is directed at people of African descent, rooted in their unique history and experience of enslavement. It is manifested in the legacy and racist ideologies that continue to define African descendants' identities, their lives and places them at the bottom of society and as primary targets of racism. It is manifested in the legacy of the current social, economic, and political marginalization of African Canadians in society such as the lack of opportunities, lower socio-economic status, higher unemployment, significant poverty rates and over-representation in the criminal justice system. Anti-Black racism is characterized by particularly virulent and pervasive racial stereotypes. Canadian courts and various Commissions have repeatedly recognized the pervasiveness of anti-Black stereotyping and the fact that African Canadians are the primary targets of racism in Canadian society.

The presence and pervasiveness of anti-Black racism in Canada has been recognized by Canadian authorities and institutions since at least the early 1990s. Anti-Black racism was documented by Stephen Lewis who, in 1992, reported the following to the Premier of Ontario:

First, what we are dealing with, at root, and fundamentally, is anti-Black racism. While it is obviously true that every visible minority community experiences the indignities and wounds of systemic discrimination throughout Southern Ontario, it is the Black community which is the focus. It is Blacks who are being shot, it is Black youth that is unemployed in excessive numbers, it is Black students who are being inappropriately streamed in schools, it is Black

¹⁵ Ellis Cashmore, ed., *Out of Order? Policing Black Populations* (London: Routledge, 1991); Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Toronto: Ontario Human Rights Commission, 2005) at 18.

¹⁶ United Nations Development Programme, *Human Development Reports – Canada*. See online: <http://hdr.undp.org/en/countries/profiles/CAN>

¹⁷ Joseph Mensah, *Black Canadians: History: Experience, Social Conditions*, 2nd ed. (Winnipeg: Fernwood Publishing, 2010)

kids who are disproportionately dropping out, it is housing communities with large concentrations of Black residents where the sense of vulnerability and disadvantage is most acute, it is Black employees, professional and non-professional, on whom the doors of upward equity slam shut. Just as the soothing balm of ‘multiculturalism’ cannot mask racism, so racism cannot mask its primary target.¹⁸

The Ontario government’s 2008 *Review of the Roots of Youth Violence* report found that this statement “remains apposite.”¹⁹

Additionally, in 2005 the Supreme Court of Canada in the decision of *R v. Spence*²⁰ accepted the existence of widespread racism, and in particular, the presence of anti-Black racism in Canadian society.²¹ The Court did this when it endorsed the following portion of the *R. v. Parks* decision in which Justice Doherty of the Ontario Court of Appeal stated:

Racism, and in particular anti-black racism, is a part of our community's psyche. A significant segment of our community holds overtly racist views. A much larger segment subconsciously operates on the basis of negative racial stereotypes. Furthermore, our institutions, including the criminal justice system, reflect and perpetuate those negative stereotypes. These elements combine to infect our society as a whole with the evil of racism. Blacks are among the primary victims of that evil.²²

Furthermore, similar to its 2007 observations, in its 2012 concluding observations on the state of affairs in Canada, the United Nations Committee on the Elimination of Racial Discrimination (UNCERD) indicated to the Canadian Government that:

[T]he Committee is concerned that African Canadians continue to face discrimination in the enjoyment of social, economic and cultural rights, in particular in access to employment, housing, education, wages, and positions in the public service.²³

The current report will demonstrate that the Canadian Government’s compliance with the

¹⁸ Stephen Lewis, *Stephen Lewis Report on Race Relations in Ontario*, (Toronto: Office of the Premier, 9 June, 1992) at 2.

¹⁹Ministry of Children & Youth Services, *The Review of the Roots of Youth Violence* by Roy McMurtry, Alvin Curling, (Toronto: Ministry of Children & Youth Services, 2008) at 39.

²⁰ *R v. Spence*, [2005] 3 SCR 458 at 52.

²¹ *R v. Williams*, [1998] 1 SCR 1128 at 21-22, 28; *R. v. S. (R.D.)*, [1997] 3 SCR 484 at 47, 57.

²² *R v. Parks*, 1993 CanLII 3383 (ON CA); See also *R v. Brown*, 2003 CanLII 52142 (ON CA) at 7-9, 44 and *Longueuil (Ville de) c Debellefeuille*, 2012 QCCM 235 (CanLII) at 102-106 for discussion of anti-Black racism in the context of racial profiling; *Peart v. Peel Regional Police Services*, 2006 CanLII 37566 (ON CA) at 42.

²³ *Committee on the Elimination of Racial Discrimination, Report on the Eightieth Session*, UNCERD, 2012, Supp No 18, UN Doc A/67/18 (2012) at 11. Note that these observations are almost identical to the ones the ones that CERD arrived at in its 2007 report on racial equity in Canada: *Elimination of Racial Discrimination: Concluding Observations, Canada*, 25 May 2007, CERD/C/CAN/CO/18 at 20-21.

***International Covenant on Civil and Political Rights (ICCPR)* has been woefully inadequate and has had the impact of supporting and even perpetuating anti-Black racism within Canada.**

Canada's National Consultations Regarding Compliance with the *ICCPR*

Canada's sixth report to the United Nations Human Rights Committee (the Committee) on compliance with the *International Covenant on Civil and Political Rights (ICCPR)*²⁴ states that, "[m]ore than 200 non-governmental organizations were invited by the Government of Canada to give their views on the issues to be covered in the federal portion of the report. No responses were received."²⁵ The ACLC, though Canada's only African Canadian-servicing organization with ECOSOC status²⁶, was not offered the opportunity to participate in consultations regarding the drafting of the government of Canada's record of compliance with its obligations under the *ICCPR*.

It is important to note that nowhere in Canada's 36-page report or 44-page core documents forming part of the reports of State parties does the Government of Canada refer to African Canadians or "visible minorities" of African descent.²⁷

PART II: VIOLATIONS OF SPECIFIC PROVISIONS OF THE *ICCPR*

Overview: African Canadian Civil and Political Rights

The consideration of Canada's sixth report to the Committee on the Occasion of the Review of Canada's Periodic Reports under the *ICCPR* presents an important opportunity to draw the Committee's attention to the persistent and growing civil and political exclusion of African Canadians.

The occasion of the review the Government of Canada's record of compliance under the *ICCPR* provides an important reminder that there are still a number of areas where significant improvements in the Government of Canada's rights performance are needed from the perspective of a marginalized community. The African Canadian experience continues to be one of extreme marginalization and disadvantage; restricted access to housing; racial profiling in policing, security, education and child welfare; criminalization; over-representation in the

²⁴ International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), 21 UN GAOR Supp No. 16 at 52, UN Doc A/6316 91966), 999 U.N.T.S.171 entered into force March 23, 1976 [*ICCPR*].

²⁵ Canada, Government of Canada, "Consideration of reports submitted by States parties under article 40 of the Covenant" (UN Doc CCPR/C/CAN/6) in Sixth Periodic Reports of States Parties due in October 2010 (9 April 2013) at 5.

²⁶ Economic and Social Council, List of non-governmental organizations in consultative status with the Economic and Social Council as of 1 September 2014 at 9. Online: <http://csonet.org/content/documents/E-2014-INF-5%20Issued.pdf>

²⁷ Canada, Government of Canada, "Consideration of reports submitted by States parties under article 40 of the Covenant" (UN Doc CCPR/C/CAN/6) in Sixth Periodic Reports of States Parties due in October 2010 (9 April 2013); Canada, Government of Canada, "Core document forming part of the reports of State parties" (UN Doc HRI/CORE/CAN/2013) (28 January 2013).

criminal justice system; high levels of unemployment; and disproportionate and extreme poverty.²⁸ This alarming state of affairs contravenes a number of Canada's obligations under the *ICCPR*.

Article 2 – Race-based Disaggregated Data: A Necessity for *ICCPR* Compliance

According to the *UN Human Rights Committee General Comment No. 31 (2004)*, Article 2 allows a State Party to change its domestic law or practice to meet the standards imposed by the Covenant's substantive guarantees. The requirement under Article 2, Paragraph 2, to take steps to give effect to the Covenant rights is unqualified and of immediate effect. According to this Comment, a failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State. Because the Government of Canada does not systematically collect and make publicly accessible race-based disaggregated data, it is in violation of Article 2 of the *ICCPR*.

The violation of civil and political rights of African Canadians is invisibilized in Canada because governmental bodies, although aware that acts of non-state and state violations of the *ICCPR* occur, do not systematically and specifically name and address violations of rights to physical integrity, liberty and security of the person and individual liberties of African Canadians. This is most evidenced in Canada's intransigent reluctance to collect race-based disaggregated data; a problem that has already been identified by both the United Nations' Committee on the Rights of the Child and Committee for the Elimination of Racial Discrimination in 2012. In both instances, the Committees recommended the collection of race-disaggregated data in their latest concluding observations on Canada. The Committee on the Rights of the Child's recommendation was articulated as follows:

The Committee recommends that [Canada] establish a comprehensive and systematic mechanism of federal data collection, analysis, monitoring, and impact assessment covering all areas of the Optional Protocol. The data should be disaggregated by , inter alia, sex, age, national and ethnic origin, geographical location, indigenous status and socio-economic status, with particular attention to children in the most vulnerable or marginalized situations. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence. The Committee also recommends that the State party establish a system of common indicators when collecting data for the various states and territories.²⁹

²⁸ Doudou Diène, *Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance – Mission to Canada*, UNHRC, E/CN.4/2004/18/Add.2 (2004) at para 72.

²⁹ Committee on the Rights of the Child: Canada, "Concluding observations on the initial periodic report of Canada, adopted by the Committee at its sixty-first session" (17 September-5 October 2012) at 2. Online: <http://uhri.ohchr.org/document/index/128296b5-0662-45c7-a3e7-543a0e0837da>

The Committee on the Elimination of Racial Discrimination's almost identical recommendation reads as follows:

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its previous recommendation that the State party collect and, in its next Periodic Report, provide the Committee, with reliable and comprehensive statistical data on the ethnic composition of its population and its economic and social indicators disaggregated by ethnicity, gender, including on Aboriginal (indigenous) peoples, African Canadians and immigrants, to enable the Committee to better evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population.³⁰

By refusing to systematically collect and make publicly accessible race-disaggregated data, the Canadian government, its agencies and institutions are active or complicit agents in the violation of the civil and political rights of African Canadians. The practice of statistically invisibilizing African Canadians by refusing to collect and publicly report race-based disaggregated data is a violation of Article 2 Paragraph 2 of the *ICCPR* which requires states to undertake necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the *ICCPR*. The collection, analysis and accessible dissemination of such data is necessary for determining whether the Government of Canada actively is respecting and recognizing African Canadians' civil and political rights under the *ICCPR*.

In light of this, we, the African Canadian Legal Clinic respectfully invite the Committee to take note of, and demand answers regarding, the state's indifference to and non-recognition of the extreme barriers faced by African Canadians in realizing their civil and political rights.

Articles 7 and 10 – Over Incarceration and Cruel and Inhuman Punishment

According to the *UN Human Rights Committee, General Comment 20 (1992)*, Article 7 of the *ICCPR* should be read in conjunction with article 2, paragraph 3, of the Covenant. In their reports, the Committee advises that State parties should indicate how their legal system effectively guarantees the immediate termination of all the acts prohibited by Article 7 as well as appropriate redress.

According to the *UN Human Rights Committee, General Comment 21 (1992)*, Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in Article 7 of the *ICCPR*. The Comment goes further to state that not only may

³⁰Committee on the Elimination of Racial Discrimination: Canada, "Concluding observations of the Committee on the Elimination of Racial Discrimination at its eightieth session (13 February – 9 March 2012). Online: <http://uhri.ohchr.org/document/index/f2d0c76b-a3fb-4d3d-a6e7-f260ac785a5f>

persons deprived of their liberty not be subjected to treatment that is contrary to Article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Finally, the Comment also notes that persons deprived of their liberty enjoy all the rights set forth in the *ICCPR*, subject to the restrictions that are unavoidable in a closed environment.

For the reasons that will be outlined below, the Committee should find that the Government of Canada is violating its obligations under Articles 7 and 10 of the *ICCPR* and recommend immediate and decisive action to address this injustice.

Disproportionate Rates of African Canadian Incarceration and Anti-Black Racism in Prisons

African Canadians are “disproportionately represented”³¹ in Canadian correctional facilities and the rate of over-incarceration of African Canadians has been accelerating at a time when Canada is experiencing historically low rates of crime.³² As a result, the deliberate policies and inadequate resources devoted to addressing the over-incarceration of African Canadians have led to increasingly inhumane conditions within the Canadian prison and jail system that frequently contravene both Articles 7 and 10 of the *ICCPR*.

In 2012, the United Nations Committee on the Elimination of Racial Discrimination expressed concern over the over-representation of African Canadians in prisons:

The Committee is concerned at reports that African Canadians, in particular in Toronto, are being subjected to racial profiling and harsher treatment by police and judicial officers with respect to arrests, stops, searches, releases, investigations and rates of incarceration than the rest of the population, thereby contributing to the over-representation of African Canadians in the system of criminal justice of Canada.³³

The Committee recommended that Canada “take necessary steps” to prevent over-incarceration, and train actors in the criminal justice system including police and judges on the principles of the *International Convention on the Elimination of All forms of Racial Discrimination* of which Canada is a signatory.³⁴ In 2005, the Committee released its *General Recommendation No. 31 - Prevention of Discrimination in the Administration and Functioning of*

³¹ Correctional Service Canada, *A Profile of Visible Minority Offenders in the Federal Canadian Correctional System*, Authors Shelley Treveshan and Christophe J Rastin (Ottawa: Correctional Service Canada, June 2004) online: <<http://www.csc-scc.gc.ca/research/r144-eng.shtml>>.

³² The country’s overall crime rate is at its lowest level since 1969.

Statistics Canada, Canadian Megatrends, *Canada’s crime rate: Two decades of decline* (Ottawa: Statistics Canada) online: Statistics Canada <<http://www.statcan.gc.ca/pub/11-630-x/11-630-x2015001-eng.htm>>.

³³ Committee on the Elimination of Racial Discrimination, Report on the Eightieth Session, UNCERD, 2012, Supp No 18, UN Doc N67118 (2012) at 10.

³⁴ Committee on the Elimination of Racial Discrimination, Report on the Eightieth Session, UNCERD, 2012, Supp No 18, UN Doc N67118 (2012) at 10.

the Criminal Justice System.³⁵ In that document, the Committee recognized that the number and percentage of persons belonging to particular groups who are held in prison or preventive detention is a possible indicator of racial discrimination.³⁶

Canada's Periodic Report on compliance with the *ICCPR* only briefly refers to the right to liberty and security and treatment of persons deprived of their liberty in relation to the incarceration of youth³⁷ and victims of crime³⁸. The issues posed by the Committee remain urgent as Canada clarifies its effort to:

(a) adopt effective measures to reduce the current overcrowding and properly meet the basic needs of all persons deprived of their liberty; (b) increase the capacity of treatment centres for prisoners with intermediate and acute mental health issues; (c) limit the use of solitary confinement as a measure of last resort, and (d) abolish the use of solitary confinement for persons with serious mental illness.³⁹

In a May 2015 report entitled, "Administrative Segregation in Federal Corrections: 10 Year Trends", by the Government of Canada's Office of the Correctional Investigator (OCI)⁴⁰ it is revealed that since May 31, 2005, the population of African Canadians in federal prisons has increased by 77.5%, whereas the white population decreased by 6.8%. As noted in the report, Black segregation admissions have grown at a faster rate than the incarceration rate of the population of Black offenders.⁴¹ Furthermore, the Black inmate population is young. Approximately one-half of Black inmates are 30 years of age or younger; only 8% are over the age of 50. Moreover, the incarceration of African Canadian young people is not unique to the federal prison system, as the population of African Canadian boys (under 18) in Ontario's youth jails is four times higher than what they represent in the general young male population of the province.⁴²

³⁵ Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, Sixty-fifth session (2005) A/60/18 at 1(e).

³⁶ Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, Sixty-fifth session (2005) A/60/18 at 1(e).

³⁷ Canada, Government of Canada, "Consideration of reports submitted by States parties under article 40 of the Covenant" (UN Doc CCPR/C/CAN/6) in Sixth Periodic Reports of States Parties due in October 2010 (9 April 2013) at para 31, 67, 105, 106, 113, 147.

³⁸ Canada, Government of Canada, "Core document forming part of the reports of State parties" (UN Doc HRI/CORE/CAN/2013) (28 January 2013) at 16 and 36.

³⁹ Human Rights Committee, "List of Issues in Relation to the Sixth Periodic Report of Canada," (UN DOC CCPR/C/CAN/Q/6) (21 November 2014) at 3.

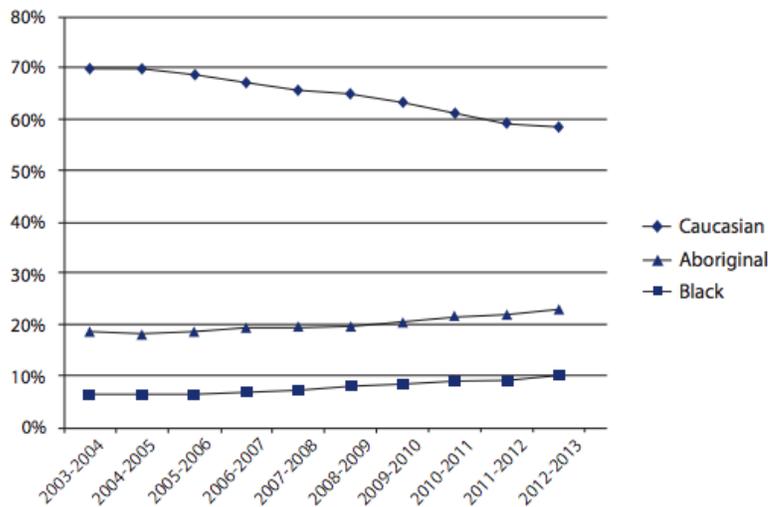
⁴⁰ As the ombudsman for federally sentenced offenders, the Office of the Correctional Investigator serves Canadians and contributes to safe, lawful and humane corrections through independent oversight of the Correctional Service of Canada by providing accessible, impartial and timely investigation of individual and systemic concerns.

⁴¹ Online: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20150528-eng.pdf>

⁴² Jim Rankin, Patty Winsa, "Unequal Justice: Aboriginal and black inmates disproportionately fill Ontario jails", *Toronto Star*. See online:

This latest data from the OCI adds to observations previously made by the Correctional Investigator which, in 2013, noted that African Canadians are one of the fastest growing sub-populations in federal corrections.⁴³ African Canadian inmates now account for 9.5% of the total prison population while representing just 2.9% of the general Canadian population.⁴⁴ Between March 2003 and March 2013, the rate of federally incarcerated African Canadians increased by 80% from 778 to 1,403.⁴⁵ African Canadian federally sentenced inmates have increased every year since 2003, growing by nearly 90%. Canada’s Correctional Investigator has also noted that white inmates actually declined by 3% over this same period.⁴⁶

10 Year Offender Population Trends: (Incarcerated and Community)



Correctional Investigator, Government of Canada, Annual Report of the Office of the Correctional Investigator, 2012-2013.

Once in the federal prison system, African Canadians experience some of the worst treatment as a group. From May 2005 to May 2015, the number of segregation admissions for African Canadian inmates has more than doubled, increasing by 100.4%, while it has decreased for the white population by 6.1%. Additionally, African Canadian offenders who were admitted to

http://www.thestar.com/news/insight/2013/03/01/unequal_justice_aboriginal_and_black_inmates_disproportionately_fill_ontario_jails.html#

⁴³ Sentences of two or more years in Canada are served in federal prisons.

Correctional Service Canada, *Corrections and Conditional Release Statistical Overview* (Ottawa: Public Works and Government Services Canada, 2004) at 47-8; Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013).

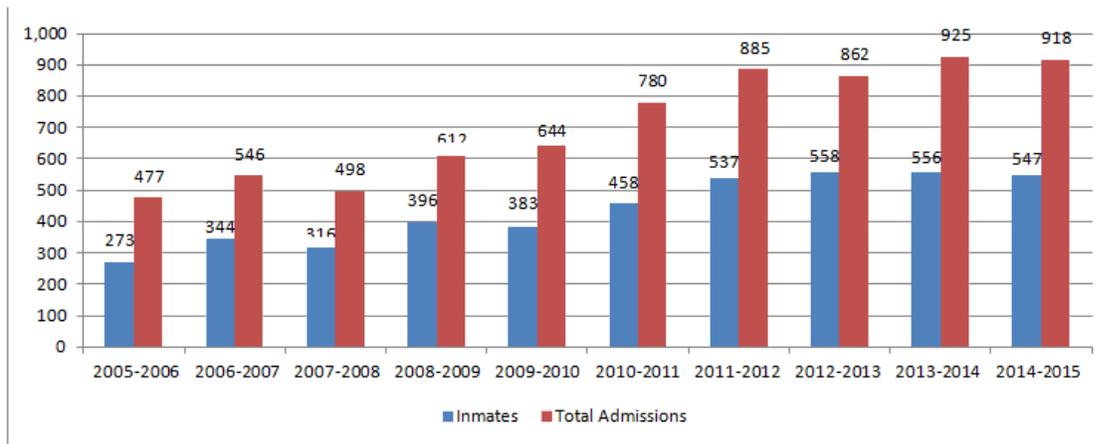
⁴⁴ Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013) at 9.

⁴⁵ Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013) at 9.

⁴⁶ Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013) at 3.

segregation in 2013-2014 were significantly less likely than white inmates to have a history of self-injury (6.5% compared to 13.8%).⁴⁷

Total Black Admissions to Segregation – 10 Years



- Both the number of Black offender admissions to segregation and the number of offenders have increased significantly in the last 10 years.

The OCI reports that despite being rated as a population having a lower risk to re-offend and lower need overall, Black inmates are 1.5 times more likely to be placed in maximum security institutions where programming, employment, training, education-upgrading, rehabilitative programming and social activities are limited.⁴⁸

The OCI's 2012-2013 Annual Report further notes that Black inmates consistently reported difficulties finding employment. The official prison unemployment rate in 2012-13 was 1.5%; however, for Black inmates this rate was 7%.⁴⁹

Furthermore, African Canadian inmates interviewed for a 2013 OCI case study reported experiencing discrimination by correctional officials by being subject to racist language, as well as being ignored and disregarded in ways that, as the OCI observed, increase feelings of marginalization, exclusion and isolation for Black inmates. These inmates also face the dehumanizing experience of being subjected of discriminatory stereotypes such as being a "gang member," "trouble-maker," "drug dealer" or "womanizer." Finally, it is also reported that a 2013 review of data over the previous five years reveals that Black inmates were consistently over-represented in administrative segregation, particularly involuntary and disciplinary placements. In 2012-13, Black inmates were also disproportionately involved in use of force incidents.⁵⁰

⁴⁷ <http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20150528-eng.pdf>

⁴⁸Government of Canada, The Correctional Investigator Canada, Annual Report of the Office of the Correctional Investigator, 2012-2013 Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013) Online: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

Finally, the OCI's 2012-2013 Annual Report also notes that Black offenders did not feel that in-prison programming adequately reflected their cultural reality. Black inmates reported that they were not reflected in program materials and activities and they felt these were not rooted in their cultural or historical experiences. Moreover, many initiatives and services which serve as important complements to CSC programming also fell short of expectations, the report noted.⁵¹ The OCI's review also revealed the following:

- Inconsistent support for cultural events at the institutional level. Some Black Inmate Committees had sufficient guidance in planning events while others reported little to no assistance, to the point that very few events had ever taken place within the institution.
- A lack of community support. Many Black inmates had never seen, spoken with or met anyone from a Black community group while incarcerated, though most expressed a strong desire to develop and maintain these community linkages. (Importantly, this form of support is a key component of CSC's *Strategic Plan for Aboriginal Corrections*.)
- A need for better access to and availability of hygiene products specifically designed for their hair/skin type and cultural food items through the canteen.
- Lower grant rates for temporary absences, day and full parole. Programs that offer gradual, supervised release have been shown to reduce re-offending.

Incarcerated African Canadian Women

The Committee has taken note of the specific concerns facing African Canadian women inmates, and in 2006 expressed concern regarding the situation in Canada of women prisoners belonging to ethnic minorities and women with disabilities.⁵² In 2009, the Human Rights Council adopted the Report of the Working Group on the Universal Periodic Review, which recommended that Canada "closely monitor the situation of ...women prisoners."⁵³ The accelerated rate of federally sentenced African Canadian women reveals important gendered dynamics.⁵⁴

⁵¹ Government of Canada, The Correctional Investigator Canada, *Annual Report of the Office of the Correctional Investigator, 2012-2013* Cat. No. PS100-2013E-PDF (Ottawa: Correctional Service Canada, June 28, 2013).

⁵² UN HRC, Eighty-fifth Session, 20 April 2006, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, concluding observations of the Human Rights Committee at page 5.

⁵³ Human Rights Council-Universal Periodic Review-Canada (February 2009), online: <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights3February2009am.aspx>>.

⁵⁴ Office of the Correctional Investigator, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, Final Report, online: <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx>> at para 18

African Canadian women inmates now account for 9.12% of the total federal penitentiary population while African Canadians represent just 2.9% of the general Canadian population.⁵⁵ African Canadian women who are disproportionately over-represented in federal correctional institutions in Canada “are more likely to have mental health issues, histories of abuse, and are more likely to self-harm or attempt suicide”⁵⁶. Solitary confinement and segregation of inmates continue to be relied on as a “tool to warehouse prisoners with mental health issues.”⁵⁷ A further consideration compounding the intersection of race, gender and criminalization is the fact that the needs and experiences of African Canadian women are often addressed as only secondary to those of men.⁵⁸ The Office of the Correctional Investigator reports that, “[a]ll Black inmates, particularly Black women, indicated a lack of access to hygiene products specifically designed for their hair/skin type through canteen.”⁵⁹

The stark data documenting the continued anti-Black racism in the form of over-incarceration of male and female African Canadians remains at unacceptable levels that have implications world wide as Canada continues to be perceived as a leader of human rights. When the governments of Canada are condoned to disproportionately criminalize African Canadians and mistreat Black incarcerated persons, permission is granted to lower the expected standard of human rights for incarcerated people across the world.

The over-incarceration and the excessively punitive treatment of African Canadians in Canadian prisons amounts to a violation of Articles 7 and 10 of the *ICCPR* because it amounts to cruel, inhuman and degrading treatment of punishment.

The Safe Streets and Communities Act

The imposition of a jail sentence upon conviction is a “punishment” that engages Articles 7 and 10 of the *ICCPR*. Both the *ICCPR* and section 12 of the *Canadian Charter of Rights and Freedoms*⁶⁰ provide African Canadians with constitutional protections against state-inflicted punishment that is cruel, degrading and unusual.

⁵⁵ Office of the Correctional Investigator, A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries, Final Report, online: <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx>> at para 18.

⁵⁶ Canadian Human Rights Commission, Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women, (Ottawa: Canadian Human Rights Commission, 2003) at 5.1.2.

⁵⁷ British Columbia Civil Liberties Association, Press Release, “BCCLA launches lawsuit to challenge woman’s lengthy solitary confinement in federal prison” (4 March 2011) online: BBCLA <<http://www.bccla.org/pressreleases/11solitary.html>>.

⁵⁸ Commission of Inquiry into certain events at the Prison for Women in Kingston, (Ottawa: Public Works and Government Services Canada, 1996); Canadian Human Rights Commission, Protecting their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women, (Ottawa: Canadian Human Rights Commission, 2003).

⁵⁹ Office of the Correctional Investigator, A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries, Final Report, online: <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx>> at para 28, 29.

⁶⁰ Section 12: “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”

In *General Recommendation No. 34 - Racial discrimination against people of African descent*, the Committee urged states to ensure that measures taken in the fight against crimes do not discriminate in purpose or effect on the grounds of race and colour.⁶¹ Similarly, in *General Recommendation No. 31 - The prevention of racial discrimination in the administration and functioning of the criminal justice system*, the Committee recognized the handing down by courts of harsher or inappropriate sentences against persons belonging to racialized groups as a possible indicator of racial discrimination.⁶²

Since 2006, the Canadian government has developed sixty mandatory minimum jail terms for crimes involving guns, drugs and sex offences despite crimes rates that are at a fifty-year low. Nowhere is the impact of denied civil rights more pronounced or more palpable than within the criminal justice system. African Canadians are disproportionately more likely to receive the mandatory minimum sentence, particularly in Toronto.⁶³ African Canadians also have more charges initially laid against them and are more likely to be detained before trial than white Canadians.⁶⁴ The disparity in detention rates of African Canadians and white Canadians is especially concerning in light of a recent Supreme Court of Canada decision, *R. v. St-Cloud*⁶⁵, which leading criminal lawyers say will make it much harder for accused persons to get bail in Canada. The decision has this effect because it now allows judges to order pre-trial detention of an accused for a broader range crimes, whereas, in Canada, it has typically been the case that pre-trial detention, or denial of bail, would be reserved for crimes that are especially heinous, such as murder.⁶⁶

Mandatory minimum sentences of three years upon conviction for a first offence of possession of a loaded, restricted firearm were introduced with the 2012 enacting of the omnibus *Bill C-10* titled, the *Safe Streets and Communities Act*.⁶⁷ The *Safe Streets and Communities Act* proposes to make communities safer by imposing tougher sentences (*e.g.* mandatory minimums) for the production, possession and trafficking of illicit drugs; eliminating the use of conditional sentences for certain crimes; extending ineligibility periods for applications for a pardon; and increasing the likelihood of custodial and adult sentences for young offenders under the *Youth Criminal Justice Act*.⁶⁸

⁶¹ *General Recommendation No. 3* at para 38.

⁶² *General Recommendation No. 31* at para 1(f).

⁶³ Code J ruling in *Nur* at 77 and 79.

⁶⁴ Scot Wortley & Julian Tanner, "Discrimination or "Good" Policing? The Racial Profiling Debate in Canada" in *Our Diverse Cities*, ed Caroline Andrew (2004) 1 *Metropolis* 197 -201 at 197.

⁶⁵ *R. v. St-Cloud*, 2015 SCC 27

⁶⁶ Yamri Taddese, "Lawyers predict more overcrowding after St-Cloud", *Law Times* 25 May 2015. Online: <http://www.lawtimesnews.com/201505254697/headline-news/lawyers-predict-more-overcrowding-after-st-cloud>

⁶⁷ *Safe Streets and Communities Act*, SC 2012, c 1.

An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts.

⁶⁸ *Youth Criminal Justice Act*, SC 2002, c 1.

While many mandatory minimum sentences remain in effect, there are signs that Canadian courts are starting to recognize them as a human rights violation. In November 2013, a unanimous five-judge panel of the Ontario Court of Appeal heard *R v Nur* and struck down s. 95(2) of the *Criminal Code* after finding that it violates section 12 of the *Charter*.⁶⁹ This decision was appealed at the Supreme Court of Canada (SCC). The ACLC was granted leave to intervene at the SCC in a hearing that took place in November 2014. On April 14, 2015, the Supreme Court of Canada struck down the s. 95(2) mandatory minimum sentences in the *Criminal Code* for gun possession.⁷⁰

The mandatory minimum sentence raises a number of concerns regarding cruel and degrading punishment in violation of Articles 7 and 10 of the *ICCPR*. Firstly, the Government of Canada has introduced legislation that is disproportionately applied to African Canadians and therefore will elevate already unacceptable levels of incarceration rates and the duration of jail sentences for African Canadians. Secondly, the elimination of conditional sentences for a range of offences denies any individualized assessment. Flexible sentencing tools are used by the judiciary to, for example, allow single mothers to continue working while serving their sentence and preventing the break-up of families, or to ensure that those with underlying mental health needs get the community treatment that best ensures their recovery and rehabilitation. Poverty, racial profiling and over-incarceration remain the major contributors to the increased dislocation of African Canadian families. That the situation has continued to worsen over the years is indicative of Canada's failure to fulfill its obligation to protect the African Canadian family, mother and child.

Mandatory minimum jail terms reflected by amendments to the *Criminal Code*, provision s. 95(2)(a)(i), will result in the imposition of unjust, grossly disproportionate sentences of African Canadians.⁷¹ The *Safe Streets and Communities Act* will serve only to exacerbate the negative impact of criminal law on the African Canadian community. Specifically, the *Safe Streets and Communities Act* will lead to furthering the mass criminalization and incarceration of the African Canadian community, thereby exposing African Canadians to cruel and degrading treatment and punishment, and depriving African Canadians of the right to liberty and security of the person, freedom from arbitrary arrest and detention, segregation in correctional facilities and equal participation in political life, contrary to Articles 7 and 10 of the *ICCPR*.

Due to its inevitable disproportionate impact on the civil and political rights of members of the African Canadian community, the federal government's introduction of the *Safe Streets and Communities Act* contravenes the Committee's recommendations and Articles 7 and 10 of the

⁶⁹ *R v Nur*, 2013 ONCA 677, 117 OR (3d) 401.

⁷⁰ *R v Nur*, 2015 15.

⁷¹ Canadian HIV/AIDS Legal Network, "Mandatory Minimum Sentences for Drug Offences: Why Everyone Loses" (April 2006), online: <<http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1455>>. Thomas Gabor and Nicole Cruther, *Mandatory Minimum Penalties: Their effects on crime, sentencing disparities, and justice system expenditures*, (Ottawa: Justice Canada, Research and Statistics Division, 2002) at 23; *Racism Behind Bars: The Treatment of Black and Other Racial Minority Prisoners in Ontario Prisons*, Commission on Systemic Racism in the Ontario Justice System, 1994.

ICCPR. The disjuncture between Canada's international commitments and its domestic law highlights how deeply at odds the Canadian federal government is with globally recognized standards of civil and political rights.

Article 14 – Carding and Non-Conviction Records

The Human Rights Committee, *General Comment No. 32, Article 14, U.N. Doc. CCPR/C/GC/32 (2007)* states that, in accordance with Article 14 of the ICCPR, paragraph 2, everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence is articulated by the Committee as being fundamental to the protection of human rights, and imposing on the prosecution the burden of proving the charge for the purpose of guaranteeing that no guilt can be presumed until the charge has been proved beyond reasonable doubt. The Human Rights Committee also affirmed that this provision is intended to ensure that an accused has the benefit of doubt, and requires that persons accused of a criminal act be treated in accordance with this principle. The presumption of innocence is right that is not equally enjoyed by African Canadians due to what are called non-conviction records.

Non-conviction records are police records documenting interactions of individuals with police. A non-conviction record could include everything from random questioning to a mental health distress call. They are records of encounters where no criminal charge is laid or where an individual is not convicted of a crime. It was recently revealed in a 2014 *Toronto Star* investigation that these records were, unbeknownst to civilians, being kept in police databases and showing up on individuals' background checks. The effect of such disclosures, the investigation revealed, was to prevent individuals from qualifying for jobs, educational and volunteer opportunities and from crossing the border into the United States.⁷²

African Canadians are subjected to heightened scrutiny by police and have their communities and lives disproportionately monitored and surveilled by the police and policing activities. This has led to disproportionate contact of African Canadians with the police, resulting in a disproportionate accumulation of non-conviction records among African Canadians. As such, non-conviction records have served to exacerbate the under-employment and unemployment of African Canadians as many employers in Ontario require job applicants' police background checks, which also include non-conviction records, as grounds to deny or rescind employment and internship opportunities.⁷³ This has resulted in many African Canadians being forced to face

⁷² Richard Brennan, Robert Benzie, Robert Cribb, "Ontario moves to limit police sharing non-conviction information", *Toronto Star*, Online: <http://www.thestar.com/news/canada/2015/06/03/ontario-cracking-down-on-inappropriate-use-of-police-information.html>; See also: John Howard Society of Ontario, Canadian Civil Liberties Association, *On the Record: An Information Guide for People Impacted by Non-Conviction Police Records in Ontario*, 2014. Online: <http://www.johnhoward.on.ca/wp-content/uploads/2014/11/On-the-Record-1-FINAL.pdf>

⁷³ Richard Brennan, Robert Benzie, Robert Cribb, "Ontario moves to limit police sharing non-conviction information", *Toronto Star* (June 3 2015) Online: <http://www.thestar.com/news/canada/2015/06/03/ontario-cracking-down-on-inappropriate-use-of-police-information.html>

the embarrassment, humiliation and stigmatization of being denied opportunities because of non-criminal interactions or crimes for which they were never charged or convicted.

Non-conviction records continue to deny individuals the right to be presumed innocent until proven guilty. They are generated where an individual has contact with the police, but no charge is laid, charges are stayed or a person is acquitted for a crime. However, this information is still being inserted into police records for background checks and being released by police to employers, as well as academic institutions,⁷⁴ volunteer organizations and even shared with Canadian and US border services agencies.⁷⁴

Because the African Canadian community is over-policed, these records have a disparate and more damaging impact on this community than on the average civilian. In June 2015, the Ontario government proposed legislation limiting the release of non-conviction records in police background checks.⁷⁵ However, it will be months before such legislation is passed. This legislation also does not account for the hundreds and thousands of African Canadians who have already been negatively impacted by disclosures of non-conviction records to potential employers, academic institutions and civic organizations. It is important to note that Ontario's Human Rights Code protects individuals from discrimination on the bases of having been convicted of a crime for which they have obtained a pardon⁷⁶, but individuals who have not even been charged or convicted of a crime for which they have been accused enjoy no such protection from discrimination. Resultantly, the laws of Ontario allow African Canadians to have their rights to be presumed innocent until proven guilty routinely violated by employers, academic institutions, volunteer-based community/civic organizations and border officials. While the use and disclosure of non-conviction records have been allowed to impact African Canadians in a manner that violates Article 14's guarantee of the right to be presumed innocent, disclosure of non-conviction records also engages Article 17 of the *ICCPR*. This is due to the fact that such records subject a disproportionate number of African Canadians to arbitrary interference with their privacy.

Article 26 – African Canadian Inequality before the Law and Absence of Equal and Effective Protection Against Discrimination

According to the UN Human Rights Committee, *General Comment 18, Non-discrimination (1994)*, Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Racial profiling by law enforcement agencies is one of the most pervasive and pernicious

⁷⁴ *Ibid.*

⁷⁵ *Supra* Note 73

⁷⁶ See sections 5 and 10 of Ontario's *Human Rights Code R.S.O. 1990, c. H.19*

practices that infringe on the ability of African Canadians to have equal enjoyment of their civil and political rights under the *ICCPR*. The African Canadian Legal Clinic's definition of racial profiling has been accepted in Canadian law, and is as follows:

Racial profiling is criminal profiling based on race. Racial or colour profiling refers to that phenomenon whereby certain criminal activity is attributed to an identified group in society on the basis of race or colour resulting in the targeting of individual members of that group. In this context, race is illegitimately used as a proxy for the criminality or general criminal propensity of an entire racial group.⁷⁷

Despite Canada being a liberal democratic society, it is well established that "racial stereotyping and discrimination exists in society, it also exists in institutions such as law enforcement agencies."⁷⁸ Racial profiling violates Article 26 of the *ICCPR* by violating the fundamental principle of equal protection under the law. Racial profiling also offends numerous sections of the *Charter*, a constitutional guarantee of Canadian rights against abusive governmental actions and some inaction. Racial profiling in law enforcement prescribes criminal actions onto African Canadians⁷⁹ and contributes to the over-representation of African Canadian youth in prison. Racial profiling thus divests African Canadians of a sense of citizenship and belonging within their country and respective communities.

In 2012, the Committee on the Elimination of Racial Discrimination noted concern about the treatment of African Canadians, particularly in Toronto, who were subject to racial profiling and harsher treatment by police and judicial officers with respect to arrests, stops, searches, releases, investigations and rates of incarceration than the rest of the population. In light of *General Recommendation no 34 (2011)* on racial discrimination against people of African Descent, and in light of its *General Recommendation no. 31 (2005)* on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the

⁷⁷ *R. v. Richards* (1999), 1999 CanLII 1602 (ON CA), 26 C.R. (5th) 286, 42 M.V.R. (3d) 70 (Ont. C.A.), as at p. 295 C.R.

⁷⁸ African Canadian Legal Clinic, *African Canadian Legal Clinic, Anti-Black Racism in Canada: A Report on the Canadian Government's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination* (Toronto: African Canadian Legal Clinic, 2012) at 55-65; *R v Brown*, [2008] 64 OR (3d) 161 at 165 at 165; Jimmy Bourque et al., "The Effectiveness of Profiling from a National Security Perspective" Canadian Human Rights Commission and Canadian Race Relations Foundation (March 2009) at 21; Ontario, Race Relations and Policing Task Force, *The Report of Race Relations and Policing Task Force* (Ontario, April 1989) at 14 (Chair: Claire Lewis); David Tanovich, "One List for Air Travelers, One List For Black Youth" *Toronto Star* (Thursday July 5, 2007) at AA8; CTV.ca News Staff, "1 in 6 Canadians victims of Racial Profiling: Poll" (March 21, 2005) (online: <http://www.ctv.ca/servlet/an/story/CTVNews/20050321/racism_ipsos_050321>); and Powell, Terry, "One in Six Canadians Victims of Racism" (March 21, 2005) Canadian Press (online: <http://www.caaircan.ca/mw_more.php?id=P1488_0_7_0_C>); Carl R James, "'Up to No Good': Black on the Streets and Encountering Police" in V Satzewich, ed, *Racism and Social Inequality in Canada: Concepts, Controversies & Strategies of Resistance* (Toronto: Thompson Educational Publishing, 1998) 157; Canada, Royal Canadian Mounted Police, "Inequality Before The Law: The Canadian Experience of 'Racial Profiling'" (Ottawa: Community, Contract and Aboriginal Policing Services Directorate, February 2007) (Written by: Ron Melchers).

⁷⁹ Kazarian, Crichlow & Bradford, *Diversity Issues in Law Enforcement*, *supra* note 21 at 202.

Committee on the Elimination of Racial Discrimination reminded the Government of Canada about the obligations to:

Investigate and punish the practice of racial profiling; (c) Train prosecutors, judges, lawyers, other judicial and police officers in the criminal justice system on the principles of the Convention; (d) Provide the Committee with statistical data on the treatment of African Canadians in the criminal justice system; (e) Conduct a study on the root causes of the over-representation of Africans Canadians in the system of criminal justice.⁸⁰

Commentary regarding Article 26 of the *ICCPR* indicates that this provision is to be interpreted as requiring not only protection against discrimination, but also positive action to promote equality.⁸¹ The record of the Canadian government is abysmal when it comes to promoting equality for African Canadians.

A 2002 series on race, policing and crime in Toronto documented the racial profiling and harsher treatment of African Canadians with respect to arrests, stops, searches and release.⁸² A 2010 and another 2012 series on racial profiling by the *Toronto Star* newspaper revealed that despite a slate of changes including a new police chief and more racial diversity in the police force's higher ranks, racial bias *is* a factor in police decisions as evidenced by the following:

- Although African Canadians make up 8.4 per cent of Toronto's population, they account for three times as many contacts with police;
- African Canadian males aged 15-24 are stopped and documented 2.5 times more than white males the same age⁸³; and
- Differences between the rates of carding between African Canadian and white groups are highest in more affluent, mostly white areas of Toronto, indicating the presence of the "out-of-place" phenomenon.⁸⁴

⁸⁰ Committee on the Elimination of Racial Discrimination, Report on the Eightieth Session, UNCERD, 2012, Supp No 18, UN Doc N67118 (2012) at 3.

⁸¹ B.G. Ramcharan, "Equality and Non-discrimination" in Louis Henkin, ed, *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981) 246 at 255.

⁸² Jim Rankin, "Singled Out," *The Toronto Star* (19 October 2002); Jim Rankin, "The Story Behind The Numbers", *The Toronto Star* (19 October 2002); and Jim Rankin, "Police Target Black Drivers, Star Analysis of Traffic Data Suggests Racial Profiling" *The Toronto Star* (20 October 2002); *Toronto Star*, "Star's Race Profiling Series Valid, Board Told York U. Professor Explains Analysis", December 11, 2002; Michael Friendly, *Analysis of Toronto Police Data Base*, (York University, 2003).

⁸³ Jim Rankin, "Race Matters: Blacks documented by police at high rate," *The Toronto Star* (6 February 2010), online: <http://www.thestar.com/specialsections/raceandcrime/article/761343--race-matters-blacks-documented-by-police-at-high-rate>.

⁸⁴ Jim Rankin, "Race Matters: Blacks documented by police at high rate," *The Toronto Star* (6 February 2010), online: <http://www.thestar.com/specialsections/raceandcrime/article/761343--race-matters-blacks-documented-by-police-at-high-rate>; Royson James, "Change trickles slowly to the streets," *The Toronto Star* (6 February 2010), online: <http://www.thestar.com/news/article/761503--james-change-trickles-slowly-to-the-streets>; Jim Rankin, "Police ponder how to best to collect race data," *The Toronto Star* (15 February 2010), online: <http://www.thestar.com/specialsections/raceandcrime/article/765605--police-ponder-how-best-to-collect-race-data>; Jim Rankin, "Story behind the numbers" *The Toronto Star* (6 February 2010), online: <http://www.thestar.com/specialsections/raceandcrime/article/761069--story-behind-the-numbers>;

- According to a 2012 analysis undertaken by the *Toronto Star*, African Canadians were the target of almost 25% of all contact cards filled out between 2003 and 2008. This report also found that between 2008 and mid-2011, the number of young African Canadian males carded in Toronto was 3.4 times higher than the city's actual population of African Canadian young men.⁸⁵
- In July 2014, the *Toronto Star* reported that since July 2013, carding in Toronto dropped by 75%. After the July 2013 drop in carding numbers, the proportion of contact cards for African Canadians rose to 27.4 per cent.⁸⁶

The aforementioned reports from the *Toronto Star* expose the anti-Black racist outcomes of the practice of what is called “carding”. Carding is a process whereby Toronto police officers arbitrarily stop and question innocent people (predominantly African Canadians) who are not under investigation, arrest or detention and record in the police database the personal details of the individual and, who they are with. This personal information is stored indefinitely in a police database to which neither the individuals carded nor the general public have open access. A 2014 independent study into the practice of carding was commissioned by the Toronto Police Services Board and found that even children (young people younger than 18) were being subjected to carding.⁸⁷

This insidious practice of police carding is officially sanctioned and avidly supported by the Toronto Police Service and its Chief of Police, despite the fact that this practice has proven to disproportionately target African Canadians. Ultimately, carding, as a form of racial profiling, amounts to direct and systemic violation of African Canadians’ right under Article 26 of the *ICCPR* to be regarded as equal before the law and entitled without discrimination to the equal protection of the law, namely African Canadians’ right to be free from arbitrary detention.

Policing that violates the civil and political rights of African Canadians is not restricted to Toronto.⁸⁸ The Chief of Police Services in the Ontario city of Kingston admitted that racial

and *Toronto Star*, “The Chief on race, crime, and policing” (6 February 2010), online: <http://www.thestar.com/specialsections/raceandcrime/article/761112--the-chief-on-race-crime-and-policing>.

⁸⁵ *Toronto Star* – “Known to Police” See online:

http://www.thestar.com/news/gta/2012/03/09/known_to_police_how_the_star_analyzed_toronto_police_stop_and_arrest_data.html

⁸⁶ Jim Rankin, Patty Winsa, “Carding drops but proportion of blacks stopped by Toronto police rises”, *Toronto Star* (July 26 2014). Online:

http://www.thestar.com/news/insight/2014/07/26/carding_drops_but_proportion_of_blacks_stopped_by_toronto_police_rises.html

⁸⁷ Patty Winsa, “Toronto Police ‘carding’ policy to be assessed by third party”, *Toronto Star* (December 14, 2014) Online:

http://www.thestar.com/news/gta/2014/12/14/toronto_police_carding_policy_to_be_assessed_by_thirdparty.html; Neil Price, “*This Issue Has Been With Us For Ages*”: A Community-Based Assessment of Police Contact Carding in 31 Division: Final Report” (Logical Outcomes: November 2014) at 64. Online:

<http://capptoronto.ca/wp-content/uploads/2014/07/CAPP-Final-Report-WEB201114.pdf>

⁸⁸ Kelly Bennett, “Hamilton police street checks linked to carding by Toronto report”, CBC News (June 5 2015).

Online: <http://www.cbc.ca/news/canada/hamilton/news/hamilton-police-street-checks-linked-to-carding-by-toronto-report-1.3100594>

profiling was a common police tactic.⁸⁹ A 2006 study of police statistics on Kingston found that African Canadian males were 3.7 times more likely to be stopped by police than white males.⁹⁰ More recently, in 2012 the Ottawa Police Service agreed to a settlement in a racial profiling case after a young Black man was racially profiled and physically assaulted by an Ottawa police officer who pulled him and his friends over while driving his mother's Mercedes Benz.⁹¹

Furthermore, in Montreal racial profiling has been documented as an extensive systemic practice of the police. A 2011 study on racial profiling released by Quebec's human rights commission, states the following:

In today's Québec, the "racialized" groups that are most likely to be victims of racial profiling are Blacks, persons of Latin American, South Asian or Arab origins, and Muslims as well as Aboriginals persons.

Based on the definition of racial profiling adopted by the Commission, it seems clear that the significant over-representation of Blacks among those stopped and questioned in Montréal in recent years confirms the perception that racial profiling is being applied to them.

Blacks are more often arrested and prosecuted throughout the territory of the Island of Montréal.

Blacks [all age groups combined] were 2.5 times more likely to be arrested on the Island of Montréal than whites, they were 4.2 times more likely to be stopped and questioned. These rates are at their highest levels (7 to 11 times more likely to be stopped) in neighbourhoods where there are fewer Black residents.⁹²

Racial profiling, along with other forms of police harassment and abuse are also a frequent experience for African Canadians in Nova Scotia, where there are resilient and heritage-rich African descendant communities with roots that go back to the earliest settlements of what is now Canada.⁹³

⁸⁹ William Closs & Paul F McKenna, "Profiling a problem in Canadian police leadership: The Kingston Police data collection" (June 2006) 49: 2 Can Pub Admin 143; G. McArthur & J. Pritchett, "It's official: racial profiling banned" *The Kingston Whig-Standard* (16 May 2003).

⁹⁰ William Closs & Paul F McKenna, "Profiling a problem in Canadian police leadership: The Kingston Police data collection" (June 2006) 49: 2 Can Pub Admin 143; G. McArthur & J. Pritchett, "It's official: racial profiling banned" *The Kingston Whig-Standard* (16 May 2003).

⁹¹ CBC News, "Ottawa police racial-profiling settlement questioned" (May 4 2012) Online: www.cbc.ca/news/canada/ottawa/ottawa-police-racial-profiling-settlement-questioned-1.1199823

⁹² Paul Eid, *Racial Profiling and Systemic Discrimination of Racialized Youth* (Quebec: Commission des droits de la personne et des droits de la jeunesse, 2011) at 10, 28-29.

⁹³ Michelle Y. Williams, "A Nova Scotian Restorative Justice: A Change Has Gotta Come" (2013) 36:2 Dal LJ 420 at 448.

While progress on racial profiling is to be commended as an important first-step, the inconsistency in standardization of police service models that address systemic racism in policing presents cause for concern.⁹⁴ Communities that are subjected to racial profiling are unfairly over-policed, unjustly scrutinized and disproportionately represented in the criminal justice system. However, it is not only the police in urban centres that are responsible for this.

In October 2013, police officers from the Ontario Provincial Police collected DNA samples from migrant workers in Tillsonburg, Ontario after a woman was sexually assaulted by an unknown person. As many as 100 men who had come to Canada as Seasonal Agricultural Workers from the Caribbean and Mexico were asked to provide a DNA sample though many of the men were not within reasonable parameters of the suspect's description. None of these men were ever charged or convicted of the alleged offence and yet their DNA samples remain warehoused in a police database. Since March 3, 2014, the Office of the Independent Police Review Director has been undertaking a review of Ontario Provincial Police practices for obtaining DNA samples from specific groups during criminal investigations.⁹⁵

Racial profiling contributes to the over-representation of African Canadians in all levels of Canada's criminal justice system. By failing to adequately address and eradicate the pervasive problem of racial profiling, Canada is in violation of its non-discrimination obligations under the *ICCPR* (Articles 2 and 26) and the *Convention on the Elimination of All Forms of Racial Discrimination*.

The ACLC encourages the Committee to review the Government of Canada's compliance with the *ICCPR* in light of the above, especially in considering Canada's obligations of non-discrimination under Articles 26 and by extension, Article 2 of the *ICCPR*.

Canada's Police Accountability Deficit: The SIU and the OIPRD

All of the above is not meant to suggest that Canada is without institutions to which African Canadians can turn for obtaining justice when they experience anti-Black racial discrimination at the hands of a state agent or office of the criminal justice system. Such institutions do exist. However, they have proven wholly ineffective, unwilling or unable to hold police accountable. Primary among the institutions that are ineffective at serving their mandate to protect civilians from police discrimination, harassment and violence, including African Canadians, are the province of Ontario's Special Investigations Unit and Office of the Independent Police Review Director.

⁹⁴ W Shaffir, V Satzewich & H Taraky, "Policing Newcomers in Canada: Policy, Training and Practice" in P Van Aerschot & P. Daenzer, eds, *Integration and the Protection of Immigrants from Nordic Perspective* [Forthcoming in London; Ashgate] online: < p2pcanada.ca/wp-content/uploads/2011/11/Policing-final-report.doc > at 20.

⁹⁵ Office of the Independent Police Review Director, "OIPRD TO REVIEW OPP PRACTICES FOR OBTAINING VOLUNTARY DNA SAMPLES IN POLICE INVESTIGATIONS" (3 March 2014) online: OIPRD < https://www.oiprd.on.ca/CMS/oiprd/media/image-Main/PDF/NewsRelease--OPP-DNA-Systemic-Review_E.pdf>.

The following discussion and examination of these institutions relies on and draws from a February 2015 report by the Policing Literacy Initiative (PLI), which is a Toronto-based grassroots public education and advocacy group focused on policing and public safety in Ontario. The report is entitled “What We Can Learn from Policing and Public Safety in Toronto”.⁹⁶

The Special Investigations Unit

As reported by the PLI, the SIU was established in 1990 in response to community and political pressure for increased police accountability and laying of criminal charges against police officers after a series of deadly use of force incidents against members of Toronto’s African Canadian community. Ontario’s Special Investigations Unit (“SIU” or “the Unit”) is a civilian law enforcement agency that investigates incidents involving the police that result in death, serious injury or allegations of sexual assault. As a provincial agency of the Government of Ontario’s Ministry of the Attorney General, the SIU, at least in legislation, operates independently of any police service.⁹⁷

The PLI report also points out that the legitimacy, effectiveness and relevance of the SIU is severely compromised by the fact that it has a low charge-rate, tends to primarily employ former police officers as investigators, and does not communicate in an open, accessible and transparent way with the public about its activities and operations.⁹⁸

The SIU does not track the results of charges laid based on its investigative work, but the *Toronto Star* newspaper analyzed 3,400 SIU investigations from 1990 to 2010 and found that in the Unit’s first twenty years, only 16 officers had been convicted of a crime, while only 3 officers have spent time in prison as inmates. Most appallingly, in its 25 years of existence, the SIU’s interventions have not led to a single instance of a police officer being prosecuted for deadly use of force against an African Canadian.⁹⁹ This is despite the fact that African Canadians are significantly over-represented in police use of force incidents.¹⁰⁰

The Office of the Independent Police Review Director (OIPRD)

The Office of the Independent Police Review Director is another institution that, despite its progressive mandate, has failed to effectively protect African Canadians from police abuse and brutality. The information below is reproduced from the PLI report as it most accurately

⁹⁶ Jamil Jivani, ed. (February 2015) Online : <https://urbanalliance.files.wordpress.com/2015/02/pli-what-we-can-learn-from-policing-and-public-safety-in-toronto-feb-2015.pdf>

⁹⁷ *Ibid.* at 7 -10

⁹⁸ *Ibid.*

⁹⁹ *Supra* Note 97

¹⁰⁰ Ajamu Nangwaya, “Fact Sheet on Police Violence in the Jane-Finch Community of Toronto” Global Research, March 19 2015. Online: <http://www.globalresearch.ca/fact-sheet-on-police-violence-in-the-jane-finch-community-of-toronto/5437581>; See also: Ajamu Nangwaya “Fact Sheet on Police Violence Against the African Community in Canada” <http://toronto.mediacoop.ca/blog/ajamu-nangwaya/18378>

captures the origins, nature and limitations of the OIPRD.¹⁰¹

The Office of the Independent Police Review Director (“OIPRD”) is legislatively mandated to receive complaints from civilians about the police services in Ontario. Established in 2009, the OIPRD conducts investigations and holds professional standards hearings in relation to officers’ employment when a civilian complains of police conduct. The codes of conduct of the police services that the OIPRD regulates are the rules that it enforces. Investigations are often conducted by police officers working under the supervision of the OIPRD.¹⁰²

Since 2009, the OIPRD has received over 17,000 complaints, with just over 3100 received in 2014. Upon receipt of a complaint, the OIPRD first screens it to determine whether it warrants an investigation. If it does, they either refer the complaint to the police service against which it was filed for investigation, refer the complaint to a different police service for investigation, or retain the complaint and investigate it themselves. Complaints about police policies or services must be referred to a Police Chief or to the Ontario Provincial Police (“OPP”) Commissioner. Investigations that are referred to police services are supervised by an OIPRD case coordinator. Complainants are to be kept informed throughout the process concerning the progress of their complaint.¹⁰³

In addition to investigating complaints, the OIPRD can undertake systemic reviews of police services. While the Office has undertaken a systemic review of the Ontario Provincial Police’s practices for obtaining voluntary DNA samples from Ontario-based racialized migrant workers from the Caribbean and Mexico, it has not undertaken a review of the Toronto police practice of carding, which is discussed above.

As noted in the PLI report, one of the significant limitations of the OIPRD is its reliance on police professional standards officers within police services to investigate some citizen complaints. The OIPRD oversees these investigations after they are “referred” to professional standards officers. The director has discretion to take over an investigation, in which case OIPRD staff assume the role of investigators.¹⁰⁴

The OIPRD is only able to recommend professional standards hearings. The hearings are entirely staffed by lawyers and adjudicators that have been selected by police.¹⁰⁵ The result is that it is “nearly impossible”, states the PLI report, to give an officer a harsher than minimal penalty even when there is strong evidence to support such action. The OIPRD does not conduct criminal investigations. Although the OIPRD provides materials through community outreach and learning seminars and it has a small social media presence and creates commercial advertising. However, as noted in the PLI report, most Ontarians are still totally unaware of the existence of the OIPRD. This has the effect of promoting a “lack of public awareness about a possible remedy for pervasive police misconduct” the report continues, and

¹⁰¹ *Supra* Note 96 at 14-18.

¹⁰² *Ibid.*

¹⁰³ *Supra* Note 96 at 15.

¹⁰⁴ *Ibid.* at 16.

¹⁰⁵ *Supra* Note 96 at 17.

also “means that many individuals who have legitimate complaints to make will never know that they have any recourse.”¹⁰⁶

Another considerable limitation of the OIPRD that was highlighted by the PLI is that it automatically screens out any complaint that is older than six months. This limitation period is unreasonably short.¹⁰⁷ Because of the significant power imbalance between police and civilians, a negative interaction with a police officer can be so traumatic as to leave a civilian needing more than 6 months to find the calm, courage, information and support to file a police complaint. Given the disproportionate contact of police with African Canadians, and the statistical over-representation of African Canadians in use of force incidents, this limitation period has a discriminatory impact on Ontario’s African descendant population.

The abovementioned limitations of both the SIU and OIPRD deny African Canadians their right to be recognized as equal before the law and to enjoy equal protection of the law without discrimination, pursuant to Articles 26 and 2 of the *ICCPR*. The above-noted shortcomings of both institutions call into question the independence, effectiveness and accountability of these police over-sight bodies and policing in general. This significantly diminishes public confidence in the police, and the police complaints process, especially when considering that these oversight institutions essentially allow police to either investigate other supervise the investigations of other police officers.

Anti-Black Hate Crimes

Police-reported hate crimes refer to criminal incidents that, upon investigation by police, are determined to have been motivated by hate towards an identifiable group. The most recent statistics reveal an alarming trend of victimization based on race, especially for African Canadians.¹⁰⁸

According to Statistics Canada¹⁰⁹, in 2013, there were 585 police-reported hate crimes motivated by race or ethnicity. Black populations continue to be the most highly targeted group among these incidents, accounting for 44% of racial hate crimes (or 22% of all hate crimes).

In 2013, there were 255 police-reported hate crime incidents that targeted Black populations. This represented an estimated rate of 27.0 incidents per 100,000 persons in Canada reporting that they were Black.¹¹⁰

Over the period from 2010 to 2013, about two-thirds (66%) of hate crimes targeting Black populations were non-violent, mostly involving mischief (56%). Violent offences made

¹⁰⁶ *Ibid.*

¹⁰⁷ *Supra* Note 96 at 17-18.

¹⁰⁸ Government of Canada, Mary Allen, *Police-reported hate crime in Canada, 2013* (Canadian Centre for Justice Statistics) at 15. Online: <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14191-eng.pdf>

¹⁰⁹ *Ibid.*

¹¹⁰ *Supra* Note 108

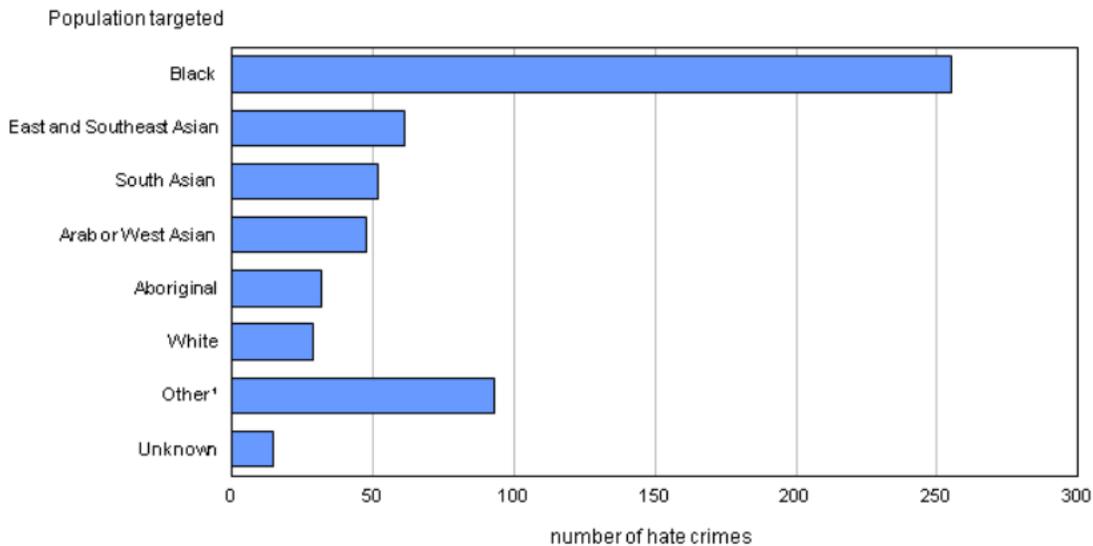
up 34% of hate crimes targeting Black populations. More specifically, assault accounted for 19% of hate crimes against Black populations.¹¹¹

Victims of violent hate crimes targeting Black populations from 2010 to 2013 were predominantly male (73%). As with hate crimes in general, victims were often young; 39% were under age 25.¹¹²

The majority (55%) of individuals accused of hate crimes targeting Black populations from 2010 to 2013 were under age 25, including 34% under age 18. Of these accused youth (aged 12 to 17), 42% were accused of mischief.¹¹³

In 2013, there were 585 police-reported hate crimes motivated by race or ethnicity. Black populations continued to be the most highly targeted group among these incidents, accounting for 44% of racial hate crimes (or 22% of all hate crimes).¹⁷ Hate crimes targeting East and Southeast Asian populations¹⁸ comprised 10% of race/ethnicity hate crimes, followed by those targeting South Asian¹⁹ (9%), Arab and West Asian²⁰ (8%) and Aboriginal (5%) populations (Chart 7, Table 7). It should be noted that the overlap between race/ethnicity and religion for some populations may have an impact on hate crime statistics, as some religious populations (communities) may also be targeted in hate crimes motivated by race or ethnicity.

Chart 7
Number of police-reported hate crimes motivated by race or ethnicity, Canada, 2013



1. Includes motivations based upon race or ethnicity not otherwise stated (e.g. Latin American, South American) as well as hate crimes which target more than one race or ethnic group.

Note: Information in this chart reflects data reported by police services covering 99% of the population of Canada.

Source: Statistics Canada, Canadian Centre for Justice Statistics, Incident-based Uniform Crime Reporting Survey.

Between 2012 and 2013 there was a 17% decline in police-reported hate crimes motivated by race or ethnicity, with 119 fewer incidents reported. The decline was greatest for hate crimes targeting Arab and West Asian (-16 incidents) and Black populations (-40 incidents). As with hate crime generally, the declines were primarily in non-violent incidents. There was an increase in reported hate crimes targeting East and Southeast Asian populations (+11 incidents) as well as White populations (+9 incidents). In these cases, the increase was primarily in the number of violent incidents.

Similarly, Statistics Canada has also reported in 2012, there were 295 police-reported hate crime incidents that targeted African Canadian populations. This represented an estimated rate

¹¹¹ *Ibid.*

¹¹² *Supra* Note 108

¹¹³ *Ibid.*

of 31.2 incidents per 100,000 persons in Canada reporting that they were Black. In 2012, almost three-quarters of hate crimes targeting African Canadian populations in 2012 were non-violent (71%); these mostly involved mischief (59% of Black hate crimes). Violent offences made up 29% of hate crimes targeting African Canadian populations.¹¹⁴

Alarming, these statistics reveal that, while representing only 2.9% of the Canadian population, African Canadians continued to be the most commonly targeted victims of race-based hate crimes.¹¹⁵

As the ACLC noted in its 2012 Report on the Canadian Government's Compliance with the *International Convention on the Elimination of All Forms of Racial Discrimination*, there are several reasons why hate crimes should be singled out for special attention by the criminal justice system beyond the current provisions of Canada's *Criminal Code*.¹¹⁶

First, while the presence of aggravating factors presumably leads to harsher sentences, there is no way to ascertain whether this in fact occurs. Because the *Code* makes no distinction between an assault and an assault motivated by racism (the sentence may differ, but the conviction is the same), it is practically impossible to track and measure the efficacy of hate crime prosecutions and convictions. The absence of a federal offence for race based assaults thus creates a problem with transparency and accountability. Similar concerns have been voiced by police forces.¹¹⁷

Second, Canadians who are not members of one of the usually targeted communities have difficulty comprehending the seriousness of hate crimes. Since racial minorities are underrepresented among criminal justice professionals, the seriousness of hate crimes is also not fully appreciated in the criminal justice system.¹¹⁸ As such, in practice, victims and community groups have to exert pressure on prosecutors to have offences recognized as a hate crime motivated by anti-Black racism.¹¹⁹ Leaving hate-motivated crimes to be dealt with by the sentencing provisions of the *Code* thus presume a racial equality before the law that does not exist for African Canadians. Rather, because the prosecutor must request that the judge consider the racist nature of the crime, a lack of understanding of anti-Black racism by prosecutors and/or the members of the judiciary often prevents hate and bias towards African Canadians from being considered.¹²⁰

¹¹⁴ Government of Canada, Mary Allen, *Police-reported hate crime in Canada, 2012* (Canadian Centre for Justice Statistics) Online: <http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14028-eng.htm>

¹¹⁵ *Ibid.*

¹¹⁶ African Canadian Legal Clinic, *Errors and Omissions: Anti-Black Racism in Canada – A Report on the Canadian Government's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination* (January 24, 2012) at 34-36. Online:

http://www2.ohchr.org/english/bodies/cerd/docs/ngos/AfricanCanadianLegalClinic_CANADA_CERD80.pdf

¹¹⁷ *Ibid.* at 34.

¹¹⁸ *Supra* Note 116 at 35.

¹¹⁹ *Ibid.*

¹²⁰ *Supra* Note 116 at 35

Third, relatively few hate crime cases are completed in Canadian courts. As an example, in 2009, Canadian police services reported 1,473 hate crimes. Nonetheless, adult courts completed only 14 cases involving at least one hate crime charge, while youth courts completed only five. Of the 14 cases in adult court, hate crime charges accounted for the most serious charge in just two cases, both of which resulted in the accused person being found guilty and subsequently sentenced to probation. Similarly, in all five cases in youth court, the hate crime charges were not determined to be the most serious offence. As noted earlier, there is currently no data available on the use of sentencing provisions related to hate crime. The low number of completed hate crimes cases points to a lack of strong public condemnation of hate crimes and sends a message to victims that they do not merit proper protection. As a result, victims of hate appear to be reluctant to report incidents to police. Self-reported victimization data from Canadians suggests that only about one-third (34%) of incidents perceived by respondents to have been motivated by hate are subsequently reported to police. According to police sources, the reporting rate is even lower for African Canadians due to the African Canadian community's mistrust of the police and the criminal justice system.¹²¹

Finally, hate crimes have effects upon the victim beyond those commonly associated with non-bias crimes. Information on self-reported victimization, collected by the General Social Survey ("GSS"), for example, suggests that the emotional consequences for victims of crimes motivated by hate are greater than for victims of crimes not motivated by hate. For example, for four in 10 crimes perceived to have been motivated by hate, victims stated that they found it difficult or impossible to carry out their everyday activities; this was double the proportion of crimes that had not been motivated by hate.¹²²

Also, unlike other crimes, the effects of hate crimes reach far beyond the immediate victim, impacting whole communities. "Hate crimes convey a message of fear to all members of the community to which the specific individual belongs." If a crime is motivated by racism, and this is not taken into account by the criminal justice system, the system will have failed to reflect the true extent of the harm caused by the crime. "To the extent that victims are aware of this, they may well become disenchanted with the criminal justice response, and this may reduce still further the probability that such incidents will be reported to the police."¹²³

The only way to protect African Canadians, to publicly denounce anti-Black hate crimes, and to ensure consistent sentences for race-based hate crimes across the country is to enact a criminal offence of race-based assault. Such a provision has been enacted in other jurisdictions and is a clear affirmation by states that race-based violence requires specific recognition and attention.¹²⁴

This was already communicated to the Human Rights Committee in the ACLC's January 2012 Report on the Canadian Government's Compliance with the *International Convention on the*

¹²¹ *Supra* Note 116 at 35

¹²² *Supra* Note 116 at 35-36.

¹²³ *Supra* Note 116 at 36

¹²⁴ *Ibid.*

Elimination of All Forms of Racial Discrimination.¹²⁵ On the present occasion of the Human Rights Committee's assessment of the Canadian Government's Compliance with the *International Covenant on Civil and Political Rights*, the ACLC encourages the Committee to direct the Canadian Government to take a firm and definitive stance against anti-Black hate crimes by immediately taking steps to develop and implement a comprehensive action plan against anti-Black racism and hate crimes. Without such action, Canada stands in violation of Article 26 (and by extension Article 2) of the *ICCPR* for failing to provide African Canadians with equal protection of the law as well as equal and effective protection against discrimination.

Article 24 -- Over-representation of African Canadian Children in the Child Welfare System and Rates of School Discipline

Canada is bound by the internationally recognized set of rights for children as expressed in Article 24 of the *ICCPR* and Article 9(1) of the *Convention on the Rights of the Child*¹²⁶. In Canada, child protection legislation is under provincial jurisdiction requiring that any federal effort to understand children's rights engages provincial initiatives. In Ontario, children's aid societies also provide specific services to Jewish, Catholic and aboriginal families. African Canadians do not yet have a child welfare agency established that is directed, developed or operated by the African Canadian community.

There is a gross over-representation of African Canadian youth and children in child welfare systems in Ontario. It is reported that 65% of the children and youth in the care of a Children's Aid Society in the Greater Toronto Area are African Canadian.¹²⁷ Yet, African Canadians make up only 6.9% of Toronto's population and just 8% of the city's population is under the age of 18.¹²⁸ Contrastingly, 37% of children in care in Toronto are white, while more than 50% of the city's population under 18 years old is white.¹²⁹ The relative youth of African Canadians across Canada demands attention to the disproportionate amount of Black children in child welfare systems. In 2001, children under the age of 15 made up 32% of all those with African ethnic origins, whereas children represented just 19% of the overall population.¹³⁰

¹²⁵ *Supra* Note 116.

¹²⁶ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

¹²⁷ Child Welfare Anti-Oppression Roundtable, an initiative which includes representation of almost half of the 52 child welfare agencies in Ontario; Gordon Pon et al, "Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare" (2011) 3 & 4 *Intl J of Child, Youth and Fam Stud* 385 at 386.

¹²⁸ Statistics Canada, *Canada's Ethnocultural Mosaic, 2006 Census: Canada's major census metropolitan areas, Toronto: Largest number of visible minorities in the country* (Ottawa: Statistics Canada, 2010), Catalogue No. 97-562-XIE2006001, online: <<http://www12.statcan.ca/census-recensement/2006/as-sa/97-562/p21-eng.cfm>>.

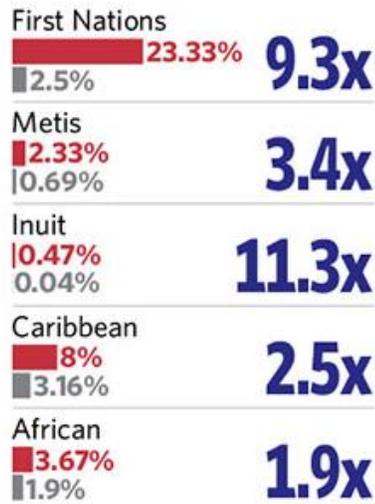
¹²⁹ Sandro Contenta, Laurie Monsebraaten & Jim Rankin, "Why are so many black children in foster and group homes?," *Toronto Star* (11 December 2014), online: *Toronto Star* <http://www.thestar.com/news/canada/2014/12/11/why_are_so_many_black_children_in_foster_and_group_homes.html>.

¹³⁰ Statistics Canada, "The African Community in Canada" (Ottawa: Statistics Canada, 2007) online: Statistics Canada <<http://www.statcan.gc.ca/pub/89-621-x/89-621-x2007010-eng.htm>>.

Black and aboriginal children in care

OVERREPRESENTED: First Nations and black children in care in Ontario are overrepresented when compared to the percentages they make up of the province's under 18 population. All figures below are for under 18 populations, based on a survey of 6,900 children. Only 15 Inuit children were involved.

- Per cent of children in care whose parents and/or ancestors are from this background
- Per cent of the under 18 population in Ontario that the group represents
- How many times more a group in care is overrepresented



SOURCES: 2014 OnLac Survey of children in care at least one year, Statistics Canada TORONTO STAR GRAPHIC

A leaked memo from a Children's Aid Society manager in Ontario requested that staff not close any ongoing cases during March 2013 as a strategy to guarantee funding since welfare agencies in Ontario are transfer payment agencies that receive government funding (no matter the formula) based on the number of children in its care.¹³¹ Motives for the apprehension and placement of children in care by the state are not in all cases noble or objective.

In other words, as reported in the ACLC's 2012 Submissions to the Committee on the Rights of the Child on the Third and Fourth Reports of Canada¹³² the alarming rate of apprehension of African Canadian children and youth can be partially attributed to funding formulas that prioritize child removal over prevention, family preservation and support. Reminiscent of the devastating federal funding of Aboriginal Residential Schools that paid churches on a per capita basis to house Aboriginal children removed from their families and communities, today's funding structures continue to reward the apprehension of children. In *A New Approach to Funding Child Welfare in Ontario*, a report published in 2011 by the Commission to Promote Sustainable Child Welfare, for example, the Commission identified that this funding formula creates a "perverse incentive" for children's aid societies ("CASs") to maximize volumes of higher cost services (e.g. foster care) in order to ensure positioning for next year's funding.¹³³

Funding is tied to specific cost factors which in turn are tied to specific activities. Since the highest cost activities relate to supporting children in foster and group

¹³¹ Katie Daubs, "In leaked memo, Peel CAS staff asked to keep cases open to retain funding," *Toronto Star* (14 March 2013) online: *Toronto Star* GTA:

<http://www.thestar.com/news/gta/2013/03/14/in_leaked_memo_peel_cas_staff_asked_to_keep_cases_open_to_retain_funding.html>.

¹³² Moya Teklu, *Canada's Forgotten Children*, African Canadian Legal Clinic, July 2012 at 10-12.

¹³³ *Ibid* at 10

care, the current approach inadvertently rewards CASs that maintain “in care” volumes resulting in an inherent disincentive to find alternative lower cost avenues to support children and families.¹³⁴

The current funding formula thus creates an incentive among provincial children’s aid societies to contravene Article 24 of the *ICCPR* and remove children from their homes even when it is not in their best interests to do so. Given the socio-economic vulnerability of the African Canadian population, and the over-monitoring that African Canadians are often subjected to due to pervasive stereotypes about their inherent aggression, criminality and lack of intelligence, it is not surprising that the cost of this “perverse incentive” is largely borne by African Canadian children and their families.¹³⁵

Further concern stems from the lack of aggregate data about the experience of visible minority children in child welfare systems, and the resulting knowledge gap with respect to African Canadian children. Most children’s aid societies do not collect data on race despite a 2012 provincial report¹³⁶ and the 2005 Standing Senate Committee on Human Rights¹³⁷ recommending that ethnic background information be captured. The gap in information presents barriers to addressing the overlap between the over-representation of African Canadians in the youth criminal justice system and child welfare system.¹³⁸ Canadian standards and principles for the protection of children’s rights can only become a reality when they are respected by all levels of government.

Not only are African Canadian children removed from their families in circumstances where such action is likely unwarranted, reports to the ACLC suggest that they are not being placed in culturally appropriate familial settings. The province of Ontario has in place practices that are meant to increase the utilization of extended family and kin networks. According to the Ontario Association of Children’s Aid Societies (“OACAS”), these options reduce the stress for children coming into care, maintain family and community ties, and increase the likelihood of the child’s reunification with his/her primary family.¹³⁹

For generations, extended families and kin networks have cared for children whose parents are experiencing challenges or are in need of support. In addition, many African Canadians come

¹³⁴ *Ibid.*

¹³⁵ *Supra* Note 133 at 10-11.

¹³⁶ Ene Underwood, Barry Lewis & Wendy Thomson, Commission to Promote Sustainable Child Welfare, “Realizing A Sustainable Child Welfare System in Ontario” (19 September 2012) online: <http://www.children.gov.on.ca/htdocs/English/documents/topics/childrensaid/commission/2012sept-Final_report.pdf>.

¹³⁷ The Honourable Raynell Andreychuk (Chair) and The Honourable Landon Pearson (Deputy Chair). “Who’s in Charge Here? Effective Implementation of Canada’s International Obligations with Respect to the rights of Children.” Interim Report: Standing Senate Committee on Human Rights. November 2005.

¹³⁸ The Honourable Raynell Andreychuk (Chair) and The Honourable Landon Pearson (Deputy Chair). “Who’s in Charge Here? Effective Implementation of Canada’s International Obligations with Respect to the rights of Children.” Interim Report: Standing Senate Committee on Human Rights. November 2005.

¹³⁹ *Supra* Note 132 at 11

from societies where the nuclear family is not the norm and where more importance is placed on the clan or the extended family. 39 Nonetheless, reports to the ACLC suggest that extended family members and community members of African Canadian children in care are often dismissed outright as viable alternatives. As a result, African Canadian children are not only taken out of their immediate homes, they are also removed from their families, communities and cultures. This has serious cultural implications for African Canadians over and above non-racialized children and youth. As acknowledged by the Supreme Court of Canada, “[r]ace can be a factor in determining the best interests of the child because it is connected to the culture, identity and emotional well-being of the child.”¹⁴⁰

Culture is the essence of being human. Culture is the bridge that links the present with the past and the past with the future. Culture provides a sense of historical continuity. It is a protective device structured to eliminate trial and error in the past and the future. Culture is second nature. It is a person's values, beliefs, learnings [sic.], practices, and understandings that are passed on.¹⁴¹

Children of African descent learn about their identity from within the home and community. African Canadian children that are removed from their homes, schools, religious institutions, friends, and families are thus disengaged from their cultural background and denied the opportunity for optimal development and functioning. As suggested by academics in the context of the over-representation of Aboriginal children and youth in the Canadian child welfare system and African American children in the US child welfare system, this apparent disregard for continuity in the upbringing, and ethnic, religious, cultural and linguistic background of African Canadian children amounts to “institutionalized assimilation.”¹⁴² This amounts to a violation of Article 24 the *ICCPR* and the protection it is meant to afford African Canadian children.

African Canadian Children and the School to Prison Pipeline

In Canada’s largest school board, the Toronto District School Board (TDSB), African Canadian students make up approximately 12% of high school students, yet these students are disturbingly over-represented in suspension rates, making up 31 % of all suspensions.¹⁴³

The percentage of African Canadian primary school students suspended from school in 2011-2012 was 1.5%, while the rate of suspension for white students was 0.5. In TDSB high schools

¹⁴⁰ *Ibid.*

¹⁴¹ *Supra* Note 132 at 12

¹⁴² *Supra* Note 132 at 12

¹⁴³ Jim Rankin, “Toronto school suspension rates highest for black and aboriginal students”, *Toronto Star*. See online:
http://www.thestar.com/news/gta/2013/03/22/toronto_school_suspension_rates_highest_for_black_and_aboriginal_students.html.

the rate of suspension among African Canadian students in 2011-2012 was 8.6%. For white high school students during that same year, it was 2.9%.¹⁴⁴

Disproportionate rates of discipline lead to what is commonly referred to as the “school to prison pipeline.” According to this theory, those students who are disciplined are more likely to drop out, and those students who drop out are more likely to turn to criminality. As an example, in 2009, a *Toronto Star* analysis found that Toronto schools with the highest suspension rates tended to be in parts of the city that also had the highest rates of provincial incarceration.⁸² As another example, recent figures show that more than 70% of Canadian inmates did not complete high school.⁸³ The above statistics show that African Canadian students continue to be disproportionately targeted for school discipline. As such, it is no surprise that they continue to leave school and enter the prison system at such alarming rates. This points to Canada’s failure to ensure that African Canadian children enjoy, without discrimination, the right to such measures of protection as are required as minors, pursuant to Article 24 of the *ICCPR*.

Article 17 in relation to Articles 3 and 24 - Crisis of Housing and Homelessness for African Canadian Families

The housing crisis in Canada is well recognized internationally and domestically. After a 2007 mission to Canada, the Special Rapporteur on Adequate Housing declared a “national emergency” of inadequate housing and homelessness in Canada.¹⁴⁵ The international human rights expert members of the Committee on Economic, Social and Cultural Rights have also called upon Canada’s “federal, provincial and territorial governments to address homelessness and inadequate housing as a national emergency”.¹⁴⁶

Canada’s international obligation to ensure adequate housing is recognized in multiple ratified covenants. While Article 11(1) of the *ICESCR*¹⁴⁷ explicitly outlines the right to housing, Article 17 of the *ICCPR* protects persons from arbitrary or unlawful interference with their home. The obligation of a State to realize Article 17 of the *ICCPR* is not qualified by State’s availability of resources. The preamble of the *ICCPR* notes the interconnection of Article 17 with other violations of civil and political rights, such as the right to life, right to security of the person, right to non-interference with privacy, family and home and the right to peaceful enjoyment of possessions:

¹⁴⁴ <http://www.tdsb.on.ca/Portals/0/AboutUs/Research/CaringSafeSchoolsCensus201112.pdf>

¹⁴⁵ Miloon Kothari, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Addendum, MISSION TO CANADA* (9 to 22 October 2007)*, A/HRC/10/7/Add.3 17 February 2009, paragraph 32.

Miloon Kothari, the UN Special Rapporteur on Housing, called the housing and homelessness crisis in Canada a “national emergency.”

¹⁴⁶ CESCR, Concluding observations, 22 May 2006, E/C.12/CAN/CO/4 - E/C.12/CAN/CO/5, para. 62.

¹⁴⁷ *International Covenant on Economic and Social Cultural Rights*, GA Res. 2200A (XXI), 21 UN GAOR, Supp. No. 16 at 49, UN Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976

the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his [or her] civil and political rights, as well as his [or her] economic, social and cultural rights.

Further, Canada ratified the *Universal Declaration of Human Rights (UDHR)* that unequivocally recognizes the basic right to housing:

Everyone has the right to a standard of living adequate for the health and wellbeing of himself [or herself] and of his [or her] family, including food, clothing, housing and medical care and necessary social services...¹⁴⁸

Despite the breadth of Canada's codified obligations to housing, the country remains the only G8 nation without a federal housing strategy. Each year in Canada, 235,000 are homeless and almost one in five experience extreme housing problems due to financial affordability.¹⁴⁹ The waitlist for affordable housing in Ontario has reached an all-time high, with 165,069 households in Ontario on the waiting list as of December 2013.¹⁵⁰ With the wait list increasing every year since 2006 and average wait times spanning from four years and reaching more than ten years, the lack of financially accessible housing in Ontario is urgent.¹⁵¹

The government of Canada's sixth Periodic Report on compliance with the *ICCPR* does not address the condition of African Canadians as one of the most vulnerable groups with higher rates of poverty and housing insecurity than other Canadians, with exception to Indigenous communities. Poverty reduces the quality of housing Africa Canadians can access, which makes it more likely that African Canadians live in, and move into, neighbourhoods with lower socio-economic status.¹⁵²

The right to live free from eviction and unsafe housing can only be achieved if conditions are created whereby the government prevents eviction and the systemic pattern of housing instability caused by poverty. The housing crisis in Canada disproportionately impacts African Canadians because they are more likely to experience poverty, low-income jobs and racial and socio-economic discrimination in securing housing. In 2011, 25% of the African Canadian population in Canada lived below the poverty line compared to 11% of the non-racialized population.¹⁵³ Canadians of African descent are more than twice as likely as those in the overall population to have low incomes.

¹⁴⁸ *Universal Declaration of Human Rights*, GA Res 217A (III) A, UN Doc A/810 (1948) 71 at Article 25.

¹⁴⁹ Stephen Gaetz, Tanya Gulliver & Tim Richter, "The State of Homelessness in Canada 2014" (2014) Homeless Hub Press at 5, online: <<http://www.homelesshub.ca/SOHC2014>> at 5.

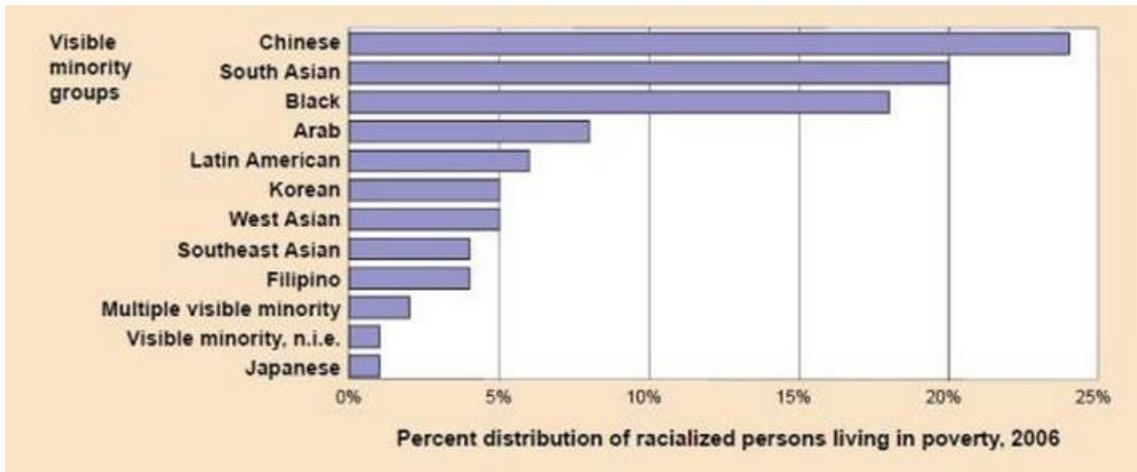
¹⁵⁰ *Waiting Lists Survey 2014*, (Ontario: ONPHA's Report on Waiting List Statistics for Ontario, 2014) at 4.

¹⁵¹ *Waiting Lists Survey 2014*, (Ontario: ONPHA's Report on Waiting List Statistics for Ontario, 2014) at 4.

¹⁵² R. Alan Walks and Larry Bourne, "Ghettos in Canadian Cities? Racial segregation, ethnic enclaves and poverty concentration in Canadian urban areas" (2006) 50(3) *The Canadian Geographer* 273 at 279, online: <http://neighbourhoodchange.ca/wp-content/uploads/2011/06/Walks-Bourne-2006-Ghettos-in-Canadas-Cities.pdf>

¹⁵³ National Council of Welfare, "A Snapshot of Racialized Poverty in Canada," (January 2012), online:

The 2006 Census data, which is the last available census data before the federal government cancelled the country's mandatory long form Census, reinforces the reality that African Canadians are among the nations poorest, especially in urban centres. As of 2006, African Canadians earn 75.6 cents for every dollar a non-racialized worker earns, with an annual earnings gap of \$9,101.¹⁵⁴ The racialized poverty among African Canadians today mirrors the economic disparity in 2000, where 47% of African Canadian children under the age of 15 lived in a situation considered to be low-income, compared with 19% of all children in Canada.¹⁵⁵ The Table below identifies the poverty rate of African Canadians based on the 2006 census data results where the poverty rate for non-racialized persons was 9%, while that of racialized persons was 22%.¹⁵⁶



Empl

ment and Social Development Canada, Government of Canada, "Snapshot of racialized Poverty in Canada."¹⁵⁷

The Table above must be considered in light of how the family dynamic of African Canadian families who are considerably less likely than other people to be married makes the levels of poverty more stark as less income earners contribute to a household. In 2001, just 37% of the

<<http://www.ncw.gc.ca/l3bd.2t.1ilshtml@-eng.jsp?lid=379&fid=1>>.

¹⁵⁴ Sheila Block & Grace-Edward Galabuzi, "CANADA'S COLOUR CODED LABOUR MARKET: The Gap for Racialized Workers," The Wellesley Institute (March 2011) online: <http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf> at 13.

¹⁵⁵ Statistics Canada, "The African Community in Canada" (Ottawa: Statistics Canada, 2007) online: Statistics Canada <<http://www.statcan.gc.ca/pub/89-621-x/89-621-x2007010-eng.htm>>.

¹⁵⁶ National Council of Welfare, "A Snapshot of Racialized Poverty in Canada," (January 2012), online: <<http://www.ncw.gc.ca/l3bd.2t.1ilshtml@-eng.jsp?lid=379&fid=1>>.

¹⁵⁷ Employment and Social Development Canada, "Snapshot of racialized Poverty in Canada," (Ottawa: EDSC, January 2012) online: EDSC http://www.edsc.gc.ca/eng/communities/reports/poverty_profile/snapshot.shtml.

Poverty is measured using Statistics Canada's after-tax low income cut-offs (LICOs). The LICOs are only available for persons in private households in the ten provinces. That means the data presented above does not include residents of the Yukon, the Northwest Territories and Nunavut, persons living on Indian reserves and residents of institutions

African population aged 15 and over was married, compared with 50% of the overall adult Canadian population. African people are also less likely than other Canadians to live in a common-law relationship. That year, 6% of Africans aged 15 and over were living in a common-law union, compared with 10% of all adult Canadians.¹⁵⁸ In 2001, women made up 87% of all African lone parents, while the figure in the rest of the population was 81%.

Policy changes by the federal and provincial governments have made housing access a financial impossibility for the disproportionate amount of Canada's poor that are African Canadian families. The 2006 concluding observations regarding Canada's compliance with the *ICCPR*, noted concern that "severe cuts in welfare programmes have had a detrimental effect on women and children, for example in British Columbia, as well as on Aboriginal people and Afro-Canadians."¹⁵⁹ Action on behalf of the governments of Canada has resulted in the gutting of social programming, combined with inaction to address the gap in adequate housing, which runs in direct contradiction to its international commitments under the *ICCPR*, the *UDHR*, Article 11 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*,¹⁶⁰ sections 7 and 15 of the *Charter*,¹⁶¹ and further does not satisfy and the right of women to housing in Article 14(h) of the *Convention on the Elimination of All Forms of Discrimination against Women*¹⁶². Due to the lack of concern for the well-being of African Canadian low-income families, Black communities in Canada remain at near bottom of the social and economic strata.¹⁶³ For the purpose of the current review of the Government of Canada's compliance with the *ICCPR*, it should be recognized that this State Party is not satisfying its obligations pursuant to Article 17, to ensure that African Canadians shall not be subjected to arbitrary or unlawful interference with their home.

¹⁵⁸ Employment and Social Development Canada, "Snapshot of racialized Poverty in Canada," (Ottawa: EDSC, January 2012)

online: EDSC http://www.edsc.gc.ca/eng/communities/reports/poverty_profile/snapshot.shtml.

¹⁵⁹ United Nations, Human Rights Committee, Eighty-fifth Session, 20 April 2006, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, concluding observations of the Human Rights Committee.

¹⁶⁰ Article 11(1) states: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent." *United Nations International Covenant on Economic, Social, and Cultural Rights*, General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27, online: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>.

¹⁶¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

¹⁶² UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249. It is worth noting that this convention protects women's equality rights in the area of housing. It does not establish a free standing right to housing specific to women.

¹⁶³ Their socio-economic circumstances and daily lived experiences partly explain, although not fully reflected in, Canada's 9th ranking in the UNDP Human Poverty Index (for OECD countries).

PART III - RECOMMENDATIONS

Based on all of the foregoing, the African Canadian Legal Clinic requests that the Human Rights Committee to recommend that the Government of Canada do the following:

Race-Based Disaggregated Data:

1. Reintroduce the mandatory long-form census in order to provide governments and community groups with an accurate statistical basis from which to pursue structural changes and rectify policies, programs and legislation that have a disparate impact on African Canadians;
2. Provide in its next period report information on any data collection measures implemented and their results;
3. Implement a nationwide mandatory disaggregated race-based data collection policy, and collect and make publicly accessible disaggregated data on police stops, searches, arrest and releases;
4. In its next period report, provide information on specific measures taken to reduce inequities affecting African Canadians at the national, provincial and territorial levels;

Reforms in the Criminal Justice System

5. Adopt national and provincial measures, including legislation and external complaint mechanism, to end racial profiling and carding by law enforcement and national security agencies
6. Provide in its next Periodic Report, information on any data collection measures implemented and their results;
7. Conduct an extensive study of systemic anti-Black racism and the over-representation of African Canadians at all levels of the criminal justice system. This should include an in-depth demonstration of an intersectional analysis along the lines of race, age, gender and mental health status to ensure that effective and corrective action can be taken for not only African Canadian male adults, but for African Canadian women, youth, and African Canadians with mental health concerns, as well.
8. Develop an effective action plan towards eliminating the disparity in rates of sentencing and incarceration of African Canadians, including such things as sentencing reforms and training on anti-Black racism for members of the police, Crown Prosecutors and members of the Judiciary;

9. Ensure that mandatory minimum sentences are eliminated and not imposed where they could or do result in the over-incarceration of African Canadians;
10. Increase the number of African Canadian staff and culturally responsive programming, supports and services to African Canadian inmates with the aim to reduce the disparity in admissions of African Canadians to segregation/solitary confinement, and discriminatory treatment experienced by this group at the hands of prison guards and administrators;
11. Ensure that the timelines for criminal pardons are not extended;
12. Ensure that conditional sentences continue to be available for those convicted of less serious violent or property offences;
13. Ensure that custodial sentences continue to be reserved as a last resort for young offenders, and expand rehabilitative and community-based programs for this group;
14. Establish rules, regulations or protocols which enhance equal treatment of child offenders and train all professionals involved in the administration of juvenile justice on their anti-discrimination obligations under domestic and international human rights instruments;
15. Adopt national and provincial measures, including legislation and external complaint mechanisms, to end racial profiling by law enforcement and national security agencies;
16. Implement measures to abolish carding, street checks and any similar practice of police forces arbitrarily engaging civilians in non-criminal encounters to extract and store their personal information in a database.
17. Immediately engage a process of reviewing and expunging all carding, street-check and non-conviction data currently in the police databases that reveal no material or relevant connection to an incidence of crime or an active criminal investigation;
18. Work with the provinces towards adopting consistent Anti-Racial Profiling legislation at the federal and provincial levels;
19. Adopt legislation forbidding the release of non-conviction records by police forces and law enforcement agencies except in very exceptional circumstances that are clearly articulated in legislation and/or regulations.
20. Amend provincial and federal human rights legislation where such legislation does not explicitly forbid discrimination on the basis of a non-conviction record of offence;

21. Develop and implement with the African Canadian community, a provincial and national strategy for identifying, providing training on, addressing and reducing anti-Black hate crimes.

Child Welfare Reforms:

22. Provide disaggregated race-based data on the number of children: a) separated from their parents; b) placed in institutions; placed with foster families; d) placed in kinship service or kinship care; and, e) adopted domestically or through inter-country adoptions;
23. Examine the impact of class and poverty-related issues on rates of removal to ensure that children are not being removed from their homes simply due to poor housing or poverty, particularly if the parent(s) is/are willing to do what is necessary to change the situation;
24. Where poverty-based “neglect”, as opposed to “abuse” is the reason for the involvement of the child welfare agency, provide the necessary supports to improve the family’s socio-economic security;
25. Work together with African Canadian agencies and communities to ensure that African Canadian agencies and communities to ensure that African Canadian families are provided with adequate supports to keep Black children at home with their natural families and/or to ensure that if an African Canadian child must be removed, they are placed in kinship care or a culturally responsive setting;
26. Implement policies that ensure that children who are placed in foster care or are adopted are placed in culturally responsive familial settings in which they can maintain their language, religion, culture and identity;
27. Conduct a review of racial disparities in the Child Welfare System by the Ontario Human Rights Commission. In 2011, Quebec’s human rights commission undertook an in-depth and thorough review of racial profiling, in which it devoted a lengthy examination of disparities of African Canadian child welfare as manifested in Quebec. The ACLC urges the Ontario Human Rights Commission to do the same.¹⁶⁴
28. Amend Ontario’s Child and Family Services Act to entitle African Canadians to provide, wherever possible, their own child and family services and provide services in a manner that recognizes the culture, heritage and traditions of the child and the concept of the extended family;

¹⁶⁴ Paul Eid, *Racial Profiling and Systemic Discrimination of Racialized Youth* (Quebec: Commission des droits de la personne et des droits de la jeunesse, 2011)

Education Reforms

29. Undertake a review of suspension and expulsion rates of African Canadian students and develop an intervention strategy for reversing and eliminating the school to prison pipeline;
30. Take steps to ensure that parents of suspended and expelled African Canadian students are made fully aware of their rights and the resources, services and programs available to them;

Housing Reforms

31. Partner with provincial governments to immediately undertake a study, review and provide substantive recommendations and a plan of action to address the significant, yet unacknowledged housing crisis facing the African Canadian community;

National Commitment to Eliminating Anti-Black Racism

32. Publicize and develop with provincial governments a plan for the Government of Canada's participation in executing the Programme of Activities for the Implementation of the International Decade for People of African Descent;
33. Re-commit to a national anti-racism strategy such as Canada's 2005 Action Plan Against Racism;

Previous Human Rights Committee Recommendations

34. Implement the previous United Nations recommendations that the Government of Canada:
 - a) Collect and, in its next Periodic Report, provide the Committee, with reliable and comprehensive statistical data on the ethnic composition of its population and its economic and social indicators disaggregated by ethnicity, gender, including, African Canadians and immigrants, to enable the Committee to better evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population;
 - b) Coordinate its various policies, strategies and programs on Aboriginal peoples and African Canadians by adopting a comprehensive strategy on the situation of Aboriginal people at the federal level, so as to give a coherent picture of its actions and enhance

their efficiency, and ensure that any differences of treatment are based on reasonable and objective grounds;

- c) Prevent racial profiling at all stages of criminal procedure by: (a) Taking necessary steps to prevent arrests, stops, searches and investigations and over - incarceration targeting different groups, particularly African Canadians, on the basis of their ethnicity; (b) Investigating and punishing the practice of racial profiling; (c) Training prosecutors, judges, lawyers, other judicial and police officers in the criminal justice system on the principles of the Convention; (d) Providing the Committee with statistical data on treatment of African Canadians in the criminal justice system; (e) Conducting a study on the root causes of the over-representation of Africans Canadians in the system of criminal justice;
- d) Establish a budgeting process which adequately takes into account children's needs at the national, provincial and territorial levels, with clear allocations to children in the relevant sectors and agencies, specific indicators and a tracking system. In addition, the Committee should recommend that the Government of Canada establish mechanisms to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the *ICCPR*. Furthermore, the Committee should once again recommend that the Government of Canada define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures (for example, African Canadian children) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies.
- e) Include information in its next Periodic Report on measures and programs relevant to the *ICCPR* undertaken by the State party in follow - up to the Declaration and Program of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference. The ACLC also asks that the Committee also recommend that the State party: (a) Take urgent measures to address the over-representation of African Canadian children in the criminal justice system and out-of-home care;
- f) Intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including services to parents who need counseling in child-rearing, and, in the case of African Canadian populations, culturally appropriate services to enable them to fulfill their parental role.
- g) Ensure that funding and other support, including welfare services, provided to Aboriginal, African Canadian, and other minority children is comparable in quality and accessibility to services are provided to other children in the State party and is adequate to meet their needs.