

**A JOINT REPORT
BY**

**THE ONTARIO COUNCIL OF AGENCIES SERVING
IMMIGRANTS,**

**THE METRO TORONTO CHINESE
& SOUTHEAST ASIAN LEGAL CLINIC**

AND COLOUR OF POVERTY - COLOUR OF CHANGE

**ON THE STATUS OF COMPLIANCE BY THE CANADIAN
GOVERNMENT WITH RESPECT TO THE
INTERNATIONAL CONVENTION ON THE ELIMINATION
OF ALL FORMS OF RACIAL DISCRIMINATION**

**A Community Response to the Nineteenth and Twentieth
Reports of Canada**

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INTRODUCTION

About OCASI

The Ontario Council of Agencies Serving Immigrants (OCASI) is a council of autonomous community-based, non-profit, immigrant and refugee serving agencies in Ontario. It is the umbrella organization for the immigrant and refugee serving sector in this province.

OCASI was formed in 1978 to act as a collective voice for immigrant serving agencies and to coordinate responses to shared needs and concerns. It is a registered charity governed by a volunteer board of directors, and has more than 200 member organizations across the province of Ontario.

OCASI's mission is to achieve equality, access and full participation for immigrants and refugees in every aspect of Canadian life. OCASI asserts the right of all persons to participate fully and equitably in the social, cultural, political, and economic life of Ontario. A key aspect of the Council's work is analysis and commentary on the impact of legislation, public policy and practice on immigrant, refugee and racialized communities, especially as it impacts on human rights and access and equity. This work is informed by the experience of OCASI member organizations and the communities they serve. Specifically, OCASI has monitored the impact of immigration legislation and policy, security legislation, policy and practice, economic experience, access to justice, the situation of people with less than full immigration status in Canada, and the experience of women. OCASI also undertakes public education among member organizations, other stakeholders, media and the general public on these issues, and has helped to develop and deliver resources and training to stakeholders to improve access and equity for affected individuals.

In recent years, OCASI's work has been dominated by the experience of exclusion, marginalization and discrimination experienced by immigrants, refugees and racialized communities in the wake of post 9/11 security measures, the rising poverty of these communities, and the growing numbers of people without full immigration status.

OCASI is a founding member of Colour of Poverty - Colour of Change.

About MTCSEALC

The Metro Toronto Chinese & South East Asian Legal Clinic (MTCSEALC) is a community based non-profit organization, which is mandated to provide free legal services to low income members of Toronto's Chinese and Southeast Asian communities. Established in 1987, MTCSEALC has provided services to tens of thousands of low-income individuals and families from these communities. Apart from providing direct legal services, MTCSEALC also engages in public education in order to help build knowledge among members of its community in order to empower them to protect their

own rights. Moreover, MTCSEALC undertakes law reform activities to further the rights of immigrants, refugees and racialized communities in general.

On a day-to-day basis, MTCSEALC serves clients who face multiple problems in their lives because of economic, political and social barriers, such as: lack of job security, exploitation and discrimination at the workplace, domestic violence, lack of access to affordable housing, and much more.

For close to two decades, MTCSEALC has been an advocate for many immigrant workers and workers from racialized communities who find themselves ghettoized in low-wage, non-unionized jobs, and who face exploitation by employers who have little regard for their rights. These are also the workers who, when times get tough, find themselves falling through the cracks of the social safety net that is supposedly built to catch those who are destitute.

MTCSEALC is also a founding member of Colour of Poverty - Colour of Change.

About Colour of Poverty - Colour of Change (COP-COC)

Colour of Poverty Campaign/Colour of Change Network (COP-COC) is a province-wide initiative made up of individuals and organizations working to build community-based capacity to address the growing racialization of poverty and the resulting increased levels of social exclusion and marginalization of racialized communities across Ontario. COP-COC works to build concrete strategies, tools, initiatives and community-based capacity through which individuals, groups and organizations (especially those reflective of the affected racialized communities) can better develop coherent and effective shared action plans as well as coordinated strategies so as to best work together to address and redress the growing structural and systemic ethno-racial inequality across the province.

OVERVIEW OF THE COMMUNITY RESPONSE

OCASI, MTCSEALC and COP-COC have had the opportunity to review Canada's nineteenth and twentieth periodic reports under the Convention on the Elimination of Racial Discrimination (CERD) during the CERD Committee's 80th session. We have also reviewed the Report of the African Canadian Legal Clinic (ACLC) to the CERD Committee.

We echo the concerns raised by ACLC and we support their recommendations. While the ACLC Report is focused on the issue of Anti-Black racism in Canada, many of the proposed recommendations, if adopted, would benefit all members of racialized communities (including communities of colour as well as the First Peoples of Canada).

The purpose of this community response is two-fold. First, it will address and highlight areas of non-compliance by the Canadian Government which are of particular concern to members of communities of colour, and respond to Canada's Report to the CERD

Committee. Second, it will deal with the Government of Ontario's compliance with CERD as reported in Canada's Report.

DEMOGRAPHIC CHARACTERISTICS OF THE CANADIAN POPULATION

In its Report to CERD, Canada included some useful basic demographic information about Canada's population. Not surprisingly, the statistical information about Canada describes a multicultural pluralistic society with great ethno-racial diversity.

Indeed, by 2017, one in five Canadians will be a "visible minority" according to Statistics Canada – due largely to the continuing trend of Canada receiving more and more immigrants from Asia, Central and South America and the Caribbean than other regions in the world.

Missing from Canada's Report, however, are data showing the growing level of inequities experienced by immigrant communities as well as communities of colour.

The 2006 Census reported one in five Canadians as foreign-born, the highest proportion in 75 years. Recent immigrants born in Asia made up the largest proportion of newcomers to Canada in 2006 (58.3%). Another 10.8% were born in Central and South America and the Caribbean. 68.9% of the recent immigrants in 2006 lived in three census metropolitan areas, namely, Toronto, Montreal and Vancouver.¹

In 2006, most recent immigrants experienced higher unemployment rates and lower employment rates than their Canadian-born counterparts. The exceptions were immigrants from the Philippines and those born in Europe, who had labour market outcomes similar to the Canadian born. Immigrants born in Africa experienced the most difficulties in the labour market, regardless of how long they had lived in Canada. For the very recent African-born immigrants, their unemployment rate at 20.8% was four times higher than that of the Canadian born.² Higher unemployment rates are also found among the younger recent immigrants between the age of 15 and 24, irrespective of where they were born.³

Statistical studies have conclusively disproved the hypothesis that high unemployment rates among recent immigrants are due to their inferior educational background. With few exceptions, very recent immigrants who had any level of postsecondary education had employment rates that were lower than that of their Canadian-born peers. Most important to note was the fact that this was true irrespective of where this postsecondary education was obtained.

¹ Statistics Canada. (2007). *Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census*. Ottawa, pp. 5, 19.

² Gilmore, Janice. (2007). *The Immigrant Labour Force Analysis Series, The Canadian Immigrant Labour Market in 2006: Analysis by Region or Country of Birth*. Ottawa. p.6.

³ *Ibid*, p.7.

As reported by Statistics Canada, in 2007, very recent immigrants aged 25 to 54 who received their highest university education in Canada were less likely to have significant Canadian work experience compared to their Canadian-born peers. The same study also showed that almost one in five very recent immigrant university graduates were attending school in Canada in 2007, even though they already had a university degree, yet the majority of university-educated very recent immigrant students were not participating in the 2007 labour market.⁴

Gender also seems to play a role in this respect. While immigrant women represented nearly half of university-educated very recent immigrants, their participation in the labour force was significantly lower, particularly for those born or educated in Asia.⁵

The only exceptions to this troubling pattern of employment gaps are recent and established immigrants who received their highest university education in Canada or Europe; they had comparable employment rates in 2007 to the Canadian born. In contrast, many of those who obtained these credentials in Latin America, Asia or Africa had lower employment rates with the one exception being immigrants who received their university degree from a Southeast Asian (mainly Filipino) educational institution.⁶ If immigrants are not getting employed at the same rates as others, they are also not earning the same levels of income. The immigrants' birthplace – a proxy for ethnicity – turns out to have the strongest influence over the immigrants' earnings, as a Statistics Canada study has shown. This finding coincides with the repeatedly noted fact that increasingly immigrants to Canada come from “non-traditional” sources and are members of visible minorities, and are more likely to be educated as compared with persons born in Canada. Despite an increasing number of university graduates among immigrants, the relative earnings of immigrants did not improve in recent times.⁷

Hiding behind the statistics is the disturbing trend of the ever growing racial inequities in Canada among the immigrant group members as well as racialized individuals born in Canada (both Indigenous Peoples as well as peoples of colour). Disturbingly, the employment inequities and the resulting income inequities experienced by recent immigrants with degrees (minus those with European or Filipino background) are shared by young visible minority men born in Canada to immigrant parents. Everything else being equal, their annual earnings are significantly lower than those of young men with native-born parents.⁸ Canadian born members of racialized communities, who have even higher levels of education than other Canadians in the same age group are faring the worst.⁹

⁴ Statistics Canada. (2008). The Immigrant Labour Force Analysis Series, The Canadian Immigrant Labour Market in 2007: Analysis by Region of Postsecondary Education. Ottawa. p.6.

⁵ Ibid. p.6.

⁶ Ibid, p.7.

⁷ Ostrovsky, Yuri. (2008). Statistics Canada Analytical Studies Branch Research Paper Series: Earnings Inequality and Earnings Instability of Immigrants in Canada. Ottawa.

⁸ <http://www.cbc.ca/consumer/story/2007/10/29/immigration-statscan.html>

⁹ Leslie Cheung. October 2005. Racial Status and Employment Outcomes. Research Paper #34, Canadian Labour Congress. Ottawa: CLC.

A recent report by the Wellesley Institute and Canadian Centre for Policy Alternatives (CCPA)¹⁰ confirms a "colour code" is keeping "visible minorities" out of good jobs in the Canadian labour market. The report found that visible minority Canadian workers earned 81.4 cents for every dollar paid to their Caucasian counterparts.

Based on the 2006 census, researchers found that earnings by male newcomers from visible minorities were just 68.7 per cent of those who were white males. The Wellesley and CCPA Report also confirms that such colour code persisted for second-generation Canadians with similar education and age, though the gap narrowed slightly - with visible minority women making 56.5 cents, up from 48.7 cents in 2000, for every dollar white men earned, while minority men in the same cohort improved by almost 7 cents, to 75.6 cents.

In 2006, during the boom years, visible minorities had an unemployment rate of 8.6 per cent, compared with 6.2 per cent for white Canadians. Even more disturbing is that visible minorities were under-represented in public administration, where 92 per cent of workers were white.

The increasing "racialization" or "colour-coding" of all of the major social and economic indicators can be gleaned not only from the statistics on income & wealth, but also from any one of a number of different measures – such as the inequalities with respect to health status and educational learning outcomes, higher drop-out or "push-out" rates among racialized learners, inequitable access to employment opportunities and over-representation in low-paying, unstable, and low-status jobs in which their rights as workers are often poorly or totally unprotected, higher levels of under-housing and homelessness and the re-emergence of imposed racialized residential enclaves and the increasing rate of incidence and ethno-racial differentials with respect to targeted policing as Aboriginal and men and women-of-colour are ever more over-represented in Ontario's jails and prisons. All of these are products of the long-standing and now growing social and economic exclusion of racialized groups from the so-called mainstream of society.

It is in this context of growing inequities that the Report from Canada should be examined by the CERD Committee.

¹⁰ Block, Sheila and Grace-Edward Galabuzi. (2011). Canada's Colour Coded Labour Market: the gap for racialized workers. Wellesley Institute and Canadian Centre for Policy Alternatives. Toronto.

COMMENTS ON COMPLIANCE BY THE GOVERNMENT OF CANADA

Article 1 – Definition, Interpretation and General

Issues Facing Refugee Claimants, Permanent Residents and Temporary Residents

Refugees

We echo the concerns raised by ACLC with respect to Bill C-11 – the *Balanced Refugee Reform Act*. We too believe that the designated “safe” countries list, the expedited processes, the amendment to the humanitarian and compassionate (H&C) applications as well as to the Pre-Removal Risk Assessment (PRRA) would have a negative impact on refugee claimants – many of whom are racialized - who wish to seek asylum in Canada.

Adding to that list of concerns, is the fact that the Government of Canada has not provided sufficient funding to provincial legal aid programs in order to ensure refugee claimants (and other marginalized groups) will have adequate access to legal representation. While in 2009 the Ontario Government has announced an increase in funding to legal aid by \$150 million over a four year period, that funding increase did not take into account the additional resources that would be required to provide legal services to claimants under the reformed refugee determination system. As well, the increase in funding from the Government of Ontario has been offset by declining funding that Legal Aid Ontario (LAO) has received through the Law Foundation of Ontario over the last several years due to the economic crisis which resulted in a declining level of interests earned on lawyers’ trust accounts.

The combining anticipated result of a more stringent refugee determination system and less access to legal aid for claimants is that a higher percentage of refugee claimants will fail their claims, and that the failure rates cannot be corrected by the very limited appeal right given to them under Bill C11.

The government recently proposed legislation Bill C-4 supposedly to crack down on human smuggling. The proposal was first made in 2010 following the arrival of two boats of asylum seekers from Sri Lanka, but was withdrawn prior to the general election in May 2011 and then re-introduced last year.

The Bill allows a mandatory detention of a minimum of one year on any migrant, refugee and asylum seeker designated by the Minister of Public Safety as an “irregular arrival”, including children. The designation would be based on the mode of arrival of the group and not on individual circumstances. The individuals detained in this arbitrary manner are not to be granted access to mandated detention reviews, in contravention of the International Convention on Civil and Political Rights and Convention on the Rights of the Child. Asylum seekers generally have few options for reaching a safe country and have typically followed ‘illegal’ or ‘irregular’ means of passage or entry. Because of geographical considerations and visa requirements, entry to Canada is usually more

difficult for asylum seekers from the global south. The proposed Bill will have a disproportionate impact on people of colour who are over-represented among asylum seekers from those regions. The Bill does very little to prevent human smuggling and instead seeks to punish those who have to resort to such risky means to seek asylum.

Recommendations

We ask that the Committee recommend the following to Canada:

- a. Amend the regulations to give refugee claimants appealing a negative decision a minimum of 15 days to file the application to the Refugee Appeal Division and 30 days to perfect (complete) the application; And allow postponement for vulnerable claimants such as LGBT claims, women, children, torture survivors
- b. Claimants should not be treated differently – subject to lesser procedural protections – based on the country of origin.
- c. Canada should withdraw Bill C-4.

Family Class Immigrants

We agree with ACLC that the continuing erosion to Canada's commitment to family reunification under the immigration law is troubling to say the least.

The overall trend of the changing immigration pattern over the last two decades has been coupled with specific changes to the definition of "family class" in the regulations and in the processing of such applications by overseas visa offices over time. On the one hand, greater requirements are being imposed on those who wish to sponsor their families. On the other, "family class" immigration (with the exception of spouses) has become more and more narrowly defined. So for instance, while in the past, brothers, sisters and other extended family members were given points for their relationship to a Canadian immigrant or citizen under the point system, today only those who are considered part of the nuclear family are deemed worthy of being granted entry.

As well, increasingly restrictive financial eligibility requirements effectively bar many low income Canadians from sponsoring their families from abroad. Conveniently, because members of racialized communities and recent immigrants are more likely to live in poverty, the financial eligibility requirement also has a disproportionately negative impact on these communities.

And because immigrants from Asia and other parts of global south are most likely to apply through the family class stream, and are also more likely than immigrants from European background to adopt an extended family structure, the reduction of the family class quota and the restrictive definition of family class membership have the added advantage - intended or otherwise - of limiting the number of immigrants from these countries.

As ACLC Report has noted, the Canadian Government has introduced a moratorium on the processing of all parents and grandparents applications, while instituting a multiple entry visitor's visa, commonly referred to as the "super visa" system for parents and

grandparents to come to Canada to visit their families. Apart from the fact that eligibility for the multiple-entry visitor is conditioned upon the purchase of private health insurance policy – a measure that would ensure only those who could afford such a policy need apply – the Government of Canada has not addressed the underlying inequities in the visa system with this new policy.

The inequitable resource allocation across the various visa posts currently plays a role in perpetuating systemic barriers to immigration. On a per capita basis, there are far more visa offices in Europe than in Asia, Africa and any other regions of the world. Fewer resources mean more processing time in these regions even for those who are qualified. As well, the visa requirement often applies only to applicants coming from the Global South. Yet, they are also the most common source of Canada's immigration today – including immigrants under the Family Class. Without addressing the underlying problems with how visas are being issued and where visa offices are situated, offering the possibility of a "super visa" will thus not address the issue of family separation for those Canadians who wish to be reunited with their parents and grandparents.

Another worrisome change under the family sponsorship was the regulatory change to the spousal sponsorship. Introduced in September 2010, the new provision governing spousal sponsorship would see spouses in genuine relationship being denied permanent resident status to Canada. As a very high percentage of Canadian permanent residents and citizens who submit spousal sponsorship applications are seeking to bring their spouses from China, India, other parts of Asia and Africa, the regulatory change to spousal sponsorship thus have a disproportionate impact on members from these respective communities. The Government is also considering the imposition on a conditional visa so that those who qualify are to be given limited permanent resident status that would be conditional upon remaining married to the spouse who is the sponsor. This change would have the greatest impact on women, making them further vulnerable if they were in an abusive relationship.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Broaden the definition of family and increase quota for family class immigration to allow family reunification with immediate and extended family.
- b. Remove the health insurance restriction from multiple-entry visas for parents and grandparents.
- c. Review and redress any inequities in resource allocation at Canadian visa posts, particularly with a view to providing equitable service at visa posts located in countries with a majority racialized population.
- d. Withdraw plan to introduce a conditional permanent residency for sponsored spouses.

Temporary Foreign Workers Program (TFWP)

Over the last few years, the TFWP has grown from a relatively small program to one that provides for an ever-larger number of guest workers coming to Canada. In 2003, the

total number of guest workers in Canada was just over 110,000. In 2007 and 2008 more TFW than immigrants entered Canada. In 2010, 182,276 TFWs entered Canada and 282,771 TFWs were present in Canada as of December 1, 2010¹¹. That year, only 280,681¹² permanent residents were admitted to Canada, lower than the number of TFW's present in the country.

The program also underwent a series of “administrative changes” in recent times which some critics have described as benefiting employers without any provisions to ensure that the workers' rights would be protected. Although racial status data are not available for these workers, they are disproportionately people of colour. Of the top 10 source countries for guest workers, half of them host racialized populations, and in 2006 nearly 35% of the 160,000- plus guest workers came from countries where the population is racialized.¹³

On December 9, 2009, some new dramatic changes regarding TFWP came into force.¹⁴ The new regulations place a higher onus on employers to prove that their job offers are genuine to prevent workers from being duped with promises of jobs that don't exist. As well, employers who have failed to meet their contractual obligations to provide satisfactory wages and working conditions are barred from hiring new workers for two years.

But the small positive change brought about by the new regulations is clearly overshadowed by the negative measures that have been put in place since then.

On April 1, 2011 changes to the TFW program came into force, such that it will become “a revolving door of migrant workers willing to accept inferior wages and working conditions will be available to Canadian employers”. The most problematic of the changes was the provision that there would be a 4-year limit on the stay of a TFW and a subsequent 4-year period in which the worker would not be allowed to work in Canada¹⁵. Included with this was an additional change that would prohibit an employer who had violated the terms of the agreement with the worker from hiring any more TFWs for a two year period. However, the government did not implement a mandatory employer monitoring system as protection for workers.

Canada's Live-In Caregiver program continues to be one of the most problematic aspects of the migrant worker program, particularly the requirement that the worker should live with the employer for at least one-year. The majority of workers recruited through the program are women, and are generally people of colour from the global south. The live-in

¹¹ Citizenship and Immigration Canada (2010). Facts and Figures 2010 – Immigration overview: Permanent and Temporary residents.

¹² Ibid.

¹³ Flecker, Karl. 2008. Conservative Colours: The Harper Conservatives and the Colour-Coding of Canada. Healy T. ed. The Harper Record. Ottawa: Canadian Centre for Policy Alternatives.

¹⁴ Regulations Amending the Immigration and Refugee Protection Regulations (Temporary Foreign Workers), Canada Gazette, Vol. 143, No. 41 – October 10, 2009

¹⁵ Canadian Council for Refugees (2011). “Changes to the Temporary Foreign Worker Program Leave Workers Unprotected”.

requirement puts these women workers in a position of tremendous vulnerability to abuse and exploitation by the employer, and such cases continue to be reported. Workers have reported that they are not paid the wages they are owed, they are required to work beyond regular working hours and to undertake work not specified in the contract including sometimes working free for the employer's friends, and are subject to degrading treatment, abuse, sexual harassment and assault by the employer. The live-in provision puts workers in a situation where they are isolated, invisible and often cut-off from sources of support or assistance¹⁶.

Migrant agricultural workers have experienced many of the similar conditions of being unpaid or underpaid, being asked to do work not specified in the contract, work in unsafe conditions and often being forced to pay a premium for health insurance, rent and other charges imposed by the employer¹⁷. Many agricultural workers are located in rural communities or neighbourhoods where they are isolated and far from sources of assistance. Migrant agricultural workers and Live-in Caregivers are at risk of loss of their temporary immigration status or even deportation if they complain about their treatment or take any action to redress their situation. Workers who are deported in this manner are then unable to pursue a complaint against the employer, including trying to recover the wages that are lawfully owed to them.

As such, we disagree with the Canadian Government's position that it "takes the promotion and protection of human and labour rights of migrants seriously", and that it is not necessary for Canada to become a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Unlike the Government of Canada, we do not believe that there are adequate protection in place in Canada's domestic human rights and legal system to protect the rights of migrants.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Canada should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- b. Canada should review and remove residence restrictions imposed on workers participating in the Live-In Caregiver Program and Seasonal Agricultural Worker Program.
- c. Canada should work with provincial and territorial governments to ensure that temporary foreign workers enjoy the same legal protections as all other workers in Canada and ensure that these laws are being effectively enforced.

Cuts to Settlement Services

As referenced in the ACLC report, significant cuts have been introduced by Citizenship and Immigration Canada over the last couple of years, with the greatest cuts being brought to Ontario.

¹⁶ Toronto Star. 2009. "Investigation: Nanny Abuse". Toronto Star, April 2, 2009. Toronto.

¹⁷ UFCW Canada (2009). The Status of Migrant Farm Workers in Canada 2008-2009. United Food and Commercial Workers Union Canada.

In December, 2010, the Federal government cut \$53 million in funding from settlement agencies and programs across Canada, excluding Quebec. Ontario, the province receiving the largest number of immigrants, bore more than \$43 million of the cuts, forcing the closure of some agencies and resulting in job losses across the sector.

The cuts come at a time when the immigrant and refugee serving sector had managed to turn the corner after years of under-funding and had established a level of stability in the sector. They also came at a time when more complex interventions are needed to facilitate labour market participation by new Canadians and to address complicated social and health issues of Refugees (GARS). Apart from the destabilizing effects of the cuts in general, there is concern about whether the current investment is sufficient to address the many systemic barriers that immigrants, especially racialized immigrants face in the settlement process.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Canada must invest the necessary funds to support immigrant settlement and integration on the basis of need, including addressing systemic barriers.

Article 2 – Legislative, Administrative, Judicial or Other Measures

Collection of Disaggregated Data and Cancellation of Long Form Census

With the exception of City of Toronto in the Province of Ontario, there is a serious lack of data and research in many local communities across the nation about racialized communities and their socio-economic participation in society. On the national level, there is also no concerted effort to collect race-based data on a disaggregated basis.

Specifically, the lack of desegregated data means the Government of Canada does not have a clear picture of who are among the most marginalized in Canada and how are they affected by government policies and programs. Without such data, the Government is also unable to calculate the “default” costs of doing nothing, from an economical as well as social perspective.

To add injury to insult, the Government of Canada decided to abolish the mandatory long-form census in 2010. While the Government of Canada continued to maintain a mandatory short-form census, there are no questions in the short-form census dealing with information on race, ethnicity and disability – although gender based and age based questions are included.

Low income newcomers and members of racialized communities rely on Census data to help ensure that existing government programs that are designed to alleviate their disadvantages remain effective and responsive to their needs. At best, the failure to

count racialized Canadians may render any such social programs less effective and less responsive to the needs of the disadvantaged communities. At worse, the exclusion of questions relating to race and ethnic origin in the census may lead to the discontinuation or cancellation of some of these social programs altogether. Further, because newcomers, members of racialized communities and low income people are among those who are least likely to participate in a voluntary census, the exclusion of questions relating to race and ethnic origin in the census means that these individuals will become under-counted, which in turn will undermine their participation in the Canadian democracy and further reinforce their status as disadvantaged communities.

The exclusion of questions about race and ethnic origin will also have a long lasting and irreversible impact on access to social programs by those who are the most in need. It also negatively affects the ability of low income Ontarians and members of other disadvantaged communities to bring to light issues of justice, be it through the court system or in the political arena. Without accurate data regarding the break down of Canadians by race and ethnic origin, low income and other disadvantaged Ontarians will find it more difficult to demonstrate exclusion from the political process and the existence of socio-economic inequities in our society. By taking away reliable census data, the Government has also succeeded in taking away one of the most effective tools for law reform.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Bring back the Long Form Census
- b. Collect and track disaggregated data across all Ministries, Departments and relevant institutions in order to identify racialized and other structural and systemic disadvantage

The Visible Minority Category

For the reasons stated above, we agree with the position of ACLC that the term “visible minority” should not be maintained and that its usage continues to mask the different experiences among different racialized groups.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Cease using the term “visible minority”

Access to Justice for Vulnerable Groups

With the creation of the Canadian Health and Social Transfer (CHST), the Government of Canada no longer has dedicated funding to provinces for legal aid programs on an ongoing basis.

Over the last few years the Canadian Government has dedicated some legal aid funds in some areas of criminal law or immigration law, but such funds were targeted at specific initiatives. In addition, the CHST has not in any way kept pace with the rising cost of legal aid. As such, provincial governments are often asked to step in to pick up the short fall.

The continuing underfunding of legal aid in all provinces, including Ontario, poses a serious barrier for many vulnerable groups, including racialized communities, to access justice.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Provide dedicated and adequate funding to provinces for legal aid and that such funding should be indexed to cost of living

Employment

The current legislative framework that supports employment in the federal public service is found in the *Employment Equity Act*, 1995, s. 15 (2) of the *Canadian Charter of Rights and Freedoms* and provincial human rights legislation and policies. The purpose of this framework is to ameliorate the historical and current marginalization of members of designated groups not only in hiring practices, but in promotion and retention practices as well.

Yet despite nearly 25 years since the *Employment Equity Act* was first put in place, there continues to be serious under-representation of workers from racialized groups in the federal public service, the single largest employer in Canada.

In the Report of the Standing Senate Committee on Human Rights, *Reflecting the Changing Face of Canada: Employment Equity in the Federal Public Service*, the Senate Committee examined issues of discrimination in the hiring practices of the federal public service and found that employment equity targets among the four designated groups were not fully being met, especially for “visible minorities”. Based on data available for the core public service in 2008-2009, “visible minorities” were represented at 9.8%, a figure that was much lower than their workforce availability rate at 15.3%.

Despite the failure of the *Employment Equity Act* to improve representation of racialized groups in the federal public service, during the summer of 2010, the Hon. Stockwell Day, President of the Treasury Board, was quoted as suggesting that the Federal Employment Equity program was barring qualified Canadians from job opportunities in the federal public service.

Moreover, the federal legislation only governs federally regulated employers and in federal contract compliance. The majority of workplaces are provincially regulated and are thus not subject to any equity hiring program requirements.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Undertake concrete measures to improve representation of racialized groups in the federal public service and fulfil its requirements under ICERD as well as the equality rights protection under section 15 of the Canadian Charter of Rights and Freedoms.

Article 5 – Equality Before the Law

Anti-Terrorism Act

We read with dismay the denial of the Canadian Government that there are national laws on security that are discriminatory and that the Government “does not accept the presumption that Canada engages in racial or religious profiling”.

Following the enactment of the *Anti-Terrorism Act*, and together with the pre-existing security certificates under the immigration law regime, a number of immigrants were issued security certificates and were detained (some indefinitely). Almost all of those issued with the certificates were of Muslim faith. The arrest in Toronto of 18 Muslim men, (later reduced to 11) and the subsequent convictions under the *Anti-Terrorism Act*, further demonstrated the alarming and far-reaching impact of the legislation on anyone who is suspected of being in any way associated with terrorist groups – however remote or tenuous that connection might be.

More generally, the increased characterization of members of Muslim and Arab communities as “terrorists” and their consequent racial profiling is further reinforced by the above legal measures. As argued forcefully by the Canadian Muslim Lawyers Association, “the combination of a culture of fear, vilification of Islam and profiling of Muslims and Arabs by State agents has led to a ‘trickle down’ effect where profiling in the public sphere bleeds into garden variety discrimination in the private sphere.” The result is the increasing “reports of Muslims and Arabs being discriminated against in matters involving services, employment and accommodations where whispers and hints of terrorism fears have played a role.”

In June 2007, the Conservative Government implemented Canada’s secret ‘no-fly list’ which checks the names of domestic airline passengers against a secret list of people deemed to be threats. This is a clear example of yet another tool that has the potential to target and scapegoat members of Arab and Muslim communities, and in this particular instance, is one that can be used to deny the freedom of movement that all other Canadian residents take for granted.

Introduced by the Conservative Government as a response to the Supreme Court of Canada's decision in *Charkaoui*¹⁸, Bill C-3 introduces a system of "special advocates" for immigration security cases. The vast majority of individuals subjected to security certificates over the past 20 years are racialized and many of them are Muslim. This measure does very little to redress the systemic discrimination embedded in the security certificate process. It replicates a system that has been in place in the United Kingdom for a number of years and has been subject to extensive criticism. As a result, racialized immigrants and refugees will continue to be afforded second class justice in cases where there is mere suspicion that they have links with terrorism - whereas citizens will be afforded fuller due process through criminal trials.

As per the legislative requirement, the *Anti-Terrorism Act* was reviewed by the Special Senate Committee on the Anti-terrorism Act and the House of Commons Subcommittee on Public Safety and National Security with both committees initiating proceedings to study the legislation as well as the security certificate regime under the *Immigration and Refugee Protection Act*. A number of organizations concerned about civil liberties and human rights made proposals on how to amend the legislation to make it more consistent with the values and principles enshrined in the *Canadian Charter of Rights and Freedoms*. But as stated above, the Government's response was to enact Bill C-3 which does not come close to addressing the serious rights infringements brought about by a process that is shrouded in secrecy and that has little judicial oversight.

As stated in their submissions, the Canadian Muslim Lawyers Association told the Special Senate Committee on the *Anti-Terrorism Act* that "secrecy is antithetical to the rule of law and accountable government." The Association argued that Bill C-3 failed to meet the Supreme Court of Canada's advice regarding the security certificate regime, which says alternatives to full and direct participation in the security certificate review process must be "substantial", "meaningful" and allow "informed participation". The Association, along with other human rights groups made a number of suggestions to ensure that the new special advocate mechanism would meet the benchmark set by the Court. Regrettably, none of their recommendations were adopted.

The Standing Committee on Public Safety and National Security acknowledged in its report that despite efforts to address racial profiling by law enforcement and intelligence agencies, "concerns were still being expressed within minority communities". Nevertheless, none of the report's recommendations offer viable suggestions for addressing and redressing the systemic discrimination embedded in the application of either immigration security measures or other anti-terrorism provisions. Indeed as the report indicates, "much more has to be done in consultation with the affected ethno-cultural communities to address these concerns". Neither the recommendations nor the proposed consultations have been implemented.

In addition, the introduction of Bill C49 in the summer of 2010 (which was later re-introduced as Bill C4 after the May 2011 federal election) is a further example of legislated racial profiling which was prompted by the arrival of MV Sun Sea with a boatload of Tamil refugees fleeing their war torn country. As noted above, under this

¹⁸ *Charkaoui v. Canada (Citizenship and Immigration)* [2007] 1 S.C.R. 350

Bill, measures were introduced to keep some refugees longer in detention, deny them family reunification and restrict their freedom of movement. Not only are those measures likely in violation of the Canadian Charter and of international human rights obligations, they are also clearly practices that amount to racial profiling and racial discrimination.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. End the practice of using security certificates, and end the use of secretive measures such as the no-fly list.
- b. Appoint an independent commission that would remain in force for as long as the government persists in these practices, that would review and periodically report publicly on government activities, and that would provide an avenue for independent review and investigation for affected individuals.
- c. Work with affected communities to eliminate racial and ethnic profiling in security practices.
- d. Implement the recommendations made by Commissioner Dennis O'Connor in the independent review of the Maher Arar case¹⁹.

Access to Social Services

The Government of Canada states in its Report to CERD that undocumented persons and refugee claimants are eligible for a wide range of services including emergency and essential health services. While refugee claimants do have access to certain basic services such as health and social assistance, such services may be terminated when the claim is found to be unsuccessful.

More importantly, many undocumented and non-status immigrants are not able to access many services that are granted to permanent residents. Municipal welfare authorities sometimes deny social assistance to individuals whom they believe are subject to deportation – even if the deportation is not imminent. As well, many non-status immigrants would not turn to social assistance even if they are in dire financial straits for fear that the welfare authority would report their whereabouts to immigration officials – and their fear is entirely legitimate. As such, while the law may not explicitly deny undocumented persons and refugee claimants access to social services, in practice, such denial of services occurs on a regular basis.

Even permanent residents sometimes are denied access to health care, as in the case of Ontario where there is a three-month waiting period for newly arrived immigrants before they could be eligible for the provincial health insurance coverage.

Recommendation

We ask that the Committee recommend the following to Canada:

- a. Work with provincial and territorial governments to ensure that all residents have access to needed healthcare regardless of immigration status.

¹⁹ Commission of Inquiry into the actions of Canadian officials in relation to Maher Arar (Arar Commission). 2006. Canadian Government Publishing. Ottawa.

COMMENTS ON COMPLIANCE BY THE GOVERNMENT OF ONTARIO

Article 1 Definition, Interpretation and General

Use of the Term Visible Minority

While it is true that the term “visible minority” does not appear in Ontario statutes or regulations, the real concern of racialized communities is the lack of efforts to date by the Ontario Government to collect disaggregated data in order to understand and measure racial disparities in the province.

The Ontario Government introduced a Poverty Reduction Strategy and legislated a commitment to reduce child poverty by 25% in 5 years through its 2009 Poverty Reduction Act. Though the Poverty Reduction Act, 2009 itself specifically provides for an ethno-racially and other appropriately disaggregated tracking and analysis of the impacts and outcomes of the strategy for various historically disadvantaged population groups – it has not explained how it would address the specific issue of racialized poverty, and have not included ways to ensure measuring the effectiveness of the poverty reduction strategy on the disaggregated basis called for.

Article 2 – Legislative, Administrative, Judicial and Other Measures

Employment

According to 2006 Census data, Ontario had a population of 2,745,200 “visible minorities”, which comprised 22.8% of Ontario's total population. When combined with the almost 2% that were First Peoples (First Nations, Inuit and Metis) racialized groups made up over 25% of the Ontario population in 2006. By 2017, the 150th anniversary of Canada, close to one-third of Ontario's population will be racialized (including both First Peoples as well as peoples of colour).

Members of racialized communities are much more likely than non-racialized group members to face discrimination in hiring, promotion and retention in labour markets and in getting paid fair wages, as noted above in the Wellesley Institute Report.

Racialized Francophones also face similar challenges. According to a 2010 report by the Ontario Trillium Foundation, racialized Francophones in Toronto earn roughly 33.3% less than Francophones as a whole, while the differentiation between the two groups is 40% in Ottawa and surrounding areas. Racialized Francophone women in Ontario have an unemployment rate twice as high as that of Francophones as a whole.

Members of racialized communities are over-represented in unstable, contingent types of work including part-time, temporary, contract and piece-work. Workers in these jobs are usually paid minimum wage or lower, and because of the irregular and transitory nature of the work, often do not receive or qualify for any benefits as provided by the employer or the standard employee supports available from the government (such as Employment Insurance).

Ontario must facilitate the creation of good jobs with adequate pay, benefits and stability and provide inclusive and bias-free mechanisms and means for racialized workers to be hired and promoted into those jobs. The Ontario Government has failed to re-introduce Employment Equity legislation as a mechanism to dismantle systemic barriers and address the colour-coded imbalance in the labour market, including holding governments and employers accountable for providing workplaces free of systemic discrimination.

Recommendation

We ask that the Committee recommend the following:

- a. The Ontario Government should bring back employment equity legislation.

Employment Standards and other Employment Issues

Members of racialized communities are more likely to be employed in unsafe workplaces. They are more likely to experience a violation of Employment Standards such as not being paid the wages that are owed to them. Many organizations have advocated for the strengthening of the *Employment Standards Act* (ESA) to bring better protection for workers, improve the enforcement of the ESA and introduce harsher penalties for non-compliant employers.

During the last several years, the Ontario Government did introduce some positive measures, such as prohibiting temporary agencies from charging workers fees, enhancing protection for live-in-caregivers by banning agency fees charged against them, and stiffening penalties up to \$50,000 and up to 12 months of jail time for violators.

Not all changes that the Ontario Government made are beneficial to workers, however. The ESA now makes it a pre-requisite for filing claims, an obligation on the workers to first try to seek remedy from their employer. This creates an unfair barrier to the claim process for vulnerable workers, workers with limited support networks, as well as workers who face language and other systemic barriers.

Even with the positive reforms the ESA does not cover all foreign workers, nor does it institute the licensing of recruitment agencies and the posting of bonds; and foreign workers are still prohibited from forming unions.

Recommendation

We ask that the Committee recommend the following:

- b. The Ontario government should ensure that the Employment Standards Act covers all workers in Ontario regardless of immigration status.
- c. The Ontario government should allow all workers to have the right to legally organize, unionize, and collectively bargain with the employer.

Access to Justice for Vulnerable Groups

In 2006, the Ontario Government introduced Bill 107 to reform the enforcement of the human rights system in Ontario. The Bill created much controversy at the time. It was supported by some human rights lawyers, but attracted strong criticisms from many community-based organizations working with people with disabilities and racialized communities. In December, 2006, the Ontario Government used its majority power to abruptly stop the legislative hearing process and pass the Bill without further public consultation. The new system came into effect on June 30, 2008.

Critics of the Bill were – and still are – concerned that the Bill transforms a system based on public investigation and enforcement of human rights into one that places the burden on individual victims of discrimination to investigate and prosecute their own cases of discrimination. While the Government created a new Human Rights Legal Support Centre (HRLSC) to provide information and some legal representation to complainants, the sheer volume of the complaints it has received means the Centre has had to turn many complainants away. The old system was long seen as ineffective as the under-funded Ontario Human Rights Commission (OHRC) was similarly unable to handle the 60,000 inquiries it received every year – with the result that many cases were never referred to the Human Rights Tribunal of Ontario (HRTO) for a hearing. Many community advocates in the anti-racism and disabilities movement question, however, whether the new system merely replaces one gatekeeper with another.

As complaints based on disability and race made up the majority of all the complaints under the old system, the impact of the change on people with disabilities and racialized communities members is thus particularly disconcerting.

In its February 9, 2009 deputation before the Ontario Legislature's Standing Committee on Government Agencies, the Accessibility for Ontarians with Disabilities Act (AODA) Alliance commented that many of the promises made by the Ontario Government on Bill 107 have been broken. Using information obtained from the HRTO, OHRC and HRLSC, the AODA Alliance showed, for example, that the number of potential human rights claimants who approached the new human rights system had dropped, the backlog of cases in the human rights system had not been reduced, and that despite a promise for a more accessible Human Rights Tribunal, the HRTO had created complex new rules of procedure which are difficult for un-represented complainants to navigate. The AODA Alliance deputation showed, as of February, 2009, that a substantial majority of new human rights applicants, at least 60%, have no lawyer at the HRTO. Moreover, speciality human rights clinics, such as the African Canadian Legal Clinic, have seen a number of unrepresented litigants before the HRTO request summary legal advice, brief services

and representation since the introduction of the Bill.

Meanwhile, the OHRC laid off all its investigators, and – despite its new more focussed mandate – has not launched any new Commission-initiated systemic discrimination cases at the Tribunal under the new system.

To placate the concerns of members of the racialized communities and people with disabilities, the Government put into Bill 107, a provision to establish an Anti-Racism Secretariat and A Disability Rights Secretariat under the OHRC. As of this date, these two Secretariats have yet to be established.

The Ontario's human rights system is currently under review. Racialized communities have questioned the impartiality of the review. Communities have requested that additional experts be appointed to conduct the review and the consultation time period be extended to allow for meaningful public input into the review.

Recommendation

We ask that the Committee recommend the following:

- a. The Ontario Government should appoint additional reviewers to conduct the review of the Ontario Human Rights system and to extend the consultation period for the review.

CONCLUSION AND SUMMARY OF RECOMMENDATIONS

Conclusion

Despite the Canadian Charter of Rights and Freedoms and the various federal and provincial human rights laws and systems that are there to advance and promote equality, racial discrimination persists in Canada. Members of racialized communities, both people of colour and Indigenous peoples, continue to face challenges and barriers to achieving true equality. We call on the CERD Committee to adopt the recommendations as set out in this joint report so as to remind the Government of Canada of its obligation to protect the rights of all Canadians under domestic laws and international human rights laws.

Summary of Recommendations

COMMENTS ON COMPLIANCE BY THE GOVERNMENT OF CANADA

Article 1 – Definition, Interpretation and General

Issues Facing Refugee Claimants, Permanent Residents and Temporary Residents

Refugees

- a. Amend the regulations to give refugee claimants appealing a negative decision a minimum of 15 days to file the application to the Refugee Appeal Division and 30 days to perfect (complete) the application; And allow postponement for vulnerable claimants such as LGBT claims, women, children, torture survivors

- b. Claimants should not be treated differently – subject to lesser procedural protections – based on the country of origin.
- c. Canada should withdraw Bill C-4.

Family Class Immigrants

- a. Broaden the definition of family and increase quota for family class immigration to allow family reunification with immediate and extended family.
- b. Remove the health insurance restriction from multiple-entry visas for parents and grandparents.
- c. Review and redress any inequities in resource allocation at Canadian visa posts, particularly with a view to providing equitable service at visa posts located in countries with a majority racialized population.
- d. Withdraw plan to introduce a conditional permanent residency for sponsored spouses.

Temporary Foreign Workers Program (TFWP)

- a. Canada should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- b. Canada should review and remove residence restrictions imposed on workers participating in the Live-In Caregiver Program and Seasonal Agricultural Worker Program.
- c. Canada should work with provincial and territorial governments to ensure that temporary foreign workers enjoy the same legal protections as all other workers in Canada and ensure that these laws are being effectively enforced.

Cuts to Settlement Services

- a. Canada must invest the necessary funds to support immigrant settlement and integration on the basis of need, including addressing systemic barriers.

Article 2 – Legislative, Administrative, Judicial or Other Measures

Collection of Disaggregated Data and Cancellation of Long Form Census

- a. Bring back the Long Form Census
- b. Collect and track disaggregated data across all Ministries, Departments and relevant institutions in order to identify racialized and other structural and systemic disadvantage

The Visible Minority Category

- a. Cease using the term “visible minority”

Access to Justice for Vulnerable Groups

- a. Provide dedicated and adequate funding to provinces for legal aid and that such funding should be indexed to cost of living

Employment

- a. Undertake concrete measures to improve representation of racialized groups in the federal public service and fulfil its requirements under ICERD as well as the equality rights protection under section 15 of the Canadian Charter of Rights and Freedoms.

Article 5 – Equality Before the Law***Anti-Terrorism Act***

- a. End the practice of using security certificates, and end the use of secretive measures such as the no-fly list.
- b. Appoint an independent commission that would remain in force for as long as the government persists in these practices, that would review and periodically report publicly on government activities, and that would provide an avenue for independent review and investigation for affected individuals.
- c. Work with affected communities to eliminate racial and ethnic profiling in security practices.
- d. Implement the recommendations made by Commissioner Dennis O'Connor in the independent review of the Maher Arar case²⁰.

Access to Social Services

- a. Work with provincial and territorial governments to ensure that all residents have access to needed healthcare regardless of immigration status.

COMMENTS ON COMPLIANCE BY THE GOVERNMENT OF ONTARIO**Article 2 – Legislative, Administrative, Judicial and Other Measures*****Employment***

- a. The Ontario Government should bring back employment equity legislation.

Employment Standards and other Employment Issues

- a. The Ontario government should ensure that the Employment Standards Act covers all workers in Ontario regardless of immigration status.
- b. The Ontario government should allow all workers to have the right to legally organize, unionize, and collectively bargain with the employer.

Access to Justice for Vulnerable Groups

- a. The Ontario Government should appoint additional reviewers to conduct the review of the Ontario Human Rights system and to extend the consultation period for the review.

²⁰ Commission of Inquiry into the actions of Canadian officials in relation to Maher Arar (Arar Commission). 2006. Canadian Government Publishing. Ottawa.