

Colour of Poverty



Colour of Change



**JOINT SUBMISSION TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD
AT ITS 87TH SESSION AND REVIEW OF THE FIFTH AND SIXTH PERIODIC
REPORTS OF CANADA – FOLLOW-UP SUBMISSIONS AFTER CANADA’S
RESPONSE TO LIST OF ISSUES**

By

**Colour of Poverty – Colour of Change
South Asian Legal Clinic of Ontario
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Introduction

The South Asian Legal Clinic of Ontario (SALCO), the Black Legal Action Centre, and our coalition of partner the Colour of Poverty – Colour of Change (COP-COC) thank the UN Committee on the Rights of Children for the opportunity to participate in Canada’s review.

Colour of Poverty – Colour of Change (COP-COC) is a community initiative based in the province of Ontario, Canada, 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 (both Indigenous Peoples and peoples of colour) across Ontario.

The **South Asian Legal Clinic of Ontario (SALCO)** is a not-for-profit organization established to enhance access to justice for low-income South Asians in Ontario and in Canada. Since 1999, SALCO has been working to serve the growing needs of South Asians in a culturally and linguistically sensitive manner. As a specialty clinic funded by Legal Aid Ontario, SALCO provides advice, brief services and/or legal representation in various areas of poverty law and work on law reform and systemic advocacy to address the impact of systemic racism and discrimination and to improve the lives of the racialized communities that it works with.

The **Black Legal Action Centre (BLAC)** is a not-for-profit corporation create to combat individual and systemic anti-Black racism. BLAC provides legal services to low and no income Ontarians that identify as Black or African Canadian. BLAC’s service areas include housing, income maintenance, social assistance, human rights, police complaints, employment and education. BLAC also engages in test case litigation, law reform, and community development.

To date, we have provided submission to the Committee on March 20, 2020, presented at the pre-session that took place on October 8, 2020, and provided additional submission with a list of questions on October 9, 2020. The following submissions are provided after review of Canada’s Response to the List of Issues from the United Nations Committee on the Rights of the Child in preparation for the review of Canada’s 5th and 6th Report on the Convention on the Rights of the Child.

To start, we want to point out again that many of the issues highlighted in report dated, March 20, 2020, and then again addressed at the pre-session on the post pre-session submissions have not been adequately addressed by the Canadian Government. To the extent that they were addressed, the Government of Canada has either not accepted the recommendation or has not acted on them. Some of these issues continue to remain unresolved since the Committee’s 2003 review of Canada during its thirty-fourth session.

I. Disaggregated Data

Article 4 of the Convention mandates that State Parties must undertake “all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.”¹ Despite numerous calls for action, including in the Committee’s 2003 and 2012 Concluding Observations, Canada continues in its failure to establish a comprehensive national data collection system.² This continued failure at all levels of government to meet its due diligence obligations is an overarching issue that cuts across the different areas where racial discrimination is manifested, and reflective of the Federal Government’s refusal to fully acknowledge the realities of racism.

Data that is disaggregated by race, age, gender identity, sexual orientation, geographic location, ethnicity, faith, immigration status, disability, and socio-economic background, is crucial in facilitating the comprehensive and intersectional analysis of the situation of children, and the

¹ *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 art 4 (entered into force 2 September 1990).

² Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention*, UN Doc CRC/C/15/Add.215, October 27, 2003, at para 19 [2003 CRC Concluding Observations]; Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012)*, UN Doc CRC/C/CAN/CO/3-4, December 6, 2012, at para 21 [2012 CRC Concluding Observations].

development of targeted strategies, action plans, and budget investments to address systemic failures and marginalization.³ Failure to collect such data prevents the measurement and tracking of inequities and disparities; impairs assessment of the impacts of government laws, policies, and programs on marginalized communities; and impedes political and legal recognition of racial discrimination.

Questions posed by the Committee

3. Please indicate the steps taken to address the non-collection of certain data by the provinces and territories, and the progress made to set up a comprehensive national data collection system. Please provide an update on progress to enact Bill S-217, which seeks to establish a Commissioner for Children and Youth in Canada.

17. Please provide, if available, updated statistical data disaggregated by age, sex, ethnic origin, national origin, geographic location and socioeconomic status, for the past three years, on:

- (a) Children living in poverty and in inadequate housing;
- (b) Separated from their parents;
- (c) Children in refugee and migrant situations;
- (d) Children in immigration detention, distinguishing between accompanied and non-accompanied children;
- (e) Reported cases of children subjected to involuntary admission and treatment in psychiatric institutions.

18. Please provide data disaggregated by age, sex, socioeconomic background, ethnic origin and geographic location regarding the situation of children deprived of a family environment, for the past three years, on the number of children:

- (a) In alternative care;
- (b) In foster/kinship care;
- (c) That have been adopted.

19. Please provide data, disaggregated by age, sex, type of disability, ethnic origin and geographic location, for the past three years, on the number of children with disabilities:

- (a) Living with their families;
- (b) Living in institutions;
- (c) Attending regular primary schools;

³ 2003 CRC Concluding Observations, *supra* at para 19; 2012 CRC Concluding Observations, *supra* at para 21. See also Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-first to twenty-third periodic reports of Canada*, UN Doc CERD/C/CAN/CO/21-23, August 25, 2017, at paras 5-6.

- (d) Attending regular secondary schools;
- (e) Attending special schools;
- (f) Out of school;
- (g) Abandoned by their families.

20. Please provide, if available, updated statistical data disaggregated by age, sex, type of offence, ethnic and national origin, geographic location and socioeconomic status, for the past three years, on children in conflict with the law who have been:

- (a) Arrested;
- (b) Referred to diversion programmes;
- (c) In pre-trial detention, including the duration;
- (d) Tried as adults;
- (e) Serving a sentence in detention and the length of the sentence.

Canada's Response

In its response, Canada advises that “All PTs improved data collection, particularly regarding children in care, children in vulnerable situations, and Indigenous children.” It also notes some specific instances of provincial initiatives.

In Annex 2, Canada also provided available data on such things as children living in poverty, separated from their parents for child protection purposes, admitted to psychiatric institutions on an involuntary basis, referred to diversion programs, placed in pre-trial detention, sentenced to secure detention, and sentenced to open custody. With the exception of the statistics provided with respect to the number of children in inadequate housing, Canada has not provided data that is disaggregated on the basis of race or ethnic origin.

Submission

Canada's continued failure at all levels of government to collect disaggregated race-based data is an overarching concern that cuts across all areas where racial discrimination is manifested, and is reflective of the Federal Government's refusal to fully acknowledge the realities of racism in Canada.

Such realities include the deepening racialization of child poverty, higher rates of homelessness and core housing needs among racialized groups, disproportionate rates of involvement in the youth criminal justice system, poorer education outcomes for racialized children, lack of access to healthcare for racialized children, inequitable access to government benefits and programs for racialized families and children, as well as discriminatory treatment of racialized children with precarious status and children of parents with precarious status.

Canada has not established a national data collection strategy that mandates data collection across all jurisdictions that will allow us to meaningfully understand that disparities for children from different communities, including racialized communities. For example, we have no understanding of the number of children in Canada who continue to be

ineligible for supports like the Canada Child Benefit (which is meant to be one of the government's most critical components of reducing child poverty).

RECOMMENDATION:

Data Collection

- Canada must establish a national data collection system, mandating Federal, Provincial, Territorial, and Municipal governments to collect data disaggregated by race, age, gender identity, sexual orientation, geographic location, ethnicity, faith, immigration status, disability, and socio-economic background, across all Departments, Ministries, Divisions, and relevant institutions, and use this data to develop strategies for addressing systemic discrimination.

Relevant Articles of the Convention: arts. 2, 4

II. Anti-Racism Strategy 2019-2022

Question posed by the Committee

4. (a) Please provide information on measures taken to: (a) Implement the Accessible Canada Act, the Anti-Racism Strategy (2019-2022) and the decision in *Caring Society v. Canada*;

Canada's Response

In response, Canada advises that it “has made youth-focused investments to enhance community supports for Black youth and to develop research in support of more culturally focused mental health programs in Black communities. Funding was also provided for organizations to help diverse youth overcome barriers to employment and develop skills and knowledge to participate in the labour market.”

Submission

Canada's Anti-Racism Strategy outlines a whole-of-government approach to anti-racism but, to date, **Canada has failed to look at the legislation, programs, and policies that it has created that perpetuate systemic racism against racialized children in Canada.**

For example, the Canada Child Benefit (CCB) is a tax-free monthly payment made to eligible families to help with the cost of raising children, administered through the income tax system. It was introduced by the federal government to help low- and middle-income families with the cost of raising children. It also has an important role to play in reducing child poverty in Canada. CCB may be the only amount a family receives to cover basic needs for children, including food, and other necessities.

Eligibility for the CCB is based on the immigration status of the child's parents. The *Income Tax Act* limits eligibility for the CCB to citizens, permanent residents, protected persons, temporary residents who have lived in Canada for 18 months and “Indians” registered under the *Indian Act*. This means there are many children in Canada who are unfairly and arbitrarily excluded,

including children who are born in Canada, and whose parents file income tax and pay into the income tax system.

This is particularly disturbing since in Canada, non-permanent residents have a poverty rate of 42.9%, compared with 14.2% for the general population. The children of non-permanent residents are therefore among those most in need of financial support.

Newcomer and racialized women also face disproportional impacts from gender-based violence, due to the many barriers they face. Women with precarious immigration status are often forced to choose between remaining in an abusive relationship together with their children and living without access to social services including CCB.

A constitutional challenge to the provision in the *Income Tax Act* which excludes certain children from access to CCB based solely on their parents' immigration status argued that no child should be deprived of the support they need based simply on the immigration status of their parent. Such an exclusion violates s.7 and s.15 of the *Canadian Charter of Rights and Freedoms*. It also violates articles 2, 3, 18.2, 26 and 27 of the CRC.

RECOMMENDATIONS:

Anti-Racism

- Create a National Action Plan Against Racism to accompany and provide the necessary details for the national Anti-Racism Strategy, containing concrete strategies with actionable goals, measurable targets, and timetables, and the necessary resource allocations to accompany each strategy and action to address all relevant forms of racism and faithism - including anti-Indigenous racism, anti-Black racism, anti-Asian racism and Islamophobia.
- Adopt a federal Anti-Racism Act to build a legislative framework and foundation for the Anti-Racism Secretariat - with dedicated and sustainable funding support. The Anti-Racism Act must name and address all relevant racism and faithism, including anti-Indigenous racism, anti-Black racism, anti-Asian racism, and Islamophobia.

Appropriate Assistance to Parents

- The current exclusions based on immigration status should be removed from the *Income Tax Act*, such that every parent in Canada who is considered a resident for income tax purposes is eligible for the CCB;
- Particular consideration must be given when considering CCB audits of individuals residing in a First Nation community and individuals receiving social assistance, keeping in mind barriers to responding to requests;
- Requests for information must also be tailored to the individual, requesting only information that is necessary to confirm eligibility, as opposed to sending form letters requesting repetitive documentation and documentation that has already been provided;

- Specialized caseworkers should be responsible for the CCB audits, especially for First Nation communities, and contact information provided, to assist in collecting and providing the information that is necessary to review eligibility benefits;
- A system of interim CCB assistance should be implemented while appeals are being processed, along with a responsive system in place to address objections, disclose documents, and facilitate mediation, or an early resolution process;
- Where an individual identifies a legal representative, the CRA must directly communicate with the representative, especially when responding to correspondence directly from the representative;
- The default for collection of CCB overpayments should not be a 100% rate of recovery

Relevant Articles of the Convention: arts. 2, 3, 6, 18.2, 26

III. Immigration: Implementation of the Best Interest of the Child (BIOC)

Question posed by the Committee

4. (b) Develop procedures and criteria to determine the best interests of the child in all areas that impact children in addition to the newly introduced best interests of the child determinations in the Federal Immigration and Refugee Protection Act, the Federal Youth Criminal Justice Act and the Federal Divorce Act;

Canada's Response

Canada reports that in 2021, the government amended the *Immigration and Refugee Protection Act* and Canada's Immigration and Refugee Board issued a new Detention Guideline that provides further guidance to board members in considering the BIOC in decisions on the detention of a child, or a parent or guardian of a child.

Submission

Canada continues criminal inadmissibility in immigration against racialized youth and adults who were left unprotected by Canada's immigration laws and child welfare systems as racialized children. Current immigration legislations, regulations, and policies simply do not apply the BIOC in these two instances.

Each year, Canada issues removal orders against hundreds of adult noncitizens as a result of criminality.⁴ Among those ordered removed are people who came to Canada as children and were involved in Canada's child welfare system as children and youth. While they were involved in the child welfare system, the state had a legal obligation to provide them with the care, guidance, and other services generally expected of parents, including a responsibility to seek Canadian citizenship on their behalf. Because the state failed to meet its obligations, these people did not become Canadian citizens, and are now facing deportation.

⁴ Canada Border Services Agency, "Standing Committee on Public Accounts: Spring 2020 Auditor General report" (Nov 24 2020), online: <<https://www.cbsa-asfc.gc.ca/pd-dp/bbp-rpp/pacp/2020-11-24/km-mc-eng.html#s3>>

The majority of recent immigrants to Canada are racialized.⁵ Given the nature of immigration, and the systemic racism and anti-Black racism in the Canadian criminal justice system⁶, racialized people in general, and Black people in particular, are more likely to be punished twice by serving a criminal sentence and being forced to leave the only country they have ever really known.

Black children and families in particular, like Indigenous children, are overrepresented in child welfare systems relative to their proportion in the general population.⁷ A 2016 report found that despite experiencing similar rates of neglect, and of physical, sexual and emotional abuse as white children, in Ontario Black children are 40% more likely to be investigated, 18% more likely to have their abuse substantiated, 8% more likely to be transferred to ongoing services, and 13% more likely to be placed in out-of-home care during investigations.⁸

Because Black children are disproportionately admitted into the child welfare system, Black children who were not citizens at the time that they became involved in the child welfare system are also more likely to be disproportionately impacted by a failure of the state to seek and obtain Canadian citizenship on their behalf.

It is also worth noting that youth in the child welfare system are particularly vulnerable to “crossing over” to the criminal justice system. This is mainly because actors in the child welfare system often rely on police to “parent”; i.e. for de-escalation and crisis management. In Ontario, it is estimated that over 50% of young people living in group care settings will incur criminal charges related to something that they did in out-of-home care.⁹ For most, this will be their first criminal charge.¹⁰ Black youth are more likely to receive more severe charges, more administrative charges, and more time in pre-trial detention.¹¹ This is referred to in Canada as the “child welfare to youth justice pipeline”.

⁵ Statistics Canada, “Visible Minority (15), Immigrant Status and Period of Immigration (11), Age (12) and Sex (3) for the Population in Private Households of Canada, Provinces and Territories, Census Metropolitan Areas and Census Agglomerations, 2016 Census - 25% Sample Data”, online: <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?TABID=2&Lang=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=1341679&GK=0&GRP=1&PI=D=110532&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=120&VID=0&VNAMEE=&VNAMEF=&D1=0&D2=0&D3=0&D4=0&D5=0&D6=0>>

⁶ R v Morris ONCA 680

⁷ Ontario Human Rights Commission, “Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare” (Feb 2018), at 4, online: <http://www.ohrc.on.ca/sites/default/files/Interrupted%20childhoods%20Over-representation%20of%20Indigenous%20and%20Black%20children%20in%20Ontario%20child%20welfare_accessible.pdf>

⁸ Ontario Association of Children’s Aid Societies, “One Vision, One Voice: Changing the Ontario Child Welfare System to Better Serve African-Canadians, Practice Framework Part 1: Research Report”, (Sep 2016) at 22, online: <http://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1_digital_english.pdf>

⁹ Judy Finlay et al., “Cross-Over Youth Project: Navigating Quicksand” (Sep 2019) at 74, online: <<https://youthrex.com/wp-content/uploads/2020/01/COYNavigatingQuicksand.pdf>>

¹⁰ *Ibid.* at 76.

¹¹ *Ibid.* at 77.

Canadian police services single out Black people for greater scrutiny, surveillance, and questioning.¹² As a result, police are also more likely charge and arrest Black people.¹³ Once arrested, judges and justices of the peace are more likely to deny Black people bail. If they grant bail, they are more likely to impose more release conditions, thereby subjecting Black people to greater surveillance by the court (i.e. curfews, mandatory supervision requirements), and increasing the likelihood of a breach of bail conditions.¹⁴ This means that Black people are also more likely to plead guilty, be unjustly convicted, and have more severe sentences imposed on them after conviction.¹⁵ As a result, Canada incarcerates Black people at rates that are disproportionate to their representation in the general population. Despite representing only 3% of the population in Canada, Black people represent 7% of people in Canada's prisons.¹⁶

Because Black people are disproportionately policed, stopped, questioned, arrested, charged, convicted and sentenced, Black people who are not citizens are also more likely to be deemed inadmissible for reasons of criminality and to face deportation as a result. **There is no indication that Canada has applied a BIOC of GBA+ analysis to the application of immigration criminal inadmissibility laws on Black and other racialized children.**

RECOMMENDATIONS

Immigration Protections For Children Who Were In Care

- Canada must take immediate action to halt the removal of any foreign national who came to Canada as a child and spent any period of their childhood in Canada's child welfare system.
- Canada must amend the *Immigration and Refugee Protection Act* to provide that a removal order cannot be enforced against a person who was not a citizen when they transitioned out of the care of a child welfare agency or foster parent.

¹² Scot Wortley and Julian Tanner, "Data, denials, and confusion: The racial profiling debate in Toronto" (2003) 45(3) *Canadian J. Criminology and Crim. Just.* 367; Akwasi Owusu-Bempah "The usual suspects: police stop and search practices in Canada" (2011) 21(4) *Policing and Society* 395; Scot Wortley and Julian Tanner "Inflammatory rhetoric? Baseless accusations? A response to Gabor's critique of racial profiling research in Canada" (2005) 47(3) *Canadian J. Criminology and Crim. Just.* 581; Jim Rankin, Sandro Contenta, and Andrew Bailey "Toronto marijuana arrests reveal 'startling' racial divide" *The Toronto Star* (6 July 2017), online:

<https://www.thestar.com/news/insight/2017/07/06/toronto-marijuana-arrestsrevealstartling-racial-divide.html>

¹³ Vic Satzewich & William Shaffir, "Racism versus Professionalism: Claims and Counter-Claims about Racial Profiling" (2009) 51 *Canadian J. Criminology and Crim. Just.* 119 at 203.

¹⁴ Gail Kellough and Scot Wortley, "Remand for Bail: Bail decisions and plea bargaining as commensurate decisions" (2002) 42(1) *Brit J Crim* 186, as explained in Akwasi Owusu-Bempa & Scot Wortley, "Race, Crime and Criminal Justice in Canada" in Sandra M. Bucerius & Michael H. Tonry eds, *The Oxford Handbook of Ethnicity, Crime and Immigration*, (Oxford: Oxford University Press, 2013) at 292; Anna Mehler Paperny "Exclusive: New data shows race disparities in Canada's bail system" Reuters (19 October 2017), online:

<https://ca.reuters.com/article/domesticNews/idCAKBN1CO2RD-OCADN>

¹⁵ Commission on the Reform of Ontario's Public Services, "Public Services for Ontarians: A Path to Sustainability and Excellence", (2012) at 354, online: <http://www.fin.gov.on.ca/en/reformcommission/chapters/report.pdf>

¹⁶ Department of Justice Canada, "Bill C-22: Mandatory Minimum Penalties to be repealed", online: <https://www.canada.ca/en/departement-justice/news/2021/02/bill-c-22-mandatory-minimum-penalties-to-be-repealed.html>

- Canada must promptly extend or reinstate permanent resident status to anyone who came to Canada as a child and spent any period of their childhood in Canada's child welfare system.
- Canada must amend the *Citizenship Act* to provide citizenship for persons when they transition out of the care of a child welfare agency or foster parent.

Relevant Articles of the Convention: arts. 1, 9, 18, 20

IV. Access to Education for Racialized Communities

Question Posed by the Committee

11. Please provide information on measures taken to: (a) Remove hidden costs for education to ensure free primary education for all; ... (c) Ensure that indigenous and African Canadian children receive culturally appropriate education which respects their heritage and language;

Canada's Response

In its response, Canada advises:

“All PTs ensure free access to primary education. Fees may be charged for supplies, extracurricular activities, tournaments and transportation. Some PTs have mechanisms in place for administrators to waive fees for families in need.”

Curricula in Alberta, Newfoundland and Labrador, New Brunswick, Ontario and Saskatchewan are being revised to better reflect the historical legacies of the Atlantic slave trade in Canada and the contributions made and challenges faced by Black Canadians. This work addresses systemic racism, concepts related to diversity and race relations, equity and human rights for Black, Indigenous and People of Colour, and issues related to marginalization and social and economic inequalities.

Submission

Education falls within the jurisdiction of Canadian provinces and territories. Access to free education is predicated upon the children having a certain type of immigration status (Canadian citizens, permanent residents, protected persons, convention refugees, asylum seekers, and other documented immigrants). There are many reasons why some children end up living in Canada without status, including the denial of their refugee claims, or when their parents remain in Canada after the expiration of their temporary work permits or visitor visas.

Under s. the *Education Act*, R.S.O. 1990, c.E.2, Ontario mandates all children over the age of six and under the age of eighteen to attend either primary or secondary school. Despite this compulsory attendance requirement, there have been many reports in **Ontario of schools denying access to education for children with no or precarious immigration status**. Even in some cases where the children may have status (e.g. as a refugee claimant), some school boards in Ontario have been known not to allow these children enrollment. While these cases are often resolved in the children's favour after advocates become involved, it is unclear how many children with no or precarious status may have been denied access to education if they have no legal or community support.

Across Canada, other provinces and territories continue to **deny access to education for undocumented (non-status) children, many of whom are low-income and racialized**. No data is available on the number of children impacted across Canada, but Collectif Éducation Sans Frontières, the Quebec based branch of Canadian non-profit organization Education Beyond Borders, has estimated that several thousand children are being denied schooling due to a lack of legal status in Quebec alone.¹⁷

The Canadian government provides each province with a Canadian Social Transfer (“CST”). The CST notes that one of the priority areas for this transfer of funding is “support for children”. No information could be found on whether that transfer of funding includes conditions to support access to education for all children in Canada. **Canada’s report back to the Committee does not align with the actual reality – The denial of access to education for many racialized and other children in Canada.**

With respect to culturally appropriate education for Indigenous and Black children, anti-Black racism in education continues through the introduction of predominantly Eurocentric (i.e., white, patriarchal) teaching materials in all subject areas of the curriculum. These teaching materials reinforce white supremacy by diminishing, caricaturing or eliminating the experiences and histories of other races, including Black people. Students do not see themselves reflected in their curriculum, their physical surroundings, or the broader environment. As an example, in February 2021, the Ontario Black History Society reviewed a textbook that is used to teach Canadian history to children across the province who are in Grade 8. Of the 255 pages, only 13 pages made mention of Black history in Canada.¹⁸

It is worth noting that some provincial governments have rolled back and removed language about racism and colonialism. As an example, in July 2021, the Ontario government removed from the preamble of the math curriculum mentions of “anti-racist and anti-oppressive teaching and learning opportunities,” and “the colonial contexts of present-day mathematics education.”¹⁹

RECOMMENDATIONS:

Education

- Canada must coordinate with Provincial and Territorial governments to ensure that all school boards establish a data collection system to collect student demographic data disaggregated by race, age, gender identity, sexual orientation, geographic location, ethnicity, faith, immigration status, disability, and socio-economic background, to develop targeted measures to address systemic discrimination in education and education outcomes; and

¹⁷ <http://collectifeducation.org/en/conference-de-presse-sur-lexclusion-denfants-a-statut-dimmigration-precaire-de-lecole-et-implementation-de-la-nouvelle-loi-144/>

¹⁸ Miriam Katawazi “Ontario government urged to add Black history to education curriculum” *CTV News* (February 26, 2021), online: <https://toronto.ctvnews.ca/ontario-government-urged-to-add-black-history-to-education-curriculum-1.5326049>

¹⁹ Allison Jones, “Ontario removes anti-racism text from math curriculum preamble”, *Global News* (July 14, 2021), online: <https://globalnews.ca/news/8028182/ontario-removes-anti-racism-text-math-curriculum/>

- Education and curriculum development needs to be reformed to employ an anti-colonial, anti-oppressive and intersectional lens that identifies and addresses inequities in educational institutions, including racism, homophobia, and Islamophobia.

Relevant Articles of the Convention: arts. 2, 28, 29

V. Indefinite Immigration Detention of Children

Question Posed by the Committee

12. Please provide information on: (a) Measures taken to develop non-custodial alternatives to immigration detention for children in view of reports that the average length of time that children spend in immigration detention has increased and that conditions resemble medium security prisons;

Canada's Response

In its response Canada notes that it “continues to work to minimize the use of immigration detention for children and their parents or guardians. In 2018, the GC launched an expanded Alternatives to Detention (ATD) program, which includes tools to enable the effective release of individuals into the community. The greater use of ATD has resulted in fewer individuals detained on immigration grounds, better options for managing vulnerable people, including adults with children, and greater national consistency.”

Submission

Canadian immigration law continues to allow for the immigration detention of children for an indefinite period of time. In some cases, the Canada Border Services Agency (“CBSA”) classifies children as being “housed” versus being “detained”. The distinction noted by the Canadian government is that those children who are “housed” are staying in the same detention centres as their parents (so that the family can remain together) but are not detained under immigration law. Alternatively, families are advised that children can be separated from their parents so as not to be detained.

Ultimately, those children remain in exactly the same detention centres, under the same conditions, regardless of their classification by the CBSA. The significant psychological trauma experience by children that have lived in detention, even briefly, and which persists long after their release, has been extensively documented. Detained children experience “high rates of psychiatric symptoms, including self-harm, suicidality, severe depression, regression of milestones, physical health problems, and post-traumatic presentations,” and younger children experience “developmental delays and regression, separation anxiety and attachment issues, and behavioural changes, such as increased aggressiveness.”²⁰

²⁰ Hanna Gros & Yolanda Song, *No Life for a Child: A Roadmap to End Immigration Detention of Children and Family Separation* (University of Toronto, Faculty of Law: Toronto, 2016) at 23 online: https://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-NoLifeForAChild.pdf [No Life for a Child]; Rachel Kronick, Cécile Rousseau & Janet Cleveland, “Asylum-seeking children’s experiences of detention in Canada: A qualitative study” (2015) 85:3 Am J Orthopsychiatry 287. See also International Human Rights Program, *Rights violations associated with Canada’s treatment of vulnerable persons in immigration detention: Joint*

While we acknowledge the movement towards minimizing immigration detention for children, it is our submission that **Canada must immediately end the practice of detaining or housing children.**

RECOMMENDATIONS

Immigration Detention of Children

- Canada must immediately end the practice of detaining or housing children;
- The CBSA must be overseen by an independent accountability mechanism with the jurisdiction to receive complaints about non-compliance with the Minister's directives on the detention of minors;
- Strong protections of children's rights must be legislated within the *IRPA* rather than relying on a Ministerial Directive, such that the best interests of the child are a primary consideration in all decisions concerning children; and

Relevant Articles of the Convention: arts. 22, 37(b)-(d), 39

VI. Poverty Rates for Racialized Children

Question Posed by the Committee

17. Please provide, if available, updated statistical data disaggregated by age, sex, ethnic origin, national origin, geographic location and socioeconomic status, for the past three years, on: (a) Children living in poverty and in inadequate housing;

Canada's Response

In its response, Canada reports that Canada's "poverty rate for children decreased from 11.6% to 9.7% between 2017 and 2019, which represents about 123,000 children lifted out of poverty. Over the same period, seven PTs experienced a decrease in their childhood poverty rates while three provinces had an increase." In Annex 2, Canada provided data on children living in poverty. Not disaggregated data was provided to break down poverty rates based on race, ethnic origin, or immigration status.

Submission

Indigenous and racialized communities in Canada continue to face disproportionate levels of poverty. According to the most recent census data, 41% of status First Nations children living off-reserve are living in poverty, with the number climbing to 53% on reserve. For non-status First Nations children across the country, the poverty rate is 32%, and for Inuit and Métis children, the rates are 25% and 22% respectively. Racialized children face a poverty rate of 22%, with children

submission to the Working Group on Universal Periodic Review to assist in its review of Canada, 30th session (April–May 2018), online (pdf): < https://ihrp.law.utoronto.ca/utfl_file/count/media/Canada%20UPR%20Final.pdf>.

of former or current landed immigrants facing a poverty rate of 35%. Each of these figures stands in stark contrast to the 12% poverty rate of non-immigrant White children.²¹

These disparities are even more pronounced in particular cities. In Toronto, a shocking 84% of all Indigenous children and one third of all racialized children live in poverty, in contrast to the 15.1% of non-racialized children. For children of colour, these numbers increase with further disaggregation: 59.5% of West Asian children, 58.8% of Arab children, 43.6% of Black children, 36.1% of Latin American children, 25.3% of Chinese children and 33% of South Asian children live in poverty.²² For children of West Asian and Black backgrounds, these high poverty rates persist even when they are born in Canada, including being third-generation or more in Canada.²³

Poverty is exacerbated by other forms of race-based disadvantage. For example, the effects of poverty for children living on reserve are intensified by chronic underfunding of schools and child welfare services, crowded housing, and undrinkable water.²⁴

In 2018, Canada released its first ever Poverty Reduction Strategy, a welcomed commitment to addressing poverty in Canada. However, despite identifying various vulnerable communities at heightened risk of poverty, altogether missing from consideration are all communities of colour. Among communities of colour, communities of African descent in particular are over-represented in virtually every category that signifies disadvantage. It is critical that race based data is disaggregated further to allow identification of the experiences of diverse peoples of colour and to measure the unique impacts of public policy interventions. Any poverty reduction strategy must directly address the reality of racialized poverty, with targeted action plans to eradicate these inequities.

Also of note, as part of its poverty reduction strategy, Canada is using the Market Basket Measure (MBM) as the official poverty measure. Under the MBM, a household is determined to be low income if it is unable to afford a specific basket of goods and services that would allow them to meet their basic needs and achieve a modest standard of living; the costs of each item vary across communities.²⁵ The MBM however, underestimates the prevalence of poverty. It measures only material deprivation, rendering invisible other aspects of poverty including social participation. It moreover leaves out items such as childcare and prescription medication, underestimates shelter costs, does not take into account cultural differences, and does not define what a “modest” standard of living is.²⁶ Many children and families considered to be living in poverty under other poverty measures such as the low income measure are not considered to be living in poverty under the MBM.²⁷ The MBM also does not apply to First Nations reserves and the territories, which face higher rates of poverty.

²¹ Campaign 2000, *supra* at 8-9.

²² OACAS, *2018 Toronto Child and Family Poverty Report: Municipal Election Edition* (2018) at 2, online: <<https://www.torontocas.ca/news/2018-toronto-child-family-poverty-report>>.

²³ *Ibid* at 2.

²⁴ David Macdonald and Daniel Wilson, “Shameful Neglect: Indigenous Child Poverty in Canada” (2016) *Canadian Centre for Policy Alternatives*, <<https://www.policyalternatives.ca/publications/reports/shameful-neglect>>.

²⁵ Canada, *Opportunity for All: Canada’s First Poverty Reduction Strategy* (2018) at 11, online: <<https://www.canada.ca/en/employment-social-development/programs/poverty-reduction/reports/strategy.html#h2.8>>.

²⁶ Campaign 2000, *supra* at 4, 13-14.

²⁷ *Ibid* at 14.

Despite repeated recommendations from this committee and other UN mechanism (ex: Committee on the Elimination of Racial Discrimination and the Universal Periodic Review), Canada continues to fail to collect and report on child populations that are amongst the most vulnerable in Canada. This in turn allows Canada to report on an overall reduction in child poverty and hide the reality for racialized and Indigenous children.

RECOMMENDATIONS:

Poverty Reduction

- Canada must address the racialization of poverty in the national as well as provincial and territorial poverty reduction strategies; and
- Canada must improve the MBM and adopt additional poverty measures beyond material deprivation, in order to meaningfully track levels of poverty and reflect cultural variation. Canada must also set timelines to co-develop poverty measures with Indigenous communities and organizations.

Relevant Articles of the Convention: arts. 2, 6.2, 24, 26, 27

Conclusion

Many of the issues highlighted above have not been adequately addressed by the Canadian Government in its Response. In addition, on some issues (ex: access to education), the reality on the ground for children is not commensurate with what Canada has reported in its Response.

Our coalition submits that the rights of racialized children in Canada require targeted approaches to legislative and policy reform to address the issues raised above, and an inclusive approach to consult with grassroots CSO's that work within racialized communities.