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**The Blackening Margins of Multiculturalism: The African Canadian Experience of Exclusion  
from the Economic, Social and Cultural Promise and Prosperity of Canada**

**A Report on the Canadian Government's Compliance with the *International Covenant on  
Economic, Social and Cultural Rights* for the 57th Session of the Committee for Economic,  
Social and Cultural Rights (February 22 to March 4 of 2016).**

**(February 2016)**

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## **PART I - INTRODUCTION**

The current report will demonstrate that the Canadian Government's compliance with the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* has had the impact of supporting and even perpetuating direct and systemic anti-Black racism and disadvantage within Canada.

### **Identification of Canadian Civil Society Organization**

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

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

### **Canada's African Canadian Population and Its History and Significance**

According to Canada's 2011 Census<sup>2</sup> just fewer than 945,700 individuals identified themselves as Blacks, the third largest visible minority group. African Canadians make up 15.1% of the visible minority population and 2.9% of the total Canadian population. Among Canada's African Canadian population, 42% live in Toronto, and 22.9% in Montréal. African Canadians are also the second largest proportion of Canadian-born among all visible minority groups, at 43.2%. Among African Canadians, 8.9% were third generation or more. Moreover, the African Canadian

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

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

population is quite young: The median age of African Canadians is 29.5 years, which means it is Canada's youngest visible minority group. Among African Canadians, 27% are aged 14 and under, compared with 17% of the total population and 21.5 % of the overall visible minority population.<sup>3</sup>

### **A Brief History of African Canadians**

In order to understand contemporary anti-Black racism in Canada, it is necessary to first understand its history. Canadians tend to downplay the role of slavery in our nation's history: "Unlike the United States, where there is at least an admission of the fact that racism exists and has a history, in this country one is faced with a stupefying innocence."<sup>4</sup> Slavery, however, existed in Canada from the 17th century until its abolition in 1834, for a total of 206 years.<sup>5</sup> During this time, persons fleeing from slavery in the United States found themselves either re-enslaved or living a truncated version of freedom. After slavery was abolished, African Canadians had to contend with slavery's afterlife by being forced to face legal and de facto segregation in housing, schooling, and employment, and exclusion from public places such as theatres and restaurants.<sup>6</sup> These racist practices were reinforced by a justice system that often served to keep African Canadians "in their place."<sup>7</sup>

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

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<sup>3</sup> Government of Canada, "Immigration and Ethnocultural Diversity in Canada", Statistics Canada, 2011. Online: [http://www.chba.ca/uploads/Urban\\_Council/Spring%202013/Tab%208%20-%20Immigration%20and%20Ethnocultural%20Diversity%20in%20Canada.pdf](http://www.chba.ca/uploads/Urban_Council/Spring%202013/Tab%208%20-%20Immigration%20and%20Ethnocultural%20Diversity%20in%20Canada.pdf)

<sup>4</sup> Dionne Brand, *Bread Out of Stone* (Toronto: Coach House Press, 1994).

<sup>5</sup> Afua Cooper, *The Hanging of Angelique: The Untold Story of Canadian Slavery and the Burning of Old Montréal* (Toronto: HarperCollins Publishers, 2006).

<sup>6</sup> Robin Winks, *The Blacks In Canada: A History*, 2d ed., (Montreal: McGill-Queen's Press, 1997).

<sup>7</sup> *Christie v. York Corporation*, [1940] S.C.R. 139; *R. v. Desmond*, (1947) 20 M.P.R. 297 (N.S.S.C.); *Hill v. Camden and Zone*, 11 U.C.B.Q. 573 (Ont. Q.B.).

<sup>8</sup> Lawrence Hill, *Trials and Triumphs: The Story of African Canadians*, (Toronto: Umbrella Press, 1993) at 19, 20 and 53.

<sup>9</sup> *Ibid.* at 54.

<sup>10</sup> *Ibid.* at 41-42; Milfflin Wistar Gibbs was part of the Victoria City Council and played a role in encouraging British Columbia to become a part of Canada, which eventually happened in 1871.

<sup>11</sup> *Ibid.* at 22, 23 and 35. The Dawn settlement, Chatham, Ontario was established by Josiah Henson in the 1840s. Another prominent Black school, the Buxton Mission School in Ontario, was established in 1850.

but absent from educational curricula and public discourse on Canada's history.<sup>12</sup>

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

Left without a reasonable historic explanation for the disadvantaged position occupied by the African Canadian community and any acknowledged record of African Canadian accomplishments, it is easy to explain the marginalized position of the African Canadian community by reverting to racist stereotypes (e.g. Afro-descendants as unintelligent, lazy, savage, overly aggressive and prone to anti-social or criminal behaviour).<sup>13</sup> This continuing legacy of Canada's racist past was acknowledged by Dr. Doudou Diène, the UN Special Rapporteur on Racism, upon his visit to Canada in 2004:

Canadian society is still affected by racism and racial discrimination. Because of its history, Canadian society, as in all the countries of North and South America, carries a heavy legacy of racial discrimination, which was the ideological prop of trans-Atlantic slavery and of the colonial system. The ideological aspect of this legacy has given rise to an intellectual mindset which, through education, literature, art and the different channels of thought and creativity, has profoundly and lastingly permeated the system of values, feelings, mentalities, perceptions and behaviours, and hence the country's culture.<sup>14</sup>

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<sup>12</sup> Four-Level Government/African Canadian Community Working Group, *Towards a New Beginning: The Report and Action Plan of the Four-Level Government/African Canadian Community Working Group* (Toronto: African Canadian Community Working Group, 1992) at 15: "The story of people of African origin in Canada is a long one, predating Confederation itself by more than two centuries. Yet few Canadians know of this story and fewer still are aware of the contributions which this ethnic minority group has made over these centuries to the development of Canadian society as we know it today. One tragic consequence of this ignorance is that it has denied Black Canadians the full measure of their own self-worth in the way that other communities ... have been able to enjoy." See also TDSB, "Improving Success for Black Students: Questions and Answers".

<sup>13</sup> Earl Hutchison, *The Assassination of the Black Male Image*, (New York: Touchstone, 1997); Esmeralda Thornhill, *Focus on Racism: Legal Perspectives From a Black Experience*, (Ottawa: National Judicial Institute, 1995) at 81, 83, 86, and 87; Frances Henry and Carol Tator, *Racist Discourse in Canada's English Print Media* (Toronto: The Canadian Race Relations Foundation, 2000).

<sup>14</sup> Doudou Diène, Report by Mr. Doudou Diène, *Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance – Mission to Canada, UNHRC, E/CN.4/2004/18/Add.2 (2004)* at para. 68.

Anti-Black racist stereotypes are the result but also the cause of anti-Black racist practices. In the past, stereotypes of Black people were used to justify slavery and segregation.<sup>15</sup> Today, they provide the basis for direct and systemic anti-Black racist policies and practices that violate the economic, social and cultural rights of African Canadians. This is reflected in the persistent, chronic and negative disproportionalities and disparities that exist for African Canadians in the areas of poverty, unemployment, housing, education, child welfare, food security, as well as representation and participation in the cultural life of Canada. These phenomena reveal an institutionalized practice of neglect and marginalization of African Canadians which bars them from full participation in Canadian life and perpetuate the underlying socioeconomic and historic causes of African Canadian life being relegated to the margins of multiculturalism.

### **Anti-Black Racism is No Secret to Canadian Authorities**

Despite African Canadians having a presence in Canada since the early 1600s, and notwithstanding Canada's 2015 ranking as one of the top 10 countries in the world according to the 2015 UN Human Development Index<sup>16</sup>, anti-Black racism continues to dominate the experience and encumber not only the civil and political rights of African Canadians but their economic and social rights as well.<sup>17</sup>

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

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

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<sup>15</sup> Richard Delgado, ed., *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 1995) at 547-548; Frances Henry and Carol Tator, *Discourses of Domination: Racial Bias in the Canadian English-Language Press* (Toronto: University of Toronto Press, 2002) at 163-202.

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

<sup>17</sup> Joseph Mensah, *Black Canadians: History: Experience, Social Conditions*, 2<sup>nd</sup> ed. (Winnipeg: Fernwood Publishing, 2010); Akua Benjamin, David Este, Carl James, Bethan Lloyd, Wanda Thomas Bernard and Tana Turner, *Race and Well-Being The Lives, Hopes and Activism of African Canadians* (Halifax and Winnipeg: Fernwood Publishing 2010).

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

First, what we are dealing with, at root, and fundamentally, is anti-Black racism. While it is obviously true that every visible minority community experiences the indignities and wounds of systemic discrimination throughout Southern Ontario, it is the Black community which is the focus. It is Blacks who are being shot, it is Black youth that is unemployed in excessive numbers, it is Black students who are being inappropriately streamed in schools, it is Black kids who are disproportionately dropping out, it is housing communities with large concentrations of Black residents where the sense of vulnerability and disadvantage is most acute, it is Black employees, professional and non - professional, on whom the doors of upward equity slam shut. Just as the soothing balm of 'multiculturalism' cannot mask racism, so racism cannot mask its primary target.<sup>18</sup>

The Ontario government's 2008 *Review of the Roots of Youth Violence* report found that this statement "remains apposite."<sup>19</sup>

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

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

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

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

<sup>20</sup> *R v. Spence*, [2005] 3 SCR 458 at 52.

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

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

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

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

### **The Exclusion of African Canadians From Canada's Preparation for Reporting to the Committee on Economic, Social and Cultural Rights For its 57<sup>th</sup> Session on the ICESCR**

To supplement Canada's Sixth Period Report for the 57<sup>th</sup> Session of the ICESCR, the Canadian government prepared a Core Document at the request of the Secretary-General of the United Nations. The Core Document purports to provide members of the Committee on Economic, Social and Cultural Rights (the Committee) with a useful overview of general factual and statistical information about Canada, covering the country's demographic, economic, social and cultural characteristics. The Document also provides for members of the Committee an overview of the general framework for the promotion and protection of human rights in Canada, as well as information on how Canada's human rights systems can be accessed to remedy instances of discrimination that violate individuals' fundamental right to equality.

Inexcusably, African Canadians are entirely erased and excluded from any mention in this Core Document. This document was produced as if Canada does not have and has never had a Black population involved in the shaping of Canada. African Canadians have had a continuous presence in what is now Canada since at least 1604.<sup>24</sup> Moreover, African Canadians have been intimately involved in the shaping and development of Canada's struggles towards realizing and institutionalizing the multicultural heritage for which Canada has become globally renowned and celebrated. This is especially evident when one considers Canada's history of enslaving Africans, racial segregation, racist immigration policies, and the establishment of Canada's first anti-discrimination legislation, namely the *Fair Employment Practices Act* (1951) and the *Fair Accommodations Act* (1954)<sup>25</sup>, and Canada's first human rights-protection agency, the Ontario Human Rights Commission.<sup>26</sup> It is also important to note that despite extreme levels of socio-economic disadvantage experienced by the African Canadian population, African Canadians are not listed by the Canadian government in the Core Document's section on Canada's "Specific

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

<sup>24</sup> A.J.B. Johnston, "Mathieu Da Costa and Early Canada: Possibilities and Probabilities", (Government of Canada - Parks Canada: 2001).

<sup>25</sup> Ontario Heritage Trust, "Hugh Burnett and the National Unity Association" Online: <http://www.heritagetrust.on.ca/CorporateSite/media/oht/PDFs/Hugh-Burnett-NUA-ENG.pdf>

<sup>26</sup> Government of Ontario, "Work at the Ontario Human Rights Commission", Ministry of Government and Community Services. Online: [http://www.archives.gov.on.ca/en/explore/online/dan\\_hill/human\\_rights.aspx](http://www.archives.gov.on.ca/en/explore/online/dan_hill/human_rights.aspx)



Vulnerable Groups”, which included Indigenous Peoples, women, homeless persons, and persons with disabilities.

## **PART II: VIOLATIONS OF SPECIFIC PROVISIONS OF THE *ICESCR***

### **Overview: African Canadian Economic, Social, Cultural Rights and Article 2 of the *ICESCR***

The consideration of Canada’s sixth report to the Committee on Economic, Social and Cultural Rights under the *ICESCR* presents an important opportunity to draw the Committee’s attention to the precipitously declining state of economic, social and cultural rights of African Canadians.

The occasion of the review the Government of Canada’s record of compliance under the *ICESCR* provides an important reminder that there is still a number of areas where significant improvements in the Government of Canada’s performance are needed. The African Canadian experience continues to be one of extreme marginalization and disadvantage; restricted access to housing; discriminatory victimization by education and child welfare systems; social criminalization; high levels of unemployment; and disproportionate and alarming rates of poverty, and near total exclusion and chronic devaluing of African Canadians in the area of arts and culture.<sup>27</sup> This alarming state of affairs contravenes a number of Canada’s obligations under the *ICESCR*. In particular, Article 2 requires that Canada “undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” As will become evident through the reading of this document, a violation of this Article’s protection of non-discrimination in the enjoyment of economic, social and cultural rights, is not a protection which is enjoyed by African Canadians.

### **Article 1: The Right of Self-Determination and Race-based Disaggregated Data**

Paragraph 3 of Article 1 of the *ICESCR* states:

The States Parties to the present Covenant [...] shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The right of self-determination of African Canadians is significantly undermined in Canada because of its government bodies’ and state agencies’ chronic reluctance to systematically and regularly collect and publicize race-based disaggregated data. Without this data, the African Canadian community is significantly compromised in its ability to successfully organize itself around a firm statistically-grounded foundation that accurately captures the state of African Canadian life. This seriously frustrates the African Canadian community’s ability to know the

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<sup>27</sup> Doudou Diène, *Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance – Mission to Canada*, UNHRC, E/CN.4/2004/18/Add.2 (2004) at para 72.

extent to which its community development and collective empowerment initiatives successfully diminish the deep and ongoing disparities and disproportionalities negatively affecting the community. Being without this data also poses considerable challenges to the community's ability to set benchmarks or meet goals for the betterment of the community's economic, social and cultural well-being. By not providing or facilitating the development of an adequate statistical picture of African Canadian life, the Government of Canada impedes rather than promotes the African Canadian community's right of self-determination. This only serves to perpetuate generations of socio-economic anti-Black racist exclusion, marginalization, deprivation and neglect of the African Canadian community.

The Government of Canada's refusal to initiate and standardize the collection and publication of race-based disaggregated data is a problem that has already been identified by both the United Nations' Committee on the Rights of the Child and Committee for the Elimination of Racial Discrimination in 2012. In both instances, the Committees recommended the collection of race-disaggregated data in their latest concluding observations on Canada. The Committee on the Rights of the Child's recommendation was articulated as follows:

The Committee recommends that [Canada] establish a comprehensive and systematic mechanism of federal data collection, analysis, monitoring, and impact assessment covering all areas of the Optional Protocol. The data should be disaggregated by, inter alia, sex, age, national and ethnic origin, geographical location, indigenous status and socio-economic status, with particular attention to children in the most vulnerable or marginalized situations. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence. The Committee also recommends that the State party establish a system of common indicators when collecting data for the various states and territories.<sup>28</sup>

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

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

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<sup>28</sup> Committee on the Rights of the Child: Canada, "Concluding observations on the initial periodic report of Canada, adopted by the Committee at its sixty-first session" (17 September-5 October 2012) at 2. Online: <http://uhri.ohchr.org/document/index/128296b5-0662-45c7-a3e7-543a0e0837da>

immigrants, to enable the Committee to better evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population.<sup>29</sup>

By refusing to systematically collect and make publicly accessible race-disaggregated data, the Canadian government, its agencies and institutions are active or complicit agents in inhibiting the full realization of African Canadians' economic, social and cultural rights under the *ICESCR*. The practice of statistically invisibilizing African Canadians by refusing to collect and publicly report race-based disaggregated data is a violation of Article 1 Paragraph 3 of the *ICESCR* which requires states to undertake necessary steps to promote the realization of the right of self-determination, and respect that right. The collection, analysis and accessible dissemination of such data is necessary for determining whether the Government of Canada actively is respecting and recognizing African Canadians' economic, social and cultural rights under the *ICESCR*.

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

### **Articles 11 and 3: Poverty and the African Canadian Community**

Article 11 of the *ICESCR* is aimed at ensuring state parties such as Canada reduce poverty and make certain that civilians are fully extended the right to an adequate standard of living. However, poverty and socio-economic exclusion is another area in which Canada is failing miserably in relation to African Canadians. This is especially true when we explore the gendered nature of poverty among African Canadians, as African Canadian women typically experience greater degrees of poverty and its attendant disadvantages. In this way, Canada also stands in violation of Article 3 of the *ICESCR* which demands that states prevent gender-based discrimination in the enjoyment and protection of economic, social and political rights.

The 2006 Census data, which is the latest available and most reliable Census data (because the previous federal government cancelled the country's mandatory long-form Census<sup>30</sup>), reinforces the reality that African Canadians are among the nation's poorest, especially in urban centres.

Based on a 2012 report by the Canadian Government's National Council on Welfare, as of 2006, 18% of African Canadians were living in poverty. In Montreal, and Toronto, where the vast majority of African Canadians reside, the rates of poverty are 27% and 19%, respectively. In Nova Scotia, where there is a founding and longstanding African Canadian presence, 34.8% of

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<sup>29</sup>Committee on the Elimination of Racial Discrimination: Canada, "Concluding observations of the Committee on the Elimination of Racial Discrimination at its eightieth session (13 February – 9 March 2012). Online: <http://uhri.ohchr.org/document/index/f2d0c76b-a3fb-4d3d-a6e7-f260ac785a5f>

<sup>30</sup> Bruce Campion-Smith, *Canada's Long form census is back for 2016* (*Toronto Star*: Thursday November 5, 2015). Online: <http://www.thestar.com/news/canada/2015/11/05/liberals-restore-mandatory-long-form-census.html>

African Nova Scotians are low-income versus 16.5% for the rest Nova Scotia.<sup>31</sup> The overall poverty rate for non-racialized Canadians is 9%. This means that Canadians of African descent are twice as likely as Canada's non-racialized population to live in poverty.<sup>32</sup>

In another 2011 report prepared jointly by the Canadian Centre for Policy Alternatives and the Wellesley Institute, and also based on Statistics Canada's most updated data, it was found that 24% of African Canadians in an "Economic Family"<sup>33</sup> are after-tax low-income earners, while 54.3% of single African Canadians (those not in an Economic Family)<sup>34</sup> are after-tax low-income earners. This same study found that African Canadians earned 75.6 cents for every dollar a non-racialized worker earns, with an annual earnings gap of \$9,101.<sup>35</sup>

For African Canadian children in the City of Toronto, which is the Canadian city with the highest number of African Canadian residents, statistics show that from Junior Kindergarten to Grade 6, 48% of African Canadian children lived in families with incomes of less than \$30,000 a year, compared to only 9% of non-racialized children. Furthermore, it was found that families of African descent are about three times more likely to be living on low incomes than are families of European descent.<sup>36</sup>

In Montreal, it has been found that the poverty rates of African Canadian women were much higher than rates for men. In particular, it is reported that 38.5% of African Canadian women in Montreal were poor compared with 33.9% of Black men. Moreover, it is also reported that almost one in every two African Canadian children under the age of 15 in Montreal lived below the poverty line in 2006. This is more than twice the percentage of non – African Canadian children living in poverty (47.1% vs. 21.6%).<sup>37</sup>

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<sup>31</sup> African Nova Scotian Affairs, African Nova Scotian Community: <https://ansa.novascotia.ca/community>

<sup>32</sup> National Council of Welfare, "A Snapshot of Racialized Poverty in Canada," (January 2012), online: [http://www.esdc.gc.ca/eng/communities/reports/poverty\\_profile/snapshot.shtml](http://www.esdc.gc.ca/eng/communities/reports/poverty_profile/snapshot.shtml); African Nova Scotian Affairs, Government of Nova Scotia, "African Canadian Nova Scotian Community". Online: <https://ansa.novascotia.ca/community>.

<sup>33</sup> Economic family refers to a group of two or more persons who live in the same dwelling and are related to each other by blood, marriage, common-law or adoption. A couple may be of opposite or same sex. Foster children are included. By definition, all persons who are members of a census family are also members of an economic family. Examples of the broader concept of economic family include the following: two co-resident census families who are related to one another are considered one economic family; co-resident siblings who are not members of a census family are considered as one economic family; and, nieces or nephews living with aunts or uncles are considered one economic family. Source: <http://www.statcan.gc.ca/eng/concepts/definitions/famecon>

<sup>34</sup> *Ibid.*

<sup>35</sup> Sheila Block & Grace-Edward Galabuzi, "CANADA'S COLOUR CODED LABOUR MARKET: The Gap for Racialized Workers," The Wellesley Institute (March 2011) online: <[http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour\\_Coded\\_Labour\\_MarketFINAL.pdf](http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf)> at 13-14.

<sup>36</sup> Michael Polanyi, et al. *The Hidden Epidemic: A Report on Child and Family Poverty in Toronto* (Toronto Children's Aid Society, 2014). Online: <http://www.torontocas.ca/app/Uploads/documents/cast-report2014-final-web71.pdf> at pg. 12

<sup>37</sup> James L. Torczyner, *Demography Challenges Facing the Black Community of Montreal in the 21st Century*, (Quebec: McGill University School of Social Work, 2010) Online: <http://www.mcgill.ca/mchrat/files/mchrat/ExecutiveSummaryBlackDemographic2010.pdf> at 34

In Nova Scotia, poverty among African Canadians is also unjustly common, especially among African Nova Scotian women. The poverty rate among African Nova Scotian women is double that of the average for women in Nova Scotia. It is reported that though African Nova Scotians are more likely than the average Nova Scotian to be in an economic family, their likelihood of living in low income is higher than the average Nova Scotian's. Finally, it is also reported that 57% of single African Canadian women in Nova Scotia live in poverty.<sup>38</sup>

The above information demonstrates that Canada is violating its obligations under Article 11 of the *ICESCR* by not taking sufficient steps to alleviate the chronic poverty and absence of a decent standard of living for African Canadians. That African Canadian women experience poverty at more significant rates also speaks to Canada's failure to satisfy its obligation to prevent gender-based discrimination pursuant to Article 3 of the *ICESCR*.

### **Article 6: The Labour Market and the African Canadian Community**

Article 6 of the *ICESCR* protects the right to work. It reads as follows:

#### Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

African Canadians are not being afforded the protections of this provision in Canada. In violation of Article 6, Canadian governing institutions are failing to implement meaningful systemic law and policy to protect African Canadian's right to work. As such, anti-Black racism continues to shut them out of Canadian society's most prosperous economic opportunities and leaves them segmented in lower-paying and typically more dangerous occupations.

Canada's most recent and reliable set of comprehensive official statistics, which are from 2006, indicate that the labour participation rate of African Canadians is 70.1% while its only 66.8% for all Canadians and 67% for all racialized Canadians.<sup>39</sup> Despite having a higher labour market

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<sup>38</sup> Angella MacEwen, Christine Saulnier, *The Cost of Poverty in Nova Scotia*, Canadian Centre for Policy Alternatives, 2010, Online: [http://www.feednovascotia.ca/images/Cost\\_of\\_Poverty\\_in\\_Nova\\_Scotia.pdf](http://www.feednovascotia.ca/images/Cost_of_Poverty_in_Nova_Scotia.pdf) at 11.

<sup>39</sup> Joseph Mensah, *Black Canadians: History, Experience, Social Conditions*, 2nd ed. (Winnipeg: Fernwood Publishing, 2010) at page 153.

participation rate, the unemployment rate for African Canadians (10.7%) is 73% higher than it is for non-racialized Canadians (6.2%).<sup>40</sup> Based on the same Statistics Canada data, one study has found that for African Canadian youth in Toronto, the unemployment rate is at 20.7%, while it stood at 13.3% for non-racialized Canadian youth.<sup>41</sup> Generally, the unemployment rate for African Canadians is higher than the general average in every Canadian province and territory except Newfoundland. This is especially troubling because in every province except Ontario and Nova Scotia, African Canadians hold bachelor's degrees or higher at greater rates than the provincial population's average.<sup>42</sup>

One of the most authoritative and up-to-date sources on African Canadian labour market participation data, statistics and analysis, is Dr. Joseph Mensah's seminal text, *Black Canadians: History, Experience, Social Conditions*. Now in its second edition, this text was published in 2010. There are a number of important findings featured in this text which provide an excellent picture of the current state of labour participation of African Canadians. Among them are the following:

1. Post-Secondary Education: 15.6% of African Canadians have a bachelor's degree or higher, while the rate for all Canadians is 18.1%. That being said, 21% of African Canadians have no formal educational certificate, diploma or degree while this is the case for 23.8% of all Canadians.<sup>43</sup>
2. Management Occupations: 5.2% of African Canadians are in such positions, while the rate for all Canadians is 9.9%. Mensah notes that higher proportions of African Canadians work in occupations related to processing, manufacturing and utilities, and therefore earn relatively lower incomes.<sup>44</sup>
3. Median Income: African Canadians median income was \$21 376, which is more than \$4000 less than the median income for all Canadians.<sup>45</sup>

In terms of the experience of African Canadian women in the Labour Market, Dr. Mensah has found the following:

1. Post-Secondary Education: African Canadian women have an attainment level of 14.33% which is 3% lower than that of all Canadian women at 18.08%. The rate of attainment for all visible minority women of a Bachelor's degree or higher is 26.4%, or 12% higher than the rate for African Canadian women.<sup>46</sup>

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<sup>40</sup> *Ibid.* at pg. 154

<sup>41</sup> Hamlin Grange, Gervan Fearon, Peter Sloly, et. al, "Towards a Vision for the Black Community" (The Jamaican Canadian Association, 2012) at page 16.

<sup>42</sup> Mensah at page 156-7.

<sup>43</sup> Mensah at page 151-152.

<sup>44</sup> Mensah at page 154

<sup>45</sup> Mensah at page 154-155

<sup>46</sup> Mensah at page 160

2. Management Occupations: For African Canadian women, 4.52% is their representation in management occupations. This figure is 7.51% for all Canadian women, and 6.34% for all visible minority women.<sup>47</sup>
3. Median Income: The median full time employment income for African Canadian women was \$34 253, while it was \$32 546 for all visible minority women and \$35 830 for all Canadian women. The median part time employment income of African Canadian women was \$11 948, \$12 283 for all visible minority women and \$11 840 for all Canadian women. An added important factor to note is that a greater percentage of African Canadian women's income is derived from government assistance (20.2%) when compared to all visible minority women at 16.97% and 15.9% for all Canadian women.<sup>48</sup>

The table below provides a clearer statistical picture of the comparative labour market participation of African Canadian men and African Canadian women.

**Table 6.9 Male-Female Differentials in Educational, Employment, and Income Indicators, 2006**

	Black Women	Black Men
<b>Educational and Language Characteristics</b>		
% with neither English nor French ability	1.29	0.70
% with bachelor's degree nor above	14.32	17.13
<b>Employment and Occupation</b>		
Labour force participation rates (%)	67.20	74.70
Unemployment rate (%)	11.10	10.10
% management occupation	4.50	5.90
% business, finance, and administration	25.00	14.60
% natural and applied science and related occ.	2.23	8.08
% health occupation	16.42	2.79
% social sc., educ., gov't services, and religion	10.38	5.60
% art, culture, recreation, and sport	2.02	2.67
% sales and services occupation	30.37	22.93
% trade, transport and equipment operators	1.98	24.28
% unique to primary industry	0.32	1.88
% unique to processes, manufacturing, and utilities	6.75	11.27
<b>Income Characteristics</b>		
Median full-time employment income, 2005	34,253	36,952
Median part-time employment income, 2005	11,948	13,196
Average annual income, 2005	25,088	29,493
Median annual income, 2005	20,151	23,033
% from government transfer payment	20.2	8.8

Source: Statistics Canada 2008d, 2006 Census of Canada Cat. # 97-564-XCB2006009.

Based on the above, it is clear that addressing and reversing the plight of African Canadian workers is of little to no real interest to the Canadian government. The elimination and perpetual avoidance of provincial employment equity legislation is having a significant impact

<sup>47</sup> Mensah at page 160

<sup>48</sup> Mensah at page 160-161

on causing and maintaining the above-noted disadvantages facing African Canadians in the labour market. As such, insofar as African Canadians are concerned, this state party stands in violation of Article 6 of the *ICESCR* which is intended to enshrine the protection of the right to work for all Canadians.

### **Articles 13 and 14: African Canadian Children and Access to Education**

Too lengthy to reproduce here, Articles 13 and 14 of the *ICESCR* afford protections of the right to education which the Canadian government is failing to extend to African Canadian students.

In 2006, the Economic and Social Council's concluding observations of Canada's fourth and fifth periodic reports stated the following:

The Committee is concerned about information that African Canadian students face difficulties in accessing education and that they experience a disproportionately high drop-out rate from secondary school.

In light of this concern, in the same document the Committee stated:

The Committee recommends that an overall assessment of the situation of African Canadians be conducted, particularly in the area of education, in order to adopt and effectively implement a targeted programme of action to realize their rights under the Covenant.

Finally, in the Economic and Social Council's List of Issues for this 57th Session of the Committee for Economic, Social and Cultural Rights it directed Canada to do the following:

Please update the Committee on the measures taken in all jurisdictions to improve access to education by African Canadian pupils as well as their retention, in light of the Committee's previous recommendations.

The following paragraphs will provide information which demonstrates that the measures being undertaken to address the dropout rate and miseducation of African Canadians are woefully inadequate. As such, in so far as African Canadians are concerned, the Canadian government is violating its obligation to protect and promote the right to education under Articles 13 and 14 of the *ICESCR*.

The dropout rate of African Canadians has been referred to as a "national disgrace".<sup>49</sup> In 2013, it was reported that the dropout rate for African Canadian students in Toronto was

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<sup>49</sup>CBC News Interview with Dr. Afua Cooper in 2015, Online:  
<http://www.rcinet.ca/histoiredesnoirs/en/2015/01/30/2634/english-black-drop-out-rate-in-canada-a-national-disgrace-professor-afua-cooper/>;



approximately 23%.<sup>50</sup> In Montreal, a 2010 study revealed that among African Canadians aged 15 to 24, 38% had not completed high school.<sup>51</sup> In 2011, Quebec's human rights commission also reported that African Canadian students are over-represented in dropout rates for Montreal students.<sup>52</sup> It has been found that nearly half of Quebec's African Canadian students drop out of high school<sup>53</sup>, while in 2015 it was reported that the graduation rate of African Canadian students at Montreal sits as low as 40%.<sup>54</sup> While locating reported and/or official statistics on the African Nova Scotian dropout rate were unable to be located for inclusion in this report, it has been consistently recognized that disproportionately high dropout rates among African Nova Scotian students has been as chronic a problem in Nova Scotia as in Toronto and Montreal.<sup>55</sup> These elevated dropout rates are in large measure a result of harsher and more frequent suspending and expelling of African Canadian students and putting them on what has come to be known as the school-to-prison pipeline.<sup>56</sup>

In Canada's largest school board, the Toronto District School Board (TDSB), African Canadian students make up approximately 12% of high school students, yet these students are disturbingly over-represented in suspension rates, making up 31 % of all suspensions.<sup>57</sup>

The percentage of African Canadian primary school students suspended from school in 2011-2012 was 1.5%, while the rate of suspension for white students was 0.5%. In TDSB high schools the rate of suspension among African Canadian students in 2011-2012 was 8.6%. For white high school students during that same year, it was 2.9%.<sup>58</sup>

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<sup>50</sup> Jim Rankin, Kristin Rushowy and Louise Brown, "Toronto school suspension rates higher for black and aboriginal students", *Toronto Star* (March 22, 2013) Online: [http://www.thestar.com/news/gta/2013/03/22/toronto\\_school\\_suspension\\_rates\\_highest\\_for\\_black\\_and\\_aboriginal\\_students.html](http://www.thestar.com/news/gta/2013/03/22/toronto_school_suspension_rates_highest_for_black_and_aboriginal_students.html)

<sup>51</sup> James L. Torczyner, *Demography Challenges Facing the Black Community of Montreal in the 21st Century*, (Quebec: McGill University School of Social Work, 2010) Online: <http://www.mcgill.ca/mchrat/files/mchrat/ExecutiveSummaryBlackDemographic2010.pdf> at 5

<sup>52</sup> Paul Eid, *Racial Profiling and Systemic Discrimination of Racialized Youth* (Quebec: Commission des droits de la personne et des droits de la jeunesse, 2011) at Online : [http://www.cdpdj.qc.ca/publications/Profiling\\_final\\_EN.pdf](http://www.cdpdj.qc.ca/publications/Profiling_final_EN.pdf) at 13

<sup>53</sup> Rosalind Hampton, "Black Learners in Canada", *Race & Class*, Institute of Race Relations, Vol 52(1) at page 106. Online: [https://www.mcgill.ca/dise/files/dise/hampton\\_-\\_black\\_learners\\_in\\_canada.pdf](https://www.mcgill.ca/dise/files/dise/hampton_-_black_learners_in_canada.pdf)

<sup>54</sup> Brenda Branswell, "Fonds 1804 trying to help curb dropout rate in black community and beyond", *Montreal Gazette*, January 9, 2015. Online: <http://montrealgazette.com/news/local-news/1804-fund-trying-to-help-curb-dropout-rate-in-black-community-and-beyond>

<sup>55</sup> CBC News, "African Nova Scotian picked to chair Halifax school board" November 8, 2008. Online: <http://www.cbc.ca/news/canada/nova-scotia/african-nova-scotian-picked-to-chair-halifax-school-board-1.706749>

<sup>56</sup> Abigail Tsionne Salole,; Zakaria Abdulle, "Quick to Punish: An Examination of the School to Prison Pipeline for Marginalized Youth" *Canadian Review of Social Policy* Vol. 72 Issue 73 (Jan. 2015). Online: <https://www.questia.com/library/journal/1P3-3928331201/quick-to-punish-an-examination-of-the-school-to-prison>

<sup>57</sup> Supra Note 50

<sup>58</sup> Toronto District School Board Fact Sheet: "Suspension Rates by Students' Demographic and Family Background Characteristics", *Caring and Safe Schools* Issue 3, June 2013. Online: <http://www.tdsb.on.ca/Portals/0/AboutUs/Research/CaringSafeSchoolsCensus201112.pdf>

According to the research and analysis on the “school to prison pipeline”, those students who are disciplined are more likely to drop out, and those students who drop out are more likely to turn to criminality. As an example, in 2009, a *Toronto Star* analysis found that Toronto schools with the highest suspension rates tended to be in parts of the city that also had the highest rates of provincial incarceration. As another example, recent figures show that more than 70% of Canadian inmates did not complete high school.<sup>59</sup> The discriminatory and elevated suspension rates of African Canadian children is not a practice unique to Toronto, but is also part of the experience of African Canadian students in Montreal and Halifax as well, demonstrating that the school to prison pipeline is a Canada-wide phenomenon.<sup>60</sup> The above statistics show that African Canadian students continue to be disproportionately targeted for school discipline. As such, it is no surprise that they continue to leave school, dropping out before graduation and ending up trapped within the prison system at alarming rates.

At disconcerting rates, African Canadian students are also being streamed into less academically rigorous courses of study, thereby limiting their ability to pursue post-secondary education and lowering their overall income potential. In Ontario high schools, academic streams are ranked from most academically challenging to least under the following categories: academic; applied; essential; and, undefined. In Toronto, African Canadian students are overrepresented in applied, essential and undefined programs in high school. They make up 23% of students in applied courses and close to 30% in essentials. African Canadian students are also overrepresented in the “undefined” program, but not as dramatically. These students also have lower post-secondary application rates: 39.2% (applied), 20.3% (essential), 41.4% (undefined), compared to academic stream students at 82% and 67% for students generally.<sup>61</sup>

The streaming of African Canadian students in the ways seen in Toronto is also a common disadvantage experienced by students in Montreal. In a 2011 study conducted by the human rights commission in Quebec, the following was found:

The education sector often resorts to categorization in the processes used to orient and evaluate students. Although these processes are inevitable, they nevertheless lead to labelling, in the sense that school personnel are at risk of categorizing students as a function of their social status or group identity, whether real or assumed. Such labelling has the effect of causing the school to reduce the range of possibilities offered to the student. It can also have an impact on the way the counsellor interacts with the student, such as investing less effort with some students because of lower expectations, or automatically orienting students toward

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<sup>59</sup> Jim Rankin, Sandro Contenta, “Suspended Sentences: Forging a school to prison pipeline?” *Toronto Star*, June 6, 2009. Online:

[http://www.thestar.com/news/gta/2009/06/06/suspended\\_sentences\\_forging\\_a\\_schooltoprison\\_pipeline.html](http://www.thestar.com/news/gta/2009/06/06/suspended_sentences_forging_a_schooltoprison_pipeline.html)

<sup>60</sup> Paul Eid, *Racial Profiling and Systemic Discrimination of Racialized Youth* (Quebec: Commission des droits de la personne et des droits de la jeunesse, 2011); Carsten Knox, “A Matter of Principle”, *The Coast*, June 7, 2007. Online: <http://www.thecoast.ca/halifax/a-matter-of-principle/Content?oid=960870>.

<sup>61</sup> Grace-Edward Galabuzi, “Race and the Streaming of Ontario’s Children and Youth”, in *Restacking the Deck: Streaming by class, race and gender in Ontario schools* at pg.185-225.

education that is focused on employment, based on some prejudice about their capacity to pursue later schooling. It was mentioned on numerous occasions during the consultation that young Blacks were especially likely to be victims of these stereotypes, expressed in the form of lower expectations.<sup>62</sup>

African Nova Scotian students also experience this discriminatory and opportunity-limiting reality in school. A primary way in which this has been found to manifest is through the disproportionate placing of African Nova Scotian students on individual program plans (IPPs). These IPPs are developed for students when it is deemed that the “curriculum outcomes are not applicable and/or attainable” for them. In January 2016, a devastating Nova Scotia Department of Education and Early Childhood Development report was publicly released showing the following statistics on African Nova Scotian students:

1. In a random sample of 292 Halifax Regional School Board (HRSB) students, 124 kids of African ancestry were found to be on individual program plans (IPPs);
2. As of January 2015, there were 3535 students with self-identified African heritage in the HRSB, and 7.7% (273) have an IPP;
3. Sixty nine IPPs that were created were supported by evidence, while 55 needed more information, and 65 IPPs had evidence they were the most appropriate option, while 59 needed more info.<sup>63</sup>

The major concerns that this government report raises for African Nova Scotian parents and community members is that their children are being discriminatorily placed on IPPs. This concern is raised because IPP placements is evidenced to be taking place in too many instances where there is an absence of a verifiable and legitimate evidentiary basis for doing this. The IPP report’s results are indicative of the lack of meaningful regard government actors within Canadian education institutions have for the right of education for African Canadian children under Articles 13 and 14 of the *ICESCR*.

Canada’s periodic report for this session makes cursory reference to the different initiatives being undertaken in various provinces to address the overall negative experience African Canadian students are having in the education system. The information provided in Canada’s report cannot be said to amount to an “overall assessment of the situation of African Canadians [...] in education” as was recommended by the Economic and Social Council in 2006. The information provided is also not useful in determining whether or the extent to which the measures undertaken to improve access to education for African Canadians have been successful. Moreover there is an especially glaring omission from the report as it relates to initiatives instituted to protect the right of education for African Canadian students, namely the Toronto District School Board’s Africentric School.

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<sup>62</sup> Supra Note 50 at page 10.

<sup>63</sup> Haley Ryan, “High number of black students put on specific education plans 'shocking:' Halifax mother”, Metro News Halifax, January 28, 2016. Online: <http://www.metronews.ca/news/halifax/2016/01/28/high-number-of-black-students-on-ipps-worries-halifax-mother.html>

There is only one Africentric school in all of Canada. It was established in 2009 after decades of persistent and tireless advocacy undertaken by African Canadian parents, students and their allies aiming to reduce dropout rates of African Canadian pupils.<sup>64</sup> Toronto's Africentric school offers an excellent and comprehensive model for increasing access to education for African Canadian students. In a November 2015 report analyzing the progress and effectiveness of Canada's only Africentric school, the following promising and positive findings were made among others:

1. The school has created a sense of community for African Canadians in ways that have not been historically present in public schools and resulted in a distinctly different school climate for African Canadian students, teachers, administrators, parents and community members;
2. School staff have developed a model of inclusivity whereby priority is placed upon working and negotiating through difficult relationships among staff, parents, and community members, rather than exclude them;
3. The Strong Parent and Community Involvement and Engagement (PCIE) model, culture of high expectations, integration of Nguzo Saba principles and African-based knowledge and practices, and development of a positive Black identity were framed as overall successes of the school in terms of positively impacting students' identity, confidence, social development, awareness of African culture and critical thinking skills;
4. On the provincial standardized test for Grade 3 and Grade 6 students, pupils at the Africentric school posted results that were above the averages of the Toronto District School Board for reading, writing and mathematics.
5. The three-year rolling average of standardized testing scores for students at the Africentric school (4.37%) were a much higher rate of improvement than the overall TDSB (1.54%) and the province of Ontario (.88%);
6. The Africentric school is doing better in achievement compared to schools with similar socio-economic challenges.<sup>65</sup>

Despite noting these successes, the report also identified that challenges remain that impede the prospect of the Africentric school realizing its full potential. These challenges included: under-resourcing of the school in terms of funding, space and availability culturally competent teaching and support staff; challenges in harmonizing the vision for the school, the expectations of the community and the framework within the school must operate in accordance with policies and procedures of the Toronto District School Board and the Ministry of Education,

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<sup>64</sup> Louise Brown, "Africentric grade school still a lightning rod for debate", *Toronto Star*, February 20, 2015, Online: <http://www.thestar.com/yourtoronto/education/2015/11/20/africentric-grade-school-still-a-lightning-rod-for-debate.html>

<sup>65</sup> Carl James, et. al, *Africentric Alternative School Research Project: Year 3 (2013-2014) Report* Online: <http://ycec.edu.yorku.ca/files/2012/11/AAS-Research-Project-Year-3-Report.pdf> at pg. 48-50

and; the disruptive and distracting effect of heightened and negative media attention on the school; coupled with changing administration and stigma related to special education.<sup>66</sup>

The ongoing triumphs and challenges have been followed closely and extensively by mainstream Canadian media and academics in Toronto, Montreal and Halifax. As such, there is no plausible reason for the Canadian government to have omitted from its 100-plus page periodic report, the successes and opportunities provided by an Africentric model of education for African Canadian students as a promising example of how to increase access to education for African Canadian pupils. Be that as it may, what is clear is that if equitably resourced and supported by decision makers and community, Africentric education offers Canada one of its most promising opportunities to meaningfully increase access to education for African Canadian students, decrease their dropout rates and thereby protect and promote their right to education under articles 13 and 14 of the *ICESCR*.

### **Article 10: Over-representation of African Canadian Children in the Child Welfare System**<sup>67</sup>

Article 10, Paragraph 1 of the *ICESCR* aims to protect the family, mothers and children. In part, it reads as follows:

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.

Next to Indigenous families in Canada, there is almost certainly no other statistically significant community that experiences greater violations of this right than the African Canadian family.

In Canada, child protection legislation is under provincial jurisdiction requiring that any federal effort to understand children's rights engages provincial initiatives. In Ontario, children's aid societies also provide specific services to Jewish, Catholic and aboriginal families. African Canadians do not yet have a child welfare agency established that is directed, developed or operated by the African Canadian community.<sup>68</sup>

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<sup>66</sup> *Ibid.*

<sup>67</sup> The writing of this section was supported by the research and writing of current Student-At-Law and Osgoode Hall Law School graduate, Darcel Bullen. It is based largely on the child welfare writings she contributed to in the ACLC's June 2015 submission to United Nations Economic and Social Council (ECOSOC)'s Human Rights Committee for its 114th Session. That submission is entitled *Civil and Political Wrongs: The Growing Gap Between International Civil and Political Rights and African Canadian Life: A Report on the Canadian Government's Compliance with the International Covenant on Civil and Political Rights*. The report was prepared for to assist ECOSOC in assessing Canada's sixth report to the United Nations Human Rights Committee (the Committee) on compliance with the International Covenant on Civil and Political Rights (ICCPR).

<sup>68</sup> Government of Ontario – Children's Aid Societies, Online:  
<http://www.children.gov.on.ca/htdocs/English/topics/childrensaids/childrensaidsocieties/index.aspx>

There is a gross over-representation of African Canadian youth and children in child welfare systems in Ontario. It is reported that 65% of the children and youth in the care of a Children's Aid Society in the Greater Toronto Area are African Canadian.<sup>69</sup> Yet, African Canadians make up only 6.9% of Toronto's population and just 8% of the city's population is under the age of 18.<sup>70</sup> Contrastingly, 37% of children in care in Toronto are white, while more than 50% of the city's population under 18 years old is white.<sup>71</sup> Sadly, African Canadian children are also over-represented in the child welfare systems of Quebec and Nova Scotia.<sup>72</sup>

As reported in the ACLC's 2012 Submissions to the Committee on the Rights of the Child on the Third and Fourth Reports of Canada<sup>73</sup> the alarming rate of apprehension of African Canadian children and youth in Ontario can be partially attributed to funding formulas that prioritize child removal over prevention, family preservation and support. Reminiscent of the devastating federal funding of Aboriginal Residential Schools that paid churches on a per capita basis to house Aboriginal children removed from their families and communities, today's funding structures continue to reward the apprehension of children. In *A New Approach to Funding Child Welfare in Ontario*, a report published in 2011 by the Commission to Promote Sustainable Child Welfare, for example, the Commission identified that this funding formula creates a "perverse incentive" for children's aid societies ("CASs") to maximize volumes of higher cost services (e.g. foster care) in order to ensure positioning for next year's funding.<sup>74</sup>

Funding is tied to specific cost factors which in turn are tied to specific activities. Since the highest cost activities relate to supporting children in foster and group care, the current approach inadvertently rewards CASs that maintain "in care" volumes resulting in an inherent disincentive to find alternative lower cost avenues to support children and families.<sup>75</sup>

Given the socio-economic vulnerability of the African Canadian population, and the over-monitoring that African Canadians are often subjected to due to pervasive stereotypes about

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<sup>69</sup> Child Welfare Anti-Oppression Roundtable, an initiative which includes representation of almost half of the 52 child welfare agencies in Ontario; Gordon Pon et al, "Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare" (2011) 3 & 4 *Intl J of Child, Youth and Fam Stud* 385 at 386.

<sup>70</sup> Statistics Canada, *Canada's Ethnocultural Mosaic, 2006 Census: Canada's major census metropolitan areas, Toronto: Largest number of visible minorities in the country* (Ottawa: Statistics Canada, 2010), Catalogue No. 97-562-XIE2006001, online: <<http://www12.statcan.ca/census-recensement/2006/as-sa/97-562/p21-eng.cfm>>.

<sup>71</sup> Sandro Contenta, Laurie Monsebraaten & Jim Rankin, "Why are so many black children in foster and group homes?," *Toronto Star* (11 December 2014), online: *Toronto Star* <[http://www.thestar.com/news/canada/2014/12/11/why\\_are\\_so\\_many\\_black\\_children\\_in\\_foster\\_and\\_group\\_homes.html](http://www.thestar.com/news/canada/2014/12/11/why_are_so_many_black_children_in_foster_and_group_homes.html)>.

<sup>72</sup> Paul Eid, *Racial Profiling and Systemic Discrimination of Racialized Youth* (Quebec: Commission des droits de la personne et des droits de la jeunesse, 2011); Government of Nova Scotia, *Nova Scotia: Adolescent Withdrawal Management Guidelines 2013*. Online: <http://novascotia.ca/dhw/addictions/documents/Adolescent-Withdrawal-Management-Guidelines.pdf> at 45.

<sup>73</sup> Moya Teklu, *Canada's Forgotten Children*, African Canadian Legal Clinic, July 2012 at 10-12.

<sup>74</sup> *Ibid* at 10

<sup>75</sup> *Ibid*.

their inherent aggression, criminality and lack of intelligence, it is not surprising that the cost of this “perverse incentive” is largely borne by African Canadian children and their families.<sup>76</sup>

Further concern stems from the lack of aggregate data about the experience of visible minority children in child welfare systems, and the resulting knowledge gap with respect to African Canadian children. Most children’s aid societies do not collect data on race despite a 2012 provincial report<sup>77</sup> and the 2005 Standing Senate Committee on Human Rights<sup>78</sup> recommending that ethnic background information be captured. The gap in information presents barriers to addressing the overlap between the over-representation of African Canadians in the youth criminal justice system and child welfare system.<sup>79</sup> Canadian standards and principles for the protection of children’s rights can only become a reality when they are respected by all levels of government.

Not only are African Canadian children removed from their families in circumstances where such action is likely unwarranted, reports to the ACLC suggest that they are not being placed in culturally appropriate familial settings. The province of Ontario has in place practices that are meant to increase the utilization of extended family and kin networks. According to the Ontario Association of Children’s Aid Societies (“OACAS”), these options reduce the stress for children coming into care, maintain family and community ties, and increase the likelihood of the child’s reunification with his/her primary family.<sup>80</sup>

For generations, extended families and kin networks have cared for children whose parents are experiencing challenges or are in need of support. In addition, many African Canadians come from societies where the nuclear family is not the norm and where more importance is placed on the clan or the extended family. Nonetheless, reports to the ACLC suggest that extended family members and community members of African Canadian children in care are often dismissed outright as viable alternatives. As a result, African Canadian children are not only taken out of their immediate homes, they are also removed from their families, communities and cultures. This has serious cultural implications for African Canadians over and above non-racialized children and youth. As acknowledged by the Supreme Court of Canada, “[r]ace can be a factor in determining the best interests of the child because it is connected to the culture, identity and emotional well-being of the child.”<sup>81</sup>

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<sup>76</sup> *Ibid.*

<sup>77</sup> Ene Underwood, Barry Lewis & Wendy Thomson, Commission to Promote Sustainable Child Welfare, “Realizing A Sustainable Child Welfare System in Ontario” (19 September 2012) online: <[http://www.children.gov.on.ca/htdocs/English/documents/topics/childremsaid/commission/2012sept-Final\\_report.pdf](http://www.children.gov.on.ca/htdocs/English/documents/topics/childremsaid/commission/2012sept-Final_report.pdf)>.

<sup>78</sup> The Honourable Raynell Andreychuk (Chair) and The Honourable Landon Pearson (Deputy Chair). “Who’s in Charge Here? Effective Implementation of Canada’s International Obligations with Respect to the rights of Children.” Interim Report: Standing Senate Committee on Human Rights. November 2005.

<sup>79</sup> The Honourable Raynell Andreychuk (Chair) and The Honourable Landon Pearson (Deputy Chair). “Who’s in Charge Here? Effective Implementation of Canada’s International Obligations with Respect to the rights of Children.” Interim Report: Standing Senate Committee on Human Rights. November 2005.

<sup>80</sup> Moya Teklu, *Canada’s Forgotten Children*, African Canadian Legal Clinic, July 2012 at 11

<sup>81</sup> *Ibid.*

Culture is the essence of being human. Culture is the bridge that links the present with the past and the past with the future. Culture provides a sense of historical continuity. It is a protective device structured to eliminate trial and error in the past and the future. Culture is second nature. It is a person's values, beliefs, learnings [sic.], practices, and understandings that are passed on.<sup>82</sup>

Children of African descent learn about their identity from within the home and community. African Canadian children that are removed from their homes, schools, religious institutions, friends, and families are thus disengaged from their cultural background and denied the opportunity for optimal development and functioning. As suggested by academics in the context of the over-representation of Aboriginal children and youth in the Canadian child welfare system and African American children in the US child welfare system, this apparent disregard for continuity in the upbringing, and ethnic, religious, cultural and linguistic background of African Canadian children amounts to “institutionalized assimilation.”<sup>83</sup>

All of the above information on the African Canadian experience with child welfare systems offers significant proof of the fact that Canada is falling disastrously short of fulfilling its obligations to protect the African Canadian family under Paragraph 1 of Article 10 of the *ICESCR*.

### **Articles 10 and 11: Non-Conviction Records and Employment Opportunities**

Articles 10 and 11 of the *ICESCR* obligate Canada to provide adequate and robust protections of Canadians’ right to work and right to an adequate standard of living. The failure of Canadian government institutions to prevent employment discrimination against African Canadians with a non-conviction record is another example of the near total disregard Canada has for the economic and social well-being of African Canadians.

Non-conviction records are police records documenting interactions of individuals with police where an individual is not charged with an offence. A non-conviction record could include everything from random questioning to a mental health distress call. They are records of encounters where no criminal charge is laid or where an individual is not convicted of a crime. It was recently revealed in a 2014 *Toronto Star* investigation that these records were, unbeknownst to civilians, being kept in police databases and showing up on individuals’ background checks. The effect of such disclosures, the investigation revealed, was to prevent individuals from qualifying for jobs, educational and volunteer opportunities and from crossing the border into the United States.<sup>84</sup>

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<sup>82</sup> *Supra* Note 80 at 12

<sup>83</sup> *Supra* Note 80 at 12

<sup>84</sup> Richard Brennan, Robert Benzie, Robert Cribb, “Ontario moves to limit police sharing non-conviction information”, *Toronto Star*, Online: <http://www.thestar.com/news/canada/2015/06/03/ontario-cracking-down-on-inappropriate-use-of-police-information.html>; See also: John Howard Society of Ontario, Canadian Civil



African Canadians are subjected to heightened scrutiny by police and have their communities and lives disproportionately monitored and surveilled by the police and policing activities.<sup>85</sup> This has led to disproportionate contact of African Canadians with the police, resulting in a disproportionate accumulation of non-conviction records among African Canadians. As such, non-conviction records have served to exacerbate the under-employment and unemployment of African Canadians as many employers in Ontario require job applicants' police background checks, which also include non-conviction records, as grounds to deny or rescind employment and internship opportunities.<sup>86</sup> This has resulted in many African Canadians being forced to face the embarrassment, humiliation and stigmatization of being denied opportunities because of non-criminal interactions or crimes for which they were never charged or convicted.

Non-conviction records continue to deny individuals the right to be presumed innocent until proven guilty. They are generated where an individual has contact with the police, but no charge is laid, charges are stayed or a person is acquitted for a crime. However, this information is still being inserted into police records for background checks and being released by police to employers, as well as academic institutions, volunteer organizations and even shared with Canadian and US border services agencies.<sup>87</sup>

Because the African Canadian community is over-policed, these records have a disparate and more damaging impact on this community than on the average civilian. In June 2015, the Ontario government proposed legislation limiting the release of non-conviction records in police background checks.<sup>88</sup> This legislation came into effect in December 2015 under the title, the *Police Record Checks Reform Act*.<sup>89</sup> While positively offering broad-based, province-wide and uniform protections for individuals that were previously non-existent, the legislation does not account for the hundreds and thousands of African Canadians who have already been negatively impacted by disclosures of non-conviction records to potential employers, academic institutions and civic organizations.

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Liberties Association, *On the Record: An Information Guide for People Impacted by Non-Conviction Police Records in Ontario*, 2014. Online: <http://www.johnhoward.on.ca/wp-content/uploads/2014/11/On-the-Record-1-FINAL.pdf>

<sup>85</sup> Frances Henry and Carol Tator, *Racial Profiling in Canada: Challenging the Myth of a Few Bad Apples* (Toronto: University of Toronto Press, 2007); David Tanovich, Wendy Chan and Dorothy Chunn, *Racialization, Crime, and Criminal Justice in Canada* (Toronto: University of Toronto Press, 2014); David Tanovich, *The Colour of Justice* (Toronto: Irwin Law, 2006); Frances Henry, Carol Tator, *The Colour of Democracy: Racism in Canadian Society* 4<sup>th</sup> Ed. (Toronto: Nelson Education, 2010); Elizabeth Comack, *Racialized Policing: Aboriginal People's Encounters with the Police* (Winnipeg: Fernwood Publishing, 2012); Aylward, Carol, *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood Publishing, 1999).

<sup>86</sup> Richard Brennan, Robert Benzie, Robert Cribb, "Ontario moves to limit police sharing non-conviction information", *Toronto Star* (June 3 2015) Online: <http://www.thestar.com/news/canada/2015/06/03/ontario-cracking-down-on-inappropriate-use-of-police-information.html>

<sup>87</sup> *Ibid.*

<sup>88</sup> *Supra* Note 86

<sup>89</sup> Proposed Legislation, *Police Record Checks Reform Act*, Online: [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&BillID=3416](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=3416)

It is important to note that Ontario's Human Rights Code protects individuals from discrimination on the bases of having been convicted of a crime for which they have obtained a pardon<sup>90</sup>, but individuals who have not even been charged or convicted of a crime for which they have been accused enjoy no such protection from discrimination. Resultantly, the laws of Ontario allow African Canadians to have their rights to be presumed innocent until proven guilty routinely violated by employers, academic institutions, volunteer-based community/civic organizations and border officials. The use and disclosure of non-conviction records have been allowed to impact African Canadians opportunities to obtain employment and participate in the labour market in their chosen fields of employment due to employers' heavy reliance on clear criminal records checks as a pre-requisite for employment.<sup>91</sup>

There is a total lack of reparatory and positively retroactive protections within efforts the Canadian government has undertaken to address non-conviction records. As such, it is reasonable to imagine that tens of thousands and possibly many more African Canadians have already been unjustly denied the opportunity to participate in the labour market in their desired fields because of the unjust impact of non-conviction records. Ontario's new legislation to prevent furthering the negative effects of non-conviction records is simply insufficient and for this reason, the continued impact of non-conviction records on African Canadians stands as another example of Canada failing to extend protections of the *ICESCR* to African Canadians and their right to work and right to enjoy an adequate standard of living.

### **Articles 12: Health and Well-Being of African Canadians**

Article 12 of the *ICESCR* protects the right to physical and mental health. It reads as follows:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The promotion and protection of the health and well-being of African Canadians is another area in which Canada fails to satisfy its obligations under the *ICESCR*.

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<sup>90</sup> See sections 5 and 10 of Ontario's *Human Rights Code R.S.O. 1990, c. H.19*

<sup>91</sup> John Howard Society, *On The Record: An Information Guide for People Impacted By Non-Conviction Police Records in Ontario*. Online: <http://www.johnhoward.on.ca/wp-content/uploads/2014/11/On-the-Record-1-FINAL.pdf>

The multifold manifestations of anti-Black racism that undergird the socio-economic marginalization, exclusion and deprivation of African Canadians have had devastating impacts on their physical and mental health and well-being. In Ontario, several recent reports have shown that African Canadians have double the risk of diabetes, hypertension and heart disease when compared to other population groups.<sup>92</sup>

To determine the extent of racialized disparities in health, in 2013, the municipal agency, Toronto Public Health, undertook a thorough literature review of Canadian, and Toronto-focused health and well-being scholarship and coupled it with data reported in the 2006 long-form Census, the Canadian Community Health Survey (CCHS; 2005 - 2011), and the Neighbourhood Effects on Health and Well - Being (NEHW; 2009 - 2011). Among the study's findings were that African Canadians were more likely to experience pain or discomfort, have high blood pressure, and to be overweight or obese than non-racialized individuals.<sup>93</sup> These negative health outcomes are caused and contributed to by attendant deprivations associated with living in poverty. For example, a leading study on household food insecurity in Canada found in 2012 that in households where the respondent was African Canadian, it had a rate of food insecurity that was almost two and one-half times that of all Canadian households (28.2%), versus 12.6% in Canada overall.<sup>94</sup>

Additionally, other Ontario research has found that in 2009, African Canadians represented approximately 19% of people living with HIV. The relative rate of heterosexual HIV acquisition was 24 times higher than among others infected heterosexually. Moreover, it was also found that In the five-year period from 2004 to 2009, the number of African Canadians living with HIV (HIV prevalence) increased by 55% and HIV incidence (new infections) increased by 16%, primarily in women.<sup>95</sup>

Regarding mental health considerations, African Canadian patients admitted to hospital with psychosis have an increased likelihood to be brought there by police or ambulance. It is suggested that African Canadians' suspicion of the justice and medical systems may cause

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<sup>92</sup> Dianne Patychuk, "Health Equity and Racialized Groups: A Literature Review" Health Equity Council, June 10, 2011, Online: [http://en.healthnexus.ca/sites/en.healthnexus.ca/files/resources/healthequityracializedgrps\\_literature\\_review.pdf](http://en.healthnexus.ca/sites/en.healthnexus.ca/files/resources/healthequityracializedgrps_literature_review.pdf)

<sup>93</sup> Jennifer Levy, et. al., "Racialization and Health Inequities in Toronto" Toronto Public Health, October 2013. Online: <http://www.toronto.ca/legdocs/mmis/2013/hl/bgrd/backgroundfile-62904.pdf>

<sup>94</sup> Valerie Tarasuk, et. al., "Household Food Insecurity in Canada, 2012" Proof, 2012. Online: [http://nutritionalsciences.lamp.utoronto.ca/wp-content/uploads/2014/05/Household\\_Food\\_Insecurity\\_in\\_Canada-2012\\_ENG.pdf](http://nutritionalsciences.lamp.utoronto.ca/wp-content/uploads/2014/05/Household_Food_Insecurity_in_Canada-2012_ENG.pdf)

<sup>95</sup> Ontario HIV/AIDS Strategy for African, Caribbean and Black Communities 2013-2018. Online: [http://www.accho.ca/portals/3/documents/resources/acb\\_strategy\\_web\\_oct2013\\_en.pdf](http://www.accho.ca/portals/3/documents/resources/acb_strategy_web_oct2013_en.pdf) at 7-8

delays in seeking help from these institutions, thereby leading to a worsening of symptoms that may result in the need for emergency medical care.<sup>96</sup>

Finally, it has also been found that discriminatory policing has had a deeply negative impact on the mental health and well-being of African Canadians, specifically African Canadian young men, as the community is forced to live under the constant threat of being exposed to discriminatory and inequitable treatment by law enforcement and security officials. The mental health implication of anti-Black policing practices is that African Canadians have come to experience elevated levels of diminished self-esteem, perceived discrimination, and internalized stigma. Furthermore, the Ontario Government's major report *The Review of the Roots of Youth Violence* also noted the mental health impacts of structural violence and anti-Black socio-economic disadvantage when it noted in 2008 that poverty can lead to a lack of self-esteem, the experience of oppression, a lack of hope or empathy or sense of belonging, impulsivity and other immediate risk factors that lead young African Canadians, especially young men to engage in acts of violence.<sup>97</sup>

In a recently conducted large and significant research study of African Canadian health and well-being outcomes and experiences in the cities of Calgary, Toronto and Halifax, African Canadian professors and researchers, Carl James, David Este, Wanda Thomas Bernard, Akua Benjamin, Benthan Lloyd and Tana Turner, concluded the following:

As research findings indicate, racism is a fundamental cause of health disparities and is undoubtedly a major factor in the overall health of African Canadians. It therefore follows that health care policy must include racism as a determinant of health. Canada's growing and increasingly diverse population predicates the need for adjustment to the social determinants of health to meet today's realities.<sup>98</sup>

As suggested above, there is overwhelming evidence that racism is a social determinant of health in Canada.<sup>99</sup> As such, it is fair to say that the health disparities experienced by African Canadians ultimately exposes Canada's failure to fulfill its obligations under Article 12 of the *ICESCR* and the protection of mental and physical health that it is intended to afford all civilians. It also exposes Canada as not satisfying its obligation under Article 2 Paragraph 2 of the *ICESCR* which explicitly requires that Canada guarantee that "the rights enunciated in the present Covenant [including the right to health] will be exercised without discrimination of any kind as to race, colour [...]"

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<sup>96</sup> Sheryl Nestel, "Colour Coded Health Care: The Impact of Race and Racism on Canadians' Health", Wellesley Institute, January 2012. Online: <http://www.wellesleyinstitute.com/wp-content/uploads/2012/02/Colour-Coded-Health-Care-Sheryl-Nestel.pdf>

<sup>97</sup> Government of Ontario Website, "Review of the Roots of Youth Violence – What are the roots?" Online: <http://www.children.gov.on.ca/htdocs/English/topics/youthandthelaw/roots/what.aspx>

<sup>98</sup> Race and Well-Being The Lives, Hopes and Activism of African Canadians (Halifax and Winnipeg: Fernwood Publishing 2010) at page 139-140.

<sup>99</sup> Ilene Hyman, Ron Wray, "Health Inequalities and Racialized Groups – A Review of the Evidence. Prepared in collaboration with Toronto Public Health", Toronto Public Health, 2013.

## **Article 15: African Canadians and the Denial of the Right to Culture**

Article 15 of the *ICESCR* states:

1. The States Parties to the present Covenant recognize the right of everyone:
  - (a) To take part in cultural life;
  - (b) To enjoy the benefits of scientific progress and its applications;
  - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

A look at the African Canadian experience within Canada's cultural industries quickly and definitively demonstrates that Canada is in gross violation of Article 15 of the *ICESCR*. As one African Canadian artist has put it, "Black music, and black art, like black people are undervalued in Canada".<sup>100</sup> There is a consistent line of statistics, reports and studies to prove this.

A most recent, comprehensive review of funding and support structures for the arts in Canada comes from a 2014 research publication entitled, *Figuring the Plural: Needs and Supports of Canadian and US Ethnocultural Arts Organizations*. The publication was written, edited, and compiled by Mina Para Matlon, Ingrid Van Haastrecht, Kaitlyn Wittig Mengüç as part of Plural, which is a project based out of the School of the Art Institute of Chicago and dedicated to supporting Canadian and US ethnocultural arts organizations. Among the findings outlined in this 380 page research report, are the following:

1. Canada's Aboriginal and culturally diverse population comprises 23 percent of the country's general population, however the Canada Arts Council provided a mere four percent of its total operating funds to Aboriginal and culturally diverse arts organizations in the 2011-2012 fiscal year;
2. Culturally diverse arts organizations received \$4,494,341 out of the \$102,127,000 in Canada Council funding provided to arts organizations in the

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<sup>100</sup> Ian Kamau, "An Insider's look in: examining the real value of Toronto's rap scene", Noisy: Music by Vice, August 11, 2015. Online: [http://noisy.vice.com/en\\_ca/blog/an-insiders-look-in-examining-the-real-value-of-torontos-rap-scene](http://noisy.vice.com/en_ca/blog/an-insiders-look-in-examining-the-real-value-of-torontos-rap-scene)

2005-2006 fiscal year, or 4.4 percent of total arts organization funding; in the 2009- 2010 fiscal year, this amount rose slightly to 4.7 percent (\$5,815,416 out of \$122,890,000);

3. Beginning in 2011, the Canada Council began to phase out a number of capacity building programs run by its Equity Office, which addresses access to Canada Council arts discipline funding programs by culturally diverse and other “equity-seeking” arts groups, with the anticipated restructuring of such programs;
4. General federal and provincial funding programs have not historically supported, and do not currently support, more than a small percentage of the country’s culturally diverse arts organization;
5. White arts organizations make up a slightly greater proportion of the Canadian field than culturally diverse arts organizations, and Aboriginal arts organizations comprise the smallest proportion of the field.<sup>101</sup>

In a January 2016 exposé on racism in Toronto’s music scene by *Now Magazine*, African Canadian artists and industry professionals provided their feedback on the marginalization of Black music and artists in Toronto and Canada more broadly. Below are some excerpts from their comments in the exposé, entitled “Real Talk About Racism in the T.O. Music Scene”<sup>102</sup>:

On the topic of race and music in Toronto, the first issue to come to mind is the Canadian industry’s lack of support for Black artists and traditionally Black music. Those issues are well document and go back a long time. – **Shad, African Canadian Juno award-winning rapper and host of CBC Radio’s q**

A lot of racism in the music industry in Toronto is rooted in the systemic problems of racism in Canada. There’s a lot of discourse around electoral politics or bureaucratic ways of dealing with things, but it really all goes back to the supremacy agenda [...] There’s a lot of exclusion happening. Black people are excluded specifically. – **Nicholas Murray, one of the operators of Toronto’s DIY music venue, Unit 2**

I look at the people making decisions domestically in our industry in Canada, I still don’t see a diversity that represents the artists here or the diversity of the people in this country. – **Ian Kamau, hip-hop artist, cultural critic and public intellectual**

Black women in hip hop? No one’s a CEO, no one’s growing up and earning the equivalent of their peers. The discrimination would be reflected at events I performed at. The whole thing, you name it: the room, the stage, the order of who played when. I would feel it. It trickled down in so many ways. I’d be first on the bill

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<sup>101</sup> Mina Para Matlon, Ingrid Van Haastrecht, Kaitlyn Wittig Mengüç, *Figuring the Plural: Needs and Supports of Canadian and US Ethnocultural Arts Organizations*, (Plural, 2014) at pages 3, 4, 40, 74.

<sup>102</sup> Carla Gillis, Michelle Da Silva, Tabassum Siddiqui, Vish Khanna, “Real talk about racism in the T.O. music scene”, *Now Magazine*, January 28- February 3, 2016, Issue 1773, Vol. 35, No. 20, at pages 36-42.

and all that, until I go so numb to it. That's where I'd feel the racial thing. [...] I'm just like, "Come on, Canada". – **Michie Mee, rapper/songwriter/actor**

Racism won't go away when the people who run the industry want things to remain the same. They keep changing the face of it so you're not quite sure you're getting kicked in your face. – **Julion King, Reggae promoter and owner of canadianreggaeworld.com**

These reflections are consistent with the lack of funding, investment and support for racialized artists and organizations as discussed extensively in the *Figuring the Plural* publication discussed above. Moreover, the marginalization and underfunding of African Canadian artists is not restricted to Canada's music industry. In the forthcoming issue of the journal *Canadian Theatre Review* world-renowned and celebrated African-Jamaican-Canadian dub-artist, arts educator, author and theatre director, d'bi.young anitafrika, had the following things to say about the socio-systemic exclusion of African Canadians in the Canadian theatre industry:

Black people continue to experience under-representation in well-funded storytelling spaces-media as well as experience and challenges in finding spaces where they can receive mentorship and professional development.

Theatres in Toronto that receive substantial funding are still largely white, male, and hetero-normative.

Well-funded Canadian theatre companies and institutions continue to reflect [an] unfortunate narrative with their choices of artistic directors, acting companies, administrative staff, and play productions, which routinely exclude or tokenize Black people.<sup>103</sup>

Finally, Amanda Parris, host of CBC<sup>104</sup> Art's television show, *Exhibitionists*, has also weighed in on this issue. Parris is an African Canadian who is also a well-known actor, playwright, producer and academic. She has blogged about the barriers facing Black artists and musicians in her regular online column for CBC Arts. In a January 2016 article reflecting on the Canadian reverberations of African American exclusion from the 2016 Oscar nominations, Parris received the following comment from award-winning African Canadian film director, Randall "RT" Thorne:

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<sup>103</sup> D'biyoung anitafrika, "Black Plays Matter: Watah Theatre, Creating Safe Space for Black Artists in These Dangerous Times", *Canadian Theatre Review* (Vol 165, Winter 2016).

<sup>104</sup> CBC stands for Canadian Broadcasting Corporation. It is a Canadian crown corporation that serves as the country's sole national public radio and television broadcaster.

In our own Canadian Screen Awards, culturally we're not very represented there either. I think it's a North American entertainment industry issue. I think the only way it's going to change is a concerted effort on all parts.<sup>105</sup>

Thorne's comment further demonstrates how widespread the marginalization of African Canadian artistic creations is in the Canadian creative industries; extending beyond music and theatre and into the film industry as well. Furthermore, Parris' regular touching on this issue in her nationally televised show and column for Canada's national public broadcasting network is also indicative of how prevalent and pervasive the exclusion and devaluing of African Canadian performed and inspired creative works is in Canada.<sup>106</sup>

### **PART III - RECOMMENDATIONS**

Based on all of the foregoing, the African Canadian Legal Clinic requests that the Economic and Social Council to recommend that the Government of Canada do the following:

#### **Race-Based Disaggregated Data:**

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

#### **Anti-Poverty Reforms**

1. Adopt harmonized federal, provincial and municipal poverty reduction strategies that explicitly address and consistently monitor the need to aggressively and systemically reduce poverty among African Canadians. These poverty reduction strategies must provide staggered timelines for meeting specific targets for reducing African Canadian

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<sup>105</sup> Amanda Parris, "Is a boycott the solution to #OscarsSoWhite? Canadians feel similarly excluded, but calls for a separate award show meet resistance" CBC Arts, January 19, 2016, Online:

<http://www.cbc.ca/beta/arts/exhibitionists/is-a-boycott-the-solution-to-oscarssowhite-1.3410267>

<sup>106</sup> Amanda Parris, CBC Arts Column. Online: <http://amandaparris.com/cbc-arts-column/>



rates of poverty, by way increasing: minimum wages; access to affordable housing, child care, public transit and food security and prescription drugs for African Canadians. Specific measures to reduce poverty among African Canadian women should be emphasized and prioritized;

### **Employment Equity Reforms**

1. Reintroduce Employment Equity legislation in Ontario and adopt legislation to introduce and/or enhance employment equity legislation in every other Canadian province, as well as at the federal level. This legislation should be explicit about improving the employment and labour outcomes and experiences of African Canadians in the labour market;

### **Education Reforms**

1. Undertake a review of suspension and expulsion rates of African Canadian students and develop an intervention strategy for reversing and eliminating the school to prison pipeline;
2. Take steps to ensure that parents of suspended and expelled African Canadian students are made fully aware of their rights and the resources, services and programs available to them;
3. Undertake a comprehensive and properly resourced strategic action plan to introduce and make accessible Africentric educational opportunities for African Canadian children across Canada;

### **Child Welfare Reforms:**

4. Provide disaggregated race-based data on the number of children: a) separated from their parents; b) placed in institutions; placed with foster families; d) placed in kinship service or kinship care; and, e) adopted domestically or through inter-country adoptions;
5. Examine the impact of class and poverty-related issues on rates of removal to ensure that children are not being removed from their homes simply due to poor housing or poverty, particularly if the parent(s) is/are willing to do what is necessary to change the situation;
6. Where poverty-based “neglect”, as opposed to “abuse” is the reason for the involvement of the child welfare agency, provide the necessary supports to improve the family’s socio-economic security;

7. Work together with African Canadian agencies and communities to ensure that African Canadian agencies and communities to ensure that African Canadian families are provided with adequate supports to keep Black children at home with their natural families and/or to ensure that if an African Canadian child must be removed, they are placed in kinship care or a culturally responsive setting;
8. Implement policies that ensure that children who are placed in foster care or are adopted are placed in culturally responsive familial settings in which they can maintain their language, religion, culture and identity;
9. Conduct a review of racial disparities in the Child Welfare System by the Ontario Human Rights Commission. In 2011, Quebec's human rights commission undertook an in-depth and thorough review of racial profiling, in which it devoted a lengthy examination of disparities of African Canadian child welfare as manifested in Quebec. The ACLC urges the Ontario Human Rights Commission to do the same.<sup>107</sup>
10. Amend Ontario's Child and Family Services Act to entitle African Canadians to provide, wherever possible, their own child and family services and provide services in a manner that recognizes the culture, heritage and traditions of the child and the concept of the extended family;

### **Reforms in the Criminal Justice System**

1. Adopt legislation forbidding the release of non-conviction records by police forces and law enforcement agencies except in very exceptional circumstances that are clearly articulated in legislation and/or regulations;
2. Amend provincial and federal human rights legislation where such legislation does not explicitly forbid discrimination on the basis of a non-conviction record of offence;

### **Health Care Reforms**

1. Adopt robust provincial African Canadian health and well-being strategies specifically aimed at addressing the effects of racism as a social determinant of health. This strategy must have specific timelines and targets for improving the health care outcomes of African Canadians;

### **Arts and Culture Reforms**

1. Develop and implement federal and provincial action plans for increasing funding, support and industry infrastructure for African Canadian arts and cultural professionals

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<sup>107</sup> Paul Eid, *Racial Profiling and Systemic Discrimination of Racialized Youth* (Quebec: Commission des droits de la personne et des droits de la jeunesse, 2011)

and organizations, especially in the areas of music, film, theatre, television, literature and publishing and fine arts;

### **National Commitment to Eliminating Anti-Black Racism**

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

### **Previous Human Rights Committee Recommendations**

1. Implement the previous United Nations recommendations that the Government of Canada:
  - a) Collect and, in its next Periodic Report, provide the Committee, with reliable and comprehensive statistical data on the ethnic composition of its population and its economic and social indicators disaggregated by ethnicity, gender, including, African Canadians and immigrants, to enable the Committee to better evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population;
  - b) Coordinate its various policies, strategies and programs on Aboriginal peoples and African Canadians by adopting a comprehensive strategy on the situation of Aboriginal people at the federal level, so as to give a coherent picture of its actions and enhance their efficiency, and ensure that any differences of treatment are based on reasonable and objective grounds;
  - c) Establish a budgeting process which adequately takes into account children's needs at the national, provincial and territorial levels, with clear allocations to children in the relevant sectors and agencies, specific indicators and a tracking system. In addition, the Committee should recommend that the Government of Canada establish mechanisms to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the *ICESCR*. Furthermore, the Committee should once again recommend that the Government of Canada define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures (for example, African Canadian children) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies.
  - d) Include information in its next Periodic Report on measures and programs relevant to the *ICESCR* undertaken by the State party in follow-up to the Declaration and Program of Action adopted at the 2001 World Conference against Racism, Racial Discrimination,

Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference. The ACLC also asks that the Committee also recommend that the State party: (a) Take urgent measures to address the over-representation of African Canadian children in the criminal justice system and out-of-home care;

- e) Intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including services to parents who need counseling in child-rearing, and, in the case of African Canadian populations, culturally appropriate services to enable them to fulfill their parental role.
- f) Ensure that funding and other support, including welfare services, provided to Aboriginal, African Canadian, and other minority children is comparable in quality and accessibility to services are provided to other children in the State party and is adequate to meet their needs.