



**Committee on the Elimination of Racial Discrimination  
Seventieth Session  
19 February – March 9, 2006**

**Questions from the African Canadian Legal Clinic**

**IN CONNECTION WITH THE CONSIDERATION OF THE SEVENTEENTH AND  
EIGHTEENTH PERIODIC REPORTS OF CANADA**

**Composition and distribution of the population**

1. Please provide updated statistical information on the size of the African Canadian population within Canada, including their geographic location and their socio-economic status.

**Article 2**

2. In 2003, Mr. Dou Dou Diène, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, visited the State party and recommended that Canada conduct an overall assessment of the situation of the Afro-Canadian community. Similarly, the concluding observations from the Thirty-sixth session of the Committee on Economic Social and Cultural Rights also recommended an overall assessment of the situation of African Canadians. Has the State party implemented the recommendations of both the Special Rapporteur and the Committee on Economic Social and Cultural Rights by taking steps to conduct an overall assessment of the situation of the African Canadian community in Canada?
3. In 2000, the State party introduced the *Embracing Change Action Plan* to address the under-representation of visible minority groups in the federal public service. A preliminary review of the *Plan* concluded that it had failed to meet the benchmarks set for visible minority participation in the federal public service. Since the preliminary review, what measures has the State party taken to address the failure of the *Plan* and how will these measures assist in increasing visible minority participation in the targeted areas within the federal public service?

4. The State party's report references the government's national action plan against racism, which is entitled *A Canada For All: Canada's Action Plan Against Racism*. According to the State party's report, the *Action Plan* identifies six areas as key priorities. The *Action Plan* also lists five "new or enhanced measures that the Government of Canada will take to eliminate racism in Canadian society". However, the wording of the report suggests that the proposed new measures have yet to be implemented. Accordingly, since the launch of the *Action Plan*, what if any of the "new or enhanced measures" delineated in the *Action Plan* have the State party implemented to combat racism in Canada?
5. Many disadvantaged groups have raised concerns about the prevalence of the practice of racial profiling in Canada. The existence of the phenomenon of racial profiling, and in particular its damaging impact on African Canadians and other racialized groups is beyond dispute and has been widely documented by several reports and studies.<sup>1</sup> However, despite requests for the State party to assume a leadership role by enacting policies and legislation to prohibit racial profiling, the State party has taken no action to eliminate this practice. Given the recognized discriminatory impact on African Canadians and other racialized groups, what steps will the Canadian government take to address the impact of racial profiling on these groups?

#### Article 4

6. Canada's anti-terrorism strategy has primarily relied on immigration laws, principally the issuance of security certificates under the *Immigration and Refugee Protection Act*. These laws are administrative and provide little to no procedural safeguards or substantive protections. Given the disproportionate impact of such measures on certain racialized and religious groups, what measures is the government taking to ensure that its anti-terrorism laws are not applied in an unequal or discriminatory manner?

#### Article 5

7. The State party's report indicated that its *Action Plan Against Racism* will include measures to address the overrepresentation of African Canadians and other groups in the criminal justice through "research and consultations". However, there have already been several reports that have addressed the impact of systemic racism on the experiences of African Canadians and other racialized groups in the State party's criminal justice system.<sup>2</sup> These

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<sup>1</sup> Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Ontario Human Rights Commission: 2003); Charles Smith, *Crisis, Conflict and Accountability: The Impact and Implications of Police Racial Profiling*, (African Canadian Community Coalition: 2004); Wortley & Marshall, *Bias free Policing: Kingston Racial Profiling Study*, (2005, Kingston).

<sup>2</sup> There have been numerous reports dealing with racism in the Canadian criminal justice system including the following: Province of Ontario, Race and Policing Relations Task Force, *Report of the Race Relations and Policing Task Force*, chair, Clare Lewis (Toronto: Task Force, 1989); Province of Nova Scotia, *Royal Commission on the Donald Marshall, Jr. Prosecution* (Halifax: 1989); Province of Alberta, *Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta*, chair, R.W. Cawsey (Edmonton: March,

reports included detailed recommendations, the vast majority of which the State party has not implemented. Prior to conducting further research and consultation on this issue, will the State party commit to reviewing and implementing the recommendations arising from previous reports which have highlighted the impact of systemic racism in the Canadian criminal justice system on African Canadians and other racialized groups?

8. The State party has recently promoted a “law and order” approach to criminal justice issues through the introduction of a range of amendments to its *Criminal Code*. Research has indicated that many of these proposed reforms, such as the introduction of mandatory minimum penalties, have a disproportionate impact on African Canadians and other racialized groups. What measures has the State party taken to ensure that the proposed reforms to its criminal justice system will not have a disproportionate or discriminatory impact on African Canadians and other racialized groups?
9. A report presented to the Ipperwash Inquiry<sup>3</sup> in 2006 established that African Canadians overwhelmingly victims of police use of force in Ontario. The report noted that African Canadians are ten times more likely to be killed or seriously injured by police shooting than Whites in Ontario and, while only representing 3.6% of the province’s population, accounted for 35% of deaths caused by police shootings.<sup>4</sup> Given the disproportionate impact of police use of force on African Canadians, what measures has the State party taken to rectify this serious problem?
10. The Court Challenges Program was instituted to provide financial assistance for important court cases that advance language and equality rights guaranteed under Canada’s Constitution. The concluding observations from the Nineteenth and Thirty-sixth sessions of the Committee on Economic, Social and Cultural Rights recommended the extension of the Court Challenges Program to permit challenges with respect to provincial and territorial legislation and policies. In September of 2006 the State party eliminated the Court Challenges Program. Given its importance in advancing equality rights, why has the State party eliminated the Court Challenges Program? In the absence of the Court Challenges Program, what support will the State party provide to ensure the ability of disadvantaged groups to protect their language and equality rights in the courts and other legal systems?
11. The Law Commission of Canada was established to engage Canadians in the renewal of the law to ensure that it is relevant, responsive, effective, equally accessible to all, and just. In September of 2006 the State party sanctioned substantial cutbacks to the budget of the Law Commission of Canada. In the absence of the Law Commission, what initiatives will the

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1991); Province of Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba*, Public Inquiry in the Administration of Justice and Aboriginal People (Winnipeg: 1991). Province of Ontario, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Ontario: 1995)

<sup>3</sup> The Ipperwash Inquiry was established by the Government of Ontario in 2003 to inquire and report on the events surrounding the death Dudley George, an Aboriginal man who was fatally shot by police during a by First Nations protest at Ipperwash Provincial Park.

<sup>4</sup> Wortley, S. and Roswell T. *Police Use of Force in Ontario: An Examination of Data from the Special Investigations Unit*. Research Project Conducted on Behalf of the African Canadian Legal Clinic for the Ipperwash Inquiry (December 2006).

State party implement to ensure that the critical objectives of this program will continue to be a priority?

### **Article 6**

12. In the concluding observations from the Sixty-first session, the Committee on the Elimination of Racial Discrimination noted with concern that despite the large number of complaints relating to racial discrimination and the relatively small number of positive admissibility decisions (i.e. cases that were referred to a Tribunal for a hearing on the merits). What steps has the State party taken to remedy this discrepancy and ensure that the system is fully accessible to individuals bringing claims of racial discrimination?
13. The province of Ontario recently made significant changes that severely weakened its human rights complaint system. Numerous individuals and organizations representing a broad cross section of equity seeking groups raised serious concerns regarding the proposed changes, including the failure to provide the human rights system with critically needed funding and the failure to provide sufficient supports so that the proposed system would be accessible for all disadvantaged and marginalized groups. Given the concerns raised by human rights experts from many impacted communities, what efforts is the government taking to ensure that the proposed changes will truly strengthen Ontario's human rights system and protect the human rights of equity seeking groups?

### **Article 7**

14. Since the introduction of the "Safe Schools" provisions of Ontario's *Education Act*, evidence indicates that students with disabilities and racialized students, particularly African Canadian males, have been disproportionately suspended and expelled. Concerns about the "Safe Schools" provisions prompted the Ontario Human Rights Commission to initiate a human rights complaint against both the Toronto District School Board and the Ontario Ministry of Education. A settlement has been reached with the Toronto District School Board but the Ontario Ministry of Education continues to litigate the case, despite evidence of the discriminatory impact of the "Safe Schools" provisions. Has the State party taken appropriate measures to address the discriminatory impact of the "Safe Schools" provisions of the *Education Act* on African Canadians and other racialized students in order to ensure that its application does not adversely impact their right to an education in Ontario?

### **Implementation of Concluding Observations of the Committee's Sixty-first session**

15. Can the State party provide an update on its efforts to address the concerns raised in the following Concluding Observations from the Sixty-first session of the Committee on the Elimination of Racial Discrimination:

333. The Committee reiterates its concern about the high rate of incarceration of, violence against and deaths in custody of Aboriginals and people of African and Asian

descent, and recommends that the next periodic report contain information on the efficacy of programmes adopted with a view to reducing these phenomena and on the results of any inquiries undertaken.

334. The Committee is concerned with the high number of incidents of discrimination targeting Aboriginals and people belonging to minorities in the field of employment. The Committee recommends that the State party submit more detailed information on the results achieved to eradicate racial discrimination in the field of employment, including management positions, at federal, provincial and territorial levels and in the public and private sectors, and provide the Committee with disaggregated data, as well as an assessment of the activities of the employment equity review tribunals.

335. The Committee expresses concern about information on patterns of racial discrimination affecting people of African and Asian descent and at expressions of prejudice in the media against such people, as well as against foreigners and refugees. It is further concerned that the State party focuses on the prohibition of activities conducted by racist organizations rather than on the prohibition of such organizations, as required by article 4 (b) of the Convention. The Committee wishes to receive more information on the practical implementation of article 4 of the Convention and of section 718.2 of the Criminal Code, which establishes racial discrimination as an aggravating circumstance.