



**Report of the African Canadian Legal Clinic (“ACLC”) to
the United Nations Human Rights Council**

**Universal Periodic Review of Canada
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Promoting Justice, Defending Equality, Building Community

Overview of the African Canadian Legal Clinic

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 combatting systemic anti-Black racism in Canadian society. The ACLC represents and advocates on behalf of the African Canadian community through: (i) involvement in ground-breaking test-cases and interventions involving anti-Black racism, human rights and the equality provisions guaranteed in Canadian human rights legislation such as the *Canadian Charter of Rights and Freedoms (Charter)*;¹ (ii) monitoring significant legislative, regulatory, administrative and judicial developments; and (iii) engaging in advocacy, law reform and legal education.

Introduction and Overview

- [1] The African Canadian Legal Clinic is pleased to submit to the third Universal Periodic Review (“UPR”) of its state party, the Government of Canada. This report contains a collection of systemic concerns that compromise Canada’s fulfilment of its human rights obligations to African Canadians. These concerns have been repeatedly identified by the ACLC since 1994.
- [2] The issues identified below reiterate Canada’s minimal substantive action addressing its institutional anti-Black racism, which has been identified to and by various United Nations (“UN”) bodies since the previous UPR in 2013
- [3] The most recent recognition of these concerns is the Report of the Working Group of Experts on People of African Descent (“Working Group”) on its 2016 mission to Canada. The Working Group’s Report was released on September 24, 2017 and provides a clear overview of Canada’s legacy of anti-Black racism and its effects on African Canadians.
- [4] The Working Group recognized the ACLC’s coordination of African Canadian civil society organizations across Canada, and articulated the dire socio-economic framework facing African Canadians today. In particular, the Working Group writes:

“It is important to underline that the experience of African Canadians is unique because of the particular history of anti-Black racism in Canada, which is traceable to slavery and its legacy, through specific laws and practices enforcing segregation in education, residential accommodation, employment and other economic opportunities. History informs anti-Black racism and racial stereotypes that are so deeply entrenched in institutions, policies and practices, that its institutional and systemic forms are either functionally normalized or rendered invisible, especially to the dominant group.”²

- [5] The ACLC appreciates the Working Group’s contributions to unpacking anti-Black racism in Canada. It endorses the Working Group’s report and recommendations, which are informed by recommendations submitted by the ACLC and partner civil society organizations. They are further informed by African Canadian community members and submissions to various UN human rights bodies, including:

- The *CRC* (2012); the *CCPR* (2015); the *CEDAW* (2016); the *CESCR* (2016); and the *CERD* (2012, 2017)¹

Areas of Concern since Last Review

- [6] Canada’s failure to take necessary action offends the following human rights conventions to which it is a signatory: *CERD* articles 1-5, 7; *CCPR* articles 2, 7, 10, 14, 17, 24, 26; *CESCR* articles 1, 3, 10-15; *CEDAW* articles 9, 11, 15; and, *CRC* articles 1, 2, 9, 20.

¹ See: *The Convention on the Rights of the Child*; *The International Covenant on Civil and Political Rights*; *The Convention on the Elimination of Discrimination Against Women*; *The International Covenant on Economic, Social and Cultural Rights*; *The Convention on the Elimination of All Forms of Racial Discrimination*

[7] In this Report, the ACLC canvasses Canada's progress on its recommendations since the last review cycle, and documents other concerns it has introduced to various other UN human rights bodies.

a. Race-Based Disaggregated Data

[8] Collecting race-based disaggregated data is invaluable to the fight against anti-Black racism. This was recognized by the federal government in its 2005 Action Plan Against Racism (before it was repealed in 2010), by the Ontario Human Rights Commission and by the Canadian Human Rights Commission. It is recognized by the Toronto District School Board and the Halifax Regional School Board. Both organizations collect and publish race-based disaggregated data. It was also recognized by Ontario's Ministry of Education, which committed to disaggregated data collection in its Education Action Plan. As a result of Ontario's new Anti-Racism strategy, the Ministries of Health, Education, Justice and Child Welfare are now mandated to collect race-based statistics. Academia recognizes the utility of race-based data, with multiple institutions currently collecting racial admissions statistics to identify disparity and increase equity.² Both the University of Toronto and Ryerson University are implementing disaggregated admissions data collection. Legal Aid Ontario also endorses the collection of race based data.³

[9] Despite this general consensus, the federal government has yet to commit to developing a federal disaggregated data collection program. While re-establishing the long-form census under the Trudeau government in 2016 is a step forward, it must do more to identify race-based disparities and address systemic anti-Black racism.

b. Racial Profiling in Corrections, Policing and Criminal Justice

[10] African Canadians continue to be racially profiled and over-represented across the Canadian criminal justice system, corrections and policing. African Canadians account for 9.5% of federal inmates in Canada despite making up only 3% of the national population.⁴ The African Canadian population in federal penitentiaries rose 80% between 2003 and 2013.⁵ In 2013, the number of African Canadian youth (ages 12-17) in correctional facilities was reported to be four times higher than the general Black youth population at the time.⁶

[11] In 2013, the Office of the Correctional Investigator recognized both the existence of racial bias in correctional officers' decisions in determining which inmates are placed in segregation (solitary confinement) and the persistent stereotyping African Canadian inmates are subjected to.⁷ From March 2005-2015, the number of Black inmates in federal segregation increased by 100.4% while the number of White inmates in segregation declined by 12.3%.⁸ At the Toronto South Detention Centre, roughly 40% of the inmates in segregation were Black at the time of the Working Group's visit in 2016.⁹

[12] A 2017 report on segregation in Ontario, prepared by the Independent Advisor on Corrections, indicates that segregation reform has been a provincial priority since 2014.¹⁰

² See: Mount Saint Vincent University, Acadia University, Queen's University, the University of Winnipeg and the Royal Military College of Canada

In tackling this priority issue, Ontario’s Ministry on Community Safety and Correctional Services (“MCSCS”) has launched multiple reform efforts, including: consultations with community stakeholders; high-level transformation strategies; internal reviews; pilot projects; local initiatives; and, a significant series of reports, policy updates, training sessions and reform projects. Many of these reform efforts were taken in response to court filings and legal settlements. The Independent Advisor indicates that these efforts still demonstrate a lack of strategic planning on advancing the reform agenda.¹¹ In addition, there remains a severe lack of culturally specific programming, community interaction or job skills training for Black inmates.¹²

- [13] The federal government has failed to make similar reform efforts within federal corrections despite gross over-representation of African Canadians in correctional institutions and in segregation at the federal level. It must implement a strategic reform plan to overhaul federal corrections in a way that responds to the issues of race-based segregation, lack of culturally relevant programming and the over-representation of African Canadians.
- [14] Street checks, or the practice of “carding,” also has a disproportionate effect on African Canadian men, youth in particular, and amounts to little more than sanctioned racial profiling by the police. New regulations were introduced in late 2016 in an attempt to quell the rampant use of street checks against young African Canadian men by police. However, these new regulations remain uncomfortably vague and provide officers with enough discretion to circumvent what is otherwise supposed to act as a check on racial profiling.¹³ The MCSCS has commissioned an independent review of the use of street checks in Ontario, conducted by the Honourable Justice Michael Tulloch of the Ontario Court of Appeal, to be completed by January 2019.¹⁴ However, in the interim, the continued use of street checks and the maintenance of information collected from these street checks irrespective of a subsequent charge being laid (i.e., non-conviction records), remains an exercise of racial profiling sanctioned by police services and should be immediately stopped. All information gathered through non-conviction records should be immediately destroyed.

c. Hate Crimes

- [15] The ACLC’s 2012 report for the second cycle of the UPR indicated that the federal government had failed to address hate crimes or hate propaganda through criminal or human rights legislation. Since then, the federal government has taken no action towards introducing hate crime as a separate and distinct ground of criminal activity in the *Criminal Code of Canada*.¹⁵ Instead, racial motivation remains only as an aggravating factor on sentencing, leaving it in the hands of the prosecutor and presiding judge to determine whether or not racial bias was involved in the crime and to what extent.
- [16] This failure to single out hate crimes within the criminal justice system is particularly concerning given the widespread presence of anti-Black racism in Canadian society and the increased presence of white supremacist groups across the country.¹⁶ Since 2010, Black populations have been the most targeted among incidents of hate crime.¹⁷ In both 2014 and 2015, nearly half of police reported hate crimes (48% or 641 incidents) were motivated by hatred towards a race or ethnicity, with African Canadians reporting the highest number of race-based hate crimes.¹⁸ Despite a decrease in total number of incidents

from 2012 to 2015, police reported incidents motivated by hatred against the Black population in Canada still make up 35% of racial hate crimes and 17% of all hate crimes.¹⁹ Violent offences against the Black population made up 35% of anti-Black hate crimes, with assault making up 19% of police reported anti-Black hate crime. 31% of victims sustained injuries. Over half of the victims of anti-Black hate crime reported that the accused was a stranger.²⁰

d. Housing, Homelessness, Employment, Poverty and Health

- [17] Persistent anti-Black racism in the workplace results in systemic, intergenerational poverty that impacts every area of concern indicated in this report. The African Canadian experiences in child welfare, criminal justice, education, health, housing and homelessness cannot truly improve without resolving the issue of racialized poverty. The failure of the government in addressing anti-Black racism in employment and the resulting rates of poverty experienced by African Canadians was highlighted in the ACLC's report at the second cycle of the UPR. The Canadian government has failed to address poverty and the inequitable, precarious employment experienced by African Canadians.
- [18] Nearly twice as many racialized Ontarians are living in poverty than White Canadians. Furthermore, one-quarter of African Canadian women are living below the poverty line compared to 6% of White Canadian women.²¹ Although Canada has announced a Federal Poverty Reduction Strategy and the Province of Ontario has released its own Poverty Reduction Strategy, neither strategy mentions race and neither references the disproportionate level of poverty experienced by African Canadians. The Ontario Poverty Reduction Strategy instead uses colloquialisms such as "at risk neighbourhoods" and "urban." This oversight is particularly disturbing within the racialized context of poverty and the ways in which it affects the other areas indicated in this report. These systemic derivations of Black poverty have been recognized by multiple civil society groups and have been brought to the state party's attention on numerous occasions, both at consultations at home and UN human rights reviews abroad.
- [19] The unemployment rate for African Canadian women (11%) is 4% higher than the average rate for all Canadians. While African Canadians have a relatively high labour force participation *contra* other racial and ethnic demographics, they have the second highest unemployment rate in the country. African Canadian women earn 15% less than White women and 37% less than White men. Those Canadians who identify as Black earn only 75.6 cents for every dollar that non-racialized workers earn. This amounts to an annual earning gap of \$9, 101.00.
- [20] African Canadian youth and families are more likely to suffer numerous health consequences as a result of impoverishment and anti-Black racism. Children from low income families are at a higher risk of asthma due to low housing quality and environmental pollutants and are more likely to have emotional and behavioural problems.²²
- [21] Thus, the failure to consider poverty through a racialized lens across the country and in provincial and territorial jurisdictions renders the African Canadian experience invisible and prevents further development of efficient and sustainable solutions. The

intergenerational nature of poverty means that African Canadian youth are affected in disproportionate numbers by the high rates of poverty in their families and communities: one-third of children of Caribbean heritage and nearly one-half of those from continental Africa live below the poverty line, as compared to only 18% of White Canadian children.²³

- [22] It is necessary that Canada and its provinces and territories specifically address racialized poverty and African Canadian poverty. Furthermore, the national and provincial actions plans *must* allocate funding specifically towards addressing root causes of African Canadian poverty, including funding groups and organizations with a specific focus on combatting poverty, income inequality and homelessness in the African Canadian community. The Federal government must also commit to the implementation of a national employment equity framework in order to ensure that African Canadians and, in particular, African Canadian women, are paid the same salary as their non-Black, non-racialized colleagues.

e. Child Welfare

- [23] Despite comprising only 8.5% of Toronto's population, African Canadian children and youth in Toronto made up 40.8% of children apprehended and placed in care.²⁴ This disparity was linked to the fact that African Canadian parents are 40% more likely to be investigated for child mistreatment than White parents and that the removal of African Canadian children is more likely to happen during these investigations. This phenomenon is not Toronto-specific; a Quebec study indicated that youth of Haitian origin in Quebec are twice as likely as White French Canadian youth to be reported to child protection.²⁵ While Haitian youth were primarily referred by education and health care professionals, White French Canadian youth were primarily referred by extended or immediate family members.²⁶
- [24] These disproportionate apprehension rates reflect a failed understanding of cultural differences by those professionals who are the primary source of referrals to children's aid societies (i.e., teachers, police, and medical practitioners) and a failure of the child welfare system to assist struggling families instead of penalizing poverty.
- [25] Additionally, the lack of culturally appropriate services and the failure to place African Canadian youth and children in culturally appropriate familial settings has serious cultural consequences and amounts to "institutionalized assimilation."²⁷ As the Supreme Court of Canada acknowledged in *Van de Perre v Edwards*,²⁸ "[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."²⁹
- [26] The Canadian government has yet to work with the provinces and territories to improve these issues in child welfare. The ACLC continues to observe troubling instances of African Canadian children being apprehended and removed from their families on questionable and tenuous bases. In failing to address these discrepancies despite repeated calls for action by the African Canadian community, other community stakeholders and the various United Nations human rights committees, Canada remains in contravention of its obligations under the human rights instruments listed above.

Conclusion

[27] The federal government has failed to implement the recommendations from the second cycle of the UPR as they pertain to African Canadians. It continues to contravene the various human rights conventions to which it is signatory, despite repeated recommendations and calls for action by various stakeholders, including the ACLC and multiple UN human rights committees.

[28] The situation for African descendants in Canada must improve. Canada has responsibilities to its Black community that are presently unfulfilled. As stated by the Working Group, Canada's "contemporary form of racism replicates the historical de jure and de facto substantive conditions and effects of spatial segregation, economic disadvantage and social exclusion."³⁰ The ACLC endorses the entirety of Working Group's recommendations from its Final Report to Canada. In particular, it endorses:³¹

- i. Recognize African Canadians as a "distinct group" (83(b))
- ii. Create a national department of African Canadian Affairs (85(b))
- iii. Implement national African Canadian justice and corrections strategies (89(a)(b))

[29] The ACLC awaits any comments or contributions of the Human Rights Council and hopes the Council will endorse its recommendations for the state party.

Recommendations

[30] Based on the foregoing, the African Canadian Legal Clinic requests that the Human Rights Council recommend that the Government of Canada take the following action:

- i. Immediately implement a nation-wide disaggregated data collection action plan.
- ii. Develop a national action plan to implement the recommendations from the previous UPR cycle (ACLC's and the UN's)
- iii. Re-introduce Canada's National Action plan against racism in consultation with racialized communities.
- iv. Allocate money from Canada's Poverty Reduction Strategy to provide child welfare organizations with the resources to assist African Canadian families living below the poverty line.
- v. Include race and anti-Black racism as factors contributing to poverty in the Federal Poverty Reduction Strategy or, alternatively, create a distinct African Canadian Federal Poverty Reduction Strategy.
- vi. Allocate money from Canada's Poverty Reduction Strategy specifically to address the pervasive endemic of poverty across the African Canadian population, for example, by allocating such resources to initiatives/organizations aimed specifically at combatting poverty within the African Canadian community.
- vii. Establish a Special Advisor for African Canadian Children within each provincial/territorial ministry responsible for child.

- viii. Work with the provinces and territories to develop an Education Action Plan³ within each province/territory's ministry of education to address the cultural implications, underlying biases and racism, and failed recognition of the history and contribution of African Canadians in Canada's educational system.
- ix. Abolish the practice of street checks ("carding") and destroy any personal information collected through its practice.
- x. Introduce legislation criminalizing race-based hate crimes as a separate and distinct criminal charge.
- xi. Introduce a racially focussed employment equity framework to ensure that African Canadians and, in particular, African Canadian women, are paid the same salary and at the same rate as their non-Black, non-racialized colleagues.

¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 15.

² United Nations Human Rights Council, "Report of the Working Group of Experts on People of African Descent on its mission to Canada." August 16, 2017. P. 7.
<http://www.refworld.org/docid/59c3a5ff4.html>

³ Josephine Li, "The Case for Race-Based Statistics." *Legal Aid Ontario*, February 27, 2017.
<http://blog.legalaid.on.ca/2017/02/27/infographic-the-case-for-race-based-statistics/>

⁴ Ivan Zinger, "The Changing Face of Canada's Prisons: Correctional Investigator Reports on Ethno-Cultural Diversity in Corrections," www.oci-bec.gc.ca. November 26, 2013.
<http://www.oci-bec.gc.ca/cnt/comm/press/press20131126-eng.aspx>

⁵ Howard Sapers, "Annual Report of the Office of the Correctional Investigator 2012-2013," www.oci-bec.gc.ca. June 28, 2013. <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>

⁶ Jim Rankin and Patty Winsa, "Unequal Justice: Aboriginal and Black Inmates Disproportionately Fill Ontario Jails." *Toronto Star*. March 1, 2013.
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⁷ White, Patrick, "Use of solitary confinement for black inmates in federal prisons increasing" (May 28, 2015) <https://www.theglobeandmail.com/news/national/use-of-solitary-confinement-in-federal-prisons-has-increased-over-last-10-years/article24661862/>; Office of the Correctional Investigator, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, (2013) at pages 16-18.

⁸ Office of the Correctional Investigator, *Administrative Segregation in Federal Corrections, 10 Year Trends* (May 28, 2015) at p. 2; White, Patrick, "Use of solitary confinement for black inmates in federal prisons increasing" (May 28, 2015) <https://www.theglobeandmail.com/news/national/use-of-solitary-confinement-in-federal-prisons-has-increased-over-last-10-years/article24661862/>

⁹ United Nations Human Rights Office of the High Commissioner, *Statement to the media by the United Nations' Working Group on People of African Descent, on the conclusion of its official visit to Canada, 17-21 October 2017* (October 21, 2016)
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20732&LangID=E;>

³ See: The Ontario Ministry of Education's "Action Plan" as a potential blueprint

see also Robin, Raizel, “The \$1-Billion Hellhole” (February 15, 2017)

<http://torontolife.com/city/inside-toronto-south-detention-centre-torontos-1-billion-hellhole/>

¹⁰ Howard Sapers, “Segregation in Ontario – Independent Review of Ontario Corrections” *Ministry of Community Safety and Correctional Services* (March 2017) 52.

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¹¹ Ibid, 53.

¹² Office of the Correctional Investigator, “A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report.” *Government of Canada* (2013) 12.

<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx>

¹³ ¹³ Muriel Draaisma, “New Ontario Rule Banning Carding by Police Takes Effect.” *Canadian Broadcasting Corporation*, January 1, 2017. <http://www.cbc.ca/news/canada/toronto/carding-ontario-police-government-ban-1.3918134>

¹⁴ ¹⁴ Muriel Draaisma, “New Ontario Rule Banning Carding by Police Takes Effect.” *Canadian Broadcasting Corporation*, January 1, 2017. <http://www.cbc.ca/news/canada/toronto/carding-ontario-police-government-ban-1.3918134>

¹⁵ Josh Dehaas, “What counts as “hate crime” in Canada?” *CTV*, March 1, 2017.

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¹⁶ Evan Baggord, “Toronto Public Library Refusing to Cancel Planned Neo Nazi Gathering.”

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Wright, “Recent displays of white supremacy are not an anomaly.” *CBC News*, August 20, 2017.

<http://www.cbc.ca/news/opinion/white-supremacy-charlottesville-1.4254297>

¹⁷ Ben Leber, “Police Reported Hate Crime in Canada, 2015.” *Statistics Canada*, June 14, 2017.

Page 15. <http://www.statcan.gc.ca/pub/85-002-x/2017001/article/14832-eng.pdf> at page 15

¹⁸ Ibid 6-7.

¹⁹ Ibid 15.

²⁰ Ibid 17

²¹ Sheila Block, Grace-Edward Galabuzi, and Alexandra Weiss, “The Colour Coded Labour Market By the Numbers: A National Household Survey Analysis” (2014) *Wellesley Institute*,

<http://www.wellesleyinstitute.com/wp-content/uploads/2014/09/The-Colour-Coded-Labour-Market-By-The-Numbers.pdf>, i

²² Rita Paul Gupta et al., “The Impact of Poverty on the Current and Future Health Status of Children”, (2007) Vol 12 NO. 8 *Paediatric Child Health* 667 at 668.

²³ United Nations Working Group of Experts on People of African Descent, “Statement of the media by the United Nations’ Working Group of Experts on People of African Descent, on the conclusion of its official visit to Canada, 17-21 October 2016.” United Nations Office of the High Commissioner, October 21, 2016.

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20732&LangID=E>

²⁴ Kike Ojo, “One Vision One Voice: Changing the Ontario Child Welfare System to Better Service African Canadians – Practice Framework Part 1: Research Report.” *Ontario Association of Children’s Aid Societies*. September 2016. Pages I, cited in *African Canadian Legal Clinic*, “Making Real Change Happen.” July 2017.

²⁵ Ibid, 26-27

²⁶ Ibid, 22

²⁷ Gordon Pon et al, “Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare” (2011) 3&\$ *International Journal of Child*

²⁸ [2001] 2 SCR 1014.

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²⁹ [2001] 2 SCR 1014 at para 40.

³⁰ United Nations Human Rights Council, “Report of the Working Group of Experts on People of African Descent on its mission to Canada.” August 16, 2017. 7-8.

<http://www.refworld.org/docid/59c3a5ff4.html>

³¹ Ibid, 16