

**TO THE UN HUMAN RIGHTS COUNCIL ON UNIVERSAL PERIODIC REVIEW OF
HUMAN RIGHTS**

CANADA

JOINT UPR SUBMISSION

By

**COLOUR OF POVERTY - COLOUR OF CHANGE
CHINESE & SOUTHEAST ASIAN LEGAL CLINIC
COUNCIL OF AGENCIES SERVING SOUTH ASIANS
ONTARIO COUNCIL OF AGENCIES SERVING IMMIGRANTS and
SOUTH ASIAN LEGAL CLINIC OF ONTARIO**

October 2017

DEMOGRAPHICS

In 2011, the foreign-born population was 20.6% of the total population in Canada.¹ Recent newcomers are predominately people of colour (POC) from the global South.² In 2012, 51% of all low-income immigrants were in chronic (5 or more consecutive years) low income, compared to 43% for Canadian-born. Immigrants from East and South Asia were chronic low-income at 17-19%, compared to 4-5% for those from NW Europe, Philippines, Australia, New Zealand and the United States.³ Peoples of colour in Canada are significantly more likely to live in poverty. In 2011, 20% of Ontarians of colour are living in poverty compared to 11.6% of white Ontarians.⁴

53.4% of Indigenous women 65 and older are low-income compared to 30.9% of non-Indigenous women in the same age category.⁵

Regarding income, women of colour made 53.4% as much as white men; men of colour made 73.6% as much as white men; women of colour made 84.7% as much as white women.⁶

¹ Statistics Canada. (2011). Immigration and Ethnocultural Diversity in Canada, 2011 Census. Ottawa. p. 7. Most recent data.

² *Ibid.* Includes Asia 56.9%, Africa 12.5%, Caribbean – Central - South America 12.3%.

³ Picott, Garnett and Yuquian Lu. “Chronic low income among immigrants in Canada and its communities”. Statistics Canada. September 29, 2017.

⁴ 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>.

⁵ Canadian Human Rights Commission, “Report on the Equality Rights of Aboriginal People” (2013), http://www.chrc-ccdp.gc.ca/sites/default/files/equality_aboriginal_report.pdf.

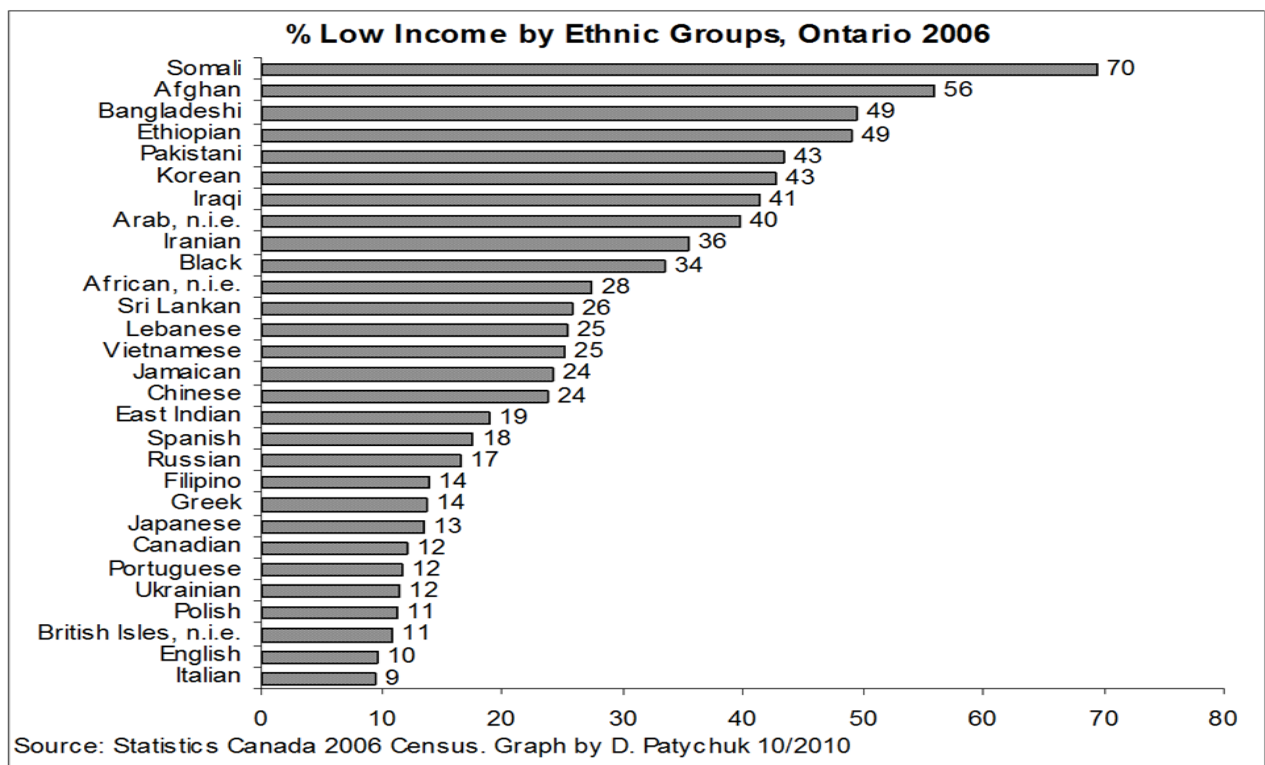
Indigenous women earn 10% less than Indigenous men, and 26% less than non-Indigenous men.

Workers of colour earn 81.4 cents for every dollar paid to non-workers of colour. The ‘colour-code’ in earnings persists for second generation workers of colour.⁷

Unemployment

Ontarians of colour are unemployed at 10.5% compared to 7.5% for white workers, and these disparities are widening.⁸ Discrimination against POC is persistent, such as employer discrimination against job applicants with Asian-sounding names.⁹

Percent Low Income by Sample Ethno-Racial Groups – Ontario 2006

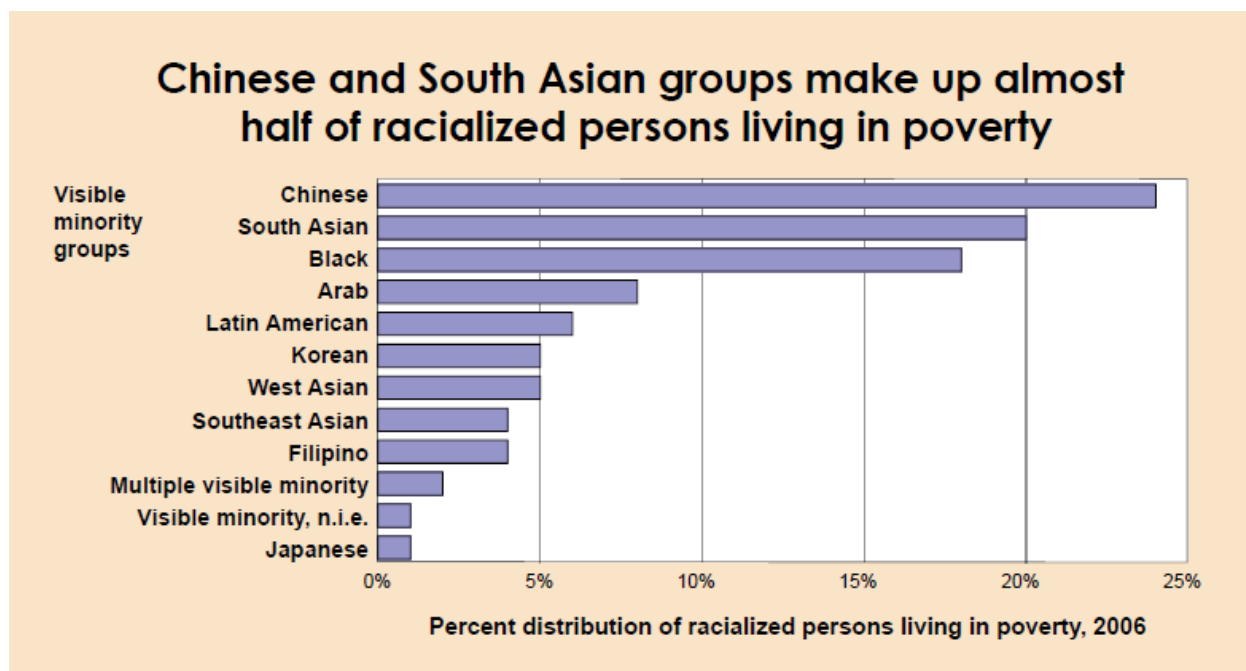


⁶ Sheila Block, “The Role of Race and Gender in Ontario’s Racialized Income Gap” (2010) *Canadian Centre for Policy Alternatives*, <https://www.policyalternatives.ca/publications/reports/role-race-and-gender-ontarios-growing-gap>.

⁷ Block, Sheila and Grace-Edward Galabuzi. (2011). *Canada’s Colour Coded Labour Market: the gap for racialized workers*. Wellesley Institute and Canadian Centre for Policy Alternatives. Toronto.

⁸ 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>.

⁹ Rupa Bannerjee, Jeffrey G Reitz, and Phil Oreopoulos, “Do Large Employers Treat Racial Minorities More Fairly? A New Analysis of Canadian Field Experiment Data” (2017), <http://www.hireimmigrants.ca/wp-content/uploads/Final-Report-Which-employers-discriminate-Banerjee-Reitz-Oreopoulos-January-25-2017.pdf>.



ISSUES

1. Data Collection and National Action Plan Against Racism

Data disaggregated by ethno-racial background is rarely collected by any order of government, preventing the measurement and tracking of racial inequities and disparities, and impact of law and policies. It impedes political and legal recognition of racial discrimination.

In areas of federal jurisdiction this presents particular concerns relating to racial discrimination such as immigration and immigration enforcement, national security policies and federal income support programs¹⁰, ethno-racially specific break-outs of the data are not made available. The lack of race based data reflects the Federal Government's refusal to adequately acknowledge the experience and impact of racism, especially as they affect communities of colour. The recently announced federal Poverty Reduction Strategy – the first ever in Canada – identified several priority vulnerable communities at heightened risk of poverty. Peoples of colour are not included – even though they are more likely to live in poverty compared to the general population.¹¹ It is critical that race based data is disaggregated further to allow identification of the experiences of diverse peoples of colour and to measure the unique impacts of public policy interventions.

¹⁰ Including the Canada Child Tax Benefit, Old Age Security, Guaranteed Income Supplement

¹¹ "Towards a poverty reduction strategy – A backgrounder on poverty reduction in Canada". Employment and Social Development Canada, February 2017. Government of Canada, "Poverty Reduction Strategy," <https://www.canada.ca/en/employment-social-development/programs/poverty-reduction/backgrounder.html>

Recommendations:

- The Federal, Provincial, Territorial and Municipal governments in Canada must collect and track disaggregated data with respect to ethno-racial and faith background across all Departments, Ministries, Divisions and relevant institutions, and use this data to develop strategies for addressing systemic racism and human rights violations;
- Data should be collected in a way that enables analysis of the intersecting effects of ethno-racial and faith background with gender identity, sexual orientation, socioeconomic status, immigration status, age, and (dis)ability;
- Use disaggregated socio-demographic data to develop strategies to address systemic racism and faithism;
- Renew the Federal Government’s commitments to work with civil society to create and implement a renewed, enhanced and comprehensive National Action Plan Against Racism.

2. The Racialization of Poverty and Labour Market Discrimination

Poverty

Racialized people – Indigenous and peoples of colour – are more likely to live in poverty and earn less than non-racialized people. Moreover, racialized people face additional barriers in accessing affordable housing because of discrimination on the basis of ethno-racial background.

Child poverty rates are higher for children of immigrants, children of colour, and Indigenous children. Child poverty rates in Canada are 13% for White non-immigrant children, but 51% for Indigenous children (and 60% for Indigenous children living on reserve); 32% for children of immigrants; and 22% for children of colour.¹² Indigenous peoples living on reserves experience disproportionately high poverty rates. They are under-represented in the census, thus artificially deflating officially published poverty rates in Canada.¹³ As intersectional data is not included in the publicly available Census data we are not able to determine the poverty rates for immigrant children of colour.

The Federal Government initiated a National Poverty Reduction Strategy, but made little to no mention of communities of colour, rendering these communities invisible while their issues remain unaddressed.¹⁴ Ontario has had a Poverty Reduction Strategy since 2008, but analysis of the experiences and needs of peoples of colour has been marginal at best.

¹² David Macdonald and Daniel Wilson, “Shameful Neglect: Indigenous Child Poverty in Canada” (2016) *Canadian Centre for Policy Alternatives*, <https://www.policyalternatives.ca/publications/reports/shameful-neglect>.

¹³ *Ibid.*

¹⁴ Note 1, *supra*.

Employment Discrimination and the Racial Wage Gap

There are significant racialized wage and employment gaps in Canada. Factors that contribute to making the gaps deeper and wider are: systemic racism in hiring and promotion; de-skilling of immigrants due to non-recognition of international credentials and experience; and use of police record checks to discriminate against applicants. As a result, racialized people and immigrants are more likely to engage in precarious employment.

Peoples of colour resident in Ontario have higher unemployment rates than White residents – 10.5% versus 7.5%, despite having higher labour force participation rates – and racial disparities in the labour market is widening.¹⁵ Employers discriminate against job applicants even when they have equivalent education and experience, for instance by discriminating against candidates with Asian-sounding names.¹⁶

Wage gaps increase for Indigenous women, women of colour, and immigrant women with university degrees. Indigenous women with a university degree earn 24% less than Indigenous men with a university degree, and 33% less than non-Indigenous men with a university degree. A 2016 report concludes that “[d]iscriminatory hiring and wage setting practices are undermining the benefits of education for these groups.”¹⁷

Racialized people and immigrants are over-represented in part-time and precarious employment characterized by lower wages, absence of benefits, and job insecurity.¹⁸ The average hourly wage of full time workers (\$17.34) was much higher than the average hourly wage for part-time workers (\$13.02).¹⁹ The Ontario Government tabled legislation in June 2017 to strengthen protection for precarious workers.²⁰ However the Bill stops short of addressing unjust racialized labour market disparities. Further, there is little in the Bill or in government plans to address issues that have a disproportionate impact on workers of colour and immigrant workers such as:

¹⁵ 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>.

¹⁶ Rupa Bannerjee, Jeffrey G Reitz, and Phil Oreopoulos, “Do Large Employers Treat Racial Minorities More Fairly? A New Analysis of Canadian Field Experiment Data” (2017), <http://www.hireimmigrants.ca/wp-content/uploads/Final-Report-Which-employers-discriminate-Banerjee-Reitz-Oreopoulos-January-25-2017.pdf>.

¹⁷ Oxfam and the Canadian Centre for Policy Alternatives, “Making Women Count: The Unequal Economics of Women’s Work” (2016), <https://www.oxfam.ca/sites/default/files/making-women-count-report-2016.pdf>.

¹⁸ The Poverty and Employment Precarity in Southern Ontario Research Group, “It’s More than Poverty: Employment Precarity and Household Wellbeing” (2013), <https://pepsouwt.files.wordpress.com/2013/02/its-more-than-poverty-feb-2013.pdf>; The Poverty and Employment Precarity in Southern Ontario Research Group, “The Precarity Penalty: The Impact of Employment Precarity on Individuals, Households, and Communities – And What To Do About It” (2015), https://pepsouwt.files.wordpress.com/2012/12/precarity-penalty-report_final-hires_trimmed.pdf.

¹⁹ Access Alliance, “Like Wonder Women, Goddesses, and Robots: How Racialized Immigrant Women in Toronto are Impacted by and Respond to Employment Precarity,” (2014), http://accessalliance.ca/wp-content/uploads/2015/03/Like-Wonder-Women-Goddess-and-Robots_final.pdf.

²⁰ Bill 148, Fair Workplaces, Better Jobs Act in June 2017.

employers violating employment standards provisions with impunity; employees being unable to recover lost wages due to recalcitrant employers; and fear of losing one's job and being blacklisted in the community – a fear that is greatly exacerbated in Indigenous communities and communities of colour.²¹

Recommendations:

- Reinstating mandatory compliance with employment equity for federal contractors, expanding it to include LGBTQ communities, and effectively enforcing the regime;
- Requiring provincial and territorial governments to introduce and enforce equivalent employment equity legislation;
- Instituting Employee Wage Protection Funds to compensate victims of wage theft;
- Requiring all federal-provincial-territorial financial transfers with respect to infrastructure (physical and social) and other investments to have community benefit agreement (CBA) like conditionality with respect to labour market opportunities for Indigenous Peoples, peoples of colour, as well as other equity-seeking groups and historically disadvantaged communities;
- Incorporating addressing racialization of poverty centrally in the national as well as provincial or municipal Poverty Reduction Strategies;
- Removing barriers to recognition of international training by institutions, regulatory bodies and employers;
- Amending human rights legislation to protect individuals from discrimination on the basis of police records of conviction or non-conviction, and facilitating pardons/record suspensions;
- Strengthening enforcement of employment standards laws through increased prosecutions, higher fines and penalties, public databases for employers with outstanding orders to pay, and automatic Director's liability for owed employment standards entitlements;
- Providing public reports on incidents of racism in the public service, and better protecting public service employees from racial discrimination and aggression, and reprisals.

3. Temporary Foreign Workers Program (TFWP)

The Federal Government has refused to ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, and ILO Convention 189 concerning decent work for domestic workers. In addition, many social entitlement programs are denied to Temporary Foreign Workers despite their mandatory payroll contribution into these programs when they work in Canada.

²¹ Ontario Ministry of Labour, "Proposed Changes to Ontario's Employment and Labour Laws", 30 May 2017, <https://news.ontario.ca/mol/en/2017/05/proposed-changes-to-ontarios-employment-and-labour-laws.html>.

The number of temporary migrant workers in Canada has more than quadrupled since 2000. As of 2014, there were 567,977 temporary status workers in the country.²² Migrant workers in low-wage streams of temporary migration – disproportionately workers of colour from the global South – are exceptionally susceptible to exploitation and abuse.

Recommendations:

- Sign and ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* and ILO Convention 189;
- Provide permanent residency to migrant workers upon arrival;
- Allow access to social entitlement programs for all migrant workers;
- Extend the protections of federal, provincial and territorial labour relations legislation to all domestic and migrant agricultural workers and increase support for collective organizing and bargaining of any and all workers;
- Include migrant workers themselves in government consultations on all programs implicating temporary migrant labour.

4. Family Class Immigration Reforms and Spousal Sponsorship

"Family class" immigration (with the exception of spouses) has become more and more narrowly defined. Increasingly restrictive financial eligibility criteria, particularly minimum necessary income requirements, have also barred many low to middle income Canadians from sponsoring and reuniting with their families from abroad. Because members of racialized communities and recent immigrants are more likely to live in poverty, the financial eligibility requirements have a disproportionately negative impact on these communities.

Further, because immigrants from Asia and other parts of the Global South are most likely to apply through the family class stream, and are more likely than immigrants from a European background to adopt an extended family structure, the reduction of the family class quota and restrictive definition of family class membership have the added effect of limiting the number of immigrants from these countries.

Recent reforms to family class immigration for parents and grandparents include an annual cap of 10,000 on applicants and significantly stricter minimum annual income requirements for their sponsors.²³ Since racialized Canadians have systemically poorer labour market outcomes than White Canadians, and since the vast majority of these family class immigrants come from

²² Fay Faraday, "Canada's Choice: Decent Work or Entrenched Exploitation for Canada's Migrant Workers?" (2016) *Metcalf Foundation*, <http://metcalffoundation.com/stories/publications/canadas-choice/>.

²³ Fannie Sunshine, "Changes to Parent and Grandparent Program Not Enough" *InsideToronto.com* 20 December 2016.

countries in the global South, the changes will disproportionately impede reunification of such racialized families.²⁴

Recommendations:

- Repeal the application cap and minimum income requirement for sponsorship of parents and grandparents;
- Evaluate the impact of immigration policies (including regarding spousal sponsorship) on racialized communities, and adopt measures to mitigate ethno-racially disparate effects.

5. Immigration Detention

The Canadian Border Services Agency (CBSA) does not publish detention statistics disaggregated on the basis of race, ethnicity, or country of origin. However, anecdotal evidence suggests that long-term detainees are disproportionately racialized: because racialized undocumented migrants are more likely to be detained rather than receive a notice to appear for a hearing; because of difficulty obtaining identity documents from their countries of origin; and because of the paucity of legal aid for detention reviews.

Canada does not impose a maximum time limit on immigration detention. This raises the spectre of indefinite detention based entirely on immigration grounds. In April 2017, the Ontario Superior Court ordered the release of a West African immigration detainee held in a maximum-security jail for seven years (including 103 consecutive days spent in solitary confinement).²⁵

In addition, the best interests of Canadian children detained with their parents are not sufficiently or consistently accounted for: “*de facto* detained children do not have their own detention review hearings, and until recently, adjudicators explicitly declined to consider the best interests of Canadian children in the detention reviews of their parents.”²⁶

Recommendations:

- Impose a time limit on immigration detention;
- Develop robust and meaningful community-based alternatives to detention to make detention truly an avenue of last resort;
- Immediately cease holding immigration detainees in provincial jails;
- Immediately abolish the practice of keep children in immigration detention facilities;

²⁴ Jacklyn Neborak, “Family Reunification? A Critical Analysis of Citizenship and Immigration Canada’s 2013 Reforms to the Family Class,” *Ryerson Centre for Immigration and Settlement Working Paper No 2013/8* (2013).

²⁵ Brendan Kennedy, “Jailed Seven Years by Canada, Kashif Ali Now Walks Free,” *Toronto Star* (28 April 2017), online: <<https://www.thestar.com/news/canada/2017/04/28/jailed-seven-years-by-canada-kashif-ali-now-walks-free.html>>.

²⁶ University of Toronto International Human Rights Program, “Invisible Citizens: Canadian Children in Immigration Detention” (2017), http://ihrp.law.utoronto.ca/utfl_file/count/PUBLICATIONS/Report-InvisibleCitizens.pdf.

- Ensure that the best interests of all children are a primary consideration in detention-related decisions;
- Collect and publish data disaggregated by ethno-racial and faith background and country of origin with respect to all aspects of detention (including data regarding reasons for detention and length of detention).

6. Restrictive Asylum Laws and Policies

Safe Third Country Agreement

The 2004 *Safe Third Country Agreement* (STCA) between Canada and the US generally precludes refugees entering the country from the US from claiming asylum in Canada at regulated points of entry.²⁷ The recent introduction of increasingly discriminatory policies in the US has produced a sharp rise in asylum seekers who, because of the restrictions in the STCA, attempt to enter Canada through irregular border crossings, often under dangerous or life-threatening conditions.²⁸

Designated Countries of Origin

Canada's Designated Countries of Origin (DCO) scheme, implemented in 2012, discriminates between refugee claimants on the basis of their countries of origin. Claimants from countries deemed "safe" by the Minister of Citizenship and Immigration have half the time to prepare for their hearings than other claimants, compromising their ability to gather evidence and engage legal support.²⁹

While a 2015 Federal Court decision has restored the right to appeal refugee board decisions for claimants from DCOs, the compressed timeframe for hearings remains in place.

LGBTQ2S Refugee Claimants

Racialized asylum seekers from countries outside North America/Europe claiming persecution on grounds of sexual orientation or gender identity are disadvantaged in the refugee process by: decision-makers' Eurocentric preconceptions about authentic LGBTQ2S identity; the difficulty of providing evidence of LGBTQ2S identity when coming from a home country where such

²⁷ Government of Canada, "Canada-US Safe Third Country Agreement," <http://www.cic.gc.ca/english/department/laws-policy/menu-safethird.asp>.

²⁸ Nicole Thompson, "Lawyers Urge Ottawa to Make Changes to Safe Third Country Agreement" *Globe and Mail*, 12 February 2017, <https://www.theglobeandmail.com/news/politics/lawyers-urge-canada-to-make-changes-to-safe-third-country-agreement/article33994208/>.

²⁹ Government of Canada, "Designated Countries of Origin," <http://www.cic.gc.ca/english/refugees/reform-safe.asp>.

identities are criminalized and need to be kept secret; and decision-makers' stereotypes about particular countries as sources of fraudulent refugee claimants.³⁰ Lawyers representing LGBTQ2S claimants have reported instances of clients being asked graphic and intrusive questions about sexual practices during hearings. These disadvantages are compounded by the frequent inadequacy of translation services at hearings.

Recommendations:

- Canada should withdraw from or suspend the *Safe Third Country Agreement* with the United States;
- Repeal the Designated Countries of Origin regime;
- Implement mechanisms for tracking and remedying racial discrimination in refugee hearings.

7. Violence Against Indigenous Women and Women of Colour

Missing and Murdered Indigenous Women and Girls

In 2016, the Federal Government announced that it would be holding a national inquiry on MMIWG. However, the inquiry has been roundly criticized.³¹ The Native Women's Association of Canada's most recent report card on the Inquiry (released May 2017) gave the Inquiry failing grades in ten out of fifteen categories, including for its failure to include families, absence of transparency, and departure from timelines.³²

Zero Tolerance for Barbaric Cultural Practices Act

The 2015 *Zero Tolerance for Barbaric Cultural Practices Act* (BCPA) specifically targets polygamy, forced marriages, and "honour killings" by making changes to the *Immigration and Refugee Protection Act*, the *Civil Marriage Act*, and the *Criminal Code*, including: a new inadmissibility provision in immigration law for polygamy; new criminal offences for participation in forced and under-aged marriages; and narrowing of the provocation defence. The

³⁰ Envisioning Global LGBT Human Rights, "Is Canada a Safe Haven?" (September 2015), online: <<https://www.dropbox.com/s/nn9qork9zqi2da1/Is%20Canada%20A%20Safe%20Haven%20-%20Report%202015.pdf?dl=0>>; DAB Murray, "'Authentic' LGBT Refugee Claimants and Homonationalism in the Canadian Refugee System" (2014) 56:1 *Anthropologica*.

³¹ Amnesty International, "Statement on Terms of Reference for the National Inquiry into Missing and Murdered Indigenous Women and Girls in Canada" 20 July 2016, <http://www.amnesty.ca/news/statement-terms-reference-national-inquiry-missing-and-murdered-indigenous-women-and-girls>.

³² Native Women's Association of Canada, "Inquiry Report Card" (May 2017), <https://www.nwac.ca/wp-content/uploads/2017/05/NWAC-Inquiry-Report-Card-May-2017-Final.pdf>.

BCPA is unlikely to increase the safety of vulnerable women, particularly racialized women – and indeed, will probably have the opposite effect.

Recommendations:

- Provide greater support for families and Indigenous women’s organizations to take part in the MMIWG inquiry;
- Ensure accountability in implementation of inquiry recommendations;
- Repeal the *Zero Tolerance for Barbaric Cultural Practices Act*, and provide greater economic and social support for racialized women experiencing violence.

8. Access to Justice

Racialized communities are over-represented among the low income population and face heightened risk of homelessness, incarceration, and human rights violations. However, access to justice, and the fair representation of racialized individuals before courts, administrative tribunals and government agencies, and access to legal aid is made that much more difficult because of their race and immigration status on the one hand, and the lack of culturally and linguistically responsive and safe services in the justice system on the other.

Federal and Provincial/Territorial governments in Canada use a cost-sharing program to fund legal aid across the country. In Ontario, Canada’s largest province, while the majority of legal clinics provide services in such areas as housing and social assistance law, the inadequate level of funding means many still have to turn clients away. Furthermore, in other areas of law where racialization of poverty has resulted in enormous need for racialized communities, such as employment law, family law, and immigration and refugee law, lack of resources and funding is even more pronounced.

Recommendations:

- Significantly increase the Federal Government’s contribution to legal aid programs in all provinces and territories, with a significant portion earmarked for civil law and poverty law;
- Adopt a racial equity impact analysis tool to examine and evaluate all laws and policies at the federal level to minimize, if not eliminate, adverse impact of such laws and policies on racialized group members;
- Work with provinces and territories to develop a centrally accredited interpretation and translation program for all courts and administrative tribunals;
- Develop a National Access to Justice Strategy in tandem with the National Poverty Strategy based on social determinants of health that recognizes particular vulnerability of

marginalized groups on the basis of Indigeneity, ethno-racial background, gender identity, disability, sexuality, and other human rights grounds.

9. Hate Crimes

In 2013, s.13 of the *Canadian Human Rights Act*, which had made communication of hateful messages legal grounds for complaint, was repealed.³³ This has reduced the avenues available for addressing hate through the human rights system.

In 2014, there were 611 crimes motivated by hatred against a particular racial group (primarily anti-Black racism: 238), and 429 motivated by hatred against a particular religious group (primarily Jewish: 213, and Muslim: 99). Hate crimes against Muslims have doubled between 2014 and 2016.³⁴ However, these statistics are incomplete because only a small proportion of hateful acts are reported, systematically recorded and tracked.

Recommendations:

- Amend the *Criminal Code* to take hate motivation into account more effectively and consistently;
- Mandate standards for identifying and recording all hate incidents (including those deemed not as hate crimes) and their dispensation in the justice system;
- Implement consistent minimum policing standards and ongoing police training requirements for dealing with and investigating reported hate crimes.

10. Racial Discrimination in Child Welfare

Indigenous, Black, and other racialized children are heavily over-represented in the child welfare system. In Toronto, Black Canadians constitute 8.5% of the population, but 40% of the children in care.³⁵ Indigenous children represent 3.4% of the total number of children in Ontario, but 25.5% of them in foster care.³⁶

³³ Michael Woods, "Hate Speech No Longer Part of Canada's Human Rights Act" *National Post*, 27 June 2013, <http://news.nationalpost.com/news/canada/canadian-politics/hate-speech-no-longer-part-of-canadas-human-rights-act>.

³⁴ Statistics Canada, "Police-Reported Data on Hate Crime and Cybercrime, 2014," <http://www.statcan.gc.ca/daily-quotidien/160412/dq160412b-cansim-eng.htm>.

³⁵ "One Vision One Voice: Changing the Ontario Child Welfare System to Better Serve African Canadians, Part 1" (2016), http://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1_digital_english.pdf.

³⁶ Annie Turner, "Living Arrangements of Aboriginal Children Aged 14 and Under" (2016) *Insights on Canadian Society*, <http://www.statcan.gc.ca/pub/75-006-x/2016001/article/14547-eng.htm>.

Long-term placement in foster care is correlated with lower education achievement, future homelessness, and involvement with the criminal justice, welfare, and mental health systems.³⁷ Further, racial biases and stereotypes inform referrals to child welfare agencies by professionals, as well as decision-making practices by child welfare workers. For example, Black families have reported being referred to child welfare because their children eat non-Western food.³⁸

Recommendations:

- All provincial governments must systematically collect ethno-racially disaggregated data regarding child welfare apprehensions (including with respect to reasons for removal and involvement of police) and placements;
- Mandatory inquests be held for all child and youth deaths in the child welfare system;
- Federal Government must honour the repeated rulings of the Canadian Human Rights Tribunal and provide fair and equal funding for the Indigenous led child welfare system;
- Ontario must implement the One Vision, One Voice plan for addressing systemic anti-Black racism in child welfare.

11. Racial Discrimination in Policing and Criminal Justice

Policing

Indigenous communities and communities of colour have reported experiencing racial profiling and discrimination in police street checks, traffic stops, investigations, searches, DNA sampling, arrest decisions, and use of force.³⁹

Data on traffic stops collected by the Ottawa Police Services from 2013 to 2015 found that Black drivers were stopped 2.3 times more often than expected given their representation in the driving population; young Black men were stopped 8.3 times more; Middle Eastern drivers were stopped 3.3 times more; and young Middle Eastern men were stopped 12 times more.⁴⁰

In its 2016 review of Canada, the UN Working Group of Experts on People of African Descent concluded that “there is clear evidence that racial profiling is endemic in the strategies and practices used by law enforcement (in Canada). Arbitrary use of ‘carding’ or street checks

³⁷ “One Vision One Voice: Changing the Ontario Child Welfare System to Better Serve African Canadians, Part 1” (2016), http://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1_digital_english.pdf.

³⁸ Ontario Human Rights Commission, “Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario” (2017), <http://ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario>.

³⁹ Ontario Human Rights Commission, “Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario” (2017), <http://ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario>.

⁴⁰ Lorne Foster, Les Jacobs, and Bobby Siu, “Race Data and Traffic Stops in Ottawa, 2013-2015: A Report on Ottawa and the Police Districts” (October 2016), online: <https://www.ottawapolice.ca/en/about-us/resources/.TSRDCP_York_Research_Report.pdf>.

disproportionately affects people of African descent.”⁴¹ A 2014 study found that Black people were 3.4 times more likely to be carded by Toronto police than expected, given their representation in the population.⁴²

Pre-Trial Detention

A 2016 report by Legal Aid Ontario on the bail system observes that Indigenous Peoples and peoples of colour “...who are subject to over-policing practices and racial profiling are more likely to find themselves in pre-trial detention...”⁴³ In 2014, Indigenous People comprised 13% of persons in remand detention, despite constituting only 2% of Ontario’s population.⁴⁴

As the Canadian Civil Liberties Association has argued, the Canadian bail system is one that “disproportionately penalizes – and criminalizes – poverty, addiction and mental illness.”⁴⁵

Corrections

Data from the Federal Government reveal that Indigenous and Black people are significantly and increasingly over-represented in Canadian prisons. In January 2016, 25% of the total federally incarcerated population – and 35% of federally-sentenced women – were Indigenous, despite accounting for only around 4.3% of the total Canadian population.⁴⁶ Between 2005 and 2015, the number of incarcerated Indigenous people increased by more than 50%, while the number of incarcerated Indigenous women almost doubled.⁴⁷ Black people comprise 3% of the general Canadian population, but make up 10% of the federally incarcerated population.⁴⁸ The Black prison population has grown by nearly 90% since 2003.⁴⁹

⁴¹ “Statement to 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,” online: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20732&LangID=E>>.

⁴² Jim Rankin, Patty Winsa, Andrew Bailey, and Hidy Ng, “Carding Drops but Proportion of Blacks Stopped by Toronto Police Rises” *Toronto Star* (26 July 2014), online: <https://www.thestar.com/news/insight/2014/07/26/carding_drops_but_proportion_of_blacks_stopped_by_toronto_police_rises.html>.

⁴³ Legal Aid Ontario, “A Legal Aid Strategy for Bail,” (2016), <http://www.legalaid.on.ca/en/publications/paper-legal-aid-strategy-for-bail-2016-11.asp>.

⁴⁴ Legal Aid Ontario, “A Legal Aid Strategy for Bail,” (2016), <http://www.legalaid.on.ca/en/publications/paper-legal-aid-strategy-for-bail-2016-11.asp>.

⁴⁵ Canadian Civil Liberties Association, “Set Up to Fail: Bail and the Revolving Door of Pre-Trial Detention” (July 2014), https://ccla.org/dev/v5/_doc/CCLA_set_up_to_fail.pdf.

⁴⁶ Office of the Correctional Investigator, “Annual Report of the Office of the Correctional Investigator” (2016), <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20152016-eng.aspx>>.

⁴⁷ Office of the Correctional Investigator, “Annual Report of the Office of the Correctional Investigator” (2016), <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20152016-eng.aspx>>.

⁴⁸ Office of the Correctional Investigator, “A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries” (2014), online: <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx>>.

⁴⁹ Office of the Correctional Investigator, “Annual Report of the Office of the Correctional Investigator” (2012-2013), <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20122013-eng.aspx>.

In 2016, the UN Working Group of Experts on People of African Descent expressed “extreme concern about the practice and excessive use of solitary confinement or ‘segregation’ in correctional facilities, the absence of appropriate monitoring, and lack of data being kept on inmates’ race, mental health status or gender.” The Working Group noted that as many as 40% of inmates in segregation at the Toronto South Detention Center were Black.⁵⁰

14% of people in segregation in Ontario jails are Indigenous.⁵¹ One 23-year-old Indigenous man, Adam Capay, was held in solitary confinement for more than 1,500 days while awaiting trial.⁵²

Recommendations:

- Ontario abolish all arbitrary street checks, require the issuing of receipts – that allow for ethno-racial and other relevant self-identification – for all police contact and engagement with members of civil society, and purge historical databases of information collected through “carding”;
- Ontario implement Justice Tulloch’s recommendations to strengthen police oversight, while addressing the limitations of the Tulloch recommendations;
- National data be consistently collected on ethno-racial discrimination in the criminal justice system;
- Strengthened procedures be implemented for dealing with public complaints about police, especially those involving allegations of discrimination;
- Federal and provincial inmates be given access to a more robust complaints mechanism for in-corrections abuses, including access to courts and protection from reprisals;
- Federal and provincial governments adhere to international law limitations on the use of solitary confinement, and implement all of the Sapers’ recommendations with respect to solitary confinement.

12. Racial Discrimination in National Security

National security agencies have so far ignored the Canadian Human Rights Commission’s call to collect and analyze ethno-racially disaggregated data in their operations, so that the impact of

⁵⁰ “Statement to 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” 21 October 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20732&LangID=E>.

⁵¹ Independent Review of Ontario Corrections, “Segregation in Ontario” (March 2017), https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/IROC%20Segregation%20Report%20ENGLISH%20FINAL_0.pdf.

⁵² Independent Review of Ontario Corrections, “Segregation in Ontario” (March 2017), https://www.mcscs.jus.gov.on.ca/sites/default/files/content/mcscs/docs/IROC%20Segregation%20Report%20ENGLISH%20FINAL_0.pdf.

security practices and policies on Indigenous communities and communities of colour can be assessed.⁵³

Racial Profiling

Government reports on national security by Public Safety Canada and the Canadian Security Intelligence Service (CSIS) focus almost exclusively on Muslim individuals and organizations as the source of terrorism⁵⁴ – ignoring the more than 100 extreme right-wing and White supremacist groups active across Canada.⁵⁵ Young Muslims have reported being targeted for monitoring by CSIS or police intelligence because of participation in activism for causes like Palestinian rights.⁵⁶

Muslim, South Asian, Arab, and Black travellers have reported experiencing racial profiling at airports and border crossings: being stopped, being followed by air marshals, being placed on no-fly lists, having their names flagged, being selected for “random” screening, being subjected to body and/or luggage searches, and being questioned about religious beliefs.⁵⁷ The National Council of Canadian Muslims notes that 15% of the human rights complaints it received in 2014 were from Muslims who were “turned away from border crossings without any explanations.”⁵⁸

Security Certificates

Security certificates have been applied to non-citizens deemed inadmissible to Canada on security grounds, on the strength of secret evidence – permitting indefinite detention or imposition of extremely stringent house arrest conditions.⁵⁹

⁵³ Canadian Human Rights Commission, “Human Rights Accountability in National Security Practices: A Special Report to Parliament,” (November 2011), online: <<http://www.chrc-ccdp.gc.ca/sites/default/files/chrc-specialreport-28112011.pdf>>.

⁵⁴ See Public Safety Canada, “Building Resilience Against Terrorism: Canada’s Counter-Terrorism Strategy,” (2012), <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rslnc-gnst-trrrsm/index-en.aspx>; Public Safety Canada, “2013 Public Report on the Terrorist Threat to Canada,” (2013), <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/trrrst-thrt-cnd/index-en.aspx>; Public Safety Canada, “2014 Public Report on the Terrorist Threat to Canada,” (2014), <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2014-pblc-rpr-trrrst-thrt/index-en.aspx>; Public Safety Canada, “2016 Public Report on the Terrorist Threat to Canada,” (2016), <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2016-pblc-rpr-trrrst-thrt/index-en.aspx>.

⁵⁵ Barbara Perry and Ryan Scrivens, “Uneasy Alliances: A Look at the Right-Wing Extremist Movement in Canada” (2016) 39:9 *Studies in Conflict and Terrorism* 819.

⁵⁶ Ontario Human Rights Commission, “Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario” (2017), <http://ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario>; Baljit Nagra and Paula Maurutto, “Crossing Borders and Managing Racialized Identities: Experiences of Security and Surveillance Among Young Canadian Muslims” (2016) 41:2 *Canadian Journal of Sociology* 165.

⁵⁷ International Civil Liberties Monitoring Group, “Report of the Information Clearinghouse on Border Controls and Infringements to Travellers’ Rights” (2014), <http://iclmg.ca/wp-content/uploads/sites/37/2014/03/R-Clearinghouse-border-controls.pdf>.

⁵⁸ Ontario Human Rights Commission, “Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario” (2017), <http://ohrc.on.ca/en/under-suspicion-research-and-consultation-report-racial-profiling-ontario>.

⁵⁹ Audrey Macklin, “The Canadian Security Certificate Regime” (2009) *Centre for European Policy Studies*, <http://aei.pitt.edu/10757/1/1819.pdf>.

The Anti-Terrorism Act, 2015

Anti-terrorism legislation passed in 2015 drastically augments the powers of security agencies and police, without counter-balancing oversight and review mechanisms.

Loudly expressed concerns include: expansion of information-sharing powers between government bodies about activities that “undermine the security of Canada”; widening of the criteria for placement on Canada’s no-fly list; creation of a new, broad criminal offence of “advocating or promoting the commission of terrorism offences in general”; lowering of the threshold for preventive arrest and imposition of recognizances with conditions; extension of the maximum time of preventive detention; and expansion of CSIS’s mandate from intelligence-gathering to threat disruption, including permission to violate the *Charter of Rights and Freedoms* if a judicial warrant has been obtained.⁶⁰

Complicity with Torture

The Canadian government has compensated Maher Arar, Ahmad El-Maati, Abdullah Almalki, and Muayyed Nureddin for its involvement in their secret imprisonment and torture, and recently announced compensation for Omar Khadr. However, another Muslim man tortured with Canadian complicity - Abousfian Abdelrazik has not yet received any compensation or apology.

Canadian security and foreign affairs officials implicated in torture have not been prosecuted, and the recommendations of two official inquiries into the Arar, El-Maati, Almalki, and Nureddin cases (the Iacobucci and O’Connor Inquiries) for preventing future abuses have not been implemented.⁶¹ Moreover, memos allowing security agencies to share information with regimes known to torture have not been rescinded.⁶²

Recommendations:

- Collect and publish ethno-racially disaggregated data regarding counter-terrorism practices, including on visitations by security officials, composition of the no-fly list, and security clearance denials;

⁶⁰ British Columbia Civil Liberties Association, “8 Things You Need to Know About Bill C-51” 11 March 2015, <https://bccla.org/2015/03/8-things-you-need-to-know-about-bill-c-51/>; Canadian Civil Liberties Association and Canadian Journalists for Free Expression, Challenge to Bill C-51 in Ontario Superior Court, <https://ccla.org/cclanewsites/wp-content/uploads/2015/08/Issued-Notice-of-Application-Bill-C-51-C1383715xA0E3A.pdf>.

⁶¹ Frank Iacobucci, “Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin” (2008), http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/internal_inquiry/2010-03-09/www.iacobucciinquiry.ca/pdfs/documents/final-report-copy-en.pdf; Dennis O’Connor, “Report of the Events Relating to Maher Arar” (2006), http://www.sirc-csars.gc.ca/pdfs/cm_arar_bgv1-eng.pdf.

⁶² Public Safety Canada, “Ministerial Direction on Information Sharing with Foreign Entities” (2011), <http://iclmg.ca/wp-content/uploads/sites/37/2014/04/Vic-Toews-Torture-memos.pdf>.

- Abolish the security certificate regime, and cease deportation proceedings under it;
- Repeal the *Anti-Terrorism Act, 2015*;
- Canada must adhere to its obligations under the *United Nations Convention Against Torture* to compensate the tortured and prosecute complicity in torture;
- Revoke the torture memos, and implement the Iacobucci and O'Connor Inquiry recommendations.