



SUBMISSIONS TO THE UN UNIVERSAL PERIODIC REVIEW ON CANADA - October 2013

1. The African Canadian Legal Clinic (“ACLC”)¹ would like to raise the following issues for consideration by the Working Group involved in the Universal Periodic Review on Canada:
 - A. Inadequate Monitoring of the Situation of the African Canadian Community and Other Disadvantaged Groups
 - B. Inadequate Measures to Combat Racial Discrimination in the Administration of the Criminal Justice System
 - C. Failure to Adopt Targeted Poverty Reduction Strategy
 - D. Failure to Address Hate Propaganda and Hate Crimes
 - E. Continued Opposition to the Durban Declaration and Programme of Action

A. INADEQUATE MONITORING OF THE SITUATION OF THE AFRICAN CANADIAN COMMUNITY AND OTHER DISADVANTAGED GROUPS
2. Disaggregated race-based data is necessary to effectively monitor discrimination, identify and remove systemic barriers, ameliorate historical disadvantage and promote substantive equality. In July 2010, however, the government of Canada decided to abolish the mandatory long-form census and replace it with a voluntary survey. The census in its revised form requires households to answer only questions on gender, age, marital status, and relationships of people in a household. Questions pertaining to race and ethnicity are provided on a supplementary survey which individuals can choose not to complete.
3. The government’s failure to collect and/or produce disaggregated race-based data, despite repeated requests, has been criticized by, *inter alia*, the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child. Contrary to Article 2(1)(c) of the CERD, the government’s decision will erode its ability to deliver social programs that are responsive to the specific needs of racially marginalized communities and will lead instead to further marginalization. Without disaggregated race-based data, there is no way that appropriate policies and programmes to accommodate the needs of particular groups can be sought or implemented.
4. **It is recommended that Canada 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; implement nationwide mandatory disaggregated data collection, based on race, colour, and ethnic and national origin in order to determine if and where racial disparities exist and address them accordingly; and provide in its next periodic review information on any data collection measures implemented and their results.**

B. INADEQUATE MEASURES TO COMBAT RACIAL DISCRIMINATION IN THE ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM

5. Anti-Black racial bias operates at all levels of the criminal justice system from racial profiling, to the exercise of prosecutorial discretion, to the imposition of pre-trial incarceration, and to disparities in sentencing.² First, African Canadians live in constant fear of enduring the humiliation of being targeted by police for no apparent reason other than the colour of their skin. For example, a 2012 news report about the Toronto Police Service (“TPS”) found that the number of African Canadian youth (aged 15 to 24) stopped by members of the TPS is 3.4 times larger than the total number of African Canadian youth that actually live in the City of Toronto; while African Canadians account for only 8.3% of Toronto’s population, they account for 23.4% of the “contact cards” filled out by police; and that African Canadians were more likely to be stopped by police than their white counterparts in every single patrol area.
6. Racial profiling divests African Canadians of a sense of citizenship and belonging within their country and respective communities. Also, as the first point of contact, the racial inequities in police enforcement contribute to the disproportionate numbers of African Canadians being investigated and prosecuted.³ The overrepresentation of African Canadians in prison populations is startling. African Canadians make up only 2.5% of Canada’s population. However, in 2010-2011, the proportion of African Canadian offenders in federal prison was 9%. This represented a 52% leap from just a decade earlier.⁴ This alarming increase occurred during a period when the national crime rate was at its lowest level since 1973, continuing a 20-year decline.⁵
7. Anti-Black racism in the administration of the criminal justice system has been a persistent and long standing problem. Yet the Canadian government has continually failed to address this disparity.
8. **It is recommended that Canada implement a nationwide mandatory disaggregated race-based data collection policy, and collect disaggregated data on police stops, searches, arrests, and releases; adopt national and provincial measures, including legislation and external complaint mechanisms, to end racial profiling by law enforcement and national security agencies; provide in its next periodic review information on any data collection measures implemented and their results; conduct an extensive study of systemic anti-Black racism and the overrepresentation of African Canadians at all levels in the criminal justice system; facilitate the provision of African centered or led programming in correctional facilities; and develop an effective action plan towards eliminating the disparity in rates of arrest, sentencing and incarceration of African Canadians, including such things as sentencing reforms and training on anti-Black racism for members of the police, Crown prosecutors, and members of the judiciary.**

C. FAILURE TO ADOPT A TARGETED POVERTY REDUCTION STRATEGY

9. In 2003, the Committee on the Rights of the Child recommended that Canada continue to address the factors responsible for the increasing number of children living in poverty and develop programmes and policies to ensure that all families have adequate

resources and facilities.⁶ While the percentage of children in low income families fell from 19% in 1996 to 13% in 2004,⁷ during that same period of time, the poverty rate among racialized families rose by 361%.⁸ The 2006 census which revealed that the poverty rate for non-racialized persons was 9%, while that of racialized persons was 22%, demonstrates that this problem continues to persist.⁹

10. Significantly, studies suggest that due to persistent anti-Black discrimination, lower employment rates, higher unemployment rates, lower wages and earnings, insecure employment, fewer weeks worked and labour force discrimination, the problem of poverty is significantly pronounced in the African Canadian community.¹⁰
11. The unemployment rate for African Canadians has been reported at 74% higher than non-racialized Canadians.¹¹ It has also been reported that those who identify as African Canadian earn 75.6 cents for every dollar that a non-racialized worker earns.¹² According to one study, while there are varying earnings differences for different ethnic groups, African Canadians experience the largest and most “striking” earnings gap.¹³ This wage differential exists regardless of whether African Canadians are immigrants or Canadian-born,¹⁴ and irrespective of their level of education.¹⁵ Given the pervasiveness of anti-Black discrimination in employment, it is not surprising that African Canadian workers have neither been fully utilized nor equitably compensated in the labour market.
12. Instead of ensuring the full implementation of legislation prohibiting discrimination in the labour market and measures to reduce unemployment among minority groups, the government has quietly deleted employment equity through a recent budget bill. The Federal Contractors Program was established in 1986 to further the goal of achieving workplace equity for designated groups – including “visible minorities” – experiencing discrimination in the Canadian labour market. Under the Program, organizations that have 100 or more employees and wished to bid on a federal government contract or standing offer of \$200,000 or more, had to first sign a Certificate of Commitment to implement employment equity. Article 602 of the Federal Government’s omnibus Bill C-38, however, has changed the language of the Act to eliminate the mandatory requirement that Federal Contractors comply with the *Employment Equity Act* thereby effectively dismantling a program that helps business tackle discrimination and protects some of the most vulnerable Canadians.
13. **It is recommended that Canada reduce poverty among African Canadians by implementing policies to address wage discrimination against African Canadian workers and ensuring that workers are earning equal pay within the same occupations; implementing policies to address occupational segregation against African Canadian workers and ensuring that workers’ occupational attainment is consistent with their educational attainment and work experience; and implementing policies that require companies and governments to report on their performance in addressing wage discrimination and occupational segregation within their organizations.**

D. FAILURE TO ADDRESS HATE CRIMES AND HATE PROPAGANDA

14. Section 13(1) of the *Canadian Human Rights Act* provides:

13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a

telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that person or those persons are identifiable on the basis of a prohibited ground of discrimination.

15. In June 2012, the federal government repealed the section of the *Canadian Human Rights Act* which deals with complaints regarding “the communication of hate messages by telephone or on the Internet.” The removal of these sections from the Act will effectively strip the Canadian Human Rights Commission of its power to educate Canadians and shut down inappropriate hate-promoting websites.
16. Given the widespread presence of anti-Black racism and hate in Canadian society,¹⁶ this move away from the prohibition of hate propaganda is particularly concerning for members of the African Canadian community. With the repeal of section 13, guarantees of freedom of expression and religion have essentially become a “constitutional right to be racist” or weapons with which to defend the *status quo*.¹⁷ Arguments of hate propagandists, cloaked in terms of freedom of expression or religion, have been permitted to obscure the fact that what is truly at issue is the right of vulnerable and marginalized groups to be treated as equals and to be free from and protected against hate.¹⁸
17. The government’s failure to protect vulnerable groups from hate propaganda will surely lead to their increased victimization. Police-reported hate crimes refer to criminal incidents that, upon investigation by police, are determined to have been motivated by hate towards an identifiable group. The most recent statistics reveal an alarming trend of victimization based on race, especially for African Canadians. In 2011, for example, it was reported by Statistics Canada that the number of police-reported hate crimes rose 42 per cent in 2009 on top of a 35 per cent increase the previous year. Alarming, violent offences, such as assault, accounted for four in ten of these hate crimes. The statistics also reveal that, while representing only 2.5 per cent of the Canadian population, African Canadians continue to be the most commonly targeted racial group, accounting for 38 per cent of all racially motivated incidents.
18. Canada’s *Criminal Code* criminalizes advocating or promoting genocide; and publicly inciting hatred against an identifiable group in such a way that there will likely be a breach of the peace. In addition, the *Code* provides for the seizure and forfeiture of hate propaganda material kept on any premises for distribution or sale, and the deletion of hate propaganda from computer systems. Also, the mischief section of the *Code* covers hate-motivated mischief and mischief relating to religious property.
19. The *Code*, however, does not contain a specific offence for acts of violence against racialized or ethnic groups. A hate crime motivated by race is not an offence in and of itself; rather, it is dealt with by the sentencing provisions of the *Criminal Code*. Specifically, under s. 718.2(a)(i), the courts may define the motivations of hate, bias or prejudice as aggravating factors when sentencing an offender for other offences, such as assault, damage to property, threatening, or harassment.
20. As noted by the Committee for the Elimination of Racial Discrimination, however, hate crimes should be singled out for special attention by the criminal justice system beyond the current provisions of Canada’s *Criminal Code*. The only way to protect African Canadians, to publicly denounce anti-Black hate crimes, and to ensure consistent sentences for race-based hate crimes across the country is to enact a criminal offence of race-based assault as is required by Article 4(a) of the Convention on the Elimination of

Racial Discrimination. Such a provision has been enacted in other jurisdictions and is a clear affirmation by states that race-based violence requires specific recognition and attention. The repeal of section 13 and the lack of criminal code protections against hate motivated crimes are significant gaps in the legal protections of vulnerable groups such as African Canadians.

21. **It is recommended that Canada introduce human rights legislation that offers protection against different forms of anti-Black hate propaganda; enact criminal legislation creating an offence for racial violence; implement a nationwide mandatory disaggregated data collection policy that requires the collection of disaggregated data on the reporting, prosecution, conviction and sentencing of hate crimes; and provide information on any data collection measures implemented and their results.**

E. CONTINUED OPPOSITION TO THE DURBAN DECLARATION AND PROGRAMME OF ACTION

22. 2011 marked the 10th anniversary of the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (“WCAR”) which took place in Durban, South Africa in 2001. The Durban Conference (“Durban”) resulted in the creation and adoption by consensus of the *Durban Declaration and Program of Action* (“DDPA”), the international community’s innovative and action oriented blueprint to fight all forms of racism and racial discrimination. Among other things, the *DDPA* recognized that slavery is and always has been a crime against humanity and encouraged states to consider reparations for the slave trade.
23. In 2004, Canada’s Minister of Foreign Affairs in addressing the United Nations Commission on Human Rights stated as follows:

Both domestically and internationally, the fight against racism is a top priority for Canada. It should also be a top priority of states to draw on many of the strategies and approaches outlined in the Program of Action of the World Conference Against Racism.¹⁹

24. Canada’s actions since the WCAR, however, belie this stated commitment. Canada has consistently voted against or abstained from General Assembly and Human Rights Commission resolutions regarding racism and the implementation of the *DDPA*.²⁰
25. Most recently, the Canadian government refused to participate in events commemorating the 10th anniversary of the adoption of the *DDPA* in September 2011. Specifically, on September 22, 2011, the United Nations General Assembly held a one-day high-level meeting in New York City to commemorate the 10th anniversary of the adoption of the *DDPA*. The high-level meeting resulted in, *inter alia*, the adoption by consensus of a political declaration proclaiming the "strong determination [of world leaders] to make the fight against racism, racial discrimination, xenophobia and related intolerance, and the protection of the victims thereof, a high priority for [their] countries." Like it had done in 2009, Canada again led the withdrawal of nation states from the post-Durban event.²¹
26. Whatever the reasons for Canada’s disengagement from the Durban processes, the end result has been the Canadian government’s avoidance of its obligations under the *DDPA* with respect to the full and accurate inclusion of the history and contribution of people of

African descent in the education curriculum; the adoption of programs and measures to ensure effective access to justice for African descendants; and the assigning of particular priority and sufficient funding to improving the situation of people of African descent in the areas of health systems, education, and housing. The government's inaction thus demonstrates a lack of commitment to the elimination of racism and racial discrimination faced by African Canadians.

27. It is recommended that Canada publicize the true contents of the *Durban Declaration and Programme of Action* (“DDPA”); re-commit to a national anti-racism strategy such as Canada’s 2005 *Action Plan Against Racism* that will result in the adoption and implementation of the *DDPA*; and participate in any and all upcoming events addressing the implementation of the *DDPA*.

¹ 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. The ACLC is committed to combating anti-Black racism and other forms of systemic and institutional discrimination in Canadian society and around the world.

The ACLC represents and advocates on behalf of the African Canadian community by: (i) addressing racial discrimination through a test-case litigation and intervention strategy; (ii) monitoring significant legislative, regulatory, administrative and judicial developments; and (iii) engaging in advocacy, law reform and legal education. In addition to its full legal services, the ACLC operates four social service programs – the Youth Justice Education Program, the African Canadian Youth Justice Program, the Adult Justice Program, and the Toronto Jail Employment Program – aimed at assisting and improving the lives of African Canadian youth and adults.

The ACLC’s experience with these programs and services has given it a unique insight into the problems affecting African Canadian children and youth 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 ground-breaking legal and social justice developments.

² Julian Roberts & Anthony N. Doob, “Race, Ethnicity and Criminal Justice in Canada” (1997) 21 *Crime and Justice* 469 at i to xi [Race, Ethnicity and Criminal Justice in Canada].

³ Scot Wortley and Julian Tanner, “Data, Denials and Confusion: The Racial Profiling Debate in Toronto” (2003) 45(3) *Canadian Journal of Criminology and Criminal Justice* 367 at 372-373.

⁴ Alison Crawford, “Prison watchdog probes spike in number of black inmates” *CBC News* (15 December 2011), online: <http://www.cbc.ca/news/politics/story/2011/12/14/crawford-black-prison.html>.

⁵ Canadian Press, “Canada Crime Rate Continues Fall: StatsCan” *Huffington Post* (21 July 2011), online: http://www.huffingtonpost.ca/2011/07/21/crime-rate-continues-to-fall-statscan_n_905649.html.

⁶ See Committee on the Rights of the Child, Thirty-Fourth Session: Concluding Observations on Second Report of Canada, CRC/C/15/Add.215 at para. 43.

⁷ Government of Canada, *Convention on the Rights of the Child: Third and Fourth Reports of Canada* (Ottawa: Government of Canada, 2009) at 3.

⁸ Colour of Poverty Campaign, “Fact Sheet #6: Understanding the Racialization of Poverty in Ontario in Income Levels and Social Assistance in 2007”, online: www.colourofpoverty.ca.

⁹ National Council of Welfare, “A Snapshot of Racialized Poverty in Canada,” (January 2012), online: <http://www.ncw.gc.ca/l.3bd.2t.1ilshhtml@-eng.jsp?lid=379&fid=1>.

¹⁰ Jean Kunz, et.al., *Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income* (Toronto: Canadian Race Relations Foundation, 2000); and Grace-Edward Galabuzi, *Canada’s Creeping Economic Apartheid: The Economic Segregation and Social Marginalization of Racialized Groups* (Toronto: CJS Foundation for Research & Education, 2001).

¹¹ Sheila Block and Grace-Edward Galabuzi, *Canada’s Colour Coded Labour Market: The Gap for Racialized Workers*, (Ottawa: Canadian Centre for Policy Alternatives, March 2011) at 7.

¹² Sheila Block and Grace-Edward Galabuzi, *Canada’s Colour Coded Labour Market: The Gap for Racialized Workers*, (Ottawa: Canadian Centre for Policy Alternatives, March 2011) at 13. See also John Samuel and Kogalur Basavarajappa, “The Visible Minority Population in Canada: A Review of Numbers, Growth and Labour Force Issues” (2006) 33(2) *Canadian Studies in Population* 241 at 259 where it was reported that African Canadians made \$29,700 where non-racialized workers with similar levels of education made \$37,200.

¹³ John Samuel and Kogalur Basavarajappa, “The Visible Minority Population in Canada: A Review of Numbers, Growth and Labour Force Issues” (2006) 33(2) *Canadian Studies in Population* 241 at 253 and 258.

¹⁴ John Samuel and Kogalur Basavarajappa, “The Visible Minority Population in Canada: A Review of Numbers, Growth and Labour Force Issues” (2006) 33(2) *Canadian Studies in Population* 241 at 255. Canadian-born African Canadian females faced an earnings disadvantage of 22% and African Canadian males faced an earnings disadvantage of 36%.

¹⁵ John Samuel and Kogalur Basavarajappa, “The Visible Minority Population in Canada: A Review of Numbers, Growth and Labour Force Issues” (2006) 33(2) *Canadian Studies in Population* 241 at 258. One study showed that Canadian-born African Canadian workers aged 25-54 years were as likely to be university educated as all Canadian-born workers of same ages, but had lower average earnings and employment rates, and higher unemployment rates.

¹⁶ *R. v. R.D.S.*, [1997] 3 S.C.R. 484 at para. 46; and Stephen Lewis, *Report to the Premier on Racism in Ontario* (Ontario: Government of Ontario, 1992) at 2.

¹⁷ Mari Matsuda et al., *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Boulder: Westview Press, 1993) at 15.

¹⁸ *Ibid.* at 14.

¹⁹ Foreign Affairs and International Trade Canada. *Notes For An Address By The Honourable Bill Graham, Minister of Foreign Affairs, To The 60th Session of The Commission on Human Rights*. Geneva, Switzerland. March 16, 2004.

²⁰ Canada abstained from voting on the following resolutions before the General Assembly; *Comprehensive implementation of and follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related*

Intolerance, A/RES/56/266. The fight against racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, A/RES/57/195. Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, A/RES/59/177, A/RES/60/144, and A/RES/61/149; [Canada voted against this resolution at the 58th session (A/RES/58/160) and the 65th session Res/65/240]. Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance, [Canada abstained from voting for A/RES/60/143, A/RES/61/147 and A/RES/65/199. Canada voted against the following resolutions before the Commission on Human Rights; Racism, racial discrimination, xenophobia and related intolerance, E/CN.4/2002/L.12. World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, E/CN.4/2003/L.4.

²¹ Citizenship and Immigration Canada, "Government of Canada will not attend Durban commemorative event," (25 November 2010), online: <http://www.cic.gc.ca/english/department/media/releases/2010/2010-11-25.asp>.