



**The Hidden Side of Paradise:
Violations of the Economic and Social Rights of African Canadians**

**Submission to the United Nations Committee on Economic, Social and Cultural
Rights on the Occasion of the Review of Canada's Fourth and Fifth Periodic Reports
under the International Covenant on Economic, Social and Cultural Rights**



The African Canadian Legal Clinic (ACLC) was established in 1994 to address anti-Black racism and other forms of systemic and institutional discrimination in Canadian society. The ACLC is a community based organization that provides legal services to African Canadians in Ontario and actively engages in law reform, advocacy and public legal education. The ACLC has been, and continues to be involved in groundbreaking cases involving anti-Black racism, human rights and the equality provisions of the *Canadian Charter of Rights and Freedoms*.

TABLE OF CONTENTS

| | Page | |
|----------|---|----|
| PART I | Introduction | 2 |
| PART II | Socio-Economic Exclusion: A Historical Context | 5 |
| PART III | Violations of Specific Provisions of the Covenant | 7 |
| | (a) Right to Adequate Standard of Living (Article 11) | 7 |
| | (b) Non-Discrimination (Article 2) | 11 |
| | (c) Equal Rights of Men and Women (Article 3) | 13 |
| | (d) Right to Work (Article 6) | 15 |
| | (e) Right to Social Security (Article 9) | 18 |
| | (f) Protection of the Family, Mother and Child (Article 10) | 19 |
| | (g) Right to Physical and Mental Health (Article 12) | 21 |
| | (h) Right to Education (Article 13) | 22 |
| PART IV | Canada's Obligations under the Covenant | 26 |
| PART V | Summary of Recommendations | 29 |

I. INTRODUCTION

The consideration of Canada's fourth and fifth periodic report under the *International Covenant on Economic, Social, and Cultural Rights* (the Covenant) by the Committee presents an important opportunity to draw the Committee's attention to the persistent and growing socio-economic exclusion of racialized groups in Canada, particularly African Canadians. The information presented in this report will offer the Committee a contextualized and fuller understanding of Canada's failure to comply with its obligations under the *Covenant* from the perspective of a racialized and marginalized community. We hope that the report of the African Canadian Legal Clinic (ACLC) will persuade the Committee to ask questions and demand answers that will pierce the veil of state indifference to and non-recognition of the extreme socio-economic exclusion of African Canadians.

Canada is a wealthy country with an international reputation as a champion for human rights and its leadership roles in international peace and security. As a wealthy country, Canada has been, for several years, consistently ranked as one

of the best places in the world to live.¹ Its leading position and First World status present the appearance of a state that guarantees a high standard of living for all inhabitants and one that guarantees a high level of respect for all social and economic rights, as the Committee has previously noted.²

Impressive as Canada's ranking may appear, it would be misleading to assume or think that the improved quality of life is uniformly shared or equally enjoyed by all. The reality and daily-lived experiences of African Canadians paint a very different portrait – a non-flattering one of extreme and disparate poverty, inequality, racism, and general socio-economic insecurity and deprivation. For the most part, African Canadians are outsiders to the Canadian success stories that are depicted in the UNDP's *Human Development Reports* and in Canada's fourth and fifth periodic reports to the Committee.³

The harsh reality is that most African Canadians exist at the lowest rung of Canada's economic and social ladder.⁴ The lived experiences of African Canadians sharply contrast with the Canada the world knows – a First World paradise. In this First World there is a nonspatial Third World populated mostly by indigenous peoples, and African Canadians, who remain trapped in historical patterns of racialized poverty. The poverty rate for African Canadians is three times the average for White Canadians.

In Canada, poverty has a face and that face is Black.⁵ As victims of structural and systemic racial inequality, African Canadians suffer the kind of socio-economic deprivation that is unthinkable in a developed country that prides itself as a protector of human rights and promoter of equality. Yet, the apparent violations of the economic and social rights of African Canadians are not acknowledged.

¹ The 2005 UNDP Human Development Report respectively ranked Canada as the 5th best place to live on earth. See UNDP, *Human Development Report 2005: International cooperation at a crossroads: Aid, trade and security in an unequal world* (New York: UNDP, 2005) at 219. For almost a decade now, Canada has been consistently ranked in the upper scale of UNDP's Human Development Index. Canada ranked 4th in the 2004 Human Development Report (see, UNDP, *Human Development Report 2004: Cultural Liberty in Today's World* (New York: UNDP, 2004) at 139) and has consistently ranked within the top seven states with the best Human Development Index (see, e.g. UNDP, *Human Development Report 2001: Making New Technologies Work for Human Development* (New York: Oxford University Press, 2001) at 141).

² See *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada* 10/12/98, E/C.12/1/Add.31 (10 December 1998) at para. 3.

³ See, e.g. paras. 10 to 17 of Canada's Fifth Periodic Report.

⁴ Their socio-economic circumstances and daily lived experiences partly explain, although not fully reflected in, Canada's 9th ranking in the UNDP Human Poverty Index (for OECD countries). See UNDP, *Human Development Report 2005*, supra note 1 at 230.

⁵ See A. Sivanandan, "Poverty is the New Black" (2001) 43(2) *Race & Class* 1.

Canada's fourth and fifth periodic reports do not address the condition of African Canadians as one of the most vulnerable groups with higher rates of poverty than other Canadians. The two periodic reports effectively erased race as an issue in the enjoyment of social and economic rights in Canada, thereby rendering invisible the socio-economic exclusion of African Canadians.

Relevant levels of government have been mostly unwilling or uninterested in effecting desired changes in legislation, policies and practices or in taking meaningful, proactive steps to ensure that African Canadians enjoy adequate levels of economic and social rights.

This report highlights some major areas of concern to demonstrate Canada's violations of the economic and social rights of African Canadians and draws attention to Canada's non-compliance with its obligation to respect, protect and fulfill the provisions of the *Covenant*. We invite the Committee to take note of and strongly condemn the extreme, racialized violation of the economic and social rights of African Canadians.

Although the issues of concern are dealt with in separate sections for the Committee's ease of reference, they are intertwined, inextricably linked and grounded in discrimination – in the form of anti-Black racism.

This report is broadly divided into four parts, including this introduction, which forms Part I. Part II provides a brief historical context to demonstrate how the historical patterns of racialization and anti-Black systemic racial discrimination have informed and reproduced policies, practices, structures and outcomes of socio-economic exclusion and racial inequality. In Part III, the report will highlight some specific areas of Canada's non-compliance and violation of the economic and social rights of African Canadians. The report makes recommendations for improved and better protection of the economic and social rights of African Canadians, following the discussion of the specific areas of concern, namely:

- Poverty (Right to Adequate Standard of Living)
- Non-Discrimination
- Equal Rights of Women and Men
- Right to Work
- Right to Social Security
- Protection of the Family, Mother and Child
- Right to Physical and Mental Health, and
- Right to Education
- Canada's obligation under the *Covenant*

Part IV highlights Canada's failure to comply with its obligations to respect, protect, and fulfill the provisions of the *Covenant* with respect to the rights of

African Canadians, while the last section, part V, sets out the summary of recommendations.

II. SOCIO-ECONOMIC EXCLUSION: A HISTORICAL CONTEXT

The African Canadian community is one of the oldest settler communities in Canada. African Canadians have a long history in Canada dating back more than 400 years, as far back as the 1500s, to the introduction of the first slave.⁶ Slavery existed in Canada from the 16th century until it was formally abolished in 1834. Many Blacks arrived in Canada following the American War of Independence, some as slaves of British Loyalists; others came on the basis of promises of land and freedom for their role in defending the British Crown.⁷ The slaves were treated purely as property, together with furniture, cattle, and land.⁸ Those that came relying on the promises of land and freedom got neither land nor true freedom.⁹ They were still treated as *de facto* slaves and discriminated against in all aspects of life. This treatment and the stereotypes connected to the slavery exacerbated and entrenched negative stereotypes and anti-Black racism.

The formal abolition of slavery did little to improve the status or conditions of African Canadians who continued to experience pervasive racial discrimination and segregation, which resulted in both physical violence and death.¹⁰ For African Canadians it is not only the length of time that the community has been subject to racial discrimination but also that much of the economic, political and cultural methods employed to keep the community subjugated were state-sanctioned. Currently, although these methods are no longer *formally* state-sanctioned, they remain systemic and institutionalized.

Unlike other racialized groups in Canada, the experience of African Canadians is historically unique because of (a) the particular history of anti-Black racism which is traceable to slavery in Canada and its legacy as determined through specific laws and practices enforcing segregation in education, residential accommodation, employment and other economic opportunities, and, (b) the impact of anti-Black racism today as distinct from the racism experienced by other subjugated groups and evidenced in the differential treatment experienced by peoples of African descent in immigration, education, employment, the justice

⁶ See Isaac Saney, "Canada: The Black Nova Scotian Odyssey: A Chronology" (1998) 40 Race & Class 78; Robin W. Winks, *The Blacks in Canada: A History*, 2nd edition (Montreal: McGill-Queens University Press, 2000) at 1.

⁷ See Anti-Black Racism in Canada: A Compilation of Briefs, Presented by the African Canadian Community to Mr. Doudou Diene, UN Special Rapporteur on Racism (September 25, 2003) at 2 [hereinafter, "Compilation of Briefs"].

⁸ Robin W. Winks, *supra* note 6 at 53.

⁹ See Robin W. Winks, *Ibid* at 43.

¹⁰ See Robin W. Winks, *Ibid* at 43 - 55.

system and in Canadian mass media and culture.¹¹ No other settler community has experienced the same kind or level of discrimination for such a long and continuous period of time.¹² Apart from the Aboriginal peoples, no other racialized group has had numerous offers of land, employment and equal treatment held out in the promise of equality to then be withdrawn, ignored and treated as if non-existent, and, reneged upon with no sense of responsibility or obligation by the dominant group.¹³ No other racialized group has experienced the lasting impact of slavery and the demeaning racist practices, including the educational and residential isolation (segregation) of African Canadians.¹⁴

The history of African Canadians informs the anti-Black racism that is 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. This contemporary form of racism nonetheless replicates the historical *de jure* and *de facto* substantive conditions and effects of spatial segregation, economic disadvantage and social exclusion.¹⁵

To date, the invisibility of African Canadians continues in state policies and practices. Canada's multicultural policies, discourse and general attitude to Black Canadians are founded on a "fictitious notion that the presence of Black Canadians is a relatively recent phenomenon dating back to post World War II."¹⁶ Black Canadians are therefore regarded as perennial newcomers, with recent origins in the Caribbean and Africa. The Canadian multicultural policies and practice, which were designed to facilitate the participation of "others" – including African Canadians – continue to foster and perpetuate a "particular narrative of black invisibility."¹⁷ The historic and modern contributions of Black Canadians to Canada are neither recognized, nor are their full participation encouraged. The injustices against them are not acknowledged. Their systemic socio-economic problems attract little mainstream attention and are routinely ignored. Instead of facilitating the full integration and participation of the multicultural "others" in Canadian society, Canadian multicultural policies and

¹¹ See African Canadian Legal Clinic, *A Report on the Canadian Government's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination* (July 2002), online at http://www.aclc.net/antiba_historicalp.htm (last visited April 14, 2006) [hereinafter, "CERD Report"]

¹² African Canadian Legal Clinic, CERD Report, Ibid.

¹³ African Canadian Legal Clinic, CERD Report, Ibid.

¹⁴ African Canadian Legal Clinic, CERD Report, Ibid.

¹⁵ African Canadian Legal Clinic, CERD Report, Ibid.

¹⁶ Andrea Fatona, "In the Presence of Absence: Invisibility, Black Canadian History, and Melinda Mollineaux's Pinhole Photography" (2006) 31 *Canadian Journal of Communication* 227 at 228.

¹⁷ Rinaldo Walcott, *Black Like Who? Writing Black Canada* (Toronto: Insomniac Press, 2003) at 18.

practices continue to underline the systemic exclusion of Black people and other racialized groups.¹⁸

III. VIOLATIONS OF SPECIFIC PROVISIONS OF THE COVENANT

A. POVERTY - Right to Adequate Standard of Living: Article 11

Article 11 of the *Covenant*, obliges Canada to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions and to take appropriate steps to ensure the realization of this right.

Notwithstanding the impressive macro economic performance and the improved standard of living for the dominant group in the past decade, African Canadians continue to experience extreme forms of poverty. For African Canadians, historical patterns of racialization and persistent systemic racial discrimination have been key determinants of access to opportunity and livelihood.¹⁹ This is especially evident in their overrepresentation in low-paying occupations and low-income sectors, under-representation in high income sectors and occupations, and their differential experience with higher unemployment, poverty and social marginalization.²⁰

The standard of living of African Canadians is far from adequate, compared with that of non-visible minorities. In Canada, there is a virtual racialization of poverty, and poverty is increasingly race-based.²¹ African Canadians are among the most severely affected by racialized poverty, despite their relatively small population.²² African Canadians currently make up about 2.2 percent of

¹⁸ See generally Monika Kin Gagnon, *Other Conundrums: Race, Culture and Canadian Art* (Vancouver: Arsenal Pulp Press, 2000); Amy Gutman (ed.), *Multiculturalism* (Princeton, N.J.: Princeton University Press, 1994); William Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995); Bhikhu Parekh, *Rethinking Multiculturalism* (Cambridge, M.A.: Harvard University Press, 2000).

¹⁹ See Grace-Edward Galabuzi, *Canada's Economic Apartheid: The Social Exclusion of Racialized Groups in the New Century* (Toronto: Canadian Scholars' Press, 2006) at xi [hereinafter, "Apartheid"].

²⁰ See Grace-Edward Galabuzi, *Apartheid*, *Ibid.*

²¹ See A. Kazemipur & S. Halli, *The New Poverty in Canada: Ethnic Groups and Ghetto Neighbourhoods* (Toronto: Thompson Educational Publishing, Inc., 2000) at 10.

²² J. Torczyner, *The Shaping of Toronto's Black Identity: A Demographic Analysis of Black Community in Toronto and Regions* (McGill Consortium, 2003) at 63.

Canada's population, of which nearly one half (45%) were born in Canada.²³ In 2001, (the latest available Canadian census) African Canadians make up 17% of the visible minority population and were the third largest visible minority group in Canada, behind the Chinese and South Asians.²⁴ The census also showed that African Canadians, especially those born in Canada, are just as likely to be educated as others born in Canada.²⁵ Yet, African Canadians have disproportionately higher poverty rates, are less likely to be employed, have lower employment incomes, and have higher unemployment rates (11.4 percent as against 5.8 percent for others) than the general population.²⁶

Poverty among African Canadians is more than three times the average for whites.²⁷ In his research on the poverty level among racial minorities, Professor Michael Ornstein has shown that 10.6 percent of white families live below the *Low Income Cut Off* compared with 36 percent for African Canadians.²⁸ More than twice the number of racialized groups, especially African Canadians, live below the poverty line, compared to the general Canadian population. In other words, African Canadians have twice the poverty rate of the general population.²⁹ In urban centers, the poverty rate for racialized minorities was 37.6% while the rest of the population had a rate of 20.9%.³⁰ Comparable figures from the 2001 census show a similar trend.³¹ A recently published (2006) analysis of that census reveals that 40 per cent of African Canadians lived below the poverty line in 2001. By comparison, only 10 percent of European group members were below the poverty line, and for some European groups the figure was only about five percent.³² Professor Ornstein found no indication that the magnitude of the income differences is decreasing; on the contrary, the income differences have increased.³³

²³ See Ann Milan & Kelly Tran, "Blacks in Canada: A Long History" (2004) Canadian Social Trends (Statistics Canada – Catalogue No. 11-008) 2 at 3, online at <http://estat.statcan.ca/content/english/articles/cst/cst-soc43.pdf>

²⁴ Ibid.

²⁵ Ibid at 6. See also Leslie Cheung, *Racial Status and Employment Outcomes*, Canadian Labour Congress – Research Paper #34, October 2005, at 26-28, available online at http://canadianlabour.ca/index.php/Wokers_of_Colour/834

²⁶ See Michael Ornstein, *Ethno-Racial Groups in Toronto 1971-2001: A Demographic and Social Profile* (Toronto: Institute of Social Research, 2006) at 54, available online at http://www.isr.yorku.ca/download/Ornstein--Ethno-Racial_Groups_in_Toronto_1971-2001.pdf

²⁷ Michael Ornstein (2006), Ibid at 78.

²⁸ Michael Ornstein (2006), Ibid at 72 & 78.

²⁹ Grace-Edward Galabuzi, *Canada's Creeping Economic Apartheid: The Economic Segregation and Social Marginalization of Racialized Groups* (Toronto: CSJ Foundation, 2001) at 17 [Hereinafter, "Economic Segregation"].

³⁰ Galabuzi, Ibid.

³¹ See generally, Ann Milan & Kelly Tran, *supra*, note 23.

³² Michael Ornstein (2006), *supra* note 26 at 80.

³³ Michael Ornstein (2006), Ibid at 80.

Figures from the 2001 census also show that even when compared with other racialized groups, a disproportionately high number of African Canadians live below the poverty line than any other group. In Professor Ornstein's analysis, no other group has more than 30 percent living below the poverty line, compared with 40 percent of African Canadians living below the poverty line.³⁴

Food insecurity remains a serious and growing problem for African Canadians. For a wealthy country like Canada, a substantial (and growing) number of people depend on food banks which are run by non-profit charitable organizations to meet their daily needs. Hunger is a very real problem in Canada for poor people, including many African Canadians. A recent study reports that 40 percent of food banks are having difficulty meeting the growing demands for their services.³⁵ As the Canadian Association of Food Banks report starkly shows, in 2005 about 823,856 people used food banks in one month. Put in context, that figure is more than the total combined population of Newfoundland/Labrador, Prince Edward Island, the Northwest Territories, Yukon and Nunavut, which stands at 758,500.³⁶ Insufficient income is the primary reason why people patronize food banks. Approximately 52 percent of food bank clients are those whose primary source of income is social assistance.³⁷ Currently, about 41 percent of food bank clients are children.³⁸

With disproportionately high levels of poverty, adequate housing remains all but a dream for most African Canadians. In Ontario, for instance, landlords routinely reject tenancy applications of those who do not meet the specified (no less than 30 percent) rent/income ratio and job tenure criteria.³⁹ African Canadians are consistently worse off than other groups in accessing rental accommodation restricted by the income criterion.⁴⁰ Contrary to the broad and unsupported

³⁴ See Michael Ornstein (2006), *Ibid* (Chart 5.1 - Percentage of Persons Below the Low Income Cut-Off for Global Groups).

³⁵ See Canadian Association of Food Banks, online at <http://www.cafb-acba.ca/english/>

³⁶ See Canadian Association of Food Banks, *HungerCount 2005* at 3. This report is available online at <http://cafb-acba.ca/english/EducationandResearch-ResearchStudies.html> (last visited 4 April 2006).

³⁷ Canadian Association of Food Banks, *Ibid* at 3

³⁸ *Ibid*.

³⁹ See e.g. the Ontario Board of Inquiry (now Ontario Human Rights Tribunal) decisions in *Ontario Human Rights Commission, Dawn Kearney, & others v. Bramalea Ltd. & others*, Decision No.: 98-021 (22 December 1998) [hereinafter, "Kearney"]; *Ontario Human Rights Commission, Harcourt Sinclair & Jennifer Newby v. Hunter Investment Ltd. & Larry McGrath*, Decision No.: 01-024 (5 November 2001) [Hereinafter, "Sinclair"].

⁴⁰ See J. David Hulchanski, *Discrimination in Ontario's Rental Housing Market: The Role of Minimum Income Criteria* - Background Paper No. 1, Expert Report submitted to the Ontario Board of Inquiry in *Kearney*, *Ibid*; Michael Ornstein, *Income and Rent: Equality Seeking Groups and Access to*

claim in Canada's Fifth Periodic Report (at para. 53) that "Canadians are the best-housed people in the world" and that approximately two thirds (66 percent) of Canadians own their homes (at para. 54), the vast majority of African Canadians are neither homeowners nor adequately housed and, therefore, outside the category of "the best-housed". The vast majority live in segregated, ghettoized, disease-ridden, crime and drug infested neighbourhoods.⁴¹ Their daily lived experiences in these communities belie any claim of being among the best housed in the world. Hidden in this claim is the truth that low income people face a critical shortage of affordable, adequate housing. In some provinces, such as Ontario, the waiting time for subsidized housing is no less than four years. There is no national affordable housing program or strategy for meeting the housing needs of the poor. Canada is the only country in the developed or industrialized world without a national housing program.⁴²

In its *General Comment No. 12* (1999), the Committee stressed the need to distinguish the *inability* from the *unwillingness* of a State Party to provide an adequate standard of living.⁴³ As a wealthy state, Canada's case is far from being one of inability to provide. With its wealth, Canada is one of the clearest cases of unwillingness to provide an adequate standard of living. In accordance with the Committee's declarations,⁴⁴ Canada has the responsibility to demonstrate that every effort has been made to use all resources at its disposal to provide, as a matter of priority, an adequate standard of living for vulnerable groups such as African Canadians. Not only has Canada failed to marshal the resources at its disposal to address these problems, Canada has consistently failed to accord any priority or requisite attention to the plight of African Canadians. Canada's reports make no mention of these problems.

The Committee should:

Strongly condemn the disproportionately racialized violations of the right to an adequate standard of living and request that Canada take appropriate and effective measures to ensure an adequate standard of living for African Canadians;

Request Canada to establish a national housing program and strategy for meeting the affordable housing needs of African Canadian low

Rental Accommodation Restricted by Income Criteria, Expert Report submitted to the Ontario Board of Inquiry in *Kearney*, *Ibid.*

⁴¹ See the United Way Report, *Poverty by Postal Code: The Geography of Neighbourhood Poverty* (2003), online at http://www.unitedwaytoronto.com/who_we_help/pdfs/PovertybyPostalCodeFinal.pdf

⁴² See Grace-Edward Galabuzi, *Apartheid*, *supra* note 19 at 229.

⁴³ Committee on Economic, Social and Cultural Rights, *General Comment No. 12* (1999), *The Right to Adequate Food*, E/C.12/1999/5 (12 May 1999), at para. 17.

⁴⁴ See *General Comment No. 12*, *Ibid.*, at para. 17

income families, and racialized groups; and, to work with the provinces and territories to eliminate the long wait times for subsidized housing.

Request Canada to submit yearly interim reports and to fully report during its next periodic report on substantive measures specifically taken to ensure an adequate standard of living and affordable adequate housing for African Canadians.

B. NON-DISCRIMINATION: Article 2

Article 2(2) of the *Covenant* obligates Canada to guarantee that the provisions of the *Covenant* will be exercised without discrimination of any kind as to, among other things, race, colour, national or social origin, birth or other status.

Despite the clear provisions of the *Covenant* and the widely known position of the Committee on this issue, African Canadians have historically been and continue to be victims of systemic discrimination and other forms of overt and covert anti-Black racism. As highlighted above, Canada has a long and rich history of racism against African Canadians. In Canada, the social, political, economic or cultural status of African Canadians has been defined and shaped by a history of slavery, exclusion, segregation, economic marginalization, systemic racism, and legally sanctioned discrimination for more than four centuries. This state of affairs is all too evident in the virtual non-representation of African Canadians in the Canadian mainstream; in the lack of opportunities; in the lower socio-economic status; in the higher unemployment and lower incomes; in the widespread and dehumanizing poverty; in the *ghettoization* of communities and residential settings; in the dislocation of families and overrepresentation in the criminal justice system; and, the near complete socio-economic and political alienation of African Canadians.

In 1992, in his *Report on Racism in Ontario*, Stephen Lewis, currently the United Nations Envoy for HIV/AIDS in Africa, described the phenomenon as follows:

First, what we are dealing with, at root, and fundamentally, is anti-Black racism. While it is obviously true that every visible minority community experiences the indignities and wounds of systemic discrimination throughout Southern Ontario, it is the Black community which is the focus. It is Blacks who are being shot, it is Black youth that is unemployed in excessive numbers, it is Black students who are being inappropriately streamed in schools, it is Black kids who are disproportionately dropping-out, it is housing

communities with large concentrations of Black residents where the sense of vulnerability and disadvantage is most acute, it is Black employees, professional and non-professional, on whom the doors of upward equity slam shut. Just as the soothing balm of 'multiculturalism' cannot mask racism, so racism cannot mask its primary target. It is important, I believe, to acknowledge not only that racism is pervasive, but that at different times in different places, it violates certain minority communities more than others. As one member of the Urban Alliance on Race Relations said: "The Blacks are out front, and we're all lined up behind."⁴⁵

Although Ontario – the province with the highest number of African Canadians – was the focus of the Lewis Report, his observations apply equally to the situation of African Canadians in all parts of Canada. Yet, nearly a decade and half since the Lewis Report, there has been very little change in the socio-economic fortunes of African Canadians. Far too many African Canadians remain shackled at the socio-economic margins, lacking equality of opportunity in their access to basic resources, employment and fair distribution of income, and criminally stigmatized and overrepresented in the criminal justice system. This has ineluctably produced a tragic system of cyclical inequality and criminalization that has developed into a self-fulfilling prophecy. Several calls for appropriate economic and social reforms to be undertaken with a view to eradicating all social injustices and systemic discrimination have gone largely unheeded. All levels of government continue to ignore or pay lip service to the imperatives of substantive equality and the widespread marginalization of African Canadians.

Canada should recognize the pernicious effects of anti-Black racism and take appropriate legislative and other proactive and practical measures, in consultation with the affected community, to end or ameliorate anti-Black racism and systemic discrimination in all aspects of society.

The Committee should request Canada to update the Committee in its next report on the specific substantive measures it has taken to end pervasive anti-Black racism and to ensure the rights of African Canadians to non-discrimination.

⁴⁵ Stephen Lewis, *Report on Racism in Ontario to the Premier*, (1992) [the Lewis Report]. For a fuller insight into the phenomenon of anti-Black racism in Canada see generally Multiculturalism and Citizenship Canada, *Eliminating Racial Discrimination in Canada* (Ottawa: Supply & Services Canada, 1989).

C. EQUAL RIGHTS OF WOMEN AND MEN: Article 3

Article 3 of the *Covenant* obliges Canada to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights.

In its *General Comment No. 16* (2005), the Committee highlighted the intersection of the principle of non-discrimination and the principle of equality. Both principles mandate *de facto* (formal) and *de jure* (substantive) equality, which is concerned with the effects of laws, policies and practices and with ensuring that these laws, policies and practices alleviate and not perpetuate the inherent disadvantages of particular groups.⁴⁶

Notwithstanding the clear declarations of the Committee, there is little evidence to show that Canada is sufficiently committed to substantive equality, especially with regard to the inherent disadvantages of African Canadian women and men. Canada's emphasis remains on formal equality, not necessarily on substantive equality. Reports of the narrowing income gap between men and women are only correct to the extent that they reflect the income of white men and white women. A careful assessment of the real situation of African Canadians will reveal a widening income gap among and between women and men. As importantly, the rosy declarations in official government reports hardly reflect the self-evident reality of inequality, powerlessness and marginalization of African Canadian women in all aspects of Canadian society. Often, generalized data analyses mask the reality of the many desperate lives tucked under healthy statistical percentages of general progress.

Available evidence shows widening poverty and systematic inequality for African Canadians, despite concerted attempts to portray poverty "as a largely generic, faceless phenomenon"⁴⁷ falling randomly on residents. African Canadian women are most likely to and usually experience persistent poverty. Their poverty rates almost double that of non-visible minority women.⁴⁸ African Canadian women have the lowest income compared to non-Black women.⁴⁹ Although earnings generally increased with age (the higher the age the higher the earning), Blacks still earned far less than non-Blacks at every age category. Besides, these poor women are concentrated in segregated housing and very

⁴⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 16* (2005), *The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights*, E/C.12/2005/3 (13 May 2005), at para. 7.

⁴⁷ See Punam Khosla, *If Low Income Women of Colour Counted in Toronto, Final Report of the Action-Research Project - Breaking Isolation, Getting Involved* (Toronto: Community Social Planning Council of Toronto, 2003) at 7.

⁴⁸ See Clarence Lochhead & Katherine Scott, *The Dynamics of Women's Poverty in Canada* (Ottawa: Status of Women Canada, 2000) at 15.

⁴⁹ James Torczyner, *supra* note 22 at 47.

poor neighbourhoods – a situation that exacerbates the consequences of poverty and social exclusion as sufficiently underscored by several researches.⁵⁰ Increased concentration of the poor in certain areas of the city have led to the breakdown of social institutions,⁵¹ increased joblessness, family disruption, teenage pregnancy, high school drop-out rates, crime and drug abuse.⁵²

Even for African Canadian men, gender imbalances exist as between white women. For instance, the unemployment rate for African Canadian men is 9.6 percent, compared to the rate of 6.3 percent for white women.⁵³ Again, on average, African Canadian men earned significantly (approximately 20 percent) less than white Canadian women.⁵⁴

For the most part, Canada has been in denial about the condition of African Canadian women, whose plight has been all but ignored. It has not taken any significant specially targeted or general measures to address the growing problem. Nor has it adopted any temporary special measures, as recommended by the Committee in its *General Comment No. 16* (2005),⁵⁵ in order to bring disadvantaged and marginalized African Canadian women and men to the same substantive level as non-visible minority women and men.

The Committee should:

Request Canada to provide yearly interim reports to the Committee of the temporary special and other proactive, substantive or permanent measures it has adopted to eliminate the racialized inequality between African Canadians and non-visible minority men and women.

Canada should immediately adopt temporary special measures and implement permanent measures aimed at eliminating the racialized inequality between African Canadian women and men and non-visible minority women and men with the aim of bringing disadvantaged and marginalized African Canadians at the same substantive levels of equality as the non-visible minority women and men.

⁵⁰ See United Way Report, "Poverty by Postal Code: The Geography of Neighbourhood Poverty" at http://www.unitedwaytoronto.com/who_we_help/pdfs/PovertybyPostalCodeFinal.pdf; Douglas S. Massey & Mitchell L. Eggers, "The Ecology of Inequality: Minorities and the Concentration of Poverty, 1970-1980" (1990) 95 *American Journal of Sociology* 1153; Kazemipur, *The New Poverty in Canada* (Toronto: TEP, 2000) at 12; Grace-Edward Galabuzi, *Apartheid*, supra note 19 at 18.

⁵¹ See Kazemipur, supra note 50 at 12.

⁵² Ibid.

⁵³ See Michael Ornstein (2006), supra note 26 at 54

⁵⁴ See Michael Ornstein (2006), Ibid (Chart 4.3 (Female and Male Employment Income in 2000 for Persons 18-64).

⁵⁵ General Comment No. 16 (2005), supra note 46 at para. 15.

D. RIGHT TO WORK: Article 6

Article 6 of the *Covenant* obliges Canada to respect and protect the right to work, including the right of everyone to the opportunity to gain his living by work which he or she freely chooses or accepts and to take appropriate steps to safeguard the right to work.

Recently, in *General Comment No. 18* (2005), this Committee stated that the right to work is violated by inaccessibility, including discrimination in access to and maintenance of employment on the grounds of, inter alia, race and colour which has the intention or effect of impairing or nullifying exercise of the right to work on the basis of equality.⁵⁶

Discrimination in access to and maintenance of employment on the grounds of race and colour is widespread and pervasive in Canada. Anti-black racism and systemic discrimination, as evident in disproportionately high unemployment rates, remain the norm for African Canadians. Even with comparable levels of education, studies have shown that African Canadians are less likely to be employed than non-Blacks.⁵⁷ African Canadians are twice as likely to be unemployed than white Canadians.⁵⁸

A recent (2006) report by Professor Michael Ornstein confirmed the continuing trend and found that the unemployment rate for African Canadians is 9.6 percent for men and 13.2 percent for women, compared to the average rates of 5.2 and 6.3 percent, respectively.⁵⁹ The type of work done by African Canadians is also implicated in high rates of Black poverty. As Professor Ornstein also found, “[a]n extraordinarily high proportion of African Canadian women, 47.6 percent, are employed in less skill non-manual occupations.”⁶⁰ African Canadians have above average levels of part-time work and lower rates of self-employment.⁶¹ African Canadians are less likely to have full time jobs. In Toronto (home to most

⁵⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 18* (2005), *The Right to Work*, adopted 24 November 2005, E/C.12/GC/18, at para. 12.

⁵⁷ See for example, Canada. Employment and Immigration Canada: Affirmative Action Training Manual cited in R. Abella, *Equality in Employment: A Royal Commission Report* (Ottawa: Canadian Government Publishing Centre, 1984) at 19, noting that “employment practices have...evolved based on the physical and cultural attributes of [the] favored type of worker, placing other workers and job applicants at a disadvantage regardless of their abilities and qualifications”.

⁵⁸ Written Submission of the African Canadian Legal Clinic to the African Regional Group, March 22, 2004 at 8.

⁵⁹ See Michael Ornstein (2006), *supra* note 26 at 54

⁶⁰ Michael Ornstein (2006), *Ibid* at 55

⁶¹ See Michael Ornstein (2006), *Ibid* at 54.

Blacks), only 32% have full time jobs compared to 38% for non-Blacks.⁶² Again, even when Blacks and non-Blacks have similar jobs, Blacks earn approximately 30% less than non-Blacks. Blacks are underrepresented in occupations characterized by management and higher pay and are overrepresented in occupations with least pay, greatest insecurity as well as least authority.⁶³

The high unemployment rate among African Canadians is only a symptom of an enduring problem. As a recent study for the Canadian Labour Congress noted:

Racial discrimination is a large contributing factor to the poor labour market outcomes of Canada's racialized workers. Lower incomes, higher unemployment, and precarious work status are prevalent for workers of colour as a whole, and not just recent immigrants. In fact, it is the non-immigrant, racialized population, who are more highly educated than average, which has the most difficulty finding steady employment at decent wages. The fact that Canadian-born workers of colour are doing badly cannot be explained away by reference to lack of Canadian credentials or experience.⁶⁴

Canada's Fifth Periodic Report cites (at para. 100) as progress the fact that 5,200 visible minorities joined the federal workforce between 2000 and 2004. Any progress, albeit minor, is a welcome development given the prevalent exclusion of visible minorities. However, the report does not disclose the levels at which the visible minorities were recruited; for example, whether these positions were for janitorial, secretarial or managerial positions.

By grouping all visible minorities together, the report conveniently fails to disclose the numbers of African Canadians that join the federal workforce and the level at which they are usually recruited. The Committee may wish to inquire into the numbers of African Canadians recruited into the federal workforce and at what level they are employed.

As well, the reported figure, put in context, represents merely 1 in 10 – far below the benchmark of one in five (or 50 percent below target). Since the benchmark was introduced in 2000, the Federal Public Service has consistently missed the

⁶² James Torczyner, *The Shaping of Toronto's Black Identity: A Demographic Analysis of Black Community in Toronto and Regions* (McGill Consortium, 2003) at 54.

⁶³ James Torczyner, *Ibid* at 58.

⁶⁴ Leslie Cheung, *Racial Status and Employment Outcomes*, *supra* note 25 at 1

visible minority target each year.⁶⁵ Given, that the shortfall in the visible minority target was apparently filled by non-visible minorities, the report should have disclosed the number of non-visible minorities recruited during the period. It should have explained why it was difficult or less convenient to recruit visible minorities for the positions. In effect, the report does not explain why the public service missed by 50 percent the targeted benchmark under the *Embracing Change Action Plan* despite the disproportionately high visible minority unemployment and highly qualified (and available) visible minority pool.

Senator Donald Oliver, Q.C. (member of the Senate of Canada), has articulated three distinct but interrelated reasons for the failure to meet visible minority recruitment target.⁶⁶ The first is that the recruitment, retention and promotion of visible minorities are not particularly priority issues for senior managers or executives in the public service and there is no leadership commitment at the political levels to bring about a change.⁶⁷ The second is that the prerequisites for fair representation of visible minorities within the public service – the political will – do not exist. When the will existed, as in the case of (white) women, aboriginals, and disabled people, there was a dramatic improvement in accelerating representation.⁶⁸ Lastly, is systemic and institutionalized racism that makes it virtually impossible for visible minorities to be recruited or promoted irrespective of merit, qualifications or experience.⁶⁹

There is also institutionalized resistance to equity in employment for visible minorities at both the federal and provincial levels. This is most exemplified in Ontario where the *Employment Equity Act* which was introduced to address widespread, systemic inequity in employment, was repealed in 1995, leaving racialized groups, including the African Canadians with no effective protection against entrenched systemic discrimination in employment.

The Committee should:

Condemn the entrenched systemic anti-Black racism in the workforce and the lack of commitment and leadership to pursue meaningful and substantive equity in employment or the integration of visible minorities, including African Canadians in the Federal Public Service;

⁶⁵ See Donald H. Oliver, “Engagement Strategy for a Racist-Free Workplace”, Notes for an Address to the Human Resources and Skills Development Canada Labour Program Workshop, Ottawa, Ontario, February 21, 2005 at 1 [hereinafter, “Racist-Free Workplace”].

⁶⁶ See Donald H. Oliver, “Diversity Imperatives”, Address to the National Council of Visible Minorities Atlantic Region Forum and General Meeting, Halifax, Nova Scotia, February 20, 2006 at 2. See also, Donald H. Oliver, *Racist-Free Workplace*, Ibid at 2.

⁶⁷ Donald H. Oliver, Ibid. at 2.

⁶⁸ Donald H. Oliver, Ibid. at 3

⁶⁹ Donald H. Oliver, Ibid. at 4.

Re-emphasize Canada's responsibility to ensure equality of working opportunities for all and request Canada to prevail on provincial and territorial governments to enact meaningful Employment Equity legislation, where none exists and to ensure that such laws are vigorously enforced;

Request Canada to provide interim yearly reports and to report fully in its next periodic report specific measures taken to enhance and the progress made in the integration of African Canadians and other visible minorities into all sectors and levels of the federal and provincial workforce;

Request Canada to provide in its next periodic report specific and detailed information on the recruitment of African Canadians and other racialized groups into the Federal Public Service.

E. RIGHT TO SOCIAL SECURITY: Article 9

Large numbers of African Canadians who are disproportionately poor and unemployed depend on state welfare and other available social assistance payments.⁷⁰ Systemic anti-Black racism and racial discrimination in employment have turned a large segment of African Canadians into clients of the welfare system. In Ontario, social assistance payments to the poor were reduced by nearly 22 percent in the mid-1990s. These cuts have not been restored and, despite assurances and suggestions to the contrary, social assistance payments have not kept pace with inflation. African Canadians who depend on these programs have all but fallen through the holes in the social safety nets. The result is that most of those depending on social assistance cannot make ends meet and generally live well below the *Low Income Cut Off* (poverty) line. Put simply, they inhabit a racialized Third World of social insecurity and deprivation in a First World state.

All but two provinces continue to claw back from social assistance recipients the National Child Benefit Supplement (NCBS), which was introduced in 1997 to assist low income families. In Ontario, for instance, all poor children receive their NCBS except those whose parents depend on social assistance from the province. Instead of providing more assistance for this group of people, the provinces are taking away from them. This shameful claw back has significant adverse impact on African Canadians that are disproportionately poor, especially vulnerable and dependent on social assistance because of their disproportionate unemployment and underemployment.

⁷⁰ See Compilation of Briefs, supra note 7 at 5 (section on poverty).

Canada has no national standard for social assistance. Nor is there any legally enforceable right to adequate social assistance.

Canada should prevail on all provinces or territories still engaging in the claw back of the National Child Benefit Supplement from social assistance recipients to end this shameful practice.

Canada should establish a national minimum standard on social assistance and ensure that social assistance payments are boosted to reflect present socio-economic realities.

F. PROTECTION OF THE FAMILY, MOTHER AND CHILD: Article 10

Child poverty, racial discrimination, racial profiling and the attendant criminalization and over-incarceration of Black youths constitute the greatest threat to African Canadian families. As the 2001 Census revealed, “Black children were more likely than other children to be living in low-income households (44% compared to 19%).”⁷¹ Since 1989, the number of children living in poverty in Canada has increased by 43 percent⁷² and the number of children in homeless shelters has increased by 130 percent.⁷³ As Monica Townson reminds us, “children are poor because their parents are poor. And it is the poverty of women that is behind the poverty of so many of our children.”⁷⁴ The poverty of families has broader implications for the welfare, happiness, safety, and upbringing of children.⁷⁵ The poverty of families also puts enormous stress on familial bonds. African Canadian children are often taken from their families because of the family’s socio-economic circumstances, such as inadequate housing, clothing or meals.

As noted above, despite the alarming rate of child poverty (currently 443,000 or 1 in 6 children in Ontario alone), all but two provinces, including Ontario continue to claw back the NCBS from social assistance recipients.⁷⁶ In Ontario, the NCBS is clawed back from children whose parents depend on social assistance from the province – the very same group of parents who are most vulnerable and

⁷¹ Anne Milan & Kelly Tran, *supra*, note 23 at 4

⁷² See Anver Saloojee, *Social Inclusion, Anti-Racism and Democratic Citizenship – Perspectives on Social Inclusion Working Paper Series* (Toronto: The Laidlaw Foundation, 2003) at vii.

⁷³ Anver Saloojee, *Ibid*.

⁷⁴ Monica Townson, *A Report Card on Women and Poverty*, Canadian Centre for Policy Alternatives, April 2000 at 1.

⁷⁵ See Michael Ornstein (2006), *supra* note 26 at 66.

⁷⁶ See Robert Benzie, “McGuinty Under Fire for Benefits Clawback”, *Toronto Star*, March 30, 2006.

struggling to pay rents and feed their children. This affects African Canadian families disproportionately because African Canadians experience unusually high employment and underemployment are, most likely to be on social assistance and, therefore, mostly affected by cuts in or claw back of social assistance payments.

Racial profiling – the attribution of criminality on the basis of race – is a widespread and pervasive phenomenon in law enforcement practices in Canada. Young African Canadian males are primary targets. Living under the cloud of racial profiling has significant adverse impact on African Canadian families. Parents and children live in constant fear of the uncertainty of being targeted and the risks and humiliation of police encounters for no apparent reason than the colour of one's skin. All-too-often, such encounters determine the difference between freedom and incarceration. Racial profiling is mostly responsible for the overrepresentation of African Canadian youths in our prisons. For instance, although African Canadians comprise only about 2 percent of Canadian population, they represent over 6 percent of the federal prison population.⁷⁷ The federal incarceration rate for African Canadians (146 per 100,000) is many times higher than for whites (42 per 100,000) and Asians (16 per 100,000). The higher rates of incarceration of African Canadians directly correlate with the irrational, perennial suspicion of criminality and over-policing of African Canadian communities.

Poverty, racial profiling and over-incarceration remain the major contributors to the increased dislocation of African Canadian families. That the situation has continued to worsen over the years is indicative of Canada's failure to fulfill its obligation to protect the African Canadian family, mother and child.

The Committee should:

Strongly condemn the widespread racial profiling of African Canadians and request that Canada adopt broad and effective national measures to end racial profiling by law enforcement agencies.

Canada should take adequate and effective measures to eliminate child poverty, and in particular, end the existing gap in child poverty rates between African Canadians and other families.

Canada should work with community groups to find lasting solution to the problem of overrepresentation of African Canadians in the criminal justice system.

⁷⁷ See Correctional Service Canada, *Corrections and Conditional Release Statistical Overview* (Ottawa: Public Works and Government Services Canada, 2004) at 47 & 48.

G. RIGHT TO PHYSICAL AND MENTAL HEALTH: Article 12

In the *General Comment No. 14* (2000), the Committee stated (at para. 3) that the right to health is closely related to and dependent upon the realization of other human rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.

The cumulative outcomes of unemployment, poverty, systemic racial discrimination, ghettoized housing, and socio-economic inequality have profound negative impact on the physical and mental health of African Canadians.⁷⁸ Studies have confirmed that racial profiling and the resulting humiliation of being targeted, the constant fear of danger to oneself or a family member or the feeling and risk of a humiliating and potentially fatal encounter at the sight of a police officer lead to chronic psychological stress which adversely affect physical and mental health.⁷⁹ Unsurprisingly, therefore, specific mental health concerns such as higher levels of anxiety, stress and stress-related illnesses like high blood pressure, heart disease and nervous system problems; high risk of depression and suicide; feelings of helplessness, hopelessness, fear, mistrust, despair, alienation, and loss of control; and, damaged self-esteem, higher risk of addiction and violence, are known to be endemic amongst African Canadians.⁸⁰ These problems are compounded by systemic discrimination in healthcare institutions, which remains a serious impediment to access to quality care for African Canadians.⁸¹ Many health institutions and organizations do not provide culturally sensitive and appropriate care to the African Canadian community, which remain the most underserved group in the health care system.⁸² Health care institutions often lack coherent, comprehensive strategies, plans and adequate resources to address issues of equity and access.⁸³

⁷⁸ See Kwasi Kafele, *Racial Discrimination and Mental Health: Racialized and Aboriginal Communities*, Ontario Human Rights Commission Policy Dialogue Paper, 2004 at 1, online at <http://www.ohrc.on.ca/english/consultations/race-policy-dialogue-paper-kk.shtml> (last visited 4 April 2006)

⁷⁹ See David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work* (New York: The New Press, 2002) at 97.

⁸⁰ See Kwasi Kalefe, *supra* note 78 at 2.

⁸¹ See Kwasi Kalefe, *Ibid* at 3.

⁸² See Health Canada, *Certain Circumstances: Issues in Equity and Responsiveness in Access to Health Care in Canada – A collection of Papers and Reports Prepared for Health Canada* (Ottawa: Health Canada, 2001) at 202, available online at http://www.hc-sc.gc.ca/hcs-sss/pubs/care-soins/2001-certain-equit-acces/index_e.html (last visited April 4, 2006).

⁸³ See Kwasi Kalefe, *supra* note 78 at 3

In Canada, many people do not have access to medical insurance for vital services, including prescription drugs, dental, and vision that are usually not covered under the provincial healthcare. This problem is worsened by a growing tendency of provincial governments to de-list covered services, which makes such services unaffordable by unemployed and precariously employed people.

Canada should develop and implement coherent and comprehensive strategies and plans and commit resources to effectively address the mental health impacts of systemic racism and the issues of equity and access in the health care system for African Canadians.

H. RIGHT TO EDUCATION: Article 13

African Canadians experience serious violations of their right to education. For the most part, the public education system in Canada has become increasingly one of alienation for African Canadians students. Anti-Black systemic racism and the racist implementation of policies have effectively driven disproportionately high numbers of African Canadians out of the public school system. Substantively, African Canadians are frequent casualties of educational systems in which they are un-served or underserved. They usually lack the same level of support and treatment given to others. In effect, whether in access or quality of education, for a good number of African Canadians, there exists significant barrier to the right to education.

African Canadians are unfairly and disproportionately streamed into less intellectually challenging avenues and opportunities on the basis of their race. Streaming is a practice that places students in basic, general, vocational or advanced academic programs. These placements influence a student's entry into post-secondary education and low-level or professional occupations as well as their social status and subsequent earning potential. The practice is highly racialized as stereotypes about students' abilities or inabilities influence the streams into which students are placed.⁸⁴ In 1987, the Toronto Board of Education undertook two major studies to measure the progress of Black students compared to Whites and Asians in high school. The Board found a dramatically higher percentage of Blacks in basic programs that emphasize

⁸⁴ See J. Oakes, *Multiplying Inequalities: The Effects of Race, Social Class, and Tracking on Opportunities to Learn Mathematics and Science* (Santa Monica, CA: The Rand Corporation, 1990); David Gillborn, "Citizenship Education as Placebo: 'Standards', Institutional Racism and Education Policy" (2006) 1(1) *Education, Citizenship and Social Justice* 83 at 89; Kathleen Lynch & John Baker, "Equality in Education: An Equality of Condition Perspective" (2005) 3(2) *Theory and Research in Education* 131 at 137.

vocational rather than academic training. One out of every thirty-three Asian students was enrolled in a basic program whereas the number for Whites was one in ten. For Blacks it was one in five.⁸⁵

This highly racialized practice is rooted in formalized stereotyping and labelling in the education system, as the Radawanski Commission's 1987 report clearly noted.⁸⁶ African Canadians are typically streamed into basic, vocational, technical and dead-end programs which offer little or no prospect for higher education and which often forces them to drop out of school.⁸⁷ As a result, African Canadian students are few in numbers at the university level. The practice of streaming effectively excluded African Canadian students from post-secondary education and ensures the reproduction of inequitable social status through the education system and creates a two-tiered education system: a lower tier that continues to prepare African Canadian youth for a life of unemployment or under-employment, and another that reproduces power and dominance by preparing White students to occupy professional and decision-making positions. Eventually, this sets the stage for comparative lower incomes, high dropout rates, and eventually poverty.⁸⁸ As Bruce Curtis and others have noted, streaming creates "severe social injustice and a tremendous waste of human learning potential - at a time when formal [university] education is increasingly heralded as essential to the well-being of our society."⁸⁹

African Canadians' right to education is also violated by "zero tolerance" policies or practices that lead to disproportionately high suspension, expulsion and dropout rates. In Ontario (Canada's largest province and also the province with the highest numbers of African Canadians), the *Education Act* was amended purportedly to promote "safe schools" by preventing or reducing violence and promoting respect and discipline. Under the "*Safe Schools*" policies,⁹⁰ schools are authorized to punish 'inappropriate' behaviours through greater use of suspensions and expulsions.⁹¹ While the protection of students and the

⁸⁵ See, generally, African Canadian Legal Clinic, CERD Report, supra note 11.

⁸⁶ See George Radwanski, *Ontario Study of the Relevance of Education, and the Issue of Dropouts* (Toronto: Ontario Ministry of Education, 1987).

⁸⁷ See Bruce Curtis, D.W. Livingstone & Harry Smaller, *Stacking the Deck: The Streaming of Working-Class Kids in Ontario Schools* (Halifax: James Lorimer & Co. Ltd, 1992) at 1.

⁸⁸ See Scott Wortley, "Hidden Intersections: Research on Race, Crime, and Criminal Justice in Canada" (2003) 3 *Canadian Ethnic Studies* 99 at 101, noting that the intersection of race and poverty significantly "contribute to the apparent disadvantage many minorities face when dealing with the police, the courts and corrections."

⁸⁹ Bruce Curtis, *et al.*, supra note 87 at 1.

⁹⁰ In Ontario government introduced 'Safe Schools' policies as amendments to the *Education Act* R.S.O. 1990, c. E-2. These disciplinary procedures are now contained in Part VIII of the *Act*.

⁹¹ See African Canadian Legal Clinic, *Anti-Black Racism: A Report on the Canadian Government's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination* (July 2002) at 40-43.

maintenance of an effective learning environment is a laudable aim, the implementation of these policies cannot be divorced from the social context, including prevalent anti-Black systemic racism. The application of these policies has had a severe adverse impact on African Canadian students and parents. It has facilitated and perpetuated anti-Black racism. 'Safe Schools' policies have become one more oppressive tool of racial exclusion, leading to a disproportionately high suspension and/or expulsion of and a much higher dropout rate for students of African descent.⁹² Thus, these policies have had a direct negative impact on African Canadian students' right to education.

That these policies invariably result in increased and disproportionate suspension and expulsion of African Canadian students has been documented by many reports, including *The Ontario Safe Schools Act: School Discipline and Discrimination*⁹³ by the Ontario Human Rights Commission (OHRC), and the Toronto District School Board's Safe and Compassionate Schools Committee Report. The disproportionate impact of the policies and practices also led the OHRC to file a systemic complaint against the Ministry of Education and the Toronto District School Board.⁹⁴

In its report, *School Discipline and Discrimination*, the Ontario Human Rights Commission noted that:

The general feeling is that discipline policies have always had a disproportionate impact on Black students, but the [*Safe Schools*] Act and "zero tolerance" policies have made the problem much worse, with significantly higher numbers of Black students being suspended and expelled.⁹⁵

The findings of these reports are corroborated by the experience of the African Canadian Legal Clinic. Since the introduction of 'Safe Schools' policies there has been a striking increase in the number of African Canadian students, particularly males, seeking legal assistance in dealing with suspensions and expulsions from school.

The findings are also supported by the report of the Toronto District School Board's Task Force on Safe and Compassionate Schools. The Task Force

⁹² See George J. Sefa Dei, et al, *Reconstructing 'Dropout': A Critical Ethnography of the Dynamics of Black Students' Disengagement From School* (Toronto: University of Toronto Press, 1997)

⁹³ K. Bhattacharjee, *The Ontario Safe Schools Act: School Discipline and Discrimination*, (Toronto: Ontario Human Rights Commission, 2003)

⁹⁴ For more information on the complaint visit http://www.ohrc.on.ca/english/news/e_pr_safe-schools-complaint.shtml

⁹⁵ K. Bhattacharjee, *Discipline and Discrimination*, supra note 93 at 28

reviewed school discipline and safety policies to assess whether the application of the “*Safe Schools*” policy has had a disproportionate impact on racialized students. The Task Force found that the policy had a disproportionate impact on racialized students and recommended the repeal of the ‘*Safe Schools*’ provisions of the *Education Act* and the collection of disaggregated statistical data on suspensions and expulsions to monitor and prevent any discriminatory impact.

Despite these recommendations and the established disproportionate impact of the “*Safe Schools*” policy on African Canadians, the Ontario government has not repealed the policy. Nor has it adopted specific measures or otherwise effectively addressed the identified problems or the concerns articulated by numerous students, parents and community organizations. Instead, it continues to defend the human rights complaint filed against it by the OHRC, even when the Toronto District School Board has settled with the OHRC.

In its *General Comment No. 13* (1999), the Committee declared (at para. 59) that violations of the right to education include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; and the failure to take measures which address de facto educational discrimination. The introduction of and failure to repeal the ‘*Safe Schools*’ policy and the failure to take effective measures to address its discriminatory impacts on African Canadian students violate the *Covenant* and engages Canada’s international obligation.

The Committee should:

Request Canada to ensure the repeal of the ‘*Safe Schools*’ provisions of the Ontario *Education Act* and to prevail on the province of Ontario to take all necessary measures to protect the rights of African Canadian children to education and to non-discrimination in educational opportunities.

Condemn the practice of streaming of African Canadian students in all schools and request Canada to take all appropriate measures to end the practice. Canada should be required to report on specific and general measures taken to end this practice in its next periodic report.

IV. Canada's Obligations under the Covenant

As a State Party to the *Covenant*, Canada is obliged to guarantee, ensure, recognize and take steps to achieve the rights protected by the *Covenant*.⁹⁶ The Committee has long established that the *Covenant* gives rise to three levels of interrelated and interconnected tripartite typology of obligations, namely: obligation to respect, obligation to protect, and obligation to fulfill.

As a party to the *Covenant*, Canada assumed the obligation to respect the guaranteed rights. This obligation requires Canada, as the Committee variously enunciated, to refrain from actions that directly or indirectly result in the denial of the enjoyment of economic, social and cultural rights. The obligation to respect obliges Canada not to adopt, and to repeal laws and rescind policies, administrative measures and programmes that do not conform to the rights guaranteed by the *Covenant*. As this report amply demonstrates, Canada has failed to meet its obligation to respect the social and economic rights of African Canadians. In particular, Canada has continued to allow the existence of laws, policies, administrative measures and/or programmes that permit the racially motivated "streaming" of African Canadian students into non-academic programmes in schools; and the "Safe Schools" policies that disproportionately targets African Canadian children in Ontario schools - in direct violation of the right to education and non-discrimination, among others.

The obligation to protect, as the Committee has variously recognized, requires State parties to adopt or take appropriate legislative, administrative, budgetary, judicial and other measures to ensure the enjoyment of rights protected in the *Covenant*.⁹⁷ Canada's non-compliance with this obligation is evidently demonstrated in the unenforceability of the provisions of the *Covenant* and in the lack of effective remedies for violations of economic and social rights under the Canadian legal system. It is also evident in the absence of employment equity legislation in some provinces, including Ontario - the province with highest number of African Canadians.

⁹⁶ See *International Covenant on Economic, Social and Cultural Rights*, adopted 16 December 1966, entered into force 3 January 1976, G.A. Res. 2200A (XXI), UN Doc. A/6316 (1966), 993 UNTS 3, reprinted in (1967) 6 ILM 360, Articles 2, 3, 6-15. See also, the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/CN.4/1987/17, Annex, reprinted in (1987) 9 Human Rights Quarterly 122-135; the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, reprinted in (1998) 20 Human Rights Quarterly 691-705. See also, P. Alston & G. Quinn, "The Nature and Scope of States Parties Obligations under the International Covenant on Economic, Social and Cultural Rights" (1987) 9 Human Rights Quarterly 156 at 184-186.

⁹⁷ Committee on ESCR, General Comment No. 14 (2000), *The Right to the Highest Attainable Standard of Health*, E/C.12/2000/4, at para. 35; General Comment No. 16 (2005), para. 19. See also *Maastricht Guidelines*, supra note 96 at para. 6.

The final facet, the obligation to fulfill, requires States parties to take pro-active measures that enable and assist individuals and communities to enjoy the rights protected in the *Covenant*; and to directly provide for individuals or groups that are unable, for reasons beyond their control, to enjoy guaranteed rights. Canada's compliance with its obligation to fulfill has been grossly inadequate. As detailed in our report, as victims of disproportionately high unemployment and poverty rates, large numbers of African Canadians are poor, lack affordable adequate housing, and depend on social assistance that have been largely gutted or that have stagnated and mostly failed to keep pace with inflation. African Canadians who belong to this category have all but fallen through the holes in the social safety nets created or permitted by the state.

It has now become a common practice for Canada to plead its complex federal system and its inability to control provincial and territorial governments in answer to its failure to and demands that it fulfill its obligations under the *Covenant*. The Committee precisely noted this tendency in the Committee's concluding observations to Canada's Third Periodic Report.⁹⁸ This trend is also very much evident in Canada's Fifth Periodic Report. It is, however, a settled principle of international law that federal states are internationally responsible for acts of the federating units and other organs of state and that a state cannot invoke or plead its internal legislative arrangements or principles of municipal law, including its constitution in defence of or as a justification for its breach of international obligations or specific obligations under the *Covenant*.⁹⁹ Canada's internal constitutional arrangement does not excuse or justify the violation of the *Covenant* and should be rejected as a defence.

Although the pervasive violation of the economic and social rights of African Canadians is primarily rooted in historic and systemic anti-Black racism, it has been exacerbated by the systematic marginalization of economic and social rights in Canada's constitutional order – a constitutional order that privileges civil and political rights over social and economic rights. While the importance of enforceable socio-economic rights in a legal system as the only means of self-defence available to the socio-economically oppressed to reclaim their humanity

⁹⁸ See, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada* 10/14/1998, E/C.12/1/Add.31

⁹⁹ See Article 27 of the *Vienna Convention on the Law of Treaties* (1969) 8 I.L.M. 679, reprinted in (1969) 63 *American Journal of International Law* 875 - 903; *United Nations Headquarters Agreement case* (1988) ICJ Reports 12; *Norwegian Loans case* [France v. Norway] (1957) ICJ Reports 9 at 37; *Exchange of Greek and Turkish Population case* (1925) P.C.I.J. Reports, Series B. No. 10 at 20; *Free Zones of Upper Savoy and the District of Gex* (1932) P.C.I.J., Series A/B No. 46 at 167; Ian Brownlie, *Principles of Public International Law*, 6th edition, (Oxford: Oxford University Press, 2003) at 433; Human Rights Committee, *General Comment 31*, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 4.

has long been recognized,¹⁰⁰ in Canada, victims of social and economic rights violations have little or no legal remedy or any legal recourse to enforce their rights. Although a state party to the *Covenant*, Canada has yet to incorporate the *Covenant* into domestic law and social and economic rights are not directly legally enforceable. Socio-economic injustices are not recognized as violations of human rights. For the most part, these rights enjoy no express legal protection under the *Canadian Charter of Rights and Freedoms* or under any special or other legislation.

We believe that the issue of poverty or social inequality is not only an economic issue. It is also a human rights issue. A regime of legally enforceable socio-economic rights is imperative in order to end or ameliorate the social and economic violations described in this report. Such a regime is far more reliable and far less susceptible to official indifference and the prevailing political ideologies than a system that entirely depends on the goodwill of politicians with little understanding of what it means to be Black in Canada – as is presently the case. The civil and political rights and freedoms of African Canadians cannot be fully and adequately protected if their socio-economic rights are consistently neglected.

The Committee should:

Strongly condemn Canada for its failure to provide access to effective, legally enforceable remedies for violations of economic and social rights and urge Canada to immediately adopt legislative and other measures to make social and economic rights legally enforceable under the legal system.

Request Canada to fully comply with its obligation to respect, protect, and fulfill the economic and social rights of all without discrimination, including as to race and colour.

¹⁰⁰ See Shedrack C. Agbakwa, “Reclaiming Humanity: Economic, Social and Cultural Rights as the Cornerstone of African Human Rights” (2002) 5 Yale Human Rights & Development Law Journal 177 at 178; Rolf Kennemann, “A Coherent Approach to Human Rights (1995) 17 Human Rights Quarterly 323 at 332; Craig Scott & Patrick Macklem, “Constitutional Ropes of Sand or Justiciable Guarantees?: Social Rights in a New South African Constitution” (1992) 141 University of Pennsylvania Law Review 1 at 29.

V. SUMMARY OF RECOMMENDATIONS

1. The Committee should strongly condemn the disproportionately racialized violations of the right to an adequate standard of living and request that Canada take appropriate and effective measures to ensure an adequate standard of living for African Canadians.
2. The Committee should request Canada to establish a national housing program and strategy for meeting the affordable housing needs of African Canadian low income families, and racialized groups; and, to work with the provinces and territories to eliminate the long wait times for subsidized housing.
3. The Committee should request Canada to submit yearly interim reports and to fully report during its next periodic report on substantive measures specifically taken to provide an adequate standard of living and affordable adequate housing for African Canadians.
4. Canada should recognize the pernicious effects of anti-Black racism and take appropriate legislative and other proactive and practical measures, in consultation with the affected community, to end or ameliorate anti-Black racism and systemic discrimination in all aspects of society.
5. The Committee should request Canada to update the Committee in its next report on the specific substantive measures it has taken to end pervasive anti-Black racism and to ensure the rights of African Canadians to non-discrimination.
6. Canada should immediately adopt temporary special measures and implement permanent measures aimed at eliminating the racialized inequality between African Canadian women and men and non-Blacks with the aim of bringing disadvantaged and marginalized African Canadians at the same substantive levels of equality as non-Blacks.
7. The Committee should require Canada to provide yearly interim reports to the Committee of the temporary special and other proactive substantive measures it has adopted to eliminate the racialized inequality between Blacks and non-Blacks.
8. The Committee should condemn the entrenched systemic anti-Black racism in the workforce and the lack of commitment and leadership to pursue meaningful and substantive equity in employment or the

integration of visible minorities, including African Canadians in the Federal Public Service.

9. The Committee should re-emphasize Canada's responsibility to ensure equality of working opportunities for all and request Canada to prevail on provincial and territorial governments to enact meaningful Employment Equity legislation, where none exists and to ensure that such laws are vigorously enforced.
10. Canada should provide interim yearly reports and to report fully in its next periodic report specific measures taken to enhance and the progress made in the integration of African Canadians and other visible minorities into all sectors and levels of the federal and provincial workforce.
11. Canada should provide in its next periodic report specific and detailed data on the recruitment of African Canadians and other racialized groups into the Federal Public Service.
12. Canada should prevail on all provinces or territories still engaging in the claw back of the National Child Benefit Supplement from social assistance recipients to end this shameful practice.
13. Canada should establish a national minimum standard on social assistance and ensure that social assistance payments are boosted to reflect present socio-economic realities.
14. Canada should take adequate and effective measures to eliminate child poverty, and in particular, end the existing gap in child poverty rates between African Canadians and other families.
15. The Committee should strongly condemn the widespread racial profiling of African Canadians and request that Canada adopt broad and effective national measures to end racial profiling by law enforcement agencies.
16. Canada should work with community groups to find lasting solution to the problem of overrepresentation of African Canadians in the criminal justice system.
17. The Committee should request Canada to develop and implement coherent and comprehensive strategies and plans and commit resources to effectively address the mental health impacts of systemic racism and the issues of equity and access in the health care system for African Canadians.

18. The Committee should request Canada to ensure the repeal of the 'Safe Schools' provisions of the Ontario *Education Act* and to prevail on the province of Ontario to take all necessary measures to protect the rights of African Canadian children to education and to non-discrimination in educational opportunities.
19. The Committee should condemn the practice of streaming of African Canadian students in all schools and request Canada to take all appropriate measures to end the practice. Canada should be required to report on specific and general measures taken to end this practice in its next periodic report.
20. The Committee should strongly condemn Canada for its failure to provide access to effective, legally enforceable remedies for violations of economic and social rights and urge Canada to immediately adopt legislative and other measures to make social and economic rights legally enforceable under the legal system.
21. The Committee should request Canada to fully comply with its obligation to respect, protect, and fulfill the economic and social rights of all without discrimination, including as to race and colour.