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**AFRICAN CANADIAN LEGAL CLINIC**

**Canada's Forgotten Children: Written Submissions to the Committee on the Rights of the Child on the Third and Fourth Reports of Canada**

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## **PREFACE**

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.

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## 1. Introduction

The Committee on the Rights of the Child (the “Committee”) cannot adequately consider Canada’s compliance with the *Convention on the Rights of the Child* (the “Convention”) without paying specific attention to the lives and living conditions of Canada’s African descendant children and youth. African Canadians make up only 2.5% of the Canadian population. However, Canada’s “visible minority” population is younger than the rest of the Canadian population and African Canadians are the third largest “visible minority” group in Canada.<sup>1</sup> According to Statistics Canada, “visible minority” persons are overrepresented in all the youngest age groups and underrepresented in the older groups. This trend is expected to continue into 2017.<sup>2</sup>

Nearly half of the African Canadian population in Canada resides in Toronto. According to a study conducted by Michael Ornstein, African groups are the youngest in Toronto. Around 16% of Toronto’s continental African population is under the age of 6 and 25.5% are between 6 and 17, compared to 7.6 and 16.1% of the total population. In 2001, the mean age of the members of the continental African ethno-racial groups was 25.5 years, about 10 years less than the general population. The continental African groups have the largest proportions of young people, with around 20% under the age of 6 and 30% between the ages of 6 and 17. While the Eritrean, Ethiopian, Ghanaian and Nigerian groups are somewhat older, with a mean age of about 26 years, this is still ten years less than the average for the general population. More than 30% of the members of these four groups are under 18.<sup>3</sup>

The different age structure of the African Canadian community affects the needs and concerns of this community. For example, while the well-being and care of the elderly is much more a challenge for Western European and Southern European populations, for non-European groups, concern about the implications of population aging is years off, and care for children and young adults is much more a present concern.<sup>4</sup> Given the relative youth of Canada’s African descendant population, Canada’s compliance with the *Convention of the Rights of the Child* is of particular importance to this group.

Unfortunately, as will be demonstrated throughout this report, the experience of Canada’s African descendant children and youth is one of extreme marginalization and disadvantage; restricted access to housing and health care; racial profiling in policing, security and education; criminalization; overrepresentation in the criminal justice system; and disproportionate and extreme poverty. The alarming state of affairs faced by Canada’s African Canadian population contravenes a number of Canada’s obligations under the

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<sup>1</sup> Statistics Canada, *Canada's Ethnocultural Mosaic, 2006 Census: National picture, Visible minorities were younger than the total population* (Ottawa: Statistics Canada, 2010), Catalogue No. 97-562-XIE2006001, online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-562/p10-eng.cfm>.

<sup>2</sup> Statistics Canada, *Canada's Ethnocultural Mosaic, 2006 Census: National picture, Visible minorities were younger than the total population* (Ottawa: Statistics Canada, 2010), Catalogue No. 97-562-XIE2006001, online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-562/p10-eng.cfm>.

<sup>3</sup> Michael Ornstein, *Ethno-Racial Groups in Toronto, 1971-2001: A Demographic and Socio-Economic Profile*, (Toronto: York University, 2006), online: <[http://www.isr.yorku.ca/download/Ornstein-Ethno-Racial\\_Groups\\_in\\_Toronto\\_1971-2001.pdf](http://www.isr.yorku.ca/download/Ornstein-Ethno-Racial_Groups_in_Toronto_1971-2001.pdf)> at 22.

<sup>4</sup> Michael Ornstein, *Ethno-Racial Groups in Toronto, 1971-2001: A Demographic and Socio-Economic Profile*, (Toronto: York University, 2006), online: <[http://www.isr.yorku.ca/download/Ornstein-Ethno-Racial\\_Groups\\_in\\_Toronto\\_1971-2001.pdf](http://www.isr.yorku.ca/download/Ornstein-Ethno-Racial_Groups_in_Toronto_1971-2001.pdf)> at 32.

*Convention*. The consideration of Canada's third and fourth reports under the *Convention* during the Committee's 61<sup>st</sup> session presents an important opportunity to shine a light on the dire situation in which Canada's African Canadian children and youth continue to find themselves.

## 2. Anti-Black Racism in Canada: The Historical Context

In order to understand contemporary anti-Black racism in Canada, it is necessary to first understand its history. Canadians tend to downplay the role of slavery in our history. "Unlike the United States, where there is at least an admission of the fact that racism exists and has a history, in this country one is faced with a stupefying innocence."<sup>5</sup> Slavery, however, did exist in Canada from the 16th century until its abolition in 1834. During this time, persons fleeing from slavery in the United States found themselves either re-enslaved or living a discounted version of freedom. After slavery was abolished, African Canadians had to contend with *de facto* segregation in housing, schooling, and employment, and exclusion from public places such as theatres and restaurants.<sup>6</sup> These racist practices were reinforced by a justice system that often served to keep African Canadians "in their place."<sup>7</sup>



Despite their oppressed and enslaved status, African Canadians made significant contributions to early Canadian society. In the war of 1812, for example, African Canadians fought in the British army in defence of Canadian borders against the United States.<sup>8</sup> Similarly, in 1837, African Canadians assisted in quashing a rebellion in Upper Canada against the proposed unification of both Upper and Lower Canada by the British.<sup>9</sup> The contribution of African Canadians extended beyond

military support; Canadians of African descent were involved in politics, for example, where they helped join the province of British Columbia to the Federation of Canada,<sup>10</sup> and in education, where they established successful settlements and founded schools that provided education to children of all races.<sup>11</sup> These contributions, however, are all but absent from educational curricula and public discourse on the nation's history.<sup>12</sup>

<sup>5</sup> Dionne Brand, *Bread Out of Stone* (Toronto: Coach House Press, 1994).

<sup>6</sup> Robin Winks, *The Blacks In Canada: A History*, 2d ed., (Montreal: McGill-Queen's Press, 1997).

<sup>7</sup> *Christie v. York Corporation*, [1940] S.C.R. 139; *R. v. Desmond*, (1947) 20 M.P.R. 297 (N.S.S.C.); *Hill v. Camden and Zone*, 11 U.C.B.Q. 573 (Ont. Q.B.).

<sup>8</sup> Lawrence Hill, *Trials and Triumphs: The Story of African Canadians*, (Toronto: Umbrella Press, 1993) at 19, 20 and 53.

<sup>9</sup> Lawrence Hill, *Trials and Triumphs: The Story of African Canadians*, (Toronto: Umbrella Press, 1993) at 54.

<sup>10</sup> Lawrence Hill, *Trials and Triumphs: The Story of African Canadians*, (Toronto: Umbrella Press, 1993) at 41-42. Milfflin Wistar Gibbs was part of the Victoria City Council and played a role in encouraging British Columbia to become a part of Canada, which eventually happened in 1871.

<sup>11</sup> Lawrence Hill, *Trials and Triumphs: The Story of African Canadians*, (Toronto: Umbrella Press, 1993) at 22, 23 and 35. The Dawn settlement, Chatham, Ontario was established by Josiah Henson in the 1840s. Another prominent Black school, the Buxton Mission School in Ontario, was established in 1850.

<sup>12</sup> Four-Level Government/African Canadian Community Working Group, *Towards a New Beginning: The Report and Action Plan of the Four-Level Government/African Canadian Community Working Group* (Toronto: African Canadian Community Working Group, 1992) at 15: "The story of people of African origin in Canada is a long one, predating Confederation itself by more than two centuries. Yet few Canadians know of this story and fewer still are aware of the contributions which this ethnic minority group has made over these centuries to the development of Canadian society as we know it today. One tragic consequence of this ignorance is that it has denied Black Canadians the full measure of their own self-worth in the

Canada's refusal to accept its racist past and simultaneous failure to recognize the historical contributions of people of African descent is partly responsible for the perpetuation of contemporary anti-Black racism. Specifically, denying Canada's history of slavery, segregation and racial oppression means that the modern day socio-economic circumstances of Canada's Afro-descendant population cannot be placed in their proper historical context; at the same time, neglecting the numerous contributions of members of the African Canadian community leads to the portrayal of this community as "good-for-nothing." The "blame" for the disadvantaged position occupied by African Canadians is thus placed only on the shoulders of the African Canadian community itself.

Left without a reasonable historic explanation for the disadvantaged position occupied by the African Canadian community and any acknowledged record of African Canadian accomplishments, it is easy to explain the marginalized position of the African Canadian community by reverting to racist stereotypes (e.g. Afro-descendants as unintelligent, lazy, savage, overly aggressive and prone to anti-social or criminal behaviour).<sup>13</sup> This continuing legacy of Canada's racist past was acknowledged by Dr. Doudou Diène, the UN Special Rapporteur on Racism, upon his visit to Canada in 2004:

Canadian society is still affected by racism and racial discrimination. Because of its history, Canadian society, as in all the countries of North and South America, carries a heavy legacy of racial discrimination, which was the ideological prop of trans-Atlantic slavery and of the colonial system. The ideological aspect of this legacy has given rise to an intellectual mindset which, through education, literature, art and the different channels of thought and creativity, has profoundly and lastingly permeated the system of values, feelings, mentalities, perceptions and behaviours, and hence the country's culture.<sup>14</sup>

Racist stereotypes are the result but also the cause of racist practices. In the past, stereotypes of Black people were used to justify slavery and segregation.<sup>15</sup> Today, they provide the basis for discriminatory policies and practices such as over-policing of African Canadian communities, police brutality, disparities in sentencing, disproportionate discipline of African Canadian students, and failure to implement equitable policies to address disparities in employment, economics, and education.<sup>16</sup> These phenomena reveal a legislative, administrative and judicial focus on the perceived deviance of members of the African Canadian community and ignorance of their underlying socioeconomic and historic causes.

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way that other communities ... have been able to enjoy." See also TDSB, "Improving Success for Black Students: Questions and Answers," accessed January 13, 2012, online:

<http://www.tdsb.on.ca/site/viewItem.asp?siteid=9998&menuid=10863&pageid=9585>.

<sup>13</sup> Earl Hutchison, *The Assassination of the Black Male Image*, (New York: Touchstone, 1997); Esmeralda Thornhill, *Focus on Racism: Legal Perspectives From a Black Experience*, (Ottawa: National Judicial Institute, 1995) at 81, 83, 86, and 87; Frances Henry and Carol Tator, *Racist Discourse in Canada's English Print Media* (Toronto: The Canadian Race Relations Foundation, 2000).

<sup>14</sup> Doudou Diène, *Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance – Mission to Canada*, UNHRC, E/CN.4/2004/18/Add.2 (2004) at para. 68.

<sup>15</sup> Richard Delgado, ed., *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 1995) at 547-548; Frances Henry and Carol Tator, *Discourses of Domination: Racial Bias in the Canadian English-Language Press* (Toronto: University of Toronto Press, 2002) at 163-202.

<sup>16</sup> Ellis Cashmore, ed., *Out of Order? Policing Black Populations* (London: Routledge, 1991); Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Toronto: Ontario Human Rights Commission, 2005) at 18.

### 3. General Principles

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

In 2003, the Committee recommended that Canada continue to strengthen its legislative efforts to fully integrate the right to non-discrimination in all relevant legislation concerning children, and that this right be effectively applied in all political, judicial, administrative decisions, projects, programmes and services that have an impact on all children.<sup>17</sup> The Committee also encouraged Canada to work towards eliminating any possibility of disparity or discrimination in the implementation of the *Convention*.<sup>18</sup>

Canada's combined third and fourth reports do not address the serious questions of discrimination in services for children. As is explained below, African Canadian children and youth continue to experience discrimination in the areas of family environment and alternative care, basic health and welfare, education, and criminal justice. African Canadian children and youth are disproportionately represented in the number of children that are in state care; that are living at or below the poverty line; that drop out or are expelled or suspended from school; and that are charged or convicted under Canada's *Youth Criminal Justice Act*. Despite being a clear contravention of Articles 1 and 2 of the *Convention*, the disproportionate impact of Canada's federal and provincial legislation and policies on its African Canadian population continues to be ignored and overlooked.

Further, while it is well established and widely recognized that disaggregated race-based data is necessary for "effectively monitoring discrimination, identifying and removing systemic barriers, ameliorating historical disadvantage and promoting substantive equality,"<sup>19</sup> the Canadian government continues to refuse to collect and/or publish data.

The utility of disaggregated race-based data in the fight against discrimination has been recognized by, *inter alia*, the federal government in Canada's Action Plan Against Racism,<sup>20</sup> the Ontario Human Rights Commission,<sup>21</sup> and the Canadian Human Rights Commission.<sup>22</sup>

<sup>17</sup> 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. 22.

<sup>18</sup> Committee on the Rights of the Child, *Thirty-Fourth Session: Concluding Observations on Second Report of Canada*, CRC/C/15/Add.215 at para. 11.

<sup>19</sup> Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination*, (9 June 2005), online: <http://www.ohrc.on.ca/en/resources/Policies/RacismPolicy/pdf>.

<sup>20</sup> Government of Canada, *Canada's Action Plan Against Racism: A Canada For All*, (Ottawa: Government of Canada, 2005), online: <http://publications.gc.ca/collections/Collection/CH34-7-2005E.pdf> at 30.

<sup>21</sup> Ontario Human Rights Commission, *Policy and Guidelines on Racism and Racial Discrimination*, (9 June 2005), online: <http://www.ohrc.on.ca/en/resources/Policies/RacismPolicy/pdf> at 44-47. The Commission noted that in situations where the collection of data was clearly warranted: (1) a failure to do so may prevent an organization from putting forward a credible defence; (2) result in the commission relying on qualitative evidence to prove disproportionate representation; and (3) result in the commission seeking public interest remedies compelling data collection and analysis during litigation and during settlements.

<sup>22</sup> Canadian Human Rights Commission, *Human Rights Accountability in National Security Practices: A Special Report to Parliament*, (Ottawa: Canadian Human Rights Commission, 2011) at 10.

These and other agencies have recognized that if governments and community groups are unaware of the racial and ethnic make-up of its citizens, there is no way that appropriate policies and programmes to accommodate the needs of particular groups can be sought or implemented.



Despite this wide acknowledgement of the importance of disaggregated race-based data, in July 2010, the Conservative government of Canada decided to abolish the mandatory long-form census and replace it with a voluntary survey.<sup>23</sup> Canada's long-form census had long required that individual households answer a number of questions relating to, *inter alia*, racial and ethnic origin. The census in its revised form, however, 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.

Understanding what services are needed, where problems or opportunities arise, or how a region is changing depends on having accurate data. With respect to African Canadian youth, the collection and publication of disaggregated data is the first step in taking effective measures in the development of legislation and policies that target systemic racial disparities.<sup>24</sup> Contrary to Articles 1 and 2 of the *Convention*, the government's decision to abolish the long-form census will erode its ability to deliver social programs that are responsive to the specific needs of African Canadian youth and will lead instead to further marginalization.

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## RECOMMENDATIONS:

**Provide information on specific measures taken to reduce inequities affecting African Canadian children and youth at the national, provincial and territorial levels.<sup>25</sup>**

**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 Canadian children and youth.**

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<sup>23</sup> Janet Davidson, "Will new census capture clear picture of Canada?" *CBC News*, (5 May 2011), online: <http://www.cbc.ca/news/canada/story/2011/05/05/f-census-forms-information-gathered.html>. This is consistent with the federal government's general failure to collect disaggregated race-based data. See *Employment Equity Act* S.C. 1995, c. 44. Neither the statutory sections nor regulations require the collection of disaggregated data by race and ethnicity. The Act only requires the collection of data on four designated groups: 1. Women 2. Aboriginal Peoples; 3. Persons with Disabilities; 4. Members of Visible Minorities. There is no separation between minority groups.

<sup>24</sup> See Ontario Human Rights Commission, "Commission Settles Employment Case With Toronto District School Board" (10 November 2005), online: [http://www.ohrc.on.ca/english/news/e\\_bg\\_omoruyi-odin-settlement.shtml](http://www.ohrc.on.ca/english/news/e_bg_omoruyi-odin-settlement.shtml). In 2005, the Ontario Human Rights Commission settled a case with the Toronto District School Board ("TDSB"). The case concerned allegations of systemic racial discrimination against African Canadian teachers in the employment context. As part of the settlement the TDSB agreed to develop a survey and collect data on the number of racialized persons (disaggregated by race) who are in permanent and acting positions of responsibility for the school year of 2005-2006.

<sup>25</sup> Committee on the Rights of the Child, *Sixty-First Session: List of issues concerning additional and updated information related to the combined third and fourth periodic report of Canada*, CRC/C/CAN/Q/3-4 at 2.

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.

Provide in its next periodic report information on any data collection measures implemented and their results.

## 4. Family Environment and Alternative Care

### A) African Canadian Children in State Care

9. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

20.3. ... When considering [alternative state care], due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

In May 2012, Ontario's Minister of Child and Youth Services acknowledged that the province's child welfare system warranted review.<sup>26</sup> Almost 17,000 of Ontario's 3.1 million children are in the care of Children's Aid Societies. Of these children, the province of Ontario is legal guardian to more than 8,300 Crown wards who have been permanently removed from their parents. While 81 per cent of all Ontario youth graduate from high school, only 44 per cent of youth in care do so. Moreover, 43 per cent of homeless youth have been involved with the child welfare system; 68 per cent of homeless youth come from foster homes or group homes; and 82 per cent of children in child welfare have diagnosed special needs.<sup>27</sup> Simply put, the majority of children in state care in Canada do not fare well and require more attention and resources than has to date been given to them.

Troublingly, the little data that is available suggests that African Canadian children and youth are significantly overrepresented in the province's child welfare system. According to the Child Welfare Anti-Oppression Roundtable, an initiative which includes representation of almost half of the 52 child welfare agencies in Ontario, in the City of Toronto where African Canadians make up only 6.9% of the population,<sup>28</sup> African Canadian youth represent an overwhelming **65% of the children in care.**<sup>29</sup>



<sup>26</sup> Tralee Pearce, "Ontario urged to revamp foster care system," *The Globe and Mail* (14 May 2012), online: <http://www.theglobeandmail.com/life/parenting/ontario-urged-to-revamp-foster-care-system/article2432165/>.

<sup>27</sup> Laurie Monsebraaten, "Ontario's Youth Leaving Care hearings call for fundamental change to child welfare system" *The Toronto Star* (14 May 2012), online: <http://www.thestar.com/news/article/1177881-ontario-s-youth-leaving-care-hearings-call-for-fundamental-change-to-child-welfare-system>.

<sup>28</sup> Statistics Canada, *Canada's Ethnocultural Mosaic, 2006 Census: Canada's major census metropolitan areas, Toronto: Largest number of visible minorities in the country* (Ottawa: Statistics Canada, 2010), Catalogue No. 97-562-XIE2006001, online: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-562/p21-eng.cfm>.

<sup>29</sup> Gordon Pon et al, "Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare" (2011) 3 & 4 *International Journal of Child, Youth and Family Studies* 385 at 386.

This gross overrepresentation has been attributed to a number of factors. Academics, for example, have linked the disproportionate number of African Canadian children in state care to systemic racism and the role of the child welfare system as an “agent of colonization” and institutionalized assimilation.<sup>30</sup> This can be seen not only in the overrepresentation of African Canadian children and youth in state care but in the corresponding underrepresentation of African Canadian individuals in the child welfare work force. Despite the number of African Canadian children and youth in the country’s child welfare system,

the labour sector of child welfare services in Canada is strikingly and unquestionably the domain of primarily white women ... 94% of child welfare workers are white; 80% are female; 97% have English as their primary language; 70% are between the ages of 26 and 44; and only 2% are Indigenous.<sup>31</sup>

The alarming rate of apprehension of African Canadian children and youth has also been attributed to funding formulas that prioritize child removal over prevention, family preservation and support.<sup>32</sup> Reminiscent of the devastating federal funding of Aboriginal Residential Schools that paid churches on a per capita basis to house Aboriginal children removed from their families and communities, today’s funding structures continue to reward the apprehension of children. In *A New Approach to Funding Child Welfare in Ontario*, a report published in 2011 by the Commission to Promote Sustainable Child Welfare, for example, the Commission identified that this funding formula creates a “**perverse incentive**” for children’s aid societies (“CASs”) to maximize volumes of higher cost services (e.g. foster care) in order to ensure positioning for next year’s funding.<sup>33</sup>

Funding is tied to specific cost factors which in turn are tied to specific activities. Since the highest cost activities relate to supporting children in foster and group care, the current approach inadvertently rewards CASs that maintain “in care” volumes resulting in an inherent disincentive to find alternative lower cost avenues to support children and families.<sup>34</sup>

The current funding formula thus creates an incentive among provincial children’s aid societies to contravene Article 9 of the *Convention* and remove children from their homes even when it is not in their best interests to do so.

Given the socio-economic vulnerability of the African Canadian population, and the over monitoring that African Canadians are often subjected to due to pervasive stereotypes about

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<sup>30</sup> Gordon Pon et al, “Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare” (2011) 3 & 4 *International Journal of Child, Youth and Family Studies* 385 at 392.

<sup>31</sup> Gordon Pon et al, “Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare” (2011) 3 & 4 *International Journal of Child, Youth and Family Studies* 385 at 395.

<sup>32</sup> Gordon Pon et al, “Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare” (2011) 3 & 4 *International Journal of Child, Youth and Family Studies* 385 at 395.

<sup>33</sup> Commission to Promote Sustainable Child Welfare, *A New Approach to Funding Child Welfare in Ontario*, (Toronto: Commission to Promote Sustainable Child Welfare, 2011), online: <http://www.sustainingchildwelfare.ca/assets/Funding-Approach-CPSCW-Final-Report-final-version-Aug-17-2011.pdf> at 18.

<sup>34</sup> Commission to Promote Sustainable Child Welfare, *A New Approach to Funding Child Welfare in Ontario*, (Toronto: Commission to Promote Sustainable Child Welfare, 2011), online: <http://www.sustainingchildwelfare.ca/assets/Funding-Approach-CPSCW-Final-Report-final-version-Aug-17-2011.pdf> at 8-9. See also Gordon Pon et al, “Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare” (2011) 3 & 4 *International Journal of Child, Youth and Family Studies* 385 at 395.

their inherent aggression, criminality and lack of intelligence, it is not surprising that the cost of this “perverse incentive” is largely borne by African Canadian children and their families.

Studies from the United States in which African American children and youth suffer from similar levels of overrepresentation suggest that African Canadian children are more likely to be removed due to neglect than abuse. As such, class considerations, such as poverty, poor housing, and lack of access to health insurance, are central to understanding why some children are removed from their homes while others are not.<sup>35</sup> Further, while, when controlling for income, people of African descent are no more likely to abuse or neglect their children than other racial groups, they are more likely to be reported for abuse and neglect and are more likely to experience out-of-home placements.<sup>36</sup> Physicians are more likely to report parents of African descent for abuse or neglect than white parents even when the injuries are the same. Children of African descent are also more likely to receive additional tests and screenings in an effort to detect injury than their white counterparts even when the symptomatology is the same.<sup>37</sup>



Not only are African Canadian children removed from their families in circumstances where such action is likely unwarranted, reports to the ACLC suggest that they are not being placed in culturally appropriate familial settings. The province of Ontario has in place practices that are meant to increase the utilization of extended family and kin networks. According to the Ontario Association of Children's Aid Societies (“OACAS”), these options reduce the stress for children coming into care, maintain family and community ties, and increase the likelihood of the child's reunification with his/her primary family.<sup>38</sup>

For millennia, extended families and kin networks have cared for children whose parents are experiencing challenges or are in need of support. In addition, many African Canadians come from societies where the nuclear family is not the norm and where more importance is placed on the clan or the extended family.<sup>39</sup> Nonetheless, reports to the ACLC suggest that

<sup>35</sup> Eugene Lewit et al., “Children and Poverty: Analysis and Recommendations” (Summer/Fall 1997) Vol. 7 No. 2, *Children and Poverty: Analysis and Recommendations* 4.

<sup>36</sup> Michelle Y. Green, “Minorities as Majority: Disproportionality in Child Welfare and Juvenile Justice” (November/December 2002), *Children's Voice* 8, online: <<http://www.cwla.org/articles/cv0211minorities.htm>>.

<sup>37</sup> Wendy G. Lane et al., “Racial Differences in the Evaluation of Pediatric Fractures for Physical Abuse” (2002) Vol. 288 No. 13 *Journal of American Medical Association* 1603, online: <http://jama.jamanetwork.com/article.aspx?volume=288&issue=13&page=1603>.

<sup>38</sup> Ontario Association of Children's Aid Societies, “Kinship Service and Kinship Care: Backgrounder” (31 May 2012), online: <<http://www.oacas.org/childwelfare/changes/kinshipbackground.htm>>.

<sup>39</sup> Anne Staver, “Family reunification policies and diverse family life: a fraught relationship”, unpublished, online: <http://www.cpsa-acsp.ca/papers-2010/Staver.pdf> at 7; and Anne Staver, “Family Reunification: A Right for Forced Immigrants: Working Paper Series No. 51” *Refugee Studies Centre* (November 2008), online: [http://repository.forcedmigration.org/show\\_metadata.jsp?pid=fmo:5063](http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:5063) at 5 and 29. As an example, due to both conflict and AIDS, child-headed households and informal adoptions by extended family members are increasingly common in many African countries (e.g. Rwanda). Similarly, studies suggest that due to the complicated circumstances of the refugee experience (e.g. high mortality), family groupings are very often not nuclear but families of choice or circumstance. Finally, a study conducted on Somali immigrants in Denmark determined that 58% of Somalis given DNA testing by Danish authorities between January, 1997, and September, 1998, received a negative result. According to Somali community leaders, this was due to the differing conceptions of the family and misunderstandings among Somalis of the “Danish concept of who is a family member.”

extended family members and community members of African Canadian children in care are often dismissed outright as viable alternatives. As a result, African Canadian children are not only taken out of their immediate homes, they are also removed from their families, communities and cultures. This has serious cultural implications for African Canadians over and above non-racialized children and youth.

As acknowledged by the Supreme Court of Canada, “[r]ace can be a factor in determining the best interests of the child because it is connected to the culture, identity and emotional well-being of the child.”<sup>40</sup>

Culture is the essence of being human. Culture is the bridge that links the present with the past and the past with the future. Culture provides a sense of historical continuity. It is a protective device structured to eliminate trial and error in the past and the future. Culture is second nature. It is a person's values, beliefs, learnings [*sic.*], practices, and understandings that are passed on.<sup>41</sup>

Children of African descent learn about their identity from within the home and community.<sup>42</sup> African Canadian children that are removed from their homes, schools, religious institutions, friends, and families are thus disengaged from their cultural background and denied the opportunity for optimal development and functioning.

As suggested by academics in the context of the overrepresentation of Aboriginal children and youth in the Canadian child welfare system and African American children in the US child welfare system, this apparent disregard for continuity in the upbringing, and ethnic, religious, cultural and linguistic background of African Canadian children amounts to “institutionalized assimilation.”<sup>43</sup> It also amounts to a violation of Articles 9 and 20 of the *Convention*.

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## RECOMMENDATIONS:

Provide disaggregated race-based data on the number of children: (a) separated from their parents; (b) placed in institutions; (c) placed with foster families; (d) placed in kinship service or kinship care; and (e) adopted domestically or through inter-country adoptions.<sup>44</sup>

Examine the impact of class and poverty-related issues on rates of removal to ensure that children are not being removed from their homes simply due to poor housing or poverty, particularly if the parent(s) is/are willing to do what is necessary to change the situation.

Where poverty-based “neglect”, as opposed to “abuse,” is the reason for the involvement of the child welfare agency, provide the necessary supports to improve the family's socio-economic situation.

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<sup>40</sup> *Van de Perre v. Edwards*, [2001] 2 S.C.R. 1014 at para. 40.

<sup>41</sup> National Association of Black Social Workers, “Preserving African American Families” (Detroit: National Association of Black Social Workers, 1994) at 8.

<sup>42</sup> Paula Gomes and C. Aldrena Mabry “Negotiating the World: The Developmental Journey of African American Children” in Joyce Everett et al., eds., *Child Welfare Revisited: An Africentric Perspective* (New Jersey: Rutgers University Press, 2004).

<sup>43</sup> Gordon Pon et al, “Immediate Response: Addressing Anti-Native and Anti-Black Racism in Child Welfare” (2011) 3 & 4 *International Journal of Child, Youth and Family Studies* 385 at 392.

<sup>44</sup> Committee on the Rights of the Child, *Sixty-First Session: List of issues concerning additional and updated information related to the combined third and fourth periodic report of Canada*, CRC/C/CAN/Q/3-4 at 3.

Work together with African Canadian agencies and communities to ensure that African Canadian families are provided with adequate supports to keep children at home with their natural families and/or to ensure that if an African Canadian child must be removed, he or she is placed in culturally appropriate setting.

Implement policies that ensure that children who are placed in foster care or are adopted are placed in culturally appropriate familial settings in which they can maintain their language, culture and identity.

Amend Ontario's *Child and Family Services Act* to entitle African Canadians to provide, wherever possible, their own child and family services and provide services in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.

## 5. Basic Health and Welfare

### A) Poverty, Unemployment, and Underemployment

27.1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

27.2 The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

27.3 States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

In 2003, the Committee 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.<sup>45</sup>

While the percentage of children in low income families fell from 19% in 1996 to 13% in 2004,<sup>46</sup> during that same period of time, **the poverty rate among racialized families rose by 361%.**<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup>



<sup>45</sup> 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.

<sup>46</sup> Government of Canada, *Convention on the Rights of the Child: Third and Fourth Reports of Canada* (Ottawa: Government of Canada, 2009) at 3.

<sup>47</sup> 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](http://www.colourofpoverty.ca).

<sup>48</sup> 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>.

The unemployment rate for African Canadians has been reported at 74% higher than non-racialized Canadians.<sup>50</sup> 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.<sup>51</sup>

According to the 2006 Canadian census, the average employment income of full-year, full-time, Black workers was \$40,179 in 2005 while the average for all Canadian workers was over \$11,000 greater at \$51,221.1. Between 2000 and 2005, average real earnings of Black workers rose at a rate of 2.1 per cent compared to 5.5 per cent for all workers, resulting in a widening earnings gap.<sup>52</sup>

According to one study, while there are varying earnings differences for different ethnic groups, African Canadians experience the largest and most “striking” earnings gap.<sup>53</sup> This wage differential exists regardless of whether African Canadians are immigrants or Canadian-born,<sup>54</sup> and irrespective of their level of education.<sup>55</sup> Also, because this earnings gap has not diminished over the past two decades, the economic losses to African Canadian workers represent significant social losses across multiple generations of workers.<sup>56</sup>

According to Professor Grace-Edward Galabuzi,

Racial discrimination is a key determinant of opportunity for racialized youth in the labour market as well. General youth wages are 56.7% of other workers, 15.9% of whom are racialized youth and 41% are Canadian born. Despite higher educational attainment, they experience lower labour participation rates, lower than average incomes, and their unemployment rates are higher than average. This is especially true for black youth with almost twice the unemployment rates of all young workers.<sup>57</sup>

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<sup>49</sup> 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).

<sup>50</sup> 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.

<sup>51</sup> 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.

<sup>52</sup> Gervan Fearon and Steven Wald, “The Earnings Gap between Black and White Workers in Canada: Evidence from the 2006 Census” *Departement Des Relations Industrielles, Uniersitee Laval - ISSN 0034-379X - RI/IR*, 66-3, 2011, 324 at 324.

<sup>53</sup> 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.

<sup>54</sup> 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%.

<sup>55</sup> 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.

<sup>56</sup> Gervan Fearon and Steven Wald, “The Earnings Gap between Black and White Workers in Canada: Evidence from the 2006 Census” *Departement Des Relations Industrielles, Uniersitee Laval - ISSN 0034-379X - RI/IR*, 66-3, 2011, 324 at 341.

<sup>57</sup> Grace-Edward Galabuzi, *The Racialization of Poverty in Canada: Implications for Section 15 Charter Protection*, (Ottawa: The National Anti-Racism Council of Canada National Conference, 2005) at 14, online:

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. Amongst “visible minority” groups in Canada, survey evidence suggests that African Canadian workers may face the largest potential challenges in the labour market. In one study, it was revealed that between 10% and 38% of participants had “experienced unequivocal racial discrimination at work or in trying to obtain work” and that African Canadians were most likely to have experienced discrimination.<sup>58</sup> Similarly, in a 2002 study conducted by Statistics Canada, the highest rate of perceived discrimination was reported by African Canadians at 49.6% compared to the “visible minority” average of 35.9%.<sup>59</sup>

The significance of this economic discrimination is manifold. First, we cannot overlook the fact that **“children are poor because their parents are poor.”**<sup>60</sup> This is especially the case among those in lone parent led families. Second, the poverty that is caused by labour force discrimination, high unemployment, and low wages, manifests itself in a number of ways such as disproportionate rates of homelessness and poor housing, low rates of academic achievement, food insecurity, and health complications for African Canadian children and youth.

Racialized groups in Toronto, for example, have higher levels of homelessness and poor housing than non-racialized groups.<sup>61</sup> African Canadians in particular are more likely to live in, and to move into, neighbourhoods with lower socio-economic status.<sup>62</sup> The racialized enclaves in which African Canadians tend to find themselves “have above average levels of unemployment, low income, single parent households and school drop out rates – all characteristics of deep and enduring inter-generational poverty.”<sup>63</sup>

Young people living in these low income areas often struggle with alienation from their parents and community of origin, and from the broader society. Often the social services they need to cope with dislocation are lacking, the housing on offer is often sub-standard or if it is public housing it is largely poorly maintained because of cutbacks and they face the crises of unemployment, despair and violence. They are more likely to drop out of school and continue the cycle of poverty and because their alienation often

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<http://action.web.ca/home/narcc/attach/GEG-Section%2015%20Implications%20of%20Racialization%20of%20Poverty.pdf>.

<sup>58</sup> Jean Kunz, et.al., *Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income* (Toronto: Canadian Race Relations Foundation, 2000).

<sup>59</sup> Jeffrey Reitz and Rupa Banerjee, “Racial Inequality, Social Cohesion and Policy Issues in Canada” in Keith G. Banting et al. eds., *Belonging? Diversity, Recognition and Shared Citizenship in Canada* (Quebec: McGill-Queen's University Press, 2007), online: <http://www.irpp.org/books/archive/aots3/reitz.pdf>.

<sup>60</sup> Grace-Edward Galabuzi, “The Racialization of Poverty in Canada: Implications for Section 15 Charter Protection” *The National Anti-Racism Council of Canada National Conference Ottawa*, (November 10 -13, 2005) at 18-19, online:

<http://action.web.ca/home/narcc/attach/GEG-Section%2015%20Implications%20of%20Racialization%20of%20Poverty.pdf>.

<sup>61</sup> Colour of Poverty Campaign, “Fact Sheet #9: Understanding the Racialization of Poverty in Ontario in Housing and Homelessness in 2007”, online: [www.colourofpoverty.ca](http://www.colourofpoverty.ca).

<sup>62</sup> R. Alan Walks and Larry Bourne, “Ghettos in Canadian Cities? Racial segregation, ethnic enclaves and poverty concentration in Canadian urban areas” (2006) 50(3) *The Canadian Geographer* 273 at 279, online: <http://neighbourhoodchange.ca/wp-content/uploads/2011/06/Walks-Bourne-2006-Ghettos-in-Canadas-Cities.pdf>.

<sup>63</sup> Grace-Edward Galabuzi, “The Racialization of Poverty in Canada: Implications for Section 15 Charter Protection” *The National Anti-Racism Council of Canada National Conference Ottawa*, (November 10 -13, 2005) at 23, online:

<http://action.web.ca/home/narcc/attach/GEG-Section%2015%20Implications%20of%20Racialization%20of%20Poverty.pdf>.

translates into anti-social behaviour, they are disproportionate targets of contact with the criminal justice system.<sup>64</sup>

Studies also show that children from lower-income households tend to be less prepared for learning and formal schooling. This lack of readiness can result in low academic achievement and grade attainment. In one study, it was revealed that children who were living in the deepest poverty scored the worst on vocabulary tests at three to four years of age, and on reading and math tests at four to six years of age and seven to eight years of age. This difference in academic achievement persists through adolescence. By the adolescent years, lack of initial school success is associated with lower levels of educational attainment and literacy, and higher rates of school dropout.<sup>65</sup> This perpetuates the cycle of poverty.

Because African Canadians are disproportionately poor, it stands to reason that they are also more likely to have trouble providing sufficient or healthy food for their families. As recently reported by Olivier De Schutter, the UN Special Rapporteur on the Right to Food, the levels of social assistance benefits and minimum wage do not provide income to afford the



rising costs of basic necessities, including food and housing. In 2007/2008, approximately 7.7% of households in Canada reported experiencing moderate or severe food insecurity; approximately 1.92 million people in Canada, aged 12 or older, lived in food insecure households; and a staggering 1 in 10 families, 10.8%, with at least one child under the age of six were food insecure.<sup>66</sup>

Finally, as a result of anti-Black discrimination in the workforce and the poverty that stems from it, African Canadian

children and youth are also more likely to suffer from the numerous health consequences that are caused by living in impoverished circumstances. On average children living in low-income families or neighbourhoods have poorer health outcomes. In 1996, for example, Canada's infant mortality rate in the lowest-income urban neighbourhoods was 66% higher

<sup>64</sup> Grace-Edward Galabuzi, "The Racialization of Poverty in Canada: Implications for Section 15 Charter Protection" *The National Anti-Racism Council of Canada National Conference Ottawa*, (November 10 -13, 2005) at 23, online:

<http://action.web.ca/home/narcc/attach/GEG-Section%2015%20Implications%20of%20Racialization%20of%20Poverty.pdf>.

<sup>65</sup> Rita Paul Gupta et al., "The Impact of Poverty on the Current and Future Health Status of Children", (2007) Vol 12 No. 8 *Paediatric Child Health* 667 at 669-670.

<sup>66</sup> Olivier De Schutter, Special Rapporteur on the right to food: Visit to Canada from 6 to 16 May 2012 - End-of-mission statement, online: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12159&LangID=E>>.

than in the highest-income urban neighbourhoods.<sup>67</sup> Similarly, the low birth weight rate was 40% higher in Canada's lowest income urban neighbourhoods than in the highest income urban neighbourhoods. Babies born with a low birth weight are at increased risk of dying in the first year of life, have higher rates of re-hospitalization, childhood illnesses, neurological problems, developmental problems and health-related limitations.<sup>68</sup> Children from low-income families are also at higher risk of asthma due in part to housing quality and exposure to environmental pollutants (e.g., cockroach allergen).<sup>69</sup> In addition, Canadian children in low-income families are more likely to have emotional and behavioural problems than other children. For instance, children from low-income families exhibit high levels of indirect aggression, emotional disorder-anxiety, hyperactivity, and physical aggression.<sup>70</sup>

There is increasing evidence that children's early experiences with poverty also affect their health as adults. In addition to experiencing higher rates of adult mortality, children from economically disadvantaged backgrounds have poorer adult health in a number of areas, including physical disability, clinical depression, premature death, cardiovascular disease, non-insulin dependent diabetes, high blood pressure, obstructive lung disease, high blood cholesterol and renal damage.<sup>71</sup>

Thus, among the consequences of anti-Black discrimination against African Canadian adult workers is that African Canadian children and youth experience a growing sense of marginalization and social disconnectedness, increased rates of poverty, inadequate housing, food insecurity, and prolonged health consequences.<sup>72</sup> This is a clear contravention of Articles 27 and 1.

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#### RECOMMENDATIONS:

Reduce poverty among African Canadian children and youth 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;
- implementing policies that require companies and governments to report on their performance in addressing wage discrimination and occupational segregation within their organizations;

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<sup>67</sup> Rita Paul Gupta et al., "The Impact of Poverty on the Current and Future Health Status of Children", (2007) Vol 12 No. 8 *Paediatric Child Health* 667 at 668.

<sup>68</sup> Rita Paul Gupta et al., "The Impact of Poverty on the Current and Future Health Status of Children", (2007) Vol 12 No. 8 *Paediatric Child Health* 667 at 668.

<sup>69</sup> Rita Paul Gupta et al., "The Impact of Poverty on the Current and Future Health Status of Children", (2007) Vol 12 No. 8 *Paediatric Child Health* 667 at 668.

<sup>70</sup> Rita Paul Gupta et al., "The Impact of Poverty on the Current and Future Health Status of Children", (2007) Vol 12 No. 8 *Paediatric Child Health* 667 at 669.

<sup>71</sup> Rita Paul Gupta et al., "The Impact of Poverty on the Current and Future Health Status of Children", (2007) Vol 12 No. 8 *Paediatric Child Health* 667 at 670.

<sup>72</sup> Gervan Fearon and Steven Wald, "The Earnings Gap between Black and White Workers in Canada: Evidence from the 2006 Census" *Departement Des Relations Industrielles, Uniersitee Laval - ISSN 0034-379X - RI/IR*, 66-3, 2011, 324 at 342.

- increasing the levels of full child benefits to a minimum of \$5,400 (indexed to inflation);
- increasing the federal minimum wage to \$11 per hour so as to ensure an income that is sufficient to address the rising costs of basic necessities, including food and housing.

## 6. Education, Leisure and Cultural Activities

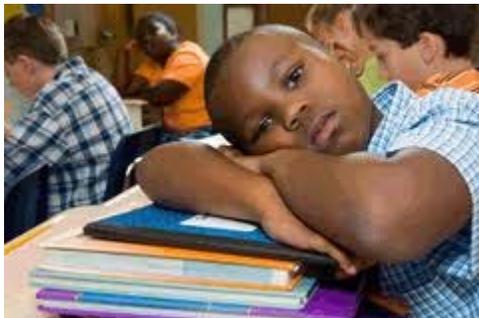
28.1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

...

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

28.2 States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

Canada continues to fail in its duty to protect the rights of African Canadian students. As an example, serving more than 250,000 students each year, the Toronto District School Board ("TDSB") is the largest school board in Canada and the fourth largest in North America. Recent research done by the TDSB found a 40 per cent drop-out rate among African Canadian students.<sup>73</sup> This is significantly higher than the average drop-out rate which is approximately 25 per cent.<sup>74</sup> The high drop-out rate, and related high failure and expulsion rates of African Canadian students, is not new. In fact, the *Every Student Survey Reports* (1970-1993) of the former Toronto School Board have consistently shown that African Canadian students do not do as well academically as their non-African Canadian counterparts.



The alarmingly high drop-out rates and low rates of success of African Canadian students can be partly attributed to the disproportionate application of disciplinary policies.<sup>75</sup> The *Safe Schools Act*, in force from 2001 to 2008, forced masses of students out of school. In 2002-2003, for example, the number of students suspended in Ontario spiked to 157,436 – an increase of almost 50,000 from two years earlier.<sup>76</sup> These students were disproportionately racialized and from poor neighbourhoods with significant African Canadian populations. In 2003, for

<sup>73</sup> Toronto District School Board, *Improving Success for Black Students: Questions and Answers*, online:

<http://www.tdsb.on.ca/site/viewItem.asp?siteid=9998&menuid=10863&pageid=9585>.

<sup>74</sup> Madhavi Acharya and Tom Yew, "Waiting for Superman: A Warning for Canada" *The Toronto Star* (12 September 2010), online: [www.thestar.com/printarticle/859942](http://www.thestar.com/printarticle/859942).

<sup>75</sup> Martin Ruck and Scot Wortley, "Racial and Ethnic Minority High School Students' Perceptions of School Disciplinary Practices: A Look at Some Canadian Findings" (2002) Vol. 31 No. 3 *Journal of Youth and Adolescence* 185 at 186.

<sup>76</sup> Jim Rankin, "Suspended Sentences: Forging a School-to-Prison Pipeline?" *The Toronto Star* (6 June 2009), online: <http://www.thestar.com/news/gta/article/646629> [Suspended Sentences].

example, a school board trustee interviewed for a report to the Ontario Human Rights Commission on school discipline and discrimination, stated:

In the school year 2002-2003, which is not yet ended, at the three high schools I represent as a trustee there is the following situation. [At the first school] there have been 131 suspensions. [The second school] has 145 suspensions. [The third school] has 65. This is only what is recorded. Almost all of them are Black or visible minority students.<sup>77</sup>

In 2007, as a result of a human rights complaint which argued that zero-tolerance policies had a disproportionate impact on racial-minority students and students with disabilities, the Ontario Ministry of Education agreed to end its zero-tolerance approach.<sup>78</sup> The provincial government introduced *Bill 212–The Education Amendment Act* which, *inter alia*, pressured school boards to reduce suspensions and expulsions by requiring principals to implement a progressive discipline approach and consider mitigating circumstances before imposing disciplinary measures, and provided \$44 million to hire psychologists and social workers and to set up alternative programs for suspended and expelled students.

### A) The School to Prison Pipeline

Canadian schools do not compile disciplinary statistics by race or ethnicity. As such, there is no quantitative evidence with which to measure the efficacy of Bill 212. Independent reports to the ACLC suggest however that African Canadian students continue to be disproportionately targeted for discipline.

The short and long-term problems associated with these types of prolonged absences from school are well known. In the short-term, exclusionary discipline practices reduce opportunities to learn, and lead to grade repetition and disengagement from learning and school. In the long-term, students who are expelled or suspended are more likely to drop out, commit crimes, and be incarcerated.<sup>79</sup>



With respect to dropouts, a number of American studies have shown that suspension is a moderate to strong predictor of a student dropping out and that suspension and expulsion are one of the top three school-related reasons for dropping out.<sup>80</sup> Further,

<sup>77</sup> Ken Bhattacharjee, *The Ontario Safe Schools Act: School Discipline and Discrimination* (Toronto: Ontario Human Rights Commission, 2003) at 28.

<sup>78</sup> Ontario Human Rights Commission, "Backgrounder - Human Rights Settlement Reached with Toronto District School Board", online: <http://www.ohrc.on.ca/en/resources/news/Nov142005Backgrounder>.

<sup>79</sup> American Psychological Association Zero Tolerance Task Force, "Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations" (2008), Vol. 63 No. 9 *American Psychologist* 852-862, online:

<http://www.apa.org/pubs/info/reports/zero-tolerance.pdf>; Tony Fabelo et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (New York: Council of State Governments Justice Center, 2011); Russell Skiba et al., *Suspended Education: Urban Middle Schools in Crisis*, (Montgomery: Southern Poverty Law Center, 2010); The Civil Rights Project, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline*, (Washington: The Civil Rights Project, 2000); David Osher et al., "Issues of Cultural and Linguistic Competency and Disproportionate Representation" in R. Ruthford et al., eds., *Handbook of Research in Behavioral Disorders*, (New York: Guilford Publications, 2004).

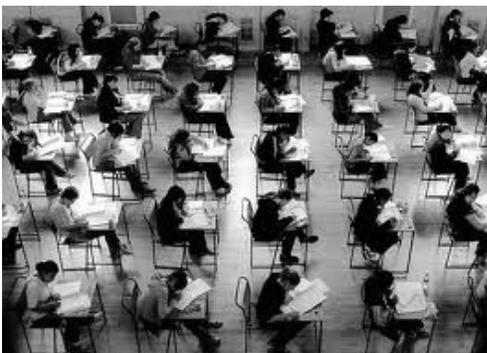
<sup>80</sup> Ken Bhattacharjee, *The Ontario Safe Schools Act: School Discipline and Discrimination* (Toronto: Ontario Human Rights Commission, 2003) at 57; and L.M. DeRidder, "How Suspension and Expulsion Contributes to Dropping Out," (February 1991) *The Education Digest*.

[t]here [is] a correlation between the schools with high drop out rates and the proportion of Black and socially and economically disadvantaged students. If those students are being disproportionately impacted by suspension and expulsion, then the correlation is that the disproportionate drop-out rate for those groups will become even worse.<sup>81</sup>

Disproportionate rates of discipline also lead to what is commonly referred to as the “school to prison pipeline.” According to this theory, those students who are disciplined are more likely to drop out, and those students who drop out are more likely to turn to criminality. As an example, in 2009, a *Toronto Star* analysis found that Toronto schools with the highest suspension rates tended to be in parts of the city that also had the highest rates of provincial incarceration.<sup>82</sup> As another example, recent figures show that more than 70% of Canadian inmates did not complete high school.<sup>83</sup> Despite the amendments introduced by Bill 212, reports suggest that African Canadian students continue to be disproportionately targeted for school discipline. As such, it is no surprise that they continue to leave school and enter the prison system at such alarming rates.

## B) Separate and Unequal Education

The legislative changes introduced by Bill 212 also appear to have failed in other ways. First, under the new legislation, school boards must ensure that students have the opportunity to continue their education by offering alternative programs for all students that are removed from school for a period of more than five school days. However, many students are denied the opportunity to participate. Reports suggest that only half of suspended students actually participate in alternative programming.<sup>84</sup> In the experience of the ACLC, this is due in large part to the fact that parents and students are not fully advised of the programs, resources and services available to them. Also, many students do not meet the threshold qualification of having been suspended for more than five days; rather, they receive multiple suspensions throughout the year, for less than five days at a time. The cumulative effect of these absences is equally damaging on students.<sup>85</sup>



Second, recent reports indicate that Toronto principals are finding loopholes to get rid of problem students and circumventing legislation designed to have the opposite effect. Some suspensions, meant to be brief, are lasting months. In the experience of the ACLC, this is largely because school administrators are quick to contact the police for minor infractions which results in the imposition of police and court conditions that not only lead to

<sup>81</sup> Ken Bhattacharjee, *The Ontario Safe Schools Act: School Discipline and Discrimination* (Toronto: Ontario Human Rights Commission, 2003) at 57.

<sup>82</sup> *Toronto Star*, “School, Interrupted” online: <http://www3.thestar.com/static/Flash/education/map.html>>.

<sup>83</sup> Jim Rankin, “Suspended Sentences: Forging a School-to-Prison Pipeline?” *The Toronto Star* (6 June 2009), online: <http://www.thestar.com/news/gta/article/646629>.

<sup>84</sup> Jim Rankin, “Suspended Sentences: Forging a School-to-Prison Pipeline?” *The Toronto Star* (6 June 2009), online: <http://www.thestar.com/news/gta/article/646629>.

<sup>85</sup> Sandro Contenta and Jim Rankin, “Are Schools Too Quick to Suspend?” *The Toronto Star* (8 June 2009), online: <http://www.thestar.com/printarticle/647102>.

criminalization but prevent students from coming within a certain distance of their school, often for a period of months. Also, while students that are formally expelled are permitted to return to regular school upon the achievement of behavioural and academic criteria set by their principals, academic conditions are often set so high that students are effectively barred for the rest of their high school years.<sup>86</sup> Between February 2008 and April 2009, for example, only 29 per cent of students who participated in a TDSB expulsion program returned to regular schools.<sup>87</sup>

Finally, there are 33 alternative programs for expelled and suspended students run by the TDSB. Because African Canadian students continue to be disproportionately suspended and expelled,<sup>88</sup> the students at these alternative schools are also disproportionately African Canadian.<sup>89</sup> The quality of education at these alternative schools, however, is questionable. As an example, in some cases, the school day is only three and a half hours long, compared to a regular six-hour school day.<sup>90</sup> Further, students from schools where they study eight courses for the whole year can be sent to expulsion programs where they can study only four courses per semester, virtually assuring failure in at least four courses.<sup>91</sup> The result is that a large number of African Canadian students are receiving an education that is separate and unequal.

### C) Afrocentric Schools

29.1. States Parties agree that the education of the child shall be directed to:

...

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

In 2003, the Committee recommended that Canada ensure that free quality primary education that is sensitive to the cultural identity of every child is available and accessible to all children.<sup>92</sup>

The importance of providing culturally reflective education goes beyond the preservation and celebration of cultural identity. It is also an important factor in ensuring the academic success of marginalized children and youth. In 2009, the Toronto District School Board responded to the mass disengagement and drop-out of African Canadian students by establishing an Afrocentric school for students from kindergarten to Grade 5.

<sup>86</sup> Jim Rankin, "Suspended Sentences: Forging a School-to-Prison Pipeline?" *The Toronto Star* (6 June 2009), online: <http://www.thestar.com/news/gta/article/646629>.

<sup>87</sup> Jim Rankin, "Suspended Sentences: Forging a School-to-Prison Pipeline?" *The Toronto Star* (6 June 2009), online: <http://www.thestar.com/news/gta/article/646629>.

<sup>88</sup> TDSB, "Improving Success for Black Students: Questions and Answers," accessed January 13, 2012, online: <http://www.tdsb.on.ca/site/viewItem.asp?siteid=9998&menuid=10863&pageid=9585>.

<sup>89</sup> See also Sandro Contenta and Jim Rankin, "Expulsion Class Gives Students Another Chance," *The Toronto Star* (7 June 2009), online: <http://www.thestar.com/printarticle/646865>.

<sup>90</sup> Sandro Contenta and Jim Rankin, "Expulsion Class Gives Students Another Chance," *The Toronto Star* (7 June 2009), online: <http://www.thestar.com/printarticle/646865>.

<sup>91</sup> Jim Rankin, "Suspended Sentences: Forging a School-to-Prison Pipeline?" *The Toronto Star* (6 June 2009), online: <http://www.thestar.com/news/gta/article/646629>.

<sup>92</sup> 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. 45.



The creation of the school was the result of pressure from the African Canadian community and reports that suggested that African Canadian underachievement was linked to systemic racism in education as manifested in the ideologies, structures, policies and practices of the education system. School curricula neglect African Canadian heritage, cultures, religions, and contributions to Canadian society as one of Canada's four founding peoples; and teachers, principals and school councils do not reflect the ethno-racial composition of the student body.

It is important to note that while the school uses the sources of knowledge and experiences of peoples of African descent as an integral feature of the teaching and learning environment and has attracted mostly African Canadian students and teachers, it is open to students and staff of all races.

The students at the Afrocentric school have experienced great academic success. Children from a demographic that sees 4 in 10 of their race drop out of Toronto high schools, took the province-wide standardized tests and scored well above average.<sup>93</sup> They scored higher than both the board and provincial average in the areas of reading, writing and math. The Afrocentric school has been such a success that in 2011, the Toronto District School Board trustees approved the city's second Afrocentric school, this time for high school students.<sup>94</sup>

The success of the Afrocentric school is encouraging but, more than that, it suggests that the mainstream school system is in need of serious review. In order to ensure the academic success of African Canadian students, school curricula must become more inclusive, and school staff must become more racially and culturally representative. Direct action is needed to address the alarmingly high suspension, expulsion and drop-out rates. Otherwise, **African Canadian students will continue to be marginalized and excluded and the "school-to-prison pipeline" will continue to feed Black youth into correctional institutions.**

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#### RECOMMENDATIONS:

Collect, publish and analyze statistics on the race of all students being suspended and expelled with the goal of addressing any inequities that may exist in the application of suspensions and expulsions.

Adopt specific measures to address the disproportionately high drop out rate of African Canadian students in the Toronto District School Board.

Ameliorate the serious problem of disproportionate rates of discipline against African Canadian students by requiring that, when dealing with African Canadian students, administrators first consider all available sanctions other than suspension and expulsion.

Adopt in-school suspensions and similar disciplinary measures that minimize the amount of time that students are out of school and the numerous negative consequences that stem from prolonged absences.

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<sup>93</sup> Royson James, "Afrocentric school's legacy of success must graduate to high school" *Toronto Star* (14 November 2011), online: <<http://www.thestar.com/printarticle/1086907>>.

<sup>94</sup> *CBC News*, "Toronto approves 2nd Afrocentric school" (17 November 2011), online: <<http://www.cbc.ca/news/canada/toronto/story/2011/11/17/toronto>>.

Take steps to ensure that the alternative programs created under the Ontario *Education Act* provide full and equal access to education for African Canadian students or, in the alternative, ensure that the non-academic supports provided to students in alternative programs are provided while behaviourally-challenged students are still in regular classes as a preventative measure.

Ensure the speedy return to mainstream education of suspended and/or expelled students whether or not they have been subject to criminal charges and/or custodial sentences.

Adopt measures, including culturally reflective education (e.g. expanding the number of Afrocentric schools and/or programs), and increased diversity among teaching staff, to increase the academic engagement, reduce the drop-out rate and decrease the disproportionate discipline of African Canadian students.

## 7. Special Protection Measures

### A) Disproportionate Rates of Incarceration

37. States Parties shall ensure that:

...

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

40.3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

...

- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

In the *General Comment No. 10 – Children's Rights in Juvenile Justice*, the Committee noted that states parties must take "all necessary measures to ensure that all children in conflict with the law are treated equally" and that

[p]articular attention must be paid to *de facto* discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as ... children belonging to racial, ethnic, religious or linguistic minorities ...<sup>95</sup>

In addition, in 2005, the CERD released its *General Recommendation No. 31 - Prevention of Discrimination in the Administration and Functioning of the Criminal Justice System*.<sup>96</sup> In that document, the Committee recognized that the number and percentage of persons belonging to particular groups who are held in prison or preventive detention is a possible

<sup>95</sup> Committee on the Rights of the Child, *General Comment No. 10: Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10 at para. 6.

<sup>96</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No. 31: The prevention of racial discrimination in the administration and functioning of the criminal justice system*, A/60/18.

indicator of racial discrimination.<sup>97</sup> The Committee also recognized the handing down by courts of harsher or inappropriate sentences against persons belonging to racialized groups as a possible indicator of racial discrimination.<sup>98</sup> Finally, in *General Recommendation No. 34 - Racial discrimination against people of African descent*, the CERD urged states to ensure that measures taken in the fight against crimes do not discriminate in purpose or effect on the grounds of race and colour.<sup>99</sup>

The overrepresentation of African Canadians in provincial and federal 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.<sup>100</sup> This alarming increase occurred during a period when the national crime rate was at its lowest level since 1973, continuing a 20-year decline.<sup>101</sup>

While there is no disaggregated race-based data available on the number of African Canadians in Canada's juvenile correctional facilities, there is evidence to suggest, that African Canadian youth are being handed custodial sentences at similarly disparate rates. In 1992/93, for example, African Canadians made up 13% of the 16 and 17 years old admitted into Ontario prisons – the second largest group of admissions that year.<sup>102</sup> Also, according to ACLC staff who are based in four youth courts in the Greater Toronto Area, and deliver programming at the Roy McMurtry Centre – the province's largest youth facility – the vast majority of youth that appear before Ontario's youth courts and are housed in the youth correctional facilities are African Canadian.



This overrepresentation of African Canadians can be largely attributed to a criminal justice system that is racially biased at almost every step. Racial discrimination by Canadian police, legal professionals, courts, jurors, and prisons is well documented.<sup>103</sup> 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.<sup>104</sup>

A Toronto-based study of 248 Youth Bureau files, for example, revealed that African Canadian youth are overrepresented among young persons whose charges are initiated solely by the

<sup>97</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No. 31: The prevention of racial discrimination in the administration and functioning of the criminal justice system*, A/60/18 at para. 1(e).

<sup>98</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No. 31: The prevention of racial discrimination in the administration and functioning of the criminal justice system*, A/60/18 at para. 1(f).

<sup>99</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No. 34: Racial discrimination against people of African descent*, 3 October 2011, CERD/C/GC/34 at para. 38.

<sup>100</sup> 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>.

<sup>101</sup> 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](http://www.huffingtonpost.ca/2011/07/21/crime-rate-continues-to-fall-statscan_n_905649.html).

<sup>102</sup> Margaret Gittens et al., *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, (Toronto: Queen's Printer for Ontario, 1995) at 84.

<sup>103</sup> Frances Henry et al., *The Colour of Democracy: Racism in Canadian Society* (Toronto: Harcourt Brace); and Nelson, C.A. *Out of Sync-Reflections on the Culture of Diversity in Private Practice* (Toronto: York University, 1995) at 199-205.

<sup>104</sup> Julian Roberts & Anthony N. Doob, "Race, Ethnicity and Criminal Justice in Canada" (1997) 21 *Crime and Justice* 469 at i to xi.

police rather than in response to a complaint; 52% for African Canadian youth as compared with 29% for white youth.<sup>105</sup> Studies also show that African Canadian youth receive more severe outcomes than Aboriginal and white youth with similar backgrounds and legal records.<sup>106</sup>

Due to a serious lack of transparency, the data that is available on the representation of African Canadian youth in the Canadian criminal justice system is either unavailable or terribly outdated. Nonetheless, anecdotal evidence and the limited data that is available suggests that in contravention of Article 37(b) and *General Comment No. 10*, African Canadian youth continue to experience anti-Black discrimination in the criminal justice system and be overrepresented in correctional facilities.

## B) Racial Profiling

In February 2010, the *Toronto Star* newspaper published a series of reports on racial profiling by the Toronto Police Service in which it examined data captured on police contact cards in mostly non-criminal encounters with the public.<sup>107</sup> The articles were a follow-up to the *Toronto Star's* 2002 series on race, policing and crime in Toronto in which the newspaper discovered that African Canadians in Toronto were subject to racial profiling and harsher treatment with respect to arrests, stops, searches, and release.<sup>108</sup>

The *Toronto Star* articles revealed that despite a change in police chiefs, a tripling in the number of minority officers in the service over the last 17 years, significant improvements in the number of “visible minorities” in higher ranks, an acknowledgement by the Toronto Police Services that racial bias is a factor in police decisions, and an attempt to deal with racial profiling through training,<sup>109</sup>

- If you are African Canadian and you do something wrong – use illegal drugs, drive without car insurance – your chances of getting caught are much greater than your white counterpart;

<sup>105</sup> Margaret Gittens et al., *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, (Toronto: Queen's Printer for Ontario, 1995) at 185.

<sup>106</sup> Michael J. Leiber, “A Comparison of Juvenile Court Outcomes for Native Americans, African Americans and Whites,” (1994) 11(2) *Justice Quarterly* 257.

<sup>107</sup> Jim Rankin, “Race Matters: Blacks documented by police at high rate,” *The Toronto Star* (6 February 2010), online: <http://www.thestar.com/specialsections/raceandcrime/article/761343-race-matters-blacks-documented-by-police-at-high-rate>; Royson James, “Change trickles slowly to the streets,” *The Toronto Star* (6 February 2010), online: <http://www.thestar.com/news/article/761503-james-change-trickles-slowly-to-the-streets>; Jim Rankin, “Police ponder how to best to collect race data,” *The Toronto Star* (15 February 2010), online: <http://www.thestar.com/specialsections/raceandcrime/article/765605-police-ponder-how-best-to-collect-race-data>; Jim Rankin, “Story behind the numbers” *The Toronto Star* (6 February 2010), online: <http://www.thestar.com/specialsections/raceandcrime/article/761069-story-behind-the-numbers>; and Toronto Star, “The Chief on race, crime, and policing” (6 February 2010), online: <http://www.thestar.com/specialsections/raceandcrime/article/761112-the-chief-on-race-crime-and-policing> [*Race Matters* 2010].

<sup>108</sup> Jim Rankin, “Singled Out,” *The Toronto Star* (19 October 2002); Jim Rankin, “The Story Behind The Numbers”, *The Toronto Star* (19 October 2002); and Jim Rankin, “Police Target Black Drivers, Star Analysis of Traffic Data Suggests Racial Profiling” *The Toronto Star* (20 October 2002). These results were independently reviewed and validated. Factors such as age, criminal history and employment were taken into account. See *Toronto Star*, “Star's Race Profiling Series Valid, Board Told York U. Professor Explains Analysis”, December 11, 2002; Michael Friendly, *Analysis of Toronto Police Data Base*, (York University, 2003).

<sup>109</sup> *Race Matters* 2010.

- Although African Canadians make up 8.4 per cent of Toronto's population, they account for three times as many contacts with police;
- African Canadian males aged 15-24 are stopped and documented 2.5 times more than white males the same age; and
- Differences between African Canadian and white carding rates are highest in more affluent, mostly white areas of the city, indicating the presence of the "out-of-place" phenomenon.<sup>110</sup>

The consequences of this misconduct are manifold. First, as the first point of contact, the racial inequities in police enforcement contribute to the disproportionate numbers of African Canadian youth being investigated and prosecuted.<sup>111</sup> According to the Commission on Systemic Racism in the Ontario Justice System, "[e]nforcement practices, rather than offending behaviours are key" to explaining the over-representation of African Canadians among prison admissions.<sup>112</sup> If African Canadians are systematically stopped and searched more frequently by the police, they are also more likely to be detected and arrested for illegal activity than white people who engage in exactly the same behaviour.<sup>113</sup>



Second, the "collateral damage" associated with disproportionate police interactions can include economic hardship, social stigmatization, childhood trauma and underdevelopment, family dissolution, and poor physical and mental health.<sup>114</sup> These social and psychological consequences of racial profiling have been extensively documented.<sup>115</sup> African Canadians – particularly young black men – live in constant fear of enduring the humiliation of being targeted by police for no apparent reason other than the colour of their skin. They feel the

<sup>110</sup> *Race Matters* 2010.

<sup>111</sup> 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.

<sup>112</sup> Faisal Mirza, "Mandatory Minimum Prison Sentencing and Systemic Racism" (2001) 30 *Osgoode Law Journal* 491 at para. 20; Scot Wortley, *Bias Free Policing: The Kingston Police Data Collection – Final Report* (Toronto: Centre of Criminology, University of Toronto, 2005), at 73 and 75; and Margaret Gittens et al., *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, (Toronto: Queen's Printer for Ontario, 1995) at 99. In 1992, in the wake of the "Yonge Street Riots", the Ontario government established the Commission on Systemic Racism in the Ontario Criminal Justice System. The Commission studied all facets of criminal justice and, in December 1995, issued a 450 page report with recommendations. To date, this is the most comprehensive report on the issue of systemic racism in Ontario's criminal justice system.

<sup>113</sup> Scot Wortley and Akwasi Owusu-Bempah, "Unequal Before the Law: Immigrant and Racial Minority Perceptions of the Canadian Criminal Justice System" (2009) 10 *Int. Migration & Integration* 447-473.

<sup>114</sup> M. Pinard, "Collateral consequences of Criminal Convictions: Confronting Issues of Race and Dignity" (2010) 85(2) *New York University Law Review* 457-534; Bruce Western and Christopher Wildeman, "The Black Family and Mass Incarceration," (2009) 621 *Annals of the American Academy of Political and Social Science* 221-242; Holly Foster and John Hagan, "The Mass Incarceration of Parents in America: Issues of Race/Ethnicity, Collateral Damage to Children, and Prisoner Reentry" (2009) 623 *Annals of the American Academy of Political and Social Science* 179-194; and D. Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*, (Chicago: University Chicago Press, 2009).

<sup>115</sup> Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Toronto: Ontario Human Rights Commission, 2005); David Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*, (New York: The New Press, 2003); David Tanovich, *The Colour of Justice: Policing Race in Canada*, (Toronto: Irwin Law, 2006); Frances Henry and Carol Tator, *Racial Profiling in Canada: Challenging The Myth of 'A Few Bad Apples'*, (Toronto: University of Toronto Press, 2006); and Ben Bowling and Leanne Weber, "Stop and search in global context Introduction" (2011) 21(4) *Policing and Society* 53.

need “to be protected from” the individuals that are supposed to be the protectors of society.<sup>116</sup> Racial profiling thus divests African Canadian children and youth of a sense of citizenship and belonging within their country and respective communities. This violation of the right to live free from discrimination diminishes the human dignity of African Canadians.

Canada continues to bury its head in the sand, hoping that racial profiling will correct itself. It will not. Rather, what is needed is a serious government strategy at the provincial and federal levels aimed at eradicating this racist practice and its impact.

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#### RECOMMENDATIONS:

**Implement a nationwide mandatory disaggregated race-based data collection policy, and collect disaggregated data on police stops, searches, arrests, and releases in order to identify the rates at which African Canadian children and youth interact with the criminal justice system.**

**Provide in its next periodic report, information on any data collection measures implemented and their results with specific regard to African Canadian children and youth.**

**Develop an effective action plan towards eliminating the disparity in rates of sentencing and incarceration of African Canadian children and youth, including such things as sentencing reforms and training on anti-Black racism for members of the police, Crown prosecutors, and members of the judiciary.**

**Establish rules, regulations or protocols which enhance equal treatment of child offenders and train all professionals involved in the administration of juvenile justice on their anti-discrimination obligations under the *Convention*.**<sup>117</sup>

**Inform the Committee on how the recent amendments made to the *Youth Criminal Justice Act* pursuant to Bill C-10 are consistent with Canada's international obligations under the *Convention*.**<sup>118</sup>

**Adopt national and provincial measures, including legislation and external complaint mechanisms, to end racial profiling by law enforcement and national security agencies.**

**Conduct an extensive study of systemic anti-Black racism and the overrepresentation of African Canadian children and youth in the criminal justice system.**

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## 8. Summary of Recommendations

1. Provide information on specific measures taken to reduce inequities affecting African Canadian children and youth at the national, provincial and territorial levels.
2. 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 Canadian children and youth.

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<sup>116</sup> Ontario Human Rights Commission, *Paying the Price: The Human Cost of Racial Profiling* (Toronto: Ontario Human Rights Commission, 2005) at 24 and 25.

<sup>117</sup> Committee on the Rights of the Child, *General Comment No. 10: Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10 at para. 6.

<sup>118</sup> Committee on the Rights of the Child, *Sixty-First Session: List of issues concerning additional and updated information related to the combined third and fourth periodic report of Canada*, CRC/C/CAN/Q/3-4 at 2.

3. 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.
4. Provide in its next periodic report information on any data collection measures implemented and their results.
5. Provide disaggregated race-based data on the number of children: (a) separated from their parents; (b) placed in institutions; (c) placed with foster families; (d) placed in kinship service or kinship care; and (e) adopted domestically or through inter-country adoptions.
6. Examine the impact of class and poverty-related issues on rates of removal to ensure that children are not being removed from their homes simply due to poor housing or poverty, particularly if the parent(s) is/are willing to do what is necessary to change the situation.
7. Where poverty-based “neglect”, as opposed to “abuse,” is the reason for the involvement of the child welfare agency, provide the necessary supports to improve the family’s socio-economic situation.
8. Work together with African Canadian agencies and communities to ensure that African Canadian families are provided with adequate supports to keep children at home with their natural families and/or to ensure that if an African Canadian child must be removed, he or she is placed in culturally appropriate setting.
9. Implement policies that ensure that children who are placed in foster care or are adopted are placed in culturally appropriate familial settings in which they can maintain their language, culture and identity.
10. Amend Ontario’s Child and Family Services Act to entitle African Canadians to provide, wherever possible, their own child and family services and provide services in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.
11. Reduce poverty among African Canadian children and youth by:
  - a. implementing policies to address wage discrimination against African Canadian workers and ensuring that workers are earning equal pay within the same occupations;
  - b. 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;
  - c. implementing policies that require companies and governments to report on their performance in addressing wage discrimination and occupational segregation within their organizations;
  - d. increasing the levels of full child benefits to a minimum of \$5,400 (indexed to inflation);

- e. increasing the federal minimum wage to \$11 per hour so as to ensure an income that is sufficient to address the rising costs of basic necessities, including food and housing.
12. Collect, publish and analyze statistics on the race of all students being suspended and expelled with the goal of addressing any inequities that may exist in the application of suspensions and expulsions.
13. Adopt specific measures to address the disproportionately high drop out rate of African Canadian students in the Toronto District School Board.
14. Adopt in-school suspensions and similar disciplinary measures that minimize the amount of time that students are out of school and the numerous negative consequences that stem from prolonged absences.
15. Ameliorate the serious problem of disproportionate rates of discipline against African Canadian students by requiring that, when dealing with African Canadian students, administrators first consider all available sanctions other than suspension and expulsion.
16. Take steps to ensure that the alternative programs created under the Ontario Education Act provide full and equal access to education for African Canadian students or, in the alternative, ensure that the non-academic supports provided to students in alternative programs are provided while behaviourally-challenged students are still in regular classes as a preventative measure.
17. Ensure the speedy return to mainstream education of suspended and/or expelled students whether or not they have been subject to criminal charges and/or custodial sentences.
18. Adopt measures, including culturally reflective education (e.g. expanding the number of Afrocentric schools and/or programs), increased diversity among teaching staff, and diversity training, to increase the academic engagement, reduce the drop-out rate and decrease the disproportionate discipline of African Canadian students.
19. Implement a nationwide mandatory disaggregated race-based data collection policy, and collect disaggregated data on police stops, searches, arrests, and releases in order to identify the rates at which African Canadian children and youth interact with the criminal justice system.
20. Provide in its next periodic report, information on any data collection measures implemented and their results with specific regard to African Canadian children and youth.
21. Develop an effective action plan towards eliminating the disparity in rates of sentencing and incarceration of African Canadian children and youth, including such things as sentencing reforms and training on anti-Black racism for members of the police, Crown prosecutors, and members of the judiciary.
22. Establish rules, regulations or protocols which enhance equal treatment of child offenders and train all professionals involved in the administration of juvenile justice on their anti-discrimination obligations under the Convention.

23. Inform the Committee on how the recent amendments made to the Youth Criminal Justice Act pursuant to Bill C-10 are consistent with Canada's international obligations under the Convention.
24. Adopt national and provincial measures, including legislation and external complaint mechanisms, to end racial profiling by law enforcement and national security agencies.
25. Conduct an extensive study of systemic anti-Black racism and the overrepresentation of African Canadian children and youth in the criminal justice system.