

SUBMISSIONS TO THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD) – CONSULTATION WITH CIVIL SOCIETY

By

COLOUR OF POVERTY CAMPAIGN/COLOUR OF CHANGE NETWORK

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INTRODUCTION

Colour of Poverty Campaign/Colour of Change Network (COP-COC) is a community initiative based in the province of Ontario, Canada, which is made up of individuals and organizations working to build community-based capacity to address the growing racialization of poverty and the resulting increased levels of social exclusion and marginalization of racialized communities across Ontario.

COP-COC welcomes the invitation of the Committee on the Elimination of Racial Discrimination (CERD) to participate in its consultation with civil society organizations engaged in addressing issues of racial discrimination all over the world.

QUESTION 1: What are the key challenges and issues of racial discrimination in your country/region today and how do you work to address them?

In terms of demographics, the racial diversity of Canada's (referring to people of colour and Indigenous peoples) has increased over time. In the 1980s, racialized groups accounted for less than 5% of the total Canadian population. In contrast, a 2011 national census found 19.1% of the total Canadian population, or 6,284,800 people, were racialized.¹ The three largest racialized groups were South Asian, Chinese, and Black Canadians.² The percentage of racialized Canadians is expected to grow to 30.6% of the population by 2031.³

Despite the increasing numbers of racialized peoples in Canada, we are seeing increasing racial inequalities across the board: including (but not limited to) growing racialization of poverty, growing economic disparities, racialized health and education disparities, and over-criminalization of Canadians of African descent and Indigenous peoples. The vast majority of new immigrants to Canada, as well as the majority of refugees (a much smaller number in comparison, but significant nevertheless) also come from the Global South and are much more likely to be racialized.⁴ New immigration laws and regulations which restrict the rights of groups such as temporary foreign workers and immigrants and refugees thus also have a disproportionate effect on racialized groups.

Growing Racialization of Poverty and Economic Inequalities

¹ Tina Chui, *Immigration and Ethnocultural Diversity in Canada*, 2016, online: Statistics Canada <<https://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-010-x/99-010-x2011001-eng.cfm>>.

² *Ibid.*

³ Douglas Quan, "Have Canada's changing demographics made it time to retire the concept of 'visibility minority'?", *National Post*, June 27, 2014.

⁴ Sheila Block & Grace-Edward Galabuzi, *Canada's Colour Coded Labour Market: The Gap for Racialized Workers*, (Toronto: Wellesley Institute, March 2011) at 6, online: <http://www.wellesleyinstitute.com/wp-content/uploads/2011/03/Colour_Coded_Labour_MarketFINAL.pdf>.

The increasing racial diversity of the Canadian population has been accompanied by a highly disturbing trend: the increasing racialization of poverty. For example, between 1981 and 2000, the poverty rate among non-racialized communities in Toronto (the largest city in Canada) **dropped by 28%**, whereas over the same time period, poverty rate among racialized communities **increased by 361%**.⁵

The last available long form census data from 2006 indicates that despite higher levels of labour force participation rates, racialized workers experience higher unemployment rates – 2.4 percentage points higher than non-racialized Canadians.⁶ Even when racialized Canadians do get jobs, they are much more likely to be insecure, temporary, and low-paying.

In addition, there are severe earnings gaps between racialized and non-racialized workers. On average, racialized Canadians earned 81.4% of what non-racialized Canadians earned.⁷ When controlling for age and education, the pay gap becomes even more pronounced – racialized men earned 68.7% of what non-racialized men earned while racialized women (reflecting the intersection of the gender pay gap) earned only 48.7% of non-racialized male earnings.⁸

Furthermore, these persistent racial earnings gaps cannot be explained by the immigrant settlement process – it persists for second generation Canadians as well. For example, second generation racialized men, controlling for age and education, earned 75.6% of non-racialized male earnings, while second generation racialized women earned only 56.5%.⁹ So while the colour coded gap narrows slightly, it remains extremely wide and concerning.

As a result of these job market disparities, there is also growing racialization of poverty in Canada. Poverty rates for racialized families are three times higher than for non-racialized families. In 2005, 19.8% of racialized families lived in poverty, compared to 6.4% of non-racialized families.¹⁰

Racialized immigrant families are disproportionately affected by restrictive family reunification rules that deny reunification of extended family structures which provide physical, emotional, and financial support. For example, the Canadian government implements a quota of 10,000 on the number of parents and grandparents who can be sponsored to immigrate to Canada. This quota is usually completely filled a few days after opening. Furthermore, low and lower-middle class Canadians are completely barred from reuniting with their parents due to extremely onerous minimum income requirements.¹¹ The inability of immigrant families to rely on contributions from grandparents such as emotional support and childcare reduces the ability and opportunity of immigrant women to enter the workforce and upgrade their own skills.

Overcriminalization of Black Canadians and Indigenous Peoples

⁵ United Way of Greater Toronto & The Canadian Council on Social Development, *Poverty by Postal Code*, (April 2004) at 49, online: United Way <<http://www.unitedwaytyr.com/document.doc?id=59>>.

⁶ *Block & Galabuzi*, *supra* note 4 at 7.

⁷ *Ibid* at 11.

⁸ *Ibid* at 12.

⁹ *Ibid* at 4.

¹⁰ *Ibid* at 5.

¹¹ The Minimum Necessary Income requirement for sponsorship can be found in the *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 133(1)(j)(i)(b) and states that a sponsor must have “a total income that is at least equal to the minimum necessary income, plus 30%, for each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application”.

As a whole, the criminal justice system in Canada disproportionately affects Black and Indigenous communities. Federally, in 2013, Black inmates represented 9.5% of the federal prison population, but less than 3% of the overall Canadian population. Aboriginal people represent a staggering 23% of federal inmates yet comprise 4.3% of the total Canadian population. One-in-three women under federal sentence are Aboriginal.¹²

The reasons for these enormous rates of prison overrepresentation ultimately stem from racial discrimination, poverty, lack of opportunity, social isolation, family challenges and unemployment, among other factors.

Certain discriminatory police policies also contribute to the overrepresentation of these groups in Canadian jails. For example, the widespread police practice of carding individuals (a practice in which police officers stop, question, and document interactions with individuals without arresting them, but simultaneously maintaining a database of personal information) puts certain racialized communities at risk of racial profiling.

In Toronto, while the Black population accounts for just 8.1 percent of the population, it accounts for 27.4 percent of all carding contacts, ultimately leading to a perpetuation of racial stereotyping in arrests and prosecutions all the way down the criminal justice pipeline.¹³

Criminalization of Immigrants and Refugees and Poor Treatment of Temporary Foreign Workers

In the past few years, Canada has moved towards a greater level of integration between criminal law and immigration law – which some commentators have dubbed ‘cimmigration’. Several government bills, including Bills C-24, C-31, and C-43, have imposed wide ranging changes to Canada’s immigration and refugee system which have made it easier for the government to revoke citizenship and permanent residency status. These changes have also reduced procedural rights for refugees and immigrants facing revocation and deportation and has also raised the spectre of double jeopardy for Canadian permanent residents who have already served a criminal sentence but then are further detained and punished through immigration and citizenship laws because of their initial criminality.¹⁴

Canada’s immigration detention system has been found to be offside many international human rights norms, which have been well documented by other UN review committees. Most egregiously, the current immigration detention regime allows for individuals, including children and the mentally ill, to be detained under administrative detention for an unlimited period of time.

Furthermore, under section 20.1(1) of the *Immigration and Refugee Protection Act*, the primary immigration and refugee legislation in Canada, any migrant and asylum-seeker designated as an

¹² Ivan Zinger, *The Changing Face of Canada’s Prisons: Correctional Investigator Reports on Ethno-Cultural Diversity in Corrections*, November 26, 2013, online: Office of the Correctional Investigator <<http://www.oci-bec.gc.ca/cnt/comm/press/press20131126-eng.aspx>>.

¹³ Jim Rankin & Patty Winsa, “Carding drops but proportion of blacks stopped by Toronto police rises”, *Toronto Star*, July 26, 2014, online: <https://www.thestar.com/news/insight/2014/07/26/carding_drops_but_proportion_of_blacks_stopped_by_toronto_police_rises.html>.

¹⁴ Bill C-24, *Strengthening Canadian Citizenship Act*, 2d Sess, 41 Parl, 2014; Bill C-31, *An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures*, 2d Sess, 41 Parl, 2014; Bill C-43, *A second Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures*, 2d Sess, 41 Parl, 2014.

“irregular arrival” would be subject to mandatory detention until the asylum-seeker’s status is established, and would not enjoy the same rights as those who arrive “regularly”. Again, these issues disproportionately affect racialized communities because the vast majority of refugees and new immigrants to Canada are people of colour.

Migrant workers in Canada, who come predominantly from the Global South, are also vulnerable to abuse and human rights violations. Migrant workers often lack access to information and face language barriers. They may be isolated, particularly if they are agricultural or food processing workers.

Migrant workers in the low-skilled streams are particularly vulnerable due to their temporary status, their dependence on a single employer for their work permit, housing, and food, and gaps in the enforcement of contracts and of the rules and regulations of the Temporary Foreign Worker Program (TFWP) and Seasonal Agricultural Worker Program (SAWP). These circumstances create a huge power imbalance between the employer and the worker, creating opportunity for abuse.¹⁵

In addition, lack of avenues to obtain permanent residency for the vast majority of low-skilled temporary foreign workers and seasonal agricultural workers means that these workers are kept in a perpetual cycle of precarity and exploitation without hope to obtain full recognition of their rights under the law.

Increase in Frequency of Hate Crimes and Hate Speech

Over the past several years, Canada has seen a rise in Islamophobia, driven by public discourse by elected officials. For example, in 2015, prominent members of the previous Federal government pledged as part of their election campaign to set up a police hotline to report ‘barbaric cultural practices’.¹⁶

Canada has seen a corresponding increase in the number of hate crimes against Muslims over this time. For example, Canadian police forces recorded 99 religiously motivated hate crimes against Muslim Canadians in 2014 – up 120% from 45 recorded in 2012.¹⁷ Racially motivated hate crimes directed against Black Canadians also remains concerningly common as there were 238 reported crimes in Canada in 2014.¹⁸ Hate crimes reported generally include harassment, assaults, arson, threats, mischief, and public incitement of hatred.

Our Work and Challenges in Addressing Racial Discrimination

What We Do

In order to combat growing race based inequalities and persistent systemic racism and discrimination, COP-COC has been actively engaged in both community based development and advocacy at the municipal, provincial, federal, and international levels.

For example, COP-COC has consistently pushed for employment equity legislation, the collection of disaggregated race-based data at all levels of government, and the creation and implementation of racial

¹⁵ Canadian Council for Refugees, *Migrant workers: precarious and unsupported: A Canada-wide Study on Access to Services for Migrant Workers*, March 2016, online: <http://ccrweb.ca/sites/ccrweb.ca/files/migrant_workers-national.pdf>.

¹⁶ John Barber, “Canada’s Conservatives vow to create ‘barbaric cultural practices’ hotline”, *The Guardian*, October 2, 2015, online: <<https://www.theguardian.com/world/2015/oct/02/canada-conservatives-barbaric-cultural-practices-hotline>>.

¹⁷ Anna Mehler Paperny, “Hate crimes against Muslim-Canadians more than doubled in 3 years”, *Global News*, April 13, 2016, online: <<http://globalnews.ca/news/2634032/hate-crimes-against-muslim-canadians-more-than-doubled-in-3-years/>>.

¹⁸ *Ibid.*

equity policies and frameworks in areas including healthcare, immigration, criminal justice, and education.

We also call for a revitalization of Canada's Action Plan Against Racism (CAPAR) which came out of the 2001 World Conference against Racism in Durban and was adopted by the Canadian government in 2005. This plan remains essentially unimplemented.

Unwillingness to Identify and Discuss Racial Discrimination

There are myriad challenges in attempting to address the problems of racial discrimination and injustice in Canada. The primary challenge stems from the overarching idea that racism in Canada does not exist, the lack of recognition or awareness including among decision-makers of structural and systemic racism, or that it is no longer a problem that requires additional resources to deal with. Because of this widespread assumption, which is largely left unchallenged in the public sphere, many people, including important decision makers, are wilfully blind to racism and often refuse to acknowledge its existence or entertain a discussion on it, particularly for peoples of colour.

In the current political climate, there is now a small window of opportunity to talk about the issue of racism as it affects Indigenous peoples, partly as a result of the work of Truth and Reconciliation Commission (TRC). However, there has not been any real follow up action from the TRC Call to Action and there remains a lack of any effective implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in Canada.

Lack of Awareness of Human Rights among Racialized Communities

Often times when certain racialized communities, particularly those with large populations of new immigrants are discriminated against because of race, they may not be aware that their human rights are being violated, or what protections are available to them to resolve instances of alleged racial discrimination. This problem is exacerbated by the next challenge: lack of funding support for groups which advocate for and provide services to racialized communities.

Lack of Funding Support for Racialized Community Organizations

The last several years have seen significant funding cutbacks for community organizations and for advocacy work., which has resulted in a yawning gap within Canadian civil society in addressing and combatting racism. Few organizations are engaged in anti-racism work. Organizations involved in social and economic justice advocacy – such as poverty reduction – typically do not use an anti-racism lens, which results in issues of racism not being addressed in that work. As a result the work to understand, name and counter structural and systemic racism is done by few organizations, and suffers disproportionately from a lack of resources. Many community agencies and community legal clinics which serve racialized communities lack the resources to pursue human rights protections for their clients and are forced to refer them out to private legal professions.

Unfortunately, the majority of individuals in these racialized communities lack the resources and knowledge to hire private legal professionals to combat racial discrimination, nor do they have the knowledge and skills necessary to navigate the human rights protection system themselves. For example, we see cases where human rights complaints based on racial discrimination are rejected not based on merit, but based on barriers to understanding and complying with complex evidentiary

requirements and procedural rules. Thus, on both a service provision and advocacy level, increasing funding support for communities assisting racialized communities is critical in addressing racial discrimination.

Proper funding for organizations tackling the issue of systemic racism is particularly important in Canada given the fact that many mainstream NGOs are not engaged in the discussion of racism, while many NGOs from racialized communities often do not have resources or opportunities to present at UN Committees and other international political fora.

QUESTION 2: What has been your experience, as civil society, of engaging with CERD to date?

On the very rare occasions that COP-COC and its constituent organizations have been able to attend the CERD meeting in Geneva, Switzerland, those experiences have generally been positive and productive.

However, due to limited funding, most NGOs representing racialized communities are limited to providing written submissions only and therefore cannot engage directly in face to face meetings with, and oral submissions to, members of the CERD. Unlike larger mainstream NGOs with more resources, who attend UN meetings regularly and have frequent contact with UN human rights offices, most NGOs representing racialized communities are unfamiliar with UN processes and do not have ‘insider’ information that certain mainstream NGOs possess.

For example, much of the information regarding procedure, information on committee members, country experts, and detailed schedules and agendas cannot be found online. It has been our experience that this information is inaccessible to all but a small cohort of ‘insiders’ in civil society, thus ensuring that the UN committee review process remains opaque.

While the Canadian Government rarely, if ever, implements the recommendations made by CERD and other UN bodies in their concluding observations, it is still important and helpful for NGOs to engage with the CERD and other UN Committees, to raise awareness around the issue of racism in Canada, and to hold the Canadian Government accountable through naming and shaming.

On an individual level, due to the lack of effective voice because of barriers NGOs representing racialized communities face in advocating at the international level, these community members’ engagement with the CERD is practically non-existent.

QUESTION 3: How can the CERD improve and enhance its engagement with civil society, and its work on racial discrimination for greater impact on the ground?

In terms of effective lobbying, currently only a select group of NGOs who have long standing relationships with UN human rights offices, and/or have permanent offices in Geneva, can maintain frequent contact with CERD and other UN committees. However, it is our view that these NGOs, with a few limited exceptions, are not necessarily representative of grassroots communities, and specifically in the case of CERD, are often not representative of the racialized communities.

Recommendations for Change:

- Democratize the UN committee process: provide more public facing information about the Committee online (e.g. membership and composition, country experts, contact information for members and experts, detailed agendas, FAQs, practice guides, etc.);
- Task Member States with the responsibility to implement country specific recommendations and use assessment tools to monitor and report on implementation of past recommendations;
- Create a more robust database to include NGOs who work domestically on the issue of racism in Canada and other countries and actively keep these NGOs informed of any upcoming meetings/review;
- Provide public educational materials (such as written materials or video clips) about the UN Committee process and specifically the CERD process;
- Coordinate and partner with NGOs to leverage media exposure at relevant and appropriate moments to maximize the political impact of the CERD committee's findings/reports on domestic government implementation;
- Create a system that facilitates communications between individual racialized community members and CERD through local NGOs, thereby allowing individual voices and stories to be heard, thus maximizing the impact of CERD's work on the ground and in individuals' lives.

COPC Steering Committee Members:

Access Alliance Multicultural Health & Community Services
 African Canadian Legal Clinic
 Canadian Arab Federation
 Chinese Canadian National Council Toronto Chapter
 Council of Agencies Serving South Asians
 Hispanic Development Council
 Karuna Community Services
 Mennonite New Life Centre of Toronto
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