Expert Mechanism on the Advancement of Racial Justice and Equality in Law Enforcement

Office of the High Commissioner for Human Rights

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## **Call for inputs: Justice, accountability and redress**

**Written Submission of Bout du Monde**

**To the International Independent Expert Mechanism to advance racial justice and equality in the context of law enforcement**

Pursuant to paragraph 15 of the Human Rights Council [resolution 47/21](https://undocs.org/A/HRC/RES/47/21), the International Independent Expert Mechanism to advance racial justice and equality in the context of law enforcement (the Expert Mechanism) will present its third annual report at the fifty-seventh session of the Human Rights Council (9 September-9 October 2024), and subsequently transmit it to the General Assembly.

In its upcoming report, the Expert Mechanism will explore its mandate in paragraph 11(g) and (h) of resolution 47/21, to advance racial justice and equality in the context of law enforcement globally and to contribute to accountability and redress for victims inter alia by **“Making recommendations on the concrete steps needed to ensure access to justice, accountability and redress for excessive use of force and other human rights violations by law enforcement officials against Africans and people of African descent, including independent and well-resourced mechanisms to support victims of human rights violations by law enforcement officials, their families and communities”** and by **“Monitoring the implementation of recommendations on ending impunity for violations by law enforcement officials emanating from the report of the High Commissioner, and identifying obstacles to their full implementation”**.

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**Canada**

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**Bout du Monde is a collective of young Black men who monitor systemic injustices—a response to the surveillance that Black lives endure. Their involvement now extends to strategic litigation aimed at challenging these systems of oppression.**

**INTRODUCTION**

This submission focuses on promising initiatives and positive or good practices; and on obstacles, challenges and lessons learned in ensuring access to justice, accountability, and redress for excessive use of force and other human rights:

* Investigation, prosecution and sentencing, and other accountability and redress measures, including disciplinary proceedings;
* Ensuring that examining the role of racial discrimination, stereotypes and biases is central to accountability measures;
* The role of victims and their families during accountability processes;
* Independent and well-resourced oversight and complaint procedures;
* Independent and well-resourced mechanisms to support victims and communities affected.

**KEY RECOMMENDATIONS:**

* **Recommendation 1:** Establish legal frameworks to permanently prohibit suspicionless vehicle stops, ensuring respect for fundamental rights and consider recommendations from JS9 Report titled [Anti-Black Racism in Quebec Report for Canada’s 4th UPR](http://anti-blackracism.ca).
* **Recommendation 2:** Strengthen the role of civil society organizations in legal advocacy and support for victims of racial profiling.
* **Recommendation 3:** Develop sustainable funding and resources for strategic litigation aimed at reforming discriminatory practices within law enforcement.
* **Recommendation 4:** Reform the correctional system to address and reduce the overrepresentation of Black individuals in the Canadian federal correction system.
* **Recommendation 5:** Expand the use of Impact of Race and Culture Assessments (IRCAs) in the criminal justice system to ensure culturally sensitive and equitable sentencing.
* **Recommendation 6:** Enhance advocacy efforts to influence legislative changes that protect the rights of Black Canadians and ensure consistent application across political landscapes.
* **Recommendation 7:** Implement the recommendations concerning People of African Descent of the Special Rapporteur on contemporary forms of slavery in his [EOM](https://www.ohchr.org/sites/default/files/documents/issues/slavery/sr/statements/eom-statement-canada-sr-slavery-2023-09-06.pdf) after the Canada visit.
* **Recommendation 8:** Strengthen Canada's support for the renewal of the Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement (EMLER) to demonstrate genuine commitment to racial justice.
* **Recommendation 9:** Establish dedicated organizations with ECOSOC status focused on the rights and issues of People of African Descent in Canada to ensure effective advocacy and representation.
* **Recommendation 10:** Reassess the allocation and impact of government funding to Black organizations to ensure it addresses systemic issues rather than serving as superficial gestures.
* **Recommendation 11:** Enhance transparency and accountability by publicly reporting on the implementation of recommendations to combat systemic racism and regularly providing progress reports.
* **Recommendation 12:** Explicitly address Anti-Black racism in media through a human rights-based approach and ensure independent and well-resourced oversight and complaint procedures with proper representation and protections for Black Canadians.

**Detailed Explanations of Recommendations:**

**Recommendation 1: Establish legal frameworks to permanently prohibit suspicionless vehicle stops, ensuring respect for fundamental rights.**

* The 2022 landmark decision by Justice Michel Yergeau of the Superior Court of Québec is a significant step in addressing racial justice within law enforcement. This decision invalidated laws that allowed police to perform random traffic stops without cause, a practice that disproportionately affected Black individuals. The ruling underlines the need for law enforcement practices to fully respect the fundamental rights guaranteed by the Charter.

**Recommendation 2: Strengthen the role of civil society organizations in legal advocacy and support for victims of racial profiling.**

* The case of Joseph-Christopher Luamba, who experienced repeated, unfounded traffic stops, highlights the crucial role of civil society, exemplified by the Canadian Civil Liberties Association (CCLA), in supporting victims and their families. This support is vital not only in legal battles but also in safeguarding their rights throughout the accountability process. Enhancing the capabilities and involvement of organizations like the CCLA can strengthen the overall responsiveness to victims' needs and rights.

**Recommendation 3: Develop sustainable funding and resources for strategic litigation aimed at reforming discriminatory practices within law enforcement.**

* Strategic litigation has proven to be an effective tool in prompting legal and systemic changes, as demonstrated by the efforts of lawyers Mike Siméon and Alexandre Shadley Bien Aimé. However, this approach requires significant resources and skilled legal advocacy. Establishing dedicated funds and training programs can help address these needs, enabling more robust challenges to entrenched discriminatory practices.

**Continued Challenges:**

* Despite the success of strategic litigation, challenges remain, such as the Quebec government's decision to appeal the ruling. This reflects ongoing resistance to acknowledging and addressing systemic racism. The strong criticism from the CCLA, emphasizing the lived experiences of Black, Indigenous, and racialized people, underscores the need for continued vigilance and advocacy to uphold civil rights victories and prevent regression.

**Recommendation 4: Reform the correctional system to address and reduce the overrepresentation of Black individuals in the Canadian federal correction system.**

* According to the Report of Correctional Investigator Ivan Zinger, there has been a worsening treatment of Black persons in the federal correction system over the past decade. Black individuals represented 9.2% of the overall incarcerated population in 2021–2022, despite making up about 3.5% of the Canadian population. This statistic indicates significant racial disparities, including higher rates of solitary confinement and higher security level assignments. A comprehensive reform is needed to address these systemic issues and ensure fairness in treatment and sentencing within correctional facilities.
Read the Correctional Investigator's Annual Report [here](https://oci-bec.gc.ca/sites/default/files/2023-06/annrpt20212022-eng.pdf).

**Recommendation 5: Expand the use of Impact of Race and Culture Assessments (IRCAs) in the criminal justice system to ensure culturally sensitive and equitable sentencing.**

* IRCAs are psycho-social evaluations that help judges understand the impacts of race and culture on an individual’s behavior and societal interactions, thus facilitating more informed and equitable judicial decisions. These assessments align with section 718.2 of the Criminal Code, which emphasizes the consideration of systemic racism and cultural contexts in sentencing. Expanding the use of IRCAs can lead to a more responsive justice system that acknowledges and compensates for systemic discrimination.
([CBC News](https://www.cbc.ca/news/canada/nova-scotia/culture-race-assessments-federal-justice-nova-scotia-1.5947196)).
They serve as a critical resource for judges, ensuring that the justice system remains equitable and just, particularly for Black and other racialized Canadians who have disproportionately suffered from historical systemic biases.

**Recommendation 6: Enhance advocacy efforts to influence legislative changes that protect the rights of Black Canadians and ensure consistent application across political landscapes.**

* Strategic advocacy, such as the initiatives before the 75th anniversary of the Universal Declaration of Human Rights and engagements with federal staff, are critical in pushing for legislative amendments that safeguard the rights of Black populations in Canada. Advocacy should focus on revising key acts like the Broadcasting Act, Canada Labor Code, and Employment Equity Act, and establishing well-resourced, independent oversight mechanisms to handle violations effectively.
* The advocacy efforts also stress the importance of creating operational and well-supported entities like the proposed National Institute for People of African Descent. This institute would support Black communities through education, policy advocacy, and direct support, empowering them to challenge systemic injustices more effectively. Additionally, the interaction with international bodies such as the visit from the Special [Rapporteur](https://www.linkedin.com/posts/ricardolamour_unga78-slavery-activity-7105497454740955138-MNT3?utm_source=share&utm_medium=member_desktop) on contemporary forms of slavery emphasizes the need to align Canadian policies with global human rights standards, ensuring a consistent and just approach to racial equality and law enforcement.

**Recommendation 8: Strengthen Canada's support for the renewal of the Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement (EMLER) to demonstrate genuine commitment to racial justice.**

* Despite symbolic gestures, such as Prime Minister Justin Trudeau taking a knee in 2020, Canada's lack of support for EMLER raises questions about the sincerity of its commitment to racial justice. Supporting the renewal of EMLER is crucial for addressing systemic issues within law enforcement practices. This includes integrating EMLER's recommendations into national policies and ensuring effective implementation to combat racial discrimination and inequality.
* This inconsistency is evident in the general stance of the Western European and Others Group (WEOG), to which Canada belongs and which has been a main opponent of EMLER. Such discrepancies between Canada's international positions and its domestic policy implementations are concerning. This situation also prompts a critical examination of who truly benefits from the substantial funding directed towards Black organizations that are perceived as servicing Black communities. In reality, many of these organizations are required to report to a federal government that has systematically and systemically failed these groups. The effectiveness of these funds and the genuine impact on the Black communities remain questionable.

**Recommendation 9: Establish dedicated organizations with ECOSOC status focused on the rights and issues of People of African Descent in Canada to ensure effective advocacy and representation.**

* The absence of renowned, dedicated and nationally accessible Canada-based ECOSOC status organizations for People of African Descent in Canada and abroad limits their representation in international human rights discussions. Establishing such organizations would provide focused advocacy, ensuring that the unique challenges faced by Black Canadians are addressed at the international level. This step is essential for amplifying their voices and addressing systemic issues comprehensively.

**Recommendation 10: Reassess the allocation and impact of government funding to Black organizations to ensure it addresses systemic issues rather than serving as superficial gestures.**

* Government funding for Black organizations is often perceived as a sign of inclusivity; however, it frequently fails to address and properly challenge deeper structural issues of racism and inequality. It is essential to reassess how these funds are allocated and utilized to ensure they genuinely benefit Black communities and contribute to long-term systemic change rather than performative gestures.

**Recommendation 11: Enhance transparency and accountability by publicly reporting on the implementation of recommendations to combat systemic racism and regularly providing progress reports.**

* Canada’s failure to provide mid-term progress reports on the implementation of recommendations to combat systemic racism hinders public accountability and informed discussion. Increasing transparency by regularly publishing implementation reports and updates would hold the government accountable and ensure that commitments to racial justice and equality translate into concrete actions and reforms.

**Recommendation 12: Explicitly address Anti-Black racism in media through a human rights-based approach and ensure independent and well-resourced oversight and complaint procedures with proper representation and protections for Black Canadians.**

* Examining the role of racial discrimination, stereotypes, and biases in media accountability measures is critical. The general response of Canadian diplomats at international forums, such as HRC 47, has often failed to specifically address Anti-Black racism within the broader context of systemic racism in Canada. Addressing Anti-Black racism explicitly can better align Canada's media practices with its commitment to combating all forms of racial discrimination.
* Independent and well-resourced oversight and complaint procedures are essential. The absence of appropriate Black representation in oversight bodies, such as the CRTC, and the need for revisions to the Broadcasting Act to implement judiciable provisions are urgent requirements for proper accountability. The current lack of effective oversight allows the use of racial slurs and other offensive language against Black Canadians to go unaddressed.
* The policing of Black voices in media and narratives is analogous to the policing of Black lives by law enforcement. Cases involving litigation against human rights defenders like Ricardo Lamour highlight the need for reform. For example, arbitrary policing of Black voices in media, as seen in the Broadcasting Decision CRTC 2022-175, where a complaint led to [judiciary](https://nationalpost.com/news/prominent-quebecers-call-on-radio-canada-to-fight-crtc-ruling-criticizing-radio-segment-with-n-word) revision and further policing through [litigation](https://mailstat.us/tr/t/qb9zbr1clntq39gq/4/https%3A//decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/521197/index.do), underscores the necessity for robust protection of Black voices. Such actions by media corporations and regulating entities mirror the aggressive policing faced by Black communities, perpetuating systemic discrimination and silencing critical human rights-based narratives.
* Ensuring that media narratives reflect a human rights-based approach requires explicit measures to combat Anti-Black racism. This includes revising the Broadcasting Act to enforce judiciable provisions that protect against the use of racial slurs and offensive language, and establishing oversight mechanisms that include significant representation from Black communities.

**Links for Reference:**

* [Instagram reel about N word in white mouths](https://www.instagram.com/reel/CmgZ4DIoQfs/?utm_source=ig_web_copy_link)
* [AJ+ Français Twitter post on media and N word](https://x.com/ajplusfrancais/status/1606228621588189184?s=20&t=BEEJ_5aZvvOPnE4YTwAyCQ)

**Ongoing Challenges and Additional Context:**

In a letter dated January 29, 2024, addressed to Vicky Eatrides, President and CEO, and Scott Hutton, Chief of Consumer, Research, and Communications at the Canadian Radio-television and Telecommunications Commission (CRTC), several ongoing challenges were highlighted:

* **Systemic Analysis of Colonial Narratives:** The CRTC needs to conduct a systemic analysis to understand how settler colonialism reacts when challenged and centers its narrative, stemming from English or French colonial legacies. This analysis should consider historical injustices and create effective compliance mechanisms for reparatory justice and equitable media narratives.
* **Lack of Black Representation:** The absence of appropriate Black representation in CRTC oversight bodies and the need for revisions to the Broadcasting Act to address racial slurs and offensive language highlights the need for proper accountability and reform. The current situation where Black voices are disregarded in legal proceedings and media narratives is part of a larger narrative of community frustration and systemic racism.
* **Policing of Black Voices:** The CRTC's approach to complaints, such as those involving the use of racial slurs, often results in the policing of Black voices in media. For example, the Federal Court appeal involving Ricardo Lamour underscores the need for robust protection of Black voices against such policing. The substantial legal fees spent by broadcasters to appeal such cases highlight the systemic issues in addressing racial discrimination.
* **Interconnectedness of Black Communities:** Although the CRTC may categorize equity-seeking groups by regions, Black communities across Canada are highly interconnected, transcending language barriers and regional differences. This interconnectedness should be recognized and reflected in the CRTC's regulation of public broadcasters to ensure effective media representation and broadcasting needs with a lens that goes beyond the notion of language.
* **Fair and Equitable Distribution of Resources:** The CRTC must address the fair and equitable distribution of resources and representation in broadcasting. The issue is exacerbated by the preference given to white-led production companies over all-Black production organizations, further disadvantaging genuine Black-led groups.
* **Bias and Accountability:** The CRTC should investigate ethical concerns and biases within licensees and public broadcaster's internal mechanisms. Examples include the French ombudsman's justification of racial slurs and opposition to CRTC decisions supporting Black complainants. Addressing these biases is crucial for upholding the principles of the International Declaration of People of African Descent.
* **Intimidation and Harassment:** The withdrawal of complaints and the harassment faced by complainants like Ricardo Lamour highlight the need for the CRTC to address intimidation and ensure the protection of Black voices. This includes applying journalistic standards through a decolonial lens and committing to institutional changes that protect and empower those challenging discriminatory narratives.

To maintain credibility and legitimacy, the CRTC must address the political dynamics that marginalize Black community voices and ensure comprehensive responses that align with Canada's commitment to addressing programming deficiencies affecting equity-seeking groups. This includes acknowledging anti-Black racism, the International Decade for People of African Descent, and participating in international forums with a stance committed to human rights and racial equity.