



Canadian
human rights
commission

Commission
canadienne des
droits de la personne

CANADIAN HUMAN RIGHTS COMMISSION

**SUBMISSION TO THE
WORKING GROUP OF EXPERTS
ON PEOPLE OF AFRICAN DESCENT**

**IN ADVANCE OF
THE WORKING GROUP'S ANNUAL REPORT
TO THE UN GENERAL ASSEMBLY**

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1. THE CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission (the Commission; CHRC) is Canada's national human rights institution. It has been accredited "A-status" by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011 and 2016.

The Commission was established by Parliament through the *Canadian Human Rights Act* (CHRA) in 1977.ⁱ It has a broad mandate to promote and protect human rights. The Constitution of Canada divides jurisdiction for human rights matters between the federal and provincial or territorial governments. The Commission, pursuant to the CHRA, has jurisdiction over federal government departments and agencies, Crown corporations, First Nations governments and federally-regulated private sector organizations. Provincial and territorial governments have their own human rights codes and are responsible for provincially/territorially-regulated sectors.

The Commission's efforts to promote and protect human rights include screening and, where possible, mediating discrimination complaints, representing the public interest in the litigation of complaints, developing policy and conducting research in consultation with rights holders and stakeholders, issuing public statements, and tabling special reports in Parliament. The Commission is committed to working with the Government of Canada as well as domestic and international partners and stakeholders to ensure continued progress in the protection of human rights, including Canada's implementation of the rights and obligations enshrined in the various human rights treaties to which Canada is a party.

The Commission also conducts compliance audits under the *Employment Equity Act* (EEA).ⁱⁱ The purpose of the EEA is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability, and to correct the historic employment disadvantages experienced by four designated groups: women, Indigenous peoples, persons with disabilities and racialized people.ⁱⁱⁱ

In 2019, the Commission was mandated with several new responsibilities under the *Accessible Canada Act*, the *Pay Equity Act*, and the *National Housing Strategy Act*. The Commission was also designated as a body responsible for monitoring the Government of Canada's implementation of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD), in accordance with article 33.2 of the Convention.

In the spirit of constructive engagement and to mark the midterm review of the international decade for people of African descent, the CHRC submits this report to the Working Group of Experts on People of African Descent in advance of its annual report to the UN General Assembly. This submission highlights ongoing challenges in Canada's federal justice system that continue to disproportionately affect people of African descent, as well as opportunities the CHRC has taken to advance its anti-racism efforts as Canada's national human rights institution.

2. CHALLENGES IN THE FEDERAL JUSTICE SYSTEM

In light of the anti-racism demonstrations that have taken place this past year across Canada and around the world, the CHRC wishes to highlight the particular experiences and concerns of people of African descent who continue to face historic and ongoing systemic and institutionalized racism and discrimination in a variety of aspects of their everyday lives, including when interacting with the justice system.

In Canada's justice system, the realities of systemic and institutionalized racism and discrimination have been repeatedly recognized by international and regional human rights mechanisms, by civil society, and by domestic human rights institutions. Nevertheless, substantive progress towards addressing these realities remains largely elusive.

A web of complex and intersecting factors lie at the root of the "pipeline to prison" and over-incarceration of certain segments of the population. These factors include, amongst others: historical disadvantage, systemic and institutional racism, colonization, discrimination and violence, racial bias and stereotyping that perpetuate everyday racial injustices, socio-economic disparity, including inadequate housing and a lack of educational and employment opportunities, a lack of appropriate and culturally-relevant health and community services and supports, including for those with mental health disabilities, and over-policing.

The CHRC notes that, across Canada, concerns continue to be raised that racial profiling by police, security agencies, and other authority figures is a daily reality that takes place in a variety of contexts and settings – including in the workplace, schools, hospitals, shopping malls and the airport, amongst others – reducing public trust, and having harmful impacts on Black communities. In addition, the CHRC remains deeply concerned with reports that Black individuals, in particular, are "over-policed". Of further concern are an increasing number of reports of injurious and deadly interactions between police and Black individuals with mental health disabilities.

Several provincial human rights commissions in Canada have also raised these concerns through various inquiries, reports and recommendations related to racial profiling and harmful policing practices.^{iv} A 2020 report from the Ontario Human Rights Commission (OHRC) on racial profiling and racial discrimination of Black persons by the Toronto Police Service,^v found that Black people are more likely to be proactively arrested, charged and subjected to uses of force in a wide range of police interactions. In addition, the data obtained by the OHRC further confirmed that Black communities are subjected to a disproportionate burden of law enforcement in a way that is consistent with systemic racism and anti-Black racial bias. All of these findings have added considerable weight to the groundswell of calls for systemic reform to policing services across Canada.

The CHRC also remains deeply concerned by reports that the recent prison population growth has been exclusively driven by increases in the composition of racially, ethnically

and culturally diverse prisoners. Of additional concern is the overrepresentation of Black individuals in Canadian prisons, who account for 8.6% of the federally-incarcerated population, while making up only 2.9% of the general population.^{vi}

As noted above with respect to the incarceration and overrepresentation of certain segments of the population, there are complex and intersectional factors underlying these realities. However, beyond overrepresentation, Black prisoners also experience discrimination in relation to their conditions of confinement, including with respect to classification and treatment. For instance, Black prisoners are more likely to be over-classified as maximum security and are more likely to be involved in incidents of use of force.^{vii} Black prisoners' stays in Structured Intervention Units (SIUs) have also been found to be longer than the stays of other groups, with reports indicating that prisoners being held in SIUs continue to experience conditions of solitary confinement.^{viii}

Oversight bodies have also noted that culturally-relevant programming and services are both limited for Black prisoners and not reflective of their rehabilitative needs.^{ix} The CHRC has received a number of complaints that allege that the Correctional Service of Canada fails to provide culturally relevant services and fails to accommodate certain religious or spiritual practices. Without access to these programs and services, Black prisoners are less likely to be granted conditional release, and in some cases, are ill-prepared to reintegrate in their communities, placing them at a higher risk of reoffending and further contributing to their overrepresentation in the correctional system.^x

3. OPPORTUNITIES AS A NATIONAL HUMAN RIGHTS INSTITUTION

As Canada's national human rights institution, the CHRC has an opportunity as well as a responsibility to lead by example in the fight against systemic racism. Over the last few years, the CHRC has taken a close look at every facet of its work, its internal organization, and the services it provides to the public. This has all been part of an ongoing commitment by the Chief Commissioner and the CHRC's senior staff to "walk the talk" of addressing the possible impacts of systemic racism across the CHRC's various roles — as a human rights advocate, a service provider and regulator, and as a federally-regulated employer. As a part of this work, the CHRC developed an Anti-Racism Action Plan,^{xi} which is an evergreen, foundational document that will guide the CHRC's ongoing and evolving anti-racism efforts, both within and outside the organization. The CHRC is dedicated to meeting the highest standards of equality and non-discrimination, inclusion, dignity and respect, and is committed to being a fierce ally in the fight against racism in Canada.

The following information details the four commitments the CHRC has made for anti-racist organizational change, as well as the various milestones the CHRC has reached in its anti-racism efforts, up to March 31, 2021, as outlined in the CHRC's Anti-Racism Action Plan Progress Report.^{xii} The CHRC is more committed than ever to ensuring that anti-racism is imbedded in all that it does and all that it represents as Canada's national human rights institution.

1. Being clear, open and accountable

The CHRC has committed to transparency and accountability in its efforts to bring about anti-racist organizational change. For instance, the CHRC has publicly reported on the CHRC's anti-racism work throughout the year by using a variety of tools and channels, including through the CHRC's 2020 Annual Report to Parliament. The CHRC also established an internal consultation committee comprising Indigenous, Black and other racialized employees to seek input on the CHRC's anti-racism work.

2. Advancing equality and inclusion as an employer

The CHRC has committed to fostering an inclusive and welcoming workplace that represents Canada's diversity and that promotes a sense of value and belonging for all employees. This has included regularly providing training to CHRC staff and management, as well as Commissioners, with the goal of improving anti-racism knowledge, and facilitating meaningful and safe anti-racist dialogue across the organization. The CHRC also continues to advocate for the appointment of Indigenous, Black or other racialized Commissioners, which was one of the recommendations noted by the Global Alliance of National Human Rights Institutions' Sub-Committee on Accreditation during the CHRC's last accreditation review. In addition, in an effort to ensure diversity in staffing, the CHRC is committed to diversifying the composition of its hiring boards, particularly where employment equity gaps exist. The CHRC is also currently auditing the diversity in senior leadership in the federal government by looking at the employment of racialized federal public servants in management and executive positions.

3. Improving access to justice

The CHRC has committed to improving its complaint screening process, with a focus on complaints from Indigenous, Black and other racialized people. The CHRC will take a comprehensive anti-racist approach to key access to justice elements, including by undergoing work to collect voluntary retroactive disaggregated race data of the people who used its complaints system during 2019–20, and developing options for how to enhance the data collection of disaggregated demographic information for all new complaints going forward. The CHRC has also provided training to its Human Rights Officers on its newly updated complaints screening tools, which have been revised to ensure that the necessary evidence, both individual and systemic, is effectively gathered and considered. Staff involved in assessing complaints have also received further training on conscious and unconscious/implicit bias and systemic racism. In addition, the CHRC has participated in the litigation of a number of cases before the Canadian Human Rights Tribunal, Courts and other Boards involving allegations of racism, including complaints alleging the federal correctional system discriminates against Indigenous, Black and other racialized prisoners in various ways.

4. Advocating for Change

Finally, the CHRC has committed to speaking out on human rights issues and to promoting equality, antiracism, respect and inclusion in all aspects of life in Canada. For instance, the CHRC continues to advocate for changes to the EEA, including by advocating for changes to the term “visible minority”, as well as disaggregating the groups that are currently considered under this term. The CHRC has also highlighted the importance of collecting and reporting disaggregated data, and in particular race-based disaggregated data, which is essential to identifying inequalities faced by particular groups, including those of African descent. Further, the CHRC continues to be a national voice and public advocate against racism and intolerance in Canada, and sheds a light on issues identified by racialized stakeholders, including in joint-messages with provincial and territorial human rights organizations, in submissions to UN bodies, and in speaking engagements, public statements, news releases and media appearances. The CHRC is also continuing to lay the groundwork for its role in monitoring Canada’s implementation of the CRPD by ensuring that it applies an intersectional and anti-racism lens and by working to engage the voices of Indigenous, Black and other racialized people with disabilities.

ⁱ Available at: laws-lois.justice.gc.ca/PDF/H-6.pdf. Although Canada’s human rights laws are not part of the Constitution, they are considered “quasi-constitutional” in nature, meaning that all other laws must be interpreted in a manner consistent with human rights law.

ⁱⁱ Available at: laws-lois.justice.gc.ca/PDF/E-5.401.pdf.

ⁱⁱⁱ The Commission notes that the terms “visible minority” and “Aboriginal” are increasingly outdated, and as such, they are used only to reflect their official usage in Canadian legislation and in Statistics Canada survey data. Where other terms (such as Indigenous or racialized) can be used, the Commission supports this.

^{iv} See: Commission des droits de la personne et des droits de la jeunesse, *Review of Implementation of the Recommendations Issued in the Report of the Consultation on Racial Profiling and its Consequences*, 2020, available at: https://cdpdj.gc.ca/storage/app/media/publications/bilan-profilage-racial_synthese_EN.pdf; See Nova Scotia Human Rights Commission, *Halifax, Nova Scotia: Street Checks Report*, 2019, available at: https://humanrights.novascotia.ca/sites/default/files/editor-uploads/halifax_street_checks_report_march_2019_0.pdf; See Ontario Human Rights Commission, *Under Suspicion: Research and Consultation Report on Racial Profiling in Ontario*, 2017, available at: http://www3.ohrc.on.ca/sites/default/files/Under%20suspicion_research%20and%20consultation%20report%20on%20racial%20profiling%20in%20Ontario_2017.pdf.

^v Available at:

<http://www.ohrc.on.ca/sites/default/files/A%20Disparate%20Impact%20Second%20interim%20report%20on%20the%20TPS%20inquiry%20executive%20summary.pdf#overlay-context=en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black>.

^{vi} OCI Annual Report 2016-2017 at p. 56, available at: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>.

^{vii} OCI Annual Report 2016-2017 at p. 56, available at: <https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf>. In addition, for but one example, the CHRC received complaints filed by an inmate who identifies as a Black Sufi Muslim. He alleges that the Correctional Service of Canada (CSC) engages in systemic discrimination against Black and Muslim inmates. Among other things, he alleges: a) that CSC subjected him to excessive force, violence and institutional discipline, and that CSC’s practices and policies on institutional discipline, use of force and security classification disproportionately affect Black and Muslim inmates; and b) that CSC failed to accommodate his religious requirements, including refusing to accommodate Friday prayers for Muslim inmates and refusing to provide a religious diet. The CHRC is participating in the hearing of these

complaints before the Canadian Human Rights Tribunal. For a preliminary ruling, see: [2020 CHRT 27](#) (ruling on scope).

^{viii} See: <https://crimbrary.blogspot.com/2020/11/solitary-confinement-continues-in.html>; and <https://johnhoward.ca/drs-doob-sprott-report/>.

^{ix} See, for example: *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries*, available at: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx#toc1>.

^x See: Interim Report of the Standing Senate Committee on Human Rights, *Interim Report – Study on the Human Rights of Federally-Sentenced Persons: The Most Basic Human Right is to be Treated as a Human Being*, February 2019, available at:

https://sencanada.ca/content/sen/committee/421/RIDR/Reports/RIDR_Report_Prisoners_e.pdf.

^{xi} Available at: https://www.chrc-ccdp.gc.ca/sites/default/files/publication-pdfs/draft_anti-racism_action_plan.pdf. Additional information on the CHRC's anti-racism work can be found here: <https://www.chrc-ccdp.gc.ca/en/resources/anti-racism-work>.

^{xii} Available at: <https://www.chrc-ccdp.gc.ca/sites/default/files/2021-06/2913080%20-%20Anti-Racism%20Action%20Plan%20First%20Progress%20Report%20-%20EN.pdf>.