

~~ANTI-BLACK~~ ~~RACISM~~ IN QUEBEC

**Discrimination Experienced
by Black People in
the Health, Immigration, Judicial
and Prison Sectors**

Joint Submission to the Working Group
on the Universal Periodic Review

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This report is the result of a collaboration between the Immigrant Workers' Centre (IWC-CTI) and the Clinique Internationale de Défense des Droits Humains de l'UQAM (CIDDDHU). It is the product of a vision, proposal and archive research project from **Ricardo Lamour, Stéphanie Germain and Rito Joseph**, in collaboration with the Immigrant Workers Centre. Ricardo, Stéphanie and Rito, through their knowledge, experiences and background as three Black persons living in Quebec, are aware of many of the issues faced by Black persons in Canada. The three partners wish to thank Mirja Trilsch and her team for having supported their vision by proposing to submit a report to the Universal Periodic Review (UPR), after the connection with Ms. Trilsch was initiated by Ms. Dufresne-Lemire. The work was led by Mirja Trilsch and Maximilien Dion for the CIDDDHU and Ricardo Lamour and Mostafa Henaway for the IWC-CTI, with the contribution of Daphne Beaudoin as project manager, UQAM B.A. students Keylls Murphy-Vanegas, Jessica Bouchard and Jessica Ranger for research and writing, and intern Rosemarie Gelinus for source verification.

Immigrant Workers' Centre (IWC)IWC

The IWC-CTI was founded in 2000 by a group of Filipino Canadians and allied activists and intellectuals. The organization defends the labour rights of immigrants and fights for dignity, respect and justice for immigrant workers. It works for popular education, the improvement of living and working conditions and the respect of immigrants' rights. Its main strategies are education projects, political campaigns and monitoring of organizations with a high proportion of immigrant employees. The IWC-CTI supports political campaigns on immigrant issues and partnerships with various leaders on issues related to social and economic justice for immigrants.

Contact details:

Mostafa Henaway
Ricardo Lamour

4755 Van Horne Avenue, Suite #110
Montreal, QC H3W 1H8

Tel: +1 514-342-2111
Fax: +1 514-227-2268
Email: info@iwc-cti.ca

Clinique internationale de défense des droits humains de l'UQAM (CIDDDHU)

The International Clinic for the Defence of Human Rights has been a pillar in the field of clinical teaching regarding the promotion and the protection of human rights, both on the international and national level, for more than 10 years. The CIDDDHU was the first International clinic for the defense of human rights in the Francophone community. The CIDDDHU has developed a strong expertise in litigation and international advocacy in all areas of human rights.

Contact details:

Mirja Trilsch, Professor,
Director of the CIDDDHU

Université du Québec à Montréal
Faculty of Political Science and Law
Département des sciences juridiques
P.O. Box 8888 Centre-ville
Montreal, Quebec, Canada
H3C 3P8

Tel: +1 514-987-3000, ext. 3892
Fax: +1 514-987-4784
Email: coordination.cidddhu@gmail.com



EXECUTIVE SUMMARY

This report denounces the systemic anti-Black racism experienced by Afro-descendant persons in Quebec, the province with the second-largest Black population in Canada. This form of racism is visible in all areas of society but especially in the laws, policies, programs, decisions and practices of the governments of Quebec and Canada. It violates numerous international human rights treaties to which Canada is bound, including the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*.¹

¹ *International Convention on the Elimination of All Forms of Racial Discrimination*, December 21, 1965, 660 U.N.T.S. 195 (entry into force January 4, 1966; ratification by Canada October 14, 1970).

To illustrate the extent of systemic anti-Black racism in Quebec and more broadly in Canada, we chose to document the discrimination faced by Black persons in three areas: health, immigration and the judicial and prison environments.

In the area of health, we found that Black communities have been particularly affected by COVID-19, in part because of their over-representation in frontline jobs, where Afro-descendant people often experience racist abuse. Black persons are also underrepresented among doctors and administrators, which results in significant structural barriers.

We have also found that the health of Black children and their families is at risk, since Black children are up to ten times more likely to end up in the child welfare system and without access to interventions tailored to their needs. Also, Black women are at greater risk of forced or coerced sterilization. Documenting anti-Black racism in the healthcare system remains a challenge, however, due to the incomplete and inadequate collection of information disaggregated by ethno-cultural background.

The immigration measures documented in this report not only make it more difficult for Afro-descendant people to immigrate to Canada, but also put the lives, liberty and safety of many Black persons seeking asylum at risk and expose them to discriminatory detention conditions. Finally, it is important to note that racial profiling remains firmly rooted in police practices in Canada and Quebec. Black persons are more often stopped by the police, particularly during traffic stops, without any legitimate reason or suspicion—a practice whose legal basis was recently declared unconstitutional. Black persons are also more likely to be arrested and imprisoned, where they face discriminatory treatment by correctional staff.

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INTRODUCTION

This report examines discrimination against Afro-descendant people in Canada and in the province of Quebec more specifically, in three areas: health, immigration and policing. This focus in no way implies that discrimination against Afro-descendant people is less common outside of these areas. On the contrary, this report condemns the systemic racism against Black persons that persists in Canadian society.

Quebec has the second largest Black population among Canadian provinces, with 26.6% of the national total.² Quebec is also notable for being until quite recently a major conduit for migrants, among whom Afro-descendant populations are overrepresented. As a result of this, the Black population in Quebec consists predominantly of first-generation immigrants.³

The 2017 visit of the Working Group of Experts on People of African Descent to Canada (which included a visit to Montreal) highlighted a number of issues related to discrimination against African-Canadians.⁴ Following the recommendations made, the Canadian and Quebec governments implemented measures to address the inequity of African-Canadians. The policies that resulted from this process were briefly analyzed in the context of Canada's last Universal Periodic Review, resulting in additional recommendations.⁵

Since then, several Canadian provinces have acknowledged the existence of systemic racism.⁶ This recognition is the first step towards the development and implementation of strategies to reform this state of affairs. However, other provincial governments, including the provinces of Quebec, Manitoba and Alberta, continue to deny the existence of systemic racism in their territories.⁷

² Statistics Canada, "Diversity of the Black Population in Canada: An Overview," February 27, 2019, online: <https://www150.statcan.gc.ca/n1/pub/89-657-x/89-657-x2019002-eng.htm>

³ *Ibid.*

⁴ Human Rights Council, *Report of the Working Group of Experts on People of African Descent on its mission to Canada*, August 16, 2017, UN Doc A/HRC/36/60/Add.1.

⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Canada*, July 11, 2018, UN Doc A/HRC/39/11.

⁶ François Carabin, "Plusieurs groupes de tous horizons reconnaissent l'existence du racisme systémique," *Le Devoir*, October 2, 2021, online: <https://www.ledevoir.com/societe/637461/societe-plus-de-prises-de-position-sur-le-racisme-systemique>.

⁷ *Ibid.*

TERMINOLOGY

In this report, the term **Afro-descendant** is used to refer to:

[...] the person of African origin who lives in the Americas and in the region of the African Diaspora as a result of slavery, who [has] been denied the exercise of their fundamental rights.⁸

The terms **Afro-descendant** and **Black** are used interchangeably.

For the purposes of this report, **systemic racism** is defined as:

[...] the entire societal structure, consisting of institutions, laws and policies, that maintain a system of inequalities that privilege and oppress different groups in society according to the “race” attributed to them. These inequalities confer privilege on White persons and undermine the rights of Black, racialized and Indigenous people. [translation]⁹

When we mention **racial profiling**, we refer to:

[...] any action taken by a person or persons in a position of authority with respect to a person or group of persons, for reasons of public safety, security or protection, that is based on factors of actual or presumed membership, such as race, colour, ethnic or national origin, or religion, without actual cause or reasonable suspicion, and that has the effect of subjecting the person to differential scrutiny or treatment. Racial profiling also includes any action by persons in a position of authority who apply a measure disproportionately to segments of the population on the basis of, *inter alia*, their actual or presumed racial, ethnic, national or religious affiliation. [translation]¹⁰

⁸ Roberto Rojas Dávila, “Afro-Descendants as Subjects of Rights in International Human Rights Law,” (2018) *International Journal on Human Rights* 151, v. 15 n. 28, online: <https://sur.conectas.org/en/afro-descendants-as-subjects-of-rights-in-international-human-rights-law/>.

⁹ Amnesty International Canada Francophone, “Systemic Racism,” online (French only): <https://amnistie.ca/campagnes/racisme-systemique>.

¹⁰ Victor Armony, Mariam Hassaoui and Massimiliano Mulone, *Les interpellations policières à la lumière des identités racisées des personnes interpellées: Analyse des données du Service de Police de la Ville de Montréal (SPVM) et élaboration d'indicateurs de suivi en matière de profilage racial: Rapport final remis au SPVM*, Centre de recherche interdisciplinaire sur la diversité et la démocratie (CRIDAQ), Montreal, August 2019, p. 13.

DISCRIMINATION AGAINST AFRO-DESCENDANT PEOPLE IN THE AREA OF HEALTH

By ratifying the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*,¹¹ Canada made a commitment to prohibit and eliminate discrimination in all its forms and to guarantee every individual the right to equal enjoyment of rights, such as the right to health, medical care, social security and social services (Article 5(iv)). However, the treatment of Afro-descendant people in the field of health remains concerning.

STRUCTURAL BARRIERS AFFECTING BLACK PERSONS

In 2020, the Public Health Agency of Canada released a report on health inequities faced by Afro-descendant populations, in which systemic discrimination was identified as the main cause of these inequities.¹² It notes that access to health services for the Afro-descendant population is complicated by stigma and discrimination.¹³

The Afro-descendant population in Canada has been disproportionately affected by the COVID-19 pandemic.¹⁴ The pandemic exacerbated some of the health disparities faced by Afro-descendant people. Black persons are more likely than people from other communities to work in “frontline” jobs,¹⁵ notably in healthcare, and are at greater risk of contracting the disease and also of being laid off as a result of the virus.¹⁶

In Montreal, neighbourhoods with a higher proportion of Afro-descendants have higher rates of COVID-19 per 100,000 inhabitants.¹⁷ Several systemic factors explain this disparity, including the fact that racialized populations, particularly Afro-descendants, live in more disadvantaged conditions,¹⁸ which exposes these populations to underlying systemic predispositions.¹⁹ The over-representation of Afro-descendant populations in low-income neighbourhoods where dwellings are more densely populated also increases the risk of disease transmission.²⁰

Despite the Quebec government’s promise to collect sociodemographic statistics disaggregated by ethnocultural background,²¹ data on the spread of COVID-19 across the province is still lacking, leaving both civil society and the general public in the dark about the disparities experienced by Black persons.

It is also important to add that chronic exposure to racism is identified as a cross-cutting health risk factor.²² Thus, the disproportionate impact of COVID-19 on Afro-descendant communities in Canada is attributable to the intersection of pre-existing structural inequities in health and employment and a generally lower standard of living.²³

¹¹ *International Convention on the Elimination of All Forms of Racial Discrimination*, *supra* footnote 1.

¹² Public Health Agency of Canada, *Social determinants and inequities in health for Black Canadians: A Snapshot*, 2020, online: <https://www.canada.ca/en/public-health/services/health-promotion/population-health/what-determines-health/social-determinants-inequities-black-canadians-snapshot.html>, p. 1.

¹³ *Ibid.*, p. 2.

¹⁴ Learning Network, “More Exposed And Less Protected” in Canada: Systemic Racism and COVID-19,” date unknown, online: https://www.vawlearningnetwork.ca/our-work/backgrounders/more_exposed_and_less_protected_in_canada_systemic_racism_and_covid19/.

¹⁵ “Frontline” jobs include cashiers in essential stores, home aides, caregivers, truck drivers, delivery people and so on. These people provide basic goods and services such as food and shelter to the population. See the definition of the Institut national de la statistique et des études économique (France), online (French only): <https://www.insee.fr/fr/statistiques/5895960>.

¹⁶ George J. Sefa Dei and Kathy Lewis, “COVID-19, Systemic Racism, Racialization and the Lives of Black People” in Tom Marrie, Ed., *Impacts of COVID-19 in Racialized Communities*, Ontario Institute for Studies in Education, University of Toronto, 2021, p. 28.

¹⁷ Direction régionale de santé publique de Montréal, “Inégaux face à la pandémie: populations racisées et la COVID-19,” Montreal, Santé Montréal, August 19, 2020, p. 2.

¹⁸ *Ibid.*

¹⁹ Sefa Dei/Lewis, *supra* note 16, p. 29.

²⁰ Direction régionale de santé publique de Montréal, *supra* note 17.

²¹ Matthew Lapierre, “Despite promise, Quebec isn’t collecting COVID-19 data about race,” *The Gazette*, May 2020, online: <https://montrealgazette.com/news/despite-promise-quebec-isnt-collecting-covid-19-data-about-race>.

²² Sefa Dei/Lewis, *supra* note 16, p. 28.

²³ Learning Network, *supra* note 14.

The underrepresentation of Afro-descendants among doctors and administrators working in the healthcare system²⁴ adds to the above-mentioned factors and contributes to structural barriers. These barriers have deleterious impacts on the effectiveness of public health programs for the populations concerned and undermine efforts to disseminate information through preventive health programs. The actual provision of healthcare for Afro-descendant people is also negatively impacted by this underrepresentation.²⁵

This situation also complicates efforts to gain a comprehensive understanding of the particular sociocultural reality of Afro-descendants. Feeling underrepresented, Afro-descendants would not only be less likely to use health services but also less likely to participate in the development and implementation of public health policies and guidelines.²⁶

As for Afro-descendants working in frontline healthcare jobs, they have been reported to be victims of violent acts and as having to endure “spitting, sexual harassment, insults [...] and racism, a real scourge in Montreal’s CHSLDs [residential and long-term care centres], where Black patient attendants are in the majority.”[translation]²⁷

Finally, a key issue for the health and well-being of Black children and their families is that Black children are more likely to end up in child welfare than other children. “A Black child who lives in an area with a high concentration of Black persons is twice as likely to be reported to child welfare as other children, whereas if he or she lives in an area with a low concentration of Black persons, he or she is ten times more likely to be reported than other children.”[translation]²⁸ Factors contributing to this disparity include cultural bias and a lack of understanding of cultural diversity on the part of those making and evaluating these child welfare reports.²⁹ The Black families involved end up bearing the burden of failed interventions that fail to adequately address their reality, and the trauma often associated with being reported or being subject to intervention or foster care placement.³⁰

FORCED AND COERCED STERILIZATIONS OF AFRO-DESCENDANT WOMEN

Coerced or forced sterilization is generally defined as sterilization carried out without the free and informed consent of the women undergoing the procedure. This practice constitutes a violation of many fundamental rights, including the right to health, the right to equality and the prohibition of torture.³¹ It is most often performed via tubal ligation following childbirth, without free and informed consent.³²

Women in vulnerable situations are more likely to experience this type of violence: as such, Afro-descendant women are among the groups most targeted by this practice.³³ Imbalance of power, mistrust and lack of awareness of human rights are all factors that aggravate the phenomenon of forced and coerced sterilization among the groups that are victims of it, which include Afro-descendant women.³⁴ Limited access to health information and care, as well as lack of agency, add to these systemic factors.³⁵ Afro-descendant patients who face invalidation and minimization of their health concerns are particularly vulnerable to this issue.³⁶

It is difficult, however, to assess the extent of the problem, because while Canada there is data in Canada on Aboriginal women who are victims of this practice, this is not the case for Black women.³⁷ In Quebec, the issue is even less documented³⁸ and no data specific to Afro-descendant women has yet been published.

In 2018, the UN Committee against Torture issued observations concerning the coerced and forced sterilization of racialized women in Canada.³⁹ It called on Canada to conduct impartial and objective investigations into allegations of coerced sterilizations and to ensure that those responsible are held accountable.⁴⁰ The Committee also recommended that Canada adopt legislative measures and policies aimed at preventing and criminalizing coerced sterilization,⁴¹ which has not been done to date.⁴²

²⁴ Report of the Working Group of Experts on People of African Descent on its mission to Canada, *supra* note 4, para. 65.

²⁵ Sefa Dei-Lewis, *supra* note 16, p. 29.

²⁶ Royal Society of Canada, “The Impacts of COVID-19 in Racialized Communities,” May 2021, online: https://rsc-src.ca/sites/default/files/RC%20PB_EN%20FINAL_O.pdf.

²⁷ Marie-Hélène Proulx, “Les préposées aux bénéficiaires : Au cœur de la tempête,” *L’actualité*, December 2, 2020, online: <https://lactualite.com/sante-et-science/les-preposees-aux-beneficiaires-au-coeur-de-la-tempete/>.

²⁸ “Instaurer une société bienveillante pour nos enfants et nos jeunes,” Rapport de la Commission spéciale sur les droits des enfants et la protection de la jeunesse, Government of Quebec, 2021, online: <https://www.csdepj.gouv.qc.ca/accueil/>, p. 303.

²⁹ *Ibid.*, p. 302.

³⁰ *Ibid.*, p. 309.

³¹ World Health Organization, *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, (2014), p. 1, online: https://www.unfpa.org/sites/default/files/resource-pdf/Eliminating_forced_sterilization.pdf.

³² Canada, First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC), *Free and informed consent and imposed sterilizations among First Nations and Inuit Women in Quebec*, November 2022, online: <https://sterilisationsimposees.cssspnql.com/?lang=en>.

³³ These groups include Indigenous women, women with disabilities and women of immigrant background; see Canada, Senate, Standing Senate Committee on Human Rights, *Forced and Coerced Sterilization of Persons in Canada* (June 3, 2021), p. 39.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Learning Network, *supra* note 14.

³⁷ FNQLHSSC, *supra* note 32.

³⁸ *Ibid.*

³⁹ Committee against Torture, *Concluding observations on the 7th periodic report of Canada*, UN Doc off CAT, 2018, UN Doc C/CAN/CO/7.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² While at least one bill to include provisions clarifying the prohibition of these practices has been tabled for consideration, it has not yet been adopted. See on this subject: PL S-250, *An Act to amend the Criminal Code (sterilization procedures)*, 1st sess, 44th leg, 2021 (not adopted, in second reading in the Senate).

SIGNIFICANT DATA GAPS

Significant gaps exist in the collection of information on healthcare services by ethnocultural background.⁴³ Although the Canadian provinces have exclusive jurisdiction over the provision of health services⁴⁴ and Quebec has a centre of expertise and reference in public health (the Institut national de santé publique du Québec), the law establishing the latter institution⁴⁵ does not provide any obligation to collect, process and disseminate information disaggregated by ethnocultural affiliation, sex, gender, social class and disability status.

At the federal level, existing data (e.g., through the Public Health Agency of Canada) remains incomplete insofar as ethnic identities are not specifically identified.⁴⁶ This situation makes it impossible to analyze data such as the mortality rate in childbirth of Black women in Canada, for instance.⁴⁷ Similarly, Canada does not have data on the prevalence of certain diseases among Black communities (for example, the most common types of cancer).⁴⁸

These shortcomings contribute to the invisibilization of structural and societal issues such as processes of stigmatization and discrimination and the inequity of access to healthcare.⁴⁹ Without precise data to draw on, it is difficult for anyone working in the healthcare field to make appropriate interventions and act in a coordinated way to reduce health inequalities.

⁴³ Sefa Dei/Lewis, *supra* note 16.

⁴⁴ *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.), s. 92 para 7.

⁴⁵ *Act respecting Institut national de santé publique du Québec*, CQLR c I-13.1.1.

⁴⁶ Public Health Agency of Canada, *supra* note 12.

⁴⁷ Leah Mpinga, "Where is Canada's data on Black maternal health and mortality?" Canadian Healthcare Network, May 2022, online: <https://www.canadianhealthcarenetwork.ca/where-canadas-data-black-maternal-health-and-mortality>.

⁴⁸ Jean-Benoît Legault - Canadian Press, "Recherche sur le cancer : la communauté noire serait mal servie au Canada," *Le Devoir*, February 3, 2023, online: <https://www.ledevoir.com/depeches/780416/recherche-sur-le-cancer-la-communaute-noire-serait-mal-servie-au-canada>.

⁴⁹ Public Health Agency of Canada, *supra* note 17.

DISCRIMINATION AGAINST AFRO-DESCENDANTS IN IMMIGRATION

Canada's history is marked by government immigration policies and actions aimed at limiting the presence of Black persons in Canada,⁵⁰ often with the use of detention and deportation as the ultimate form of control.⁵¹ Today, many seemingly neutral decisions continue to exclude or complicate the immigration of Black persons to Canada.

Most recently, at the insistence of the government of Quebec, the federal government closed "Roxham road,"⁵² a safe passageway between the United States and Canada previously used by thousands of migrants seeking safety and dignity, a significant proportion of whom are Black. This raises concerns that less secure ports of entry will be used, exposing migrants to greater risk and danger.⁵³ The issue of conformity between the Safe Third Country Agreement and the *Canadian Charter of Rights and Freedoms*⁵⁴ is currently under review by the Supreme Court of Canada,⁵⁵ due to the devastating impacts of this agreement on the rights of migrants.⁵⁶

Discrimination against Afro-descendant people in immigration processes is not limited to those seeking asylum in Canada. Employees of Immigration, Refugees and Citizenship Canada (IRCC) have expressed concern about internal racist references and stereotyping of people from certain African countries as "corrupt or untrustworthy." These officials have said that they believe these manifestations of racism can "impact case processing."

DIFFERENTIAL TREATMENT OF AFRO-DESCENDANT STUDENTS FROM ABROAD

Afro-descendant students from abroad who choose to study in Canada face many obstacles in the process of obtaining a study visa,⁵⁹ including eligibility and applicability criteria, which differ depending on the country of origin and immigration programs.⁶⁰ Refusal rates for study permit applications are particularly high for students from Africa,⁶¹ especially French-speaking Africa. The data also shows that Afro-descendant students may be subject to differential treatment in terms of processing times for their applications,⁶² which may force some to postpone or even abandon their studies.⁶³ Also, a look at the processing of study permit applications submitted by students from French-speaking Africa reveals a lack of transparency in the reasons for the decisions made by various regional offices; some decisions seem downright arbitrary.⁶⁴ Moreover, of 25 decisions to refuse study visas issued by the Accra (Ghana) office, challenged before the Federal Court, the Court upheld 23.⁶⁵

50 Channon Oneyiran, "Anti-Black Racism in Canada," The Canadian Encyclopedia, June 2022, online: <https://www.thecanadianencyclopedia.ca/en/article/anti-black-racism-in-canada>.

51 David Austin, "Urban African Canadians: A Qualitative Study of Serious Legal Problems in Quebec," Department of Justice Canada, March 2021, online: <https://www.justice.gc.ca/eng/tp-pr/jr/jrac-amu/index.html>, p. 18.

52 Canada-US Safe Third Country Agreement, entered into force on December 29, 2004, as amended by the Additional Protocol to the Safe Third Country Agreement, entered into force on March 25, 2023, online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html>.

53 Ndeye Dieynaba Ndiaye, "Voici pourquoi il est difficile – et peu souhaitable – de « fermer » le Chemin Roxham," The Conversation, February 9, 2023, online: <https://theconversation.com/voici-pourquoi-il-est-difficile-et-peu-souhaitable-de-fermer-le-chemin-roxham-199363>.

54 Constitution Act 1982, Schedule B to the Canada Act 1982 (UK), 1982, c. 11.

55 Émilie Bergeron, "L'Entente sur les pays sûrs examinée par la Cour suprême du Canada," Le Devoir, 6 October 2022, online: <https://www.ledevoir.com/societe/762011/l-entente-sur-les-tiers-pays-surs-examinee-par-la-cour-supreme-du-canada>.

56 Amnistie internationale Canada francophone, "Honte. Frustration. Rage Déception. Puni sans avoir commis de crime : L'Entente sur les tiers pays sûrs viole les droits de la Charte canadienne à l'égalité, la liberté et la sécurité de la personne," November 7, 2019, online: <https://amnistie.ca/sinformer/communiques/local/2019/canada-etats-unis/honte-frustration-rage-deception>.

57 Immigration, Refugees and Citizenship Canada, *IRCC Anti-Racism Employee Focus Groups - Final report*, 2021, online: https://epe.lac-bac.gc.ca/100/200/301/pwgsc-tpsgc/por-ef/immigration_refugees/2021/192-20-e/POR_192-20-Final_Report_EN.pdf, p. 11.

58 *Ibid.*, p. 14.

59 House of Commons, Standing Committee on Citizenship and Immigration, *Traitement différentiel dans le recrutement et les taux d'acceptation des étudiants étrangers au Québec et dans le reste du Canada*, May 2022, online: <https://publications.gc.ca/site/fra/911766/publication.html>, p. 22.

60 *Ibid.*

61 *Ibid.*, p. 39. The data shows us that the refusal rate for students from the Democratic Republic of Congo, Togo and Senegal is around 80%. This trend in refusal rates for French-speaking Africa seems to have accelerated since 2016. Similarly, in 2021, the government rejected 72% of applications from African countries with a large French-speaking population, compared to 35% for all other regions of the world (p. 45).

62 *Ibid.*, p. 37. Witnesses note that processing times are longer for the Nigerian region than for the rest of the regions.

63 *Ibid.*, p. 36.

64 Le Québec c'est nous aussi, "Mémoire présenté au Comité permanent de la citoyenneté et de l'immigration dans le cadre de son étude sur le recrutement et les taux d'acceptation des étudiants étrangers au Québec et au Canada, y compris les étudiants francophones en provenance de pays d'Afrique," 2022, online: <https://www.ourcommons.ca/Content/Committee/44/CIMM/Brief/BRI1539O47/br-external/LeQuebecCestNousAussi-2022-02-03-f.pdf>, p. 10.

65 *Ibid.*

DISCRIMINATION AGAINST BLACK MIGRANT WORKERS

In Canada, one in four workers is an immigrant, a situation that contributes to economic growth and helps to alleviate Canada's labour shortage,⁶⁶ especially in lower-paying jobs. In 2021, temporary foreign workers (TFWs) represented about one-quarter of all people working in the Canadian agriculture sector.⁶⁷ Racialized migrant workers, a portion of which are Black persons, experience economic and social marginalization largely as a result of their migration status, which forces them to work for a single employer.⁶⁸ The precariousness of TWF status places migrants in a relationship of dependence on their employers for transportation, housing and work.⁶⁹

Recently, migrant farm workers from Jamaica decried the differential and discriminatory treatment of their employers in a letter to Jamaica's Ministry of Labour and Social Security.⁷⁰ They claim to have felt treated like "robots" without feelings. Similarly, they report experiencing "systematic slavery" as a result of their dependence on their employers for pay and living conditions.⁷¹

There have also been reports of abuse by employment agencies that, on a daily basis, place people seeking asylum in public sector agencies. Migrants, a large proportion of whom are Black, were deployed to CHSLDs at the height of the pandemic without prior supervision or training.⁷² Despite political promises that these people (dubbed in Quebec the "guardian angels" of the pandemic) would be granted permanent residence in recognition of their services, the actual program that has been implemented is limited in scope, and many jobs have been removed from the list of eligible jobs.⁷³

ABUSE OF BLACK MIGRANTS IN DETENTION

Despite the fact that Canada in 2016 co-sponsored the resolution to adopt the UN General Assembly's *Standard Minimum Rules for the Treatment of Prisoners*,⁷⁴ many abuses persist in the penitentiary system, including discriminatory acts against Black migrants in detention.

Canada Border Services Agency (CBSA) data on the nationality of those detained, and testimony from activists, lawyers and detainees, demonstrate that immigration detention decisions by authorities have disproportionately negative impacts on Black persons.⁷⁵ In 2019, the majority of migrants detained for 90 days or more, 180 days or more and 270 days or more were from African countries.⁷⁶ In addition, Afro-descendants are incarcerated for longer periods and more often placed in provincial prisons with maximum security levels than in immigration holding centres (IHCs)⁷⁷ where conditions of detention are less severe. Lawyers have testified that their Afro-descendant clients are treated more harshly in the immigration detention system.⁷⁸ It is also reported that the ground of "danger to the public" was invoked more often when it came to Black persons.⁷⁹ Indeed, there have been numerous complaints of racist behaviour by the CBSA, including complaints from African-Canadian individuals arrested and detained because of their place of birth.⁸⁰

66 Immigration, Refugees and Citizenship Canada, "2020 Annual Report to Parliament on Immigration," online: <https://www.canada.ca/content/dam/ircc/migration/ircc/english/pdf/pub/annual-report-2020-en.pdf>, p. 6.

67 Statistics Canada, *Agriculture and agri-food labour statistics, 2022*, online: <https://www150.statcan.gc.ca/nl/en/daily-quotidien/220613/dq220613d-eng.pdf?st=hFlnh3z7>, p. 1.

68 Susana Caxaj, Amy Cohen and Carlos Colindres, "More of the same? Migrant agricultural workers' health, safety, and legal rights in the COVID-19 context" (2022) 11: 3 *J Agriculture, Food Systems, and Community Development* 139, p. 140.

69 Immigrant Workers Centre and Association of Migrant Workers of Quebec, *Decent Housing for migrant agricultural workers*, Report submitted for stakeholder consultations on mandatory employer-provided housing requirements under the TFW program, December 2020, online: <https://iwc-cti.ca/wp-content/uploads/2021/07/Report-consultation-housing-CTI-2020.pdf>, p. 7.

70 Al Jazeera, "Jamaica sending team to Canada to probe work conditions on farms," *Aljazeera*, 2 September 2022, online: <https://www.aljazeera.com/news/2022/9/1/jamaica-sending-team-to-canada-to-probe-work-conditions-on-farms>.

71 *Ibid.*

72 Thomas Gerbet and Romain Schué, "Des migrants mal formés envoyés au cœur du chaos des CHSLD," *Radio-Canada*, June 1, 2020, <https://ici.radio-canada.ca/nouvelle/1707739/migrants-demandeurs-asile-agences-placement-preposes-chsl-d-enquete>.

73 Aurélie Lacassagne, "Les 'anges gardiens' oubliés," *Francopresse*, September 28, 2022, <https://francopresse.ca/2022/09/28/les-anges-gardiens-oublies/>.

74 United Nations Office on Drugs and Crime, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, December 2015, online: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf.

75 Human Rights Watch and Amnesty International, "I Didn't Feel Like a Human in There: Immigrant Detention in Canada and its Impact on Mental Health," June 2021, online: <https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental>, p. 68. See also David Austen, *supra* note 51, p. 16 and Fred's testimony on pp. 16 and 20.

76 Human Rights Watch and Amnesty International, *supra*, note 75, p. 68.

77 *Ibid.*, at 68–71

78 *Ibid.*, at p. 69.

79 *Ibid.*

80 *Ibid.*, p. 71.

DISCRIMINATION AGAINST BLACK PERSONS IN POLICING AND PRISONS

POLICE ARRESTS AND DETENTIONS

Among the recommendations made to Canada following the third UPR was the adoption of measures to eliminate racial profiling and other discriminatory practices perpetrated by police forces that particularly affect Black persons and lead to their disproportionate incarceration.⁸² Despite Canada's acceptance of these recommendations, no pan-Canadian measures or amendments to the Criminal Code have been adopted.

Random police stops more often target Afro-descendant people, particularly in Montreal and Toronto.⁸³ Although some Canadian cities have banned this practice, the legislation in place remains inadequate and open to interpretation.⁸⁴ The Royal Canadian Mounted Police (RCMP) has also been severely criticized for conducting routine checks that threaten the human rights of those targeted.⁸⁵ The documentation of routine checks has been found to be "insufficient" by the Civilian Review and Complaints Commission, which also states that the practice is fundamentally ill-defined in the RCMP's national policy and that its random or arbitrary application should be avoided.⁸⁶

It is also well documented that in Canada, the use of traffic stops without real cause and without suspicion disproportionately affects Black persons.⁸⁷ The common law rule that gave rise to this police discretion in Canada⁸⁸ thus de facto enshrines racial profiling as a rule of law, and has been codified in Quebec in Article 636 of the *Highway Safety Code*.⁸⁹ However, the landmark 2022 decision in the Joseph Luamba case⁹⁰ confirmed that this rule constitutes "a loophole through which this insidious form of racism [racial profiling] is allowed to flow" [translation].⁹¹ The Quebec Superior Court therefore declared that the police power to stop anyone driving without cause violates, inter alia, the right to equality, liberty and security of the person and the right to protection against arbitrary detention.⁹² It should be noted that the government of Quebec has appealed the Luamba decision and for the time being the decision has no effect.⁹³

More generally, Afro-descendants in Quebec have arrest rates two to six times higher⁹⁴ than the rest of the population. This higher rate is not correlated with the crime rate.⁹⁵ In addition, police officers are more likely to use excessive force in incidents involving Afro-descendants.⁹⁶

- 81 Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Canada*, supra note 5 recommendations 142.62, 63, 72, 108, 109, III and III.7.
- 82 *Ibid*, para. 30.
- 83 Armony/Hassaoui/Mulone, supra note 10, pp. 10–11, and Amnesty International, "Carding and anti-black racism in Canada," August 23, 2019, online: <https://www.amnesty.ca/blog/carding-canada/>.
- 84 Carding and anti-black racism in Canada, supra note 91.
- 85 Civilian Review and Complaints Commission for the RCMP, *Review of the RCMP's Policies and Procedures regarding Street Checks*, Report of February 26, 2021, online: https://www.crcc-ccetp.gc.ca/pdf/SAR_street-check-Review-en.pdf, p. 1.
- 86 *Ibid*, pp. 2–3.
- 87 See the section "La preuve du fait social "" in *Luamba c. Procureur général du Québec*, 2022 QCCS 3866, paras. 391 et seq. See also Armony/Hassaoui/Mulone, supra note 10, p. 22: "La littérature qui s'est penchée sur les discriminations dont la communauté noire est victime au volant est d'ailleurs si abondante qu'elle possède un nom spécifique : *Driving While Black*."
- 88 *R v. Ladouceur*, [1990] 1 S.C.R. 1257.
- 89 *Highway Safety Code*, CQLR, c. 24.2.
- 90 *Luamba c. Procureur général du Québec*, supra note 87.
- 91 *Ibid*, para. 862.
- 92 *Ibid*, para. 868.
- 93 Radio-Canada, "Québec porte en appel l'interdiction des interceptions policières aléatoires sur la route," November 25, 2022, online: <https://ici.radio-canada.ca/nouvelle/1935708/quebec-appel-interceptions-policieres-aleatoires-route-profilage>. The ruling has no direct impact on the application of the common law rule in provinces other than Quebec.
- 94 Canada, House of Commons, Standing Committee on Public Safety and National Security, *Systemic Racism in Policing in Canada*, June 2021, online: https://publications.gc.ca/collections/collection_2021/parl/xc76-11-XC76-11-432-6-eng.pdf, p. 75.
- 95 *Commission des droits de la personne et des droits de la jeunesse (DeBellefeuille) c Ville de Longueuil*, 2020 QCTDP 21, para. 207, citing the expert report of Anne-Marie Livingstone.
- 96 Quebec, Commission des droits de la personne et des droits de la jeunesse, *Bilan de la mise en œuvre des recommandations du rapport de la consultation de la commission des droits de la personne et des droits de la jeunesse sur le profilage racial et ses conséquences*, September 2020, online: <https://www.cdppi.qc.ca/fr/publications/bilan-profilage-racial>, pp. 126–127.

BLACK PERSONS IN THE JUSTICE AND CORRECTIONAL SYSTEMS

The treatment of Black persons in the federal correction system has worsened over the past 10 years.⁹⁷ The rate of incarceration of Afro-descendant people is disproportionate and there is an overrepresentation of Afro-descendants in solitary confinement at all levels of the justice system.⁹⁸ In 2021–2022, “Blacks represented 9.2% of the overall incarcerated population, despite representing about 3.5% of the Canadian population.”⁹⁹ Blacks also spent the majority of their prison sentence in higher security levels than White prisoners.¹⁰⁰ Afro-descendants tend to be incarcerated for longer periods of time and are overrepresented in incidents involving the use of force.¹⁰¹ While in custody, they are likely to face a disproportionate number of charges, prosecutions, convictions and heavier and longer sentences leading to greater difficulties in transitioning into the community.¹⁰²

There are also many stereotypes and prejudices against people of African descent in detention. As observed by the UN Working Group of Experts on People of African Descent, Black persons in detention are discriminated against by correctional staff who use racist language, and are ignored and disregarded in ways that increase feelings of exclusion, marginalization and isolation.¹⁰³

Afro-descendants in detention are also more likely to be suspected of gang affiliation.¹⁰⁴ Prison staff use discriminatory factors to establish supposed gang affiliations, such as the area where detainees grew up, the people they associate with in their cell block, their congregation with groups of Black persons, their clothing and how they interact with other Black persons.¹⁰⁵ Once gang affiliation is assumed, it is not only exceedingly difficult to reverse, it can also lead to serious consequences for prisoners, such as being denied employment in the prison or being denied transfer to a lower-security level.¹⁰⁶

Other examples of differential or discriminatory treatment of Black persons in detention include their being less likely to earn the highest levels of pay and having less access to appropriate personal care products.¹⁰⁷ Young Afro-descendants have less access to diversionary programs¹⁰⁸ and are more often charged without consideration of a non-judicial alternative.¹⁰⁹

97 Anne Marie Lecomte, “Le sort des prisonniers noirs dans les pénitenciers fédéraux empire, selon un rapport,” Radio-Canada, November 1, 2022, online: <https://ici.radio-canada.ca/nouvelle/1999504/enqueteur-correctionnel-prisonnier-noir-racisme-systemique-surrepresentation>.

98 Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, UN CERD, 2017, UN Doc CERD/C/CAN/CO/21-23, para. 15.

99 Lecomte, *supra* note 97.

100 Office of the Correctional Investigator, *Annual Report 2021–2022*, Government of Canada, June 30, 2022, online: <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20212022-eng.aspx>.

101 *Ibid.*

102 *Systemic Racism in Policing in Canada*, *supra* note 94, p. 59.

103 Human Rights Council, *Report of the Working Group of Experts on People of African Descent on its mission to Canada*, *supra* note 4, para. 47.

104 Office of the Correctional Investigator, *supra* note 100.

105 *Ibid.*

106 *Ibid.*

107 *Ibid.*

108 House of Commons, Evidence, 43^e Leg, 1^{re} sess., No 9 (July 23, 2020), p. 15, referring to Kanika Samuels-Wortley, “Youthful Discretion: Police Selection Bias in Access to Pre-Charge Diversion Programs in Canada,” 2022, *Race and Justice* 12(2), pp. 387–410, online: <https://doi.org/10.1177/21533687198889093>.

109 *Ibid.*

RECOMMENDATIONS

GENERAL RECOMMENDATIONS

- 1 Appoint a Canada-wide independent Black equity commissioner with a mandate to consider the production of discrimination against Black persons and its impacts, taking into account the distinct forms of discrimination, particularly in provinces that refuse to recognize the existence of systemic racism against these groups.
- 2 Recognize the Black populations in Canada, despite their specific histories, as a distinct group, particularly given continued impacts of systemic racism on these populations.
- 3 Document the specific reality of Afro-descendant people in the areas of health, immigration and policing (arrest and detention) in order to analyze the actual state of systemic racism in Canada.
- 4 Fund research on the issues raised in this report and dissemination of this research.

HEALTH

- 1 Ensure plural representation of Black groups and communities in the development of national and provincial health policies and guidelines rooted in an anti-Black racism perspective.
- 2 Support medical schools in establishing programs, processes and policies to help address racism against Afro-descendant people in the admissions process and in medical education.
- 3 Implement anti-racism and anti-oppression training for healthcare providers.
- 4 Conduct a national consultation on the issue of forced and coerced sterilization of women in Canada with the goal of ending this practice. This consultation should take into account the evidence gathered during the preliminary study on the subject conducted by the Standing Senate Committee on Human Rights and hear survivors and groups particularly affected by this practice while showing sensitivity towards them.

- 5 Implement all the recommendations of the Standing Senate Committee on Human Rights report entitled *Forced and Coerced Sterilization of Persons in Canada*.
- 6 Adopt legislative measures and policies to prevent and criminalize coerced sterilization of women, in particular by clearly defining the obligation to obtain free, prior and informed consent and by increasing awareness of this obligation among women and medical personnel.
- 7 Ensure that all allegations of coerced sterilization are impartially investigated, that those responsible are held accountable and that adequate redress is provided to the victims.
- 8 Recognize the systemic and anti-Black racism that affects interventions with families and children in child welfare, and put in place policies and processes to address this racism, in consultation and collaboration with Black communities.
- 9 Establish, in collaboration with Black communities, a commissioner for children's rights and welfare, with a mandate to pay particular attention to the rights and needs of Black children and their families.
- 10 Implement a mandatory training program on cultural safety and anti-Black racism that takes into account the needs of Black communities for all those working with families and children in the field of child protection.

IMMIGRATION

- 1 Ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.
- 2 Abolish the Canada-US Safe Third Country Agreement. Failing abolition, waive the Additional Protocol to the Safe Third Country Agreement, which came into force on March 25, 2023, in order to reopen a safe passage route for migrants.
- 3 End immigration detention, including solitary confinement, which is perpetrated largely against Afro-descendants.
- 4 Ensure that migrants are not detained in the same facilities (prisons, police stations) as criminal offenders.
- 5 Establish an independent national enquiry into the detention of migrants with a particular focus on issues of systemic racism and discrimination.
- 6 Develop a national strategy to end the discriminatory treatment of Black persons in detention in prisons and immigration detention centres.
- 7 Create an investigation and redress mechanism to receive and address complaints from detained migrants who are victims of abuse, discrimination and violation of their human rights by the CBSA. This mechanism should also allow other civil society actors to report such cases.

POLICE AND PRISON ARRESTS

- 1 Implement all recommendations from the Office of the Correctional Investigator's 2021–2022 Annual Report in relation to Black prisoners.
- 2 Sign and ratify the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* to allow international inspection of all places of detention.
- 3 Prohibit random police checks.
- 4 Waive the appeal against the Luamba decision of the Superior Court of Quebec and implement the Court's orders.
- 5 Abolish Article 636 of the Quebec *Highway Safety Code*.
- 6 Legislate to abolish, for all of Canada, the common law rule allowing random roadside checks.
- 7 Establish independent monitoring bodies and stiffer penalties for racist behaviour by police.
- 8 Develop, in collaboration with community partners representing the plurality and diversity of Black communities, a national strategy to combat discrimination against Black people in detention that takes into account their experiences in prison settings and their particular needs.
- 9 Ensure equal access to diversion programs for Black persons.
- 10 Ensure that decisions on the release of Black persons from detention are free from anti-Black racism.

**ANTI-BLACK
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contact
missioncoherence@gmail.com