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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the independent expert on minority issues*

Addendum

MISSION TO CANADA**

(13 to 23 October 2009)

* Late submission.

** The summary is being circulated in all official languages. The report itself, contained in the annex, is being circulated in the language of submission only.

Summary

Canada is a society open to and accepting of cultural, religious and linguistic differences, where minorities can express their identities, speak their languages and practice their faiths freely. Canada has an impressive constitutional and legislative framework in the area of equality and non-discrimination at the federal and provincial and territorial levels and numerous policy initiatives to promote multiculturalism.

However, significant and persistent problems affect persons belonging to ethnic, religious and linguistic minorities, who are people of colour or of particular religious beliefs. Many feel that the Government has failed to respond adequately to their problems or to devise meaningful and enforceable solutions.

Rapid demographic changes have created new demands for deeper levels of disaggregation of data to keep pace with shifts in the economic and social status of specific minority communities. Certain minority communities, such as Black Canadians, feel strongly that the catch-all terminology of “visible minorities” under which their data is captured leads inevitably to the neglect of their specific identities and situations and has served to obscure and dilute the differences and distinct experiences of respective minority groups. Unpacking the visible minority data is a first essential step towards the recognition of diverse experiences and challenges and enabling more targeted policy responses.

African-descendant Canadians and some Asian Canadian communities are concerned that their children are having negative experiences in public schools. Dropout rates are particularly high among boys from these communities. Parents and community leaders described approaches to education that do not take into account different cultures of learning, as well as curriculums and textbooks that ignore their histories and contributions to Canadian society. There is a gross underrepresentation of minorities in the teaching and school administrative staff.

Unemployment rates generally are significantly higher for certain minorities, income levels are lower, and minorities are disproportionately living in the poorest neighbourhoods and in social housing with relatively poor access to services. Useful

legislation and policies exist in the field of employment equity, however, standards and requirements must be better enforced, first and foremost, in public service employment, to ensure that Canada's workplaces truly reflect the diversity present in society.

Highly qualified and skilled workers have been encouraged to migrate to Canada, but many of them find on their arrival that their qualifications are not recognized at the provincial and territorial levels. Many professionals are unable to gain employment in their former professions and find themselves in low-skilled, low-waged or precarious employment often for years. This is a long-standing problem, however while some efforts continue to be made to find solutions they appear to still be at an initial stage.

Poverty is a problem disproportionately faced by people of colour. Poverty alleviation programmes in Canada must be targeted towards racialized communities. Responses should be holistic in nature and must recognize the complex causes of poverty that include racial discrimination and the resulting social and economic exclusion.

In the field of policing, serious concerns include the use of racial profiling as a systemic practice, biased and heavy-handed policing of some minority communities and allegations of excessive use of force leading to deaths, particularly of young Black males. Some minorities feel that the justice system is failing them. Arabs and Muslims reported that post September 2001, communities feel targeted, profiled and subject to unequal treatment.

Finally, minorities are poorly represented in political structures and institutions at all levels of government.

Annex

REPORT OF THE INDEPENDENT EXPERT ON MINORITY ISSUES

MISSION TO CANADA

(13 to 23 October 2009)

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I. INTRODUCTION

1. The independent expert on minority issues conducted an official visit to Canada between 13 and 23 October 2009. She visited the provinces of Ontario, British Columbia and Quebec and held consultations with senior federal, provincial and territorial government representatives with responsibilities in the field of minority rights, anti-discrimination and equality. She held numerous meetings with non-governmental organizations, members of minority communities and academics and hosted forums for minority women. She thanks the Government of Canada and the provincial and territorial governments for their excellent cooperation, as well as the numerous non-governmental organizations, civil society groups and community representatives that provided valuable information and assistance.

2. Under the federal Employment Equity Act, “visible minorities” are defined as “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour”. The following groups are included in the visible minority population: Chinese, South Asians, Blacks, Arabs, West Asians, Filipinos, Southeast Asians, Latin Americans, Japanese, Koreans and other visible minority groups, such as Pacific Islanders.

3. Canada has a total population of 31,241,030 according to 2006 census data. More than 5 million, or 16.2 per cent, are identified as visible minorities. The visible minority population increased by 27.2 per cent between 2001 and 2006, five times faster than growth for the population as a whole. Statistics Canada projections demonstrate that by 2017, one in five Canadians will be non-white or people of colour. In 2006, 95.9 per cent of visible minorities lived in a metropolitan area, the largest concentrations in Toronto (42.9 per cent of the total population), Vancouver (41.7 per cent) and Montreal (16.5 per cent). Three in 10 visible minorities were Canadian-born.

4. Canadians identifying as South Asian (including those of East Indian, Pakistani, Sri Lankan and Bangladeshi origin), account for 1.3 million people, 24.9 per cent of the visible minority population, and 4 per cent of the total population. Chinese make up 24 per cent of the visible minority population (1.2 million people), and 3.9 per cent of the

total population. Other large visible minority groups are: Black¹ (15.5 per cent of the visible minority population); Filipino (8.1 per cent); Latin American (6.0 per cent); Arab (5.2 percent); Southeast Asian (4.7 per cent); West Asian (3.1 per cent); Korean (2.8 per cent); and Japanese (1.6 per cent).

Methodology

5. The independent expert's evaluation of minority issues in Canada is based on the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) and other relevant international standards, from which she has identified four broad areas of concern relating to minorities globally. These are: (a) the protection of a minority's survival, through the combating of violence against them and the prevention of genocide; (b) the protection and promotion of the cultural identity of minority groups and the right of national, ethnic, religious or linguistic groups to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination, as well as the promotion of affirmative action when required; and (d) the guarantee of the right to effective participation of members of minorities in public life, especially with regard to decisions that affect them. She applies a gender perspective in all areas of her work.

6. The independent expert has chosen to focus her attention on persons belonging to racial or ethnic and religious minorities, officially categorized in Canada as "visible minorities". Statistics Canada uses this term in its reporting based upon demographic census data. When enacting the Employment Equity Act in 1986, Canada adopted the term "visible minorities" to define those with diverse ethnic and racial origins who had experienced disadvantages in employment, considering it the best terminology available.

7. The term "visible minority" is objected to by many of those it is used to describe. They point out that this catch-all term has served to obscure and dilute the differences and distinct experiences of diverse minority groups. They state that the term discounts the racial hierarchy that is embedded in how race is constructed and how racism is

¹ A total of 52 per cent of the Blacks reported Caribbean origins; 42.4 per cent reported African origins.

manifested for different racial minority groups. Many favour being referred to as “racialized” individuals or groups.

8. Statistical analysis should acknowledge and reveal the great diversity of identities and experiences of different national, ethnic, religious and linguistic minorities. However, the independent expert notes a considerable lack of clarity with regard to the use of terms such as “visible-minority” (and conversely “non-visible-minority”), “Black”, “African Canadian”, “Asian Canadian” and “Arab”. General references to “African Canadians” or “Blacks” encompass people of extremely diverse ethnic, sociocultural, geographical and historical origins, including former slaves, loyalists, immigrants from the Caribbean (both anglophone and francophone), immigrants from Africa and African refugees. The same is true for diverse communities of Asian origin.

9. Specific minority communities experience unique situations and challenges that may be hidden by the use of general terms of reference under which their data is gathered. Aggregating these experiences under “catch-all” terminologies masks their uniqueness and defies attempts to gain understanding and develop effective policies. References made in the present report to statistical data disaggregated into categories called “visible-minorities”, “African Canadian”, “Black” or “Asian”, are drawn from various sources as noted, and are not necessarily the preference of the independent expert.

II. LEGAL FRAMEWORK AND ENFORCEMENT MECHANISMS

10. Canada is a federal State in which legislative and executive powers are divided between federal, provincial and territorial levels of government. The Constitution of Canada is the supreme law of Canada and the Supreme Court of Canada has stated that the protection of minorities is one of the basic structural principles of the constitutional framework of Canada.² Human rights are a matter of shared federal, provincial and territorial jurisdiction.

11. Canada has ratified human rights treaties including the International Convention on the Elimination of All Forms of Racial Discrimination. The courts of Canada have held that domestic law is presumed to be in conformity with international obligations

² See *Reference re Secession of Quebec* [1998] 2 S.C.R. 217.

and will strive for an interpretation of domestic law that is consistent. Human rights treaties are implemented through constitutional law, human rights legislation that has been enacted in each jurisdiction, and other legislative, policy and programmatic measures.

12. The Charter of Rights and Freedoms, as part of the Canada Act, 1982, applies to all government legislation and action, federal, provincial and territorial, which must be in conformity with it. It also applies to actions of municipalities. Section 15 (1) states that: “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”. The Charter allows for affirmative action measures to ensure equality under Section 15 (2). Although the Charter does not apply to purely private action, human rights legislation does apply in the areas of employment, accommodation and services.

13. The Constitution empowers the courts with the ability to strike down or read down legislation that is inconsistent with the Charter. In addition, the Charter states that anyone whose Charter rights have been infringed can apply to a court for an appropriate and just remedy. This allows a court to award a range of remedies, including damages.

14. The purpose of the Canadian Human Rights Act (1977) is: “to give effect...to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated ... without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted”. The Act applies only to the federal Government and to federally regulated bodies and activities throughout Canada. The Act established the Canadian Human Rights Commission, mandated to investigate claims of discrimination, and the Canadian Human Rights Tribunal to judge discrimination cases. Each province and territory has its own anti-discrimination law, and concerns related to discrimination by such organizations as retail and hospitality businesses, hospitals or

health care providers, educational institutions and most manufacturers come under provincial or territorial jurisdiction.

15. The Canadian Human Rights Commission administers the Canadian Human Rights Act and is responsible for ensuring compliance with the Employment Equity Act.³ Both laws ensure that the principles of equal opportunity and non-discrimination are followed in all areas of federal jurisdiction. Citizens, permanent residents or persons legally present in Canada can file complaints under the Canadian Human Rights Act with the Canadian Human Rights Commission, however complaints may only be filed against federally regulated organizations, employers, unions and service providers, representing just 10 per cent of organizations.⁴ All other cases must be addressed to the provincial and territorial bodies.

16. The Canadian Multiculturalism Act, adopted in July 1988, requires federally regulated institutions, in all their activities, to be sensitive and responsive to the multicultural reality of Canada. They are responsible for ensuring equal opportunity for employment in federal institutions, enhancing the ability of individuals and communities to contribute to the continuing evolution of Canada, enhancing the understanding of and respect for the diversity of the members of Canadian society, collecting statistical data, and making use of language skills and cultural understandings.⁵ The federal Multiculturalism Program encourages federal institutions to meet their obligations under the Act and aims to remove barriers related to ethnicity, race, culture and religion.

17. Most provinces and territories have multiculturalism legislation or policies, including British Columbia which adopted its Multiculturalism Act in 1993, and Ontario which adopted a Ministry of Citizenship and Culture Act in 1982. Quebec designates its policy as “inter-culturalism” and has a Ministry of Immigration and Cultural Communities.

³ See www.chrc-ccdp.ca/default-en.asp.

⁴ Discrimination cases can be brought against federally regulated employers and service providers: federal departments, agencies and Crown corporations; chartered banks; airlines; television and radio stations; interprovincial communications and telephone companies; buses and railways that travel between provinces; First Nations; other federally regulated industries.

⁵ See Annual Report on the Operation of the Canadian Multiculturalism Act 2007-2008, part 3, available from www.cic.gc.ca/ENGLISH/resources/publications/multi-report2008/part3.asp.

18. Specific legislation and protection bodies exist in the provinces of Canada. The Human Rights Code of Ontario is administered by the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario. The province's Human Rights Legal Support Centre also provides legal services to individuals. The British Columbia Human Rights Code created the British Columbia Human Rights Tribunal, an independent, quasi-judicial body responsible for accepting, screening, mediating and adjudicating human rights complaints. The Quebec Charter of Human Rights and Freedoms covers civil and political rights as well as economic and social rights. The Human Rights and Youth Rights Commission is responsible for promoting and upholding the Quebec Charter and a Human Rights Tribunal hears cases referred by the Commission.

19. Minority spokespersons highlighted concerns regarding the erosion of avenues of redress for victims of discrimination. They note that in 2007 the investigatory powers of the Ontario Commission were diluted. Charges of political correctness, bias and criticism of evidential standards have reportedly served to create a negative environment in which Commissions conduct their work. Muslim representatives described a backlash against Commissions following cases that Muslim groups have asked them to consider. Some perceive this as a part of a wider climate of hostility against Muslims when they attempt to raise their concerns.

20. Minority spokespersons cite the abolition of the British Columbia Human Rights Commission in 2003 and attacks on other provincial or territorial bodies that provide accessible and affordable avenues of complaint. While cases are heard by the British Columbia Human Rights Tribunal, the Commission is no longer available to assist victims with the preparation of cases, conduct investigations, prepare reports, offer advisory services, monitor government policy or conduct public education.

21. The Government notes that review of the British Columbia Human Rights Commission revealed inefficiencies, delays in processing complaints and a high percentage of complaints dismissed. British Columbia replaced the Commission with direct access to the Human Rights Tribunal. According to the Government, the Tribunal is reportedly able to process a complaint, notify respondents, provide mediation services and schedule a hearing date within six months, whereas some complaints previously took

up to three years to resolve. A Human Rights Clinic provides assistance, including legal representation to eligible complainants and respondents. The Clinic is mandated to deliver a public education program on the British Columbia Human Rights Code and deal with requests for information.

22. Minorities criticized the abolition of the Court Challenges Program. This national initiative, previously funded by the Department of Canadian Heritage, provided financial assistance to linguistic and disadvantaged minority groups and individuals to initiate court challenges which sought to clarify matters related to constitutional rights and freedoms, equality and official language rights. The Program was discussed positively in Canada's Action Plan Against Racism, as making "important contributions to the scope of the equality and linguistic provisions of the Canadian Charter of Rights and Freedoms". Despite this, in September 2006 the funding for the Program was terminated. Funding was partially restored under the Program to Support Linguistic Rights in 2008, however not for other, non-linguistic minority and discrimination issues.

III. NON-DISCRIMINATION AND EQUALITY

23. According to Statistics Canada research, the proportion of visible minorities who felt they had experienced discrimination was twice that of non-visible minorities. Overall, 81 per cent of visible minorities who felt that they had experienced discrimination believed that it was because of their race or ethnic origin. The Ethnic Diversity Survey (EDS)⁶ revealed that about 20 per cent of visible minorities reported experiences of discrimination sometimes or often, compared to 10 per cent of non-visible minorities. Nearly 32 per cent of Blacks said that they had experienced discrimination sometimes or often. About 21 per cent of South Asians and 18 per cent of Chinese respondents reported experiencing discrimination. Discrimination was most often experienced at work or in a store or bank.

24. A 2003 survey⁷ reported that 74 per cent of Canadians polled believe that racism is prevalent in Canada. Muslim and Arab groups highlight research conducted in 2007 revealing that 47 per cent of respondents confessed to some racist views and that their

⁶ A post-census survey of 42,500 people in 2002 provided information on how people's backgrounds affect their participation in social, economic and cultural life, including perceptions of discrimination.

⁷ Commissioned by the Centre for Research and Information on Canada and *The Globe and Mail*.

prejudice is “planted firmly at the door of Arab and Muslim minorities”.⁸ African Canadian representatives stated that anti-Black racism must be understood in the context of a history rooted in the maintenance and perpetuation of stereotypes of African Canadians as inferior, overly aggressive and prone to criminality.

25. In March 2005, A Canada for All: Canada’s Action Plan Against Racism was adopted. The Action Plan acknowledged that racism and discrimination exist and that a comprehensive strategy and programme of action is required. Six key priority areas seek: (a) to assist victims and groups vulnerable to racism and discrimination; (b) to develop forward-looking approaches to promote diversity and combat racism; (c) to strengthen the role of civil society; (d) to strengthen regional and international cooperation; (e) to educate children and youth on diversity and anti-racism; and (f) to counter hate and bias.

26. The Government notes that the Action Plan represents a concerted effort across organizations to advance inclusiveness through over 40 existing programs and initiatives, six new initiatives and \$Can 56 million allocated over five years. It claims positive results in key areas: workplace discrimination, youth integration, hate crime reporting, race-based issues in the justice system, and institutional change within public institutions to remove systemic barriers. The Government states that its Multiculturalism Program continues to achieve success through important public education initiatives, research and policy development, and support and grants to civil society and public institutions.

27. A variety of provincial initiatives have been established. In 2008, Quebec adopted the policy “Diversity: An Added Value”, primarily focused on combating racism and racial discrimination. An action plan proposes measures targeting education, the exercise of human rights, systemic discrimination and support for victims in matters of employment, education, health and social services, and public security.

28. The following sections consider discrimination in the key policy areas of poverty, education, employment, policing and national security.

A. Poverty

⁸ Survey of Canadian attitudes toward immigrant ethnic communities, conducted by Leger Marketing in January 2007. Reported by the Canadian Arab Federation.

29. Minority representatives consider that discrimination, racism and educational and economic inequality are key causal factors in the disproportionate poverty experienced by people of colour. Blacks in Ottawa are five times more likely to be poor than the non-visible minority population. About 60 per cent of all employed Black Canadians earn less than \$20,000 per year, compared to 55 per cent of all visible minorities and only 37 per cent of non-visible minorities.⁹

30. In Toronto, between 1980 and 2000 the number of non-racialized families living in poverty fell by 28 per cent. In comparison the number of racialized families in poverty rose by 361 per cent.¹⁰ The research stated that there had been a major shift in the resident profile of higher poverty neighbourhoods, with poor visible minority and immigrant families making up far larger percentages of the total “poor” family population in those neighbourhoods. Minority representatives in Ontario, including the Colour of Poverty Campaign believe that, nationwide, initiatives have failed to address the poverty of racialized communities.

31. The African Canadian Legal Clinic notes that approximately 44 per cent of African Canadian children live in poverty.¹¹ The Roots of Youth Violence study by the Government of Ontario highlights that the levels, concentration and circumstances surrounding child poverty contribute to youth violence, lack of accessible services, health issues and educational achievement. Black children are more likely to grow up in low income neighbourhoods and housing and are further stigmatized by their living conditions. Food insecurity is reportedly a growing problem for some African Canadians. High levels of poverty are a significant factor contributing to a higher incidence of poor health among affected groups.

⁹ Social Planning Council of Ottawa, “Communities within: diversity and exclusion in Ottawa. Mixed blessings and missed opportunities” (2008), p. 8, available from www.spcottawa.on.ca/Documents/Reports/Research/ExecSum_Intercase_Study_Report.doc.

¹⁰ United Way of Greater Toronto and the Canadian Council on Social Development, *Poverty by Postal Code: The Geography of Neighbourhood Poverty, City of Toronto, 1981–2001* (Toronto, 2004), p. 49.

¹¹ “Report of the African Canadian Legal Clinic to the Committee on the Elimination of Discrimination against women on the Review of Canada’s Seventh Periodic Report under the Convention on the Elimination of All Forms of Discrimination against Women”, forty-second session, 20 October–7 November 2008, para. 8, available from http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ACLC_Canada42.pdf.

32. Ontario's Poverty Reduction Strategy (2008) includes policies focusing on reducing child poverty, supporting education initiatives, addressing the needs of low income households, and addressing poverty affecting new immigrant communities. There is no targeted focus on Black, Asian and other minority groups or explicit recognition of the role that discrimination plays in poverty. The Quebec Government Action Plan to Combat Poverty and Social Exclusion published in 2004 includes, among other things, measures to support the socio-occupational integration of visible minority groups, and recognizes challenges and discrimination facing groups including the Black English-speaking community. In British Columbia specific initiatives focus on addressing high levels of child poverty.

B. Education

33. Provincial or territorial governments establish and implement education policies with the devolution of certain measures of control to municipal and district school boards. Black Canadian sources in particular stated that systemic racism in education is manifested in the ideologies, structures, policies and practices within the education system, at all levels throughout Canada. They complained that the issue of racism is rarely addressed in schools and that a focus on "multiculturalism" and "diversity" does not adequately address inequality.

34. Dropout rates among students from certain minority groups are considerably higher than the average. The Toronto District School Board's 2006 Student Survey found that dropout rates of English-speaking Black students with a Caribbean heritage were 40 per cent. Central and South American students experienced dropout rates of 37 per cent and the rate for students of East-African descent was 32 per cent. In some low-income localities with a high percentage of ethnic minorities, dropout rates were reported to be far higher. The poor educational outcomes of Black boys are particularly worrying.

35. Minority communities reported school curriculums that neglect their heritage, cultures and religions, or contributions to Canadian society. Teachers, principals and school councils continue to be predominantly white even in localities with high proportions of people of colour. A study of Toronto's teachers showed that roughly 23

per cent are visible minorities – yet 7 in 10 high-school students are minorities.¹² Approaches to learning and the school environment do not respond to different learning cultures or the specific needs of children of colour. Wide disparities are reported among school boards and within school districts in how issues of race, exclusion and inequity are addressed. Minority representatives call for more inclusive learning environments and Afro-centered programs.

36. Ontario's Ministry of Education notes that its Equity and Inclusive Education Strategy provides a framework to identify and remove discriminatory biases and systemic barriers to student achievement. With the Ontario Human Rights Commission the Ministry is working to provide joint training sessions for the education sector as part of the province's commitment to an equitable and inclusive education system. Ontario has set a target of an 85 per cent graduation rate by 2010-11. Additional supports, including credit schemes for struggling students, seek to enable eligible students to overcome barriers to graduation.

37. Minority representatives believe that the Safe Schools Act and “zero-tolerance programs”, implemented in Ontario since 2001, impose a security and disciplinary regime that has targeted and negatively impacted on Black students. They claim that the legislation, which allows police presence in some schools, promotes racial profiling of Black, Hispanic and some Asian students. School principals have broad powers to suspend or expel students considered a threat to safety. Community representatives claimed that 80 per cent of students expelled under the legislation are from visible minority groups – most commonly Black students. Expulsion greatly increases the likelihood of permanent dropout. Some commentators described Safe School policies as a “pipeline into the criminal justice system”.

38. The government of Ontario notes that a comprehensive review of the safe schools provisions of the Education Act was conducted and amendments passed (Bill 212 and associated regulations in 2007) to more effectively combine discipline with opportunities for students to continue their education. Disciplinary measures are to be applied, it states, within a framework that shifts the focus from solely punitive to both corrective and supportive interventions. The government of British Columbia notes that its “Make a

¹² See Louise Brown, “Searching for a generation of teachers”, *Star* (Toronto), 19 May 2008, available from www.thestar.com/article/427299.

Case against Racism” programme is an example of a positive programme which encourages students to take personal responsibility for preventing racism, while celebrating cultural diversity through music and art.

39. The independent expert visited Ryerson Community School, which services a diverse ethno-cultural and linguistic community and is part of the Model Schools for Inner Cities Initiative of Toronto District School Board. This school demonstrates an impressive commitment to anti-racist education and positive practices in education. These include: a school council including numerous community representatives; enhanced opportunities for parent involvement; the Parenting and Literacy Centre as an important link between home and school; and a network of community links and partnerships with community-based social and support organizations.

C. Employment

40. Employment discrimination on the basis of race is prohibited by the Canadian Human Rights Act and provincial and territorial human rights codes. The federal Employment Equity Act of 1995 (which amended the 1986 Act) applies to federally regulated employers and industries including banks, broadcasters, telecommunications companies, railroad companies, airlines and transportation companies - approximately 12 per cent of Canada’s labour market, totalling about 1,527 employers and 1.94 million employees. The majority of private employers and their staff fall under provincial and territorial jurisdiction. The Act aims to provide equal opportunities in employment to designated protected groups: women; persons with disabilities; aboriginal peoples; and visible minorities. The Canadian Human Rights Commission monitors compliance and conducts employment equity audits of employers, including their implementation of special measures and the “accommodation of differences”.

41. No province has a law that is analogous with the federal Employment Equity Act. Most Canadian provinces have employment equity policies that apply to provincial and territorial government and private employers within a framework of non-discrimination legislation that prohibits discrimination including in employment. Minority representatives highlight that legislation and policy initiatives suffer from poor implementation and enforcement.

42. Some minorities asserted that they experience discrimination in access to employment based upon their colour, ethnic origin or their religion. Census data from 2006 reveals that, nationally, Blacks (not disaggregated by Statistics Canada) experienced unemployment rates of 10.7 per cent, West Asians (including Iranian and Afghan, among others) 10.7 per cent, and Arabs 13 per cent, compared to non-visible minority unemployment rates of 6.2 per cent.¹³ Barriers to labour markets are experienced not only by recent immigrants, but by workers of colour generally, including Canadian-born minorities more highly educated than average. Minorities stated their belief that foreign or Muslim sounding names or addresses in low-income neighborhoods were also the basis for discriminatory rejection of employment applications.

43. Research by the Canadian Labour Congress in 2006 revealed large and consistent gaps in economic security for workers of colour compared to other comparably educated and skilled workers. The research concluded that discrimination is an important contributing factor to their poor labour market outcomes. About 33 per cent of racialized workers overall and 51 per cent of Black workers (a sub-set of all racialized workers) experienced racial discrimination. Racialized workers are most likely to be in low-status, low-skill, or precarious jobs, accounting for 45 per cent of workers in sewing and textile industries, over 43 per cent of taxi drivers and 45 per cent of electronics assemblers.

44. Canadians of Arab origin are twice as likely to have a university or post-graduate degree, yet experience unemployment rates among the highest in Canada at 13 per cent. Equally, poverty among Arab and Muslim communities is disproportionately high, which many attribute to discrimination, exclusion and income inequality. These trends are replicated within certain Asian communities, including the Chinese community, where significantly higher than average educational attainment is not translated into average levels of skilled, high income or executive employment and workplace mobility. Racialized persons reportedly make up only 3 per cent of executives.¹⁴

¹³ See Statistics Canada, Topic-based tabulations (labour activity), available from <http://www12.statcan.gc.ca/census-recensement/2006/dp-pd/tbt/Rp-eng.cfm?LANG=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=837928&GK=0&GRP=1&PID=94183&PRID=0&PTYPE=88971,97154&S=0&SHOWALL=0&SUB=0&Temporal=2006&THEME=80&VID=0&VNAMEE=&VNAMEF=>.

¹⁴ See Catalyst Canada and the Diversity Institute in Management and Technology at Ryerson University, "Career advancement in corporate Canada: A focus on visible minorities – an early preview", p. 2 (Toronto, 2007), available from www.ryerson.ca/diversity/news/fulldocument.pdf.

45. Unemployment (16.5 per cent) among Muslim women is more than double the rate (7.2 per cent) for all women, despite their significantly higher levels of graduate education and professional qualifications. They are concentrated in low-paying, low-skill occupations and earn on average \$16,010, compared with \$22,885 for all women.¹⁵ Muslim women described “triple jeopardy” - intersectional discrimination based upon their identities as Muslims, as women and as people of colour.¹⁶ For Arab, West Asian, South Asian and African women in Toronto, the unemployment rate is over twice that of white Canadian women. One in four workers in Ontario earns below the poverty line. This number is higher for women overall (31 per cent) and women of colour especially (38 per cent).

46. People of colour are underrepresented in public service employment. Following the enactment of the Employment Equity Act, the federal Government established the Perinbam Task Force on the Participation of Visible Minorities in the Federal Public Service in 2000, to advise on measures to increase representation and propose an action plan. Its recommendations,¹⁷ endorsed by Parliament, set targets for hiring one visible minority in every five new hires by 2003 and the same ratio for executive promotions by 2005. Failure to implement these recommendations is reflected in an actual decline in visible minorities in the federal public service from 9.8 per cent in 2005/06 to 8.7 per cent in 2006/07,¹⁸ below the workforce availability estimate of 10.4 per cent.

47. The Public Service Commission and the National Council of Visible Minorities in the Federal Public Service challenge as false the arguments that few visible minority candidates apply for posts and that managers cannot find suitably qualified minorities. While statistics are not available, consultations with provincial and territorial government representatives also revealed underrepresentation in government employment. Of some 26,000 members of the Royal Canadian Mounted Police, in 2006 only 316 (1.2 per cent) were visible minorities. The Government acknowledges that the

¹⁵ See Canadian Council of Muslim Women fact sheet No. 1, available from www.ccmw.com/documents/FactSheet1.pdf.

¹⁶ See Daood Hamdani, “Triple jeopardy: Muslim women’s experience of discrimination” (Canadian Council of Muslim Women, 2005), p. 6, available from www.ccmw.com/documents/Triple_Jeopardy.pdf.

¹⁷ Contained in the report *Embracing Change in the Federal Public Service*, available from www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_852/dwnld/ecfps-eng.pdf.

¹⁸ Canada, *Public Service 2006-2007 Annual Report* (Public Service Commission of Canada, Ottawa, 2007), p. 59.

public service still has work to do to address critical issues affecting the recruitment, advancement and retention of visible minorities.

48. The issue of non-recognition of foreign credentials was raised as a long-standing and persistent problem. Many described a disconnect between the federal policy of promoting immigration to Canada of highly skilled people in fields including medicine and engineering, and employment restrictions imposed at the provincial or territorial level by professional regulatory bodies. They highlighted a lack of clarity, information and full disclosure at the pre-immigration stage, followed by inadequate support after immigration.

49. Affected individuals described having to take unskilled, low-wage employment, often for years, and the need to retrain in professions in which they were previously practitioners in order to meet provincial requirements. Some find themselves in a cycle of poverty and one community member stated: “The Government promotes qualified immigration and then lets those skills rot. It’s like a dream gone bad”. It is estimated that 6 in 10 immigrants cannot find work in their chosen profession. Minority representatives point out that, even when credentials are recognized, discrimination results in continuing barriers to employment often on the grounds of “lack of Canadian experience”.

50. A Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications was established through cooperation between government representatives and professional regulatory bodies. The framework provides a Canada-wide vision for immigrant labour market integration based on timeliness, transparency, consistency and fairness. In December 2009 the federal Government announced a fast-track process of recognition of foreign credentials and that credentials of individuals in eight fields would be assessed within a year regarding their compliance with Canadian standards. The Working in Canada website and the Foreign Credentials Referral Office aim to improve pre-immigration information. In 2006, the Ontario government enacted the Fair Access to Regulated Professions Act to help ensure fair registration practices.

51. The federal Government notes that under Canada’s Action Plan Against Racism, the Racism-Free Workplace Strategy develops the tools, guidelines and educational materials required to facilitate the integration of skilled individuals, including visible

minorities, into equitable and inclusive workplaces.¹⁹ Partnerships are built with and between different government departments and agencies, community and labour organizations, and the private sector. Through partnerships, the Government aims to raise awareness of the Racism-Free Workplace Strategy, while removing barriers to opportunity.

52. Through the Welcoming Communities Initiative of the Department of Citizenship and Immigration funding is allocated to regions and provinces to support ongoing anti-racism activities, awareness-raising, outreach, direct services and tools and resource development. Funded projects have included community-based conferences, focus groups, workshops and committees.²⁰ In 2008, British Columbia launched the Welcoming and Inclusive Communities and Workplaces Program to support the capacity of communities and workplaces in British Columbia to be inclusive.

D. Policing

53. Policing issues were raised in community consultations held in Regent Park, Jane and Finch and Thorncliffe Park in Toronto, the Downtown Eastside in Vancouver, and Montreal North. Persons belonging to African Canadian, Muslim, Arab and Latino communities reported feeling subject to unjustified police surveillance and experiencing negative interactions with the police, which they consider to be consistent with a practice of racial profiling.

54. Community members claim that derogatory stereotypes, such as characterizations of African Canadian criminality, violence and drug offences, or Muslim extremism, colour wider societal perceptions of Black or Muslim males. They devalue whole communities and negate their sense of citizenship and belonging. Racial profiling and heavy-handed policing of minority neighbourhoods is blamed for disproportionate arrest rates and overrepresentation of minorities in the criminal justice system. Members of minority communities claim that racial profiling, police impunity and disproportionate use of force have resulted in deaths and serious injuries.

¹⁹ See Annual Report on the Operation of the Canadian Multiculturalism Act 2007-2008, part 2, available from www.cic.gc.ca/ENGLISH/RESOURCES/PUBLICATIONS/multi-report2008/part2.asp.

²⁰ Ibid.

55. Montreal North residents claim that investigations of police misconduct have not been independent. Rather, they characterize the current system as amounting to the police investigating the police. When a police officer is involved in a shooting, the investigation of whether the use of force was justified and proportional is given to the police force in another jurisdiction. Cases may be referred for prosecution by the Crown Prosecutor. But according to the investigations of a local journalist, over the past six years, 97 cases were investigated where civilians were injured or killed in police shootings, chases and arrests. Of those, only one was prosecuted.

56. Community members claim that reports and evidence related to investigations are withheld from them. They call for a comprehensive review of the process of investigation to ensure independence, the establishment of an independent civilian investigation authority board, full transparency and disclosure, an investigation into racial and religious profiling, and suspension of the use of tasers.

57. Montreal police representatives provided information on their policies,²¹ and highlighted a zero-tolerance policy with regard to profiling and racism. No police have been found guilty of profiling. They pointed to specialist expert committees established with advisory roles, including on racial profiling and with respect to specific communities. They rejected claims of excessive force and impunity.

58. The Quebec government notes that independent investigations are launched systematically where a person has died or sustained serious injuries as a result of police actions or while being held in custody. Actions of police officers are scrutinized by civilian and police mechanisms, including the Police Ethics Commissioner and the Police Ethics Committee, which were established upon the recommendation of the Human Rights and Youth Rights Commission. However, police representatives acknowledged that the process currently fails to have the confidence of the community.

59. Work is under way to improve the system of independent investigations, providing additional guarantees regarding impartiality.

²¹ Including: Montreal City Police Service-Police action in a changing society – an action strategy on intercultural skills development.

60. The action plan of the government of Quebec, entitled “Diversity: An Added Value,” contains measures focused on preventing discrimination and racial profiling within Quebec police forces, including education and measures to hire staff from cultural communities. On 19 October, 2009, the government of Ontario established the Office of the Independent Police Review Director as an arms-length agency to accept, process and oversee the investigation of public complaints against Ontario’s police. British Columbia has a Diversity Committee that examines policing issues.

61. There is currently no requirement for ethnically disaggregated data relating to the criminal justice system, including on stop-and-search rates or arrests. Between 1994 and 2004, African Canadian inmates held in federal prisons comprised approximately 6 per cent of inmates while African Canadians comprised only 2 per cent of the population.²² The African Canadian Legal Clinic expressed serious concerns regarding disproportionately high incarceration rates of African Canadian women, many on drug-related offences. They stressed that solutions must be considered in the wider context of social inequality and poverty.

E. Profiling under national security legislation

62. The security certificates process is based on provisions within the Immigration and Refugee Protection Act (2001). Certificates can be issued to non-citizens as a preliminary step to detain and deport individuals on national security grounds. The independent expert met an individual who had been detained for considerable periods under security certificate provisions. He described his treatment as discriminatory and his detention as based only upon his profile as a man of Arab ethnicity. Numerous civil society groups claim the powers authorized under these laws are used indiscriminately, are targeted against Muslims and Arabs, resulting in discriminatory impact, and serve to re-enforce negative stereotypes.

63. The Government notes that the security certificate process is a legal immigration proceeding and not a criminal proceeding²³ and that it is neither arbitrary nor indiscriminate. Its aim is to remove non-Canadians who pose a serious threat to national

²² S. Trevethan and C.J. Rastin, “A profile of visible minority offenders in the federal Canadian correctional system” (Ottawa, Correctional Service Canada, 2004). Available from www.csc-scc.gc.ca/text/rsrch/reports/r144/r144-eng.shtml#il.

²³ See Public Safety Canada website www.publicsafety.gc.ca/prg/ns/seccert-eng.aspx.

security or public safety. Certificates are issued in exceptional circumstances²⁴ and with the approval of two Ministers. Security certificates are referred to a federal court judge who determines whether the application is reasonable. The federal Government is legally empowered to use classified information in closed proceedings, however, in 2007, the Supreme Court ruled that additional safeguards were required. In 2008, the Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act introduced “special advocates” to protect the interests of subjects during closed proceedings. The legislation requires regular reviews of long-term detention and/or terms and conditions of release of the individual subject to the security certificate.

IV. IDENTITY, RELIGION, LANGUAGE

64. Amongst initiatives to promote tolerance and knowledge of diversity within Canadian identity, the federal Government has initiated Black History Month, marked annually in February. It includes events that honour the legacy of Black Canadians and raise awareness of their long history in Canada, their experiences and contributions to Canadian society, past and present. Official literature acknowledges the relative absence of people of African descent from Canadian history books. Asian Heritage Month in May recognizes similar omissions and seeks similar objectives in respect to Canada’s varied Asian communities, while recognizing past injustices.

A. Religious minorities

65. Freedom of religion is protected in Canada under section 2(a) of the Canadian Charter of Rights and Freedoms. The purpose of section 2(a) is to ensure that society does not interfere with profoundly personal beliefs that govern one’s perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. The Supreme Court has interpreted freedom of conscience and religion very broadly and has acknowledged that it is not restricted to major and recognizable religions.

66. Minorities were positive about the extent of freedom to express their religious identity and consider that Canada offers an enabling environment. However, Muslim

²⁴ Since 1991, 27 individuals have been subject to proceedings.

community members expressed concerns over increasing Islamophobia within mainstream society. Some described anxiety over openly expressing their faith, supporting Islamic schools or promoting Muslim rights, lest they be perceived as extremists. A rise in anti-Islamic sentiment is leading some to question their equality and their ability to speak out openly about Muslim issues.

67. A debate on “reasonable accommodation” of racial, ethnic and religious differences and practices undertaken in Quebec since 2006 has, some claim, taken on racist dimensions and revealed prejudices. Muslims and others point to a “false crisis” created by the media regarding Islam in Canada despite census statistics revealing that Muslims form little over 2.5 per cent of the population. Muslim women’s groups highlight that stereotypes about Muslim women differ markedly from reality and help to fuel anti-Muslim sentiment.

68. In 2003 the Ontario Human Rights Commission launched an examination into the human cost of profiling in social institutions for individuals, their families and their communities. Having identified more than 800 personal accounts, the Commission said the practice may lead to alienation, an eventual mistrust of Canada’s institutions, and a weakened sense of citizenship for targeted racial and ethnic groups.

69. Polls carried out in 2009²⁵ revealed that only 28 per cent nationally had a “generally favourable opinion” of Islam compared to 72 per cent for Christianity. About 45 per cent of those polled said that they believe that Islam encourages violence. Muslims and Arab representatives stated that negative stereotypes abound in Canadian society including in the mass media and entertainment industry and have been reinforced since September 2001. Arabs and Muslims described discriminatory treatment, detention, interrogation and fingerprinting by immigration officials and consular services and pointed out incidents revealing marked contrasts in the experiences of Arabs and Muslims in comparison to white Canadians.

70. The government of British Columbia noted that within its multiculturalism and anti-racism program, entitled “EmbraceBC”, a specific programme element called

²⁵ See John Geddes, “What Canadians think of Sikhs, Jews, Christians, Muslims ...”, *Macleans.ca*, 28 April 2009. Available from <http://www2.macleans.ca/2009/04/28/what-canadians-think-of-sikhs-jews-christians-muslims/>.

“Interfaith Bridging” exists. In recognition of intersectional identities (such as race, gender, religion, etc.), Interfaith Bridging promotes the building of relationships between diverse, established faith communities.

B. Language issues

71. The official language provisions in the Charter serve to preserve and promote the two official languages of Canada and the cultures represented by those languages, by ensuring that each language flourishes in provinces where it is not spoken by the majority. Section 23 aims at achieving this goal by granting minority language educational rights to minority language parents throughout Canada. In addition to the minority language rights contained in the Charter, the Official Languages Act is the cornerstone of Canada’s legislative and regulatory regime of language rights protections.

72. The 2006 Census revealed that 98 per cent of Canadian residents speak at least one official language, English or French. However about 20 per cent of Canadians (roughly 6.1 million people) speak a different mother-tongue language. Immigration trends have resulted in significant growth in the number of people speaking non-European languages including Chinese, South Asian and African languages. However, minority representatives noted that Government policy is geared towards promoting the universal knowledge of and equality of official languages, rather than the teaching of non-official languages.

73. The federal Multiculturalism Act aims to, among other things, “preserve and enhance the use of languages other than English and French”, and some support has been provided to ethno-cultural communities via multiculturalism programmes. Teaching of mother-tongue languages is generally based upon community classes and the initiatives of individual school boards. The Toronto District School Board operates the International Languages Elementary Program in some Toronto schools. Students learn mother-tongue languages including Arabic and Cantonese as extra-curriculum activities in which parents contribute as teaching assistants. The government of Quebec offers members of minority communities courses in some 20 languages other than French and English.

V. PROTECTION AGAINST VIOLENCE

74. A Statistics Canada 2004 General Social Survey found race or ethnic origin was the most commonly cited motive for hate crime incidents (66 per cent of all hate-motivated incidents). In just over 3 per cent of all crimes victims believed that the crime had been motivated by hate. However, for incidents in which the victim was a visible minority the proportion is over 7 per cent. Research on hate crimes in 2007 reveals that 33 per cent of the victims of all racially motivated hate crimes were Black, decreased from 48 per cent in 2006.²⁶

75. Muslims and Arabs described a more hostile post-September 2001 environment in which they feel increasingly targeted by racism, Islamophobia and hatred. Muslim groups described increasing incidents of vandalism of mosques and Muslim schools, hate crimes against individual Muslims, negative portrayals of Islam in the media and anti-Muslim sentiments among the general public. They expressed the need for stronger protection measures and action against racism. In Quebec, a preliminary report on hate crimes is expected in 2010.

76. The Department of Justice implements key objectives of Canada's Action Plan Against Racism, focusing on race-based issues in the justice system, interventions for victims and perpetrators of hate crimes, and countering Internet-based hate crimes. These constitute the Department's strategy to sustain equality before the law. In 2007-2008 the Department supported initiatives to combat the proliferation of hate propaganda on the Internet, including a national stakeholders meeting which brought together participants from community organizations.

77. Violence within poor localities with high ethnic minority populations is a problem that minority representatives consider cannot be disassociated from poor educational outcomes, economic inequality, poverty and the relative lack of opportunities open to young people of colour. Gang-related and drug crime must consequently be addressed by social policy responses as well as policing initiatives.

VI. POLITICAL PARTICIPATION OF MINORITIES

²⁶ Phil Walsh and Mia Dauvergne, "Police-reported hate crime in Canada, 2007", *Juristat*, Vol. 29, no.2, table 2, available from www.statcan.gc.ca/pub/85f0033m/85f0033m2008017-eng.pdf.

78. Research on political participation of minorities published in 2008 revealed that in 2004, just 7 per cent of Members of the Canadian Parliament were visible minorities compared to a 15 per cent representation in the overall population. Despite rapid growth in the visible minority population, the seat share for visible minorities was virtually the same as that achieved in 1993. Across 11 cities, out of 552 elected officials at three levels of government, the study revealed 48 visible minorities (9 per cent).

79. Minority representatives suggest that discrimination restricts their participation and that a “glass ceiling” in political structures stops people of colour progressing to senior posts. Political parties rarely select minority candidates. Other barriers exist in such factors as employment and economic status, poor outreach to minorities by political parties including via ethnic media, and lack of inclusive consultations with minorities in policymaking.

80. Muslims are the least likely of all faith communities to exercise the franchise and Muslim women have a lower propensity to vote than men. In Vancouver, Chinese community representatives discussed progress in their representation in localities with large Chinese communities. However this is not matched by strong representation at provincial, territorial or national levels.

81. Barriers to political participation by minority women are particularly persistent. They include the heavy burden of care for families and cultural factors. In the 1997 and 2000 federal elections, there was only one Muslim female candidate running on the ticket of any major party. This number increased to four in 2004. In 2005, there were only two Muslim women serving in a provincial and territorial or federal legislature.

82. The Government highlights that various barriers may be impacting the civic and political integration of minorities, including: language, size and territorial concentration of a group, organizational density, sense of belonging and unfamiliarity with Canadian political culture.

83. Elections Canada has specific initiatives to promote minority participation including multi-language advertising and information campaigns in over 25 languages;

website-based voter information; targeted information communications (made available to 573 ethno-cultural associations); and community relations officers to disseminate voter information to ethno-cultural communities.

VII. CONCLUSIONS AND RECOMMENDATIONS OF THE INDEPENDENT EXPERT

84. **Canada is rightly proud of its richly diverse society including citizens with many ethnic backgrounds, numerous languages, religions and cultural practices. Many identify themselves as African or Black Canadians, Arab and Asian Canadians, people of colour and religious minorities. Persons belonging to minorities generally described Canada as a society where they can express their identities, speak their languages and practice their faiths freely and without hindrance. Canada has an impressive constitutional and legislative framework at the federal, provincial and territorial levels that requires adherence to the core principles of equality and non-discrimination for all. Canada was a leader in fashioning a State policy of multiculturalism and has invested considerable resources into meeting the expectations of its Constitution and legislation.**

85. **Achieving a truly inclusive society requires constant vigilance. Significant and persistent problems face individuals and communities belonging to certain ethnic, religious and linguistic minorities. Many of those consulted believe that federal, provincial and territorial governments have not adequately implemented the impressive legislative and policy framework that exists. They have failed to respond adequately to their problems or to devise meaningful and enforceable solutions, leaving them and their communities feeling discriminated against and neglected. The following recommendations are proposed.**

Take robust actions to achieve equality in employment

86. **At all levels of government and within the work of all relevant ministries it is essential that efforts to fully implement non-discrimination and equality guarantees be intensified. Appropriate penalties should be applied to those entities that fail to fully comply with standards for non-discrimination and equality as**

measured by a “results test”. Where current best efforts fail to achieve the equality objectives, robust affirmative action programs should be implemented.

87. Federal, provincial and territorial governments have useful legislation and policies in the field of employment equity. However there is a substantial implementation gap. Standards and requirements must be better enforced and penalties must be imposed to ensure that Canada’s workplaces, both public and private, truly reflect the diversity present in society and live up to the promise of equality.

88. Government must lead by example with robust efforts and measurable achievements in recruiting, retaining and promoting minorities to senior roles in the public service, ministries and departments. Government workplaces should be examples of enabling environments for the advancement of minorities. In this respect, the Perinbam Task Force on the Participation of Visible Minorities in the Federal Public Service established by the federal Government in 2000 provided a valuable action plan and recommendations that remain extremely relevant today. A decade later, its objectives remain unfulfilled. Those recommendations should be implemented fully at both federal and provincial or territorial levels.

89. For some minority communities, including sectors of the African Canadian, Asian Canadian, Arab and immigrant community, consistently higher-than-average educational achievements do not translate into access to professional and skilled employment, labour mobility and wages commensurate with their educational outcomes. It must be recognized that discrimination plays a role in this equation. A disconnect between education and employment must be tackled by Government as an important issue of concern requiring policy implementation.

90. Minorities are frustrated that highly qualified workers have been encouraged to migrate to Canada, but many find on their arrival that their qualifications are not recognized at the provincial or territorial level. Many professionals are unable to gain employment in their former professions despite critical shortages, including of doctors and nurses in some regions. Professionals who have practiced prior to migrating have faced lengthy, expensive and

unexpected hurdles to satisfy provincial requirements. Many must resort to low-skilled, low-waged employment for years forcing some to live in conditions of hardship and poverty. The cliché of “doctors driving taxi cabs” resonates as reality for many minority professionals. While the federal, provincial and territorial governments are engaged in a collaborative process to address this long-standing problem, efforts to find solutions should be intensified as a matter of urgency.

Disaggregate data currently labeled as “visible minorities”

91. Data disaggregated along ethnic and religious lines, as well as gender, is essential to reveal hidden inequalities and to provide a key resource for informed policy responses. Statistics Canada has done excellent work in the field of data collection and analysis. However demographic changes, including rapidly growing minority populations, are making new demands for deeper levels of disaggregation to keep pace with shifts in the economic and social status of specific minority communities. Digging deeper into demographic data can give recognition to even greater diversity in Canadian society.

92. While the category called “visible minority” in the Employment Equity Act was at one time a positive step to acknowledge minority communities, it is now too broad to give a realistic picture of the achievements of or problems faced by distinct communities. Certain communities, particularly those with African heritage, feel strongly that this terminology, under which their data is captured, leads inevitably to the neglect of their specific identities and situations.

93. Consultations revealed the interchangeable and overlapping use of terms including “immigrants”, “visible minorities” and “cultural communities”. A lack of clarity exists between and within different levels of government, which may impact on the effectiveness of measures to address the issues of distinct population groups. Many positive policies appear targeted towards “immigrants”, while few seem to speak directly to the experiences of established minority communities experiencing long-standing problems and discrimination.

94. “Unpacking” the visible minority data is a first essential step towards recognition that a wide variety of experiences exist among different minority

groups. Statistics Canada should hold nation-wide consultations with various communities to develop terminology and a nomenclature based on the exercise of those communities' right to self-identification. Consultations should determine the categories used in the future to disaggregate data for reporting and policymaking purposes. Consideration should be given to amending the Employment Equity Act to use corresponding terminology.

95. All data should be further disaggregated by sex to reveal how the situation of women in each racial/ethnic category differs from the experiences of men in those categories. That would enable Status of Women Canada to play a more effective role in policymaking with respect to minority women.

Target poverty elimination policies to the special needs of ethnic/racial and religious minorities

96. Federal and provincial or territorial governments acknowledge that poverty is a problem disproportionately faced by people of colour, including African Canadian and specific Asian Canadian communities. Income levels generally are significantly lower for minorities, unemployment rates are higher and minorities are disproportionately living in the poorest neighbourhoods and in social housing with relatively poor access to services. A cycle of poverty is set in place from which it is difficult to escape. Policy responses and specific anti-poverty measures should be holistic and must recognize the complex causes of poverty that include discrimination targeted towards minorities because of the colour of their skin and the resulting social and economic exclusion. Consequently, poverty alleviation programmes must be targeted towards racialized communities.

Comprehensively address inequalities in educational outcomes

97. Black Canadians and some Asian Canadian communities are concerned that their children are having negative experiences in public schools. Data reveals that dropout rates are particularly high among boys from these communities. The current discourse and rhetoric of multicultural education appears to be failing these children. Community members described approaches to education that do not take into account their different cultures of learning, curriculum and textbooks

that ignore their histories and contributions to Canadian society and a gross underrepresentation of minorities in the teaching and school administrative staff.

98. **It is vital to fully recognize the challenges facing minority children and to address these throughout the learning experience. Safe Schools legislation should be reviewed to ensure that its implementation is conducive to a positive learning environment and is not discriminatory. The independent expert draws the Government's attention to the recommendations regarding minorities and the right to education from the first session of the Forum on Minority Issues (see A/HRC/10/11/Add.1).**

Increase political participation of minorities

99. **Political participation and representation enables minorities to have a voice in decision-making bodies. However, at the federal, provincial/territorial and municipal levels minorities are poorly represented in political structures and institutions. Minorities must be proactive in their engagement and participation in political processes. At the same time, more must be done to empower them to do so and attention must be given by all political actors, including political parties, to improve the representation of minorities. The independent expert wishes to draw attention to the recommendations of the second session of the Forum on Minority Issues on minorities and effective political participation (A/HRC/13/25) and urges appropriate implementation of these recommendations.**

Take effective steps to protect against profiling and establish community confidence in unbiased policing

100. **Minority communities raised serious issues regarding policing, including racial profiling as a systemic practice, biased, heavy-handed policing of some communities and allegations of excessive use of force leading to deaths, particularly of young Black males. Perceptions persist that the police act with impunity in some localities and that investigations are not conducted by independent authorities or civilian review boards.**

101. It is essential that investigations into serious allegations of police misconduct have the confidence of communities concerned, are carried out by bodies that are perceived by communities to be independent and that mechanisms of civilian oversight are strengthened where they exist or established where they do not.

102. Initiatives by police authorities to strengthen community relations and enforce internal non-discrimination measures are welcome, but must be enhanced. Steps should be taken to dramatically increase minority employment in the national, provincial/territorial and municipal police forces. Requirements for reasonable suspicion should be established for all police stops. Statistics should be collected and publicly reported which anonymously identify the ethnicity of the subject each time an officer stops a person, noting the nature and justification for the action. Data should be retained to assess what percentage of those stops has resulted in grounds for arrest and convictions. Disaggregated data should be required throughout the criminal justice system and publicly reported annually, as a measure to enforce bans on racial profiling.

103. Oversight mechanisms should be strengthened with respect to scrutiny of the necessity and proportionality regarding the use of force by a police officer in every case. The methods of scrutiny should allow a comparison between the frequency and severity of force used in situations involving minority as opposed to majority community individuals.

Ensure that counter-terrorism measures meet human rights standards and avoid profiling

104. Members of Muslim and Arab communities commonly reported that Government policies post September 2001 have made them feel targeted, profiled and harassed. They described indiscriminate, unfair and unjust treatment by federal, provincial or territorial authorities, the media and others. They described anxiety about speaking out about their concerns and expect a backlash when they seek avenues of redress. They are concerned about racial profiling and the use of Security Certificates based on unsubstantiated information. They perceive they have a second class citizenship when they are abroad and require the assistance of

the Canadian authorities and consular services. Steps must be taken to address these concerns, answer allegations, and to build positive relations and confidence among communities that feel targeted by national security legislation.

Strengthen mechanisms of redress and access to justice throughout the country

105. **The Constitution of Canada recognizes the authority of provincial or territorial governments in such fields as education, non-federally regulated employment, the delivery of health care and social services. These are critical responsibilities with respect to equality in the protection of social and economic rights.**

106. **The constitutional arrangement of shared responsibility for human rights between federal Government and provincial/territorial governments has resulted in an uneven and unclear enforcement system that varies between provinces. The federal Government, in close cooperation with provincial or territorial authorities, must work towards stronger mechanisms of cooperation to guarantee consistent enforcement with respect to obligations under the provisions of international treaties, particularly in the area of non-discrimination and equality and the implementation of the rights of persons belonging to minority groups.**

107. **Where provincial/territorial governments fail, the federal Government must take a vigorous approach to influencing matters that are otherwise considered within the exclusive jurisdiction of provincial or territorial governments. The federal Government has placed conditions on provincial governments in the exercise of its spending powers. Using that authority to exercise control over provincial or local actions when necessary to guarantee the rights of minorities to equality should be considered in the national interest regardless of whether the matter falls within the exclusive provincial jurisdiction.**

108. **Minorities feel that certain mechanisms of redress are inaccessible, underfunded and under threat, particularly the Human Rights Commissions. Additionally, the Court Challenges Program which provided critical support for enforcing constitutional guarantees has been defunded. This has led some communities to perceive an erosion of their avenues for redress and to lose faith in**

the effectiveness of these critical enforcement bodies. Human Rights Commissions and other independent advisory and monitoring bodies have an essential role to play in the promotion and protection of human rights and should be adequately resourced in order to carry out their work. The independent expert recommends review of the abolition of the Court Challenges Program, particularly the Equality Rights Program.
