

Canada: Preventing and Combating Racial Profiling

**Submission to:
The UN Committee on the Elimination of Racial Discrimination**

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Introduction

The Union of British Columbia Indian Chiefs' (UBCIC) mandate is to work towards the implementation, exercise and recognition of our inherent Title, Rights and Treaty Rights and to protect our Lands and Waters, through the exercise and implementation of our own laws and jurisdiction. The UBCIC strengthens Indigenous Nations to assert and implement their Aboriginal Title, Rights, Treaty Rights and Right of Self Determination as Peoples. The UBCIC works collectively amongst Indigenous Nations in British Columbia (BC) and acts as an advocacy body to provide a cohesive voice (regionally, nationally and internationally) in support of Indigenous Nations and communities, and to promote and protect each Nation's exercise of Sovereignty within their traditional territories.

An integral part of UBCIC's mission is the commitment to address the institutionalized racism against Indigenous peoples that is deeply rooted in colonialism, patriarchy and hierarchy. Our following report uses First Nations' experiences of racial profiling and racialized policing as a crucial lens through which to examine the Committee's draft General Recommendation No. 36 and its suggestions to prevent and counter profiling.

Goal 10 of the UN's 2030 Sustainable Development Agenda includes the commitment to reduce inequality in and amongst racialized, disadvantaged and marginalized populations by eliminating discriminatory laws and policies. It is only possible to achieve this goal by 2030, when Nations recognize and safeguard the rights and welfare of Indigenous peoples who have suffered from historic injustices and oppression. While the current Canadian government, led by Prime Minister Justin Trudeau, has committed to a new relationship with Indigenous peoples in Canada based on the "recognition of rights, respect, co-operation and partnership," systemic racism continues to be pervasive and responsible for an inequitable Canadian justice system. The disproportionate number of Indigenous peoples targeted by racial profiling is a testament to the deeply entrenched colonial belief that they are inferior and marginal to the beliefs and cultures of the non-Indigenous society. Our submission offers an assessment of the Committee's Draft report and will highlight the importance of identifying historic systemic racism that is responsible for influencing contemporary systems of racial profiling.

Indigenous Peoples' Experiences of Racial Profiling in BC and Canada

Historical Context:

The Canadian government's treatment and perception of Indigenous peoples continues to be impacted by racism that originated in colonialism. The precursors of racial profiling in Canada emerged in government programs launched in the late nineteenth century and the mid twentieth century including the residential school system and the adoption of Aboriginal children into non-Aboriginal homes, the "60's Scoop." Both of these programs singled out Indigenous children and youth for discriminatory and abusive treatment. These practices both grew from and perpetuated the belief that Indigenous people were "inferior," "uncivilized," and at a racial, cultural, social, economic, and educational disadvantage. These negative beliefs and stereotypes provide the framework for the various forms of racial profiling that Indigenous peoples are subjected to today.

Throughout Canada's history of institutionalized racism, the fraught relationship between Indigenous people and the police evolved to shape and reinforce practices of racial profiling. Police historically operated as agents of colonization, enforcing laws, policies, and unwritten codes established by the church and government that were aimed at extinguishing Indigenous culture. The police also played a significant role in removing Indigenous children from their homes and bringing them to the residential schools. They became complicit in a system that was responsible for sickness, abuse, death, and cultural

genocide. In 1927 all Royal Canadian Mounted Police (RCMP) officers and constables were officially appointed truant officers and were tasked with tracking down and returning runaway children to residential schools.¹ Canadian history is littered with many cases of police violence and prejudice towards Indigenous peoples, and it is unsurprising that many Indigenous peoples view the police as perpetrators of cultural genocide and symbols of Indigenous subjugation. Unfortunately, racist dynamics are still very much prevalent and at play in policing culture. Racial profiling has become an insidious form of social control and something First Nations in BC confront on a daily basis. UBCIC is particularly concerned with and involved in addressing the following police practices:

Street checks/carding

On June 14, 2018, UBCIC and the BC Civil Liberties Association (BCCLA) filed a complaint with the Office of the Police Complaint Commissioner calling for an immediate investigation of the significant racial disparity revealed in Vancouver Police Department's (VPD) practice of "street checks" or police stops, often referred to as carding. Street checks are the practice of stopping a person outside of an investigation, questioning them, obtaining their identifying information, and often recording their personal information. Our complaint was based on the VPD's release of data on street checks from 2008 to 2017 that revealed that of the 97,281 street checks, 15% were of Indigenous people, despite this population making up only 2% of the population.² The data released confirmed that racial profiling is a contributing factor for both Indigenous and Black people being significantly overrepresented in street checks. This targeting and surveillance of Indigenous people reveals a lived reality that is still saturated in colonial violence and discrimination.

Under-policing

Under-policing is often racially motivated and occurs when police ignore or minimize requests for assistance from Indigenous communities. Although Indigenous peoples are overrepresented as victims of crime, a confluence of damaging racial stereotypes and misconceptions causes police to view them as "less worthy victims" and to investigate and prosecute crimes against them with a biased eye and a lack of drive³. In BC, no more is this evident in the staggering statistics of missing and murdered Indigenous women and girls. Many of the family members and loved ones of these women and girls cite a lack of reliable and thorough police response. Unsurprisingly, the RCMP have a track record of not accurately and consistently recording the Indigenous identity of victims of crime. In 2009, Statistics Canada reported that the RCMP had failed to record whether the victims of crime were Aboriginal or non-Aboriginal in 384 out of 610 homicides. The RCMP's negligence and distortion of facts is symptomatic of the racial profiling that continues to discount and pigeonhole First Nation women into "sex workers" or "the drunken and poor."

Key Impacts of Racial Profiling on First Nations

Notable impacts of racial profiling in BC include:

- Increased stigmatization and negative stereotyping; the perpetuation of the image that Indigenous men are "criminals" and Indigenous women are "sex workers"
- Barriers to employment and equal job and learning opportunities

¹ Truth and Reconciliation Canada. *Canada's Residential Schools: The History, Part 1 Origins to 1939 The Final Report of the Truth and Reconciliation Commission of Canada*, vol 1 (Montreal: McGill-Queens University Press, 2015) at note 2, page 285.

² Vancouver Police Department, Published Freedom of Information Requests, VPD Street Check Data 2008-2017 (Vancouver: 2018) <<http://vancouver.ca/police/organization/public-affairs/freedom-of-information.html>>.

³ Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System* (Toronto: Ipperwash Inquiry, 2005) anote 87 at 37.

- The general feeling of injustice and humiliation that fosters further distrust and animosity towards institutions and the justice system
- Indigenous mothers, particularly single mothers, are targeted and scrutinized by child welfare authorities. The removal of children from their parents and families is associated with the increased risk of Indigenous youth becoming implicated in the criminal justice system and the overrepresentation of Indigenous children in the child welfare system
- Adverse psychological, physical and behavioral impacts including the internalization of negative stereotypes and/or increased stress, insomnia, depression, anxiety and diminished self-worth
- The pervasive and underhand nature of racial profiling; it manifests in education, retail, child welfare, transportation and other sectors, and can become so normalized in an organization that it is integrated into policies, decision-making, and procedures.

Draft General Recommendation No. 36: Preventing and Combating Racial Profiling

The Committee's draft recommendation identified seven foundational strategies to counter the problem of profiling. The following is an assessment of several of these recommendations.

Legislative Measures

UBCIC strongly agrees with Recommendation A.26 and A.27 that establish the importance of having comprehensive laws and policies that prohibit the generalized use of race "as a basis for suspicion and decision-making in law enforcement actions." Clearly defined laws, policies, and guidelines must be in place to prevent and deter racial profiling. A clear example of this coming into effect in Canada can be seen in the recently defeated *Bill C-262, an Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples*. If passed, Bill C-262 would have harmonized federal laws with the principles set out in the *UN Declaration*, an important step towards affirming and codifying the *UN Declaration's* guiding principle that Indigenous peoples are equal to other peoples and should be free from discrimination of any kind. Embedding the *UN Declaration* into legislation is a clear step forward to counteract racial profiling and can be used as an example for other countries as a way to build a strong foundation of equality. It is important that any legislation or policy that is proposed, developed and put into effect is done so with the full consultation and participation of impacted racialized communities. In its Federal Budget 2018, Canada provided \$2 million over two years to support cross-country consultations on a new national anti-racism approach. However, the secrecy and invitation-only nature of these consultations was not conducive to accountability and transparency.⁴ It is therefore paramount that consultation processes regarding anti-racist legislation or programming be done so only with transparency and inclusivity in mind.

Dialogue with Community

Recommendation D.30, concerning the engagement in dialogue between law enforcement and community leaders/members, is vital for pushing back against the distrust law enforcement and racialized communities have towards each other. In response to BCCLA and UBCIC's complaint to the RCMP concerning street checks, the Vancouver Police Board approved six recommendations that included assigning an Indigenous Liaison Protocol Officer to support greater communication between patrol officers and partners in the Indigenous communities. Appointing a knowledgeable and highly trained individual to liaise with communities and to monitor and investigate complaints alleging systemic racism is an important means of engaging with communities and building a solid foundation of trust. Law

⁴ Zi-Ann Lum, "Liberals' Invite-Only Anti-Racism Strategy Consultations Quietly Wrap in Secrecy," *Huffington Post* April 12, 2019. Online: < https://www.huffingtonpost.ca/2019/04/11/canada-new-anti-racism-strategy_a_23710492/>.

enforcement should always work towards strengthening existing community relationships to better understand the unique experiences, perceptions, and histories of the communities they serve.

Human Rights Education and Training

Recommendation B.28 is crucial for ensuring that the systemic biases in policing are addressed through training and education. In the release of its 2019 Federal Budget, Canada promised \$45 million over three years to support a new Anti-Racism Strategy that has the principle purpose of finding “ways to counter racism in its various forms, with a strong focus on community-based projects⁵.” Part of this strategy includes developing public educational materials or programs that help build skills and leadership opportunities, as well as having “an Anti -Racism Secretariat that will work across government to identify opportunities, coordinate activities and engage with our diverse communities.”⁶ Having a central system or body in place to disseminate information and coordinate studies, research, and educational programs related to inclusivity is an important way to foster public awareness of systemic racism and engage with new Canadians, racialized individuals and religious minorities.

Disaggregated Data

As recommendation E.31 states, data pertaining to the ethnic origin of the members of the communities that are targeted must be recorded and made publicly available as anonymized statistics. An example of achieving this recommendation is seen through Canada’s commitment in Budget 2019 to provide \$6.7 million of funding over five years to create a new Centre for Gender Diversity and Inclusion Statistics. This centre will increase the disaggregation of various data sets by race which allows one to focus on particular racialized communities and to take the diversity of the Canadian population into consideration, leading to better policymaking.⁷

In BC, the VPD issued a Request for Proposals from independent third parties to independently analyze and interpret the VPD data on street checks practice, policy, procedures and guidance on street checks and the use of them by July 2019. Having an independent third-party to review and monitor law enforcement data and procedures, as well as conducting studies to assess the impacts of racial profiling and related practices on racialized people and their satisfaction with implemented changes, is instrumental to removing the bias and discrimination in policing.

Accountability

UBCIC supports strong language and action around section F32-34; accountability mechanisms need to become a law enforcement standard. UBCIC has continually witnessed an appalling lack of accountability in the justice system, whether it be the lack of action around implementing and heeding Missing and Murdered Indigenous Women and Girls reports, research and studies, or the fact that despite critical police failures in the missing women investigations, police continue to operate with no repercussions.

General Comments:

UBCIC agrees with Section IV. 17 that states that “profiling can also be biased on the basis of sex, gender, age, or religion or other prohibited or intersecting grounds. Those practices should also be addressed.” In BC, gender plays a significant role within the context of Indigenous discrimination and marginalization. More work needs to be done in assessing how Indigenous women’s lives are more threatened by acts of racist and misogynist violence, and whether they are more vulnerable to racial profiling than Indigenous men, or vice versa. A nuanced approach to racial profiling can be realized in

⁵ *Investing in the Middle Class: Budget 2019*, page 172. Online: <https://budget.gc.ca/2019/docs/plan/budget-2019-en.pdf>

⁶ Ibid, 172.

⁷ Ibid, 171.

determining and considering how the interplay of gender, age, religion, and other intersecting factors can make one demographic vulnerable to racial profiling over another. Parallels may also be drawn and productively applied across demographics; Indigenous and Black people share a history of displacement, segregation and being racially profiled in Canada. Finding an approach that is distinction-based and aware of both the diverse experiences of racialized peoples and the uniting commonalities between communities is important to consider.

UBCIC's Recommendations:

The following are UBCIC's recommendations to prevent and combat racial profiling:

- States must make and implement effective mechanisms, policies, and legislation to **ensure that a strong foundation of equality and anti-racism is laid out as a framework towards addressing and eliminating racial profiling**. Canada has begun to build this framework with an Anti-Racism Strategy that provides a range of supportive services and educational programs, but needs to greatly strengthen this work, and Canada needs to pass legislation that will harmonize the *UNDRIP* with federal laws after C-262 was recently killed in the Senate.
- States and industry **must meaningfully recognize and respect the experiences and opinions of racialized communities and establish robust, transparent consultation processes** in the development and implementation of any anti-racism strategies, legislation, or initiatives.
- **Law enforcement agencies must commit to publicly and regularly releasing their data and statistics, as well as having independent third parties monitor and review their policy, procedures and guidelines on policing practices.**
- Consistent with recommendation F34, **an independent complaint mechanism that is separate from the police is vital for fostering the safety and security needed for people to file complaints of racial discrimination** – this could be in the form of a separate human rights complaints process or a police misconduct process. For example, the Civilian Review Complaints Commission is an independent agency in Canada that conducts an impartial and fair review of public complaints made about the conduct of RCMP members.
- **States must have a strong focus on promoting community engagement and public outreach projects that will involve the participation and engagement of racialized individuals, new citizens, and religious minorities.** Projects, programs and events that provide an educational, inclusive space for discussion is vital to combat racial stereotypes and profiling.
- **The pre-existing colonial framework of any nation and associated historical programs and regimes of institutionalized racism must be recognized as a root cause and factor in racial profiling.** To dismantle long-standing racism, it is important to identify and understand the historic structures and systems that are responsible for shaping how current governments and institutions view and target specific communities and peoples.

Conclusion:

In Canada, racial profiling is a by-product of an ongoing legacy of colonial oppression, racialized policing, and institutionalized discrimination. UBCIC is deeply concerned about the many damaging impacts racism has upon First Nations in BC and approves of the Committee's efforts to strengthen work against racial profiling. We hope that a focus on acknowledging the historical and colonial dimensions of racial profiling and conducting thorough, community-based consultation and research can help topple the systemic racism that continues to isolate and oppress Indigenous and racialized communities.