

Statement for the WGEPAD 27th Session – November 30, 2020, Monday 0800-0830 EST

Good day,

My name is Ikram Warsame, I am a 2020 people of African descent fellow from Canada, and I am a human rights lawyer. I would like to raise two issues that are of great concerns for people of African descent in Canada: (a) the ability of victims of discrimination to access justice and (b) the need to recognize Canadians of people of African descent as a distinct group under the *Employment Equity Act*.

A. Canadians of African descent do not have adequate access to have their human rights complaints adjudicated.

Under the current human rights system, the Canadian Human Rights Commission (Commission) reviews complaints and decides whether to refer them for adjudication to the Canadian Human Rights Tribunal (Tribunal). The Commission has the power to deny victims of discrimination the ability to have their cases adjudicated.

The current Canadian system is outdated, ill-equipped to address adequately equality rights claims and denies access to justice to victims of discrimination. This system is of particular concern for Canadians of African descent because raced-based complaints are the second-highest complaints received by the Commission according to its 2019 annual report¹ and only a small percentage of these cases have made it to the Tribunal stage. In fact, according to its 2019 annual report², the Commission received 1,203 complaints, and only 85 of these complaints have been referred to adjudication.

Over the years, human rights activists, lawyers and community advocates have raised serious concerns about the state of the federal human right system in Canada and its inability to effectively promote access to justice to Canadians for African descent and other marginalized groups.

In December 1998, the U.N Committee on ESCR addressed the access to justice issue in its third periodical review of Canada's compliance with the *ICESCR* and recommended that a competent Human Rights Tribunal determine all unresolved complaints.³

In June 2000, a panel of human rights experts appointed by the Minister of Justice of Canada under the leadership of a former Supreme Court judge, Honourable Justice LaForest conducted a comprehensive review of the Federal human rights system. One

¹ <https://www.chrc-ccdp.gc.ca/eng/content/annual-report-2019> at page 53

² <https://www.chrc-ccdp.gc.ca/eng/content/annual-report-2019> at pages.51 and 61

³ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1%2fAdd.31&Lang=en

of the primary and most pressing needs for reform that was identified in the LaForest Report was to eliminate the Commission's gatekeeping function and provide a process allowing victims of discrimination to bring their cases directly to the Tribunal with public legal assistance.

In April 2006, the United Nations Human Rights Committee made similar comments in its observations of Canada's compliance with the requirement of the *ICCPR* and noted that its previous concerns remained unaddressed. The committee was concerned that the Commission still has the power to denied victims of discrimination the ability to have their complaints adjudicated by the Tribunal⁴.

Despite these advocacy efforts, Canadians of African descent and other marginalized groups continue to be denied the ability to have their complaints heard by a competent Tribunal. We respectfully ask this working group to urge Canada to implement previous recommendations, adopt a direct access model and take the following actions:

- Human rights complaints should be filed directly with the Tribunal rather than with the Commission. The Tribunal would be responsible for processing the application, offering mediation services and adjudicating the complaint on its merits.
- This direct access model is already in place in the Canadian provinces of British Columbia and Ontario. A direct access model is more efficient and will provide a fair and quicker dispute resolution process for all parties, including respondents.
- The Commission should no longer have a complaint processing function. Instead, the Commission's role should focus on developing policies, providing information and education and promoting compliance with the *Canadian Human Rights Act*. The Commission should retain its authority to initiate and intervene in complaints before the Tribunal.

B. Canadians of African descent should be recognized as a distinct group under the Employment Equity Act.

The *Employment Equity Act* requires federally regulated employers to engage in proactive employment practices to increase the representation of four designated groups: women, people with disabilities, Aboriginal peoples, and visible minorities. This legislation requires federal employers to remove barriers to employment that disadvantage members of the four designated groups. This legislation aims to address systemic discrimination against these four designated groups, among other things by increasing numerical representation throughout the organization reflective of representation in relevant labour markets.

⁴ <https://www.refworld.org/docid/453777a50.html>

Section 3 of the *Employment Equity Act*⁵ defines members of visible minorities as “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour”. The term visible minorities was introduced when the legislation was first enacted in 1986.

By combining all non-White Canadians together as visible minorities for the purpose of this legislation, this provision makes no distinction between various racial minority groups’ particular needs, fails to recognize the unique struggle of Canadians of African descent and Canada’s legacy of slavery, segregation and ongoing marginalisation of Black Canadians. In fact, by grouping all racial minorities together, this provision wrongly presumes that various non-White Canadians experience the same level of discrimination in employment. This provision homogenizes experiences of different ethnic groups, fails to consider the gross disparity between the ethnic groups and makes the disparate experiences of Canadians of African descent seem much less and far less problematic.

In sum, the term visible minorities is outdated and this provision is ineffective in addressing the numerical representation of Canadians of African descent in the workforce and therefore does not effectively address their socioeconomic gaps in the Canadian society.

We respectfully request this Working Group to urge Canada to take necessary steps to promote the decade and the Durban declaration to improve racial equality in employment by:

- Recognizing Canadians of African descent as a distinct designated group under the *Employment Equity Act* .

Thank you very much for your kind attention. Ikram Warsame, human rights lawyer and 2020 people of African descent fellow.

⁵ *Employment Equity Act*, ss. 3, supra note 2