

Briefing paper | December 2015

Action Required

Five key HIV-related issues facing Canada's federal government

Introduction

Globally, we are starting to see significant progress in the effort to address HIV. When given easy, safe access to testing and to affordable care, many people living with HIV are able to lead long, healthy lives. Highly effective treatment with **anti-retroviral drugs** (ARVs) also dramatically reduces the likelihood of transmission, resulting in lower rates of new infections. These gains not only improve the personal health of people living with HIV, but have broad public health benefits as well.

Scaling up **evidence-based prevention and treatment** are central to the internationally agreed goal of ending the global HIV epidemic. For example, UNAIDS' ambitious "90-90-90" plan aims, by 2020, to ensure that 90% of those with HIV are diagnosed, 90% of those diagnosed get access to effective ARV treatment, and 90% of those getting treatment manage to fully suppress the virus to "undetectable" levels, keeping them healthy and preventing further transmission.

But none of these goals is possible unless governments are willing to protect and **uphold human rights**, especially those of the communities most affected by HIV. Across the planet, sex workers, people in prisons, migrants, Indigenous peoples, women, LGBTI communities, and people who use drugs — to name just some "key populations" affected by the epidemic — continue to suffer neglect or abuse. Too often, ill-conceived laws and policies cause or contribute to this harm, rather than protecting and promoting health and other human rights. Canada is no exception.

It is time for Canada to **re-commit to the global project of ending HIV**, including by basing our response on sound scientific evidence and fundamental human rights principles. There are immediate actions Canada's federal government can and should take. The **Canadian HIV/AIDS Legal Network** is Canada's leading research, education and advocacy organization working on legal and human rights issues related to HIV. Below, we have identified the five priority issues — and associated government actions — to ensure a federal response to HIV that is effective because it is evidence-based and respects and promotes the human rights of all constituents.

1 Reinvalidate the federal response to HIV

A number of countries have recently adopted new strategies and committed funds to the global goal of ending AIDS as a public health threat by 2030. Yet, Canada's **federal strategy on HIV and AIDS** is now a decade old. It is not informed by the most recent scientific breakthroughs and has never been adequately funded.

In 2003, all parties then represented in the House of Commons unanimously recommended that Canada's federal strategy on HIV be enhanced by effectively doubling its funding to \$85 million annually, and the government committed to reaching this target over the subsequent five years. But, in 2007, funding was cut,

and it has remained stagnant at \$72.6 million per year ever since. As a result, over the last eight years, more than \$100 million of funds originally committed to the HIV response — and reflecting an all-party consensus — have simply never been delivered.

However, reinvigorating Canada’s response to HIV is about more than money. An effective federal HIV strategy must take into account the latest **research and experience**. Moreover, it must respond to the needs of the **people and communities most affected**, including by funding programs and services that accommodate the specific circumstances and systemic obstacles faced by those communities.

ACTIONS

- Immediately **restore full funding** at least to the current federal strategy.
- Develop and implement a **new, updated, adequately funded federal strategy** on HIV and AIDS, **in consultation** with national, provincial and local organizations responding to HIV, and with representatives of affected communities.

2 Promote harm reduction and reform drug policy

Drug use and dependence are matters of public health, not of criminal justice. After decades of waging a failed and expensive “war on drugs,” the punitive approach to drug policy has devastated people and communities. Instead, we need a fundamental reorientation away from prohibition, prosecution and imprisonment to an approach based on **evidence, public health principles and human rights**.

But Canada’s recent record on drug policy is shockingly poor. In 2012, the *Safe Streets and Communities Act* implemented mandatory minimum sentencing for non-violent drug offences, despite overwhelming international evidence that such measures are both ineffective and damaging. In 2015, the *Respect for Communities Act* targeted **supervised consumption services (SCS)**, such as Vancouver’s Insite. SCS are proven to be effective in reducing risks of transmission of blood-borne diseases, such as HIV and hepatitis C, reducing deaths from overdose, and connecting people to other needed health services. As the Supreme Court of Canada declared in its landmark ruling in 2011: “Insite saves lives. Its benefits have been proven.” Nevertheless, Bill C-2 imposed excessive and unreasonable obstacles for health authorities and community agencies seeking to provide these life-saving health services.

Meanwhile, government inaction is jeopardizing the lives of people in prison, and by extension, the community at large. Canadian prisons refuse to provide clean needles, an essential health-care intervention available to every other, non-incarcerated Canadian. **Prison-based needle and syringe programs (PNSPs)**, recommended by UN agencies, are known to be an effective public health measure, and have been introduced in more than 60 men’s and women’s prisons around the world, with no negative outcomes. The Public Health Agency of Canada has concluded that the evidence supports PNSPs, and numerous Canadian health professional organizations, the Correctional Investigator and the Canadian Human Rights Commission have recommended them. Yet so far the government has chosen to continue violating prisoners’ constitutional rights, perpetuating — on the backs of people who use drugs — yet another deadly disregard of science and empirical evidence, which also undermines public health more broadly.

ACTIONS

- Repeal the *Respect for Communities Act*, and institute a **straightforward, simple process for exemptions permitting the operation of SCS** without risk of criminal prosecution of clients or staff.
- Direct Correctional Services Canada to begin immediate measures to **implement needle and syringe programs in federal prisons**, in consultation with prisoner groups and community health organizations to ensure operational success.
- Reinstate **harm reduction** as a key element of Canada’s federal strategy on drugs, and substantially enhance the allocation of funds within that strategy for harm reduction.
- **Repeal mandatory minimum sentences** for minor, non-violent drug crimes.
- Decriminalize the possession for personal use of cannabis; follow through on the commitment to examine appropriate models for the **legalization and regulation of cannabis**; and extend this examination to include other currently illegal substances, as part of an **evidence-based, public health approach**.
- Commit Canada to more constructive engagement at the upcoming **UN General Assembly Special Session on drugs** (in April 2016), by supporting an evidence-based, non-punitive, public health approach to drug use.

3 Defend the human rights of LGBTI people, domestically and globally

HIV does not discriminate based on sexual orientation or gender identity. It does, however, thrive in conditions of stigma and discrimination. Although significant progress, including legal protection against discrimination based on sexual orientation, has been made in Canada, the human rights of **transgender people** are still being violated. These violations occur through lack of access to appropriate health care, denial of appropriate identification documents, and ongoing discrimination, harassment and violence. Meanwhile, legal protection against discrimination and violence based on gender identity or expression is still incomplete under Canadian law, and little recognition exists of the rights of **intersex people**.

Beyond Canada, more than 80 countries still criminalize consensual sexual activity between people of the same sex. Many more have other laws that discriminate on the basis of sexual orientation or gender identity. In numerous parts of the world, **LGBTI people** are routinely arrested, denied basic job protections, health care, housing and parental rights, while many have been brutally attacked, tortured or even murdered. Appalling in themselves, these realities also have disastrous consequences for HIV testing, prevention and treatment efforts. In 2015, a group of civil society organizations in Canada, including the Legal Network, came together to form the **Dignity Initiative**, with the twin objectives of strengthening both international solidarity work by Canadian civil society groups and Canada's **foreign policy commitment** to defending human rights for LGBTI people internationally. Our Call to Action (www.dignityinitiative.ca/call-to-action) is being broadly endorsed by organizations Canada-wide.

ACTIONS

- Introduce legislation that would support **full legal protection** in Canadian law against discrimination and hate crimes based on gender identity or expression, and on intersex status.
- Endorse the **Dignity Initiative's Call to Action**, and implement its recommendations in Canadian government foreign policy, international development initiatives, and its treatment of LGBTI refugees and refugee claimants.

4 Protect sex workers' rights

Sex work is work, and sex workers deserve the same protections in law as any worker, including support in protecting their health and safety. Sex workers are also **important frontline allies** in the prevention of HIV transmission. By criminalizing sex workers, their clients or their workplaces, governments are perpetuating human rights violations, endangering the health and safety of both sex workers and their clients, and exacerbating the HIV epidemic. They also ignore the growing international calls for reform, including from UNAIDS and, most recently, Amnesty International, which has called for the full decriminalization of sex work.

In December 2013, the Supreme Court of Canada unanimously struck down several sections of Canada's *Criminal Code* dealing with "prostitution" as unconstitutional because they unacceptably **violated the rights of sex workers** under the *Canadian Charter of Rights and Freedoms*. The Supreme Court decided that its ruling would take effect in December 2014, after which the unconstitutional parts of the law would no longer be in force. Despite calls from sex worker groups and their allies for critical discussion and collaboration to propose legislation in keeping with Court's rights-based decision, the federal government introduced Bill C-36. Misleadingly named the *Protection of Communities and Exploited Persons Act*, the bill re-introduced many of the very harms the Court struck down as unconstitutional. In December 2015, this bill came into effect in Canada, again **putting sex workers in harm's way** and disregarding their health and human rights.

ACTIONS

- Immediately **repeal in full** the *Protection of Communities and Exploited Persons Act*.
- In consultation with sex workers and their allies, put in place legislative measures to ensure that **sex workers' rights, safety and dignity** are respected, protected and fulfilled.

5 Promote access to medicines

The need for equitable access to medicines is urgent. Millions in **developing countries** are dying because medicines are unaffordable, both for individuals and the health agencies that serve them. People die because they cannot afford to buy life. Meanwhile, equitable, universal access to prescription medicines remains elusive in Canada, with a patchwork of **inadequate pharmacare coverage** across the country. Laws and policies, including intellectual property rules in international trade agreements, are a significant part of the problem affecting access to medicines for HIV and other health needs.

The previous Parliament had before it Bill C-398, aimed at fixing the flaws in **Canada's Access to Medicines Regime (CAMR)**. Created with unanimous support in Parliament in 2004, CAMR was supposed to allow compulsory licensing of expensive, patented medicines to permit exports to developing countries of equivalent, lower-cost, generic versions. But more than a decade later, CAMR has not assisted countries in getting access to more affordable medicines. Despite overwhelming support from civil society, religious and community leaders, scientists and other medical professionals, 80% public support in a national opinion poll, and support from MPs from all federal parties, Bill C-398 was defeated by a small handful of votes in the House of Commons. Parliament can and should fulfil its pledge to fix CAMR.

In addition, Canada is one of the countries negotiating (in secret) the **Trans Pacific Partnership (TPP)** Agreement. Recently released text of the agreement confirms the

fears of health advocates that the TPP will pose a major new threat to access to medicines, in developing countries and in participating high-income countries such as Canada. Particular areas of concern include expanding restrictive intellectual property rules beyond what is already agreed at the World Trade Organization; greater opportunities for pharmaceutical companies to challenge decisions about coverage and reimbursement of medicines under public health insurance formularies (thereby also creating a further impediment to a national, **universal pharmacare program** in Canada); and giving multinational corporations access to closed-door tribunals for challenging regulations adopted by government to protect public health or other public interests.

ACTIONS

- Commit to a **full public consultation** on the TPP, including an independent assessment of its impact on human rights (including access to medicines).
- Work with civil society advocates and other parties in Parliament to **fix CAMR**, specifically by enacting the key reforms that previously attracted widespread, cross-party support in the last Parliament.
- Establish a publicly funded and administered, **pan-Canadian pharmacare program** to ensure equitable, affordable and timely access to life-saving treatments, in consultation with the provinces and territories, and with civil society organizations, including those representing patients and health care professionals.

About the Canadian HIV/AIDS Legal Network

The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS.

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