HALCO
HIV & AIDS Legal Clinic Ontario

List of Issues Prior to Reporting: Submission to the United Nations Committee on the Elimination of all Forms of Discrimination Against Women

Violations of Articles 2, 5, 6, 11, 12 and 15 of the *Convention on the Elimination of all Forms of Discrimination Against Women*

76th Pre-Sessional Working Group (11 Nov 2019 – 15 Nov 2019)

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INTRODUCTION

1. In advance of the adoption of the List of Issues Prior to Reporting for Canada's periodic review under the UN *Convention on the Elimination of all Forms of Discrimination Against Women* ("CEDAW Convention"), to be held during the 76th Pre-Sessional Working Group (11 – 15 November, 2019), the Canadian HIV/AIDS Legal Network ("HIV Legal Network") and HIV & AIDS Legal Clinic Ontario ("HALCO") would like to provide information to the Committee on the Elimination of all Forms of Discrimination Against Women ("CEDAW Committee") on violations of Articles 2, 5, 6, 11, 12 and 15 of the CEDAW Convention with respect to the human rights of women living with HIV, sex workers and women who use drugs.

2. The HIV Legal Network promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization. We envision a world in which the human rights and dignity of people living with or affected by HIV are fully realized, and in which laws and policies facilitate HIV prevention, care, treatment and support.

3. HALCO is the only community legal clinic in Canada that provides services exclusively for the HIV community. HALCO staff provide legal advice and representation as well as engage in public legal education, law reform, and community development activities. We envision a society where laws and the legal system help reduce discrimination, stigma, poverty and injustice faced by people living with HIV/AIDS.

WOMEN LIVING WITH HIV

Violations of Articles 2 and 12

4. In Canada, approximately 200 people, including women living with HIV, have been charged to date for not disclosing their HIV-positive status to their sexual partners.[1] The law in Canada is known internationally for its severity.[2] People living with HIV are usually charged with aggravated sexual assault — an offence that carries a maximum penalty of life imprisonment and mandatory registration as a sexual offender for a minimum of 20 years — for not disclosing their status. Based on paired decisions of the Supreme Court of Canada in 2012, a person living with HIV in Canada is at risk of prosecution for non-disclosure of their HIV-positive status even if there was no transmission, the person had no intention to harm their sexual partner, and the person used a condom or had an undetectable viral load.[3] This is contrary to international recommendations and human rights standards on HIV criminalization, as well as the medical evidence on HIV and public health considerations.[4]

5. In its last review of Canada, the CEDAW Committee denounced the "concerning application of harsh criminal sanctions (aggravated sexual assault) to women for non-disclosing their HIV status to sexual partners, even when the transmission is not intentional, when there is no transmission or when the risk of transmission is minimal," and it recommended that Canada "*limit the application of criminal law provisions to cases of intentional transmission of HIV/AIDS*, as recommended by international public health standards."[5] [emphasis added]

6. Numerous human rights and public health concerns associated with the criminalization of HIV non-disclosure, exposure or transmission have led the Joint UN Programme on HIV/

AIDS (UNAIDS) and the UN Development Programme (UNDP),[6] the UN Special Rapporteur on the right to health,[7] the Global Commission on HIV and the Law[8] and women's rights advocates[9] to urge governments to limit the use of the criminal law to cases of *intentional transmission* of HIV (i.e. where a person knows his or her HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it).

7. The UN Special Rapporteur on the right to health has pointed out that criminalizing HIV transmission infringes on not only the right to health, but also the rights to privacy, equality and non-discrimination.[10] Meanwhile, the UN Committee on Economic, Social and Cultural Rights has called on States "to reform laws that impede the exercise of the right to sexual and reproductive health" including laws criminalizing "HIV non-disclosure, exposure and transmission"[11] and the UN Committee on the Rights of the Child has noted the need to review legislation "that criminalizes the unintentional transmission of HIV and the non-disclosure of one's HIV status."[12]

8. Since the CEDAW Committee's last review, there have been positive developments in Canada to limit HIV criminalization. In December 2018, the federal Attorney General instructed federal lawyers to stop prosecuting people who have a suppressed viral load (i.e. under 200 copies/ml).[13] The directive also, *inter alia,* instructs federal lawyers to "generally" not prosecute someone who used a condom, took HIV treatment as prescribed, or just had oral sex, because "there is likely no realistic possibility of transmission" in these circumstances. But the directive only applies to Canada's three territories. Most people live in the provinces, and provincial Attorneys General are lagging behind in adopting a similar approach.[14]

9. In addition to sound policies governing prosecutors in each jurisdiction, reforms to the federal *Criminal Code* are necessary to end unjust HIV criminalization, as recognized by the House of Commons Standing Committee on Justice and Human Rights in a June 2019 report.[15] In particular, the Standing Committee recommended removing HIV non-disclosure from the reach of sexual assault law and limiting HIV criminalization to actual transmission.

10. Criminalization is often described as a tool to protect women from HIV and enhance women's autonomy in sexual decision-making. However, a gendered analysis of current HIV criminalization reveals that it is a blunt, punitive and inflexible approach to HIV prevention that does little to protect women from HIV infection, violence, coercion or sexual objectification. Research in Canada has shown that the criminalization of HIV non-disclosure exacerbates women's fear of disclosing their HIV-positive status and intensifies violence against them.[16] An overly broad use of the criminal law puts women living with HIV at increased risk of violence and prosecution by providing a tool of coercion or revenge for vindictive partners.[17] Research reveals that women who experience rape or sexual assault may also decide not report to police for fear of non-disclosure charges.[18] Moreover, the use of sexual assault law in the HIV non-disclosure context — where the sexual activity is consensual — is a poor fit and can ultimately have a detrimental impact on sexual assault law as a tool to advance gender equality and renounce gender-based violence.[19]

11. In particular, the criminalization of HIV non-disclosure can have a serious, adverse and disproportionate impact on women living with HIV who face challenges due to their socioeconomic status, discrimination, insecure immigration status, or abusive or dependent relationships.[20] Canada's current approach is gender-blind to the power dynamics of negotiating male condom use, HIV disclosure and access to HIV care.[21] Gender power

dynamics can make it difficult for women living with HIV to negotiate condom use and marginalized women living with HIV may not be able to achieve an undetectable viral load that could protect them from criminal prosecutions if they cannot disclose. According to a study of 277 women living with HIV in Vancouver, B.C., at least 48% of the participants were at risk of criminal prosecution if they did not disclose because they could not maintain a suppressed viral load (<200 copies/ml). Recent homelessness, recent sex work and recent incarceration are correlated with increased odds of viral load suppression failure.[22]

12. Evidence also suggests that the criminalization of HIV non-disclosure may represent a structural barrier to health care engagement for some people living with HIV in Canada, discouraging access to both HIV testing and the HIV care services required to achieve viral suppression, which is important to promote both individual and community health.[23] Studies have also demonstrated that HIV criminalization affects the sexual lives and well-being of women living with HIV, with high rates of sexual abstinence among women living with HIV[24] being driven partly by concerns about HIV criminalization and fear of HIV disclosure.[25]

Case study:
In 2005, D.C. was charged in Quebec for not disclosing her status to her ex-partner before the first time they had sex. The couple had a relationship for four years after she disclosed her status to him. The end of the relationship was marked by violence, and D.C. turned to the police for protection — after which her ex-partner complained to police that she had not disclosed her HIV-positive status before their first sexual encounter. He said that this first instance of sex had been unprotected, whereas she said they had used a condom. Her viral load was undetectable. HIV was never transmitted. At trial, D.C. was convicted of aggravated assault and sexual assault and sentenced to 12 months' house arrest. D.C. was ultimately acquitted in 2012 by the Supreme Court of Canada, but solely on technical legal grounds.[26]

RECOMMENDED QUESTIONS TO BE INCLUDED IN THE LIST OF ISSUES:

- **Does the federal government commit to limit, through law reform and in consultation with the HIV community, the use of the criminal law against people living with HIV to cases of actual and intentional HIV transmission?**

- **Will the federal government establish a federal-provincial working group to develop a common prosecutorial directive to apply across Canada to limit the prosecution of people living with HIV to cases of actual and intentional HIV transmission?**

- **Does the federal government commit to reviewing the cases of all individuals who have been prosecuted or convicted of HIV non-disclosure who would not have been prosecuted based on a new common prosecutorial directive and/or new *Criminal Code* offence?**

SEX WORKERS

Violations of Articles 2, 5, 6, 11, 12 and 15

13. In 2016, the CEDAW Committee expressed concern about the “potentially increased risk to the security and health of women in prostitution, particularly Indigenous women, brought about by the criminalization of prostitution under certain circumstances as provided for in the new legislation” and recommended that Canada “[f]ully decriminalize women engaged in prostitution and assess the impacts of the *Protection of Communities and Exploited Persons* [PCEPA], notably on the health and security of women in prostitution.”[27] Nearly five years since the passage of the PCEPA in 2014, sex workers in Canada continue to be arrested,[28] as do those who purchase sex and third parties involved in sex work.[29] Sex workers have been prosecuted under the offences related to third-party benefits and trafficking when they work with, gain material benefits from, or assist other sex workers to enter or work in Canada.[30] In particular, Indigenous women and youth, and migrant, racialized and trans women face targeted violence, stigmatization, hyper-surveillance and over-policing under the PCEPA.[31]

14. Numerous studies have concluded that banning the purchase of sexual services has contributed to violence against sex workers, who are forced to work in isolation and in clandestine locations, as well as to rush negotiations with potential clients for fear of police detection.[32] Predators are aware that in a criminalized regime, sex workers actively avoid police for fear of detection, apprehension and, in the case of migrant women, deportation. In Canada, research has demonstrated that police targeting of clients (and third parties) rather than sex workers has not affected rates of violence against sex workers or enhanced sex workers’ control over their sexual health and HIV prevention.[33] In a study involving 299 sex workers from Vancouver, B.C., over 26% reported negative changes after the passage of the PCEPA, including reduced ability to screen clients and reduced access to workspaces/clients.[34] By facilitating the removal of sex workers from public spaces, such tactics have merely perpetuated labour conditions that render sex workers at increased risk for violence and poor health.[35]

15. At the same time, research in Canada has shown that criminalizing third parties (e.g. drivers, security, bookers, webmasters, business owners, receptionists) who work with or for sex workers, or who employ sex workers, forces sex workers to work in isolation, away from support networks and without proven safety mechanisms.[36] Evidence has demonstrated the role of safer work environments and supportive housing through supportive managerial and venue-based practices, which allow sex workers to work together and promote access to health and support services, in reducing violence and health risks among sex workers.[37] Third parties — who in some cases are sex workers themselves — can be helpful resources for other sex workers, especially migrant sex workers who may have limited resources and face language barriers.[38] A legal framework that subjects all third parties to criminal sanctions without evidence of abuse or exploitation drives the sex industry underground where labour exploitation can flourish, and deters sex workers from the criminal justice system when they experience violence, because they fear that they and/or their employer may be charged with prostitution-related offences.[39]

16. Moreover, since the passage of the PCEPA, criminalizing sex work has been deemed to be a central strategy to protect women from human trafficking and has resulted in the conflation of sex work with human trafficking.[40] This strategy has enabled law enforcement to intensify

police surveillance and other law enforcement initiatives against sex workers.[41] Greater surveillance of migrant and Indigenous women who leave their communities has undermined their relationships with family members or others who may offer them safety or support, including in circumstances where they may be selling sex. Migrant sex workers, who are legally prohibited from working in the sex industry, are under constant threat of detention and deportation, thus hindering their access to health and support services and the police for fear of being labeled victims of trafficking.[42] Immigration restrictions prohibiting women from working in legal establishments offering sensual services, such as strip clubs, massage parlours and escort services, further serve to infantilize migrant women and treat them as incapable of making their own life decisions. Such policing initiatives have not resulted in more protection or safety for trafficked persons.[43] An effective anti-trafficking strategy should prioritize support to people who wish to seek help, rather than employing law enforcement measures as a method of protection.

17. Decriminalizing sex work is in line with recommendations made by numerous UN entities, including UNAIDS,[44] UNDP[45] and the Global Commission on HIV and the Law.[46] The UN Special Rapporteur on the right to health has described the negative ramifications of criminalizing third parties such as brothel owners, called for the decriminalization of sex work, and denounced the conflation of sex work and human trafficking.[47] The UN Special Rapporteur on violence against women has noted the need to ensure that "measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers."[48] Similarly, UN Women has expressed its support for the decriminalization of sex work, acknowledged that sex work, sex trafficking and sexual exploitation are distinct, and that their conflation leads to "inappropriate responses that fail to assist sex workers and victims of trafficking in realizing their rights."[49] Human rights organizations such as Amnesty International,[50] Human Rights Watch,[51] the Global Alliance Against Traffic in Women[52] and the Center for Health and Gender Equity[53] have also studied the human rights implications of criminalizing sex work and have recommended the repeal of sex work–specific criminal laws, including those that criminalize clients and third parties.

Case study:
Brandy, an Indigenous sex worker, has faced unrelenting police surveillance, racial profiling, harassment and interrogation when she works, including encounters with police posing as clients. In 2016, police officers arbitrarily stopped Brandy on the street while she was on her way to meet a client and demanded to know where she was going. When Brandy tried to leave, the officers restrained her, tackled her to the ground, hit her with a baton, tased her and punched her, fracturing one of her ribs. Brandy was arrested and detained overnight. For Brandy and other sex workers, this was not an isolated incident, but reflects a systematic pattern of harassment and abuse that law enforcement officers — empowered by sex work–specific criminal and other laws — have perpetuated against sex workers since the passage of the PCEPA.[54]

RECOMMENDED QUESTIONS TO BE INCLUDED IN THE LIST OF ISSUES:

- **Does the federal government commit to repeal all sex work–specific criminal laws, and to work with sex workers to develop a legislative framework that respects, protects and fulfills their human rights?**

- **Does the federal government commit to repeal all immigration regulations that prohibit migrant people from working in the sex industry and have led to the detention and deportation of migrant sex workers?**

- **Will the federal government stop law enforcement activities including raids, detentions and deportations of sex workers that are justified through anti-trafficking and anti–sex work laws and policies?**

- **Will the federal government fund and support programs and services that are developed by people who have lived experience trading or selling sexual services, including sex worker–led outreach, ensuring that such measures are made available to everyone — not only to people who identify as "trafficked"?**

- **Will the federal government support concrete measures to improve the safety of individuals selling sexual services and to assist those who wish to transition out of the sex industry, including by providing significant resources for income support, poverty alleviation, housing, childcare, education and training, and treatment and support for problematic substance use?**

WOMEN WHO USE DRUGS

Violations of Articles 2 and 12

18. Canada is in the midst of an opioid overdose crisis fuelled by a contaminated drug supply that is killing at an alarming rate. In the past four years, the overdose crisis has claimed more than 12,800 lives in Canada, roughly one quarter of them women,[55] with Indigenous women particularly affected.[56] Yet, despite marked differences between men, women and gender-diverse people in terms of their drug use and drug-related vulnerabilities, determinants of women's health such as gender-based violence, pregnancy and mothering, stigma, racism, homophobia, transphobia, poverty, homelessness and repressive laws and policies that disproportionately affect women who use drugs are not sufficiently accounted for in the design of health and harm reduction strategies.[57] As a result, the UN Reference Group on HIV and injecting drug use has found that compared to their male counterparts, women who inject drugs experience increased likelihood of injection-related problems, faster progression from first drug use to dependence, higher levels of risky injection and/or sexual risk behaviours, and higher rates of HIV.[58]

19. In Canada, 12% of women reported using opioid pain relievers in the past year, and higher rates of use of both psychoactive pharmaceutical drugs and sedatives than men.[59] The proportion of reported HIV cases among women and girls over 15 attributable to injection drug use in 2016 was 27.3% compared to 10.9% for boys and men, with a disproportionately higher percentage of HIV attributable to injection drug use among Indigenous women than among non-Indigenous women.[60] In a national study of people who inject drugs, 68% of women who participated were seropositive for HCV.[61]

20. Supervised consumption services (SCS), which consist of providing a safe, hygienic environment where people can use drugs with sterile equipment under the supervision of trained staff or volunteers to prevent the transmission of infections and overdose-related deaths, have been one key measure to address Canada's ongoing overdose crisis. SCS

can also provide a refuge from various forms of violence that women may experience on the street[62] and have been found to disrupt certain social structures such as gender power dynamics, enabling women to assert agency over drug use practices.[63] In 2017, the tenacity of activists led Canada to replace some of the onerous legislative requirements to operate SCS with simpler, streamlined requirements, resulting in new SCS being implemented across the country.[64] But there remains a persistent need to facilitate the scale-up of SCS across the country including gender-sensitive SCS[65] and, very importantly, interventions to address the critical issue of the unsafe drug supply leading to fatal overdoses.

21. A major barrier to the scale-up of SCS and access to health care for women who use drugs is the criminalization of people who use drugs. An immense body of evidence demonstrates that the continued overwhelming emphasis on drug prohibition — from policing to prosecution to prisons — fails to achieve both the stated public health and public safety goals of prohibition (including reducing drug use). It also results in costly damage to the public purse, to public health and to human rights, in Canada[66] and globally[67] including by forcing many people who use drugs to rely on a poisoned criminal market for supply. Yet Canada continues to criminalize possession of illegal substances for personal use and impose mandatory minimum sentences for non-violent drug offences. While such mandatory minimum sentences purport to only target those who traffic in drugs, the burden of harsher enforcement falls most heavily on those with drug dependency, particularly those who may engage in small-scale dealing to support their own drug use.[68]

22. Canada's repressive approach to drugs has resulted in a substantial growth in recent decades in the proportion of women in Canada serving a federal sentence (i.e. a prison sentence of 2+ years) in relation to a drug offence.[69] According to the Correctional Investigator of Canada, federally sentenced women are twice as likely to be serving a sentence for drug-related offences as federally sentenced men,[70] while Indigenous and Black women are more likely than white women to be in prison for drug-related offences.[71] Moreover, irrespective of the underlying offence that led to their jail sentence, 76% of federally incarcerated women have had a lifetime alcohol or substance use disorder.[72] Not surprisingly, research shows that the incarceration of people who inject drugs is a factor driving Canada's HIV and HCV epidemic.[73]

23. In a 2007 national study of federal prisoners, 14% of women admitted to injecting drugs while in prison, many of whom shared their injection equipment.[74] Similarly, 19% of federally incarcerated women reported injection drug use in an earlier national study.[75] A lack of harm reduction and other health measures, including prison-based needle and syringe programs, has led to significantly higher rates of HIV and HCV in prison compared to the community as a whole[76] — a harm that has been disproportionately borne by the rapidly growing population of women behind bars. A 2016 study indicated that about 30% of people in federal prisons, and 30% of women (compared to 15% of men) in provincial prisons are living with HCV, and 1–9% of women (compared to 1–2% of men) are living with HIV.[77] Federally incarcerated Indigenous women, in particular, have much higher rates of HIV and HCV than non-Indigenous prisoners, with reported rates of HIV and HCV of 11.7% and 49.1%, respectively.[78]

24. During its last review of Canada, the CEDAW Committee expressed its concern with the "excessive use of incarceration as a drug-control measure against women" and "the significant legislative and administrative barriers women face to access supervised

consumption services." To address this, the Committee recommended that Canada (i) "reduce the gap in health service delivery related to women's drug use, by scaling-up and ensuring access to culturally appropriate harm reduction services," (ii) "establish a transparent process for exemptions permitting the operation of supervised consumption services without risk of criminal prosecution of clients or service providers"; and (iii) "repeal mandatory minimum sentences for minor, non-violent drug-related offences." In relation to women in prison, the CEDAW Committee expressed its concern with the "high rates of HIV/AIDS among female inmates" and urged Canada to "expand care, treatment and support services to women in detention living with or vulnerable to HIV/AIDS, including by implementing prison-based needle and syringe programmes, opioid substitution therapy, condoms and other safer sex supplies."

25. These recommendations are in line with those made by UN human rights bodies. For example, the UN Special Rapporteur on the right to health has stated, "[a]t the root of many health-related problems faced by people who use drugs is criminalization itself, which only drives issues and people underground and contributes to negative public and individual health outcomes."[79] According to the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, States should "[e]nsure that all harm-reduction measures and drug-dependence treatment services, particularly opioid substitution therapy (OST), are available to people who use drugs, in particular those among incarcerated populations."[80] Most recently, the UN Chief Executives Board for Coordination unanimously adopted a common position on drug policy calling for increased investment in harm reduction measures, respect for the dignity and human rights of people who use drugs in all aspects of drug and social policies, alternatives to conviction and punishment, including the decriminalization of drug possession for personal use, the provision of equivalent health care services in prison settings, and changes in laws, policies and practices that threaten health and human rights.[81] Similarly, the *International Guidelines on Human Rights and Drug Policy* recommend that States "decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption" and to take all appropriate measures to "prevent, mitigate, and remediate any disproportionate or otherwise discriminatory impact on women as a result of drug laws, policies, and practices, particularly where aggravated effects result from intersecting forms of discrimination" and to "ensure the availability of and non-discriminatory access to good-quality gender-sensitive prevention, treatment, harm reduction, and other health care services for women who use drugs."[82]

26. In Canada, there is also strong support for the decriminalization of illegal drug possession for personal use from community organizations, harm reduction and human rights advocates[83] as well as public health associations and authorities including the Canadian Public Health Association,[84] Canadian Mental Health Association,[85] Canadian Nurses Association,[86] Toronto Board of Health,[87] Montreal Public Health,[88] Winnipeg Regional Health Authority,[89] and Provincial Health Officer of British Columbia.[90] Support for a regulated, safe market is also growing.[91]

27. Moreover, the UN Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules") recommends that prisoners enjoy the same standards of health care that are available in the community.[92] A number of UN agencies, including the UNODC, UNAIDS and the World Health Organization have also recommended that prisoners should have access to a series of key interventions, including needle and syringe programs, condoms, drug dependence treatment including OST, programs to address tattooing, piercing and other forms of skin penetration, and HIV treatment, care and

support.[93] Not only should these interventions be made available, but incarcerated women should have access to gender-specific health care that is at least equivalent to that available in the community.[94]

Case study:
In 2015, Cheyenne Sharma, a young Indigenous woman and single mother, was arrested for importing cocaine into Canada. Sharma accepted the assignment, for which she was paid $20,000, because she was behind in her rent and facing eviction. Her grandmother was a residential school survivor and her mother spent time in foster care. Sharma ran away from home and was raped at 13; at 15, she began selling sex. She gave birth to her daughter at 17, after which she remained unstably housed until her arrest. In light of Sharma's particular circumstances as an intergenerational survivor of colonialism and systemic discrimination, the unique history of Indigenous peoples in Canada, and the fact that this was her first offence, the sentencing judge concluded that the mandated minimum penalty of two years' incarceration for drug importation was unconstitutional.[95] However, the federal government has yet to repeal mandatory minimum sentences for non-violent drug offences.

RECOMMENDED QUESTIONS TO BE INCLUDED IN THE LIST OF ISSUES:

- **Will the federal government commit to sustaining and scaling up the number of supervised consumption services (SCS) in Canada, including by providing adequate funding for these services and removing the need for a case-by-case exemption of SCS?**

- **Does the federal government commit to minimizing custodial sentences and repealing all mandatory minimum prison sentences for non-violent drug offences?**

- **Does the federal government commit to decriminalizing the possession of all drugs for personal use?**

- **Does the federal government commit to providing a safe, legal and regulated supply of drugs to curtail the harms of the illicit drug market?**

- **Will the federal government implement key health and harm reduction measures in all prisons in Canada, including prison-based needle and syringe programs that comply with public health principles and professionally accepted standards for such programs, opioid substitution therapy, naloxone, condoms and other safer sex supplies, and safer tattooing programs in consultation with prisoner groups and community health organizations to ensure operational success, taking into account the need for culturally appropriate and gender-specific programs?**

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[1] C. Hastings, C. Kazatchkine and E. Mykhalovskiy, *HIV criminalization in Canada: key trends and patterns*, March 2017; and ongoing tracking of cases by the Canadian HIV/AIDS Legal Network (material on file).
[2] E. J. Bernard and S. Cameron, *Advancing HIV Justice 2: Building momentum in global advocacy against HIV criminalisation,* HIV Justice Network and Global Network of People Living with HIV (GNP+), April 2016.
[3] *R. v. Mabior*, 2012 S.C.C. 47 and *R. v D.C.*, 2012 S.C.C. 48.
[4] For example, when used correctly and no breakage occurs, condoms are 100% effective at preventing the transmission of HIV, and condomless sex with a person living with HIV under effective antiretroviral therapy poses

no risk of transmission. See M. Loutfy, M. Tyndall et al., "Canadian consensus statement on HIV and its transmission in the context of the criminal law," *Canadian Journal of Infectious Diseases & Medical Microbiology* 25, 3 (2014): pp. 135–140 and F. Barrée-Sinoussi et al., "Expert consensus statement on the science of HIV in the context of criminal law," *Journal of the International AIDS Society*, 2018, 21:e25161, July 2018.

[5] UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Canada*, November 2016, at paras 42 and 43.

[6] UNAIDS/UNDP, *Policy Brief: Criminalization of HIV Transmission*, August 2008.

[7] UN Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, Report on the 14th session, UN General Assembly, agenda item 3, UN Doc. A/HRC/14/20, April 27, 2010.

[8] Global Commission on HIV and the Law (UNDP HIV/AIDS Group), *HIV and the Law: Risks, Rights & Health*, July 2012.

[9] See the perspectives articulated in the documentary film, *Consent: HIV non-disclosure and sexual assault law* (Goldelox Productions & Canadian HIV/AIDS Legal Network, 2015).

[10] UN Human Rights Council, paras 2, 51.

[11] UN Committee on Economic, Social and Cultural Rights, *General comment No. 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights),* UN doc. E/C.12/GC/22, May 2016, para. 40.

[12] UN Committee on the Rights of the Child, *General Comment No. 20*, 2016.

[13] Attorney General of Canada, "Directive to Director of the Public Prosecution Service," Canada Gazette, Part I, Vol. 152, December 8, 2018.

[14] Canadian HIV/AIDS Legal Network, *The Criminalization of HIV Non-Disclosure in Canada: Current Status and the Need for Change*, June 2019.

[15] House of Commons, *The criminalization of HIV non-disclosure in Canada,* Report of the Standing Committee on Justice and Human Rights, June 2019, 42nd Parliament, 1st session.

[16] WATCH*, Brief to the Standing Committee on Justice and Human Rights Study on the criminalization of non-disclosure of HIV Status*, April 29, 2019.

[17] S. Green et al., "How women living with HIV react and respond to learning about Canadian law that criminalises HIV non- disclosure: 'How do you prove that you told?'" *Culture, Health & Sexuality* (2019), DOI: 10.1080/13691058.2018.1538489.

[18] Center for Gender and Sexual Health Equity, *Gendered Impact of Criminalization of HIV Non-Disclosure: Implications for Prosecutorial Guidelines in BC. Research for policy*, 2018. Notably, several women convicted of HIV non-disclosure in Canada are survivors of violence and sexual violence. See, for instance, C. Kazatchkine and L. Gervais, "Canada's newest sex offenders," *Winnipeg Free Press*, March 8, 2016 and Canadian HIV/AIDS Legal Network, "Women and the Criminalization of HIV Non-Disclosure," info sheet, 2012.

[19] LEAF (Women's Legal Education and Action Fund), *A Feminist Approach to Law Reform on HIV Non-Disclosure*, January 2019; Canadian HIV/AIDS Legal Network, *What does consent really mean? Rethinking HIV non-disclosure and sexual assault law meeting report*, 2014.

[20] See Center for Gender and Sexual Health Equity, *Gendered Impact of Criminalization of HIV Non-Disclosure: Implications for Prosecutorial Guidelines in BC. Research for policy*, 2019 and P. Allard, C. Kazatchkine and A. Symington, "Criminal prosecutions for HIV non-disclosure: Protecting women from infection or threatening prevention efforts?" in. J. Gahagan (ed.), *Women and HIV Prevention in Canada: Implications for Research, Policy, and Practice* (Toronto: Women's Press, 2013): pp. 195–218.

[21] A. Krüsi et al., "Positive sexuality: HIV disclosure, gender, violence and the law - A qualitative study," PLOS ONE, 13(8): e0202776, 2018.

[22] A. Krüsi et al., "Marginalized women living with HIV at increased risk of viral load suppression failure: Implications for prosecutorial guidelines regarding criminalization of HIV non-disclosure in Canada and globally." 22nd International AIDS Conference in Amsterdam, Netherlands, July 2018.

[23] S. E. Patterson et al., "The impact of criminalization of HIV non-disclosure on the health care engagement of women living with HIV in Canada: a comprehensive review of the evidence," *Journal of the International AIDS Society* 18, 1 (2015): 20572.
[24] A. Kaida et al., "Sexual inactivity and sexual satisfaction among women living with HIV in Canada in the context of growing social, legal and public health surveillance," *Journal of the International AIDS Society* 18, Supplement 5 (2015): 20284.
[25] The Canadian HIV Women's Sexual & Reproductive Health Cohort Study (CHIWOS) revealed that over half of women who participated in the study were sexually inactive, over three quarters of whom reported intentionally abstaining from sex; 21% reported that abstinence was driven by concerns about HIV criminalization and 30% reported that abstinence was driven by fear of HIV disclosure. See, A. Kaida et al., *CHIWOS, The influence of the criminalization of HIV non-disclosure on intentional sexual inactivity among women living with HIV in Canada*, presentation, CAHR 2017.
[26] B. Myles, « De bourreau à victime; de victime à criminelle », *Le Devoir*, February 15, 2008
[27] UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Canada*, November 2016.
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