Submission to the UN Committee on the Elimination of Discrimination against Women:

Equality and Non-discrimination with a Focus on Indigenous Women and Girls and Intersecting Forms of Discrimination

June 2021

HIV Legal Network

schu@hivlegalnetwork.ca
www.hivlegalnetwork.ca

Canadian Aboriginal AIDS Network

reneem@caan.ca
www.caan.ca

INTRODUCTION

1. The HIV Legal Network and the Canadian Aboriginal AIDS Network (CAAN) make this submission in support of the plan of the UN Committee on the Elimination of Discrimination against Women ("CEDAW Committee") to develop a new General Recommendation on Indigenous women on the topic of "equality and non-discrimination with a focus on Indigenous women and girls and intersecting forms of discrimination." In particular, our organizations would like to provide information to the CEDAW Committee on violations of the *Convention on the Elimination of all Forms of Discrimination Against Women* ("CEDAW Convention") with respect to the human rights of Indigenous women living with HIV, Indigenous women who sell or trade sex, and Indigenous 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. Established in 1997, CAAN has 24 years of history as an incorporated non-profit organization whose mandate has evolved from a primary HIV and AIDS focus to include STBBIs, Hepatitis C, Tuberculosis, Harm Reduction, Mental Health, and Aging.

INDIGENOUS WOMEN LIVING WITH HIV

4. In Canada, approximately 225 people have been charged for not disclosing their HIV-positive status to their sexual partners.[i] The majority of these cases involve men who had sex with women, and **a large proportion of the cases where a woman was charged involved Indigenous women** and women who had long histories of sexual abuse by men.[ii] In some cases, women have faced charges of HIV non-disclosure in the context of themselves being sexually assaulted.[iii]

5. The law in Canada is known internationally for its severity.[iv] 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 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.[v]

6. In Canada, Indigenous people are disproportionately living with HIV, and Indigenous women bear a disproportionate share of the burden of HIV infection.[vi] Racism and the multigenerational effects of colonialism including the residential school system have perpetuated economic, social, and systemic barriers to HIV prevention, testing, and care. Research with Indigenous women living with HIV has shown how the criminalization of HIV non-disclosure constitutes an additional layer of colonial violence and control over their bodies, minds, and spirits.[vii]

7. While criminalization is often described as a tool to protect women from HIV and enhance their autonomy in sexual decision-making, a gendered analysis reveals that it is a blunt, punitive, and inflexible approach to HIV prevention that does little to protect women from HIV infection, violence, or coercion. 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[viii] by providing a tool of coercion or revenge for vindictive partners.[ix] Research also reveals that women who experience rape or sexual assault may decide not to report to police for fear of non-disclosure charges.[x]

8. 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, or abusive or dependent relationships.[xi] Gender power dynamics can make it difficult for Indigenous women living with HIV to either negotiate condom use or to achieve an undetectable viral load that could protect them from criminal prosecutions if they cannot disclose.[xii]

9. In its 2016 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."[xiii]

10. Numerous human rights and public health concerns associated with the criminalization of HIV non-disclosure, exposure or transmission have led UNAIDS and the UNDP,[xiv] the UN Special Rapporteur on the right to health,[xv] the Global Commission on HIV and the Law,[xvi] and women's rights advocates[xvii] to urge governments to limit the use of the criminal law to cases of *intentional transmission* of HIV. Meanwhile, the UN Special Rapporteur on the right to health has described HIV criminalization as an infringement on the rights to health, privacy, equality, and non-discrimination.[xviii] The UN Committee on Economic, Social and Cultural Rights has also 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,"[xix] 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."[xx]

STATES PARTIES MUST:

- **at minimum, limit the use of the criminal law to the *intentional* transmission of HIV (i.e. where a person knows their HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it);**

- **ensure that the criminal law under no circumstances is used against people living with HIV for not disclosing their status to sexual partners where they use a condom, practice oral sex, or have condomless sex with a low or undetectable viral load; and**

- **invest in supports that reduce the vulnerability of women living with HIV to gender-based violence, including universal access to basic income, housing in a multitude of supportive options, paid sick leave, childcare, legal services, violence against women shelters, harm reduction services, and support services that are culturally safe for Indigenous women and girls.**

INDIGNEOUS WOMEN WHO SELL SEX

11. 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]."[xxi] More than six years since the passage of the PCEPA in 2014, sex workers in Canada continue to live with the impacts of criminalization,[xxii] as do those who purchase sex and third parties involved in sex work.[xxiii] 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.[xxiv] In particular, Indigenous women face targeted violence, stigmatization, hyper-surveillance, and over-policing under the PCEPA.[xxv]

12. 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.[xxvi] Predators are aware that in a criminalized regime, sex workers actively avoid police for fear of detection and apprehension. 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 and clients.[xxvii]

13. Research in Canada has also shown that criminalizing third parties 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.[xxviii] Evidence has demonstrated the role of safer work environments and supportive housing which allow sex workers to work together and promote access to health and support services, in reducing violence and health risks among sex workers.[xxix] Third parties — who in some cases are sex workers themselves — can be helpful resources for other sex workers who have limited means.[xxx] 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 legal system when they experience violence because they fear that they (and the people with whom they work) may be charged with prostitution offences.[xxxi]

14. As the National Inquiry into Missing and Murdered Indigenous Women and Girls ("Inquiry") concluded, Indigenous women involved in sex work who experience violence face risks in reaching out to police, including the risk of being treated with a presumption of criminality and being implicated, arrested, and charged for violence themselves.[xxxii] In a recent Canadian study, 36.36% of Indigenous sex workers (primarily cis women) reported that they were unable to call emergency services due to fear of police detection of themselves or third parties.[xxxiii]

15. 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.[xxxiv] This strategy has enabled law enforcement to intensify police surveillance and other law enforcement initiatives against sex workers.[xxxv] Greater surveillance of 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.[xxxvi]

16. As the Inquiry recommended, "**justice and security depend on recognizing and honouring the agency and expertise held by women themselves to create just communities and relationships in determining the services and supports that would enhance safety and justice**. These include having access to safe spaces to engage in sex work; access to other services, such as health care, counselling, addictions services, and legal services; opportunities and spaces in which to learn and practice traditional culture and language; and improved response

from the police in recognizing the knowledge held by sex workers."[xxxvii]

17. Decriminalizing sex work is in line with recommendations made by numerous UN entities, including UNAIDS,[xxxviii] UNDP[xxxix] and the Global Commission on HIV and the Law.[xl] The UN Special Rapporteur on the right to health has described the negative ramifications of criminalizing third parties, called for the decriminalization of sex work, and denounced the conflation of sex work and human trafficking.[xli] 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,"[xlii] while 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."[xliii] Human rights organizations such as Amnesty International,[xliv] the Global Alliance Against Traffic in Women,[xlv] and the Center for Health and Gender Equity[xlvi] have also recommended the repeal of sex work offences, including those that criminalize clients and third parties.

STATES PARTIES MUST:

- **immediately repeal all sex work–specific criminal offences;**
- **ensure human trafficking laws and initiatives do not conflate sex work with human trafficking;**
- **enact legislative measures that respect, protect and fulfill sex workers' human rights, ensuring that Indigenous women who sell and trade sex are consulted;**
- **fund and support culturally appropriate programs and services that are developed by people who have lived experience selling sex and that are made available to everyone — not only to people who identify as "trafficked," including:**
    - **safe spaces to engage in sex work;**
    - **access to health care, counselling, legal services, income support, housing, childcare, education, training, and treatment and support for substance use; and**
    - **opportunities and spaces in which to learn and practice traditional culture and language.**

INDIGENOUS WOMEN WHO USE DRUGS

18. Over the past five years, the overdose crisis has claimed more than 20,000 lives in Canada,[xlvii] with Indigenous women particularly affected.[xlviii] In the first half of 2020, Indigenous people accounted for a staggering 16% of all overdose deaths in British Columbia despite representing only 3.3% of the province's population, while Indigenous women were 8.7 times more likely to die from an overdose compared to other women in B.C.[xlix] In Alberta between 2016 and 2018, 49% of overdose deaths among Indigenous peoples were among Indigenous women (compared with a rate of 23% for non-Indigenous women).[l]

19. In Canada, Indigenous women who use drugs have described the ways in which colonial policies and programs such as the harmful impact of residential schools, mass removal of Indigenous

children from their families into the child welfare system, displacement from traditional lands, and destruction or banning of Indigenous traditions perpetuate intergenerational trauma that leads to drug use.[li] As the Inquiry found, substance use is "for many Indigenous people living with a history of trauma and violence, one of the only ways of managing significant pain, suffering, shame, and despair within broader systems and institutions that fail to provide other forms of meaningful and adequate support."[lii]

20. According to the Inquiry, **addressing the overdose crisis among Indigenous peoples requires Indigenous-specific solutions, grounded in Indigenous values and delivered in culturally appropriate ways, as well as confronting the structural and institutional inequalities such as poverty and housing that disproportionately affect Indigenous people and contribute to the crisis in the first place**.[liii] Yet, there remains a dearth of culturally appropriate harm reduction services for Indigenous women who use drugs, including those that account for determinants of Indigenous women's health such as gender-based violence, pregnancy and mothering, stigma, colonialism, racism, homophobia, transphobia, poverty, and homelessness. As a result, the latest available data in Canada indicates that among Indigenous women living with HIV, 63.6% of HIV infections were attributed to injection drug use, compared to 24.2% for non-Indigenous women living with HIV.[liv]

21. For example, 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 to prevent the transmission of HIV and hepatitis C (HCV) 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[lv] and have been found to disrupt certain social structures such as gender power dynamics, enabling women to assert agency over drug use practices.[lvi] But there remains inadequate access to SCS across the country — particularly gender-sensitive and culturally appropriate SCS.[lvii]

22. 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 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. Criminalization deters people from vital health services and forces people who use drugs to rely on an unregulated market for supply. Canada's repressive approach to drugs has resulted in a substantial growth 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. According to Canada's correctional ombudsperson, federally sentenced women are twice as likely to be serving a sentence for drug offences as federally sentenced men,[lviii] while Indigenous and Black women are more likely than white women to be in prison for drug-related offences.[lix] Irrespective of the underlying offence that led to their jail sentence, 76% of federally incarcerated women have had a lifetime substance use disorder.[lx]

23. Not surprisingly, research shows that the incarceration of people who inject drugs is a factor driving Canada's HIV and HCV epidemic.[lxi] 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[lxii] — 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.[lxiii] Federally incarcerated Indigenous women, in particular, have much higher rates of HIV and HCV, with reported rates of HIV and HCV of 11.7% and 49.1%, respectively.[lxiv] Despite this, and calls from

Canada's correctional ombudsperson to provide trauma-informed programming and interventions for Indigenous women in federal prisons, there are no culturally appropriate, gender-specific drug treatment services for Indigenous women in Canada's prisons.

24. During its 2016 review of Canada, the CEDAW Committee expressed its concern with the "excessive use of incarceration as a drug-control measure against women," "high rates of HIV/AIDS among female inmates," and "the significant legislative and administrative barriers women face to access supervised consumption services." To address this, the Committee recommended that Canada "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," and 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."[lxv]

25. Moreover, the UN Standard Minimum Rules for the Treatment of Prisoners recommends that prisoners enjoy the same standards of health care that are available in the community.[lxvi] A number of UN agencies, including the UNODC, UNAIDS and the WHO have also recommended that prisoners should have access to a series of key interventions, including needle and syringe programs, condoms, drug dependence treatment, programs to address tattooing, piercing and other forms of skin penetration, and HIV treatment, care and support.[lxvii] Not only should these interventions be made available, but incarcerated women should have access to gender-specific and culturally appropriate health care that is at least equivalent to that available in the community.[lxviii]

STATES PARTIES MUST:

- **reduce the gaps in health service delivery related to drug use by scaling-up and ensuring access to culturally appropriate harm reduction services for Indigenous women, including needle and syringe programs, supervised consumption services, opioid agonist therapy, naloxone, and drug dependence treatment and support services, particularly in remote and rural communities, and in prisons;**

- **decriminalize the possession of all drugs for personal use, and develop appropriate models for the legalization, regulation and supply of currently criminalized substances — ensuring the meaningful involvement of people who use drugs and Indigenous organizations in the elaboration, implementation, and evaluation of these reforms;**

- **expand evidence-based alternatives to incarceration for people who use drugs, taking into account the need for culturally appropriate care for Indigenous women and girls;**

- **implement key health and harm reduction measures in all prisons, including needle and syringe programs, opioid agonist therapy, condoms and other safer sex supplies, and safer tattooing programs in consultation with prisoner groups, Indigenous organizations, and community health organizations, taking into account the need for culturally appropriate and gender-specific programs; and**

- **expand care, treatment, and support services in prison for women living with and vulnerable to HIV and HCV, including peer health programs, and ensure such support is developed and implemented to meet the specific needs of Indigenous women.**

[i] C. Hastings et al., 2021 (forthcoming).
[ii] See, for example, *R. v. Schenkels*, 2015 MBQB 44.
[iii] C. Hastings et al., 2021 (forthcoming).
[iv] 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.
[v] *R. v. Mabior*, 2012 S.C.C. 47 and *R. v D.C.*, 2012 S.C.C. 48.
[vi] Public Health Agency of Canada, *Estimates of HIV incidence, prevalence and Canada's progress on meeting the 90-90-90 HIV targets*, December 2020.
[vii] A. Sanderson et al., "Indigenous Women Voicing Experiences of HIV Stigma and Criminalization Through Art," *International Journal of Indigenous Health* 16:2 2021.
[viii] WATCH*, Brief to the Standing Committee on Justice and Human Rights Study on the criminalization of non-disclosure of HIV Status*, April 29, 2019.
[ix] 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.
[x] 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; 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.
[xi] *Gendered Impact of Criminalization of HIV Non-Disclosure*, supra 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.
[xii] A. Krüsi et al., "Positive sexuality: HIV disclosure, gender, violence and the law - A qualitative study," *PLOS ONE*, 13(8): e0202776, 2018 and 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
[xiii] UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Canada*, November 2016, at paras. 42 and 43.
[xiv] UNAIDS/UNDP, *Policy Brief: Criminalization of HIV Transmission*, August 2008.
[xv] 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.
[xvi] Global Commission on HIV and the Law, *HIV and the Law: Risks, Rights & Health*, July 2012.
[xvii] See the perspectives articulated in the documentary film, *Consent: HIV non-disclosure and sexual assault law* (Goldelox Productions & Canadian HIV/AIDS Legal Network, 2015).
[xviii] UN Human Rights Council, paras. 2, 51.
[xix] 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.
[xx] UN Committee on the Rights of the Child, *General Comment No. 20*, 2016.
[xxi] CEDAW Committee Concluding Observations, supra.
[xxii] See, for example, Canadian HIV/AIDS Legal Network, *The Perils of "Protection": Sex Workers' Experiences of Law Enforcement in Ontario*, 2019 and B. Sawchuk, "Undercover cops take aim at sex trade," *St. Catharines Standard*, July 20, 2016.
[xxiii] See, for example, Hamilton Police Service, "Project Orchid Takes Aim at Illegal Massage Parlours," June 3, 2019 and K. Nielson, "Waterloo police arrest man as part of province-wide 'Operation Northern Spotlight'," *Global News*, October 24, 2018.
[xxiv] See, for example, *The Perils of "Protection"*, supra.
[xxv] Ibid
[xxvi] See, for example, J. Levy and P. Jakobsson, "Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers," *Criminology & Criminal Justice* 1–15 (March 31, 2014); P. Östergren and S. Dodillet, "The Swedish Sex Purchase Act: Claimed success and documented effects," paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges, March 3-4, 2011, The Hague, Netherlands; and U. Bjørndah, *Dangerous Liaisons: A report on the violence women in prostitution in Oslo are exposed to*, Municipality of Oslo, 2012.

[xxvii] S. Machat et al., "Sex workers' experiences and occupational conditions post-implementation of end-demand criminalization in Metro Vancouver, Canada," *Canadian Journal of Public Health*, June 10, 2019.
[xxviii] B. McBride et al., "Third Parties (Venue Owners, Managers, Security, etc.) and Access to Occupational Health and Safety Among Sex Workers in a Canadian Setting: 2010-2016," *American Journal of Public Health* 109, 5 (May 2019): pp.792-798.
[xxix] K. Shannon et al., "Global epidemiology of HIV among female sex workers: influence of structural determinants," *Lancet* 385, 9962 (January 3, 2015): pp. 55–71.
[xxx] See B. McBride et al., supra.
[xxxi] *The Perils of "Protection",* supra, and Canadian Alliance for Sex Work Law Reform, *Pimps, Managers and Other Third Parties: Making Distinctions Between Third Parties and Exploitation*, 2014.
[xxxii] National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, Volume 1a, 2019 at pp. 663-4.
[xxxiii] A. Crago et al., "Sex Workers' Access to Police Assistance in Safety Emergencies and Means of Escape from Situations of Violence and Confinement under an "End Demand" Criminalization Model: A Five City Study in Canada," *Social Sciences* 10,1 (2021): pp. 1-15 at p. 5.
[xxxiv] Indeed, the *National Action Plan to Combat Human Trafficking* makes the unsubstantiated claim that the sexual exploitation of women and girls is the most common manifestation of trafficking in Canada. See Public Safety Canada, *National Action Plan to Combat Human Trafficking*, 2012.
[xxxv] A. Rose, "Punished for Strength: Sex Worker Activism and the Anti-Trafficking Movement," *Atlantis* 37, 2 (2015): pp. 57-64; POWER (Prostitutes of Ottawa/Gatineau Work, Educate, and Resist), *Ottawa Area Sex Workers Targets of Intrusive Police Visits*, 2014; *The Perils of "Protection",* supra.
[xxxvi] *The Perils of "Protection"*, supra.
[xxxvii] *Reclaiming Power and Place*, supra, Volume 1a, 2019 at p. 672.
[xxxviii] UNAIDS, *UNAIDS Guidance Note on HIV and Sex Work*, 2012.
[xxxix] J. Godwin, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and human rights in the context of sex work*, UNDP, 2012.
[xl] Global Commission on HIV and the Law (UNDP HIV/AIDS Group), *HIV and the Law: Risks, Rights & Health*, July 2012.
[xli] 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*.
[xlii] UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, Report on the 26th Session, UN General Assembly, agenda item 3, UN Doc. A/HRC/26/38/Add.1, 2014.
[xliii] UN Women, *Note on Sex Work, Sexual Exploitation and Trafficking*, October 9, 2013.
[xliv] Amnesty International, *Amnesty International Policy on state obligations to respect, protect and fulfill the human rights of sex workers*, May 2016.
[xlv] Global Alliance Against Traffic in Women, *Response to UN Women's consultation on sex work*, 2016.
[xlvi] B. Roose-Snyder, P. Mitchum and D. Shea, *Between Her and Her Rights: Criminalization of Sex Work is the Barrier*, December 16, 2016.
[xlvii] Government of Canada, *Opioid- and Stimulant-related Harms in Canada*, March 2021.
[xlviii] First Nations Health Authority, "First Nations Illicit Drug Deaths Rise during COVID-19 Pandemic, July 6, 2020.
[xlix] Ibid.
[l] CBC Radio Canada, "Les Premières Nations particulièrement touchées par les surdoses aux opioids," December 3, 2019.
[li] *Reclaiming Power and Place*, Volume 1b, 2019 at pp. 107 and 122.
[lii] *Reclaiming Power and Place*, Volume 1a, 2019 at p.444.
[liii] Ibid, at p. 672.
[liv] Public Health Agency of Canada, *HIV/AIDS Epi Updates: Chapter 8: HIV/AIDS among Aboriginal People in Canada*, December 2014, p. 1
[lv] N. Fairbairn, "Seeking refuge from violence in street-based drug scenes: Women's experiences in North America's first supervised injection facility," *Social Science & Medicine* 67 (2008) 817–823.
[lvi] J. Boyd, "Gendered violence & overdose prevention sites: A rapid ethnographic study during an overdose epidemic in Vancouver, Canada," *Addiction*, September 2018, DOI: 10.1111/add.14417.
[lvii] Ibid.
[lviii] Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2014–2015*, June 26, 2015.
[lix] Ibid.
[lx] See Office of the Correctional Investigator, *Annual report of the Office of the Correctional Investigator, 2017-2018*, 2018 and F. MacDonald et al., *Women offenders, substance use, and behaviour* (Research Report R-358), Correctional Service of Canada.

[lxi] See, for example, M.W. Tyndall et al., "Intensive injection cocaine use as the primary risk factor in the Vancouver HIV–1 epidemic," *AIDS* 17,6 (2003): pp. 887–893; H. Hagan, "The relevance of attributable risk measures to HIV prevention planning," *AIDS* 17,6 (2003): pp. 911–913.

[lxii] F. Kouyoumdjian et al, "Health status of prisoners in Canada: Narrative review," *Canadian Family Physician* 62:3 (March 2016): 215-222.

[lxiii] Ibid.

[lxiv] D. Zakaria et al., *Summary of emerging findings from the 2007 National Inmate Infectious Diseases and Risk-Behaviours Survey Research Report R-211*, Correctional Service of Canada, 2010.

[lxv] CEDAW Committee Concluding observations, supra.

[lxvi] Rule 24 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN Doc. A/RES/70/175, December 17, 2015.

[lxvii] UNODC, ILO, UNDP, WHO and UNAIDS, *Policy brief: HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, 2013.

[lxviii] Rule 10 of *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, UN Doc. A/RES/65/229, March 16, 2011.